

## AUSTRIA

### LEGAL BASIS

- 1. Has your State signed and/or ratified the *European Convention on State Immunity* (1972) and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004)? Do the authorities of your State consider the provisions on these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

Austria has ratified the European Convention on State Immunity (1972) on 10 July 1974.

Austria has ratified the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) on 14 July 2006. Austria considers the provisions of the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) on service of process as a codification of customary international law. In relation to EU member states, Austria applies EU Regulation No. 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

Austria is not a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965.

### **2. Please provide information on:**

- a. National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).**

The Austrian Federal Law on the Service of Official Documents (Zustellgesetz), Federal Law Gazette No. 200/1982 as amended, contains the following provisions that are, inter alia, applicable to the service of official documents issued by Austrian authorities on foreign states and to the service of official foreign documents on Austria:

According to § 11, service of official documents abroad shall be effected in accordance with the existing international agreements or in the way that is admissible according to the laws and other regulations of the state where the service ought to take place, or according to international practice, if necessary with the involvement of the Austrian diplomatic or consular missions. Moreover, service of process on foreigners or international organisations that enjoy international privileges and immunities - which includes foreign states - shall be effected with the involvement of the Federal Ministry for European and International Affairs.

The Austrian Federal Law on the Service of Official Documents provides in Section 12, para. 1, that the service of legal documents of foreign authorities in Austria is to be effected in accordance with existing international agreements, and if no such agreements exist, in accordance with this Federal Law.

- b. Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.**

Austrian national courts and tribunals review the lawfulness of the service of process. The jurisprudence of the Austrian courts on the service of process has recently been reviewed by the European Court of Human Rights in the case of Wallishauser v. Austria, application no.156/04, judgment delivered on 17 July 2012.

## PROCEDURE

- 3. Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.**

As a matter of international law, Austria, like many other European civil law countries, maintains the view that the service of legal documents is a governmental act performed in the exercise of sovereign authority. As a consequence, in the absence of applicable international agreements and rules deriving from such agreements or unilateral Austrian acts authorizing such service, Austria regards the direct service of foreign legal documents in its territory by foreign authorities or by private individuals without the assistance or explicit or implicit consent of the competent Austrian authorities as an infringement of its sovereignty. Therefore, in order to avoid defective service, service of foreign legal documents in Austria has to be effected through diplomatic channels, i.e. via of the Federal Ministry for European and International Affairs (Austrian foreign ministry). In the absence of international agreements or rules deriving from such agreements, customary international law as reflected in the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) applies. Accordingly, service of documents is deemed to have been effected by their receipt by the Austrian foreign ministry.

A certified German translation of foreign documents that are served to Austria is required. Service that is not effected in accordance with the above legal rules and procedures is to be considered contrary to and therefore not effective under Austrian as well as international law.

- a. How are the terms “diplomatic channels” (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.**

“Diplomatic channels” means that service of process to the defendant state is effected via the diplomatic mission of the state of the forum accredited in the defendant state. A notification to the embassy of the defendant state in the state of the forum is not foreseen.

- b. How are the terms “if necessary” (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?**

The Austrian authorities understand the terms “if necessary” as referring to the official language of the state of the forum. It is therefore necessary to provide a German language translation if the original documents have not already been drafted in the German language.

- 4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.**

Service of process has to be made via the foreign embassy accredited in Austria to the Austrian foreign ministry. Austria does not accept service to its embassy in the State of the forum.