

Entire legal provision for the Act on the Federal Bureau of Anti-Corruption (Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung or BAK), version of 29 February 2024

Long title

Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption (Act on the Federal Bureau of Anti-Corruption or BAK Act)

Initial version: Federal Law Gazette I No. 72/2009 (NR: GP XXIV RV 219 AB 300 p. 29. BR: 8137 AB 8152 p. 774.)

Amendment

Federal Law Gazette I No. 13/2012 (NR: GP XXIV RV 1520 AB 1657 p. 144. BR: 8665 AB 8671 p. 805.).

Federal Law Gazette I No. 65/2013 (NR: GP XXIV RV 2143 AB 2214 p. 193. BR: AB 8918 p. 819.).

Federal Law Gazette I No. 52/2015 (NR: GP XXV RV 480 AB 524 p. 64. BR: AB 9338 p. 840.).

Federal Law Gazette I No. 101/2017 (NR: GP XXV RV 1674 AB 1684 p. 188. BR: AB 9864 p. 870.).

Federal Law Gazette I No. 111/2019 (NR: GP XXVII RV 1 AB 14 p. 6. BR: AB 10276 p. 899.).

[CELEX No.: 32017L1371]

Federal Law Gazette I No. 6/2023 (NR: GP XXVII IA 3087/A AB 1921 p. 197. BR: AB 11174 p. 950.).

[CELEX No.: 32019L1937]

Federal Law Gazette I No. 107/2023 (NR: GP XXVII RV 2089 AB 2122 p. 224. BR: AB 11260 p. 956.).

Text

Establishment

§ 1. For the effective nationwide preventing, averting and fighting of corruption, in particular for cooperating with the Central Public Prosecutor's Office for Combating Economic Crime and Corruption (Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption or WKStA), for performing central functions in the area of security and criminal police cooperation with foreign and international institutions active in this area, investigating allegations of mistreatment within the responsibility of the Federal Ministry of the Interior (BMI) and performing other tasks assigned by federal law, the Federal Bureau of Anti-Corruption (Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung or BAK; in the following: BAK or Federal Bureau) is an organisational unit of the Federal Ministry of the Interior established outside the Directorate General for Public Security for the entire federal territory [Section 6 para. 1 Security Police Act (SPG), Federal Law Gazette No. 566/1991].

Organisation

§ 2. (1) The Federal Bureau is headed by a Director. In the event of the Director's absence, their duties shall be performed by one of two Deputies.

(2) The Director and the Deputies shall be appointed by the Federal Minister of the Interior after consultation with the Presidents of the Constitutional Court, the Administrative Court and the Supreme Court for a term of office of ten years. Reappointments are permissible.

(3) Only persons with special knowledge and national and international experience in the field of preventing and combating corruption may be appointed as Director or Deputy Director. In addition, only persons who have worked for at least five years in a profession for which a degree in law or economics is a professional requirement may be appointed Director, and only persons who have worked for at least three years in such a profession may be appointed Deputy Director.

(4) No person may be appointed as Director or Deputy Director who is a member of the federal government, a regional government or a general representative body or who has held one of these functions in the last six years.

(5) When appointing other staff members of the BAK, the legal and other knowledge, skills and aptitudes required for their specific duties as well as sufficient experience in their field of activity shall be taken into account. The Director and Deputies shall be heard before the appointment is made.

(6) By way of derogation from Section 7 (2) second sentence of the Recruitment Act (Ausschreibungsgesetz 1989 or AusG), Federal Law Gazette No. 85/1989, the Head of the Central Agency shall appoint a member for the Evaluation Commission for the Director and for the Deputies. The Federal Minister responsible for the civil service shall appoint the other member, taking into account gender parity.

(7) The Director and the Deputies shall be prohibited from engaging in any secondary employment with the exception of publications and teaching activities. The exercise of other unpaid secondary employment may be authorised by the civil service authority in exceptional cases. Authorisation shall be refused if the exercise of this secondary employment would give rise to justified suspicion that the secondary employment would hinder the performance of official duties, give rise to a presumption of bias or jeopardise other essential official interests.

(8) Other employees of the Federal Bureau may only engage in secondary employment, with the exception of publications and activities in the field of teaching, with the authorisation of the civil service authority, whereby an opinion of the Director must be obtained prior to the decision of the civil service authority. When assessing whether the exercise of a secondary employment is inadmissible under Section 56 (2) of the 1979 Civil Servants Act (BDG 1979), Federal Law Gazette No. 333/1979, or Section 5 (1) of the 1948 Civil Service Employees Act (VBG), Federal Law Gazette No. 86/1948, or the regulations issued thereunder, the official interest arising from the scope of duties of the Federal Bureau (§ 4) shall be given special consideration.

(9) Before taking up their duties, the Director, the Deputies and other employees of the Federal Bureau in management functions shall undergo a security clearance for access to top secret information pursuant to § 55 para. 3 subpara. 3 Security Police Act (SPG), other employees of the Federal Bureau shall undergo a security clearance at least for access to secret information pursuant to § 55 para. 3 subpara. 2 SPG. The security clearance must be repeated every three years. If there are indications that an employee may no longer be trustworthy, the security clearance must be repeated before this period expires.

(10) An organisational unit shall be set up as part of the division of responsibilities, which shall be responsible for investigating allegations of mistreatment pursuant to § 4 para. 5 and investigations pursuant to § 4 para. 4 and which shall report directly to one of the Deputy Directors as its Head (Investigation and Complaints Office Allegations of Mistreatment – Ermittlungs- und Beschwerdestelle Misshandlungsvorwürfe). After completing the training pursuant to para. 11, only employees permanently entrusted with the function shall be deployed in this unit.

(11) Staff members of the Investigation and Complaints Office Allegations of Mistreatment must complete special training in a timely manner, in particular in the area of fundamental and human rights, which must be carried out by the Federal Police Academy (§ 11 SPG).

(12) In order to fulfil the tasks assigned by this Federal Act, the Federal Minister of the Interior shall provide the Federal Bureau with the necessary material and human resources and ensure the interdisciplinary and multi-professional composition of the Investigation and Complaints Office Allegations of Mistreatment. Subject to availability, the interdisciplinary and multi-professional resources may also be used to perform other tasks assigned to the Federal Bureau with the consent of the Head of the Investigation and Complaints Office Allegations of Mistreatment.

BAK Rules of Procedure

§ 3. The Director shall determine who is authorised to approve decisions within the framework of the BAK's division of responsibilities, in which matters they reserve the right of approval and who is responsible for approval in the event of hindrance (rules of procedure).

Remit

§ 4. (1) The Federal Bureau of Anti-Corruption (Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung or BAK) has nationwide jurisdiction in security police and criminal police matters for the following punishable acts:

1. Abuse of official authority (Section (§) 302 of the Austrian Penal Code (Strafgesetzbuch or StGB), Federal Law Gazette (Bundesgesetzblatt or BGBl.) No. 60/1974).
2. Corruptibility (§ 304 Penal Code),
3. Acceptance of an advantage (§ 305 Penal Code),
4. Acceptance of an advantage with intent to be influenced (§ 306 Penal Code),
5. Bribery (§ 307 Penal Code),
6. Offering an advantage (§ 307a Penal Code),
7. Offering or granting an advantage with intent to influence (§ 307b Penal Code),

8. Illicit intervention (§ 308 Penal Code),
- 8a. Breach of official secrecy (§ 310 Penal Code),
- 8b. Breach of § 18 Information Management Act, Federal Law Gazette I No. 102/2014,
9. Breach of trust taking advantage of an official function or with the involvement of an office holder (§ 153 para. 3, § 313, or in conjunction with § 74 para. 1 No. 4a Penal Code),
- 9a. Misuse of funds or assets affecting the financial interests of the European Union (§ 168g Penal Code),
10. Acceptance of gifts by persons holding a position of power (§ 153a Penal Code),
11. Agreements restricting competition in procurement procedures (§ 168b Penal Code) as well as aggravated fraud (§ 147 Penal Code) and business-like fraud (§ 148 Penal Code) on the basis of such agreements,
12. Acceptance of gifts and bribery of employees or agents (§ 309 Penal Code),
13. Money laundering (§ 165 Penal Code), if the assets arise from offences 1 to 8, 9, 9a, 11 (second and third case) or 12; criminal association or criminal organisation (§§ 278 and 278a Penal Code), if their intention is to commit offences 1 to 9a or 11 (second and third case),
14. Acts punishable pursuant to the Penal Code as well as to other laws relevant to criminal law, if these acts are related to offences 1 to 13 and to the extent assigned to the BAK upon written order by a court or public prosecutor's office,
15. Acts punishable pursuant to the Penal Code as well as to laws relevant to criminal law concerning members of the civil service at the Federal Ministry of the Interior, to the extent assigned to the BAK upon written order by a court or public prosecutor's office.

In the cases of Nos. 11 to 13, the Federal Bureau might only have jurisdiction if the offences mentioned are decisive for determining the extent of the sentence pursuant to Section 28 (1) second clause Penal Code.

(2) The BAK is responsible for cooperation in investigations in the framework of international police cooperation and administrative assistance in the cases referred to in (1) above. Furthermore, the BAK is responsible for cooperation with foreign authorities and international institutions in the field of preventing and combating corruption in general, and, in particular, for the exchange of experience in this area. Section 4 (1) of the Criminal Intelligence Service Austria Act, Federal Law Gazette I No. 22/2002, remains unaffected.

(3) The BAK shall research and analyse corruption phenomena, gather information on preventing and combating them and develop appropriate preventive measures.

(4) The BAK is responsible nationwide for criminal investigations into the use of direct coercive force resulting in death and life-threatening use of weapons including firearms (§ 7 Use of Weapons and Firearms Act 1969, Federal Law Gazette No. 149/1969) by

1. members of law enforcement, provided that they are employees of the federal government,
2. other employees of the Directorate State Protection and Intelligence Service, (§ 2b para. 2 Directorate State Protection and Intelligence Service Act, Federal Law Gazette I No. 5/2016) and
3. other employees of the Federal Ministry of the Interior or subordinate agencies authorised to exercise command and coercive power.

(5) The BAK is responsible Austria-wide for investigations in connection with allegations of mistreatment against members of the civil service according to para. 4 Nos. 1 to 3. An allegation of mistreatment is the suspicion or allegation of

1. an intentional punishable act against life and limb in the course of duty without connection to the exercise of direct coercive power,
2. a punishable act against life and limb if there are reasonable grounds for believing that it was caused by the disproportionate use of direct coercive power (§§ 4-6 Use of Weapons and Firearms Act 1969), or
3. inhumane or degrading treatment in the performance of official duties.

The Federal Bureau shall not be in charge if an allegation of mistreatment pursuant to para. 5 No. 3 relates to behaviour towards an employee of the Federal Ministry of the Interior and there is no initial suspicion pursuant to Section 1 para. 3 of the Code of Criminal Procedure (Strafprozeßordnung 1975 – StPO), Federal Law Gazette No. 631/1975.

Investigation and Complaints Office Allegations of Mistreatment

§ 4a. (1) The Investigation and Complaints Office Allegations of Mistreatment (§ 2 para. 10) (in the following: Investigation and Complaints Office) shall be responsible for performing the tasks pursuant to

§ 4 para. 4 and 5 and for processing reports pursuant to § 5 para. 3 last clause. Investigations must always be conducted swiftly and without unnecessary delay and with the involvement of interdisciplinary and multi-professional expertise (§ 2 para. 12).

(2) Insofar as there is an initial suspicion pursuant to Section 1 (3) Code of Criminal Procedure (StPO), the Investigation and Complaints Office must report allegations of mistreatment to the public prosecutor's office without delay (incident report).

(3) Insofar as there is no initial suspicion pursuant to Section 1(3) of the Code of Criminal Procedure in the case of an allegation of mistreatment pursuant to Section 4(5)(3), the Investigation and Complaints Office shall apply the provisions of the General Administrative Procedure Act 1991 (AVG), Federal Law Gazette No. 51/1991, Section 53(2) and (4) of the Security Police Act (SPG) mutatis mutandis and the Service of Documents Act (ZustG), Federal Law Gazette No. 200/1982, which are relevant for the conduct of investigative proceedings – with the exception of the right to inspect files – and for the collection of evidence.

(4) The Investigation and Complaints Office Allegations of Mistreatment shall inform the superior directly or indirectly appointed to exercise supervision (hierarchical superior) of the initiation of their investigations and report on their findings. The Investigation and Complaints Office shall inform of this report on the results of investigations to their superior the staff member concerned and the person who may be affected by a life-threatening use of weapon (§ 4 para. 4) or allegation of mistreatment (§ 4 para. 5). In addition, the Investigation and Complaints Office Allegations of Mistreatment shall inform the civil service authority of facts that may be relevant for the assessment of any provisional suspension pursuant to § 112 Civil Servants Act (Beamten-Dienstrechtsgesetz 1979 or BDG) or any leave of absence pursuant to the Civil Service Employees Act (Vertragsbedienstetengesetz or VBG).

(5) If the superior becomes aware of new facts relevant to the matter after the investigation has been initiated or after reporting pursuant to para. 4 first clause, they must forward these facts to the Investigation and Complaints Office Allegations of Mistreatment. Otherwise, the superior shall refrain from conducting enquiries to clarify the facts of the case pursuant to § 109 para. 1 first clause BDG 1979 after investigations have been initiated; after reporting by the Investigation and Complaints Office Allegations of Mistreatment, the superior shall proceed in accordance with § 109 BDG 1979 or the provisions of the VBG.

(6) In the case of allegations of mistreatment pursuant to § 4 para. 5 subpara. 3 where there is no initial suspicion pursuant to § 1 para. 3 StPO, the Sections § 94 para. 2 and § 114 para. 2 and 3 BDG 1979 shall apply, with the proviso that the investigation proceedings by the Investigation and Complaints Office Allegations of Mistreatment shall take the place of the criminal proceedings pursuant to the StPO until the reporting to the superior pursuant to para. 4 first sentence has been made.

Reporting

§ 5. (1) Law enforcement authorities or departments that become aware of the initial suspicion of an offence within the meaning of § 4 (1) shall, without prejudice to their reporting obligations under the Code of Criminal Procedure, report this in writing to the Federal Bureau without delay (duty to report).

(2) The law enforcement authorities or departments, the Federal Office for Immigration and Asylum, the civil service authority or the superior who become aware of the suspicion of a criminal offence within the meaning of § 4 (4) or of the suspicion or allegation within the meaning of § 4 (5) shall, without prejudice to their reporting obligations under the Code of Criminal Procedure, report this in writing to the Investigation and Complaints Office Allegations of Mistreatment without delay (duty to report). If the report by the superior to the Investigation and Complaints Office Allegations of Mistreatment contains the suspicion of a criminal offence to be prosecuted ex officio, the superior must also notify the civil service authority at the same time (Section 109 BDG 1979); in this case, the report to the Investigation and Complaints Office Allegations of Mistreatment also fulfils the duty of notification of the civil service authority pursuant to Section 78 StPO.

(3) No member of the federal civil service may be prevented from reporting a suspicion or allegation within the meaning of § 4 para. 1, § 4 para. 4 or 5 directly and outside official channels to the Federal Bureau (right to report). In addition, anyone is entitled to report an allegation of mistreatment within the meaning of § 4 (5) to the Federal Bureau.

Cooperation with other authorities and departments

§ 6. (1) Notwithstanding the duty to report under § 5 (1) and (2), law enforcement authorities or departments shall independently carry out investigative acts that cannot be postponed, for example to prevent the imminent loss of evidence, unless the Federal Bureau, the WKStA (Section 20a (2) StPO) or another competent public prosecutor's office issues a different order.

(2) In the event of an initial suspicion of a criminal offence within the meaning of § 4 (1) and in investigations pursuant to § 4 (4), the Federal Bureau may, for reasons of expediency, commission other law enforcement authorities and departments to carry out individual investigations. It may also order that the authorised agency report directly to it on the progress of a matter on an ongoing basis or at specific times.

(3) The Federal Bureau may transfer the conduct of investigations into an initial suspicion of a criminal offence within the meaning of § 4 (1) to other competent law enforcement authorities or departments if there is no particular public interest due to the significance of the criminal offence or the person under investigation. The competent public prosecutor's office must be informed of the transfer.

(4) In investigations pursuant to § 4 (5), the Investigation and Complaints Office Allegations of Mistreatment may task other law enforcement authorities or departments with carrying out forensic investigations, crime scene work by the criminal police and individual evidence preservation and investigative measures that cannot be postponed.

Instructions

§ 7. § 7. Instructions to the Federal Bureau regarding the handling of a particular case must be issued in writing and must be justified; instructions to the Federal Bureau in connection with the activities of the Investigation and Complaints Office Allegations of Mistreatment must also be forwarded to the Advisory Board (§ 9a). A verbal instruction initially issued for special reasons, in particular due to imminent danger, must be followed up in writing without delay.

Legal Protection Commission

§ 8. (1) In order to provide special legal protection with regard to matters in connection with the activities of the Federal Bureau under this Federal Act, a Legal Protection Commission shall be established at the Federal Minister of the Interior consisting of the Legal Protection Commissioner pursuant to Section 91a Security Police Act (Sicherheitspolizeigesetz or SPG) and two other members.

(2) The other members referred to in (1) above shall be appointed by the Federal President for a term of five years on the proposal of the Federal Government after hearing the Presidents of the Constitutional Court, the Administrative Court and the Supreme Court. Reappointments are permissible.

(3) A person who has been Director or Deputy Director of the Federal Bureau in the last twelve years may not be appointed as an additional member under (1). In addition, the incompatibilities stipulated in § 91b para. 1 SPG shall also apply to their appointment.

(4) The appointment as an additional member shall expire in the event of resignation, death or when the new appointment or reappointment takes effect. If there is reason to doubt the complete impartiality of an additional member, the latter shall refrain from intervening in the matter; in this case and in the event that a member of the Legal Protection Commission is prevented from doing so, a deputy of the Legal Protection Commissioner (Section 91a SPG) shall intervene in place of the member concerned.

(5) The Federal Minister of the Interior shall provide the necessary material and personnel resources for the administrative activities of the Legal Protection Commission.

(6) The members of the Legal Protection Commission shall be entitled to remuneration commensurate with the time and work involved, the flat rates of which shall be calculated in accordance with the Legal Protection Commissioner Compensation Ordinance, Federal Law Gazette II No. 116/2016.

Duties and rights of the Legal Protection Commission

§ 9. (1) The Commission shall investigate allegations brought to their attention against the activities of the Federal Bureau under this Federal Act that are not manifestly unfounded, provided that the persons concerned have no legal remedy.

(2) The members of the Legal Protection Commission shall be independent in the performance of their duties and shall not be bound by any instructions. They shall be bound by official secrecy.

(3) The Federal Bureau shall grant the Legal Protection Commission access to all necessary documents and records at any time in the performance of their duties and provide them with copies (photocopies) of individual files free of charge upon request; in this respect, no official secrecy may be asserted against them. However, this shall not apply to information and documents on the identity of persons or on sources, the disclosure of which would jeopardise national security or the safety of people, and to copies (photocopies) if disclosure of the information would jeopardise national security or the safety of people.

(4) The Legal Protection Commission may report on their examinations to the Federal Minister of the Interior at any time and, if deemed necessary, to the public. In addition, the Legal Protection Commission may make recommendations to the Federal Minister of the Interior and to the Director.

(5) The Legal Protection Commission shall submit an annual report on the performance of their duties to the Federal Minister of the Interior by 30 April of the following year at the latest. The Federal Minister of the Interior shall make this report available to the Standing Subcommittee of the Committee on Internal Affairs for the Review of Measures for the Protection of Constitutional Institutions and their Capacity to Act upon the latter's request within the framework of the right to information and inspection pursuant to Article 52a (2) of the Federal Constitutional Law.

(6) The Legal Protection Commission does not fulfil the tasks of the security or criminal investigation department, nor are they an official or disciplinary authority. The Commission shall report such matters to the competent authorities.

Independent Advisory Board Investigation and Complaints Office Allegations of Mistreatment

§ 9a. (1) For the purpose of ensuring that the Investigation and Complaints Office Allegations of Mistreatment fulfils its tasks in accordance with the law, an independent Advisory Board for the Investigation and Complaints Office Allegations of Mistreatment (in the following: Advisory Board) shall be established under the Federal Minister of the Interior. From the point of view of safeguarding fundamental and human rights, the Advisory Board is responsible for the accompanying structural monitoring of the activities of the Investigation and Complaints Office Allegations of Mistreatment, in particular with regard to identifying the need for organisational optimisation, as well as providing advice in this regard. Matters and investigations that are subject to monitoring by the public prosecutor's offices or the courts or to special legal protection by the Legal Protection Commission (Sections 8 and 9) or another legal protection organisation are not covered by this.

(2) The Advisory Board may act on their own initiative or at the request of the Federal Minister of the Interior or the Director and make recommendations to them.

(3) The Advisory Board shall consist of a chairperson, a deputy chairperson and seven other members as well as seven substitute members (Advisory Board members). The chairperson and deputy chairperson must have specialised knowledge in the field of fundamental and human rights and have completed a law degree.

(4) The members of the Advisory Board shall be appointed by the Federal Minister of the Interior for a term of seven years. Reappointments are permissible.

(5) The right of nomination shall be vested in

1. the President of the Constitutional Court for the chairperson and deputy chairperson,
2. the Austrian Bar Association for one member and one substitute member,
3. the Austrian Medical Association for one member and one substitute member,
4. the Austrian University Conference for one member and one substitute member,
5. two private non-profit organisations designated by the Federal Minister of the Interior, which are dedicated to the protection of fundamental and human rights or victims' rights, each for one member and one substitute member,
6. two private non-profit organisations designated by the Federal Minister of Justice, which are dedicated to the protection of fundamental and human rights or victims' rights, each for one member and one substitute member.

The organisations entitled to nominate members shall endeavour to achieve a balanced representation of gender and a pluralistic and diverse composition of the Advisory Board.

(6) A person who has been Director or Deputy Director of the Federal Bureau in the last twelve years may not be appointed as an additional member under subsection 4. Furthermore, persons may not be appointed who are excluded from the office of juror or lay judge pursuant to sections 2 and 3 nos. 1 to 4 and 7 of the Jurors and Lay Judges Act 1990 (GSchG), Federal Law Gazette No. 256/1990, or who are not to be appointed to this office.

(7) The appointment as a member of the Advisory Board shall expire in the event of resignation, death or when the new appointment or reappointment becomes effective. If there is reason to doubt the complete impartiality of an Advisory Board member, the latter must refrain from intervening in the matter.

(8) The Federal Minister of the Interior may prematurely dismiss an Advisory Board member on the proposal of the Chairperson or the Deputy Chairperson,

1. if the member is no longer able to fulfil the tasks associated with their function due to their state of health, or
2. if the member has grossly violated or persistently neglected the duties associated with their function.

In addition, the Federal Minister of the Interior shall dismiss an Advisory Board member prematurely if a requirement for appointment ceases to apply.

(9) Before taking up their duties, each member of the Advisory Board must undergo a security clearance at least for access to confidential information in accordance with § 55 para. 3 no. 1 SPG. The security clearance must be repeated every three years. If there are indications that an Advisory Board member may no longer be trustworthy, the security clearance must be repeated before this period expires.

(10) The Advisory Board shall constitute a quorum if the Chairperson or Deputy Chairperson and at least four other Advisory Board members are present. The Advisory Board makes decisions by simple majority. Abstentions are not permitted. The Advisory Board shall establish more detailed rules of procedure for its cooperation, in particular regarding the duties of the Chairperson, the rights and obligations of the Advisory Board members, the convening of meetings and the representation of the other Advisory Board members in the event of absence.

(11) The Federal Minister of the Interior shall provide the necessary material and personnel resources for the administrative activities of the Advisory Board. To ensure independence, the Advisory Board shall be provided with office space outside the Federal Bureau. The members of the Advisory Board shall be entitled to remuneration commensurate with the time and work involved. The Federal Minister of the Interior is authorised to set flat rates for the assessment of this remuneration by decree.

Advisory Board as reporting centre

§ 9b. Anyone is entitled to report allegations of mistreatment within the meaning of § 4 (5) to the Advisory Board in writing or electronically. The Advisory Board must forward this report to the Investigation and Complaints Office Allegations of Mistreatment for processing without delay.

Fulfilment of functions by the Advisory Board

§ 9c. (1) The members of the Advisory Board are independent in the performance of their duties, are not bound by any instructions and are subject to official secrecy and other confidentiality obligations that apply in connection with the performance of the activities of the Investigation and Complaints Office Allegations of Mistreatment. They are not obliged to disclose the identity of any person providing information.

(2) The Federal Bureau is obliged to support the Advisory Board in its activities.

(3) The Investigation and Complaints Office Allegations of Mistreatment shall grant the Advisory Board access to all necessary documents and records at any time in the performance of its duties and shall provide it with copies (photocopies) of individual files free of charge upon request and provide it with information; in this respect, official secrecy cannot be asserted against it. However, this does not apply to information and documents on the identity of persons or on sources, the disclosure of which would jeopardise national security or the safety of people, and to copies (photocopies) if disclosure of the information would jeopardise national security or the safety of people. In addition, the transfer of personal data is only permitted insofar as this is absolutely necessary for the fulfilment of functions of the Advisory Board. If documents or records contain data that were determined on the basis of the Code of Criminal Procedure, the public prosecutor's offices and courts as well as the Investigation and Complaints Office Allegations of Mistreatment are authorised, after prior consultation with the public prosecutor's office or the court, to transmit personal data required in the context of proceedings for the accompanying structural monitoring of the activities of the Investigation and Complaints Office Allegations of Mistreatment to the Advisory Board at its request in accordance with Section 76 (4) of the Code of Criminal Procedure.

(4) The Director and the Head of the Investigation and Complaints Office Allegations of Mistreatment (§ 2 para. 10) are obliged to be available to the Advisory Board for a meeting at least every six months.

(5) The Advisory Board shall not fulfil the duties of the security or criminal police, nor is it an official or disciplinary authority.

(6) The Advisory Board is authorised to process personal data, including data relating to criminal convictions and offences pursuant to Art. 10 of the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119 of 04.05.2016 p. 1, as well as special categories of personal data (Art. 9 para. 1 General Data Protection Regulation) of persons whose data are required in the context of the procedure for the accompanying structural control of the activities of the Investigation and Complaints Office Allegations of Mistreatment, and to transmit them to the Investigation and Complaints Office Allegations of Mistreatment, the public prosecutor's offices and courts, provided that the respective data are necessary for the fulfilment of legally assigned tasks. Special categories of

personal data and data pursuant to Art. 10 of the General Data Protection Regulation may only be processed and transmitted to the extent absolutely necessary and such actions must be documented in writing.

(7) The Advisory Board shall delete data, instructions (§ 7), copies and photocopies (para. 3) transmitted to them in accordance with this Federal Act as soon as the subsequent report pursuant to § 9d para. 1 has been submitted.

Reports and recommendations by the Advisory Board

§ 9d. (1) The Advisory Board shall submit a report on the performance of their duties and recommendations to the Federal Minister of the Interior by 30 April of the following year at the latest. The Federal Minister of the Interior shall forward this report to the Committee for Internal Affairs.

(2) The Advisory Board may also report to the Federal Minister of the Interior at any time and, if deemed necessary, to the public. Recommendations to the Federal Minister of the Interior and to the Director pursuant to Section 9a para. 2 shall be published. Publications pursuant to this paragraph shall be made while respecting the personal rights of the persons concerned and shall be omitted as long as the purpose of ongoing investigations by the Investigation and Complaints Office Allegations of Mistreatment would otherwise be jeopardised.

(3) If the Advisory Board becomes aware of facts that fall within the remit of the Austrian Ombudsman Board or another legal protection organisation in the course of performing their duties, they must inform them accordingly.

Staff representation

§ 10. The staff representation agendas for the Federal Bureau shall be carried out by the central staff representation of the Federal Ministry of the Interior.

References

§ 11. References in this Federal Act to other federal laws shall be understood as references to the respective applicable version.

Gender neutrality

§ 12. Insofar as this Federal Act refers to natural persons only in the masculine form, it shall apply equally to all genders. When applying the terms to specific natural persons, the gender-specific form shall be used.

Entry into force

§ 13. (1) This Federal Act shall enter into force on 1 January 2010.

(2) Sections 1, 4 and 6 (1) as amended by Federal Law Gazette I No. 13/2012 shall enter into force on 1 April 2012.

(3) The title, short title and abbreviation as well as § 4 para. 1 in the version of the Federal Law Gazette I No. 65/2013 shall enter into force at the end of the day of their promulgation.

(4) Section 4(1)(8b) shall enter into force at the end of the day of its promulgation.

(5) Section 4 and Section 8(4) and (6) in the version of Federal Law Gazette I No. 101/2017 shall enter into force at the end of the day on which they are promulgated.

(6) Section 4(1)(9a) and (13) as amended by Federal Law Gazette I No. 111/2019 shall enter into force on 28 December 2019.

(7) Sections 1, 8(1) and 9(1) as amended by Federal Law Gazette I No. 6/2023 shall enter into force at the end of the day of their promulgation.

(8) Section 1, Section 2 (1) and (2) and (5) to (12), Section 4 (1) (9a) and (13) and (3) to (5), Section 4a including the heading, Section 5, Section 6, Section 7, Section 8 (4), Sections 9a to 9d including the headings, Section 12, Section 15 including the heading and Section 16 as amended by Federal Law Gazette I No. 107/2023 shall enter into force six months after the date of promulgation.

Ordinances

§ 14. Ordinances may be issued on the basis of this Federal Act after its promulgation, but may not enter into force before that date.

Transitional provisions and preparatory measures

§ 15. (1) Section 2 (2) and (6) in the version of Federal Law Gazette I No. 107/2023 shall apply to new appointments or reappointments of the Director or Deputy Director after the entry into force of Federal Law Gazette I No. 107/2023.

(2) Employees of the Federal Bureau who have registered a secondary employment with the civil service authority at the time of the entry into force of Federal Law Gazette I No. 107/2023 shall apply to the civil service authority for the authorisation for secondary employment provided for in Section 2(7) and (8) without delay, at the latest within two weeks of the entry into force of Federal Law Gazette I No. 107/2023. Until a decision is made by the civil service authority, the staff member may temporarily pursue the secondary employment. In addition, the authorisation for secondary employment provided for in Section 2(8) may be applied for from the civil service authority before commencing work at the Federal Bureau.

(3) Section 2(9) shall apply to persons who are already employees of the Federal Bureau at the time Federal Law Gazette I No. 107/2023 comes into force, subject to the proviso that the initial security clearance must be carried out within six months of Federal Law Gazette I No. 107/2023 coming into force.

(4) Security clearance pursuant to Section 2(9) and Section 9a(9) and training pursuant to Section 2(11) in the version of Federal Law Gazette I No. 107/2023 may already be carried out at the end of the day on which Federal Law Gazette I No. 107/2023 is promulgated.

(5) From the day following the promulgation of Federal Law Gazette I No. 107/2023, all preparatory measures shall be taken that are necessary to enable the Investigation and Complaints Office Allegations of Mistreatment to perform its duties in a timely manner. In particular, the position of the Head of the Investigation and Complaints Office Allegations of Mistreatment pursuant to § 2 para. 10 in the version of Federal Law Gazette I No. 107/2023 must be advertised in good time so that the Head can take up their duties as soon as possible after Federal Law Gazette I No. 107/2023 comes into force.

Implementation

§ 16. (1) The Federal Minister of the Interior and the Federal Minister responsible for the civil service shall be entrusted with the implementation of § 2 (6).

(2) In all other respects, the Federal Minister of the Interior shall be responsible for implementing this Act.

Article 5

Transposition of European Union Directives

(Note: from Federal Law Gazette I No. 111/2019, to Section 4, Federal Law Gazette I No. 72/2009)

This Federal Act transposes into national law Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law, OJ No. L 198, 28.07.2017, p. 29, as corrected by OJ No. L 350, 29.12.2017, p. 50.