

# AUSTRIA

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## NATIONAL POLICY

The fight against terrorism forms a main part of the Austrian security policy. By means of a continuous optimisation of the legal framework, conditions should be created on a permanent basis to enable individuals to develop freely within a guaranteed legal system without being the object of arbitrariness, crime or political extremism and terrorism. The Austrian security policy is based on social freedom, on a holistic security strategy, on modern and efficient administrative structures, having a committed and well-trained staff at their disposal, and on a legal framework which is well adapted to the social, economic and technical developments as well as on appropriate enforcement powers.

Since threat has increased in diversity and threat situations have become increasingly determined by a global general framework, a modern, flexible and interconnected security policy on a national and international level is required. A globalised world makes national borders as well as borders between the internal and external security disappear. Europe, and therefore Austria, faces an interconnected threat today which is characterised by transnational terrorism, dissemination of weapons of mass destruction, cyber attacks and a globalisation of regional conflicts. This interconnection which is pushed further by the Internet and other communication technologies has also an impact on security.

Since the end of the Cold War, the likelihood of the national territory facing an attack has decreased constantly, and at the same time the internal stability and social coexistence within Europe have improved. However, this open society offers also a target to polarisation tendencies within various demographic groups, to ideological and religious radicalisation and to the development of extremism.

The phenomenon of the internationalisation of local or national events in connection with Islam which was increasingly observed during the past years shows how the borders between internal and external security have blurred. Anti-Islamic activities or statements as well as activities or statements merely critical of Islam on a local or national level

may cause reactions on an international level which may range from virtual threats, demonstrations and material damage to acts of violence. In this context especially "hate preachers" play a central role in the ideological interpretation of global political events and the radicalisation of individuals. Their polarising and inflammatory statements may not only be understood in the context of international political events as an incitement of persons to commit a crime, but may also initiate and accelerate the radicalisation process. Moreover, their activities may induce suitable and indoctrinated persons to attend a terrorist training camp and to prepare and launch terrorist attacks afterwards.

In 2012, Austria has reacted to these growing fields of threat by means of appropriate legal measures such as reducing the hate preachers' room for manoeuvre and making it a criminal offence to attend a terrorist training camp.

The phenomenon of politically motivated single perpetrators (so-called "lone wolves") poses a challenge to internal security in the 21st century. Even though extremist/terrorist groups and their activities are still of great priority to the security authorities, recently committed terrorist attacks, as well as attempted ones which failed or were thwarted especially in Europe, illustrate a growing threat by politically motivated and mostly self-radicalised single perpetrators ("lone wolves") who are very difficult to detect by the security authorities prior to an attack.

Repressive security policy measures do not seem to be an appropriate means to counter the growing tendency of radicalisation of politically motivated single perpetrators ("lone wolves"). Sustainable security requires especially preventive approaches to counter the development of extremism. Therefore, Austria has reinforced the preventive aspect in view of potential single perpetrators in 2012 by introducing the preventive measure of "identification of potential threats".

The Austrian security policy also focuses on fighting threats from and within the cyberspace. In this respect, the growing vulnerability of critical infrastructures through Internet attacks has become an important issue, since in times of modern

methods of production a longer lasting breakdown would induce significant economic damage. A national cyber security strategy to be established until 2013 should contribute considerably to the bundling of existing competences and to providing appropriate solutions to counter threats from and within the cyberspace.

Interconnected threats of the 21st century currently face a growing interconnected security policy which is characterised by international co-operation between security authorities and further development and reorganisation of security alliances and partnerships. In this context, Austria welcomes European Union initiatives such as the European Security Strategy and the partial strategies and action plans based on it.

## LEGAL FRAMEWORK

### General Information

Austrian legal provisions are accessible on the internet ([www.ris.bka.gv.at](http://www.ris.bka.gv.at)), where both the Federal Law Gazette (hereafter: FLG) and the text of the legal provisions itself may be obtained .

With regard to penal law, Austria has broadened the scope of the core provisions combating terrorism since 2002. Criminal legislation in Austria, in particular for the fight against terrorism, was introduced or amended by implementing Framework Decision (FD) 2002/475/JHA on Combating Terrorism, the Council of Europe Convention on the Prevention of Terrorism, and FD 2008/919/JHA amending the 2002 FD, as well as by implementing the recommendation of the FATF on financing terrorism. Moreover, the Government programme of the XXIVth legislative period proposed the amendment of criminal legislation concerning hate preachers and participation in so-called terrorist camps.

By FLG I No. 134/2002 the legal definition of terrorist crimes was introduced, for the first time in Austria, in Section 278c of the Penal Code (PC), furthermore the criminal offence of terrorist association was inserted (Section 278b PC), and the offence of financing terrorism was introduced (Section 278d PC). By FLG I No. 108/2010 the criminal offence of training for terrorist purposes was established (Section 278e PC). Finally, the 2011 Terrorism Prevention Act, FLG I No. 103/2011, introduced the criminal offence of instruction to commit terrorist acts (Section 278f PC) and the criminal offence of provocation to commit terrorist acts and approving of terrorist acts (Section 282a PC).

Thus provisions concerning training and instructions for terrorist purposes as well as on the incitement to terrorist acts have been introduced recently. Besides that, provisions on confiscation of illegal profits and forfeiture of property were amended .

The law on the responsibility of legal persons (Verbandsverantwortlichkeitsgesetz) entered into force on 1 January 2006, and the reform of the pre-trial phase of criminal procedure became effective on 1 January 2008.

## Penal Law

### Individual terrorist acts

In Austria individual terrorist acts are punishable in accordance with the provisions of the general criminal statutes. In addition, the Penal Code also provides for particular offences which criminalise terrorist acts under certain conditions. Section 278c PC contains a definition of terrorist offences through an exhaustive list of criminal acts which may qualify as terrorist offences (Para. 1 Subparas. 1 to 9 or 10), including murder, intentional bodily harm, criminal offences against personal liberty (kidnapping for ransom, aircraft piracy, dangerous threat, coercion), damages of property (damage to data, disturbance of the operability of a computer system, and abuse of computer programmes or entrance data), criminal acts which are a threat to the public (arson, endangering by nuclear energy, ionising radiation or explosives, preparation of a crime by means of nuclear energy, actions pursuant to Section 50 of the Weapons Act or Section 7 of the War Materials Act), incitement to terrorist acts which are classified as terrorist criminal acts, with such acts having to qualify either for terroristic effects (causing serious and enduring disruption of public life or serious damage to economic activity) or for terroristic intentions (intimidating the population in a grave way, compelling public authorities or international organisations to do, acquiesce in, or refrain from doing any act, or seriously shaking or destroying the fundamental political, constitutional, economic, or social structures of a State or international organisation).

The punishment for a terrorist crime is higher by half as compared to the listed (general) criminal acts – with a maximum of twenty years. Besides that, the crimes of money laundering (Section 165 PC) and financing of terrorism (Section 278d PC) must also be mentioned. Section 278d PC makes the providing and gathering of assets for committing certain listed criminal acts (such as aircraft piracy, attacks against life and limb or the freedom of internationally protected persons, deliberate nuclear threats, attacks on life or limb at an airport, carrying

explosives to a public place or using such explosives with an aim to cause death or bodily harm to a third person or to cause extensive destruction of a location, etc.) a punishable offence. The penalty to be imposed is six months to five years in prison, but the penalty must not be more severe than for the criminal act thus financed.

Furthermore Section 278e Para. 1 PC makes training for terrorist purposes, i.e. imparting knowledge with an aim to commit a terrorist act or to contribute to its commission, a punishable offence. In this connection it has to be considered that the knowledge imparted must be in accordance with the terrorist aims and must include either the manufacture and use of explosives, firearms or other weapons or of noxious or dangerous substances, or likewise other noxious or dangerous methods or processes which are specifically suitable to commit a terrorist criminal act pursuant to Section 278c Para. 1 Subparas. 1 to 9 or 10 PC. The noxious and dangerous methods or processes must be typically suitable for committing a terrorist act, and they must have the same noxious and dangerous effect as the other means for committing one of the criminal acts mentioned (explosives, other noxious or dangerous substances, weapons). The crime is shaped along international lines, in particular with respect to the subjective side of the offence. Hence the perpetrator must be aware (Section 5 Para. 3 PC) that the skills he imparts are aimed at committing one or several terrorist criminal acts. It is irrelevant for the punishability, however, whether such criminal acts are actually committed.

Pursuant to Section 278e Para. 2 PC it is a punishable offence to attend courses (to get instructions), and in particular to participate in a terrorist camp for the purpose of committing a terrorist criminal act by employing the lessons learnt. In connection with Section 64 Para. 1 Subpara. 9 PC, the participation in terrorist camps abroad shall be a punishable offence under Austrian law, irrespective of whether it is a punishable offence also at the location abroad.

Section 278f PC (instruction to commit terrorist acts) addresses and criminalises situations either of providing information and instructions to commit terrorist criminal acts, with the means mentioned in Section 278e PC, or of self-studies based on media publications or on information downloaded from the Internet. The concept of media publication corresponds to Section 1 Para. 1 Subpara. 3 of the Media Act, which defines it as the carrier of information or intellectual content reproduced by mass production methods for media to be distributed to a large group of people. The media publication must be intended by its very content to give instructions to commit terrorist criminal acts.

Section 282a PC establishes the provocation to commit terrorist acts, as they are defined in Section 278c Para. 1 Subparas. 1 to 9 or 10 PC (i.e. in the aforementioned list), or the approval of such acts, as a punishable offence, if the provocation or approval is made available to many people through printed publications, broadcasting or through another medium. In contrast to Section 282 PC (which is the general rule on the provocation to commit criminal acts, or the approval of such acts) a public audience of 30 persons is already sufficient for such action to qualify as a terrorist crime (whereas Section 282 PC requires 150 persons). This reduction in regard of required audiences is shaped along the lines of Section 3h of the Prohibition Statute (prohibition of the NSDAP et al.) concerning the propagation of the so-called *Auschwitzlüge* (Austrian colloquial expression for Denial of Holocaust).

In addition to the immediate offender also any other person who incites, aids, or abets to a terrorist crime may be punished in the same way as the immediate offender (Section 12 PC). A preparatory act also constitutes a crime which may be punished in the same manner as the immediate offence (Section 15 PC containing the rules on attempt).

### **Organisational offences**

According to Section 278b PC (terrorist association) certain organisational offences are established in criminal law. Section 278b PC criminalises in particular the association of terrorist offenders and makes the leading of, or participation in, a terrorist association a criminal offence. The leadership in such an organisation is punishable by a term of imprisonment between five and fifteen years. For the participation as a member of the association penalties of one to ten years of prison may be imposed. A person is considered a member of such an organisation when he or she commits a crime in accordance with the criminal goals of that association or if the person participates in its activities by providing information or assets or in any other way, knowing that by doing this he or she promotes the association or its terrorist acts.

A terrorist association must be aimed at committing criminal acts which are either listed in Section 278c PC or are in connection with the financing of terrorism (Section 278d PC). Furthermore the association must be organised on a long-term basis, with more than two persons working together.

In the given context mention must finally be made of similar offences established in the Penal Code which are not related to terrorism, i.e. those of criminal association (Section 278 PC) and criminal organisation (Section 278a PC). They penalise the

establishment of, and membership in, such an association or organisation.

## **Jurisdiction**

In Austria the rules for jurisdiction with regard to terrorist offences are governed by Sections 62 et seqq. PC. Following the general territoriality principle, all offences committed on Austrian territory are punishable under Austrian law. Commission on Austrian territory means that either the act has - or should have - taken place there, or that a result corresponding to the constituting elements of the offence has fully or partly ensued on Austrian territory or should have ensued there according to the concept of the offender.

According to Section 64 PC jurisdiction over cases where the criminal act has been committed abroad may be established regardless of the question whether dual criminality is provided for in the country where the offence has been committed. Therefore the crimes of terrorist association (Section 278b PC), terrorist acts (Section 278c PC), training for terrorist purposes (Section 278e PC) and instruction for the commitment of a terrorist act (Section 278f PC) as well as certain other serious offences are to be prosecuted in Austria if a particular domestic factor can be established (i.e. the alleged offender is an Austrian citizen, became an Austrian citizen at a later time, is a resident of Austria, or is a foreigner but cannot be extradited). Similar rules apply in cases of financing terrorism (Section 278d PC). Furthermore there is a general rule in place that Austria has jurisdiction over foreigners who cannot be extradited (Section 65 Para. 1 Subpara. 2 PC).

## **Confiscation and forfeiture**

On 30 November 2010 the National Council (Nationalrat; 1st Chamber of the Austrian Parliament) adopted the Criminal Competence Package . As a part of it also the provisions concerning changes in offence-related property decisions of penal courts have entered into force on 1 January 2011. Whereas a distinction had been made in the past between the confiscation of proceeds from or for crime (Section 20 PC in its previous version [p.v.]) and forfeiture (Section 20b PC p.v.), now the "new" forfeiture (Section 20 Penal Code in its current version) is a measure of confiscating proceeds based on the "principle of gross proceeds". Thus it has replaced the old measure of confiscating the proceeds of illicit enrichment (Section 20 PC p.v.), the previous instrument having been based on the "principle of net proceeds", with the assets gained to be reduced by the expenses incurred by the perpetrator. Pursuant to Section 20 PC (new version) the court

shall now declare forfeited all assets obtained for or by a punishable criminal act. "New" forfeiture includes all direct proceeds from criminal acts plus related income (interest, dividends, rent and lease income) as well as replacement values (sales income) or an equivalent sum of money, if direct proceeds are no longer available.

Also Section 20b PC has been amended. Under the heading "extended forfeiture" it now lists in Para. 2 those special cases which under certain conditions do not require explicit proof from which specific criminal act the assets were obtained, as opposed to the forfeiture provisions of (new) Section 20 PC. If an illegal act has been committed according to Sections 165, 278, or 278c PC, for or by whose perpetration the assets were obtained, or if such a crime has been committed, also those assets have to be declared forfeited which have been obtained in a time-related connection with such an act, provided that there are reasonable grounds to suspect that they derive from a criminal act and if their legal origin cannot be proven satisfactorily. Aside from this, according to Para. 1 also assets which are at the disposal of a criminal organisation (Section 278a PC) or a terrorist association (Section 278b PC) or which are either provided or collected as means for financing terrorism (Section 278d PC) have to be declared forfeited.

Additionally, the so-called object confiscation was introduced into Section 19a PC, permitting the confiscation of all objects which were used, or intended to be used, by the perpetrator for deliberately committing a crime, or which were obtained from such crime, if they are still owned by the perpetrator at the time of the court decision.

## **Procedural rules**

The Austrian Code of Criminal Procedure (CCP) does not provide separate procedures for prosecuting persons suspected of terrorist acts, of being leading or participating in a terrorist association, or of criminal acts committed in such a context. This means that legally there are no differences between the prosecution of criminal acts related to terrorism and proceedings based on a suspicion of other crimes . Therefore, all provisions of the CCP for the treatment of suspects before or during trial are applicable for those who have allegedly committed criminal acts related to terrorism in the same way as to all other suspects. All individual cases are to be adjudicated by the competent courts according to the CCP, and the rights of the defence are the same as in all other proceedings.

In general it must be mentioned that in 2008 the provisions on the investigation procedure in Austria were fundamentally amended. The former system of

an investigating judge leading the investigation proceedings ("Voruntersuchung" and "Vorerhebungen", initiated by the public prosecutor but led by the investigation judge) was changed into a system of a uniform investigation procedure under the direction of the public prosecutor. In this new investigation procedure criminal police and public prosecution have to act together and co-operate. The public prosecutor leads the investigation proceedings and decides about how investigations are conducted and whether the investigation is continued or terminated. The court has two functions in the investigation procedure:

- on the one hand the taking of certain evidence and the authorisation of means of coercion;
- on the other hand the decision on remedies against acts of police and public prosecution.

### **Investigation methods**

An important task of the court is the authorisation of means of coercion for which the law foresees that an authorisation is necessary. The court has to decide on applications for the imposition of pre-trial detention and certain other coercive means (Section 105 Para. 1 CCP). As a general rule it can be said that most of the ensuing investigation methods have to be ordered by a judge upon request of the public prosecutor. Regarding investigation methods representing a restriction of fundamental rights, the following should be particularly mentioned in the context of terrorism: Provisions on search of houses or persons, seizure, search und seizure of documents, as well as seizure and opening of letters and other items to be delivered.

However, as terrorist acts regularly constitute serious offences, a number of intensive investigation methods which are reserved for more serious offences, especially those committed in the context of organised crime, are applicable for alleged terrorist acts as well: Reference is made to provisions on the obligation to give evidence concerning bank accounts, on monitoring telecommunication, on audio-visual monitoring of individuals by technical means and on computer-aided data cross-referencing.

When investigating terrorism-related offences, the following topics must be kept in mind: 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 his procedural rights. Above all, judicial authorities are strictly bound to submit both incriminating and exonerating evidence. Non-disclosure of evidence and files is only admissible as

long as it is to be assumed that the disclosure would jeopardise the purpose of the investigations. As soon as there is a concrete suspicion and investigation measures against a person have been conducted, the person has the status of an accused. He or she has the right to be informed of the grounds of the suspicion prior to a formal interrogation and has the right to inspect the files without any restrictions.

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 the right to demand the presence of a lawyer. Nevertheless the police are not required to wait until the defence counsel arrives. Whenever certain circumstances imply the risk that the purpose of the investigation would otherwise be jeopardised, it is possible to refuse the attendance of defence counsel during the interrogation.

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 must be heard by a judge without delay, at the latest within 48 hours after transfer to court. 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 detention, and to bring the person to the court jail within 48 hours of the arrest.

After being heard by a 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 jail. 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 after the first prolongation, and every ensuing one within two months of the previous decision. Review takes place automatically (ex officio). Once the trial of the case has been opened, there are no further ex officio hearings.

### **Competences**

Austrian procedural law provides for four different types of courts regarding the main (first instance) trial in criminal matters. The competences of the court depend in principle on the maximum length of

the possible sentence; however, there are a few exceptions. District Courts (Bezirksgerichte) have jurisdiction concerning offences punishable by no more than one year's imprisonment, whereas Regional Courts (Landesgerichte) sit either as Einzelrichter (one single judge), or as Schöffengericht (one professional judge and two lay judges), or as Geschworenengericht (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 fall under the jurisdiction of the Regional Courts.

The public prosecutor is in charge of the investigation proceedings. His or her office is organised along the structures of the court system which means, for instance, that at each Regional Court with jurisdiction for criminal matters an office of the public prosecution is established.

### **Other relevant legislation**

#### **Witness protection**

Witness protection is an important aspect in the fight against terrorism. Within the Ministry of Interior a centrally organised Witness Protection Unit is established and provides for necessary protection measures which play a significant role in combating organised crime and terrorism.

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

In addition, the Code of Criminal Procedure provides for witness protection measures such as the possibility of anonymous statements by witnesses who are at risk, pre-trial cross examination of witnesses, interrogation via videoconference as well as out of court interrogation of witnesses if a witness is unable to appear at court, and closed court hearings. It is for the courts to decide upon such measures.

Another important aspect in the fight against terrorism is the newly introduced possibility for the public prosecutor to withdraw from the prosecution of a person who co-operates with the prosecution (Section 209a CCP): The office of public prosecution can proceed according to Sections 200 to 203 and 205 to 209 CCP (conditions and consequences of such withdrawal) if the suspect voluntarily discloses

his or her knowledge of facts that have not yet been part of the investigation proceedings against him or her and if the revelation of those facts considerably contributes to:

1. fostering the clarification of criminal acts falling under the jurisdiction of the Regional Courts in their capacity as jury courts or as courts of lay jurors, or of the Special Prosecution for Economic Crime (Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption; Sections 20a and 20b CCP), or
2. finding a person who plays or has played a leading role in a criminal association, criminal organisation or terrorist organisation.

It is a precondition for such withdrawal from prosecution that punishment does not seem to be necessary for preventing the suspect from committing criminal acts, taking into consideration the pledged performances (Section 198 Para. 1 Subparas. 1 to 3 CCP), the quality of the suspect's statements, especially the full disclosure of his or her own criminal acts and the evidential value of the information obtained. After the suspect has rendered the pledged performances, the public prosecution has to drop the investigation proceedings in regard of that person with reservation as to a later prosecution.

If the pledged obligation to foster the clarification of criminal acts has been violated or if the documents and information provided have been incorrect, have not contributed to the conviction of the perpetrator, or have only been presented in order to veil the leading role of the suspect himself or herself, the reserved prosecution can be continued unless the office of public prosecution fails to effect the measures necessary for a continuation within the deadline of fourteen days from the day when the decision terminating the proceedings on one of the grounds listed above has been served.

#### **Procedural situation and compensation of victims**

Victims of violence or of a sexual offence or dangerous threat as well as certain close relatives of victims whose death was caused by the criminal act are – under specific conditions, particularly if this is necessary to safeguard their rights - entitled to psycho-social and legal counselling free of charge in the course of the proceedings. This includes inter alia legal consultation and representation by a lawyer during the proceedings. As a basic rule any authority involved in the handling of a criminal

proceeding is obliged to inform the victims of their rights.

All persons whose rights were allegedly infringed by the defendant have the right to declare themselves a civil party to the criminal proceedings and to claim compensation. According to Section 366 CCP the court also has decide on the civil claims in case of a conviction.

According to an amendment to the Crime Victims Act Austrian citizens, nationals of other EU or EEA member States, as well as other persons who are legally resident in Austria or aboard an Austrian ship or airplane 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 the result of an intentionally committed crime which is punishable by deprivation of liberty of more than six months.

### **Freezing of funds related to terrorist activities**

In 2010 a new statute for the implementation of international sanctions ("Sanktionengesetz 2010" ) was passed. It ensures that all funds which are subject to sanctions (in particular those issued by the UN Counter-Terrorism Committee or the Taliban/Al Qaeda Sanctions Committee) can be frozen without delay. The new law also provides for the necessary investigations to uncover such funds, for the monitoring of compliance with freezing measures, and for penalties in case of non-compliance.

### **Prevention of financing of terrorism**

Measures to identify and disrupt channels through which terrorism is funded form a central part of Austria's strategy against terrorism. The punishability of the criminal offences of money laundering and the financing of terrorism, as well as the possibilities of confiscation, of forfeiture and of issuing a provisional injunction or a temporary interdiction of pending money transactions, contribute to preventing the financing of terrorism.

Credit and financial institutions are obliged to inform the Financial Intelligence Unit (FIU) without delay if there are a suspicion or reasonable grounds to believe that any attempted, upcoming, on-going or previously conducted transaction, or any asset component, serves the purpose of money laundering or financing of terrorism. In such cases, the further execution of the transaction has to be stopped unless there is a risk that such act would complicate or obstruct the investigation of the case. Furthermore, credit and financial institutions are obliged to provide, upon request from the FIU, all information deemed necessary to prevent or

prosecute money laundering or the financing of terrorism.

Special obligations of due diligence for credit and financial institutions, which aim at preventing money laundering and the financing of terrorism, are included in Sections 40 to 40d of the Banking Act, as well as in other statutes of substantive law.

In the past years, Austria put special emphasis on ensuring compliance with the requirements of the FATF Special Recommendations. A comprehensive legislative package enacted in 2010 led, inter alia, to the following changes in the national framework for preventing the financing of terrorism:

An amendment of relevant Sections of the Penal Code included that a change in the definition of terrorist associations in Section 278b Para. 3 PC established criminal responsibility (according to Section 278b Paras. 1 and 2 PC) for acts of participation, organisation and direction of others in a terrorist association, even if that group is established for the sole purpose of financing terrorism.

Further, it was clarified that the crime of participation in a terrorist association includes the provision and collection of funds. This provision of funds or assets may be direct or indirect, and the knowledge of the person providing funds to the terrorist group may either be a knowledge of promoting criminal acts (such as financing terrorism) or a knowledge of furthering the group itself.

As a result of amendments to the Banking Act, the Insurance Supervision Act, the Securities Supervision Act and the Stock Exchange Act, reporting obligations were clarified and extended by referring to all offences relevant for the financing of terrorism.

Moreover, in response to some shortcomings identified in Austria's FATF evaluation, an entirely new law was adopted and entered into force on 1 July 2010, i.e. the Sanctions Act (Sanktionengesetz): Core provision of this new statute is Section 2 Para. 1 which allows for the freezing of funds and other assets of terrorists and other persons subject to restrictive measures by the UN or the EU in case there are no other implementing provisions in place, such as directly applicable EU law. This provision contains no third-country requirement and applies thus to all persons under sanctions, including so-called EU-internals.

Amendments to various laws of the financial sector and to the Criminal Intelligence Service Act now explicitly allocate the responsibility for international co-operation - not only in cases of money laundering but also in regard of financing terrorism - to the FIU.

Implementing the requirements of (the former) FATF Special Recommendation VII, the EU enacted Regulation 1781/2006 on information on the payer accompanying transfers of funds, which is directly applicable in Austria.

Austria also implemented (the former) FATF Special Recommendation IX on cash controls by fully applying EU Regulation 1889/2005 on controls of cash entering or leaving the Community. Close co-operation between the Federal Ministry of Finance, Customs Department, and the FIU has been ensured.

Finally, Austria recognised the particular vulnerability of the non-profit sector in the context of financing terrorism. This problem is tackled by provisions on accounting and disclosure obligations in the Associations Act. Furthermore, legislative amendments which came into force in 2010 oblige private foundations to present the current/up-to-date founding deed and the appendix/supplementary declaration to the founding deed to the tax authorities as well as to disclose the beneficiaries who are not indicated in the founding deed. The Ministry of Finance also organises regularly seminars to raise awareness and discuss the potential threat of non-profit organisations being used as an instrument for the financing of terrorism.

### **Security Police Act**

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 nature. Furthermore, they are responsible for the prevention of dangerous attacks and of the establishment of criminal associations.

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. Under 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 the necessary measures are considerably complicated, investigations can be carried out by covert means.

As far as the prevention of threats is concerned, it is the task of 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 threats" 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 Commissioner for Legal Protection. Upon initiative of the Federal Agency for State Protection and Counter Terrorism a significant amendment regarding the tasks of the security authorities was introduced into Austrian legislation in 2012. Due to the so-called lone wolf phenomenon, the preventive measure of "identification of potential threats" was extended to potential single perpetrators in the Security Police Act.

Another preventive measure authorised by law is the surveillance of public places by video and sound recording devices. This measure is intended for places which have proven to be particularly prone to crime such as streets where drug-trafficking takes place. Surveillance measures can be taken in this context, assuming that in their absence dangerous attacks on life, health or property could be carried out.

### **Other preventive measures**

The use of undercover investigators and undercover audio-video recording is only permissible as preventive measures for averting dangerous attacks or criminal associations. In the latter case it is an additional requirement that the commission of criminal offences may be expected for which considerable punishment is foreseen. Furthermore, a special Commissioner for Legal Protection must be informed.

## **INSTITUTIONAL FRAMEWORK**

Police, criminal prosecution, immigration control, customs, taxation and financial supervision are in principle matters of federal competence and the respective responsibilities are therefore incumbent upon federal agencies. The Federal Ministries responsible for the greatest part thereof are those of the Interior, of Justice, and of Finance.

Besides the above-described organisational system of public prosecution and courts, the federal agencies to be mentioned in this context are the Federal Bureau of Criminal Investigation, the Federal Agency for State Protection and Counter-Terrorism,

the Reporting Point for Money Laundering and the Financial Market Supervision Authority.

Further information on organisational issues can be obtained from the following websites:

<http://www.bmj.gv.at>

<http://www.bmi.gv.at/geschaefteinteilung>

<http://www.bmi.gv.at/meldestellen>

<http://www.fma.gv.at/fma.htm>

<http://english.bmf.gv.at/>

## INTERNATIONAL CO-OPÉRATION

### **Mutual assistance in criminal matters and extradition**

Austria is a Party to several bi- and multilateral treaties in the field of mutual legal assistance in criminal matters (MLA) and extradition. Inter alia it has signed and ratified the European Convention on Mutual Assistance in Criminal matters and its Additional Protocol, the European Convention on Extradition and its Second Additional Protocol, as well as the European Convention on the Suppression of Terrorism and the Council of Europe Convention on the Prevention of Terrorism.

Furthermore, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocol are in force for Austria since 2005. The European Arrest Warrant has 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 Assistance and in the Act on Judicial Co-operation in Criminal Matters with Member States of the European Union.

### **Measures at international level**

#### **United Nations**

Austria has signed, ratified and implemented all international conventions and protocols on terrorism up to the International Convention for the Suppression of Acts of Nuclear Terrorism.

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 which would be 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 of the Counter-Terrorism Committee (CTC) and the Taliban/Al-Qaeda Sanctions Committee, and has fully complied with all reporting obligations to these bodies. In order to invigorate the UN response to terrorism, Austria has financially contributed to, 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 which 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 within the framework of the EU. The country has implemented the key legal instruments such as the EU Framework Decision against Terrorism. Great importance is attached to the EU mechanisms against the financing of terrorism and to the implementation of measures relating to the pertinent lists of groups, entities and persons.

### **Council of Europe**

In addition to the general instruments on co-operation in criminal matters (particularly concerning MLA and extradition) which have already been mentioned, Austria is also a Party to the multilateral legal instruments relevant for the combat of terrorism which are in force, i.e. the European Convention on the Suppression of Terrorism and the Council of Europe Convention on the Prevention of Terrorism. Austria has also signed the Amending Protocol to the Suppression Convention as well as 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 this instrument is in progress.

Furthermore, Austria is fully committed to the ongoing work of the Council of Europe's Committee of Experts on Terrorism (CODEXTER) which an Austrian expert chaired during its first two years when the Council of Europe Convention on the Prevention of Terrorism was negotiated.

## Relevant Council of Europe conventions – Austria

| Relevant Council of Europe conventions – Austria  | Signed     | Ratified   |
|---|------------|------------|
| European Convention on the Suppression of Terrorism (CETS No. 90)   | 27/01/1977 | 11/08/1977 |
| Amending Protocol (CETS No. 190)  | 15/05/2003 | -          |
| Council of Europe Convention on the Prevention of Terrorism (CETS No. 196)  | 16/05/2005 | 15/12/2009 |
| Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism (CETS No. 198) | 16/05/2005 |            |
| European Convention on Extradition (CETS No. 24)  | 13/12/1957 | 21/05/1969 |
| Additional Protocol (CETS No. 86)   |            |            |
| Second Additional Protocol (CETS No. 98)  | 17/03/1978 | 02/05/1983 |
| <a href="#">Third Additional Protocol</a> (CETS No. 209)  | 10/11/2010 |            |
| <a href="#">Fourth Additional Protocol</a> (CETS No. 212)   | 20/09/2012 |            |
| European Convention on Mutual Assistance in Criminal Matters (CETS No. 30)  | 20/04/1959 | 02/10/1968 |
| Additional Protocol (CETS No. 99)   | 17/03/1978 | 02/05/1983 |
| Second Additional Protocol (CETS No. 182)   | 20/09/2012 |            |
| European Convention on the Transfer of Proceedings in Criminal Matters (CETS No. 73)  | 15/05/1972 | 01/04/1980 |
| European Convention on the Compensation of Victims of Violent Crimes (CETS No. 116)   | 12/04/2006 | 30/08/2006 |
| Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No. 141)  | 10/07/1991 | 07/07/1997 |
| Convention on Cybercrime (CETS No. 185)   | 23/11/2001 | 13/06/2012 |
| Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (CETS No. 189)        | 30/01/2003 |            |