

**AUSTRIA<sup>1</sup>**

**National Procedures for Transfer of sentenced persons**

**Updated on 27/02/2021**

<b>The Central Authority responsible for the transfer of sentenced persons</b>	Federal Ministry of Justice Department V 1 Museumstrasse 7, 1070 Wien, Austria  Tel: ++43/1/52152-2226 Fax: ++43/52152-2500 E-mail: : <a href="mailto:team.s@bmj.gv.at">team.s@bmj.gv.at</a>
If different from the Central Authority, the authority to which the request should be sent:	Name of the institution Address Telephone Fax E-mail
If different from the Central Authority, the <b>Authority/ies in charge of coordinating and/or implementing the physical transfer</b> of the person concerned:	Name of the institution Address Telephone Fax E-mail
<b>Channels of communication</b> for the request for the transfer of sentenced persons:  (directly, through diplomatic channels or other)	Directly to the Central Authority. Austria made no declaration according to Art 5 para 3 of the Convention.
<b>Means of communication</b> (eg. by post, fax, e-mail <sup>2</sup> ):	Austria accepts any means of communication that are capable of producing written records and allow establishing the authenticity of the document.
<b>Language requirements:</b>	Requests for transfer and the relevant documents have to be accompanied by a translation into German, English or French language.
<b>Documentation required:</b>	Austria requires the documentation mentioned in Article 4 para 3

<sup>1</sup> Please indicate your state.

<sup>2</sup> Please indicate if encryption or electronic signature is required.

	of the Convention on the Transfer of Sentenced Persons, ETS No. 112, and a document showing either the consent of the convicted person (or the fulfilment of the requirements of Article 2 or 3 of the Additional Protocol to the above-mentioned Convention, ETS No. 167).
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<b>Continued enforcement or conversion of the sentence<sup>3</sup>:</b>	According to the Austrian declaration to Article 3 and 9 of the Convention Austria will in principle transform the sentence. However, the application of the principle of continued enforcement in cases where the other Contracting Party is not willing to apply the transformation procedure and where an interest of transfer prevails, is not excluded. The conversion of the sentence takes place prior to the actual transfer of the sentenced person.
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<b>General rules on early release:</b>	<p>According to Austrian Law the decision on conditional release is taken by the competent regional court not before having served half of the sentence imposed if there is a positive prognosis that the person will refrain from further criminal behaviour.</p> <p>When examining conditional release accompanying measures such as the assignment of a probation officer, instructions (to provide compensation for the damage caused by the offence, to undergo a specific training, to be treated for drug addiction, etc.) shall be taken into account.</p> <p>The person has to be released indicating a period of probation if there is reason to believe that he/she will refrain from further criminal behaviour (Section 46 para 1 of the Criminal Code). Having served half, but not yet two thirds of the sentence imposed conditional release can only be refused if in the light of the seriousness of the act committed the further enforcement of the sentence is deemed to be necessary on an exceptional basis to prevent other possible perpetrators from criminal behaviour (Section 46 para 2 of the Criminal Code).</p> <p>Conditional release is also possible from certain measures involving deprivation of liberty. Mentally ill offenders can be released on parole, if the warning to commit the person to an institution together with a continued medical treatment after release and measures such as the assignment of a probation officer, instructions, etc are considered sufficient - taking into account the personality of the offender, his/her state of health, his/her previous life, the nature of the offence committed, the success of a medical treatment during detention and chances of a positive future life – to eliminate danger emanating from the mentally ill offender.</p> <p>Mentally ill offenders who can be held responsible for the crimes committed can be released from the measures only together with a release from the sentence imposed (Section 45 para 1 of the</p>
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<sup>3</sup> In case the sentence is converted, please specify whether this is done before or after the transfer has taken place.

	<p>Criminal Code).</p> <p>Offenders addicted to drugs or alcohol can be committed to a specific institution. A release from this measure, which must not exceed two years, is also possible together with a release from the sentence imposed if there is reason to believe, that the warning to commit the person to an institution together with measures such as the assignment of a probation officer, instructions (in particular to be treated for addiction) are sufficient to overcome the addiction (Section 45 para 2 of the Criminal Code).</p> <p>A conditional release from other measures, such as a commitment to an institution for dangerous reoffenders is not possible under Austrian law (Section 45 para 4 of the Criminal Code).</p>
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<b>Scope of application with regard to transfer of mentally disordered persons:</b>	If the administering and the executing State can find an agreement a transfer of mentally disordered persons is not excluded.
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<b>Scope of application with regard to nationals and/or residents:</b>	No transfer of residents. Austria only accepts requests for transfer of own nationals
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<b>Other relevant information:</b> (such as practice regarding time limits or revocation of consent)	<p>No time limits apply.</p> <p>Consent given before the court is irrevocable according to Austrian law.</p>
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<b>Links</b> to national legislation, national guides on procedure:	
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Link to information about the Convention (according to Article 4) in the official language(s) of the State Party (see also Rec. R (84) 11 of the Committee of Ministers concerning information about ETS°112 and PC-OC INF 12):	<p>The main national legislation is contained in the Federal Law of December 4, 1979 on Extradition and Mutual Assistance in Criminal Matters (Extradition and Mutual Assistance Law - ARHG).</p> <p>With EU Member States the Federal Law on Judicial Cooperation in Criminal Matters with the Member States of the European Union (EU-JZG), implementing inter alia the Council Framework Decision 2008/909/JHA of November 27, 2008, applies.</p> <p>The Austrian legislation can be found at <a href="http://www.bka.ris.gv.at">www.bka.ris.gv.at</a> in German language.</p> <p>General information on the Austrian judicial system can be found at the webpage of the Federal Ministry of Justice at <a href="http://www.bmj.gv.at">www.bmj.gv.at</a> – also in English language.</p>
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## For Parties to the Additional Protocol

<b>Information on the implementation of Article 2:</b> (e.g. interpretation of “by fleeing to”)	Austria interprets “by fleeing to” in a broad sense in order to allow the enforcement of a sentence imposed abroad in the country of nationality.
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<b>Information on the implementation of Article 3:</b> (e.g. interpretation of the requirement of a consequential link between the decision on expulsion and the sentence)	Austrian courts do not require a consequential link between the decision on expulsion and the sentence.
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<b>Documentation required:</b>	Austria requires the documentation mentioned in Article 4 para 3 of the Convention on the Transfer of Sentenced Persons, ETS No. 112, and a document showing the fulfilment of the requirements of Art 2 or 3 of the Additional Protocol.
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<b>Other relevant information:</b>	
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