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AND BUSINESS



# **Austria's Anti-corruption Laws – Evolution and International Standards, Status and Evaluation**

## **First Phase: reactions to corruption scandals**

- First Anti-corruption Act 1964
- Second Anti-corruption Act 1982
- Criminal Law Reform 1987

## **Second Phase: implementation of international standards**

- Corporate Criminal Liability Act 2005
- Criminal Law Reform 2008
- Anti-corruption Law Amendment Act 2009

# International Standards

<b>EU</b>	1 <sup>st</sup> Protocol to the Convention on the protection of the European Communities' financial interests 1996
	EU Anti-Corruption Convention 1997
	2 <sup>nd</sup> Protocol to the Convention on the protection of the European Communities' financial interests 1997
	Joint Action 98/742/JHA on corruption in the private sector / Council Framework Decision 2003/568/JHA on corruption in the private sector
	Public Procurement Directives 2004/17/EC, 2004/18/EC
<b>CoE</b>	Criminal Law Convention on Corruption 1999
<b>OECD</b>	Anti-Bribery Convention 1997
<b>UN</b>	UN Convention against Corruption 2003

# Implementation (highlights): criminal law

<b>anti-corruption offences</b>	wider scope of application: Community officials, officials of other states and international organisations, arbitrators
	pecuniary advantage → advantage
	corruption in the private sector: new provisions (sec. 168c – 168e Penal Code)
	harsher sanctions: up to ten years [Sec. 304 (2), 307 (2) Penal Code]!
<b>money laundering</b>	sec. 304-308, 168c and 168d Penal Code predicate delicts of sec. 165 Penal Code
<b>liability of legal persons</b>	Corporate Criminal Liability Act 2005

# Implementation (highlights): other fields of law

<b>procurement law</b>	Sec. 153a, 302, 307 Penal Code among the exclusion criteria of sec. 68 and 229 Federal Public Procurement Law
<b>tax law</b>	tax deductibility of bribes connected to exports sales abolished in 1999

# Implementation (highlights): criminal procedure

## **Specialized law enforcement authorities**

- Office of Prosecution for Corruption (Jan 1, 2009)
- Federal Anti-Corruption Bureau (Jan 1, 2010)

# Independent authorities

## UN Convention against Corruption

**Art. 36.** Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the **necessary independence**, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and **without any undue influence**. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

## Council of Europe Criminal Law Convention on Corruption

**Art. 20.** Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the **necessary independence** in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and **free from any undue pressure**. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

# Austria's Laws against Corruption

- Substantive Law
- Sec 153 - Breach of trust
- Sec 168 c, d - Bribery of civil servants
  
- Sec 302 - Abuse of authority
- Sec 304 – Corruption
- Sec 305 – Acceptance of a benefit
- Sec 306 – Preparation of corruption
- Sec 307 – Bribery
- Sec 307a – Granting of a benefit to a public official
- Sec 307b – Preparation of bribery
- Sec 308 – Illicit intervention
- Sec 165 – Money Laundering (304 et sequ. are predicates)

- Procedural Law
- Sec 19 – Confiscation (Konfiskation)
- Sec 20 – „Asset Recovery“ (Verfall)
  
- Sec 20a CPC – Office of Prosecution for corruption
- Sec 209a – Principal Witness

# 304 Corruption

- (1) A public official or an arbitrator, who demands, accepts or causes someone to promise an advantage for himself or a third person for performing or refraining from performing an official act in violation of his duties shall be punished by imprisonment of up to three years. Likewise to be punished is an expert assigned by the court or another administrative body for certain proceedings who demands, accepts or causes someone to promise an advantage for himself or a third person for delivering an incorrect evidence or expertise

- (2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from one year up to ten years.

# 305 Acceptance of a benefit by a public official

- (1) A public official according to section 74 par 1 (4a subpar b to d) or an arbitrator who accepts or causes someone to promise an advantage **contrary to an interdiction by public service or organization law** for himself or a third person for performing or refraining from performing an official act in accordance with his duties shall be punished by imprisonment up to two years.

- (2) Likewise such a public official or arbitrator shall be punished who demands an advantage for himself or a third person for performing or refraining from performing an official act in accordance of his duties, unless that was explicitly permitted according to a public service law or organization law provision or by a public service approval.

- (3) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from six months up to five years.

# 306 Preparation of corruption

- (1) An Austrian public official or arbitrator, a public official or arbitrator of another Member State of the European Union or a Community official, who demands, accepts or causes someone to promise an advantage for himself or a third person with the intention to initiate the performance or refrainment from performing of an official **act in violation of his duties** in the future shall be punished by imprisonment up to two years.

- (2) Likewise a public official according to section **74 par 1 (4a subpar b to d)** or an arbitrator shall be punished, who demands an advantage for himself or a third person with the intention to initiate the performance or refrainment from performing an official **act in accordance with his duties** in the future, **unless that was explicitly permitted by public service law provision or institutional service provisions or a public service approval.**

- (3) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from six month up to five years.

# 307 Bribery

- (1) Whoever offers, promises or gives an advantage to a public official or an arbitrator for himself or a third person for performing or refraining from performing an official act in violation of his duties, shall be punished by imprisonment up to three years. Likewise anybody is to be punished who offers, promises or gives an advantage to an expert (sec 304 par. 1) for himself or a third person for delivering an incorrect evidence or expertise.
- (2) ...

# 307a Granting of a benefit to a public official

- (1) Whoever offers, promises or gives an advantage to a public official according to section 74 par 1 (4a) subpar b to d or an arbitrator contrary to an interdiction by public service or organization law for himself or a third person for performing or refraining from performing an official act in accordance with his duties shall be punished by imprisonment of up to two years.
- (2) ...

# 307b Preparation of Bribery

- (1) Who offers, promises or gives an advantage to an Austrian public official or arbitrator, a public official or arbitrator of another Member State of the European Union or a Community official for himself or a third person in order to initiate the performance or refrainment from performing of an official act in violation of such duties in the future shall be punished by imprisonment up to two years.
- (2) ...

# Common Elements

- Public official
- Advantage

# Public Official

## Sec 74 (1) 4a lit a - d

- **A public officer is anyone who**
- Lit a) Is a member of a domestic constitutional assembly, insofar as he votes in an election or ballot or otherwise acts or refrains from acting in the exercise of the duties determined in the internal rules of procedure

- Lit b) As an organ or employee dischargers tasks of legislation, administration or justice for the federation, for a province (Bundesland), for association of municipal corporations, for a commune, for a social insurance institution or its association, for another state or for an international organisation, with the exemption of public officials mentioned under a) when executing their duties,

- Lit c) Is otherwise authorised to perform official duties in fulfilment of the law for a body mentioned under b)

- Lit d) Acts as an organ of a legal entity or due to the employment status to a legal entity, which is under the review of the court of auditors, or a comparable institution of the Provinces (Länder) or a comparable international or foreign control institution and works by far predominantly for the administration of a body mentioned under b)

# Advantage

- Every advantage – no restrictions
- - pecuniary advantage  
BUT also every other benefit:
- - social benefits
- - professional benefits

- Procedural Law
- Sec 19 – Confiscation (Konfiskation)
- Sec 20 – „Asset Recovery“ (Verfall)
  
- Sec 20a CPC – Office of Prosecution for corruption
- Sec 209a – Principal Witness

# Problems

- Public Official
  - Members of a domestic constitutional assembly
  - Foreign officials
- Acceptance of a benefit (305)
- Corruption/Bribery of Servants or Agents (168 c,d)
- Principal Witness
- Independence of prosecutors
- Party funding