

## CHAPTER 2

### AUSTRIA

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#### **I. Is there a national act containing a legal definition of Automated Administrative Decisions?**

The first question is whether there is a national act containing a legal definition of automated administrative decisions. Generally, this question must be answered in the negative. No provision within the Austrian legal system – neither the Federal Constitution, nor any law, regulation, or other type of general legal act (especially in procedural law) contains a general definition of what the Austrian legal system understands by an automated decision. Even the so-called E-Government Act<sup>1</sup> does not contain such a (general) definition, as it only regulates electronic communication between citizens and public authorities, not the issue of automated decision making<sup>2</sup>.

The Austrian Data Protection Act<sup>3</sup> only appears to contain a relevant definition. As part of the implementation of Directive (EU) 2016/680, a provision on automated decision making based on the processing of personal data for the prevention, investigation, detection or prosecution of criminal offences, or the execution of criminal penalties has been adopted with Article 2 § 41 of the Austrian Data Protection Act. However, this provision in the Data Protection Act only aimed to regulate the phenomenon of an authority making a decision based on automated processing, rather than merely referring to or independently defining of fully automated decision making. Essentially, the text of the directive is simply reproduced<sup>4</sup>. In summary, the term ‘automated administrative decision’, which refers to this type of decision, does not

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<sup>1</sup> *Bundesgesetz über Regelungen zur Erleichterung des elektronischen Verkehrs mit öffentlichen Stellen (E-Government-Gesetz – E-GovG)*, BGBl. I No. 10/2004.

<sup>2</sup> Cf. M. Mayrhofer, P. Parycek, *Digitalisierung des Rechts*, 4 Österreichischen Juristentages 67 (2022).

<sup>3</sup> *Bundesgesetz zum Schutz natürlicher Personen bei der Verarbeitung personenbezogener Daten (Datenschutzgesetz – DSGVO)*, BGBl. I No. 165/1999.

<sup>4</sup> Cf. Art 3 and Art 11 Directive (EU) 2016/680.

appear explicitly in the legal system. The phenomenon of algorithms – meaning digital algorithms, which is the subject here – does not play a significant role in legislation either. There are only a few isolated provisions, such as the documentation requirements of the health care system, where the hash function SHA-256 must be used as an algorithm for one-way hashing to generate irreversible unique hash values<sup>5</sup>.

**II. Is there a general legal basis (either at the constitutional level or in the Administrative Procedure Act) for the use of algorithmic automation and/or artificial intelligence (AI) by public authorities (government, agencies, local authorities, and specialised bodies)? If no such legal basis exists, are there any legislative provisions that permit public authorities to experiment with algorithmic automation or AI?**

There is no general legal basis (either at the constitutional level or in the administrative procedure Act) for the use of algorithmic automation and/or artificial intelligence (AI) by the public administration (government, agencies, local administration, specialised bodies). In general, there are also no provisions that explicitly regulate the question of whether public authorities may experiment with algorithmic automation or AI. It is therefore necessary to refer to the general pillars of the Austrian constitutional system in order to answer this complex legal question, which is also of increasing interest in Austria<sup>6</sup>. Of particular importance in this respect is Article 20 of the Federal Constitutional Law<sup>7</sup>, which, in the context of the Austrian democratic system, states: “Under the direction of the highest executive officer of the Federation and the provinces, elected executive officers, appointed professional executive officers, or contractually appointed executive officers conduct the administration in accordance with the provisions of the laws. They are responsible to their superiors for the exercise of their office and, save as provided otherwise by laws pursuant to para 2, bound by their instructions”. It follows from Article 20 of the Federal Constitutional Law that the competences and the associated responsibilities in administrative matters are – at least in principle – exercised by human beings<sup>8</sup>.

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<sup>5</sup> § 8 Health Documentation Ordinance (*Gesundheitsdokumentationsverordnung*, BGBl II No. 25/2017).

<sup>6</sup> See for example D.M. Schneeberger, *Machine Learning in der Verwaltung* (2024).

<sup>7</sup> *Bundes-Verfassungsgesetz* (B-VG), BGBl. No. 1/1930 (WV) idF BGBl. I No. 194/1999 (DFB).

<sup>8</sup> Cf. VfSlg 7264/1974 Pkt 2.3.

Procedural law also stipulates that general administrative matters must be decided by a human person. Specifically, the decision must be made by someone who holds the official function or is authorised to decide on behalf of the authority. In particular, formal decisions of administrative authorities in individual cases must be approved and signed by a person who holds or represents the official function. Section 18, paragraph 3, of the Austrian General Administrative Procedure Act<sup>9</sup> states: “Written settlements must be approved by the person authorised for approval with their signature. If the settlement has been made electronically, the signatures of the officer and the persons present may be replaced by a procedure to prove the identity [...] of the officer in charge, and the authenticity [...] of the settlement”. Section 18, paragraph 4, of the Austrian General Administrative Procedure Act further states: “Every matter processed in writing must state the name of the authority, the date when approved and the name of the approving person. Matters processed in the form of electronic documents must bear an official signature [...]. Those processed in the form of printouts of electronic documents bearing an official signature or copies of such printouts need not meet further requirements. Such documents must bear the signature of the approving person, which may be substituted by the certification issued by the office. This certification indicates that the result corresponds to the text of the matter in the respective document processed and that the document contains the approval as per Article 18 paragraph 3 of the General Administrative Procedure Act. Detailed instructions will be issued by regulation on the certification”. Essentially, without this approval and signature, the decision is not valid. In fact, the decision is null and void, i.e. it is as if the decision had never been issued<sup>10</sup>.

Irrespective of these constitutional and statutory provisions, the Austrian Constitutional Court had already addressed the question of whether formal decisions may be prepared and issued with the aid of automation in the 1980s (VfSlg 8844/1980 - *Gemeinderechenzentrum*)<sup>11</sup>. In this context, the Austrian Constitutional Court compares digital tools for the preparation and, where applicable, the issuance of decisions with other tools available to the administration. The Austrian Constitutional Court first refers to an older decision, in which it is argued that various

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<sup>9</sup> *Allgemeines Verwaltungsverfahrensgesetz 1991 (AVG)*, BGBl. No. 51/1991.

<sup>10</sup> VfSlg 484 A/1948.

<sup>11</sup> R. Walter, *Die Verwaltungsstrafgesetznovelle 1987 Ein kritischer Überblick (Teil I)*, Österreichische Jurist:innenzeitung 361 (1988); G. Holzinger, *Rechtsstaat und Verfahren*, FS Rosenzweig 27 (1988).

aids may be used to perform administrative tasks, as long as sufficient influence on the performance of administrative tasks is maintained<sup>12</sup>. In VfSlg 8844/1980 itself, the Court applies these general considerations to the issuing of decisions using technical aids such as computers<sup>13</sup>: A further obstacle to internal organisational measures is the fact that only persons legally authorised to do so may express the will of the institution and act on behalf of the administrative body to the outside world. According to the Court, such an authorisation provision at the legal level is not violated if facilities outside the institutional complex are used for technical support activities. For example, if files are not stored in the office's premises or if certified copies are made by external typists. The same principle applies to the processing of state or municipal (including public authority) matters by means of automation. The only requirement is that the external appearance of the decision can be traced back in each individual case to the will of the (constitutional) body responsible for the decision. In this sense, the Austrian Constitutional Court considers that it is in principle certainly possible to ensure that automated processing can actually be traced back to the will of the body responsible for the decision, for example by submitting the printouts generated by the association's computer system to the competent local authority for approval. It may also be possible to have the program required for the use of the computer system approved by the person responsible for the decision. The program should be designed in such a way that the person operating it has no scope for decision making. If the person operating the computer system act in accordance with their tasks, which is to be assumed, it is impossible for them to influence the decision in a way that represents the will of the authority. Consequently, authorisation by a computer program is sufficient if the question of how an administrative matter is to be dealt with can be sufficiently traced back to the will of the person responsible. Unless the law expressly provides otherwise, organs of state and self-governing bodies are free to regulate their internal affairs at their own discretion, regardless of whether these organisational measures (also in the area of office communication) serve private or official purposes.

In summary, the Austrian Constitutional Court does not consider automated administrative decisions to be inadmissible in principle. However, it also points out that other constitutional obligations such as the principle of equality (Article 7 of the Federal Constitutional Law) or

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<sup>12</sup> VfSlg 7264/1974.

<sup>13</sup> Cf. on the so called "Computerbescheid" P. Bußjäger, *Potemkinsche Behörden oder Herrschaft über den Algorithmus?*, 3 Zeitschrift für Verwaltung 2012 (2019).

the those of economy, thrift, and expediency (Articles 126b para 5 and Article 127a para 1 of the Federal Constitutional Law) remain unaffected<sup>14</sup>. The obligation to derogate from Article 18 of the Austrian General Administrative Procedures Act in accordance with Article 11 of the Austrian Federal Constitutional Law also remains unaffected. The law must therefore establish that decisions are deemed to have been approved by the competent authority and do not require a signature or authentication. In tax matters, however, it is generally envisaged that automated decisions are deemed to have been approved by the competent authority and do not need to be signed by the person in charge of the administrative function (cf. § 96 Abs 2 of the Austrian Federal Fiscal Act<sup>15</sup>).

Nevertheless, fundamental questions remain since the Austrian Constitutional Court has so far only addressed deterministic digital systems, where it is clear at the time of authorisation how the digital system fulfils a specific administrative task. It is therefore questionable to what extent modern digital systems that use machine learning are compatible with the requirements of the democratic principle of the Austrian Constitution as outlined above. This question has been the subject of a number of different answers in the legal doctrine and is still a matter of debate. It has been argued that any new functional adaptation should be approved by the authority, much like a system update<sup>16</sup>. However, this is unlikely to be possible with machine-learning-systems (or AI in general), as modern machine-learning-systems simply improve their operation during the process, but do not develop new functions or a new functional logic<sup>17</sup>. Part of legal scholarship rightly argues that a particular system adaptation can be considered included in the authorisation to use AI, provided the task can be sufficiently attributed to the authorisation granted by the person responsible within the authority<sup>18</sup>.

Taking these considerations into account, it can be stated that automated decision making in administration is in principle compatible

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<sup>14</sup> VfSlg 8844/1980.

<sup>15</sup> *Bundesgesetz über allgemeine Bestimmungen und das Verfahren für die von den Abgabenbehörden des Bundes, der Länder und Gemeinden verwalteten Abgaben (Bundesabgabenordnung – BAO)*, BGBl. No. 194/1961.

<sup>16</sup> M. Denk, *Der maschinell erstellte Bescheid (Teil II). Einsatz von Künstlicher Intelligenz für vollautomatisierte Verwaltungsverfahren*, 1 Zeitschrift für Energie- und Technikrecht (2020).

<sup>17</sup> D.M. Schneeberger, cit. at 6, 284.

<sup>18</sup> M. Mayrhofer, P. Parycek, cit. at 2, 71 (with further references).

with the Austrian Federal Constitution, provided that certain requirements are met. This applies, in any case, to deterministic systems, but also, in principle, to machine-learning systems. The key issue is whether human consent to the use of digital systems for automated decision making sufficiently determines how automated decision making is carried out in practice. Where the processing of personal data is necessary for an automated decision, a legal basis for the reliability of data processing is, of course, required under Article of the Austrian Data Protection Act (DSG)

It should also be mentioned in this regard that the legal system contains no explicit rules on the question of whether there are certain matters in the area of public administration that, for substantive reasons, must be handled by a human being on behalf of an administrative authority. It has not yet been examined whether the Constitution assumes that, in certain matters, only a natural person can constitutionally form the will of an administrative authority (e.g. the appointment of the Federal Chancellor by the Federal President according to Article 70 of the Austrian Federal Constitutional Law, to cite just one example among many), nor has the question been discussed whether certain encroachments on civil liberties and rights can only be justified on the basis of the principle of proportionality if the decision making process is constantly monitored or even carried out by a human being. There is neither case law nor scientific literature on either question. EU law – of course – already contains requirements for human supervision or the reservation of certain procedures to human beings.

According to prevailing doctrine, algorithmically generated decisions are not permissible under the Austrian Federal Constitution on the grounds of the independence of the administration of justice under Article 87 paragraph 1 of the Austrian Federal Constitution and the right to one's lawful judge under Article 8. Only technical support in decision making is permissible; the constitutional function of adjudication must, however, be performed by a human being. In other words, the Austrian legal protection system guarantees a human decision in proceedings concerning administrative actions or formal decisions '*Bescheide*' of administrative courts<sup>19</sup>. The administrative courts in Austria decide the matter themselves on the basis of their own findings of fact (Article 130 paragraph 4 of the Austrian Federal Constitutional Law). The decisions must be sufficiently reasoned.<sup>20</sup> It is therefore in any case not sufficient

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<sup>19</sup> M. Mayrhofer, P. Parycek, cit. at 2, 81 ff.

<sup>20</sup> See Austrian Supreme Administrative Court (VwGH) 24.08.2023, Ra 2020/22/0128.

for an administrative court to rely solely on the result of a previous algorithmised decision or any technical decision preparation without providing an independent statement of reasons.

**III. Do public authorities rely on algorithmic automation/AI in their daily operations? If yes, to what extent? Which areas are most affected by automation (e.g., security, policing, immigration, transport, tax management, welfare, health and employment services, education, justice, or digital identity)?**

There are still only a few cases of automated decision making in Austria<sup>21</sup>. So far, automated decision making has only been used in cases where specific criteria (e.g. the birth of a child, a certain income level) can be used to determine unambiguous legal consequences (the amount of tax, or state benefit to be paid). In tax matters, for example, as previously mentioned, there is, in principle, the possibility of issuing automated decisions (Article 96 of the Austrian Federal Fiscal Act). In addition, automated decisions are also permitted for the allocation of student grants on the basis of the Austrian Student Grant Act<sup>22</sup> and for automated decisions in connection with agricultural subsidies under the Austrian AMA Act<sup>23</sup>. Meanwhile, family allowance is also granted and fully paid automatically upon the birth of a child, under the Austrian Family Burden Equalisation Act<sup>24</sup>.

In these cases, parts of the decision can be prepared digitally, but the final approval is always made by the authority or an authorised person. Where personal data are processed in this context, a legal basis is required. At present, such legal bases exist in particular for the following cases of application: decisions on the granting of subsidies for hydraulic engineering works (§ 20 paragraph 4 of the Austrian Hydraulic Engineering Act 1985<sup>25</sup>); decisions on exemptions regarding the use of public roads, e.g. for example, exemptions from weight restrictions for

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<sup>21</sup> M. Mayrhofer, P. Parycek, cit. at 2, 20 ff.

<sup>22</sup> § 41 *Bundesgesetz über die Gewährung von Studienbeihilfen und anderen Studienförderungsmaßnahmen* (Studienförderungsgesetz 1992 – StudFG), BGBl. No. 305/1992.

<sup>23</sup> § 29, para 1a, *Bundesgesetz über die Errichtung der Marktordnungsstelle „Agrarmarkt Austria“* (AMA-Gesetz 1992), BGBl. No. 376/1992.

<sup>24</sup> §§ 10a, 11 and 46a *Bundesgesetz vom 24. Oktober 1967, betreffend den Familienlastenausgleich durch Beihilfen* (Familienlastenausgleichsgesetz 1967), BGBl. No. 376/1967.

<sup>25</sup> *Bundesgesetz über die Förderung des Wasserbaues aus Bundesmitteln* (Wasserbautenförderungsgesetz 1985 – WBFG), BGBl. No. 148/1985 (WV).

motor vehicles or exemptions from traffic restrictions and traffic bans or exemptions from the ban on long-term parking in short-term parking zones for residents or similar (§ 45 paragraph 5 of the Austrian Road Traffic Act<sup>26</sup>); decisions on legal cases relating to the employment of disabled persons (Article 2 § 19 paragraph 2 of the Austrian Disabled Persons Employment Act<sup>27</sup>).

In some cases, digital systems (AI applications) are used to prepare the content of the decision. This is the case, for example, in the area of job placement. An AMS algorithm is used by the Austrian Public Employment Service (AMS) to help AMS counsellors predict the job prospects of unemployed people<sup>28</sup>. The question of whether this is a case of automated decision making within the meaning of Art 22 GDPR has been answered differently by different Austrian Courts and authorities<sup>29</sup>. Other examples in this area include automated risk assessment of tax returns and Covid-19 grant applications. The Predictive Analytics Competence Centre (PACC) uses AI to assess grant applications for Covid-19 payments by performing an automated plausibility check on companies based on tax data<sup>30</sup>.

Lastly, it should be mentioned that voluntary participation in the electronic transmission of official documents is possible. In addition, Austrian administrative authorities are increasingly allowing electronic communication with the public<sup>31</sup>. For example, a change of address or an application for an absentee ballot can be submitted electronically via a public application called *Digitales Amt*<sup>32</sup>. The latter application also allows the digital submission of driving licences to all authorities in Austria<sup>33</sup>.

#### **IV. What legal requirements – e.g. in terms of privacy, cybersecurity, quality of the datasets, impact assessments,**

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<sup>26</sup> Bundesgesetz vom 6. Juli 1960, mit dem Vorschriften über die Straßenpolizei erlassen werden (Straßenverkehrsordnung 1960 – StVO. 1960), BGBl. No. 159/1960

<sup>27</sup> Behinderteneinstellungsgesetz (BEinstG), BGBl. No. 22/1970

<sup>28</sup> M. Mayrhofer, P. Parycek, cit. at 2, 107 ff.

<sup>29</sup> See most recently VwGH 21.12.2023, Ro 2021/04/0010.

<sup>30</sup> Report of the Austrian Court of Audit, *COFAG und Zuschüsse an Unternehmen* (2022), 155 ff.

<sup>31</sup> Cf. § 13 para 2 of the Austrian General Administrative Procedure Act.

<sup>32</sup> Further information under [https://www.oesterreich.gv.at/ueber-oesterreichgvat/faq/app\\_digitales\\_amt.html](https://www.oesterreich.gv.at/ueber-oesterreichgvat/faq/app_digitales_amt.html).

<sup>33</sup> § 15a of the Austrian Driver's Licence Act (*Führerscheingesetz*, BGBl. I No. 120/1997); § 102e of the Austrian Motor Vehicle Act (*Kraftfahrzeuggesetz 1967*, BGBl. No. 267/1967).

**transparency obligations, access to codes, the right to explanations, compulsory human involvement, and the right to obtain a review or remedy – apply to the use of algorithmic automation or AI by public authorities? Are there sector-specific regulations on Automated Administrative Decisions (e.g., public procurement, taxation etc.)?**

Austrian law sets out various requirements for the reliability of automated administrative decisions.

Firstly, automated decision making must be compatible with the principles of a rule-of-law procedure. In Austria, official decisions are made in a formal investigation<sup>34</sup>. It must be ensured that a party to an administrative procedure is given a fair hearing by the authority, otherwise the decision is tainted with arbitrariness, i.e. an illegality that extends to the constitutional sphere; more specifically, it would be a violation of the general principle of equality in conjunction with the principle of the rule of law<sup>35</sup>. It is the duty of the authority to give parties the opportunity to comment on the authority's findings of fact in some form, either in writing or orally<sup>36</sup>. If the decision is generated by an automated system, from a constitutional point of view there must be procedural options to either make a statement before (e.g. through an application) or during the automated procedure (the system stops automatically and continues automatically after the statement), or there must be the possibility of suspending the automated decision and replacing it with a human decision<sup>37</sup>. In the light of the constitutional requirements of the Austrian Federal Constitution, it does not appear to be sufficient that the party is only guaranteed a court hearing in the legal protection procedure<sup>38</sup>.

Secondly, because of the combination of constitutional requirements and equality law requirements, any formal administrative decision must be justified, and in fact justified sufficiently to ensure effective judicial protection<sup>39</sup>; otherwise, the authority is acting in an arbitrary manner also for this reason<sup>40</sup>. Under constitutional law, the statement of reasons must include a summary of the essential facts of the case, a coherent account of the consideration of the evidence and an

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<sup>34</sup> §§ 37 et seqq of the Austrian General Administrative Procedure Act.

<sup>35</sup> Cf. VfSlg 19.299/2011.

<sup>36</sup> D. Kolonovits, G. Muzak, K. Stöger, *Verwaltungsverfahrenrecht* para 268 (2024).

<sup>37</sup> See for similar considerations M. Mayrhofer, P. Parycek, cit. at 2, 87 ff.

<sup>38</sup> Cf. VfSlg 13.726/1994.

<sup>39</sup> C. Grabenwarter, *Verfahrensgarantien in der Verwaltungsgerichtsbarkeit* 666 et seq (1997).

<sup>40</sup> Cf. Austrian Constitutional Court 10.06.2024, E 580/2024.

assessment of the legal grounds for the decision<sup>41</sup>. In the words of the Austrian Supreme Administrative Court, this requires, as a first step, a clear and precise statement of the facts on which the decision is based, which enables the party to take legal action and allows for review in the public law courts. In the second step, it requires a statement of the reasons which, in the case of conflicting evidence, have led the authority to determine precisely those facts in the exercise of its discretion in considering the evidence. In the third step, it requires a presentation of the legal considerations which led to the decision. The three logically related and formally distinct elements of a properly reasoned decision are, first, a statement of the facts, second, the consideration of the evidence and, third, the legal assessment<sup>42</sup>. In the light of these constitutionally determined requirements, automated decisions are only permissible if digital systems are able to provide an adequate justification or, where necessary, to carry out the fact-finding and assessment of evidence themselves or to act only on the basis of human fact-finding and assessment of evidence. As with the right to a fair trial, it is not sufficient for the reasons for a decision to be provided only on the basis of, or as part of, an appeal procedure.

It should be noted that in general administrative disputes, the prerequisite for the automated issue of formal decisions by public authorities under § 18 paragraphs 3 and 4 of the General Administrative Procedures Act requires the formal decisions to be deemed to have been approved by the authority and that the requirement for a signature be satisfied. Similarly, in tax matters, official copies produced by means of computerised data processing, which in any case includes official copies in the form of electronic documents with an official signature pursuant to the E-Government Act, do not require a signature or authentication and are deemed to have been approved by the head of the tax authority indicated on the official copy if they do not bear a signature or authentication. Exemplars in the form of printouts of electronic documents bearing an official signature or copies of such printouts do not need to fulfil any further requirements.

There are provisions in various material laws that correspond to Article 96 of the Austrian Fiscal Act. For example, applications for student financial aid are processed by means of a decision without further investigation, making appropriate use of modern technical tools, in particular automated data processing. Decisions made by means of

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<sup>41</sup> J. Hengstschläger, D. Leeb, *Verwaltungsverfahrenrecht* para 441 et seq (2023).

<sup>42</sup> VwSlg 19226 A/2015.

automated data processing require neither the signature of the approving person nor a certification. If they do not bear either the signature of the approver or a certification, they are considered to have been approved by the head of the Austrian Study Grant Authority<sup>43</sup>; likewise, also § 29 paragraph 1a of the Austrian AMA Act, in connection with the administration of funding in the area of the common agricultural policy (paying agency), states that all official copies of the AMA authority created by means of computer-assisted data processing require neither a signature nor a certification and are valid if they show neither a signature nor a certification, as approved by the authorised signatory of the AMA body designated on the copy.

In addition, it should be mentioned that in many cases, the authority already uses automation technology (increasingly also AI-supported) to support the creation of formal administrative decisions, even if the notification is still approved by a person and thus issued and, in principle also signed, by a person. This means that the digital system or the AI only remains an aid for the authority, which in principle does not require a legal basis, unless it is a decision in which personal data are processed. In this case, a basis for the processing of personal data in this system is already necessary under the Austrian Data Protection Act (Article 1 § 1 of the Data Protection Act).

Requirements regarding the quality of the data used, data security, and network and information security (cyber security) derive either from fundamental rights standards or from EU law and its implementing provisions. For example, the accuracy of data is grounded, for example, in the fundamental right to data protection (Article 1 § 1 of the Austrian Data Protection Act). Other data standards, other data protection standards, such as those concerning police and judicial matters (Article 2 § 4 et seq. of the Austrian Data Protection Act), or cybersecurity requirements under the Austrian Network and Information System Security Act, stem primarily from EU law<sup>44</sup>. Compare in this sense also § 25 Abs 10 of the Austrian Employment Service Act<sup>45</sup>, according to which the Employment Service must, taking into account the economic feasibility and the state of the art, take sufficient precautions to ensure data security within the meaning of

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<sup>43</sup> § 41 of the Austrian Student Grant Act.

<sup>44</sup> *Bundesgesetz zur Gewährleistung eines hohen Sicherheitsniveaus von Netz- und Informationssystemen (Netz- und Informationssystemssicherheitsgesetz – NISG)*, BGBl. I No. 111/2018.

<sup>45</sup> *Bundesgesetz über das Arbeitsmarktservice (Arbeitsmarktservicegesetz – AMSG)*, BGBl. No. 313/1994.

certain provisions of Regulation (EU) No 2016/679. In rare cases, the legislator provides for specific requirements in the sense mentioned above. An important example is the electronic health record. This is a system that allows patients and authorised ELGA health service providers - such as attending physicians, hospitals, care facilities and pharmacies - to store and access certain health data. For this system, there are special provisions for data security in the electronic transmission of health data and genetic data (§ 3 ff of the Austrian Health Telematics Act<sup>46</sup>). Another important example are the data security requirements for the transmission of traffic and location data required for operations to legally authorised authorities in the telecommunications sector for the purpose of information (§ 170 of the Telecommunications Act<sup>47</sup>). The implementing provisions on technical and organisational measures are laid down in the Data Security Ordinance (TKG-DSVO).

**V. Who builds the algorithmic technologies used by public authorities? Are these developed by public entities, private companies, or a hybrid body?**

The development of algorithmic technologies for public administration in Austria is taking place in both the public and private sectors. The development of algorithmic technologies by the *Bundesrechenzentrum* (BRZ GmbH<sup>48</sup>) can be attributed to the public sector. The BRZ GmbH is an outsourced IT service company of the federal government, assigned to the Ministry of Finance (BMF). In 1997, the IT division of the BMF was outsourced to the BRZ, which is 100% owned by the Republic of Austria. The company develops and operates numerous e-government services for the public sector. BRZ GmbH has developed a number of important algorithmic technologies for the federal government, such as the Finanzonline system, which acts as an interface between private individuals and the tax authorities, where all tax declarations are made and formal administrative tax decisions are sent out via Finanzonline<sup>49</sup>. Other examples are the development of the

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<sup>46</sup> *Gesundheitstelematikgesetz* 2012, BGBl. I No. 111/2012.

<sup>47</sup> *Bundesgesetz, mit dem ein Telekommunikationsgesetz (Telekommunikationsgesetz 2021 – TKG 2021) erlassen wird*, BGBl. I No 190/2021.

<sup>48</sup> Further information under <https://www.brz.gv.at/wer-wir-sind/organisation.html>.

<sup>49</sup> Further information under <https://finanzonline.bmf.gv.at/fo/>.

program JustizOnline<sup>50</sup> for the civil and criminal justice sector, the support of ID Austria (digital identification and authentication tools)<sup>51</sup>.

Of course, the public sector cannot always develop and maintain the hardware and software technologies that are necessary in connection with the digitalisation of government. It is therefore necessary to purchase from the private sector in relation to AI or its components, such as hardware, e.g., computers, sensor technology, software systems, and other IT components. For example, Toposoft, an engineering company from Aachen (Germany), was awarded the contract to develop the hydrographic data management system HyDaMS, which has been used by the Austrian Hydrographic Office for 20 years<sup>52</sup>.

For public sector AI projects, the BBG GmbH, the central procurement agency of the federal government, also offers the possibility of procuring various services via the current framework agreement for IT services. There are pre-formulated General Terms and Conditions of Contract of the Federal Government for various IT services<sup>53</sup>. To implement innovation-promoting public procurement in Austria, a service centre for innovation-promoting public procurement (the IÖB service centre) has been established. IÖB covers both the pre-commercial procurement (PCP) of innovative R&D services and commercial procurement of innovative goods and services (public procurement of innovative solutions, PPI)<sup>54</sup>. The IÖB service centre has set up a virtual marketplace specifically for public administration and innovative companies. The 'Innovation Marketplace'<sup>55</sup> provides public administration with efficient modern solutions, while companies and start-ups offer innovative solutions<sup>56</sup>.

**VI. Is there a centralised infrastructure for digital data management, or are there several infrastructures? If the latter is true, is interoperability guaranteed, and to what extent? Are there any rules or procedures governing the exchange of information between different administrative bodies?**

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<sup>50</sup> Further information under <https://justizonline.gv.at/jop/web/home>.

<sup>51</sup> Further information under <https://www.oesterreich.gv.at/id-austria.html>.

<sup>52</sup> Further information under <https://info.bml.gv.at/themen/wasser/wasseroesterreich/hydrographie/der-weg-zu-den-daten/HyDaMS.html>

<sup>53</sup> An overview see under [www.bbg.gv.at/information/aktuelle-vertraege](http://www.bbg.gv.at/information/aktuelle-vertraege).

<sup>54</sup> See [www.ffg.at/Beschaffung](http://www.ffg.at/Beschaffung).

<sup>55</sup> See [www.ioeb-innovationsplattform.at](http://www.ioeb-innovationsplattform.at).

<sup>56</sup> See [www.ffg.at/Beschaffung](http://www.ffg.at/Beschaffung).

In principle, there is no centralised data management in Austria. Data are stored and processed locally at the point of collection. Data storage and processing is therefore fragmented. There is no guarantee of interoperability of data or data processing applications. There is also no general law governing the exchange of data between authorities. At best, data can be requested from other authorities through mutual assistance.

Only in exceptional cases can approaches to standardised data management be found. For example, the Austrian register of births, marriages and deaths, the commercial register, or the federal legal information system. Another example is the electronic health record (ELGA), which is accessible via the Austrian public health portal. According to § 12a paragraph 1 of the Austrian Health Telematics Act<sup>57</sup>, the Federal Minister responsible for health must operate a publicly accessible health portal to provide the population with quality-assured health-related information; the electronic health record is operated via this health portal. However, ELGA health data and electronic references to them are not stored centrally but are stored locally for ten years, regardless of other legal documentation obligations (§ 20 paragraph 3 of the Austrian Health Telematics Act).

Another example of a specific data management system is the EDM system<sup>58</sup>. This is a network of applications to support environmental documentation, reporting, and notification requirements. EDM provides companies with a legally secure basis for fulfilling their extensive obligations. Comprehensible presentation of the results enables authorities at all administrative levels to efficiently enforce individual legal regulations. Despite the diversity of these legal requirements, EDM, with its master data management, provides the common basis for all applications and enables the collection of asset and personal master data (ZAREg master data management). Structured personal or plant-related authorisations are mapped in the ZAREg notification administration<sup>59</sup>.

A further example of a data management system is the hydrographic data management system HyDaMS. HyDaMS allows fast data access via a simple user interface, provides many hydrologically relevant functionalities on time series and allows modular extension with additional evaluation tools. The data model consists of master data and time series, with master data stored in a relational database and time series data stored in binary files. HyDaMS allows the user to display and

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<sup>57</sup> *Gesundheitstelematikgesetz* 2012, BGBl. I No. 111/2012.

<sup>58</sup> The system can be accessed at <edm.gv.at>.

<sup>59</sup> Further information under [https://www.bmk.gv.at/themen/klima\\_umwelt/abfall/edm.html](https://www.bmk.gv.at/themen/klima_umwelt/abfall/edm.html).

analyse the interrelationships between all essential parameters of the water balance. In addition to the creation of the Hydrographic Yearbook of Austria, water-related natural events can also be evaluated quickly and efficiently. The measuring points and master data are maintained on site by the hydrographic state offices, while the time series are continuously recorded, checked and transmitted via the Internet to the Ministry of Agriculture in compressed form, using specially developed programs<sup>60</sup>.

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<sup>60</sup> Further information under <https://info.bml.gv.at/themen/wasser/wasseroesterreich/hydrographie/der-weg-zu-den-daten/HyDaMS.html>.