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ÖRAK Position Paper Protection of lawyers (call for input by the UN Special Rapporteur on the Independence of Judges and Lawyers)

The Austrian Bar notes so-called **gold plating of EU law regarding the implementation of the DAC 6 Directive¹ into national law which is detrimental to the fundamental right of citizens to professional secrecy**. Firstly, according to § 9 para 1 *Rechtsanwaltsordnung* lawyers are bound to professional secrecy. In cases where a client relieves the lawyer of this duty, the lawyer still has to assess whether this is in the clients' interest. This is not reflected in § 11 *EU-Meldepflichtgesetz*. Secondly, according to § 11 para 4 *EU-Meldepflichtgesetz*, a duty for lawyers is imposed to disclose evidence regarding the information of intermediaries or their client to tax authorities. No specific preconditions have to be met for this disclosure which inevitably includes information protected by professional secrecy.

In some **family and succession law matters** of highest complexity **time limits of only 14 days are foreseen for bringing an action**, see e.g. § 46 para 1 *Außerstreitgesetz*. This time limit even applies throughout the periods during summer and Christmas time when specific rules regarding proceedings apply (formerly known as "trial free time", *verhandlungsfreie Zeit*). In practice, this means that for decisions, some of them 60 pages and longer, which were served on 21 December 2018, lawyers had only five working days within this time frame. For comparison: the EU Succession Regulation foresees time limits of between 30 and 60 days with regard to questions of enforceability (see Art. 50 para 5 [Regulation No. 650/2012](#)).

The Austrian Bar would like to mention a politically sensitive case concerning the *Bundesamt für Verfassungsschutz und Terrorismusbekämpfung* (Office for the Protection of the Constitution and Fight against Terrorism) where the suspect, a former employee, has been **interrogated by the police at multiple occasions without a lawyer**. During the course of several days the client in custody was interrogated even though his lawyer explicitly asked not to do so. After confessing to several crimes and handing over passwords to the investigators, he had to be admitted into psychiatric care. His lawyer expressed serious doubts whether there was valid agreement on the part of her client to be interrogated without his defence counsel. In another case, also concerning an employee to the Office for the Protection of the Constitution and Fight

¹ Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements

against Terrorism, the lawyer in case also criticized that his client was interrogated without him being present at first.²

The Austrian Bar notes that – so far based on anecdotal evidence – there seems to be an increase of **complaints filed by prosecutors with regard to lawyers' conduct in specific cases**. The aim seems to be to intimidate the lawyers concerned as usually not even an initial suspicion can be confirmed.

In general, it is concerning that the tone of discussions between politicians and all branches of the judiciary has become more heated in recent years. This is detrimental to objective discussions and impairs the rule of law and the trust of citizens in the latter.

² Article in *Der Standard* here: <https://www.derstandard.at/story/2000123812259/beschuldigter-nun-in-psychiatrie-anwaelte-kritisieren-ermittler-in-bvt-affaere>

