



**Deliverable 2.10 – Whistleblower Austria**  
**WP2 – Research and Implementation assessments**

**Lead Contributor** reinhard.kreissl@vicesse.eu  
VICESSE

**Other Contributors** regina.kahry@vicesse.eu  
norbert.leonhardmair@vicesse.eu

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## Glossary

Abbreviation	German	English
AVG	Allgemeines Verwaltungsverfahrensgesetz	General Administrative Procedure Act
BAK	Bundesamt Korruptionsprävention und Korruptionsbekämpfung	Federal Office for Corruption Prevention and Anti-Corruption
B-GIBG	Bundes-Gleichbehandlungsgesetz	Federal Equal Treatment Act
BMI	Bundesministerium für Inneres	Austrian Ministry of the Interior
BKA	Bundeskriminalamt	Federal Criminal Police Office
BMVRDJ	Bundesministerium für Verfassung, Reformen, Deregulierung und Justiz	Federal Ministry of Constitution, Reforms, Deregulation and Justice
BVergG	Bundesvergabegesetz	Federal procurement law
B-VG	Bundes-Verfassungsgesetz	Constitution
BVT	Bundesamt für Verfassungsschutz und Terrorismusbekämpfung	Federal Office for the Protection of the Constitution and Counterterrorism
BWB	Bundeswettbewerbsbehörde	Federal Competition Authority
BWG	Bankwesengesetz	Banking Law
DSG	Datenschutzgesetz	Data Protection Act
FMA	Finanzmarktaufsicht	Financial Market Authority
Kerndaten-VO	Kerndaten-Verordnung	Key Data Regulation
MedienG	Mediengesetz	Media Law
OGH	Oberster Gerichtshof	Supreme Court
StAG	Staatsanwaltschaftsgesetz	State Attorney Act
StPO	Strafprozessordnung	Criminal Procedure
StRÄG 2015	Strafrechtsänderungsgesetz 2015	Criminal Law Amendment
TKG	Telekommunikationsgesetz	Telecommunications Act
UIG	Umweltinformationsgesetz	Environmental Information Act
WKStA	Wirtschafts- und Korruptionsstaatsanwaltschaft	Economic and Corruption Prosecutor



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## Whistleblowing Austria

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## Whistleblowing

### General principles

The term whistleblower refers to a person who reports secret information from his or her professional environment that should be available for public scrutiny or discussion. These may be various maladministration, crimes or threats that the whistle-blower is aware of, often through his position or activity.

Currently there is no special legal definition devoted for whistleblowing in Austria within the public administration and the public sector. Whistle-blowers (in German “Hinweisgeber”) are only referenced in the Securities/Stock Exchange Act (§ 160 Abs 13 Börsegesetz) and in corporate law. General conditions for whistleblowing ICT systems pursuant to §99g of the Banking Act are defined in the context of the standard and model regulations under the Data Protection Act 2018.

There are reporting channels provided for whistleblowing but no law that actually protects whistleblowers. The only way a whistle-blower can be protected is via the crown-witness-status:

*In §209a and b StPO the withdrawal from the witness’ persecution in case of cooperation with the prosecutor is regulated. This only applies if the information was provided voluntarily and only in the case when new information was forwarded.*

In particular the offenses mentioned in § 20 a StPO can be reported via the internet-based whistleblower systems anonymously. The catalogue of crimes (responsibility WKStA [Economic and Corruption Prosecutor]) was extended with the entry into force of the StRÄG 2015 [Criminal Law Amendment 2015]<sup>1</sup>.

In general, a distinction must be made between internal or external, personal or “un-personal” and public (personally identifiable) or anonymous whistleblowing<sup>2</sup>. Internal whistleblowing becomes a powerful tool when it comes to identifying problems within the organisation - external whistleblowing refers to the disclosure of abuses and crimes towards regulators, law enforcement agencies, the media and other public bodies. Personal whistleblowing means that you are personally affected or involved, whereas impersonal whistleblowing does not imply any engagement by the whistle-blower.

No soft law tool used. There is no central supervisory authority responsible for WB or transparency, the public account office (Rechnungshof) has very limited rights to audit public bodies or political parties, it can give recommendations but they are not binding.

### Objective field of application

#### Public sector

In Austria, a number of public authorities provide either contact details or ICT enabled reporting systems for whistle-blowers targeting specific areas (external whistleblowing):

**BMI** – Bundesministerium für Inneres – Austrian Ministry of the Interior<sup>3</sup> focuses on reports on corruption and malpractice (in office) (Amtsdelikte).

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<sup>1</sup>[https://www.parlament.gv.at/PAKT/VHG/XXV/I/I\\_00689/index.shtml](https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_00689/index.shtml)  
([https://www.parlament.gv.at/PAKT/VHG/XXV/I/I\\_00689/fname\\_423851.pdf](https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_00689/fname_423851.pdf))

<sup>2</sup> Mulle, Alexander: Whistleblowing & Arbeitsrecht, 2013, p. 23ff

<sup>3</sup> <https://www.bmi.gv.at> (German only)



In addition, the Ministry heads the following subdivisions:

- ☐ **BAK** – Bundeskriminalamt - Federal Criminal Police Office<sup>4</sup>, dealing with drug crime, money laundering, cybercrime, child pornography and -sex tourism, environmental crime, human trafficking, betting fraud, and all organised crime.
- ☐ **BVT** – Bundesamt für Verfassungsschutz und Terrorismusbekämpfung - Federal Office for the Protection of the Constitution and Counter-Terrorism<sup>5</sup> prosecuting and investigating offences related to all forms of extremism.
- ☐ **BAK** – Bundesamt für Korruptionsprävention und Korruptionsbekämpfung - Federal Office for the Prevention of Corruption and the fight against corruption<sup>6</sup> focuses on corruption and malpractice (in office)<sup>7</sup>

They provide information<sup>8</sup> about their tasks, contacts, encrypted e-mail communication<sup>9</sup> and (in case of money laundering) several forms<sup>10</sup> of anonymous reporting. The BMI (BAK, BVT, BAK) does not use a certified reporting system but provides contact details like addresses, telephone numbers and email contacts, which can be approached anonymously.

**WKStA** – Wirtschafts- und Korruptionsstaatsanwaltschaft – Economic and Corruption Prosecutor<sup>11</sup>

The WKStA provides a full reporting system<sup>12</sup> in German and English, with emphasis on corruption, economic criminal matters, social benefit fraud, balance and capital market offenses and money laundering. Although their reporting-system is also available in English, the homepage only includes information in German<sup>13</sup>.

**FMA** – Finanzmarktaufsicht - Financial Market Supervision Authority in Austria<sup>14</sup>

The FMA uses the same reporting system as the WKStA<sup>15</sup> and deals with violations of compliance regulations by companies.

The FMA and WKStA are using the BKMS-System<sup>16</sup> and a short introduction into the system is provided by the Federal Ministry of Justice<sup>17</sup>.

*[The online whistle-blower-platform BKMS run by the Austrian Financial Market Supervision, FMA (FinanzMarktAufsicht) for short, had started its test-run in February of 2014 and began service officially the following year. It offers a German and English language option for potential whistle-blowers. The*

<sup>4</sup> <https://bundeskriminalamt.at> (German only)

<sup>5</sup> <https://bvt.bmi.gv.at> (German only)

<sup>6</sup> <https://www.bak.gv.at/Downloads/start.aspx>

<sup>7</sup> <https://www.bak.gv.at/601/>

<sup>8</sup> <https://bundeskriminalamt.at/602/start.aspx>

<sup>9</sup> <https://bvt.bmi.gv.at/601/>

<sup>10</sup> <https://bundeskriminalamt.at/308/start.aspx>

<sup>11</sup> <https://www.justiz.gv.at/web2013/wksta/zentrale-staatsanwaltschaft-zur-verfolgung-von-wirtschaftsstrafsachen-und-korruption~2c9484853f386e94013f57e43e3a0bd8.de.html>

<sup>12</sup> <https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=11FMA61&language=ger>

<sup>13</sup> <https://www.justiz.gv.at/web2013/file/2c9484853d643b33013d8860aa5a2e59.de.0/informationbroschüre%20zum%20hinweisgebersystem.pdf>

<sup>14</sup> <https://www.fma.gv.at> (German and English)

<sup>15</sup> <https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=1at21&language=ger>

<sup>16</sup> <https://www.business-keeper.com/de/>

<sup>17</sup> <https://www.justiz.gv.at/web2013/file/8ab4a8a422985de30122a929678c6355.de.0/bkms.pdf>



*web-based ASP application, while running under the banner of the FMA, is developed and maintained by the German Business Keeper AG. Similarly, the secure servers which are used to store case-related and user-related data are located not within the FMAs direct supervision, but the Business Keeper AG. To prevent any unauthorized access, the platform deploys encryption technology. Any data sent by the whistle-blower via the BKMS® Incident Reporting Module of the BKMS® Compliance System is encrypted. This encryption also applies to the BKMS® Incident Management module that allows the whistle-blower to register an anonymous virtual postbox allowing for continuing communication between whistle-blower and an FMA-handler. Neither the Business Keeper AG nor any Third-Party actors have access to the encryption key, only the encrypted data, thus ensuring the privacy of any communication. The encryption key is held solely by the FMA and requires a multistage registration process before decryption is possible. Furthermore, to ensure that no external access is possible the BKMS® Compliance System application is operated on closed servers, where data is stored on-site. Any cross-access to the data via the whistle-blower-end of the application is rendered impossible by separating data-processing of whistle-blower and handler operations on different servers.]<sup>18</sup>*

**BWB** – Bundeswettbewerbsbehörde – Federal Competition Authority<sup>19</sup>

General Information as well as a reporting system are available via the BWB's homepage<sup>20</sup> (in German and English). It specialises on violations of antitrust and cases of abuse of market power. The BWB uses a quite simple system where you can send messages anonymously. To identify yourself to a reporting portal, an identification code is provided after submitting your message, which you should keep and remember in case you need it later on.

### Private sector

In the last decade whistleblowing ICT-systems have started to emerge within the private sector (internal whistleblowing). As this information is only sporadically publicly available, a systematic overview of their availability in the private sector cannot be provided here. Individual banks, large enterprises and multinational companies started to implement internal whistleblowing systems<sup>21</sup> to fulfil compliance procedures and good practice recommendations. This development can be seen in the context of the whistle-blower regulation according to § 209 a StPO. Since the whistle-blower protection only extends to offences reported before they have been detected by the authorities, this can be regarded as organisational measures mitigating the risk of prosecution.

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<sup>18</sup> Please find screenshots of the platform in the annex II of this paper

<sup>19</sup> <https://www.bwb.gv.at> (German and English)

<sup>20</sup> <https://report.whistleb.com/de/bwb>

<sup>21</sup> <http://reports.voestalpine.com/1718/ar/the-group/compliance/whistleblowing-system.html>  
<http://www.uniqagroup.com/gruppe/versicherung/corporate-responsibility/compliance/Whistleblowing-Plattform.en.html>  
<https://www.erstegroup.com/en/career/commitment>



### Summary of Reporting/Information Systems:

	General Information	Information on Whistleblowing/the w.-b.-system	Reporting System provided	Contact Details provided	Encrypted Email communication	German	English
<b>BMI (BKA, BVT, BAK)</b>	+	-	-	+	+	+	-
<b>FMA</b>	+	+	+	+	-*	+	+
<b>WKStA</b>	+	+	+	+	-*	+	+
<b>BWB</b>	+	-	+	+	-*	+	+

\* Availability not indicated.

### Categories of subjects to whom the protection applies

Apart from a small section in the Beamten-Dienstrechtsgesetz 1979 (Civil Service Law) for employees the public administration, there is no other specific subject identified within Austrian law. Of course, laws concerning retaliation, discrimination and mobbing apply for everyone and are discussed further below in this report.

### Channels to report irregularities

In order to submit a whistleblowing report, there are 3 possible entities that can serve as a contact for whistle blowers.

The **BMF** accommodates all sections concerning taxes, customs, anti-fraud, financial police and therefore is the prior contact for the BWB and FMA.

The WKStA is located in the **BMVRDJ** (Federal Ministry of Constitution, Reforms, Deregulation and Justice) and reports to the 1st instance of the general court. When the WKStA becomes active, the Regional Court for Criminal Matters Vienna is responsible; even if there is no clear local jurisdiction<sup>22</sup>.

The **BMI** holds the FIU (Money laundering reporting unit) which is located at the office of financial investigation at the BKA. This is the contact partner for professional groups (i.e. accountants and auditors).

### Protection of the privacy of the reporter

Confidentiality is guaranteed. The WB can keep anonymous when using the electronic communication system offered by public authorities and some private corporations. However, when it comes to legal proceedings WB most probably will have to disclose their identity because they will be named as a witness in a criminal court proceeding and their names will be disclosed to the lawyers representing the defendant.

Regarding to §1 DSGVO 2018 (Data Protection Act 2018) *“Everyone has a right, especially with regard to the respect of his private and family life, for the confidentiality of personal data concerning him, as far*

<sup>22</sup><https://www.justiz.gv.at/web2013/wksta/zentrale-staatsanwaltschaft-zur-verfolgung-von-wirtschaftsstrafsachen-und-korruption/zustaendigkeit~2c94848525f84a6301321fda9b5c5410.de.html>



*as there is a legitimate interest in it. The existence of such interest is excluded if data is not available for confidentiality because of its general availability or lack of traceability to the data subject.”*

§162 StPO (Criminal Procedure) about anonymous statements states the following (translated from German):

*“Is it to be feared on the basis of certain facts that the witness or a third party by the disclosure of the name and other personal information (§ 161 paragraph 1) or by answering questions that allow conclusions, a serious danger to life, health He may be allowed to refrain from answering such questions. In this case, it is also permissible that the witness changes his outward appearance in such a way that he cannot be recognized again. However, he is not allowed to cover his face in such a way that his facial expressions cannot be perceived as far as is indispensable for assessing the credibility of his statement.”*

According to §163 (1) StPO another address suitable for loading may be provided instead of the residential address.

Also, personal data shall be anonymized in certain cases according to §51 (2) StPO (translated from German):

*“To the extent that the danger referred to in § 162 exists, it is permissible to exclude personal data and other circumstances that permit conclusions as to the identity or the very personal circumstances of the person at risk from the access to the file and to make copies in which those circumstances have been rendered unrecognizable. Moreover, access to the file may only be restricted before the end of the preliminary proceedings and only to the extent that special circumstances make it probable that the purpose of the investigation would be jeopardized by an immediate knowledge of certain documents. However, if the accused person is in custody, a limitation of access to the file regarding such documents, which may be of importance for the appraisal of the suspicion or the reasons for detention, shall not be admissible after the pre-trial detention.”*

In general, also anonymous tips must be followed according to §2 (1) StPO (translated from German):

*“The Criminal Investigation Department and the Public Prosecutor's Office are obliged, in the course of their duties, to investigate any initial suspicion of an offense, which is not merely at the request of a person who is entitled thereto, in a preliminary investigation.”*

Additional to that a judicial decision in 2009 (14 OS 46/09k OGH [Supreme Court]<sup>23</sup>) states that even anonymous statements justify coercive measures.

The use of whistle-blower systems was also legally established for the prosecution (§2a (6) StAG [State Attorney Act]).

Since some detections also take place via the media, the protection of sources in the context of professional secrets is also relevant. §112 StPO is the editorial secret (§93 TKG 2003 [Telecommunications Act]) established in Media Law<sup>24</sup>, or professional secrets in general, intended for

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<sup>23</sup>[https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT\\_20090721\\_OGH0002\\_01400S00046\\_09K0000\\_000](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20090721_OGH0002_01400S00046_09K0000_000)

<sup>24</sup> [https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV\\_1981\\_314](https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1981_314)





professional groups such as doctors, priests, lawyers, notaries, media owners and media staff. At least as long as they are not themselves indicted, but merely called as witnesses.

### ***Protection against retaliation, discrimination and mobbing***

The general legal provision states that WB should not be exposed to retaliation. The legal text is very generic and abstract and does not detail any procedural provisions with regard to handling unjustified forms of retaliation, mobbing or discrimination. In principle, a victim of such measures can apply to staff council, but no such case has been reported to our knowledge. (Also, it should be noted, that even in case of a successful redress procedure, informal sanctions may be applied.)

The Civil Service Law 1979, version of 08.05.2019<sup>25</sup> (Beamten-Dienstrechtsgesetz 1979, Fassung vom 08.05.2019) is the only law considering employees as whistle-blowers and therefore need to be protected against discrimination and mobbing (Please find the full text translated to english in the annex). Other than that, a general Bundes-Gleichbehandlungsgesetz (Equal Treatment Act) and precautions implemented to ensure anonymity, are the only provisions whistle-blowers have. If anonymity sheds for some reason, there is no protection against civil lawsuits which can lead to financial challenges for the whistleblower.

According to EU-Regulation 596/2014 recital 74<sup>26</sup> (market abuse regulation) reasonable provision should be made to enable informants to inform the competent authorities of possible infringements of this Regulation and to protect them from retaliation.

Individually regulated disclosure obligations exist for example in the environmental sector (§15 Abs 1 Z3 UIG [Environmental Information Act]) where the disregard of the information obligation is punishable and protection for informers is expressly standardized (§9b UIG).

Also, in the banking sector, a Bankgeheimnisdurchbrechungskatalog (Banking secret breaching catalogue) has been implemented (§38 Abs 2 Z 2 iVm §41 Abs 1,2 BWG [Banking Law]).

Employees of public authorities and public services are bound to report suspicions of a criminal offense that occur within their area of influence (§ 78 StPO [Criminal Procedure]).

On the other hand, Austria implemented the Amtsgeheimnis (official secret) in its constitution (Art 20 Abs 3 B-VG [Constitution]). This legal concept will be further discussed in the section about Open Data.

### ***Sanctions***

According to the Equal Treatment Act there is only a penalty up to EUR 360 maximum.

Different forms of discrimination are listed in this Act:

- ☐ Section 1, Part I: Gender discrimination in the labor market (penalties §10)
- ☐ Section 1, Part II: Discrimination on the basis of ethnic background, religion, age and sexual orientation (penalties §24)
- ☐ Section 1, Part III: Discrimination on the basis of sexual orientation and ethnic background (penalties §37)
- ☐ Section 2: focuses exclusively on discrimination based on ethnic background (penalties §58 only states that a fine is to be paid, but the amount has yet to be set by the implementing legislation)

<sup>25</sup><https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10008470/BDG%201979%2c%20Fassung%20vom%2008.05.2019.pdf>

<sup>26</sup> <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:32014R0596&from=DE>

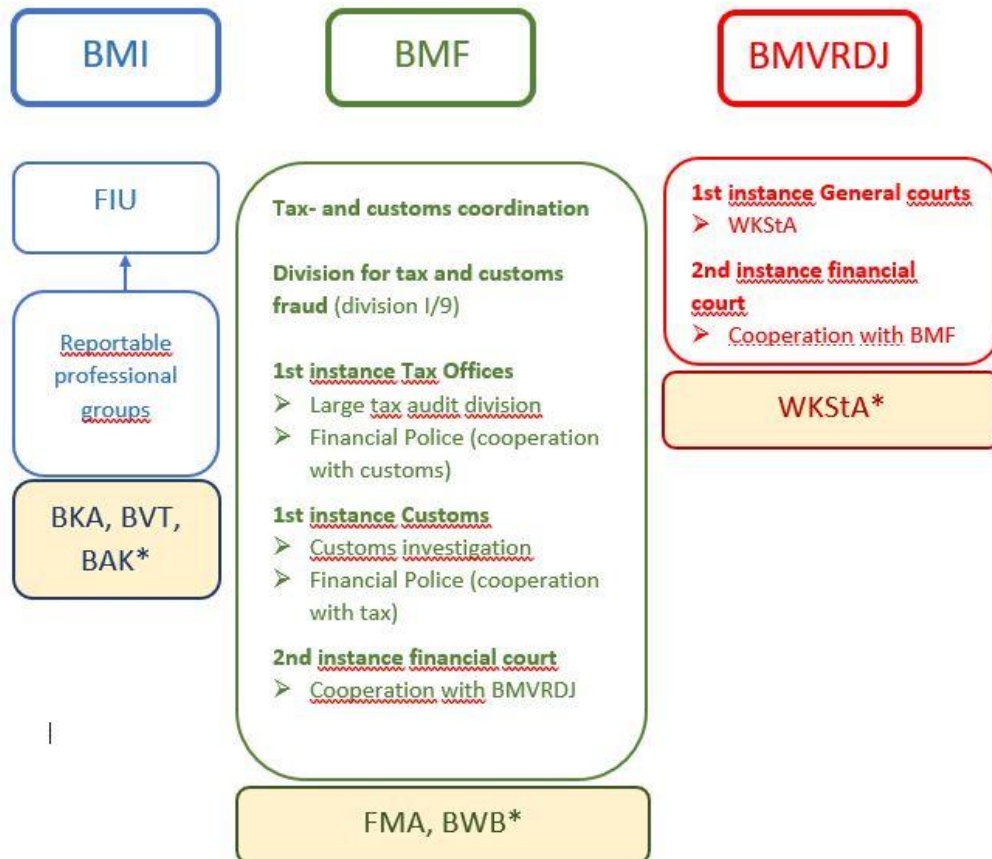


### Burden of proof

According to §20b B-GIBG (Federal Equal Treatment Act) after the injured party has made the facts credible, it is up to the defendant to prove that there was no violation of the principle of equal treatment.

### Organizational measures

There are 3 institutions involved who cooperate with each other:



\* Institutions with whistle-blower provisions

Their task is to investigate the cases but none of them is held to protect whistle-blowers. All they are obliged to is to handle data and information according to the DSGVO and therefore to keep the whistle-blowers anonymous.

### Conclusions

Whistler-blower should stay anonymous to avoid being liable for legal steps towards them. At this stage, lawyers tend not to recommend stepping forward, because of the very unclear situation concerning the protection of whistleblowers. The reporting-systems seem to be sufficient as are the visibility and accessibility. The Austrian Ministry of the Interior provides information in English on their webpages.



## Sources

### Literature

Aschauer, Paula: Whistleblowing im Arbeitsrecht, 2012

Mulle, Alexander: Whistleblowing & Arbeitsrecht, 2013

### Online Sources

Civil Rights-NGO

<https://www.informationsfreiheit.at/>

Open Data Österreich

[www.data.gv.at](http://www.data.gv.at)

### Law Databases

The legal Information System of the Republic of Austria:

<https://www.ris.bka.gv.at>

Jusline Law Platform:

<https://www.jusline.at>

Manz Publishing Company with a Law Database:

<https://rdb.manz.at/home>

### Laws Online

Auskunftspflichtgesetz - Bundesgesetz vom 15. Mai 1987 über die Auskunftspflicht der Verwaltung des Bundes und eine Änderung des Bundesministeriengesetzes 1986

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AVG – Allgemeines Verwaltungsverfahrensgesetz 1991

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005768>

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B-GIBG – Bundesgesetz über die Gleichbehandlung im Bereich des Bundes (Bundes-Gleichbehandlungsgesetz)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008858>

BörseG 2018 - Bundesgesetz über die Wertpapier- und allgemeinen Warenbörsen 2018 (Börsegesetz 2018)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009944>

BVergG – Bundesgesetz über die Vergabe von Aufträgen (Bundesvergabegesetz)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010295>

B-VG – Bundes-Verfassungsgesetz

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138>



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BWG – Bundesgesetz über das Bankwesen (Bankwesengesetz)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10004827>

DSG 2018 – Datenschutzgesetz 2018

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001597>

Kerndaten-VO - Verordnung des Bundesministers für Verfassung, Reformen, Deregulierung und Justiz, mit der die Standardisierung des Kerndatenformates und die Befüllung der Metadatenfelder festgelegt werden (Kerndaten-Verordnung)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20010591>

MedienG - Bundesgesetz vom 12. Juni 1981 über die Presse und andere publizistische Medien (Mediengesetz)

[https://www.ris.bka.gv.at/Dokumente/Erv/ERV\\_1981\\_314/ERV\\_1981\\_314.pdf](https://www.ris.bka.gv.at/Dokumente/Erv/ERV_1981_314/ERV_1981_314.pdf)

StAG - Bundesgesetz vom 5. März 1986 über die staatsanwaltschaftlichen Behörden (Staatsanwaltschaftsgesetz)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000842>

StPO - Strafprozeßordnung 1975

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326>

TKG - Bundesgesetz, mit dem ein Telekommunikationsgesetz erlassen wird (Telekommunikationsgesetz 2003)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002849>

TDBG 2012 – Bundesgesetz über eine Transparenzdatenbank - (Transparenzdatenbankgesetz 2012)

UIG - Bundesgesetz über den Zugang zu Informationen über die Umwelt (Umweltinformationsgesetz)

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010766>

### *Annex I*

Relevant Paragraphs in the Beamten-Dienstrechtsgesetz 1979 (Civil Service Law) for employees the public administration considering whistle-blowing in the public administration:

#### **General duties**

**§ 43.** (1) The official is obliged to carry out his official duties in accordance with the applicable legal system faithfully, conscientiously, engaged and impartially with his own resources.



(2) The official must take care in all his conduct to ensure that public confidence in the material performance of his duties is maintained.

(3) The official shall assist and inform the parties, as far as it is compatible with the interests of the service and the requirement of impartiality, in the course of his official duties.

Respectful treatment (prohibition of mobbing)

**§ 43a.** Civil servants, as superiors, have to treat their employees and employees with respect for their superiors and each other with respect, and to contribute to the proper functioning of official cooperation. In dealing with their supervisors, colleagues and employees, they must refrain from behaving or creating working conditions that violate their human dignity or are intended to be or otherwise discriminatory.

Official duties to superiors

**§44.** (1) The official shall assist his superiors and follow their instructions, unless otherwise provided by constitutional law. Supervisor is any organ administrator who is in charge of the service or technical supervision of the official.

(2) The official may refuse to comply with a directive if the instruction has either been issued by a non-competent body or if compliance would be contrary to criminal law.

(3) If the official considers a supervisor's instruction to be unlawful for any other reason, he shall communicate his objections to the supervisor before following the instructions, unless he / she is in danger of default. The supervisor must give such instructions in writing, otherwise they shall be deemed withdrawn.

#### **Official duties of the superior and the head of the department**

**§ 45.** (1) The supervisor must ensure that his employees perform their official duties in a lawful and expedient, economic and economical manner. He must guide his employees to give them instructions if necessary, to correct any errors and abuses that have occurred and to ensure that he or she stays on duty. He shall promote the advancement of his associates according to their accomplishments, and direct their use to a degree that is commensurate with their capacities. Furthermore, she or he has to work towards the fact that her or his employees can take advantage of the recreational vacation and also make use of it.

(2) The head of a service or part of an office shall also ensure the orderly co-operation of the individual subordinate organizational units for the purpose of ensuring lawful completion as well as expedient, economical and economical business conduct.

(3) If, in the performance of his duties, the head of a service becomes aware of a reasonable suspicion of a punishable offense affecting the scope of the service he is responsible for, he shall do so, unless he has already done so in accordance with § 109, para. 1 has to report immediately to the body appointed to make the complaint or, if he himself is called to do so, to report the complaint. The duty of disclosure is governed by §78 of the Code of Criminal Procedure 1975 (StPO), Federal Law Gazette No. 631.

(4) There is no obligation to report under para. 3,

1. if the notification would adversely affect an official activity, the effectiveness of which requires personal trust relationship, or

2. if and for as long as there are sufficient grounds for acceptance, the criminal liability of the act will soon be canceled out by measures to correct the damage.

#### *Annex II*



English

If you would like to send your **first** report, please click here:

If you have already set up a postbox, you may login here:

- Why should I submit a report?
- What reports help the Financial Market Authority?
- What is the process for submitting reports, and how do I create a postbox?
- How do I receive notification of a response while remaining anonymous?
- Do you have an enquiry or a complaint to the FMA?

★ [Bookmark this page](#)

**Are you aware of malpractice or breaches of supervisory law in an organisation that is subject to supervision by the FMA?**

To provide effective protection for whistleblowers a secure communications platform using the latest technologies has been launched to allow information to be reported anonymously using a certificate-based encryption process.

**This service allows you to submit information in a way that is both anonymous and non-traceable, in relation to banks, insurance undertakings, pensions companies, the supervision of markets and stock exchanges, securities supervision, supervision of financial reporting, money laundering and terrorist financing, as well as the conducting of unauthorised business.**

The FMA is unable to follow-up matters relating to tax law (e.g. reports on undeclared employment). In such cases you may contact the local tax offices, the Federal Ministry of Finance (BMF) and the regional health insurance funds.

We would ask you to set-up your own protected postbox, through which you will be able to communicate anonymously with us. Such a postbox is necessary to allow us to be able to clarify issues with you that arise during our investigations. By using the postbox, you make a substantial contribution towards the success of our investigation procedure.

Provided that you do not submit any information that allows information to be traced back to you, our whistleblowing system also protects your anonymity on a technical level in communications conducted using the postbox.

[Enquiries and complaints cannot be processed through this system.](#)

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[Data Protection Policy](#)

[Close window](#)

**Security Advice**

The technology behind the BKMS® System will enable you to stay anonymous if you so wish. To further enhance your security, please follow these instructions:

- If you would like to remain anonymous, please do not submit any personal information, e.g., your name or relationship to the person accused. Also, please do not submit any information that can be traced back to you.
- Make sure that the secure internet connection is displayed by the lock symbol (in the upper or lower right corner).
- Access the BKMS® server directly by bookmarking the introduction page.
- Please do not submit your report on a PC provided by your employer. In particular, an intranet connection may jeopardize your anonymity.

**I have read and understood the security advice and my responsibility regarding my anonymity and hereby accept these conditions by entering the displayed characters in the designated field.**

**Security Query**

In order to protect the system from automatic assaults, you must fill in the displayed characters in the text field.

The displayed characters are not part of your report and will not be required again during the process.

Characters:



Submit the characters here:

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Choose from the following list the category that best indicates the focus of your report and click on "Continue".

Please make your selection on the left side.  
For examples and an exact explanation of the categories click "i".

- Banking supervision i
- Insurance and pension companies supervision i
- Markets and exchanges supervision i
- Securities supervision i
- Financial reporting enforcement i
- Money laundering and financing of terrorism i
- Unauthorised business i

Continue

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Report to be sent to: **FMA Österreichische Finanzmarktaufsicht, Wien**  
Category: **Money laundering and financing of terrorism**

Subject: \*  \* Required field

Do you want to state your name? \*  Yes  No

Please describe the incident in as much detail as possible: \*

If you would like to stay anonymous, the BKMS® System protects you technically. Please make sure that the information you provide does not contain any reference to you.

You still have 4096 characters at your disposal.

Please answer the following questions in order to optimise processing your report even if you have already provided the answers in the text field above:

What legal basis or standard do you believe has been breached?

Please indicate the law or standard:

Please give the name of the organisation concerned

Name: \*

Address: \*

Note:

Which further organisations are involved in this incident?

Name:

Address:

Note:

More

Have you already informed other people in the organisation concerned?  Yes  No  Not specified

Do you work for the organisation concerned? \*  Yes  No  Not specified

Are managers involved in the incident?  Yes  No  Unknown

Are managers aware of the incident?  Yes  No  Unknown

How much approximately is the total damage in Euro? \* - Select value of breach -

Is the incident still ongoing? \*  Yes  No  Unknown

**Attachment:** You can attach a file of up to 5 MB.

**Note on sending attachments:** Files may contain hidden personal information that could jeopardise your anonymity. Please remove all such information before sending a file. If you are unable to remove such information, copy the text from your file into the report text or send a printed copy of the document anonymously using the reference number that is provided at the end of the reporting process to the examiner's address (see footnote).

Note has been acknowledged.

Durchsuchen... Keine Datei ausgewählt.

If you want to send more than one file, create your secured postbox at the end of this process. There you can send more attachments as an addition.

Clear

Send