

# Questionnaire: “Freedom of Opinion and Expression and Sustainable Development - Why Voice Matters”

Austrian Contribution

February 2022

***2. Are there restrictions or other challenges to freedom of expression or access to information that affect the delivery of public services and achievement of economic, social and cultural rights in your country? Which groups of people are most affected by these restrictions and in what ways? What measures would you recommend to address their problems?***

In 2022, the Federal Ministry for Arts, Culture, Civil Service and Sport established a competence center for diversity, anti-racism and anti-discrimination. Its main tasks consist of anchoring diversity in the ministry's areas of responsibility and counter racism and other forms of discrimination. This includes, in particular, the development of holistic strategies and measures for the public service as well as for arts, culture and sports. Freedom of expression and access to information that affect the delivery of public services and achievement of economic, social and cultural rights are essential regarding non-discrimination and are therefore an inherent part of the strategies implemented by the competence center.

***3. What factors affect the right to expression and information of women and girls, indigenous peoples and other poor and marginalized communities and their access to information and communications technology in your country? What legal, policy or other measures has the government taken to overcome these problems? How effective are these measures and what improvements would you recommend?***

The right to freedom of expression has constitutional status (Article 13 of the Basic Law on the general rights of citizens; Article 10 of the ECHR) in Austria. Everyone has the right to freely express their opinion, information and ideas, verbally, in writing, in print or through images within the legal limits (e.g. prohibition of hate speech, cyberbullying, defamation or the distribution of National Socialist content), without official interference and without regard to national borders to receive and pass on. The press must not be censored or restricted by the concessions system. This also applies to persons entitled to asylum or to subsidiary protection and migrants.

The target groups of the Integration Act (persons entitled to asylum, persons entitled to subsidiary protection and migrants) are free to express their opinions in any form and have unrestricted access to information.

Gender roles in education, work and society overall continue to have limiting effects on women's and girls' rights to expression and information. The most frequently chosen vocational trainings for girls remain in female dominated and often low paid sectors, the distribution of paid and unpaid work is still unequal and the gender pay gap continues to exist (see: Wiener Gleichstellungsmonitor 2021). Gender roles further impact the access of women

and girls to information and communication technology as exemplified by around 20% of women and girls in Vienna in ICT education (see: C6.1, Wiener Gleichstellungsmonitor 2021) and 5% of women in Vienna being characterised as analogous, 40% as selective users, 41% as comprehensive users and 14% as digital forerunners (see: Wiener Frauenbarometer 2020). In order to achieve full rights of expression and information it is therefore necessary to support a self-determined choice of career and life-path through information and activities such as the measures implemented by the City of Vienna Department for Women's Affairs, for example the Vienna daughters' day introducing girls to MINT professions, the publication of studies and data on gender inequality and the current situation of women as well as projects and campaigns to challenge gender roles and stereotypes and lastly the funding of women's and girls' associations.

Gender-based violence must be considered as an influencing factor in impairing the right to freedom of expression and access to information.

All forms of gender-based violence and patriarchal structures are characterized by oppression and control to which women and girls are exposed. This impacts not only access to education, but also access to information. As a result, access not only to the necessary knowledge or public discourse to form an opinion is lacking, but also the self-confidence and self-image to participate in it.

For many years, Austria has therefore been implementing targeted measures both for protection against violence and for the self-determination and empowerment of women and girls. In addition, awareness-raising activities on gender-based violence and its serious consequences are carried out to break down patriarchal structures and counter stereo-typical role models.

All of these measures can ultimately serve to support women's and girls' access to information and freedom of expression.

***4. What have digital companies done to promote safe and uninterrupted online access to timely and pluralistic information and communications of women and poor and marginalized communities? How can information and communication technology companies better engage with governments and communities to promote sustainable development?***

Safe and unrestricted online access to information and communication media also requires widespread basic skills as well as user know-how in order to be able to identify fake news and scams as well as to be able to deal with online sexism, cyber mobbing and -bullying and being aware of the use of personal data online. Besides the equipment and facilities necessary to access information online, it is therefore also crucial to provide information and training on online competences. The research on digitalisation and women in Vienna revealed the need for further strengthening digital competences of women and girls as well as the finding that digitalisation is not gender-neutral, but must be streamlined towards equality (see: Wiener Frauenbarometer 2020). Furthermore the City of Vienna Department for Women's Affairs has published a manual for women (see: Leitfaden Frauen im Netz 2020) and a guide for girls (see: Mädchen im Netz 2020) on the safe use of the internet.

**5. What laws, policies and practices exist in your country to facilitate public participation and access to information and data relating to sustainable development? Where have there been successes, or conversely challenges, with facilitating access to information and data relating to sustainable development in relation to a) governments and b) companies?**

The right to access to information from the administration is guaranteed at a constitutional level by Art. 20 par. 4 Federal Constitutional Law (Bundes-Verfassungsgesetz - B-VG) which stipulates the obligation of the administration to impart information and by Art. 10 ECHR which is part of the constitutional law. Implementing provisions are contained in the Duty to Grant Information Act, Federal Law Gazette (FLG) n°287/1987, the Fundamental Act on the duty to grant Information, FLG I n°286/1987, and implementing laws of the Laender and in sector-specific legislation (e.g. the Law on information on the environment - Umweltinformationsgesetz - UIG, FLG I n°495/1993, and laws of the Laender concerning geodata and statistics). Concerning the procedure, anyone is entitled to submit requests for information in writing, orally or by telephone. An E-mail request is to be considered as a written request (cf. § 2 Duty to Grant Information Act, FLG n°287/1987; § 4 Fundamental Act on the duty to grant Information, FLG n°286/1987). In addition, the Environmental Information Act (Law on Information on the Environment - UIG, FLG I n°495/1993) guarantees every natural or legal person, without proof of a legal claim or a legal interest, easier and faster access to environmental information.

Planned changes:

The Government Programme of the Austrian government mentions the establishment of “freedom of information” as one of the main policy aims for the period of 2020 to 2024 (cf. Regierungsprogramm 2020–2024, pages 19 to 20). To implement this aim, the Federal Ministry for EU and Constitution has prepared a legislative proposal after having heard a number of experts, concerned institutions, media representatives, Members of the Austrian Parliament and non-governmental organisations working in this field.

As regards the substance of the legislative proposal, which shall repeal an existing law on the duty to grant information, a new constitutional, fundamental right to information (on demand) shall be granted to everybody. In addition, public institutions shall actively make information of general interest accessible for everyone on the internet in a central information register. Not only the public administration shall be obliged to give information on demand and by their own initiative, but also the judicial and the legislative branches. Even private enterprises that are subject to review by the Austrian Court of Audit (Rechnungshof) shall be obliged to give information on demand.

In general, according to the proposal, the (informal) demands for information shall be fulfilled in lesser time (usually within four weeks at the latest, within eight weeks in special situations, e.g. if persons, whose rights are concerned, are to be heard before) and free of charge. If possible, direct access to the information is to be provided. Only certain public and very important private rights and interests provided by constitutional law (e.g. data protection) should limit the new fundamental right. Partial access to information shall be possible. The

right to information shall be enforceable before the independent administrative courts and subsequently before the Constitutional Court (VfGH). The Austrian Data Protection Authority shall support the institutions that are subject to obligations in the present matter.

Notably, the law making process will require an amendment of the Federal Constitution. This will allow making further legal details in a single Federal Law on the Freedom of Information (Informationsfreiheitsgesetz), instead of in eleven laws of the Federation (Bund) and the provinces (Länder). As competences of the provinces (Länder) are to be curtailed, the Federal Council (Bundesrat) will also have to approve the act by a qualified majority.

The Federal Ministry for Arts, Culture, Civil Service and Sport is continuing its work on a coherent framework for public participation in political-administrative processes and will publish a corresponding Guidebook within Q1 2023. Connecting the design of participation processes with differentiated goals of the policy cycle, the practical guide provides a new approach for goal-orientated participatory public policy in Austria. Among basic criteria for successful participation projects, the guide seeks to provide public sector employees and the civil society with a basic set of knowledge and tools (ranging from decision trees, methods of stakeholder-analysis, risk assessments up to checklists and the description of exemplary participation methods) in order to manage and successfully integrate participation projects within the public sector. In a latter stage of the project the gathered knowledge, theoretical foundations, methods and the step-by-step action plans are foreseen to be published on an interactive website.

Furthermore, Austria has a system of Performance-informed Budgeting along with mandatory Regulatory Impact Assessments (RIA) at the federal level of government. In the Federal Budget outcome objectives are set, the achievement of them will be evaluated in the following year. A RIA has to be conducted for every new or amended law, regulation or major project that exceeds certain thresholds. Each impact assessment contains at least a description of the problem, intended goals as well as financial and socioeconomic impacts and will be evaluated at the latest after five years. In the evaluations, for both the outcome objectives in the Federal Budget and the impact assessments, a link to the SDGs will be identified. The evaluation reports are published annually and submitted to the National Council.

The Sustainability and Diversity Improvement Act (NaDiVeG) implemented the so-called NFRD (Non Financial Reporting Directive) of the European Union at the national level in Austria. Accordingly, companies must disclose their identified risks, strategies, achieved results and non-financial performance indicators on a range of social and environmental topics since 2017. The NaDiVeG affects nearly 120 large public interest companies that employ more than 500 people on average per year.

The Corporate Sustainability Reporting Directive (CSRD), which was published in the Official Journal on December 16th 2022, significantly expands existing rules on non-financial reporting. In the future, companies will no longer have to report only on the key figures from their economic activities, but will be obliged to disclose information on their strategy, their objectives, the role of the board of directors and management, the significant negative impacts related to the company and its value chain, intangible assets and how they have determined the information to be provided. This information, which must be disclosed in accordance with mandatory EU sustainability reporting standards, is necessary to understand how sustainability issues affect companies and what impact companies have on people and

the environment. The CSRD thus paves the way towards integrated sustainability reporting. The sustainability factors that companies must report on will no longer be included in a separate report, but in the management report. This will force corporate officers to engage with the sustainability report in the same intensity as with the financial reporting. A mandatory audit of sustainability reporting is also planned. The Directive has to be implemented by 6th July 2024. The Directive will affect around 50,000 companies in the EU, 1,800 of them in Austria.

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) are the most comprehensive set of government-supported recommendations on responsible business conduct in existence. The OECD Guidelines are not legally binding on companies, but they are binding on signatory governments, which are required to ensure the Guidelines are implemented and observed.

The 2011 revision included a separate chapter on human rights in the OECD Guidelines. This includes the following:

- To acknowledge and respect internationally recognized human rights and to help prevent or tackle violations thereof by third parties. These internationally recognized human rights are stated within The Universal Declaration of Human Rights and address topics concerning: the right to life, right to freedom, equality before the law and due process, no unfair imprisonment, no torture, no slavery, the right to privacy, the right to property, freedom of speech, the right to social security, the right to relax, the right to have shelter, food and education, the right to peace and the duty to protect these rights.
- To address and reduce unfavourable impacts on human rights, directly related to the business or value chain.
- Have a clear policy demonstrating that the enterprise respects human rights.
- Execute due diligence on human rights in the value chain. This means, to perform a risk analysis, which maps potential human right risks and what measures are taken to prevent or reduce these risks.
- Cooperate and contribute to sustainable access to remedy for victims when a situation arises in which the business or business partners is affecting human rights unfavourably.

In addition to setting standards on corporate conduct, the OECD Guidelines also establish a unique, government-backed international grievance mechanism in the form of National Contact Points (NCPs). One of the central tasks of the Austrian National Contact Point (Austrian NCP) is to enhance the awareness and effectiveness of the OECD Guidelines. The exchange of experiences and cooperation with other NCPs should also be fostered. The Austrian NCP serves as a contact point for companies, civil society, other stakeholders, interested parties and other NCPs. The Austrian NCP also offers an extrajudicial dispute resolution and conciliation platform on questions related to the application of the OECD Guidelines, in particular in the case of complaints (specific instances) against alleged breaches of the OECD Guidelines. By providing this platform, the Austrian NCP contributes to a solution of the raised issues in a manner that is impartial, predictable, equitable and compatible with the principles and standards of the OECD Guidelines.

**7. What laws, policies and other institutional measures exist in your country to protect investigative journalism and whistleblowing? How effective are they and what further measures should be taken to protect journalists and whistleblowers? Where possible, please provide concrete examples of investigative journalism or whistleblowing related to sustainable development, e.g. exposure of corruption or misuse of natural resources.**

In accordance with the ex officio principle, the Austrian criminal prosecution authorities are required by § 2 of the Austrian Code of Criminal Procedure to investigate ex officio any initial suspicion of a criminal act that comes to their attention in preliminary proceedings. Thus, whistleblowers and/or investigative journalism play a significant role in the identification and disclosure of corruption and often serve as a “starting point” for (further) investigations.

The "Act to Combat Hate on the Internet" (*Hass im Netz Bekämpfungsgesetz - HiNBG*), which came into force in January 2021, aims at creating a safer digital space and combating online hate speech and hate crime. Already before the enactment of the HiNBG, online violence could fulfil a number of criminal offences such as dangerous threats, incitement to hatred, defamation or insults. With the Hate on the Net Act, the Ministry of Justice expanded the protection regime and made it much easier for those affected by online hate to enforce their rights. Inter alia the psychosocial and legal support in criminal proceedings - a service offered free of charge to victims of violent crimes independent of their financial situation - has been extended to include victims of online hate. Moreover, the Federal Ministry of Justice implemented a holistic awareness-raising campaign to further strengthen public knowledge and visibility of the Act and the support offered.

On the EU-level the so-called “Digital Services Act” (DSA) entered into force in November 2022. As an EU-wide instrument the Digital Services Act will also improve national mechanisms for the removal of illegal online content such as hate speech, disinformation and deepfakes.

In April 2022, the European Commission presented a proposal for an Anti-SLAPP directive which is currently under negotiation. Austria welcomes such an EU-wide initiative to effectively prevent SLAPPs throughout Europe.

We would also like to draw attention to the role of compliance policies to ensure qualitative investigative journalism. The Compliance management system (CMS) established in the Austrian judiciary is based on the Austrian Standards ONR 192050 and deals inter alia with rules in connection with the acceptance of gifts, the disclosure of data and information. Since 2021 all employees of the Austrian judiciary have to complete the e-learning programme “Compliance” The e-learning programme „Data-Security“ launched in 2022 aims to raise awareness on the applicable rules for disclosure of data and information. Furthermore, a network of compliance officers (58 members) was established in 2021 and a Compliance Committee has been set up. Moreover, the implementation of a web-based internal reporting is in final preparation, the concrete design of which still depends on the implementation of the EU Whistleblower Directive into national law.

Austria is close to passing a law to enforce the EU's "Whistleblower Directive" (2019/1937) and protect whistleblowers who report legal violations according to the areas covered by the Directive. Currently, whistleblower systems already exist at municipal level, public agencies and some companies, e.g. the City of Vienna, at the Office of Prosecution for Economic Crime

and Corruption (WKStA), the Financial Market Authority (FMA), the Federal Competition Authority (BWB), as well as mailboxes at the Audit Oversight Authority (APAB) and at some Media and private sector companies.

A draft law transposing Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law (“Whistleblower-Directive”) was initiated on 15th of December 2022 in the Parliament. On 25th of January 2023 it was accepted within the parliamentary committee of “Labour and Social Affairs” by the necessary majority. Without prejudice to parliamentary proceedings, the federal law transposing the Whistleblower-Directive can be expected to be adopted in February 2023.

This directive aims to achieve better enforcement of Union law and policies in certain areas by setting common minimum standards for the protection of people who obtain, within their professional activities, information about violations of Union law and report or publish such information.

In the City of Vienna, an external reporting office was established as of 1 January 2023. More information on the external reporting office according to the EU Whistleblowing Directive can be found online: <https://www.wien.gv.at/presse/2023/01/09/wien-richtet-ab-jaenner-2023-externe-meldestelle-fuer-eu-rechtsverstoesse-ein> (press release of the City of Vienna, available only in German), <https://www.wien.gv.at/verwaltung/externe-meldestelle-whistleblower/index.html> (page only available in German).

Internal reporting offices in terms of the Vienna Whistleblower Protection Act also exist, for example, at the Internal Audit and Compliance department of the municipal administration, the WIGEV (Vienna Health Care Network) or the Fonds Soziales Wien (Vienna Social Fund).

Public sector employees have already been able to invoke the EU directive since the transposition deadline expired on December 17, 2022. In addition, public sector employees must report suspected criminal acts and are protected against discrimination for doing so [Section 53 and 53a BDG (Civil Servants Service Act 1979)]. In addition, the Austrian Federal Bureau of Anti-Corruption (BAK) acts as a reporting point for criminal offenses as listed in Section 4 para. (1) BAK-G (Act on the Federal Bureau for Anti-Corruption). Security agencies and federal employees may report directly to the BAK (reporting obligation as well as the right to report).

At the regional level (“Länder”), adoption of legislative measures to transpose the Whistleblower-Directive has been finalized in 2022. In each of the Länder there is now a separate law regulating the protection of reporting persons and accompanying provisions in particular for the public service.

In addition to the regulations on the protection of whistleblowers, Austria has a media regulation framework outlined in its Media Act (Mediengesetz), which serves to protect journalistic professional practice, e.g. the protection of conviction or the protection of editorial secrecy. In general, all employees of media companies have the right to refuse to answer questions as witnesses (see Media Act and Code of Criminal Procedure). In addition, there is a ban on confiscation and search. The protection of editorial secrecy may not be circumvented by ordering the authorized person to surrender or confiscate written

documents, printed works, image, sound or data carriers, images and other representations with such content. However, the moment journalists or other media employee themselves become the accused or defendant, this prohibition ends.