**Questionnaire of the OHCHR concerning “Best Practices”
in the area of Anti-Corruption**

**Contributions by the Federal Ministry of Justice**

First of all, it should be remarked generally, that continuous training and further education events are being offered for the judiciary, which are dedicated to the topic of fundamental and human rights.

As part of a four-year training period, candidate judges - in addition to the core curriculum - have to undergo special training sessions concerning fundamental and human rights, which are also the subject of their final judicial examination (Section 16 (4) 6th and 8th alinea Judges and Public Prosecutors Service Act). In the course of their basic training, all candidate judges since 2008 have to attend the mandatory three-day interdisciplinary fundamental rights module “Curriculum Fundamental Rights”, developed by the professional group fundamental rights of the Association of Austrian Judges, jointly organised by the Ludwig Boltzmann Institute for Human Rights Vienna, the European Training and Research Centre for Human Right and Democracy Graz (ETC) and the Austrian Institute for Human Rights Salzburg (hereinafter ÖIM) and dealing with fundamental rights in daily judicial work, including decisions of the ECtHR. The subject matters also include issues such as racism, xenophobia, anti-Semitism, islamophobia and homophobia. In addition, candidate judges from all higher regional court districts have an opportunity to make a study trip to the European Court of Human Rights (ECtHR).

For addressing the issues anti-Semitism, racism and National Socialism in a more in-depth manner, the “Curriculum Judicial History” is being offered to candidate judges, which among others includes visits to the Memorials „Am Spiegelgrund“ and the Mauthausen Memorial. The curriculum should communicate basic knowledge of the more recent judicial history of the 19th and 20th century and raise the awareness of participants for political implications of both civil and in criminal law decisions.

The subject matters fundamental and human rights are being addressed on the one hand in specific professional seminars, particularly concerning family law and criminal law, on the other hand specific further education events are being offered, which deal in detail with the subject matters equal treatment law, raising awareness concerning promoting tolerance and combating racism, with the European Charter of Fundamental Rights and with anti-discrimination legislation.

In addition to numerous own training events, also the international training offers, in particular trainings offered by the European Judicial Training Network (EJTN) and the European Law Academy (ERA) can be utilised.

In order to effectively combat corruption, comprehensive knowledge in business law is absolutely required. It is therefore a matter of great importance to strengthen the business competence of judges and public prosecutors. Particularly for the benefit of prosecutors working at the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (hereinafter WKStA) several nation-wide certification training courses “Business Law” have been held.

Moreover, a training course started in May 2012, which was specially tailored to the requirements of judges at commercial courts, at labour and social courts and at insolvency and commercial registries. The concept of this training course is based on the certification training course “Business Law” for criminal judges and public prosecutors. Also this training course has been held in 2015 for the second time.

Furthermore, the BMJ, together with the Executive Academy of the University of Economics designed the training course “Master of Laws (LL.M.) - Economic Crime & Law”, which is specifically tailored to judicial staff combining theoretical and practical aspects, and which should impart comprehensive business knowledge to the attending public prosecutors and judges, so necessary for combating economic crime.

Moreover, a plethora of further education events are being offered, and seminars by external providers can be attended, such as the seminar of the Institute of Austrian Chartered Accountants, the seminar of the Regional Bureau of Criminal Investigation Lower Austria or the professional conferences in cooperation with the Ministries of Justice in Germany, the Czech Republic and Slovakia concerning a EU sponsored project entitled “More Exchange and Better Cooperation Against Economic Offences”.

**Concerning Question 7:**

Here, the procedural guarantees of the Austrian Code of Criminal Procedure enshrined in the Constitution have to be mentioned, as well as the comprehensive protection of individual fundamental rights provided by the Supreme Court. Concerning Question 7a, reference should be made here in particular to the provisions of Sections 20 and 20a Criminal Code:

**Forfeiture**

Section 20 (1) Assets acquired for or through an offence shall be declared forfeit by the court.

(2) Forfeiture also extends to any benefits and replacement value of assets to be forfeited under (1).

(3) If the assets to be forfeited under (1) and (2) cannot be frozen or seized (Sections 110 (1) 3rd alinea, 115 (1) 3rd alinea Code of Criminal Procedure [Strafprozessordnung (hereinafter StPO)], the court shall declare forfeit the monetary equivalent of such assets.

(4) The court shall determine the extent of asset to be forfeited at its own discretion if determination of the true extent of the assets to be forfeited is either impossible or involves excessive effort.

Exclusion from forfeiture

Section 20a (1) Forfeiture under Section 20 (2) and (3) of assets belonging to a third person is excluded provided such person acquired these assets being unaware of the offence.

(2) Forfeiture is also excluded:

1. Against a third person if such person acquired these assets being unaware of the offence;

2. Provided the person concerned has satisfied civil claims resulting from the offence or has provided security for such claims, or

3. If the effect of forfeiture may be achieved through other legal means.

(3) Forfeiture shall be abstained from if procedural efforts required for forfeiture would be excessive relative to the asset value to be forfeited, or to the prospect of achieving such forfeiture.”

Concerning the sub-questions 7b and 7c it should be mentioned that particularly the principles of

* objectivity and establishing the truth by all bodies of criminal prosecution (Section 3),
* lawfulness and proportionality (Section 5),
* the right to a fair hearing not only for the accused, but also for all persons involved in such proceedings or affected by coercive measures (Section 6),
* the right of defence (Section7),
* presumption of innocence (Section 8),
* the need of speed (Section 9),
* victim participation in proceedings while being treated with respect for the dignity of the individual (Section 10), and
* oral aspect, public nature and directness of proceedings (Sections 12 and 13)

are among the procedural guarantees of human rights provided by StPO.

**Concerning Question 8:**

The rights of victims enshrined in StPO (Sections 66 et seqq.) include continuous expansion by implementing European/international guidelines, in particular the right of representation, inspection of files, information, translation assistance, assertion of damage claims or compensation and the right of participation in proceedings.

Victims who are particularly afflicted emotionally shall receive psychological and legal process support, as far as such support is required to safeguard their procedural rights having maximum regard to their personal experience.

Victims in criminal proceedings enjoy the right of exemption from testifying, of refusal to give evidence (Sections 156 and 157 StPO), of giving anonymous evidence (Section 162 StPO) and of contradictory questioning (Section 164 StPO).

Some years ago, a leniency programme was newly introduced, whose rules are now laid down in Sections 209a and 209b StPO as follows:

**Withdrawal from prosecution when cooperating with public prosecutor**

**Section 209a** (1) The public prosecutor may proceed according to Sections 200 to 203 and 205 to 209, if accused witnesses voluntarily disclose their knowledge to the public prosecutor about facts that are not yet subject of preliminary proceedings against them, and which knowledge makes a considerable contribution towards

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| 1. | Decisively promoting the resolution of a crime, jurisdiction for which rests with a regional court of lay assessors or jury courts or with WKStA (Sections 20a and 20b), or |
| 2. | Identifying a person having been or still being active in a leading capacity in a criminal association, criminal or terrorist organisation. |

(2) An approach pursuant to (1) is contingent upon the fact that due to the services to be performed, (Section 198 (1) 1st to 3rd alinea), the testimonial behaviour, in particular the complete disclosure of own actions, and the evidential value of the information provided sentencing does not appear necessary to prevent the accused from committing further criminal acts; in the case of Section 198 (2) 3rd alinea, as well as with criminal acts committed by the accused which could have violated the right of a person of sexual integrity and self-determination, such an approach is not permissible. In deviation from Section 200 (2), the amount to be paid may be equivalent to a fine of 240 daily rates.

(3) Upon performance of the services, the public prosecutor shall withdraw from preliminary investigations, with the proviso of continuing prosecution at a later date.

(4) If

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| 1. | The commitment entered into to contribute to the solution of the crime was violated, or |
| 2. | The documentation and information made available were false, did not contribute to the conviction of the perpetrator or were only provided to cover up the own activity in a leading capacity in one of the associations or organisations mentioned in (1) 2nd alinea, |
| prosecution provisionally withdrawn pursuant to (3) can be resumed, unless the public prosecutor did not give instructions to resume such prosecution within a time-frame of fourteen days after receipt of the decision terminating proceedings, in which one of the circumstances described in (1) or (2) has been ascertained. |

(5) The public prosecutor must provide the instructions pursuant to (3) and (4) to the legal protection officer indicating the reasons for such approach. The legal protection officer shall be entitled, in the case of (3) to propose continuation, in the case of (4) to propose termination of proceedings.

(6) In proceedings against corporate entities under the Act on Corporate Criminal Liability (hereinafter VbVG), [BGBl. I Nr. 151/2005](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&#38;Dokumentnummer=BGBLA_2005_I_151), a similar approach must be chosen with the provisions of Section 19 (1) 1st to 3rd alinea VbVG to be applied. The amount to be paid, in deviation of Section 19 (1) 1st alinea VbVG, may be equivalent to a corporate fine of 75 daily rates.

Withdrawal from prosecution when cooperating with public prosecutor in an anti-trust violation

Section 209b (1) The Federal Cartel Attorney shall inform the public prosecutor about any action taken by the Federal Competition Authority under Section 11 (3) Competition Act, [BGBl. I Nr. 62/2002](http://www.ris.bka.gv.at/Dokumente/BgblPdf/2002_62_1/2002_62_1.pdf), or inform the European Commission or the competition authorities of other Member States about such action (Section 84 Anti-Trust Act, [BGBl. I Nr. 61/2005](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&#38;Dokumentnummer=BGBLA_2005_I_61)), if it would be disproportionate due to the importance of their contribution to resolve such violation in the meaning of Section 11 (3) 1st alinea Competition Act, to prosecute employees of a company who participated on behalf of the company in such violation, for committing a crime on the basis of such violation.

(2) The public prosecutor shall then withdraw from preliminary investigations against such employees, who voluntarily disclose to the public prosecutor and to the court their complete knowledge about their own actions and other actions, which are important to resolve the crimes committed by such violation, with the proviso of continuing prosecution at a later date. Section 209a (4) und (5) are to be applied mutatis mutandis.

(3) The same approach shall be taken in proceedings against corporate entities pursuant to VbVG.

Since March 2013 the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (hereinafter WKStA) has made available an internet-based anonymous whistle-blower system which is particularly suited for investigations in the area of economic crime and corruption. The whistle-blower can anonymously report the suspicion that a crime within the scope of WKStA pursuant to Section 20a StPO has been committed. The investigation authority for its part is able to enquire with the whistle-blower - respecting his/her anonymity - in order to objectify the value of such information. The system protects the anonymity of whistle-blowers with absolute effectivity – who in turn can be a victim, witness, informer, anti-corruption activist or whistle-blower in all the areas mentioned.