



Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption

(Bundesgesetz über die Einrichtung und Organisation des Bundesamts zur Korruptionsprävention und Korruptionsbekämpfung – [abbreviation:] BAK-G)

Federal Law Gazette (Bundesgesetzblatt – BGBl.) I No. 72/2009, as amended by BGBl. I, No. 52/2015

(Translation of the legally binding German-language original of the BAK-G)

Establishment

§ 1. The Federal Bureau of Anti-Corruption (hereinafter referred to as BAK) is an institution of the Austrian Federal Ministry of the Interior established outside the Directorate-General for Public Security. Its goals are the effective nationwide prevention of and fight against corruption, including cooperation with the Public Prosecutor's Office for Combating Economic Crime and Corruption (WKStA), as well as the performance of core tasks in the field of security police and criminal police cooperation with foreign and international anti-corruption institutions [§ 6, paragraph 1, Security Police Act (SPG), Federal Law Gazette (BGBl.) No. 566/1991].

Organization

§ 2. (1) The BAK is headed by a director. In the event of the director's absence, his duties are to be performed by a deputy.

(2) Director and deputy are appointed for a period of five years by the Federal Minister of the Interior after consultation with the presidents of the Constitutional Court, the Administrative Court and the Supreme Court. The term of office shall be renewable.

(3) A person may only be appointed as director or deputy director if he has special knowledge as well as national and international experience in the field of prevention of and fight against corruption. Furthermore, a person may only be appointed as director if he has been employed for at least five years in an occupation requiring a degree in Law or Economics, and as deputy director if he has been employed for at least three years in such occupation.

(4) A person may not be appointed as director or deputy director if he is a member of the federal government, a government of a Land, or a general representative body, or if he has held one of these positions in the previous six years.

(5) For the selection of the other employees of the BAK, account should be taken of whether they have the legal and other knowledge, skills and aptitudes required to fulfil the tasks of the specific post, as well as sufficient relevant work experience. Prior to their employment, director and deputy shall be consulted.

(6) Director and deputy are not permitted to engage in any gainful outside employment with the exception of publications and teaching activities.

Rules of Procedure of the BAK

§ 3. The director shall determine who is responsible for approving decisions to be taken in accordance with the distribution of functions, in which matters this approval is reserved to himself, and who has the right to approve in the event of absences (rules of procedure).

Tasks

§ 4. (1) The BAK has nationwide jurisdiction in security and criminal police matters concerning the following criminal offences:

1. Abuse of official authority (§ 302 of the Austrian Penal Code (StGB), Federal Law Gazette (BGBl.) No. 60/1974),
2. Corruptibility (§ 304 StGB),
3. Acceptance of an advantage (§ 305 StGB),
4. Acceptance of an advantage for the purpose of exerting influence (§ 306 StGB),
5. Bribery (§ 307 StGB),
6. Offering an advantage (§ 307a StGB),
7. Offering an advantage for the purpose of exerting influence (§ 307b StGB),
8. Illicit intervention (§ 308 StGB),
- 8a. Breach of official secrecy (§ 310 StGB),
- 8b. Breach of § 18 of the Information Management Act, Federal Law Gazette (BGBl.) I No. 102/2014
9. Breach of trust due to abuse of an official function or due to involvement of an office holder (§ 153, paragraph 3, § 313, or in conjunction with § 74, paragraph 1, no. 4a, StGB),
10. Acceptance of gifts by persons holding a position of power (§ 153a StGB),
11. Agreements restricting competition in procurement procedures (§ 168b StGB) as well as serious fraud (§ 147 StGB) and commercial fraud (§ 148 StGB) on the basis of such agreement,
12. Acceptance of gifts and bribery of employees or agents (§ 309 StGB),
13. Money laundering (§ 165 StGB), if the assets arise from the offences 1 to 8, 9, 11 (second and third case) or 12; criminal associations or organizations (§§ 278 and 278a StGB), if they intend to commit the offences 1 to 9 or 11 (second and third

- case),
14. Acts punishable pursuant to the StGB as well as to other laws relevant to criminal law, if they are related to the offences 1 to 13 and are subject to prosecution by the BAK upon written order by a court or public prosecutor's office,
 15. Acts punishable pursuant to the StGB as well as to laws relevant to criminal law concerning public employees of the Federal Ministry of the Interior, to the extent that they shall be prosecuted by the BAK upon written order by a court or public prosecutor's office.

In the cases defined in § 4, paragraph 1 (11-13), BAK-G, the BAK, pursuant to § 28, paragraph 1, sentence 2, Austrian Penal Code (StGB), may only be the authority in charge if the above mentioned criminal offences are relevant for determining the extent of the punishment.

(2) The BAK is responsible for cooperation in investigations within the framework of international police cooperation and administrative assistance in the cases referred to in § 4, paragraph 1. Furthermore, the BAK is responsible for cooperation with foreign authorities and international institutions in the field of prevention of and fight against corruption in general, and, in particular, exchange of experience in this area. § 4, paragraph 1, of the Criminal Intelligence Service Austria Act (BKA-G), Federal Law Gazette (BGBl.) I No. 22/2002, remains unaffected.

(3) The BAK shall analyse corruption phenomena, gather information on preventing and combating them and develop appropriate preventive measures. In this context, the BAK is responsible for strengthening the willingness and abilities of individuals as well as territorial communities or authorities to obtain knowledge about measures for the prevention of corruption and promotion of integrity and, accordingly, to develop an awareness of this issue.

Reporting Centre

§ 5. Without prejudice to their duties to report defined by the Austrian Code of Criminal Procedure (StPO) 1975, Federal Law Gazette (BGBl.) No. 631/1975, law enforcement authorities or departments getting notice of a criminal offence defined in § 4, paragraph 1 (1-15), shall report this offence as soon as possible in writing to the BAK (duty to report). Federal employees shall not be prevented from reporting allegations or suspicious circumstances concerning § 4, paragraph 1 (1-15), directly to the BAK without going through the official channels (right to report).

Cooperation with other Authorities and Departments

§ 6. (1) Without prejudice to the duty to report defined in § 5, the law enforcement authorities or departments, unless otherwise ordered by the BAK or the Public Prosecutor's Office for Combating Economic Crime and Corruption (WKStA) (§ 20a, paragraph 2, Austrian Code of Criminal Procedure [StPO]), shall take all investigative measures that cannot be delayed, e.g. measures to prevent the imminent loss of evidence.

(2) For reasons of expediency, the BAK may assign certain investigations to other law enforcement authorities and departments. It may also order the respective entity to directly report to the BAK, at regular or specified intervals, on the progress of a case.

(3) The BAK may transfer investigations to other competent law enforcement authorities and departments if there is no particular public interest regarding the importance of the criminal offence or of the person investigated. The relevant public prosecutor's office shall be informed of such transfer.

Instructions

§ 7. Instructions given to the BAK regarding the investigation of a specific case shall be issued in writing and justified. An oral instruction issued in advance due to special reasons, in particular in the case of imminent danger, shall be issued in writing as soon as possible thereafter.

Commission for Legal Protection

§ 8. (1) To ensure specific legal protection regarding issues arising from the activities of the BAK, a Commission for Legal Protection, subordinate to the Federal Minister of the Interior and consisting of the Legal Protection Officer defined in § 91a of the Austrian Security Police Act (SPG) as well as of two additional members, is established.

(2) The two additional members referred to in paragraph 1 are appointed by the Federal President of Austria upon proposal by the Federal Government and after consultation with the Presidents of the Constitutional, Administrative and Supreme Courts for a period of five years. Appointments may be renewed.

(3) A person may not be appointed as additional member such as defined in paragraph 1 if he has held the position of director or deputy director of the BAK in the twelve preceding years. Furthermore, for the appointment of the additional members, the rules on incompatibility set out in § 91b, paragraph 1, of the Austrian Security Police Act (SPG) apply.

(4) The appointment as an additional member expires in the case of renunciation or death, or when the new appointment or reappointment becomes effective. If there is reason to doubt the complete impartiality of an additional member, he shall refrain from performing any tasks in the particular case.

(5) In order to carry out the administrative work of the Commission for Legal Protection, the Federal Minister of the Interior shall provide the necessary equipment and personnel.

(6) The members of the Commission for Legal Protection are entitled to receive

remuneration commensurate with the time and effort required. The remuneration is calculated according to the fixed rates set out in the regulation on the remuneration of legal protection officers (Federal Law Gazette [BGBl.] II No. 116/2016).

Duties and Rights of the Commission for Legal Protection

§ 9. (1) The Commission shall investigate allegations concerning the activities of the BAK that are not manifestly unfounded if the persons concerned do not have a legal remedy at their disposal.

(2) The members of the Commission for Legal Protection are independent in the performance of their duties and not bound by instructions. They are subject to official secrecy.

(3) At any time, the BAK shall allow the Commission for Legal Protection access to all documents and records necessary for the performance of the Commission's duties and, at the Commission's request, provide it with free copies of individual files; in this respect official secrecy does not apply towards the Commission. However, official secrecy does apply regarding information and documents revealing the identity of persons or sources that – if made public – would endanger the security of the nation or of persons, as well as regarding copies including information that – if made public – would endanger the security of the nation or of persons.

(4) The Commission for Legal Protection may report on its findings to the Federal Minister of the Interior or – where deemed appropriate – to the public at any time. Moreover, the Commission for Legal Protection may address recommendations to the Federal Minister of the Interior or the director.

(5) By 30 April of the following year at the latest, the Commission for Legal Protection presents an annual report on the performance of its functions to the Federal Minister of the Interior. In accordance with the right to information and inspection laid down in Article 52a of the Federal Constitutional Act (B-VG), the Federal Minister of the Interior shall make this report available, at its request, to the Permanent Subcommittee of the Parliamentary Committee on Internal Affairs for the evaluation of measures to protect the constitutional institutions and their ability to act.

(6) The Commission for Legal Protection is neither responsible for tasks of the security police or criminal police, nor is it an administrative or disciplinary authority. It shall report relevant facts to the competent authorities.

Staff Representation

§ 10. The staff of the BAK is represented by the central staff committee of the Federal

Ministry of the Interior.

Cross References

§ 11. Whenever in this federal act another federal act is mentioned, reference is made to the version currently in force.

Gender Neutrality

§ 12. Whenever terms designating natural persons are used only in the masculine form, they shall refer equally to men and women. If these terms are applied to specific natural persons, the correct gender-specific form shall be used.

Entry into Force

§ 13. (1) This federal act enters into force on 1 January 2010.

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

(3) The title, short title and abbreviation, as well as § 4 (1) as amended by Federal Law Gazette (BGBl.) I, No. 65/2013, enter into force at the end of the day of their announcement.

(4) § 4, paragraph 1 (8b), enters into force at the end of the day of its announcement.

(5) § 4 and § 8, paragraphs 4 and 6, as amended by Federal Law Gazette (BGBl.) I No. 101/2017, enter into force at the end of the day of their announcement.

Regulations

§ 14. Regulations pursuant to this federal act may be passed following its publication but may not take effect before the entry into force of the federal act itself.

Implementation

§ 15. The Federal Minister of the Interior shall be entrusted with the implementation of this federal act.