

## Austria

### Corruption Perceptions Index 2007: 8.1 (15th out of 180 countries)

#### Conventions

Council of Europe Civil Law Convention on Corruption (signed October 2000; ratified August 2006)

Council of Europe Criminal Law Convention on Corruption (signed October 2000; not yet ratified)

OECD Convention on Combating Bribery of Foreign Public Officials (signed December 1997; ratified May 1999)

UN Convention against Corruption (signed December 2003; ratified January 2006)

UN Convention against Transnational Organized Crime (signed December 2000; ratified September 2004)

### Legal and institutional changes

- As a result of the ratification of the Council of Europe Civil Law Convention on Corruption, Austria joined the **Group of States against Corruption (GRECO)** in December 2006.
- On 24 July 2007 the Justice Ministry introduced for public discussion a **proposal to amend anti-corruption legislation**. Institutions could submit legal comments and requests until 10 September 2007.<sup>1</sup> A revised version of the bill is scheduled to pass through parliament in late 2007 and become effective in 2008. The proposal aims to implement the provisions of the UN Convention against Corruption and the Council Framework Decision 2003/568 on combating corruption in the private sector, as well as facilitate ratification of the Council of Europe Criminal Law Convention on Corruption.
- The Justice Ministry plans to **create a Public Prosecutor's Office** in Vienna that will focus

exclusively on corruption and exercise jurisdiction for the entire country. In addition, the ministry put up for discussion a proposed leniency programme in the field of corruption. Provisions for leniency programmes can be found in the Austrian legal system, particularly in the fight against organised crime. The proposed programme is expected to grant immunity from prosecution to those who collaborate with law enforcement agencies, and not just mitigate penal sanctions.<sup>2</sup>

- Despite Austria's reputation for only 'moderate' corruption, the issue has grown increasingly important in recent years. **Allegations of illegal party funding** tainted the federal election campaign in 2006, triggering two parliamentary committees of inquiry in October 2006. One investigated the procurement of eighteen Eurofighters in 2002/3 (see below) and the other scrutinised the external control mechanisms of the banking sector in the wake of the so-called BAWAG affair (see below). The

<sup>1</sup> See [www.bmj.gv.at/gesetzestwuerfe/index.php?nav=13&id=95](http://www.bmj.gv.at/gesetzestwuerfe/index.php?nav=13&id=95).

<sup>2</sup> *DiePresse.com* (Germany), 24 July 2007.

work of both was impaired by controversies between the two coalition parties, the SPÖ and the ÖVP,<sup>3</sup> and the committees terminated their work in July 2007 without producing final reports.<sup>4</sup>

### The Eurofighter procurement

The first parliamentary committee had to investigate the decision in 2002 to acquire twenty-four Eurofighter Typhoons to replace the Austrian air force's outdated SAAB Draken interceptors.<sup>5</sup> Austria is neutral and, at only 0.8 per cent of GDP, has one of the lowest defence budgets in the world. In addition, it was an open secret that the military preferred the Gripen, also made by SAAB, a company that enjoys close relations with the Austrian army and its political parties. SAAB's prices were not much lower than Eurofighter's, but it was clear that the latter – a multi-role aircraft more in keeping with out-of-area missions than Austria's defensive posture – would be far more costly to operate. Nonetheless, in 2002 the government argued that it was time for Austria to give up its neutrality and contribute to EU and North Atlantic Treaty Organization (NATO) operations. The government defended its decision by presenting the

Eurofighter as a genuinely 'European' product and emphasising the offset agreements with Austrian companies offered by the European Aeronautic Defence and Space Company (EADS) and other members of the Eurofighter consortium, which would amount to €4 billion (US\$5.4 billion) by 2018.<sup>6</sup>

These were convincing arguments and, under later scrutiny, the court of auditors could find no serious reasons to challenge them. Nevertheless, the circumstances of the procurement were surprising. Up until the final decision in July 2002, the minister of finance, Karl-Heinz Grasser (then a member of the FPÖ), had apparently opposed the purchase of new aeroplanes, arguing instead for used Lockheed Martin F-16s<sup>7</sup> on grounds of cost. Financial considerations were also uppermost with military decision-makers (including the minister of defence, Herbert Scheibner, also of the FPÖ) who seemed to prefer the Gripen instead. The upshot, however, was the decision by the ÖVP-FPÖ Cabinet to purchase the Eurofighter, which was not only the most expensive option, but would not become available until 2007, making it necessary to lease Northrop F-5E interceptors for two years.<sup>8</sup> To limit the price tag to €2 billion, Austria reduced the number of

3 In 2000–6 the (Christian-Democrat) Austrian People's Party (Österreichische Volkspartei, or ÖVP) and the (right-wing) Freedom Party (Freiheitliche Partei Österreichs, or FPÖ) formed the government. When the latter split in April 2005, most FPÖ members of government joined a newly formed Confederation for the Austrian Future (Bündnis Zukunft Österreich, or BZÖ). The Social Democratic Party (Sozialdemokratische Partei Österreichs, or SPÖ) and the Greens were in opposition until the end of 2006. In January 2007 a new 'grand coalition' government was formed between the SPÖ and the ÖVP.

4 The Eurofighter committee produced a brief written report (192 d.B, XXIII. GP), but the parties drew diverging conclusions only in their own minority reports (see *Parlamentskorrespondenz/01/05.07.2007/no. 561*). The committee on the financial sector was terminated without a written report; the chair of the committee gave only an oral report in the plenary debate of the national parliament (see *Parlamentskorrespondenz/01/06.07.2007/no. 568*).

5 For diverging interpretations of the Eurofighter purchase, see M. Rosenkranz, 'Österreich kauft Abfangjäger', at [www.airpower.at/flugzeuge/beschaffungstory.htm](http://www.airpower.at/flugzeuge/beschaffungstory.htm); and P. Pilz (chairman of the Eurofighter committee of inquiry), 'Mein Luftraum', at [www.peterpilz.at/luftraum](http://www.peterpilz.at/luftraum) (this site also publishes the protocols of the parliamentary committee).

6 See [www.wirtschaftsblatt.at/home/specials/eurofighter/247333/index.do?v1\\_backlink=/home/specials/eurofighter/index.do](http://www.wirtschaftsblatt.at/home/specials/eurofighter/247333/index.do?v1_backlink=/home/specials/eurofighter/index.do).

7 See [news.orf.at/?href=http%3A%2F%2Fnews.orf.at%2Fticker%2F242375.html](http://news.orf.at/?href=http%3A%2F%2Fnews.orf.at%2Fticker%2F242375.html).

8 See [www.airpower.at/flugzeuge/beschaffungstory.htm](http://www.airpower.at/flugzeuge/beschaffungstory.htm).

aircraft to eighteen, and did not order the options necessary for international missions.<sup>9</sup>

There were calls for a formal committee of inquiry, and, after the ÖVP-led government was defeated in the 2006 election, that demand was met. The inquiry attracted broad public attention, because the SPÖ, of which the minister of defence is a member, and the Greens, which chaired the investigating committee, explicitly searched for reasons to terminate the contract.<sup>10</sup>

Intervention by the Canadian car parts manufacturer Magna, which had a commercial interest in offset agreements with DaimlerChrysler (parent of DASA, a major shareholder in the Eurofighter consortium), led to suspicions that Grasser, a former Magna employee, had been acting throughout in the company's interests. The committee revealed several payments that gave grounds for suspecting corruption. Most prominent were a €6.6 million (US\$8.9 million) contract between EADS (which handled the lobbying for the Eurofighter in Austria) and a former FPÖ party manager, Gernot Rumpold; a consultancy fee (or, alternatively, an interest-free loan) of €87,600 (US\$118,260) from a Eurofighter lobbyist to the wife of the Austrian air chief after the purchase had been decided; additional payments of some €10,000 (US\$13,500) for minor contracts with former FPÖ party secretaries; and the payment of €1 million (US\$1.35 million) per year since 2003 to the Viennese soccer club Rapid, which employed several prominent SPÖ politicians as officials.<sup>11</sup>

A convincing reason to step out of the procurement was not found, however. According to the purchasing contract, only bribery payments by

Eurofighter GmbH itself or its direct representatives (but not parent enterprises such as EADS, and their representatives) would provide legal grounds to terminate the procurement. Though most of the investigation committee would have preferred to run the risk of legal action, the new minister of defence presented it with a fait accompli by settling with Eurofighter, reducing the order to fifteen aircraft and creating a price reduction of €370 million (US\$540 million).<sup>12</sup> In military terms alone, this was a substantial paradox. In 2002 Austria had decided to buy the most sophisticated type of Eurofighter available, but in the final settlement downgraded the equipment to mere interceptor aircraft.

### The BAWAG affair

The Bank for Labour and Business (BAWAG) is one of the biggest Austrian banks and was owned until 2007 by the Austrian Trade Union Federation (ÖGB), with a 45 per cent minority holding by the Bayerische Landesbank from 1995 to 2004. In March 2006 BAWAG admitted to having lost more than €1 billion (US\$1.35 billion) after speculative transactions in the late 1990s through investment firms owned by Wolfgang Flöttl, the son of a former chief executive officer (CEO). It was also made public that BAWAG had been rescued from bankruptcy in 2000 only by a declaration of liability by the ÖGB.<sup>13</sup>

In a bid to disguise its losses, BAWAG became involved with the US broker Refco. Since 2000 BAWAG and Refco had allegedly helped one another with balance sheet manipulations, involving other foundations owned by the ÖGB: BAWAG and, indirectly, the ÖGB technically

9 See [www.peterpilz.at/luftraum/33UnterzweiM.htm](http://www.peterpilz.at/luftraum/33UnterzweiM.htm).

10 See [www.airpower.at/flugzeuge/beschaffungstory.htm](http://www.airpower.at/flugzeuge/beschaffungstory.htm).

11 *Profil* (Austria), 26 March 2007; *Die Zeit* (Austria), no. 15 (2007); *Profil* (Austria), 16 April 2007; *Die Zeit* (Austria), no. 17 (2007); *Profil* (Austria), 11 June 2007; ORF, 14 May 2007, available at [oe1.orf.at/inforadio/76223.html](http://oe1.orf.at/inforadio/76223.html).

12 Eurofighter Typhoon press release, 26 June 2007.

13 *Times* (UK), 1 April 2007.

owned up to 50 per cent of Refco.<sup>14</sup> In May 2006 it was revealed that the ÖGB had secretly assumed liability for some €1.5 billion (US\$2 billion) of BAWAG debts in 2005, and that BAWAG had had to settle with Refco's creditors to prevent a class-action lawsuit. Settling the Refco affair cost BAWAG (and therefore, indirectly, the ÖGB) over US\$1.3 billion. By mid-2007 the union had spent its financial reserves (including a legendary strike fund) and had been forced to implement savage retrenchments.<sup>15</sup>

In a mid-2006 report, later published by a weekly magazine,<sup>16</sup> the Austrian National Bank questioned why all the speculative transactions since 1995 had ended in disaster. Auditors claimed that they were unable to trace the whereabouts of hundreds of millions of euros. A criminal lawsuit, involving former members of BAWAG's board, Flöttl and the former president and leading secretary of the ÖGB, started in July 2007.<sup>17</sup> The indictment contains allegations of embezzlement and accounting fraud.

Although the BAWAG affair is primarily an economic crime, it was facilitated by the lack of transparency enjoyed by Austria's trade unions.<sup>18</sup> Nominally a non-partisan association, the ÖGB is actually dominated by political interest groups, mainly the Fraktion Sozialdemokratische Gewerkschafter (FSG), which is closely associated to the SPÖ, and the Fraktion Christlicher Gewerkschafter (FCG), which is aligned with the Österreichischer Arbeiter- und Angestelltenbund (ÖAAB), a vehicle of the ÖVP. The FSG is the dominant faction in the ÖGB.

The ÖGB's president and financial secretary did everything possible to hush up the malaise at BAWAG, with the result that the rest of the board (including leading lights in the FSG and FCG) knew nothing about the ÖGB's liability for the losses. Indeed, so successful were they that BAWAG was even able to hide its losses from the Finance Ministry, and thus win approval for its takeover of the publicly owned Postsparkasse bank for €1.3 billion (money that BAWAG clearly did not have). Postsparkasse was ruthlessly stripped of its assets in the years that followed.<sup>19</sup>

During the election campaign in August and September 2006, rumours circulated of secret payments by BAWAG and the ÖGB to the SPÖ, although nothing ever came to light. The ÖGB already gives 3 per cent of its membership fees to parties, according to their popularity within the workforce (though mainly to the SPÖ).<sup>20</sup> While this is legal party financing under Austrian law, it is questionable whether union members fully support the practice.

### Party finance: more loopholes than rules

It remains an open question whether illicit payments to parties or politicians figured in the BAWAG and Eurofighter scandals, though both cases added to the debate about the transparency of party funding. Nor were these the only examples of possible illicit funding in the past half-decade.

The discovery of the transfer of €283,000 in 2001–3 from the Federation of Austrian Industry

<sup>14</sup> *Financial News* (US), 15 December 2006.

<sup>15</sup> *Der Standard* (Austria), 10 June 2006 and 12 June 2006; *News* (Austria) 34/2006; *Der Standard* (Austria), 13 December 2006; *Profil* (Austria), 2 April 2007.

<sup>16</sup> See 'Das BAWAG-Dossier', at [www.networld.at/prod/510/bawag/bawag\\_dossier.pdf](http://www.networld.at/prod/510/bawag/bawag_dossier.pdf).

<sup>17</sup> See [wien.orf.at/stories/207510](http://wien.orf.at/stories/207510).

<sup>18</sup> For a discussion of the political reasons and consequences of the BAWAG affair, see F. Karlhofer, 'BAWAG und die Folgen', in A. Khol *et al.* (eds.), *Österreichisches Jahrbuch für Politik 2006* (Vienna: Oldenbourg, 2007).

<sup>19</sup> 'BAWAG Skandal: "Alles in Trümmern"', *Austria Presse Agentur* (Austria), 12 June 2006.

<sup>20</sup> *Austria Presse Agentur* (Austria), 20 September 2006.

to the then finance minister, Karl-Heinz Grasser (known as the Homepage affair, because the alleged purpose of the money was to set up his web page), demonstrated the absence of transparency in political donations.

A split in one of the ruling parties, FPÖ, in April 2005 revealed the lack of internal financial controls, the generous lump sum 'allowances' for leaders and the high debts after the party's election defeats. It also demonstrated the fragmentary nature of Austria's party finance regulations.

Austria has an extraordinarily generous method of public party funding. Federal subsidies amounted to €40 million (US\$54 million) in 2007, with a further €110 million (US\$148.5 million) from the nine Austrian states and over €20 million (US\$27 million) from municipal sources, or a total equivalent of €28–29 per voter per year.<sup>21</sup> For this reason, Austrian parties are far less dependent on private donations than those in other European countries and, as a further result, there are fewer regulations on the size of party donations.

Political parties that receive federal funding under the Political Parties Act are required only to fulfil some trivial disclosure criteria: two public accountants must approve the party's budget, and a simple income–expenditure balance sheet must be published in the official gazette, the *Wiener Zeitung*.<sup>22</sup> The party must also submit a list of donations exceeding €7,260 from individuals, private associations and corporations (though not business associations, chambers or trade unions) to the president of the Court of Auditors, but this list need not be published. The published balance sheets contain only summarised information on donations and nothing about the amount of single donations or the identity of the donors.

These disclosure requirements do not include parliamentary groups, ancillary organisations or party-owned companies. In practice, the 'rules' hardly qualify as an appropriate tool for public control of party finance. The Political Parties Act does not stipulate the kind of sanctions that can be applied if a party does not meet its obligations, only the consequences should a party not deliver its report by the deadline of the following September. In that event, the federal subsidy is withheld until the party delivers its report. The act does not lay down what should happen when a party delivers an incorrect report (an incomplete donation list, for example). The same is true for nearly all other legislation governing party and parliamentary activities.

By no measure does Austria's current system of regulating party finance meet the fundamental requirements of transparency, as laid down in the Council of Europe's Recommendations on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns of April 2003.<sup>23</sup> Austria's media are becoming increasingly critical of the predicament.

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### Further reading

- F. Karlhofer, 'BAWAG und die Folgen', in A. Khol *et al.* (eds.), *Österreichisches Jahrbuch für Politik 2006* (Vienna: Oldenbourg, 2007).
- M. Kreutner (ed.), *The Corruption Monster: Ethik, Politik und Korruption* (Vienna: Czernin, 2006).
- H. Sickinger, 'Überlegungen zur Reform der Österreichischen Parteienfinanzierung', *Österreichische Zeitschrift für Politikwissenschaft*, vol. 31, no. 1 (2002).
- 'Austria', in T. Grant (ed.), *Lobbying, Government Relations, and Campaign Finance Worldwide*:

<sup>21</sup> Updated calculation for 2007 by the author.

<sup>22</sup> Political Parties Act 1974, article 4.

<sup>23</sup> Available at [www.coe.int/t/dg1/greco/general/Rec\(2003\)4\\_EN.pdf](http://www.coe.int/t/dg1/greco/general/Rec(2003)4_EN.pdf).