

Transparency International on progress by Austria

Austria has scored 67/100 in the 2024 Transparency Corruption Perceptions Index (CPI), with the country now ranked 25th out of 180 countries. This translates to a 4-point drop in Austria's score compared to the 2023 ranking and the country's worst performance since the CPI was first published in 2012. The main reasons for this lower ranking include the recurring political scandals that have resulted in several criminal investigations

in recent years. Attempts to exert political influence over independent media are another reason for this year's ranking.

Below, we provide a short overview of the legal framework governing criminal liability for bribery in Austria, in which we highlight key aspects of national and international relevance, including cross-border compliance considerations.

1. Bribery and corruption

In Austria, bribery is a punishable offence in both the public and private sectors.

With respect to bribery in the public sector, Austria distinguishes between acts or omissions (i) in violation of an official's duties and (ii) in performance of an official's duties.

Public officials are prohibited from receiving, demanding or accepting a promise of benefits in exchange for acting or refraining from acting in a way that either violates or is consistent with their duties (passive bribery). Likewise, the act of offering, promising or giving a bribe (active bribery) is also prohibited. For criminal liability to arise, the bribe need not target specific behaviour by the public official. Anyone who commits an offence in some way relating to the future performance of official duties is liable to prosecution.

However, an exception applies to certain benefits where there is no violation of official duties. Criminal liability does not extend to benefits that (i) are permitted by law, (ii) serve an official or objectively justified interest, (iii) serve charitable purposes over which the public official or a family member of the public official does not exercise decisive influence, and (iv) are considered small courtesy gifts in line with local or national customs.

The Austrian Criminal Code does not stipulate a specific monetary limit. Legal doctrine, however, advocates an upper limit of EUR 100, while the Supreme Court has adopted a case-by-case approach, so that even EUR 100 may be too high if the benefit is not customary.

Regarding private sector bribery, any person being an employee or representative of a company who, in the course of business transactions, demands, accepts, or accepts the promise of an advantage in return for the execution or omission of a legal act in breach of the person's duties is criminally liable. The same applies for any person who offers, promises or provides such advantage to a company employee or representative. Again, legal doctrine advocates an upper limit of EUR 100.

2. Corporate criminal liability (including bribery offences)

Under the Austrian Corporate Criminal Liability Act, a company can be liable for criminal offences committed by a decision-maker or employee under certain conditions. The main condition is that the offence must have been committed for the benefit of the company or must have violated obligations that apply to the company.

If this condition is met, both the offender and the company can be criminally prosecuted and convicted. In the event of a conviction, the company will be sentenced to a (conditional) fine, the amount of which will depend on the offence committed and the company's turnover.

3. Duty to report bribery

For private individuals and privately held companies, there is no obligation under Austrian law to report criminal offences to the law enforcement authorities. However, bribery and corruption can be reported by anyone – anonymously if preferred – through avenues such as the whistleblowing channel set up on the website of the Public Prosecutor's Office for the Prosecution of Economic Crimes and Corruption (reports can be made in German or in English).

4. Legal privilege and cross-border investigations

In Austria, some professional groups enjoy legal privilege. These include attorneys-at-law, psychiatrists, probation officers and media owners. These professionals have a right to refuse to testify – a right that cannot be circumvented by seizure and confiscation, interrogation of auxiliary staff or other means.

In the often highly complex proceedings concerning corruption and white-collar crime, the evaluation of evidence seized during house searches has often been delayed by several months due to the mere assertion of the existence of legal privilege.

5. Whistleblowing

Companies and legal entities in the public sector with at least 50 employees must establish an internal whistleblowing system. The whistleblowing system must protect the whistleblower's identity and allow whistleblowers to provide information in writing and/or orally.

No later than three months after receiving a whistleblowing report, the internal unit must inform the whistleblower of the follow-up measures that it has taken or intends to take or the reasons why the internal unit is not following up on the report.

6. Non-trial resolution of bribery cases

Austrian law stipulates a crown witness ("Kronzeuge") provision. If the offender – the crown witness – voluntarily makes a remorseful confession and provides information which contributes significantly to the clarification of an offence, he or she has the right to request that the public prosecutor's office impose alternative measures (e.g. a fine) instead of an indictment and withdraw the prosecution if the offender complies.

If a company cooperates with law enforcement, the result can be a discounted fine or even withdrawal from prosecution.

7. Non-trial resolution of bribery cases

There are no plea agreements in Austrian criminal law. Agreements regarding the severity of a sentence are illegal.

In general, the public prosecutor can withdraw from prosecution regarding minor offences and under certain circumstances may impose alternative measures (e.g. a fine) instead of an indictment. However, if the core criminal offence concerns active or passive bribery, this is only possible in the context of the crown witness programme described above.

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