Legalisation of Public Documents within the EU Member States

AUSTRIA

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PART I – Documents operating cross-border: Current legal practice as regards legalisation or other similar or equivalent requirements

OVERVIEW OF PART I

PART I.A. General

I.A.1. European Community Law
   I.A.1.1. Introduction
   I.A.1.2. Implementation of specific measures

Area of Justice - judicial cooperation in civil matters (Article 61(c) EC)

As the provisions listed below (with the exception of Article 13(5) of Directive 2002/8/EC) are contained in regulations, they are directly applicable. Therefore, there is no implementing legislation. We are not aware of violations of the listed provisions in practice.

The implementation of Community instruments is supervised by the competent ministries. Important instruments in this context are internal guidelines (called Erlass or Rundschreiben) that are circulated to the departments responsible for the application of the respective instrument. Note, however, that any such internal guidelines are not binding on individual citizens. In the end, it is the responsibility of the (civil and public law) courts to enforce Community and domestic law. Austrian law provides for remedies that enable individual citizens to take action against formalities that are unduly imposed. Case law dealing with such problems seems to be very scarce, however (indeed, we have found no cases where the legalisation of a document coming from another Member State was a problematic issue). This leads us to assume that the implementation of rules on legalisation is not a problematic issue in Austria’s relations with other Member States.

Article 19 of Regulation (EC) No 1346/2000
Article 4(4) of Regulation (EC) No 1348/2000

Article 56 of Regulation (EC) No 44/2001

Article 57 of Regulation (EC) No 44/2001

Article 58 of Regulation (EC) No 44/2001

Article 46 Regulation (EC) No 2201/2003

Article 52 of Regulation (EC) No 2201/2003

Article 52 Regulation (EC) No 2201/2003, certificates drawn up in the standard forms of ANNEX I (Article 39), II (Article 39), III (Article 41) or IV (Article 42)

Article 27 of Regulation (EC) No 805/2004

ANNEXES I (Article 9 - judgments), II (Article 24 – court settlements) and III (Article 25 – authentic instruments) of Regulation (EC) No 805/2004

Article 13(5) of Directive 2002/8/EC


Free movement of goods (Article 23 EC)

Article 250 of Regulation (EEC) No 2913/92
Free movement of workers - social security (Article 42 EC)

Article 85 Regulation (EEC) No 1408/71 read in conjunction with Regulation (EEC) No 574/72

I.A.1.3. Judicial control


I.A.2.1. Status


I.A.2.2. Scope

The geographical or material scope of the Convention has not been modified by the legislator. We are not aware of any such modification in practice, either. However, it should be noted that Austria has entered into a number of parallel bi- or multilateral agreements that completely abolish legalisation requirements for all or at least for certain types of documents (see below under I.A.3). Where such agreements apply, an Apostille is not required.

The legislative report on the “Apostille” Convention ((458 BlgNR 11. GP, p. 11) points out that translations prepared and certified by official translators are not subject to the Convention and that therefore the translator’s signature cannot be legalised by an Apostille. This has been reaffirmed in an internal decree of the Ministry of Justice of 11 January 2001 (see Vatter, Verträge und Urkunden im Rechtsverkehr mit dem Ausland, Introduction p. 5).

I.A.2.3. Legislative implementation

The Convention was implemented into Austria’s legal order by way of general transformation (on the different types of implementation of international agreements into Austrian law, see I.A.3.3). In addition, an implementing statute was enacted (Bundesgesetzblatt 1968/28). The statute designates the authorities competent to issue the Apostille. The annex provides a sample Apostille.

I.A.2.4. Practical implementation

An Apostille can be requested in person or in writing. The fee for the apostille is 16.20 Euro. The Apostille is issued in German. The implementing act provides for the following text of the Apostille:

Apostille
(Convention de La Haye du 5 octobre 1961)
The authority verifies the authenticity of the signature and the seal by comparing them to samples. The form of the Apostille is regulated in the annex of the implementing statute.

The Apostille is, in principle, placed on the document itself. If there is not sufficient space on the document itself, the Apostille is placed on an allonge. In such cases, the document and the allonge are non-detachably connected together. If the document consists of multiple pages, the pages are first non-detachably connected together. The Apostille is then placed on the last page. The languages used on the Apostille are German and French. A rubber stamp is used to issue the Apostille; thus, the system used is mechanical.

The Apostille is, in principle, issued immediately. For example, the Ministry of Foreign Affairs issues the Apostille within minutes if the applicant appears there personally (if the request is made by mail, the process must naturally take a few days).

The authorities competent to issue the Apostille are listed in § 3 of the implementing statute (Bundesgesetzblatt 1968/28). Besides the Ministry of foreign affairs, the competent authorities are the Presidents of the courts of first instance, the nine Landeshauptmänner (Provincial Governors) and the nine Landesregierungen (Provincial Governments). The competence of all those authorities depends on the type of document to be legalised.

Competence is distributed among those authorities as follows:

1) Bundesministerium für auswärtige Angelegenheiten (Ministry of Foreign Affairs), Legalisierungsbüro, Minoritenplatz 8, A-1014 Wien

The Ministry of Foreign Affairs is responsible for documents issued by:

a) the Bundespräsident (Federal President) or the Präsidentschaftskanzlei (Federal
President's office);
  b) the Presidents of the two chambers of the Federal Parliament (Nationalrat and Bundesrat) or the Parlamentsdirektion (Parliamentary Administration);
  c) the Bundesregierung (Federal Government);
  d) a Federal Ministry;
  e) the Verfassungsgerichtshof (Constitutional Court) or the Verwaltungsgerichtshof (Administrative Court);
  f) the Oberster Gerichtshof (Supreme Court), the Kartellobergericht beim Obersten Gerichtshof (Superior Cartel Court attached to the Supreme Court), the Oberste Rückstellungskommission beim Obersten Gerichtshof (Supreme Restitution Commission attached to the Supreme Court) or the Oberste Rückgabekommission beim Obersten Gerichtshof (Supreme Commission for the Return of Property attached to the Oberster Gerichtshof);
  g) the Rechnungshof (Federal Board of Audit).

2) The presidents of the courts of first instance dealing with civil matters, or their substitutes designated to issue the Apostille, with the exception of the Handelsgericht Wien (Commercial Court of Vienna) and the (no longer existing) Jugendgerichtshof Wien (Youth Court of Vienna).

They are responsible for documents issued in their area of jurisdiction by the following authorities:
  a) other courts than those listed under 1.e) and 1.f);
  b) public prosecution authorities;
  c) notaries;
  d) a chamber of notaries or bar association, if such chamber or association has acted as a federal authority.

The addresses of the courts of first instance can be found under http://www.justiz.gv.at

3) For all other documents:
   i) the Landeshauptmann (Provincial Governor), if the document was issued in the respective Land in matters of so-called indirect federal administration (mittelbare Bundesverwaltung), i.e. in cases where provincial authorities act on behalf of the Austrian Federation;
   j) the Landesregierung (Provincial Government) if the document was issued in the respective Land by an authority acting in execution of administrative competences of the Land.

An electronic registration system for Apostilles has not yet been established in the Ministry of External Affairs. A card index is used for this purpose. Electronic data processing is only used for internal purposes (accounting). To consult the register, the authority that has issued the Apostille must be applied to.

With regard to judicial authorities, it should be mentioned that the establishment of an electronic archive of legalised documents (Beglaubigungsarchiv der Justiz) is under way (see I.A.4.).

I.A.2.5. Judicial control
I.A.3. Parallel international agreements

I.A.3.1. Status

1. 1968 Council of Europe Convention for the Abolition of Legalisation of Documents Executed by Diplomatic or Consular Officers:

Austria is a party to the convention (Bundesgesetzblatt 1973/274 – ratification: 9 April 1973; entry into force: 9 July 1973).

2. 1987 Brussels Convention abolishing the Legalisation of Documents in the States of the European Communities:

Austria is not a party to the convention.

3. Agreements abolishing the requirement of legalisation for foreign public documents generally between two or more countries:

Austria has entered into bilateral agreements generally abolishing the requirement of legalisation with several States in- and outside the European Union. It has entered into such agreements with the following Member States:

Belgium


Czech Republic:

Bilateral agreement with former Czechoslovakia, Bundesgesetzblatt 1962/309, Bundesgesetzblatt III 1997/123 (Vertrag zwischen der Republik Österreich und der Tschechoslowakischen Sozialistischen Republik über wechselseitigen rechtlichen Verkehr in bürgerlichen Rechtssachen, über Urkundenwesen und über Erteilung von Rechtsauskünften – Agreement between the Republic of Austria and the Czechoslovak Socialist Republic on Mutual Legal Co-Operation in Civil Matters, on Documents and on Information on Law); exemption from legalisation: Article 10; Articles 21 ff; Numbers 1 and 2 of the Final Protocol.

Finland:

<table>
<thead>
<tr>
<th>Country</th>
<th>Treaty Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>Bundesgesetzblatt 1924/139 (Beglaubigungsvertrag zwischen der Republik Österreich und dem Deutschen Reich – Agreement on Legalisation between the Republic of Austria and the German Reich).</td>
</tr>
<tr>
<td>Hungary</td>
<td>Bundesgesetzblatt 1967/305 (Vertrag zwischen der Republik Österreich und der Ungarischen Volksrepublik über wechselseitigen Verkehr in bürgerlichen Rechtssachen und über Urkundenwesen – Agreement between the Republic of Austria and the Hungarian People’s Republic on Mutual Co-Operation in Civil Matters and on Documents); exemption from legalisation: Articles 22 ff.; Number 2 of the Final Protocol.</td>
</tr>
<tr>
<td>Poland</td>
<td>Bundesgesetzblatt 1974/79 (Vertrag zwischen der Republik Österreich und der Volksrepublik Polen über die wechselseitigen Beziehungen in bürgerlichen Rechtssachen und über Urkundenwesen – Agreement between the Republic of Austria and the People’s Republic of Poland on Mutual Legal Relations in Civil Matters and on Documents); exemption from legalisation: Article 56; Number 2 of the Final Protocol.</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Bilateral agreement with former Czechoslovakia, Bundesgesetzblatt 1962/309, Bundesgesetzblatt 1994/1046 (Vertrag zwischen der Republik Österreich und der Slowakischen Republik über wechselseitigen rechtlichen Verkehr in bürgerlichen Rechtssachen, über Urkundenwesen und über Erteilung von Rechtsauskünften – Agreement between the Republic of Austria and the Slovak Republic on Mutual Legal Co-Operation in Civil Matters, on Documents and on Legal Information); exemption from legalisation: Article 10; Articles 21 ff.; Numbers 1 and 2 of the Final Protocol.</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Bilateral agreement with former Yugoslavia, Bundesgesetzblatt 1955/224, Bundesgesetzblatt 1992/234.</td>
</tr>
</tbody>
</table>
1993/714 (Vertrag zwischen der Republik Österreich und der Republik Slowenien über den wechselseitigen rechtlichen Verkehr – Agreement between the Republic of Austria and the Republic of Slovenia on Mutual Legal Co-Operation); exemption from legalisation: Article 9; Articles 41 ff.

Spain:


Sweden:


4. Agreements abolishing the requirement of legalisation for categories of documents relating to a specific subject matter:

4.1. Multilateral:


c) 1996 The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children: Austria has signed the convention on 1 April 2003 but has not yet ratified it.

Multilateral agreements not mentioned in the questionnaire:


b) 1977 European Convention on the Service Abroad of Documents Relating to Administrative Matters (Bundesgesetzblatt 1983/67; signature 2 October 1979,


e) 1981 Multilateral (EUROCONTROL) Agreement relating to Route Charges (Bundesgesetzblatt 1986/136; ratification 30 December 1985, entry into force 1 January 1986); exemption from legalisation: Article 18 Number 2.

Austria has also ratified a number of multilateral agreements concerning civil status documents, prepared by the CIEC (International Commission on Civil Status):


d) 1958 Istanbul Convention on the Changes of Surnames and Forenames, Bundesgesetzblatt 1965/278


g) 1976 Vienna Convention on the Issue of Multilingual Extracts from Civil Status Records, Bundesgesetzblatt 1983/460

h) 1977 Athens Convention on the Exemption from Legalisation of Certain Records and Documents, Bundesgesetzblatt 1982/239


Austria is not a party to the following conventions:

- 1965 The Hague Convention on Service Abroad of Judicial and Extrajudicial
Documents in Civil or Commercial Matters
- 1970 The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters
- 1973 The Hague Convention concerning the International Administration of the Estates of Deceased Persons

4.2.: Bilateral (only EU Member States):

a) Agreements concerning civil status documents:

**Denmark:**

Bundesgesetzblatt 1964/241 (Vereinbarung zwischen der Republik Österreich und dem Königreich Dänemark über den Entfall der Zuständigkeitsbestätigung auf dänischen Ehefähigkeitszeugnissen sowie über den Entfall der Beglaubigung auf Personenstandsurnkunden – Agreement between the Republic of Austria and the Kingdom of Denmark on the Abolition of the Confirmation of Jurisdiction on Danish Certificates of Legal Capacity to Marry and on the Abolition of Legalisation on Civil Status Documents) (documents concerning civil status and certificates of legal capacity to marry)

**Germany:**

Bundesgesetzblatt 1982/127 (Vertrag zwischen der Republik Österreich und der Bundesrepublik Deutschland über den Verzicht auf die Beglaubigung und über den Austausch von Personenstandsurnkunden sowie über die Beschaffung von Ehefähigkeitszeugnissen – Agreement between the Republic of Austria and the Federal Republic of Germany on the Dispensation from Legalisation and on the Exchange of Civil Status Documents and on the Procurement of Certificates of Legal Capacity to Marry) (documents concerning civil status and certificates of legal capacity to marry)

**Italy:**

Bundesgesetzblatt 1992/126 (Vertrag zwischen der Republik Österreich und der Italienischen Republik über den Entfall der Beglaubigung, die Übermittlung von Personenstandsurnkunden und die Vereinfachung der der Eheschließung vorangehenden Förmlichkeiten – Agreement between the Republic of Austria and the Italian Republic on the Abolition of Legalisation, the Transmission of Civil Status Documents and on the Simplification of the Formalities Preceding Marriage): exemption from legalisation: Article 1

**Luxembourg:**


b) Agreements on social security:
Austria has entered into bilateral agreements on social security with most EU Member States. Usually those agreements also contain exemptions from legalisation requirements. However, the remaining scope of the bilateral agreements is very limited since the scope of Regulation 1408/71 has been extended to third-country nationals by Regulation 859/2003. Therefore, the bilateral agreements on social security are not listed here. A list is available, e.g., on the website of the Austrian Ministry of Social Security (<http://www.bmsg.gv.at/cms/site/attachments/8/0/5/CH0029/CMS1056553455805/tabelle-abkommen_1_4_2006.doc> visited 30 September 2006).

c) Agreements on recognition and enforcement:

Austria has entered into bilateral agreements on recognition and enforcement with a number of other Member States. Usually such agreements also contain exemptions from legalisation requirements. However, as the remaining scope of the bilateral agreements is very limited, they are not listed here.

d) Others:

Germany: Bundesgesetzblatt 1923/287 (Vertrag zwischen der Republik Österreich und dem Deutschen Reiche über Rechtsschutz und Rechtshilfe in Steuersachen – Agreement between the Republic of Austria and Germany on Legal Protection and Legal Assistance in Tax Matters); exemption from legalisation: Article 17

Hungary: Exchange of notes between Austria and Hungary on the transmission of school and similar documents (28 July 1967), see Vatter, Verträge und Urkunden im Rechtsverkehr mit dem Ausland, p. U 19.

N.B. 1 Austria has also concluded bilateral agreements abolishing the legalisation requirement generally or with regard to certain types of documents with several non-EU States (Bulgaria, Liechtenstein, Norway, Romania, Switzerland, Turkey, and former Yugoslavia [still in force between Austria and the successor States]).

N.B. 2 A table of international agreements containing exemptions from legalisation requirements can also be found in the country list for § 43 of the Rechtshilfe-Erlass in Zivilsachen – RHE Ziv 2004 (Guidelines for judicial assistance in civil matters, issued by the Ministry of Justice, Amtsblatt der österreichischen Justizverwaltung 2004/13, also available online: <http://www.bmj.gv.at/_cms_upload/_docs/rheziv2004.pdf> visited 30 September 2006). Information on Austria’s bi- and multilateral relations in legalisation matters is also available on the website of the Ministry of Foreign Affairs (<http://www.bmaa.gv.at/view.php3?f_id=1355&LNG=de&version=> visited 30 September 2006).

I.A.3.2. Scope

The scope of application of the relevant international agreements has not been modified by the legislator.

Reportedly, German and Spanish authorities demand the Apostille for documents coming from Austria in spite of the bilateral agreements Austria has concluded with these countries on the abolition of the legalisation requirement (see Vatter, Verträge und Urkunden im Rechtsverkehr mit dem Ausland p. D 12 [Germany], p. S 125 [Spain]).
The “general” bilateral agreements listed above (under I.A.3.1) usually exclude the requirement of legalisation or Apostille for public documents issued in a contracting State by a court, administrative authority or public notary. The same applies to private documents whose authenticity has been certified by a court, an administrative authority or a public notary in a contracting State. However, those agreements do not abolish the necessity to provide a legalised translation of the relevant documents; i.e., legalisation is only abolished with regard to the original document.

The bilateral agreement between Austria and Spain has a more narrow scope than most other bilateral agreements listed above. It only applies to documents for use in the courts. According to information on the website of the Austrian ministry of Foreign Affairs legalisation is also not necessary for study certificates (<http://www.bmaa.gv.at/view.php3?f_id=2047&LNG=de&version=> visited 29 September 2006).

The relation among the different international agreements is governed by public international law. Generally, the relevant rules of the Vienna Convention on the Law of Treaties apply (especially Articles 30, 41 and 59). Where the Vienna Convention on the Law of Treaties does not apply ratione tempore, its rules may be considered as customary international law. Some agreements contain explicit rules on their relation to other agreements. As a general rule with regard to agreements on legalisation, those agreements that completely abolish the legalisation requirement take precedence over agreements that retain some sort of legalisation requirement. Especially, the multilateral or bilateral agreements abolishing the legalisation requirement for all or certain types of documents take precedence over, e.g., the “Apostille” Convention.

### I.A.3.3. Legislative implementation

Article 50 of the Austrian Constitution (Bundes-Verfassungsgesetz) provides for two different models of implementation for international agreements, namely “general transformation” and “special transformation”. If an international agreement is “generally transformed”, it is immediately implemented into the Austrian legal system. In such cases, there is no need for additional implementing legislation. “Special transformation” is usually used for international agreements that are not self-executing. In such cases the agreement has no immediate effect in internal law but has to be implemented by separate national statutes. The agreements listed above (at least as far as the abolition of legalisation requirements is concerned) are self-executing and were “generally transformed”. That means that they are directly applicable after approval by parliament and publication in the Bundesgesetzblatt. Additional national legislation enacted in connection with some of the agreements is mentioned above together with the respective agreement.

### I.A.3.4. Practical implementation

Where conventions totally abolish the legalisation requirement for all documents or certain types of documents coming from a contracting State, there are no specific authorities responsible for handling incoming or outgoing documents. The document may simply be used in the procedure before the authority competent to issue the legal act for which the document is required. E.g., if a civil status document is necessary in order to perform a marriage, it is up to the registrar to examine whether the document is exempt from legalisation. Some of the agreements also contain rules on the exchange of
information, usually by way of the Ministries of Justice.

It should be noted that the abolition of the legalisation requirement only means that the original document does not have to be legalised in order to be valid before an Austrian authority. However, if the document is in a foreign language, a legalised translation into German is nevertheless required.

I.A.3.5. Judicial control

I.A.4. National Law
I.A.4.1. Legislative framework

Where legalisation is not abolished by European law and no international agreement applies, so-called diplomatic legalisation is required for foreign documents that are used in court or in administrative proceedings.

Incoming documents

According to § 311(1) Zivilprozessordnung (Code of Civil Procedure), the court has to assess in every individual case whether a document that appears to have been issued by a foreign authority or a foreign person of public trust should be accepted as authentic without further proof. According to Paragraph 2 of the said provision, in the absence of different special rules legalisation by the Ministry of Foreign Affairs or by an Austrian ambassador or consul constitutes sufficient proof.

The legalisation practice of the Austrian Ministry of Foreign Affairs for incoming documents in cases where there are no bi- or multilateral agreements is described in a verbal note of 8 February 2001. In said note, the Ministry of Foreign Affairs announced stricter legalisation guidelines in reaction to fraud problems. According to the verbal note, a foreign document must be legalised by the competent Austrian representation in the country of origin.

Documents that have not undergone the internal legalisation process in the country of origin have to be legalised by the Ministry of the Exterior of the country of origin and by that country’s representation in Austria. After that, they are legalised by the Austrian Ministry of Foreign Affairs. Special rules apply to documents issued by foreign diplomatic and consular representations in Austria. If a document has not undergone the internal legalisation process in the country of origin, a remark is made in the legalisation by the Austrian Ministry of Foreign Affairs that “This legalisation does not certify the accuracy of the content or the authenticity of the document” (“Mit dieser Beglaubigung ist keine Bestätigung der inhaltlichen Richtigkeit und Echtheit der Urkunde verbunden”). Furthermore, the note states that under the new practice, only original documents will be legalised by the Austrian Ministry of Foreign Affairs. Copies of original documents that were made by foreign representations in Austria can no longer be legalised in Austria. The verbal note is available online on the website of the Fachverband der Österreichischen Standesbeamten (Professional Association of Austrian Civil Status Officers) (<http://www.ris.at/company/standesbeamte/download/Legalisierung_Verbalnote_BMfA A_8_2_2001.pdf> visited 30 September 2006).

According to internal guidelines, Austrian representations abroad may only legalise signatures and official seals of the Ministry of Foreign Affairs or of an equivalent central authority. Signatures and official seals of other (central or other) authorities may only be legalised if the representation is in the possession of a sample signature or a sample stamp and there are therefore no doubts regarding the authenticity of the signature or the seal. At the seat of a diplomatic mission, the consular representations are not authorised to legalise signatures or seals of the Ministry of Foreign Affairs or equivalent central authority of the receiving State. A representation abroad may only legalise signatures or official seals of diplomatic and consular representations of third States in their scope of jurisdiction if the authenticity can be proven, if need be through an “intermediate” legalisation by the Ministry of Foreign Affairs of the receiving State (see Zeyringer, Österreichisches Standesamt 1998, 23).

Specific rules on the requirement of legalisation are contained in § 31(3-5) Grundbuchgesetz (Land register act) for documents that are required for entries in the land register. According to said provision, the legalisation or foreign documents is, in principle, governed by the applicable international agreements. If a document is legalised by the Austrian representation in whose area of jurisdiction the document was issued, or by the representation of the State where the document was issued in Austria, no further legalisation is necessary. Furthermore, the Ministry of Justice may allow an exemption from the requirement of diplomatic legalisation if there is neither an Austrian representation in the State of origin nor a representation of the State of origin in Austria. An exemption is also possible if legalisation is impossible or very difficult because of extraordinary circumstances.

**Outgoing documents**

According to § 40 Gerichtsorganisationsgesetz (Act on court organisation) the President of the court of first instance (Gerichtshof erster Instanz), i.e. the Landesgericht (Regional Court) is competent for the legalisation of official signatures for the purpose of diplomatic legalisation. The procedure of legalisation is laid down in § 430 of the Geschäftsordnung für die Gerichte I. und II. Instanz (Rules of the courts of first and second instance). According to that provision, first a “Zwischenbeglaubigung” (“intermediate legalisation”) by the President of the court of first instance has to be obtained. Subsequently, the Ministry of Foreign Affairs issues the “Überbeglaubigung” (“superlegalisation”).

Rules on legalisation are also contained in the Außerstreitgesetz (Act on Non-Contentious Proceedings). According to § 189 Außerstreitgesetz, the President of the Landesgericht (Regional Court) has to legalise public documents issued by courts or notaries of his or her area of jurisdiction at request by confirming the authenticity of the signature and the seal of the issuer.

The provisions of the Außerstreitgesetz on the legalisation of documents were amended by the Berufsrechts-Änderungsgesetz für Notare, Rechtsanwälte und Ziviltechniker 2006.
(Act amending professional rules for notaries, attorneys and civil engineers 2006), Bundesgesetzblatt I 2005/164. The new rules will come into effect on 1 January 2008. They regulate the legalisation of electronic documents. According to the new second sentence of § 189 Außerstreitgesetz, the confirmation of the authenticity and integrity of the electronic signature of the judiciary (elektronische Signatur der Justiz) is effected by legalisation by way of a secure electronic signature. § 188 Außerstreitgesetz as amended by Bundesgesetzblatt I 2005/164 contains detailed rules on electronic signatures in this context. The amendment also provides for the creation of a legalisation archive of the judiciary (Beglaubigungsarchiv der Justiz, new § 91b of the Gerichtsorganisationsgesetz – Act on court organization) for the filing of documents that were subject to a legalisation according to the Außerstreitgesetz.

According to § 2 Bundesministeriengesetz (Ministries Act) read in conjunction with Part 1 of the Annex, Number 17 of said Act, the Federal Ministries are competent to ("super-")legalise documents whose issuing falls in the field of responsibility of the respective ministry.

According to § 52(2) Personenstandsgesetz (Civil Status Act), civil status documents are legalised by the Bezirksverwaltungsbehörde (District Administrative Authority) and the Landeshauptmann (Provincial Governor). This legalisation confirms the authenticity of the signature and of the seal of the authority that issued or legalised the document and the identity of the signatory (see § 30 of the Personenstandsverordnung [Civil Status Regulation]).

I.A.4.2. Scope

The requirement of diplomatic legalisation is of little importance in the relationships between Austria and other EU Member States, as most Member States are parties to the “Apostille” Convention. Under the bilateral agreements listed above under I.A.3, not even an “Apostille” is required.

I.A.4.3. Practical implementation

A list of the authorities that are competent for the legalisation of outgoing Austrian documents may be found on the website of the Ministry of Foreign Affairs (<http://www.bmaa.gv.at/view.php3?f_id=1351&LNG=de&version=> visited 30 September 2006). Which authority is competent depends on the type of document. The last two “links” in the “legalisation chain” are always the Ministry of Foreign Affairs and the representation of the country where the document shall be used in Austria. Before that, the document has to be legalised by the following authorities:
– Documents for use in court (powers of attorney, contracts, certified copies, business letters etc):
  1. notary or Bezirksgericht (district court)
  2. President of the competent Landesgericht (regional court)
– Translations (by a certified translator): President of the competent Landesgericht (regional court)
– School diplomas (including Matura):
  1. Landesschulrat (regional school board); in Vienna: Stadtschulrat (city school board)
  2. Federal Ministry for Education, Science and Culture
– Academic diplomas and university confirmations: Federal Ministry for Education, Science and Culture
– Engineer diplomas: Federal Ministry of Economics and Labour
– Medical certificates or certificates of hospitalization: Federal Ministry of Health and Women
– Clearance certificates:
  1. Issue by Bundespolizeidirektion (federal police office)
  2. Federal Ministry of the Interior
  OR
  1. Issue by Gemeindeamt (municipal office)
  2. Bezirkshauptmannschaft (district administrative authority) or Magistrat (municipality)
  3. Amt der Landesregierung (office of the regional government)
– Business register extracts:
  President of the competent Landesgericht (regional court); in Vienna: President of the Handelsgericht (Commercial Court)
  OR
  1. notary
  2. President of the competent Landesgericht (regional court)
– Tax documents:
  1. Finanzamt (tax office)
  2. Finanzlandesdirektion (provincial tax authority)
  3. Federal Ministry of Finance
– Civil status documents and registration cards:
  a) in Vienna:
    1. Magistratsabteilung (Municipality Department) 61
    2. Magistratsdirektion (Chief Executive Office of the Municipality)
  b) in other Länder:
    1. Bezirkshauptmannschaft (district administrative authority) or Magistrat (municipality)
    2. Amt der Landesregierung (office of the regional government)

I.A.4.4. Judicial control

PART I.B. Specific

I.B.1. Introduction
I.B.2. Specific documents

1. Documents proving involuntary unemployment

The Arbeitsmarktservice has to confirm the receipt of a notice of unemployment (§ 17(2) Arbeitslosenversicherungsgesetz – Unemployment insurance act) and of the application for unemployment benefits (§ 46(1) Arbeitslosenversicherungsgesetz). The unemployed person has to submit a confirmation by the employer on the duration and the kind of employment, on the way in which the contract was terminated, and, if necessary, on the amount of the remuneration (§ 46(4) Arbeitslosenversicherungsgesetz).
2. Documents proving a family relationship or other durable relationship

| Birth, marriage, death and other data on civil status are registered in civil status records. The rules on such records are contained in the Personenstandsgesetz (Act on civil status records, Bundesgesetzblatt 1983/60, last amended by Bundesgesetzblatt I 2005/100) and the Personenstandsverordnung (Regulation on civil status records, Bundesgesetzblatt 1983/629, last amended by Bundesgesetzblatt II 2004/107). |

3. Documents proving or contesting a parent-child relationship

| In the first place, a parent-child relationship is proven by a birth certificate (Geburtsurkunde). In Austrian law, birth certificates are regulated by § 33 read in conjunction with § 19 Personenstandsgesetz. Other relevant documents in this context are declarations on the acknowledgment of parenthood. In Austria, fatherhood can be acknowledged before the civil status authority (§ 53 Number 1 Personenstandsgesetz) or before the court (§ 81 Außerstreitgesetz). If the acknowledgement is made before the court, it has to transmit the relevant declarations to the civil status authority. Documents contesting a parent-child relationship will usually be court decisions. |

4. Documents proving the name and forenames of a child or adult

| Documents proving the name and forenames of a child or adult will usually be civil status documents. The entry of names in civil status records is regulated in § 11 Personenstandsgesetz. The entry of a child's forename in the birth register is subject to § 21 Personenstandsgesetz. |

5. Documents proving or annulling/terminating a marriage/civil partnership or other durable relationship

| Documents proving a marriage are marriage certificates (Heiratsurkunde) according to § 34 Personenstandsgesetz. Documents annulling or terminating a marriage are court decisions. Austrian law does not provide for official documents with regard to other durable relationships. |

6. Documents proving a person's legal establishment for the purpose of pursuing specific regulated professional activities

| Documents authorising a person to pursue regulated professional activities are subject |
to the legislative acts governing the respective profession. For professions regulated in the Gewerbeordnung (Trade, commerce and industry regulation act), Sections 339 and 340 contain rules on the entry into the trade register (Gewerberegister) and on the issuing of decisions on the right to pursue certain professions. According to § 340(1) Gewerbeordnung, the trade, commerce and industry authority has to perform the entry into the business register in the course of three months from a trade registration (Anmeldung des Gewerbes) if the prerequisites to pursue the profession are fulfilled. In that case, an extract from the business register is issued to the person who has registered the trade. Also the legislative acts governing the right to exercise liberal professions contain provisions on the issue of professional diplomas. For example, diplomas on the completion of the professional formation of doctors are issued by the Ärztekammer (Medical Association) according to § 15 Ärztegesetz (Doctors Act).

7. Documents proving a person’s professional qualifications (diplomas)

Documents proving professional qualifications (diplomas) are usually issued by the institution where the examination was taken. University diplomas are regulated by the Universitätsgesetz 2002 (Universities Act 2002). The Universitätsgesetz also creates the possibility to include translations in a foreign language in university diplomas, diploma supplements and certificates (§ 58(3), § 69, § 75(4) Universitätsgesetz).

8. Documents proving a person’s death

Documents proving a person’s death are death certificates. In Austrian law, they are regulated by § 35 read in conjunction with § 28 Personenstandsgesetz.

9. Documents proving a person’s date of birth

A person’s date of birth is proven by a birth certificate (see number 3 above).

10. Documents proving the establishment by incorporation of a company

Establishment by incorporation of a company will usually be proven by a business register extract (Firmenbuchauszug). Such extracts are regulated in Sections 33 ff. Firmenbuchgesetz (Business register act).

11. Documents proving the constitution of a company, including any official translation thereof

Provisions on such documents are contained in the legislative acts regulating the organisation of the different types of companies. Different rules apply to partnerships (Personengesellschaften) and corporations (Kapitalgesellschaften). The establishment of partnerships (especially Offene Handelsgesellschaft [from 1 January 2007: Offene Gesellschaft], Kommanditgesellschaft) in principle does not require a certain form; the constitution of such companies therefore does not necessarily have to be laid down in a document at all (see in detail Jabornegg in Jabornegg, Handelsgesetzbuch, 1997, § 105,
Meanwhile the Satzung (articles of incorporation) of an Aktiengesellschaft (stock corporation) has to be certified by a notary according to § 16 Aktiengesetz (Act on stock corporations). The Gesellschaftsvertrag (deed of partnership) of a Gesellschaft mit beschränkter Haftung (limited liability company) must be executed in the form of a Notariatsakt (notarial deed). It should be mentioned that it is disputed in Austrian legal doctrine whether a notarial deed executed by a foreign notary is sufficient to establish an Austrian limited liability company (See Koppensteiner, GmbH-Gesetz, 2nd ed., 1999, § 4 marginal number 23 with further references.

12. Documents proving the latest banking accounts of a company

Documents proving banking accounts are not public documents under Austrian law.

13. Documents proving the deposit of cash or certificates of deposit

Documents proving the deposit of cash or certificates of deposit are not public documents under Austrian law.

PART II – Incoming documents: Effects in the Member State’s legal order

OVERVIEW OF PART II

II.A.1. European Community Law

II.A.1.1. The effect of the implementation of Community law

There are no specific rules on the status of foreign documents that are exempt from legalisation under EU law. Where EU law does not regulate the status of such foreign documents itself, the domestic rules apply. In principle, this means that the documents have the same status in Austria as domestic public documents (see II.A.4). As regards the admissibility and evidentiary weight of foreign documents, Austrian law seems to be in accordance with the obligations created by Community law.

II.A.1.2. Admissibility and evidentiary weight in judicial proceedings

See II.A.1.1.

II.A.1.3. Admissibility and evidentiary weight in administrative matters

See II.A.1.1.

II.A.2.1. The effect of completion of the requirements of the Hague Convention

See II.A.4.1.

II.A.2.2. Admissibility and evidentiary weight in judicial proceedings

See II.A.4.2.

II.A.2.3. Admissibility and evidentiary weight in administrative matters

See II.A.4.3.

II.A.3. Parallel international agreements

II.A.3.1. The effect of completion of the requirements of parallel agreements

See II.A.4.1.

II.A.3.2. Admissibility and evidentiary weight in judicial proceedings

See II.A.4.2.

II.A.3.3. Admissibility and evidentiary weight in administrative matters

See II.A.4.3.

II.A.4. National Law

II.A.4.1. The effect of the completion of the requirements of national law

As regards the effect of foreign public documents in the Austrian legal order, Austrian law does not differentiate between documents falling under the “Apostille” convention, documents falling under one of the parallel international agreements or documents to which none of the international instruments applies. The rules described in the following are relevant for all these categories of documents. If all requirements are completed, the document is, in principle, recognised as a public document (on the details, see II.A.4.2. and II.A.4.3).

II.A.4.2. Admissibility and evidentiary weight in judicial proceedings

The rules on proof by documents are contained in §§ 292 ff. Zivilprozessordnung (Code of civil procedure). Those rules, in principle, also apply in non-contentious procedure (Außerstreitverfahren) (§ 35 Außerstreitgesetz – Act on non-contentious procedure) and in administrative procedure (§ 47 Allgemeines Verwaltungsverfahrensgesetz – General administrative procedure act).

Austrian law differentiates between Echtheit (authenticity) and Richtigkeit (accuracy) of documents. Authenticity means that the document was really issued by the signatory. Meanwhile, accuracy means that the content of the document is correct, i.e., that the facts, circumstances or legal dispositions that are witnessed in the document have
The authenticity of public documents is dealt with in §§ 310, 311 Zivilprozessordnung. There are different rules for domestic and foreign public documents. According to § 310 Zivilprozessordnung, the authenticity of documents that appear to be domestic public documents is presumed. If the court has any doubts regarding the authenticity of a domestic public document, it may request its (professed) author to make a statement of authenticity. If the doubts cannot be removed in this way, the party that wants to use the document as a means of evidence bears the burden of proof regarding its authenticity.

The rules on the examination of authenticity of foreign documents are contained in § 311(1) Zivilprozessordnung. According to that provision, the court has to assess in every individual case whether a document that appears to have been issued by a foreign authority or a foreign person of public trust should be accepted as authentic without further proof. According to Paragraph 2 of the said provision, legalisation by the Ministry of Foreign Affairs or by an Austrian ambassador or consul constitutes sufficient proof, in the absence of different special rules. In principle, therefore, the presumption that public documents are authentic (§ 310 Zivilprozessordnung) does not apply to foreign documents. However, it is sufficient proof of authenticity if the foreign document is duly legalised. According to legal doctrine, the same is true if a document is exempt from legalisation under international agreements (see G. Kodek in Fasching/Konecny, Zivilprozessgesetze, 2nd ed., § 311 Zivilprozessordnung, margin number 2; Rechberger in Rechberger, Zivilprozessordnung, 3rd ed., § 311 Zivilprozessordnung, margin number 2).

The main privilege of public documents in Austrian procedure concerns, however, the content of the document, i.e. its accuracy. According to § 292(1) Zivilprozessordnung a public document constitutes full proof of what is officially decreed or declared in it by the issuing authority or witnessed by the authority or other person of public trust that has issued the document. According to § 292(2) Zivilprozessordnung, proof to the contrary is admissible.

According to § 293(2) Zivilprozessordnung, a foreign document that is classified as a public document at the place of issue has the evidentiary value of a public document also in Austrian civil proceedings in the case of reciprocity and if it is duly legalised.

The requirement of reciprocity is satisfied if Austrian public documents are recognised as public documents as regards evidentiary value in civil proceedings in the State where the document was issued (formal reciprocity). It is not required that the evidentiary value of public documents is the same as in Austria in the State of issue. Reciprocity can be based on international agreements, on the procedural law of the State in question, or on factual practice (Bittner in Fasching/Konecny, Zivilprozessgesetze, 2nd ed., § 293 Zivilprozessordnung, margin number 3).

If the requirements of §§ 293 and 311 Zivilprozessordnung are fulfilled, the foreign document has the same evidentiary weight in civil proceedings as Austrian public documents.

Originals as well as copies of documents can be accepted as proof. If a party only presents a copy, the court may, however, order the production of the original. Such order may be made at the other party’s request or ex officio. If the original is not presented, it is at the court’s discretion to evaluate the evidentiary value of the copy, taking into
account all circumstances (§ 299 Zivilprozessordnung).

If the document is in a foreign language, a certified translation into German is necessary, except for cases where a document drawn up in the language of a national minority is used before an authority where such language may be used as an additional official language, i.e. Slovene in parts of Carinthia, Croatian and Hungarian in parts of Burgenland (cf., in this context, ECJ, 24 November 1998, C-274/96, Bickel and Franz, Coll. I-7637). According to § 190 Außerstreitigesetz, such translations must be signed and sealed by a sworn translator. Translations can also be certified by a notary who is a sworn translator or has passed the interpreter diploma or the translator exam (§ 78 Notariatsordnung –Notaries act).

II.A.4.3. Admissibility and evidentiary weight in administrative matters

In principle, the rules of civil procedure with regard to documents also apply in administrative proceedings according to § 47 Allgemeines Verwaltungsverfahrensgesetz (General Administrative Procedure Act). In addition, the said provision contains a privilege for domestic public documents: Domestic documents also constitute proof with regard to facts and legal relationships that were prerequisites for the issue of the document and are explicitly mentioned in the document. However, this only applies to domestic documents. To foreign documents, the rules of the Zivilprozessordnung apply without this modification.

§ 5 Personenstandsverordnung contains rules on the use of documents in a foreign language in civil status proceedings. If an entry in a civil status record shall be made on the basis of a document in a foreign language, the party has to submit a translation prepared by a sworn court interpreter or translator. If the document does not have to be submitted by a party, the civil status authority itself has to procure the translation. The rules on minority languages (see II.A.4.2) remain unaffected. Paragraph 2 of the cited provision authorises the civil status authority to dispense with the translation requirement if the data that are decisive for the entry are comprehensible without translation or if the civil status officer has a sufficient knowledge of the foreign language in question.

The rules on university admission also contain provisions on documents in a foreign language. According to § 60(2) Universitätsgesetz, an applicant for a university place who proves that he or she meets the requirements for admission with documents in a foreign language has to provide an authorised translation.

A specific rule with regard to the determination of the date of birth in social security matters is contained in § 358(3) Allgemeines Sozialversicherungsgesetz (General social security act). According to that provision, for the date of birth of the insured person the first written declaration of the insured person towards the insurance institution is decisive. This can only be departed from if there was an obvious mistake in writing or if a different date of birth results from a document whose original was issued before the first declaration by the insured person towards the insurance institution. This provision is a reaction to issues that arose especially with regard to pension applications by Turkish citizens whose dates of birth were changed (to earlier dates) by Turkish courts. The provision was inspired by an equivalent amendment of German social security law (see the explanations to the government bill, Zu 834 BlgNR 21. GP, p. 19).
PART III – Incoming documents: Difficulties

OVERVIEW OF PART III

PART III.A. General

We are not aware of general problems with regard to the legalisation of incoming documents from other Member States.

| III.A.1.1. Legal |
| III.A.1.2. Practical |

| III.2. Parallel international agreements |
| III.A.2.1. Legal |
| III.A.2.2. Practical |

| III.3. National law |
| III.A.3.1. Legal |
| III.A.3.2. Practical |

PART III.B. Specific

We are not aware of problems with regard to legalisation requirements for specific incoming documents from other Member States.

<p>| 1. Documents proving involuntary unemployment |
| 2. Documents proving a family relationship or other durable relationship |
| 3. Documents proving or contesting a parent-child relationship |</p>
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<td>4.</td>
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<td>13.</td>
<td>Documents proving the deposit of cash or certificates of deposit</td>
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PART IV – Outgoing documents: Difficulties

OVERVIEW OF PART IV

PART IV.A. General

We are not aware of specific difficulties with regard to outgoing Austrian documents in the other Member States. However, it is sometimes reported that the Apostille is demanded for Austrian documents in other Member States in spite of bilateral agreements abolishing the legalisation requirement (see I.A.3.2). Apparently, this tends to happen in some of the new Member States, especially. In such cases, Austrian authorities issue an Apostille in spite of the fact that there is an agreement abolishing legalisation.


IV.A.1.1. Legal

IV.A.1.2. Practical

IV.A.2. Parallel international agreements

IV.A.2.1. Legal

IV.A.2.2. Practical

IV.A.3. National law

IV.A.3.1. Legal

IV.A.3.2. Practical

PART IV.B. Specific

We are not aware of difficulties with regard to specific outgoing Austrian documents in the other Member States.

1. Documents proving involuntary unemployment
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**PART V – Justification of legalisation or other similar or equivalent requirements identified in Part I**

**OVERVIEW OF PART V**

**PART V.A. General**

With regard to the justification of legalisation requirements in the community context, see Part VI on proposed action.


V.A.1.1 Requirements and procedures

V.A.1.2 Effects rules

V.A.2. Parallel international agreements

V.A.2.1 Requirements and procedures

V.A.2.2 Effects rules

V.A.3. National law

V.A.3.1 Requirements and procedures

V.A.3.2 Effects rules

**PART V.B. Specific**

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PART VI – Suggested action

OVERVIEW OF PART VI

VI.1. European

In our opinion legalisation requirements should be totally abolished among the Member States of the European Union. Standard forms or a central register of documents may be useful instruments to reduce the risk of fraud. However, we do not consider them as absolute prerequisites for a European free movement of documents. The success of the instruments dealing with recognition and enforcement of foreign judgments shows that the free movement of judgments does not necessarily require such precautions.

The same should be true with regard to other public documents. Instead of a central document register, a system could be established where every Member State would name a central authority responsible for inquiries with regard to the authenticity of public documents coming from that State. Such a system should be sufficient to cope with the risk of fraud in the relations among the Member States. To make sure that the system is efficient, formal as well as informal inquiries among the authorities involved should be possible. This should also include the possibility to make informal inquiries with the authority that issued the document. The establishment of a centralised registering system might be taken into consideration as a second step. However, it might be open to doubt whether a central legalisation authority would really be an efficient solution.

In addition, one might even think of a system where public documents coming from third States would be exempt from legalisation in other Member States if they have already been legalised in one of the Member States. However, this would perhaps create greater fraud risks, as there seem to be serious problems with regard to the authenticity of documents coming from certain (especially African and Asian) third States. This has, for example, induced Austria to put stricter requirements on the legalisation of documents coming from States with which there are no bilateral or multilateral agreements (see I.A.4.1). In this context, the risk of “legalisation forum shopping” should also be taken into account.

All this, however, only applies to the abolition of legalisation formalities. The recognition and enforcement of the content of foreign public documents is a different issue. Especially, an obligation to recognise foreign administrative decisions should not be introduced through the “back door” of the abolition of legalisation requirements. Any action in this regard requires more in-depth research and discussion. Before taking steps
in this direction, one must especially discuss how far the structures of administrative procedures are at all comparable among the Member States.

In civil procedure, judgments are, in principle, issued in a procedure whose basic structure is similar in all Member States; much greater structural differences seem to exist in this regard in administrative matters. Such differences might, e.g., concern the question in what way the right to be heard is assured in administrative proceedings. Another issue – a crucial one when it comes to recognition of foreign decisions – is what effects administrative decisions have in the different jurisdictions (e.g.: Do such decisions have res judicata effect? Are they binding on courts and/or other authorities?, etc.). These and similar issues should be thoroughly discussed, especially with experts on administrative procedures, before taking (or suggesting) any measures aiming at (or resulting in) the obligatory recognition of foreign administrative decisions.

VI.2. Intergovernmental

It would be preferable if a system as proposed under VI.1, i.e. the total abolishment of legalisation requirements among the Member States, could be created by a community instrument. However, if this should not be possible due to lack of competence, a multilateral agreement of the Member States to that effect should be taken into consideration.

VI.3. National

In principle, the unilateral abolition of legalisation requirements for documents coming from other Member States by national law would be possible. However, this option does not seem to be very realistic.