

Austria's Anti-corruption Laws and the International Standards in the Fight Against Corruption

First Phase: reactions to corruption scandals

- First Anti-corruption Act 1964
- Second Anti-corruption Act 1982
- Criminal Law Reform 1987

Second Phase: implementation of international standards

- Corporate Criminal Liability Act 2005
- Criminal Law Reform 2008
- Anti-corruption Law Amendment Act 2009

international standards

EU	1 st Protocol to the Convention on the protection of the European Communities' financial interests 1996
	EU Anti-Corruption Convention 1997
	2 nd Protocol to the Convention on the protection of the European Communities' financial interests 1997
	Joint Action 98/742/JHA on corruption in the private sector / Council Framework Decision 2003/568/JHA on corruption in the private sector
	Public Procurement Directives 2004/17/EC, 2004/18/EC
CoE	Criminal Law Convention on Corruption 1999
OECD	Anti-Bribery Convention 1997
UN	UN Convention against Corruption 2003

implementation (highlights): criminal law

anti-corruption offences	wider scope of application: Community officials, officials of other states and international organisations, arbitrators
	pecuniary advantage → advantage
	corruption in the private sector: new provisions (sec. 168c – 168e Penal Code)
	harsher sanctions: up to ten years [Sec. 304 (2), 307 (2) Penal Code]!
money laundering	sec. 304-308, 168c and 168d Penal Code predicate delicts of sec. 165 Penal Code
liability of legal persons	Corporate Criminal Liability Act 2005

implementation (highlights): other fields of law

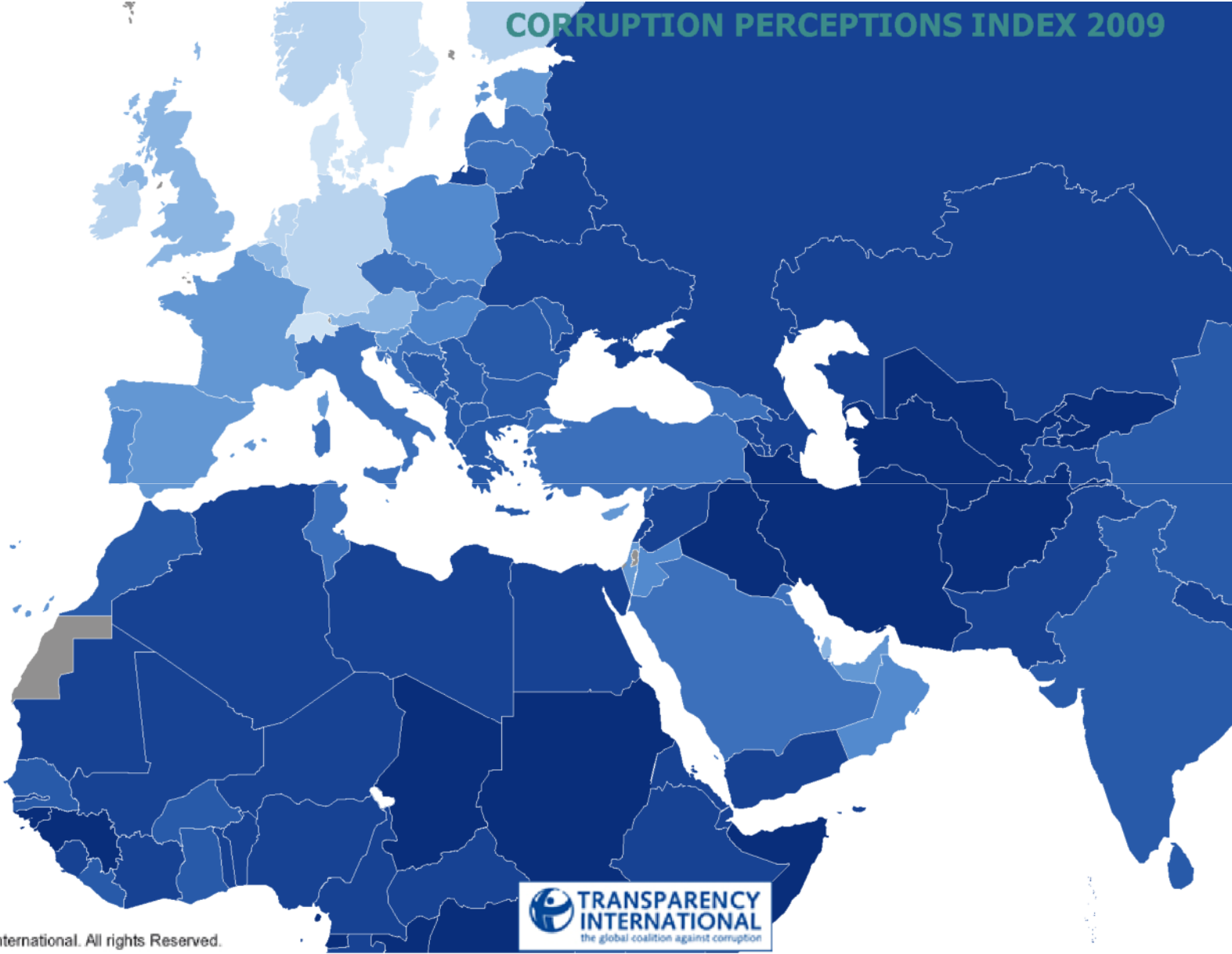
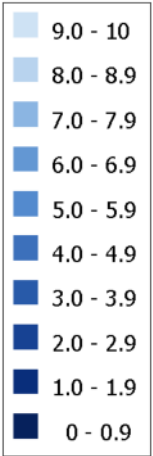
procurement law	Sec. 153a, 302, 307 Penal Code among the exclusion criteria of sec. 68 and 229 Federal Public Procurement Law
tax law	tax deductibility of bribes connected to exports sales abolished in 1999

implementation (highlights): criminal procedure

Specialized law enforcement authorities

- Office of Prosecution for Corruption (Jan 1, 2009)
- Federal Anti-Corruption Bureau (Jan 1, 2010)

CORRUPTION PERCEPTIONS INDEX 2009



case study 1: independent authorities

UN Convention against Corruption

Art. 36. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the **necessary independence**, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and **without any undue influence**. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

Council of Europe Criminal Law Convention on Corruption

Art. 20. Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the **necessary independence** in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and **free from any undue pressure**. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.

case study 2: Bribery of members of domestic public assemblies

Penal Code (Criminal Law Reform 2008, abolished 2009)

Sec 74. (1) For the purpose of this Federal Law is

[...]

4a. public official: anyone who bears an office for Austria, for another state or for an international organisation in the area of legislation, administration or justice or otherwise is entrusted with public tasks including in public companies, **with the exception of members of national constitutional representative bodies;**

Sec 304a. Whoever undertakes to **buy or sell a vote for an election or ballot** in the National Council, in the Federal Council, in the Federal Assembly, in a Diet² or in a municipal council, is to be punished with a prison sentence of up to three years.

case study 2: Bribery of members of domestic public assemblies

Penal Code (Anti-corruption Law Amendment Act 2009)

Sec. 74. (1) For the purpose of this Federal Law is

[...]

4a. Public official: anyone who

a) is a member of a domestic constitutional representative body, **as far as he takes part in an election or a vote** or otherwise acts or refrains from acting in the exercise of **his obligations** laid down in the rules of procedure,

case study 2: Bribery of members of domestic public assemblies

UN Convention against Corruption

Art. 2. For the purposes of this Convention: (a) “Public official” shall mean: (i) **any person** holding a **legislative**, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority;

Council of Europe Criminal Law Convention on Corruption

Art. 4. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct referred to in Articles 2 and 3 [bribery], when involving **any person** who is a **member of any domestic public assembly exercising legislative or administrative powers.**