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## Finanzprokurator – Lawyer and legal advisor of the Republic of Austria

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## Public/federal lawyers round the world

The position of public lawyers exists all over the world as for instance:

Outside the European Union in:

- Hong Kong (Secretary for Justice)
- United States of America (Attorney General)
- Australia (Attorney General)
- Malaysia, Canada, etc.


Within the European Union in:

- Ireland (Attorney General),
- Italy (Avvocatura dello Stato),
- Portugal (Procuradoria-Geral da Republica),
- Slovenia (Državno pravobranilstvo),
- Spain (Abogacia General del Estado) and so on.

Even the European Commission has its own in-house counsel called „The Legal Service“




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## Establishment and legal basis I

### I. Establishment of the Finanzprokurator

- historic role dates back to the 13th century and was called "Fiskalat" or "Kammerprokurator"
- combined Prosecutor and civil lawyer in one function
- main tasks: counsel and representation of the Emperor in court cases
- first lines of public liability (documented as far back as 1539 in Austria)
- as a result of the revolution 1848 and the establishment of a distinct prosecution, the Finanzprokurator remained as the civil lawyer of the state



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## Establishment and legal basis II

### II. Legal basis

- First provisional regulations came into force in 1898 and remained until 1938
- during the Second World War the Finanzprokurator was suspended
- in 1945 the Finanzprokurator was awarded a statutory basis for the first time, which was identified to need re-examining =>
- as a result of a structural reform 2007/2008 a new "Finanzprokurator-law" has been passed, which came into force 1 January 2009
  - codifies the scattered previous regulations;
  - newly defines the client-structure, duties, the organisation and vocational training for the lawyers




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## Role of the Finanzprokurator

### The Finanzprokurator:

- ✓ is a federal law office with 93 employees including 42 lawyers
- ✓ provides basically legal advice and representation in all court cases
- ✓ serves as guardian of the Public Interest under certain circumstances
- ✓ is organisationally a federal agency and a subordinated public office of the Ministry of Finance
- ✓ is headed by President Peschorn, who is a civil servant appointed by the Minister of Finance
- ✓ is not bound by instructions from the Ministry of Finance
- ✓ is a disciplinary and administrative authority for its employees
- ✓ provides high quality of work and is held in high esteem



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## Statutory clients of the Finanzprokurator I

### I. Republic of Austria


- Federation, the federal government, the Federal Chancellor
- the ministers and government ministries,
- other federal authorities such as tax offices, police-departments

### II. Legal entities with close links to the State:

- Businesses in which the State holds a majority stake;
- Companies who are fundamentally funded by the Austrian State;
- Legal entities who are administrated by public agencies or individuals who have been appointed by public agencies;
- Public bodies and institutions and
- Public foundations and funds.

### III. State governments and local government authorities

### IV. Public interest under certain circumstances



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**Statutory clients of the Finanzprokurator II**

**I. Republic of Austria**

**A. regarding national ordinary court cases**

- may not hire a private lawyer without consent of the Finanzprokurator
- is obliged to be represented by the Finanzprokurator, otherwise all legal acts are deemed invalid
- deliveries are only legally effective when they reach the Finanzprokurator

=> the Republic of Austria is a so called "obligatory client"

**B. regarding other court cases or legal counsel**

- the Republic of Austria could also engage a private lawyer

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**Statutory clients of the Finanzprokurator III**

**II. Other clients of the Finanzprokurator**  
(Legal entities with close links to the State, State governments and local government authorities):

- are called "facultative clients";
- can consult the Finanzprokurator, but are not obliged to do so; they have the right to vote
- have to remunerate for the legal services (lawyer's fee)

**Conflict of interests**  
Regarding legal disputes between the Republic of Austria and a facultative client, the Republic of Austria will always take priority.

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**Task fulfilment and lawyer's fee**

**Task fulfilment:**

- preconditions: a specific order and information about the substantial facts
- the Finanzprokurator is subject to official secrecy without exception; all cases are treated as strictly confidential;
- is committed to the principles of efficiency, usefulness and economy as well as to the rule of law.

**Lawyer's fee:**

- the Republic of Austria never has to pay a lawyer's fee for legal services of the Finanzprokurator, except cash expenditures;

in return, it has to bear the personnel and material costs of the Finanzprokurator;

- all other clients have to remunerate for the legal services according to the Austrian Law of Fees for (private) Lawyers (RATG) and the General Criteria for Fees for (private) Lawyers (AHK).

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**Mission and Activities II**

**Main activities:**

**I. Legal counsel**

- drafting contracts and negotiating;
- contracting on behalf of the clients and drawing up legal documents;
- giving legal opinions;
- conducting conferences and meetings.

**II. Legal representation**

- in all national and international courts, administrative agencies and tribunals;
- mainly in civil and administrative matters;
- in criminal matters as far as damages result from criminal offences;
- acting as plaintiff, defendant or intervenor;
- drafting all kind of pleadings;
- attending all trials.

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**Mission and Activities III**

**III. Central contact point**

- for individuals who intend to sue the Republic of Austria for damages resulting from official acts;
- statutory preliminary proceeding of which the Finanzprokurator is exclusively in charge;
- individuals have to inform the Finanzprokurator about the facts and state their financial demands;
- the Finanzprokurator has to
  - assess the facts,
  - find out the competent authority and
  - give a recommendation whether or not the claim should be admitted.

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## Mission and Activities IV

This procedure:

- ensures equal treatment as well as prompt and simple help for private persons making complaints
- saves the general public and the state considerable expenses for hopeless trials.

Fulfilling all these tasks the Finanzprokurator also plays an important role regarding the:

- coordination of official acts
- development of law as well

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## Organisation of the Finanzprokurator

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## Working requirements and training I

### I. Precondition for recruiting:

- vacant permanent post (according to the staff establishment plan)

### II. Working requirements:

- University degree in Austrian law
- Court experience of at least nine months
- Comprehensive legal knowledge

Trainee lawyers have to pass within a period of five years the:

- lawyer's exam and the
- public office exam,

otherwise the employment is automatically terminated.

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## Working requirements and training II

### III. Vocational training

- on the job training
- courses for judges at the court of appeal in Vienna two days a month
- lots of seminars held by the Academy of Lawyers

=> quality of work is at a very high level;

=> confirmed by the high customer satisfaction;

=> The Finanzprokurator wins more than two thirds of all of its civil litigations per year.

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## Federal Law Offices in general I

### I. Advantages of a federal law office:

- own lawyers specialised in dealing with public authorities' problems and special "state-related" know-how;
- no time needed for finding an appropriate private law-firm at short notice;
- can be consulted anytime and in an uncomplicated way;
- profound legal services of high quality without paying lawyer's fee;
- not primarily profit orientated; going to court is carefully considered;
- acts as a guardian of the Public Interest;
- can be involved in the preparation of Government legislation;

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## Federal Law Offices in general II

- Governmental tasks as being the head of the prosecution can be vested in a federal law office;
- lawyers' fees obtaining from other public bodies than the Federation belong to the State.



### B. Disadvantages

- The Federation has to bear all the personnel and material costs throughout the whole year;
- fixed costs accrue regardless of whether or not legal counsel or representation is needed;
- the federal law office may not have expertise knowledge in certain cases.

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**Federal Law Offices in general III**

**C. Statutory framework / Provisions concerning**

- who can consult the federal law office on what terms;
- competences of the federal law office;
- orders and principles for task-fulfilment;
- the power of attorney and the possibility for substitution;
- liability;
- dealing with conflicts of interests;
- lawyer's fee;
- the organisational structure and
- the employment-relationship (job-requirements, lawyer's exam, vocational training, salary, competition clause).

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**Thank you very much  
for your attention!**

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