

.BAK



REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF THE INTERIOR
FEDERAL BUREAU OF ANTI-CORRUPTION

BAK

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1. PREFACE	5
2. INTRODUCTION	7
2.1 International Standards and Historical Development	7
2.2 BAK - Legal Bases	8
2.3 BAK - Tasks	10
2.4 Commission for Legal Protection	12
3. ORGANIZATION	15
3.1 Department 1 - Strategy, Administration, Operational and Management Assistance	15
3.2 Department 2 - Prevention, Education, Basic Groundwork	16
3.3 Department 3 – Operational Service	17
3.4 Department 4 – International Cooperation and Mutual Legal Assistance	18
4. STAFF	19
5. STATISTICAL DATA	21
5.1 General	21
5.2 Number of Cases	21
5.3 Case-Related Intelligence	22
5.4 Malfeasance in Office	22
5.5 Clarification	23
5.6 Responsible Services	24

CONTENTS

6. PREVENTION	25
6.1 General	25
6.2 Project “Code of Conduct”	26
7. EDUCATION UND AWARENESS-RAISING	29
7.1 General	29
7.2 Austrian Anti-Corruption-Day	30
7.3 Publication “Corruption and Abuse of Official Authority”	31
8. INTERNATIONAL RELATIONS	33
8.1 General	33
8.2 Bilateral Cooperation	22
8.3 IACSS (International Anti-Corruption Summer School)	34
8.4 Multilateral Cooperation, Bodies and Networks	35

1. PREFACE

Dear Sir or Madam,

I am very pleased to present the first performance report by the Federal Bureau of Anti-Corruption (BAK) for 2010. Based on a 4-pillar approach for combating corruption, at BAK we group our tasks by four main fields - prevention, education, law enforcement and cooperation. The present annual work report details performances accomplished in all three fields.

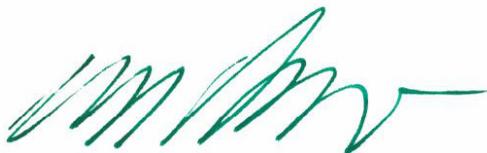
2010, the founding year of BAK, was characterized by the step-by-step establishment of the newly created Bureau, subject to continuous evaluation. Despite excellent assistance within the Austrian Ministry of the Interior (BM.I), manifold challenges were only to be tackled successfully, in particular, with a view to the tight budgetary situation, by continuous examination and optimization of BAK procedures; e.g. by the step-by-step creation of a controlling system.

Let me also draw your attention to the numerous projects BAK initiated on their own initiative, implemented, or participated in. Additionally, BAK is involved in two subareas of the new overall strategy by the Ministry of the Interior (BM.I) called INNEN.SICHER, namely, in projects "Code of Conduct", which also aims at developing the basis of a future

compliance system at BM.I, and “Increase of Prevention and Repression in the Field of Anti-Corruption”.

In the field of international cooperation, we entertained numerous visits by delegations, organized an alumni-meeting of the International Anti-Corruption Summer School (IACSS), committed to multilateral cooperation, performed work in committees, and networking.

Finally, let me emphasize that the large number of tasks included in combating corruption affords a dynamic development of the organization charged with the effort – a challenge, which in 2010 BAK not only met, but in many ways rose up to.



Mag. Andreas Wieselthaler, MSc
Director

2. INTRODUCTION

2.1 International Standards and Historical Development

Austria signed and subsequently ratified international conventions in the area of comprehensive combating of corruption phenomena, in particular, the United Nations Convention Against Corruption (UNCAC)¹, thereby undertaking to implement extensive measures – in particular, in legislation and organization law. Such measures include, inter alia, the establishment of specialised services vested with the necessary independence. Namely, the creation of an institution for the prevention of corruption (Art. 6) and a specialised prosecution authority (Art. 36) has been envisaged within UNCAC.

Pursuant to Art. 65 UNCAC, each contractual state in accordance with relevant principles of national law undertakes to take necessary measures - including legislative measures – to ensure compliance with the Convention. The Convention as such obligates contractual states to transform its contents into national law, if necessary, and if stipulations are not facultative.

¹ Austria undersigned UNCAC on 10.12.2003 and ratified UNCAC on 11.01.2006.

INTRODUCTION

Until 31.12.2009, tasks listed in the Convention were performed for Austria by the Federal Bureau for Internal Affairs (BIA). In the field of corruption prevention, inter alia, numerous presentations, trainings and workshops were held, the Austrian Anti-Corruption Day was launched, and the International Anti-Corruption Summer School (IACSS) initiated and organized, co-financed by the European Commission. In the field of corruption repression, successful investigations by the Bureau led to a large number of corruption cases and abuse of authority cases solved.

With the establishment of the Federal Bureau of Anti-Corruption (BAK) we continued this successful road and this specialized service installed within the Federal Ministry of the Interior, well-founded on a special legal basis; thereby, moreover, further implementing international requirements. These new legal bases create guarantees essential for the existence of an anti-corruption bureau.

2.2 BAK - Legal Bases

The Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK Law) entered into force on 1 January 2010 and constitutes the legal basis of the Federal Bureau of Anti-Corruption (BAK). The law was approved by the Austrian National Council on 8 July 2009

and announced on 3 August 2009 (BGBl. [Federal Law Gazette] I no. 72/2009).

BAK is an institution of the Austrian Federal Ministry of the Interior. Pursuant to section 1 BAK Law it is, organizationally speaking, established outside the Directorate-General for Public Security within Sektion IV, directly responsible to the head of Sektion IV (Service and Control).

With the entry into force of the Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK) as of 1 January 2010, BAK assumed the tasks previously fulfilled by the Federal Bureau for Internal Affairs (BIA), but also a large number of additional tasks. BAK has nationwide jurisdiction in the prevention of and the fight against corruption, close cooperation with the Public Prosecutor's Office for Corruption (KStA), and law enforcement and criminal police cooperation with foreign and international anti-corruption institutions.

BAK's legal mandate thus includes and defines the 4-pillar approach to combating corruption propagated by experts – prevention, education, repression and international cooperation.

2.3 BAK - Tasks

Security and criminal police investigations concerning the following criminal offences:

1. Abuse of official authority (§ 302 Austrian Penal Code (APC)),
2. Corruptibility (§ 304 APC),
3. Acceptance of an advantage (§ 305 APC),
4. Facilitation of corruptibility (§ 306 APC),
5. Bribery (§ 307 APC),
6. Offering an advantage (§ 307a APC),
7. Facilitation of bribery or of the acceptance of an advantage (§ 307b APC),
8. Illicit intervention (§ 308 APC),
9. Breach of trust due to abuse of an official function or due to involvement of an office holder (§§ 153 para. 2 case 2, 313 or in connection with § 74 para. 1 no. 4a APC),
10. Acceptance of gifts by persons holding a position of power (§ 153a APC),
11. Agreements restricting competition in procurement procedures (§ 168b APC) as well as serious fraud (§ 147 APC) and commercial fraud (§ 148 APC) on the basis of such agreement,
12. Acceptance of gifts by employees or agents (§ 168c para. 2 APC),

13. Money laundering (§ 165 APC), provided that the assets arise from offences 1 to 9, 11 (second and third case) or 12; criminal associations or organizations (§§ 278 and 278a APC), provided that they intend to commit offences 1 to 9 or 11 (second and third case),
14. Acts punishable pursuant to APC as well as to other laws relevant to criminal law, provided that they are related to offences 1 to 13 and must be prosecuted by BAK by written order of a court or a public prosecutor's office,
15. Acts punishable pursuant to APC as well as to laws relevant to criminal law concerning public employees of the Federal Ministry of the Interior, provided that they must be prosecuted by BAK by written order of a court or a public prosecutor's office.

In cases of no. 11 to 13 BAK Law, BAK will only be considered competent if offences mentioned are governed by section 28 para. 1 2nd sentence Austrian Penal Code (determination of maximum penalty) for the determination of the degree of penalty. For the determination of the maximum penalty, the exploitation of an official position pursuant to section 313 APC increases the severity of the penalty.

Since the beginning of 2010, international cooperation by BAK has been clearly laid down in section 4 para. 2 BAK Law: The Federal Bureau of Anti-Corruption has jurisdiction over investigations within the framework of international police cooperation and administrative assistance as well as for cooperation with the corresponding institutions of the European Union and the investigating authorities of EU Member States in the above mentioned cases. Regarding international police cooperation in cases 1 to 13 the Bureau acts as point of contact for OLAF, Interpol, Europol and other comparable international institutions. In the field of prevention, pursuant to section 4 para. 3 BAK Law, BAK shall analyse corruption phenomena, gather information on preventing and combating them and develop appropriate preventive measures.

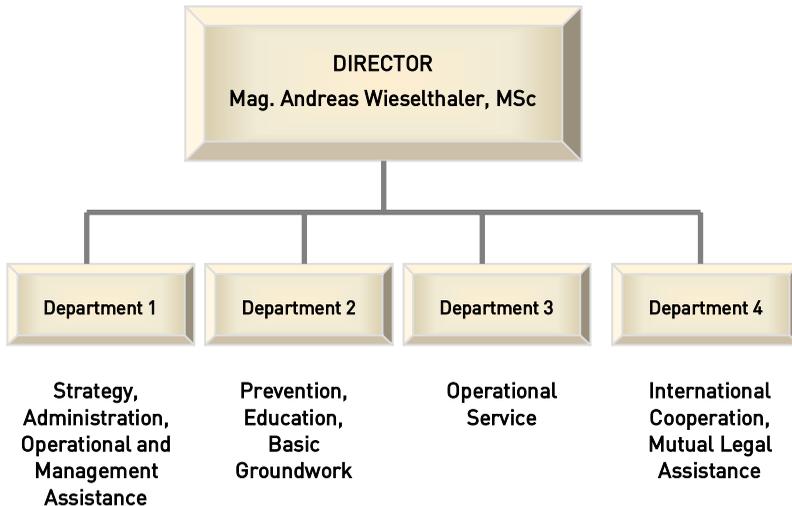
2.4 Commission for Legal Protection

A Commission for Legal Protection has been established at the Federal Minister of the Interior pursuant to § 8 para. 1 BAK Law for particular legal protection with a view to facts of case in connection to the work of the Bureau.

The main task of the Commission is the investigation of justified reproaches to activities of the Bureau, if persons concerned do not have a legal remedy at their disposal. Members of the Commission for Legal Protection are independent, hold paramount authority and are subject to

official secrecy. The Commission for Legal Protection prepares annual reports on their activity for the Minister of the Interior. On 6 April 2010 occurred the first and on 18 November 2010 the second visit of the Commission for Legal Protection at the Bureau.

3. ORGANIZATION



3.1 Department 1 - Strategy, Administration, Operational and Management Assistance

Within Department 1, the SPOC (Single Point of Contact) is established as central contact point for any incoming reports and enquiries, being available 7 days a week, 24 hours a day. At the same time, SPOC is in charge of initial security and criminal police assessments as well as the initiation of first response and ad hoc measures.

In the area of operational and management assistance, Department 1 deals with matters of operational technique and forensic data recovery and analysis, acts as liaison to

assistant services of the central body and subordinate services, and also provides servicing of BAK-specific IKT-infrastructure.

The responsibilities of Department 1 further include legal matters, the coordination of strategic measures and police assistance and expert services, as well as the entire BAK-internal project management.

3.2 Department 2 - Prevention, Education, Basic Groundwork

The area of prevention includes the development of prevention concepts and risk analysis instruments as well as the performance of risk analyses, which Department 2 attends to. Furthermore, the Department works out target group-oriented and individual recommendations for risk avoidance as well as generalizable prevention measures.

On the subject of combating corruption, information and educational campaigns are performed for internal as well as external audiences, and suitable communication mechanisms in the area of awareness-raising are developed. Matters related to external presentation of BAK are also dealt with by Department 2.

The topic of education comprises the development and performance of target group-oriented anti-corruption training measures on the entire Austrian territory, and the performance and organization of scientific training courses and symposia on the subject of prevention and combating of corruption.

In the field of basic groundwork, the focus lies in the development of fundamental knowledge on prevention, suppression and combating of corruption, the production of empirically confirmed statements on causes, conditions and consequences of corruption offences, and the coordination of a comprehensive knowledge management.

Statistical evaluation and analysis of corruption phenomena and assessment of evaluations in the form of analysis reports also fall within the competence of this Department.

3.3 Department 3 – Operational Service

Department 3 is responsible for law enforcement and criminal police investigations falling in the task area of the Federal Bureau. Operational analysis is another focal point in this competence area.

3.4 Department 4 – International Cooperation and Mutual Legal Assistance

Department 4 is in charge of the management and performance of all international tasks of BAK. In particular, it acts as a contact point for the cooperation with comparable international institutions, authorities, networks and organizations as well as the corresponding institutions of the EU. In addition, the Department assumes the tasks of mutual legal assistance. Experts of Department 4 represent BAK in the framework of the UNCAC process, of GRECO, the OECD Anti-Bribery Convention, and international projects.

4. STAFF

As of 01.01.2010, BAK had a staff number of 60 employees, which increased to 92 until the end of the year. A total of 62 employees of other services are assigned to the Bureau, primarily in the operational field.

5. STATISTICAL DATA

5.1 General

BAK keeps detailed records on all reports received and draws up corresponding statistics. Inclusion coverage is based on a catalogue of criminal offences compiled partly under criminal law aspects and partly under criminological aspects.

It is to be noted that these data do not represent a statistic of cases completed with final effect. Many of the persons included are merely suspects who are later on not sentenced as they are proven innocent or due to lack of evidence.

5.2 Number of Cases

The number of cases increased from 1431 in the year 2009 to 1601 in the reporting year (+11.88 %).

The number of investigative cases rose from 1133 in the year 2009 to 1336 in the reporting year (+17.92 %). The number of all other cases went down from 298 in 2009 to 265 in 2010 (-11.07 %). General and insubstantial complaints and reproaches, criminal acts incorrectly classified by the reporting services (no competence of BAK) and rogatory letters are classified as 'other cases'.

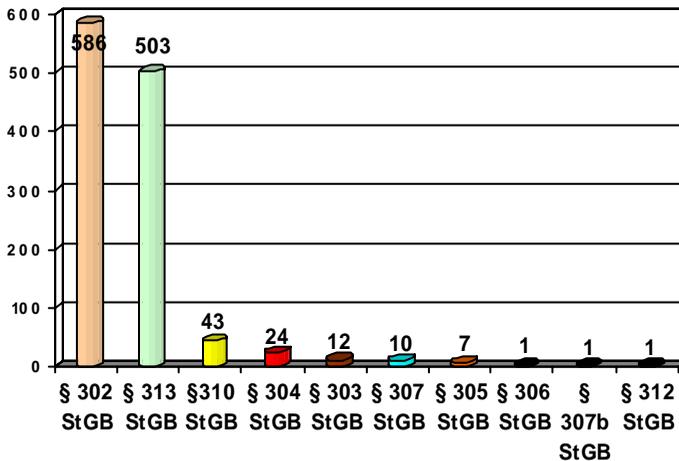
Investigative cases				
	Year 2010	Year 2009	Changes	
			total	in %
Other cases	265	298	-33	11,07 %
Investigative cases	1336	1133	203	17.92 %
Total	1601	1431	170	11,88 %

5.3 Case-Related Intelligence

The majority of reports presented to BAK originated from other authorities, followed by 134 reports from private individuals (primarily persons concerned by official acts and proceedings). In 35 cases, anonymous persons provided information and in 3 cases, investigations were initiated ex officio.

5.4 Malfeasance in Office

The malfeasances most frequently registered are abuse of official authority (586) and violation of official secrecy (43). A total of 503 proceedings were initiated for punishable acts committed by use of official positions.



5.5 Clarification

Cases are considered clarified, when at least one accused (a suspect known by name) has been identified on the basis of the investigative results of law enforcement and criminal police. Out of the 1010 proceedings concluded in 2010 (2009: 915), a total of 816 (2009: 768) were clarified. The clear-up rate represents the rate in percentages of the cleared-up cases as against the number of criminal acts reported in the same period. In 2010, the clear-up rate was 80.79 % (year 2009: 83.93 %).

5.6 Responsible Services

In 2010, a total of 1336 cases (2009: 1133) were dealt with. 922 cases (2009: 819) were dealt with by subordinate law enforcement agencies and units, and 414 cases by BAK.

Investigative proceedings		
Authority	2010	2009
Subordinate authorities / services	922	819
BAK	414	314
Total	1336	1133

6. PREVENTION

6.1 General

In conformity with the 4-pillar-model in the fight against corruption supported by BAK, prevention and education work are in the foreground next to repression in the sense of law enforcement and criminal police investigations and international cooperation in the fight against corruption.

Since 1 January 2010, BAK has been assigned the statutory mandate to work out findings on prevention, forestalment and suppression in the framework of the analysis of corruption phenomena and to implement these insights by suitable prevention measures.

In the understanding of BAK, prevention of corruption comprises all measures aiming at forestalling corruption. In order to fulfil these new tasks, theoretical bases of prevention in the area of corruption and abuse of office were at first examined for their applicability, adapted or newly developed as appropriate, and finally used to design a corruption prevention model that is to serve as a working basis.

New findings on the phenomenon of corruption are gathered through ongoing statistical evaluation and analysis of information material available on one hand, and also by following cases dealt with.

6.2 Project “Code of Conduct”



The project “Code of Conduct (M 5.1)” has been created in the framework of the comprehensive strategy INNEN.SICHER of the Austrian Federal Ministry of the Interior. The goal of the project is the elucidation on the importance of values in the everyday work of all employees of the Federal Ministry of the Interior, ultimately to enhance credibility and transparency for the general public.

The Code of Conduct is to help all employees of the FMol to clarify doubtful questions and to provide assistance for decisions in grey areas, providing an activity-specific guidance suitable for everyday use. A sustainable dissemination of the values and standards of action described in the Code of Conduct is called for.

To this end, a concept is being developed and implemented in the framework of the project to safeguard the effective communication of the Code of Conduct to all employees, and also to systematically integrate the contents of the Code of Conduct into the basic and further training of employees. Great importance is placed on the use of modern, interactive education methods during the trainings on the Code of

Conduct. By way of example, contents are presented not only in the form of talks and workshops, but also by means of e-learning modules.

7. EDUCATION UND AWARENESS-RAISING

7.1 General

Lasting successes in the fight against corruption require continuous consciousness-raising in society as a whole and awareness-raising for the connected problem issues. For this reason, BAK has continuously enlarged its offer of training and further training measures for internal and external audiences during the last years.

Since 2010, presentations given by BAK on the subject of "prevention and combating of corruption" represent a fixed component of basic training courses and further trainings of the Federal Ministry of the Interior. Added to that, three-week courses on the subject of "corruption combating and prevention" are organized and carried out by BAK on an annual basis. Participants learn about the backgrounds and mechanisms regarding the issue of "Corruption" and about possible forms of combating. They are made aware of problems and dangers that the phenomenon of corruption brings about, notably in the area of public administration.

Apart from the manifold programme offered to the Ministry of the Interior, BAK also accepts invitations to informational events, training sessions and presentations in the entire public sector. For example, talks were given at the

Administrative School of Salzburg, in the framework of the trainings of internal auditors at the Municipal Administration of Vienna, at the District Administration of Greater Salzburg and the Forum of Public Prosecutors (Federal Ministry of Justice).

In all, 122 presentation events (655 presentation hours) on corruption prevention and combating were offered to some 2700 participants.

7.2 Austrian Anti-Corruption-Day

On 27 and 28 May 2010, BAK organized the Fourth Austrian Anti-Corruption-Day, a platform of leading national experts in corruption prevention and combating. This year's key topic was the prevention of corruption. Some 50 experts from the entire public service gathered in Alt Lengbach (Lower Austria) together with experts from the anti-corruption and compliance field in order to discuss the most recent questions and issues of corruption prevention.



7.3 Publication “Corruption and Abuse of Official Authority”



Another education measure is the publication of a booklet named “Corruption and Abuse of Official Authority”. Two distinguished law experts discuss and review already completed investigations and relevant court decisions from legal points of view. The booklet serves as training material and reference book for practitioners. An online-version of this document is available for all civil servants of the Ministry of the Interior.

8. INTERNATIONAL RELATIONS

8.1 General

In accordance with the relevant legal regulations, the Federal Bureau of Anti-Corruption is obliged to cooperate internationally with the corresponding authorities of other states and with international organizations. In the sense of the 4-pillar – structure model of BAK, international cooperation is an essential factor as corruption is a cross-border phenomenon requiring combating on bilateral and multilateral levels.

8.2 Bilateral Cooperation

In the reporting year 2010, the existing relations with partner agencies continued to be deepened. A special focus in bilateral cooperation was placed on the Western Balkan countries, notably Albania, so as to strengthen the fight against corruption in this region. Another priority in bilateral cooperation was the exchange of information and experiences with other Member States of the European Union, especially Bulgaria. In the framework of a visit of representatives of the Anti-Corruption Unit of the Swedish General Public Prosecution in May 2010, various aspects of combating corruption were discussed. In October 2010, expert discussions took place with high-ranking

representatives of the national police of the Principality of Liechtenstein for the exchange of experience and fathoming of possibilities of a closer cooperation.

Furthermore, Austria hosted working meetings with heads and members of Asian anti-corruption agencies. This included a visit of a delegation from Vietnam as well as expert talks with the Chairperson of the Anti-Corruption Commission of the Kingdom of Bhutan.

Cooperation on the operational level was intensified by exchange of information in the framework of mutual legal assistance, on the basis of the Police Cooperation Act, and on bilateral agreements.

8.3 IACSS (International Anti-Corruption Summer School)



Between 27 and 30 September 2010, BAK organized the alumni symposium of the annual International Anti-Corruption Summer School (IACSS) in Baden near Vienna.

58 participants from 35 countries representing the police, justice and science sectors, international organizations and NGOs, attended the event in order to continue the

successful concept under the slogan "Practice Meets Science".

8.4 Multilateral Cooperation, Bodies and Networks

As corruption is a transnational phenomenon that has to be countered internationally, multilateral cooperation in bodies (UNCAC, GRECO) on European and international levels as well as in networks (EPAC/EACN, OLAF/OAFCN) is of significant importance. BAK is represented through department BAK/4 in all important working groups and forums that develop, implement and evaluate the relevant mechanisms and also participate in the establishment of IACA.