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NATIONAL POLICY

As a country located in the centre of Europe, Austria attaches great importance to the fight against terrorism in general and to its prevention in particular. The Austrian counter-terrorism policy is guided by respect for human rights, effective law enforcement and full international co-operation.

Since counter-terrorism comprises a broad range of activities, it is essential to ensure that necessary measures are taken in a co-ordinated manner and that these measures complement one another. Prevention activities go hand in hand with the protection of citizens and potential targets for terrorists. The protection of so-called critical infrastructures is important in this respect. Tools which were effective and proved successful in the fight against money laundering are also important to forestall attacks and to prevent activities being financed by terrorism. In order to assess possible future threats, a national security research programme was launched in 2005.

Recent terrorist attacks in Europe have been carried out with the support and participation of members of local communities. Therefore it is of utmost importance to foster links between various communities in Austria to further integration and to prevent alienation of national, ethnic or religious groups. Given the demographic changes over the last 20 years it has become evident that a meaningful dialogue between mainstream religious groups is essential. Consequently, Austria actively supports inter-cultural dialogue and seeks a firm commitment by all communities to European democratic values.

LEGAL FRAMEWORK

General information

Austrian legal provisions are available on the internet (www.ris.bka.gv.at), where both the Federal Law gazette¹ and the text of the legal provisions itself² can be obtained³.

As one of the most important recent amendments, the Penal Law Amending Act 2002⁴ has broadened the scope of the Penal Code⁵ with respect to

combating terrorism. Among other provisions, those concerning Austrian jurisdiction, money laundering, organisational offences and computer-related offences, confiscation of illegal profits and forfeiture of property were amended.

Furthermore, the pre-trial phase of criminal proceedings as regulated by the Code of Criminal Procedure (CCP)⁶ will be completely re-organised by the Criminal Procedures Reform Act⁷. The latter will enter into force by 1 January 2008; until that time, the current applicable legal provisions will be in force⁸.

A government bill submitted to Parliament very recently and which will probably enter into force on 1 January 2006⁹, will set up both substantive and procedural provisions concerning the responsibility of legal persons and other entities for all penal offences.

Penal law

Individual terrorist acts

In Austria, **individual terrorist acts** are punished in accordance with the provisions of the general criminal statutes. As a rule, the following offences might be applicable: murder¹⁰, intentional bodily harm¹¹, criminal offences against personal liberty¹² (especially deprivation of liberty¹³, extortionate kidnapping¹⁴, coercion¹⁵ and dangerous threat¹⁶), damage to property¹⁷ (including damage to data, disturbance of the operability of a computer system and abuse of computer programmes or entrance date¹⁸), criminal offences which are a threat to the public¹⁹ (among others: arson, endangering by nuclear energy, ionising radiation or by explosives, preparation of a crime by means of nuclear energy, ionising radiation or explosives, endangering of the public, production or distribution of weapons of mass destruction, illicit handling of nuclear material or radioactive substances and endangering of people by transmissible diseases²⁰ as well as hijacking and

⁶ Strafprozessordnung; abbreviated: StPO.

⁷ Strafprozessreformgesetz; abbreviated: StPRG; Federal Law Gazette I No. 19/2004.

⁸ It is essentially the currently applicable legal situation which is outlined below. However, reference is also made to the most important changes by the StPRG.

⁹ Verbandsverantwortlichkeitsgesetz.

¹⁰ Section 75 Penal Code.

¹¹ Section 83 et seqq. Penal Code.

¹² Section 99 et seqq. Penal Code.

¹³ Section 99 Penal Code.

¹⁴ Section 102 Penal Code.

¹⁵ Section 105 et seq. Penal Code.

¹⁶ Section 107 Penal Code.

¹⁷ Section 125 et seq. Penal Code.

¹⁸ Sections 126a to 126c Penal Code.

¹⁹ Section 169 et seqq. Penal Code.

²⁰ Sections 169 to 179 Penal Code.

¹ Bundesgesetzblatt; abbreviated: BGBl.

² Partly in English.

³ Further information of interest can be obtained from the following websites: www.bmj.gv.at; www.bmi.gv.at; www.bmf.gv.at; www.fma.gv.at.

⁴ Strafrechtsänderungsgesetz 2002; Federal Law Gazette I No. 134/2002; mainly entered into force on 1 October 2002.

⁵ Strafgesetzbuch; abbreviated: StGB.

willful interference with the safety of aviation²¹) and criminal offences against public order (especially "Landzwang"²², instigation to criminal offences and approval of criminal offences²³). In addition, the criminal offence punishable under Section 50 of the Weapons Act²⁴ or Section 7 of the War Material Act²⁵ could be mentioned. Finally, the criminal offences of money laundering²⁶ and financing of terrorism²⁷ – the latter providing for imprisonment from six months to five years for whoever provides property assets or collects them with the intent that they be used for the commitment of certain terrorist acts – are to be noted in this context.

Furthermore, not only the immediate offender is held criminally liable but also any person who incites another person to commit the offence or contributes to the offence committed by another person²⁸. Preparatory acts constitute a criminal offence as soon as the offender begins to carry out his/her decision to commit the offence i.e. incites another person to do so by means of an action immediately preceding the commission of the offence²⁹.

Organisational offences

In addition to the criminalisation of individual terrorist acts, certain **organisational offences** exist in substantive criminal law. **Section 278b of the Penal Code** contains a special provision concerning terrorist associations. According to this provision, whoever leads a terrorist association is to be sentenced to five to fifteen years' imprisonment (one to ten years, if the terrorist association confines itself to merely threatening to commit terrorist offences)³⁰. The participation as a member of a terrorist association is to be sentenced by one to ten years' imprisonment³¹. As such, a member of a terrorist association is considered as whoever commits a criminal offence as part of a terrorist association or participates in its activities by providing information or assets, knowing that in this way he/she promotes the association or its terrorist acts³². Therefore, *inter alia* the mere incitement to join a terrorist association would constitute a criminal offence³³.

The definition of terrorist association is to be found in Section 278b, paragraph 3 of the Penal Code³⁴, whereas terrorist offences are enumerated in

Section 278c, paragraph 1 of the Penal Code³⁵. Paragraph 2 of the latter provision contains a general qualifying rule for the commission of such terrorist offences that increases the applicable sentence for the respective offence by half (up to the maximum of twenty years).

Furthermore, the organisational offences of Criminal Association³⁶ and Criminal Organisation³⁷, which criminalise the establishment or membership of such associations or organisations, could also be of relevance in the given context.

Jurisdiction

Cases where Austria exercises jurisdiction are governed by Sections 62 et seq. of the Penal Code. As a basic principle, all criminal acts committed on Austrian territory are punishable according to Austrian Law³⁸. Commission on Austrian territory means that either the act has or should have taken place, or the result corresponding to the constituting elements of the offence has totally or partially ensued or should have ensued according to the notion of the offender on Austrian territory³⁹.

Cases where Austrian jurisdiction is established despite the fact that the criminal act has been committed abroad are governed by Section 64 et seq. of the Penal Code. Terrorist association (Section 278b of the Penal Code) and terrorist acts (Section 278c, paragraph 1 of the Penal Code) as well as certain other severe criminal acts committed in such a context are prosecuted in Austria if a domestic connecting factor is set out by law (e.g. the alleged perpetrator was Austrian when acting, obtained Austrian citizenship after the act, lives in Austria, or was a foreigner when committing the act, continues to live in Austria but cannot be extradited) is given⁴⁰. Similar rules are applicable in the case of financing of terrorism (Section 278d of the Penal Code)⁴¹. Furthermore, in principle Austrian jurisdiction exists over foreign nationals, who have committed other criminal offences abroad and are found in Austria and cannot be extradited to another State⁴².

Confiscation and forfeiture

Profits obtained from or for the commission of a criminal offence are to be confiscated by court under certain conditions⁴³. Furthermore, property at the disposal of a terrorist association or which has been provided or collected as a means of financing terrorism shall be declared forfeited under certain conditions, even if the property derives from an offence where Austrian jurisdiction does not exist, if

²¹ Section 185 et seq. Penal Code

²² A rather old-fashioned term that could be translated as "acts of terror"; Section 275 Penal Code.

²³ Section 282 Penal Code.

²⁴ Waffengesetz.

²⁵ Kriegsmaterialgesetz.

²⁶ Section 165 Penal Code.

²⁷ Section 278d Penal Code.

²⁸ Section 12 Penal Code.

²⁹ Section(s) 15 (in conjunction with 12 second case) Penal Code.

³⁰ Section 278b paragraph 1 Penal Code.

³¹ Section 278b paragraph 2 Penal Code.

³² Sections 278b paragraph 2 in conjunction with 278 paragraph 3 Penal Code.

³³ According to Sections 12 second case in conjunction with 278b paragraph 2 Penal Code.

³⁴ A union planned for longer, by more than two persons, aimed at the commitment of one or more terrorist criminal offences, by one or more members of the association.

³⁵ Only the less condemnable of the before mentioned offences are not included.

³⁶ Section 278 Penal Code.

³⁷ Section 278a Penal Code.

³⁸ Section 62 Penal Code.

³⁹ Sections 62 in conjunction with 72 paragraph 2 Penal Code.

⁴⁰ Section 64 paragraph 1 no. 9 Penal Code.

⁴¹ Section 64 paragraph 1 no. 10 Penal Code.

⁴² Section 65 paragraph 1 no. 2 Penal Code.

⁴³ Section 20 et seq. Penal Code.

the offence is punishable under the law of the State where it was committed⁴⁴. Generally, forfeiture could apply to all property and items located in Austria⁴⁵.

Procedural rules

The Austrian Code of Criminal Procedure does not provide separate procedures for prosecuting persons suspected of terrorist acts, leading or participating in a terrorist association or criminal acts committed in such a context. This means that legally there are no differences between criminal proceedings based on a suspicion of criminal acts related to terrorism and proceedings based on a suspicion of other criminal acts⁴⁶. Therefore, all provisions of the CCP, which apply to other suspects before or during trial, are to be applied to those suspected of criminal acts related to terrorism. Some particular cases are to be adjudicated by the competent Court according to the CCP and the rights of the defence are the same as in all other cases.

Investigation methods

Regarding **investigation methods** representing a restriction of fundamental rights, the following should be mentioned in the context of terrorism: provisions on search of a house or a person⁴⁷, seizure⁴⁸, search and seizure of documents⁴⁹ and seizure and opening of letters and other items to be delivered⁵⁰.

However, as terrorist acts regularly constitute serious offences, more intrusive investigation methods reserved for more serious offences⁵¹, especially those committed in the context of organised crime, are applicable: provisions on obligation to give evidence concerning bank accounts⁵², monitoring of a telecommunication⁵³, audio-visual monitoring of individuals by technical means⁵⁴ and computer-aided data cross-referencing⁵⁵.

Furthermore, to safeguard orders confiscating illegal profits or forfeiting property (especially in the case of suspicion that property is at the disposal of a terrorist association or was provided or collected for the purpose of financing terrorism), the possibility for issuing a **provisional injunction** is foreseen by Section 144a of the CCP. Pending transactions can be temporarily interdicted (postponed) in accordance with Section 41, paragraph 3 of the Banking Act⁵⁶.

As a general rule it can be said that most of the investigation methods mentioned have to be ordered by an investigating judge upon request by the public prosecutor. However, more intrusive methods like the monitoring of a telecommunication, the audio-visual monitoring of individuals by technical means and the computer-aided data cross-referencing (especially concerning data not acquired or processed by court or police for the purpose of criminal proceedings) require a judicial order issued by a chamber comprised of three judges ("Ratskammer")⁵⁷.

When investigating terrorist-related offences, the following topics are of particular relevance: as a basic rule, all authorities involved in the handling of a criminal case (police, public prosecutor, court) are obliged to **maintain objectivity** and to **inform the alleged offender of all procedural rights** even if this is not expressly provided for by law. Above all, judicial authorities are strictly bound to submit **both incriminating and exonerating evidence**⁵⁸. **Non-disclosure** of evidence and files is only admissible as long as it is to be assumed that the disclosure would endanger the purpose of investigations. After formal indictment the defendant has the right to inspect the files without any restrictions⁵⁹.

The police are required to inform a suspected person at the beginning of an interrogation that he or she has the right to be interrogated in the **presence of his or her defence counsel**. In fact an arrested person has to invoke the right to the presence of a lawyer. Nevertheless the police are not required to wait until the defence counsel arrives. Whenever certain circumstances lead to the risk that the purpose of the investigation would otherwise be endangered, it is possible to refuse the attendance of defence counsel during the interrogation⁶⁰.

Furthermore, a **detained person** has to be **informed** immediately and prior to an interrogation on the grounds of the suspicion and the detention, of the right to inform a relative, another reliable person and a legal adviser (lawyer) and of the right to refuse to testify (right to remain silent). Furthermore, the detained person has to be warned that his/her testimony may also be used against him/her⁶¹. Even if the suspected person is not arrested he/she has the right to be informed of the grounds of the suspicion prior to a formal questioning⁶².

⁴⁴ Section 20b et seq. Penal Code.

⁴⁵ Section 65b Penal Code.

⁴⁶ However, in practice the need for more intrusive or urgent measures might be expressed.

⁴⁷ Sections 139 et seqq. CCP.

⁴⁸ Sections 143 et seq. CCP.

⁴⁹ Section 145 CCP.

⁵⁰ Section 146 et seqq. CCP.

⁵¹ Usually defined by the maximum applicable sentence.

⁵² Section 145a CCP.

⁵³ Sections 149a et seqq. CCP.

⁵⁴ Sections 149d et seqq. CCP.

⁵⁵ Sections 149i et seqq. CCP.

⁵⁶ Bankwesengesetz, abbreviated BWG.

⁵⁷ Usually, but not in all cases, the police or the investigating judge can order such a measure instead of the investigating judge or the chamber of three judges in cases of imminent danger.

⁵⁸ Section 3 CCP.

⁵⁹ Section 45 paragraph 2 CCP.

⁶⁰ Common decree of the Federal Ministry of the Interior and the Federal Ministry of Justice of 14 February 2003; Official Journal of the Austrian Administration of Justice ("Amtsblatt der österreichischen Justizverwaltung") No. 13/2003.

⁶¹ Article 4 paragraph 6 Federal Constitutional Act on the Protection of Personal Liberty (Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit); Section 178 CCP.

⁶² Section 199 CCP.

Whenever a suspected person is arrested in execution of a written warrant issued by a judge, the issuing court is to be informed immediately of the arrest and the person must be brought before this court without delay, at the latest within 48 hours of the arrest. After being brought to the court jail, the arrested person has to be heard by an investigating judge without delay, at the latest within 48 hours upon transfer to court⁶³. In cases where a person is arrested without a judicial warrant, the police are required to immediately interrogate this person concerning the grounds of the suspicion and the reasons for detention⁶⁴, and to bring the person to the court jail within 48 hours of the arrest.

After being heard by an investigating judge, the latter must declare at once whether the suspect is remanded in custody. In any event, this decision must not be taken later than 48 hours after transfer to the court jail⁶⁵. Before trial, decisions on (continuation of) remand are valid only for a certain period of time. A hearing on the justification of further detention ("Haftverhandlung") has to be held each time before the period expires; otherwise the detainee must be released. The first hearing after the initial court decision on remand has to take place within 14 days of the arrest, the following one within one month upon the first prolongation and every ensuing one within two months of the previous decision⁶⁶. Review takes place automatically (ex officio). Once the trial of the case has been opened, there are no further ex officio hearings on the justification of detention.

A **house search**, that is the search of the flat and the other premises belonging to a dwelling, may be conducted only in the case of reasonable suspicion that a person being suspected of an offence is hidden in it or that there are objects whose possession or inspection could be important for a specific investigation. As a rule, a house search requires a founded court order and is only permissible after an interrogation of the holder and if this interrogation did not eliminate the grounds for the search.

Audio-visual monitoring by technical means and computer-aided data cross-referencing are subject to certain conditions when being applied (e.g. decision by a chamber of three judges; suspicion of a criminal act, which is punishable by more than ten years' imprisonment, suspicion of the offence of terrorist association or suspicion of a criminal act committed by members of such an association as well as to prevent such acts; compliance with the principle of proportionality) and implemented (e.g. transfer of the essential results in writing; report to the chamber of three judges; right of the person charged to have an insight into the material; appointment of a

commissioner for legal protection in charge of monitoring the procedure).

Competences

Austrian procedural law provides for four different types of courts regarding the main trial in the first instance in criminal matters. The competences of the court depend in principle on the maximum length of the possible sentence; however, there are a few exceptions⁶⁷. District courts ("Bezirksgerichte") have jurisdiction concerning offences punishable by no more than one year's imprisonment, whereas regional courts ("Landesgerichte") sit either as single judge ("Einzelrichter")⁶⁸ or as "Schöffengericht"⁶⁹ (two professional and two lay judges) or as "Geschworenengericht"⁷⁰ (three professional judges, and eight lay judges deciding as a jury on the guilt of the defendant). As a rule, criminal acts related to terrorism will take place before the regional court.

Concerning offences which are incumbent upon regional courts, both the public prosecutor⁷¹ and the investigating judge⁷² can be in charge of the investigations, in other words lead the pre-trial proceedings. The office of the public prosecutor is organised along the structures of the court system; this means, for instance, that an office of the public prosecutor is established in each regional court.

Criminal Procedure Reform Act

One of the major changes introduced by the Criminal Procedure Reform Act is that after 1 January 2008, only the public prosecutor will lead pre-trial investigations and the court will in principle merely be responsible for exercising judicial control and granting legal protection⁷³. Furthermore, the investigation methods mentioned above are adapted to meet modern investigation needs⁷⁴.

Other relevant legislation

Witness protection

An important aspect in the fight against terrorism is being able to offer witness protection. With the establishment of a centrally organised Witness Protection Unit within the Ministry of the Interior necessary protection measures can be ensured. Such measures play a significant role in successfully combating organised crime and terrorism.⁷⁵

⁶⁷ Section 10 et seqq. CCP.

⁶⁸ Offences punishable by no more than five years' imprisonment.

⁶⁹ Offences punishable by more than five years' imprisonment.

⁷⁰ Offences punishable with a maximum penalty of more than ten years' and a minimum penalty of no less than five years' imprisonment.

⁷¹ So-called "Vorerhebungen", a very preliminary stage in which the investigation can be also directed against several suspects or a yet unknown suspect.

⁷² So-called "Voruntersuchung", which can only be directed against one suspect and is obligatory in certain cases (e.g. in the case of pre-trial detention).

⁷³ Accordingly, the office of the "investigating judge" will cease to exist.

⁷⁴ E.g. explicit rules on the examination of DNA and the use of undercover investigators as investigation methods will be introduced into the CCP.

⁷⁵ The legal bases for witness protection are provisions in the Penal Code (Section 41a), the CCP (Sections 162a paragraph 2, 166 paragraph 1, 166a, 247a paragraph 1, 229 paragraph 1, 230 paragraph 2, 250 paragraph 1) and the Security Police Act (Sections 22 paragraph 1 subparagraph 5 and 54a).

⁶³ Sections 176 paragraph 2 and 179 paragraph 1 CCP.

⁶⁴ Section 177 paragraph 2 CCP.

⁶⁵ 96 hours after arrest at the latest; Section 179 CCP.

⁶⁶ Section 181 CCP.

The police are obliged to inform those persons at risk⁷⁶ and to take the necessary protective measures if it has good reasons to suspect that these persons might be the target of a punishable offence directed against their life, health or personal liberty⁷⁷. Furthermore, the police are entrusted with the protection of any person who might be able to disclose information on a dangerous attack or on a criminal association and would, as a result, be at risk⁷⁸.

Measures to protect witnesses which may be at risk in the framework of a criminal procedure include provisions to hear witnesses whose identities are not disclosed⁷⁹, allowing pre-trial records of cross-examination of witnesses⁸⁰, conducting questioning by means of telecasting if a witness is unable to appear in court without exposing him/herself to a serious threat⁸¹ and conducting closed court hearings⁸². The application of such measures is decided by the court.

Procedural situation and compensation of victims

The legal situation of victims of criminal acts⁸³ will be improved by a government bill which was submitted to Parliament very recently and will probably enter into force on 1 January 2006, to a considerable extent that is⁸⁴. According to this Amendment to the CCP, persons who were allegedly victims of an intentionally committed offence and certain close relatives of these persons are - under specified conditions, particularly if this is necessary to safeguard their rights - entitled to psycho-social and legal counselling during the proceedings. This encompasses *inter alia* legal consultation and representation by a lawyer during the proceedings⁸⁵.

According to the Crime Victims Act⁸⁶, Austrian citizens, citizens of other EU or EEA member States as well as others who are legally staying in Austria or on an Austrian (air)ship at the moment of the crime, are entitled to financial compensation and social benefits (like psychological care) under certain conditions, if they suffered bodily harm as a result of an intentionally committed offence for which a sentence of more than six months' imprisonment is provided. Furthermore, anybody who claims to have suffered damage deriving from an alleged offence is in principle entitled to claim

compensation for this damage as part of the criminal proceeding⁸⁷.

As a basic rule, authorities involved in the handling of a criminal case are obliged to inform a victim about procedural as well as compensation rights⁸⁸.

Prevention of financing of terrorism

The above-mentioned criminal offences of money laundering and financing of terrorism as well as the possibilities of confiscation, forfeiture and of issuing a provisional injunction or a temporary interdiction of pending transactions, contribute to the prevention of financing of terrorism⁸⁹.

Furthermore, credit and financial institutions are obliged to inform the authorities without delay about the reasonable suspicion⁹⁰; a transaction, for example, which serves to launder money or is destined to finance terrorism, has to be mentioned⁹¹. In such cases the further execution of the transaction has to be stopped unless there is a risk that a delay in the transaction would complicate or obstruct investigations⁹². Furthermore, credit and financial institutions shall provide, upon request, all information deemed necessary to prevent or prosecute money laundering.

Special due diligence duties for credit and financial institutions to combat money laundering and financing of terrorism are established by Sections 39 and 40 of the Banking Act⁹³.

To identify and disrupt the channels through which terrorism is funded is a central part of **Austria's strategy against terrorism**. The measures taken after the terrorist attacks of September 2001 extended the legislation regarding the fight against money laundering to also cover the financing of terrorism.

According to FATF Special Recommendation IV financial institutions and other defined professions (lawyers, notaries, real estate agents, tax advisers, accountants, dealers in high value goods, casinos) are required to submit a suspicious transaction report to the Austrian Financial Intelligence Unit not only in the case of suspicion of money laundering, but also when there are reasonable grounds to suspect the funding of terrorism.

This requirement applies also to the financial transfer business and foreign exchange offices. Alternative

⁷⁶ Thus including also witnesses of any criminal act.

⁷⁷ Section 22 paragraph 4 Security Police Act.

⁷⁸ Section 22 paragraph 1 subparagraph 5 especially in connection with Section 54a Security Police Act.

⁷⁹ Section 166a CCP; however, courts have to consider carefully that the probative value of an anonymous statement of a witness might be reduced.

⁸⁰ Section 162a CCP; the code of practice also allows witnesses to disguise themselves, for example by using wigs, sunglasses, etc.

⁸¹ Section 247a paragraph 1 CCP.

⁸² Section 229 et seqq. CCP.

⁸³ According to Austrian legislation, a special regime on both the procedural situation and the compensation of victims of criminal acts with a terrorist background does not exist.

⁸⁴ Thus anticipating the improvement of the situation of crime victims by the Criminal Procedures Reform Act.

⁸⁵ Both during the pre-trial and the main trial phase.

⁸⁶ Verbrechensoforgesetz – VOG; recently amended by Federal Law Gazette I No. 48/2005. This amendment broadened the scope of application and mainly entered into force on 1 July 2005.

⁸⁷ Section 47 paragraph 1 CCP.

⁸⁸ Section 47a CCP; Article II Section 14 Crime Victims Act.

⁸⁹ Austria has also signed the recent Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism and will as early as possible adjust its legislation accordingly.

⁹⁰ Further duties to report could be found among others in Section 21 Commercial Paper Supervision Act (Wertpapieraufsichtsgesetz); Section 25 Stock Exchange Act (Börsegesetz); Section 18a Gambling Act (Glücksspielgesetz); Section 36c Act on the Organisation of the Notary's Office (Notariatsordnung); Section 8c Act on the Organisation of the Advocate's Office (Rechtsanwaltsordnung); Section 365r Trade Code (Gewerbeordnung).

⁹¹ Section 41 paragraph 1 to 2 Banking Act.

⁹² Pending transactions can be postponed in accordance with Section 41 paragraph 3 Banking Act.

⁹³ In particular, general due diligence duties are contained in Section 39 Banking Act.

remittance such as hawala banking is illegal in Austria since only banks and other financial institutions subject to the provisions of the Austrian Banking Act are allowed to perform banking transactions. By including the activities of the financial transfer business and foreign exchange offices into the list of banking activities, any institution offering these services needs a license from the Financial Market Authority (FMA). As a consequence, the FMA as supervisory authority controls the compliance with the Customer Due Diligence provisions of the Banking Act. In this way Austria has fully implemented FATF Special Recommendation VI.

The non-profit sector is considered particularly vulnerable as far as financing of terrorism is concerned. Therefore an amendment to the Austrian Associations Act has increased the level of transparency. The duty to register is supplemented by rules concerning accounting and disclosure obligations. Austrian authorities are convinced that this system is an effective and efficient way to implement FATF Special Recommendation VIII.

Austria also implemented FATF Special Recommendation IX through an amendment to the Austrian Customs Law which took effect on 1 May 2004. It contains provisions about cash control such as customs officers' powers to question travellers and to control the transfer of cash and other means of payment across the borders. According to an EU Regulation on controls of cash entering or leaving the EU, which is close to adoption, an automatic declaration system (if the amount exceeds 10,000 €) will be implemented in the near future.

Security Police Act⁹⁴

According to the legal basis of the Security Police Act the maintenance of public security, which comprises the prevention of threats and the preventive protection of legal interests, rests with the security authorities.

The security authorities are entrusted with the prevention of threats of a general nature⁹⁵. Furthermore, they are responsible for the prevention of criminal associations and dangerous attacks.

As far as the prevention of dangerous attacks is concerned, the security authorities shall, if possible, take action before punishable acts are committed. The prevention of criminal associations does not only aim at preventing single punishable acts, it also targets criminal structures. According to Austrian law it is possible in this context to collect and process personal data also by video and sound recording devices. If there is a risk that the prevention of terrorist attacks or other dangerous activities of criminal associations cannot be ensured or if it is considerably complicated, investigations can be carried out by covert means.

⁹⁴ Sicherheitspolizeigesetz; Security Police Act (SPG).

⁹⁵ Section 21 paragraph 1 of the Security Police Act.

As far as the prevention of threats is concerned, it falls upon the security authorities to explore the danger, if there is suspicion of a threat, i.e. if there are certain facts justifying the assumption that a dangerous situation exists.

The security authorities can conduct an extended exploration of threats⁹⁶ as a preventive measure. Accordingly, surveillance measures can be carried out against groups, if, in terms of their structures and expected developments in their surroundings it is to be assumed that crimes posing a severe threat to public security, particularly violent acts based on ideological and religious motives, will follow. Before this measure is taken, it is required to obtain the opinion of a legal protection expert.

Another preventive measure laid down by law is the surveillance of public places by video and sound recording devices⁹⁷. This is intended for places which have proven to be particularly crime prone such as streets where there is drug-trafficking. Surveillance measures can be taken in this context assuming that if they were not, dangerous attacks on life, health or property could be carried out.

Other preventive measures

As preventive measures, the use of undercover investigators and undercover audio-video recording is only permissible to avert criminal alliances, if the commission of a criminal offence provided for with more than one year's imprisonment is likely⁹⁸. Furthermore, a special commissioner for legal protection has to be informed⁹⁹.

INSTITUTIONAL FRAMEWORK

Police, criminal prosecution, immigration control, customs, taxation and financial supervision in principle fall within federal competences and respectively are tasks incumbent to federal agencies. The federal ministries responsible for the most part are those of the Interior¹⁰⁰, Justice¹⁰¹ and Finance¹⁰².

Besides the above-described organisational system of public prosecutor's offices and courts, the federal agencies to be mentioned in this context are the Federal Bureau of Criminal Investigation¹⁰³, the Federal Agency for State Protection and Counter-Terrorism¹⁰⁴, the reporting point for money laundering¹⁰⁵ and the Financial Market Authority¹⁰⁶.

Further (organisational) information can be obtained from the following websites:

⁹⁶ Section 21 paragraph 3 of the Security Police Act.

⁹⁷ Section 54 paragraph 6 of the Security Police Act.

⁹⁸ Section 54 paragraph 3 et seqq. Security Police Act.

⁹⁹ Section 62 et seq. Security Police Act.

¹⁰⁰ Bundesministerium für Inneres; abbreviated: BMI.

¹⁰¹ Bundesministerium für Justiz; abbreviated: BMJ.

¹⁰² Bundesministerium für Finanzen; abbreviated: BMF.

¹⁰³ Bundeskriminalamt.

¹⁰⁴ Bundesamt für Verfassungsschutz und Terrorismus-bekämpfung; abbreviated: BVT.

¹⁰⁵ Meldestelle Geldwäscherei.

¹⁰⁶ Finanzmarktaufsicht; abbreviated: FMA.

<http://www.bmj.gv.at/service/content.php?nav=69>
<http://www.bmi.gv.at/geschaefteinteilung/>
<http://www.bmi.gv.at/meldestellen/>
<http://www.fma.gv.at/en/fma.htm>
<http://english.bmf.gv.at/>

INTERNATIONAL CO-OPERATION

Mutual assistance and extradition

Austria is a party to several bi- and multilateral treaties in the field of mutual legal assistance in criminal matters and extradition. Among others it has signed and ratified the European Convention on Mutual Assistance in Criminal Matters and its First Additional Protocol, the European Convention on Extradition and its Second Additional Protocol as well as the European Convention on the Suppression of Terrorism¹⁰⁷.

Furthermore, the Convention on Mutual Assistance in Criminal Matters between the member States of the European Union and its Protocol have only recently entered into force in Austria¹⁰⁸. The European Arrest Warrant has already been implemented since 1 May 2004.

National provisions on international co-operation in criminal matters can mainly be found in the Act on Extradition and Mutual Legal Assistance¹⁰⁹ and in the Act on judicial co-operation in criminal matters with member States of the EU¹¹⁰.

Measures at international level

United Nations

Austria has signed, ratified and implemented all twelve United Nations conventions and protocols on terrorism. In the framework of the UN Treaty Event 2005 Austria also signed the International Convention for the Suppression of Acts of Nuclear Terrorism¹¹¹.

Austria, in line with the Council of Europe's approach, is vigilant that the value and effectiveness of the international counter-terrorist instruments are not diminished by declarations or reservations contrary to the object and purpose of these instruments and continues to object to such reservations.

Austria supports the work of the UN Security Council, in particular the Counter-Terrorism Committee and the Taliban/Al-Qaeda Sanctions Committee, and has fully complied with all reporting obligations to these bodies¹¹². In order to invigorate the UN response to terrorism Austria has financially contributed and thus enabled the start of a Global Programme against Terrorism by the UN Office on Drugs and Crime.

Financial Action Task Force against Money Laundering (FATF)

Austria is a member of the FATF and is fully committed to its work in the field of terrorism financing. The nine special recommendations the FATF has issued on combating the funding of terrorism have been implemented in Austria.

Measures in the EU framework

Austria is actively committed to the fight against terrorism in the framework of the EU. Austria has implemented the key legal instruments such as the EU Framework Decision against Terrorism. Great importance is attached to the EU mechanisms against terrorism financing and the implementation of measures relating to the pertinent lists of groups, entities and persons.

Austria will hold the Presidency of the EU in the first half of 2006.

Council of Europe

Austria is party to the relevant international legal instruments, such as the European Convention on the Suppression of Terrorism¹¹³. At the Summit in May 2005, Austria signed the Council of Europe Convention on the Prevention of Terrorism and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. Preparatory work for the ratification of these instruments is currently being conducted.

Furthermore, Austria is fully committed to the ongoing work of CODEXTER and has also chaired the Committee of Experts on Terrorism (Ms Gertraude Kabelka).

¹⁰⁷ The Amending Protocol thereto has been signed; preparatory work for ratification is being conducted.

¹⁰⁸ On 23 August and 5 October 2005 respectively.

¹⁰⁹ Auslieferungs- und Rechshilfegesetz; abbreviated: ARHG.

¹¹⁰ Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union; abbreviated: EU-JZG.

¹¹¹ The ratification process for the International Convention for the Suppression of Acts of Nuclear Terrorism has already started.

¹¹² The Austrian reports to the CTC can be found on the internet: http://www.un.org/Docs/sc/committees/1373/submitted_reports.html

¹¹³ The Amending Protocol thereto has been signed; preparatory work for ratification is being conducted.

Relevant Council of Europe conventions - Austria	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	27/01/1977	11/08/1977
Amending Protocol (ETS 190)	15/05/2003	-
European Convention on Extradition (ETS 24)	13/12/1957	21/05/1969
First Additional Protocol (ETS 86)	-	-
Second Additional Protocol (ETS 98)	17/03/1978	02/05/1983
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	20/04/1959	02/10/1968
First Additional Protocol (ETS 99)	17/03/1978	02/05/1983
Second Additional Protocol (ETS 182)	-	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	15/05/1972	01/04/1980
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	-	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	10/07/1991	07/07/1997
Convention on Cybercrime (ETS 185)	23/11/2001	-
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	30/01/2003	-
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	16/05/2005	-
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	16/05/2005	-