ÖRAK-Stellungnahme zur gezielten Konsultation der Interessenträger zum Rechtstaatlichkeitsbericht 2026 (in englischer Sprache)

Der Österreichische Rechtsanwaltskammertag (ÖRAK) ist die gesetzlich eingerichtete Vertretung der Rechtsanwälte in Österreich und als solche zur Wahrung der Rechte und Angelegenheiten sowie zur Vertretung der österreichischen Rechtsanwältinnen und Rechtsanwälte auf nationaler, europäischer und internationaler Ebene berufen. Als solcher obliegen ihm besonders die Erstattung von Gesetzesvorschlägen und Stellungnahmen zu Gesetzesentwürfen sowie die Anzeige von Mängeln der Rechtspflege und Verwaltung bei der zuständigen Stelle und die Erstattung von Vorschlägen zur Verbesserung von Rechtspflege und Verwaltung.

2026 Rule of Law Report – Targeted Stakeholder Consultation

A. Relevant information on horizontal developments

The Austrian Bar organizes every year a conference of all presidents of national bars of the EU and neighbouring countries. This is the only event of this kind where all bars are represented on their highest level. Since the beginning of rule of law backsliding, the Bar has taken the decision to dedicate every year to another issue related to the safeguarding of the rule of law. The Bar continues this engagement with lots of resources.

The Austrian Bar traditionally publishes a report with observations on both structural and practical problems in the area of justice. Individual lawyers contribute with their experiences from every day life. In order to be able to react in a more agile manner if problems are encountered the reporting has been digitalized.

B. Questions concerning situation in Austria

I. Justice

Independence of the Bar (chamber/association of lawyers) and of lawyers

1) Violation of professional secrecy of lawyers

The Austrian government has decided to review the EU Reporting Obligation Act (EU-Meldepflichtgesetz), also in light of the ECJ judgement C-694/20.

The Austrian implementation in Section 11 (1) and (4) of the EU Reporting Obligation Act (EU-Meldepflichtgesetz) however has resulted both in an incorrect transposition of the judgement and gold plating.

First of all, the new EU Reporting Obligation Act continues to provide for an unconditional obligation to **notify authorities when a lawyer is released from their duty of professional secrecy by a client.** However, this is incompatible with the understanding and structure of the duty to professional secrecy for lawyers in Austria. Even when lawyers are released of this duty by clients, they must examine whether disclosure of information is actually compatible with their duty of loyalty and protection of interests towards the client. This reflects the status of professional secrecy as a fundamental rights and shall eg prevent abuse.

The new law further foresees an unconditional obligation to **provide an authority, upon simple request, with evidence that other intermediaries or the taxpayer have been informed about their reporting obligations**. This constitutes an inadmissible interference with the duty of confidentiality of lawyers as this disclosure of the notification would inevitably also require the disclosure of information subject to professional secrecy obligations.

2) Mandatory guardianship of vulnerable adults in non-legal matters

The *Budgetbegleitgesetz 2025* contained a change to the applicable law on guardianships of adults which can severely **compromise lawyers' resources to fulfill their role in the judiciary**. Whereas before lawyers were allowed to deny a **court mandate for guardianship when this mandate did not predominantly concern legal matters**, this is no more the case. The tasks of such guardianships can include organization of doctors' appointments and other every day issues which can be numerous, moreover these guardianships can include challenges by

eg mental illnesses which go far beyond a diminished legal capacity. It should be noted, that whenever the concerned vulnerable adult does not have sufficient means, which is very often the case, the mandated lawyer will not be paid for their services and will often use their own financial ressources to pay for expenses. The possibilities to be exempt from this obligation are very limited, either a specialized colleague has to be willing to take over the guardianship or a concerned lawyers has to prove that taking over the guardianship would be unreasonable taking into account his personal, family, professional and other circumstances. Unreasonableness is presumed only as of more than five mandatory guardianships for a lawyer which were ordered by a court.
The majority of lawyers in Austria are solo practitioners or active in very small units. This law can thus both severely compromise individual lawyers' ability to serve their clients, and also hamper the functioning of law firms.

Accessibility of courts (e.g. court/legal fees, legal aid, language)

The Austrian Bar has been calling for years for the abolition of **automatic indexation of court fees** and a comprehensive reform of the Court Fees Act. A study published every two years by the Council of Europe (CEPEJ Evaluation Report on European Judicial Systems) certifies that Austria finances 117% of its judicial budget through court fees, which means that not only is more revenue generated than expenditure, but Austria is also the clear leader in this statistic in a European comparison.

The European Commission also criticizes the regime of court fees in Austria since the first apparition of the Rule of Law Report in every edition of the same report.

The year 2025 has not shown any improvements, some problems even increased further.

A regulation issued by the Federal Minister of Justice on the reassessment of court fees (Federal Law Gazette II 51/2025) saw a massive 23% increase in court fees as of 1 April 2025. This affects fixed fee rates such as flat fees in civil court proceedings up to an assessment basis of €350,000, fees for amicable divorces, registration and filing fees in commercial register matters, fees for land register extracts and fees for commercial register queries.

Also, on the basis of the legal provisions in Section 31a GGG, court fees are to be automatically adjusted, which was last done with effect from 1 May 2021 on the basis of the December 2020 index. The increase was recently suspended due to the wave of inflation.

The Bar will continue to advocate for a significant reduction in court fees in order to ensure access to justice.

Digitalisation (e.g. use of digital technology, including electronic communication and AI tools, within the justice system and with court users, procedural rules, access to judgments online)

The problem of **non-published last instance court decisions** persists. The Austrian Bar notes, that access to justice remains unequal in some cases because of non-published court decisions which lawyers are not aware of, but that courts refer to or other lawyers in a proceeding who have been by chance aware of such a relevant, non-published decision.

In principle, all decisions of the Supreme Court, Constitutional Court and Administrative Court are available in the federal legal information system (RIS). Besides that, there is a possibility for an anonymised publication of the decisions of the higher regional courts, the regional courts and the district courts, this, however, is very rarely used.

For a detailed description of the problem, please refer to the explanations in last year's report.

II. Other institutional issues related to checks and balances

Framework, policy and use of impact assessments and evidence based policy-making, stakeholders'/public consultations (including rules and practices on the transparent participation of civil society to policy development and decision-making processes), and transparency and quality of the legislative process in the preparatory, the parliamentary and implementation phase (including guidance on how to implement legislation)

Problems with stakeholders'/public consultations persist. For example, extensive amendments to the Anti-Fraud Act 2025 were only made available for review for seven days in the course of a committee review. The government has also started to pass laws without any consultation by committee, see, for example, the NISG 2026. Furthermore, in many other cases there are still insufficient (short) assessment periods, for example the DokuG-Novelle 2025

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

See previous question/answer.

Safeguards to ensure legal certainty, the stability of the legal framework and non-discrimination.

On 10 December 2025, the National Council passed the 2025 **Anti Fraud Act** which contains **extensive privileges for the tax authorities and social security institutions in insolvency proceedings** by excluding the possibility of contesting claims. The Austrian Bar strongly opposes this **constitutionally questionable violation of the principle of equal treatment of creditors**. This project appears to be the result of budget-motivated legislation. The new provisions of the Anti Fraud Act are not necessary as there are already numerous privileges in favour of the tax authorities and social security institutions, which take account of their role as compulsory creditors. Also, both legal entities are entitled to create enforcement titles themselves and can thus enforce or secure their claims more quickly than all other creditors.

Because of the liability provisions for managing bodies however, vis-à-vis authorities there is a risk that management bodies will give priority to satisfying liabilities to the tax authorities and social security institutions in order to avoid personal liability. This is no more subject to sanctions due to the exclusion of contestation.

However, this harms all other creditors such as suppliers, employees, consumers, etc. Particularly in view of the recent insolvency proceedings, in which thousands of consumers are creditors, it is hardly justifiable that the weakest market participants are harmed for the benefit of the public sector. Furthermore, suppliers – who are usually unsecured – are under considerable pressure to deliver to (future) debtors even without advance payment in the event of liquidity bottlenecks. Finally, it should also be noted that public sector legal entities are the creditors who file the most insolvency petitions. This is because they are also the creditors who, unlike most other creditor groups, have significantly better rights to information and thus insight into the economic situation of the entrepreneur. Examples include the declarations submitted by companies to the authorities at regular intervals (income tax returns, advance VAT returns, annual financial statements, etc.), the possibilities for auditing, access to account information, etc.

The preferential treatment of the tax authorities and social security institutions in the law leads to a redistribution from unsecured creditors to the aforementioned legal entities and thus to a kind of 'special tax' for the other creditors (suppliers, consumers, etc.) who are already suffering damage.