

[Home](#) > ... > [Family Matters & Inheritance](#) > [Cross-border Placement of a Child Including Foster Family](#) > [Austria](#)

Cross-border placement of a child including foster family



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European Judicial Network
(in civil and commercial matters)

1 Which authority is to be consulted and to give prior consent before the cross-border placement of a child within your territory?

Under national law, various scenarios are possible:

a) Relocation abroad: If two people are entrusted with custody, they must also, in principle, determine the place of residence by mutual agreement. This principle of mutual agreement applies without restrictions, i.e. also in the case of a minor moving within Austria, especially if the move involves a significant change in their life. Moreover, particularly in the case of a transfer of place of residence abroad, the parent wishing to move abroad will require the consent of the other parent or the approval of the Court. The Court must take into account both the minor's welfare and the interests of the parents.

If one parent has been entrusted with primary custody by a Court decision or by an agreement, they have the sole right to determine the place of residence, in accordance with the wording of Section 162(2) of the Austrian General Civil Code (*Allgemeines bürgerliches Gesetzbuch*, ABGB). Consequently, no consent is required for a move within Austria.

However, under current case-law in such cases - if the minor's moving residence is a major event - the parent with primary custody must also inform the other parent and take the minor's welfare into account. Moreover, a change in the place of residence should not significantly affect the exercise of custody by the other parent. This restriction applies in particular to a move abroad.

The same applies to foster parents who have custody; however, this rarely happens in practice, as custody usually remains with the youth welfare authority (*Kinder- und Jugendhilfeträger*).

b) Placement in institutional care or with foster parents: A placement with the consent of the custody holder(s) (in general, the parents) only needs to be in line with the national provisions of the applicable laws on the protection of children and adolescents and does not require a Court order. A placement without the consent of the custody holder(s) is nonetheless subject to judicial review by the Court, as an emergency measure under Section 211 ABGB.

c) Placement in another Member State: Where a court or a competent authority (within the meaning of the first sentence of Article 2(2) Brussels IIb Regulation) contemplates the placement of a minor (i.e. a person under 18, pursuant to sentence 6 of Article 2(2) Brussels IIb Regulation) in another Member State, it must first obtain the consent of the competent authority in that other Member State pursuant to Article 82(1) Brussels IIb Regulation. The placement will only be ordered or arranged after the competent authority of the requested Member State has consented to the placement (Article 82(5)). The requirement of prior consent is a natural consequence of the aforementioned EU legal provisions.

Requests for consent are therefore generally to be transmitted via the Central Authority of the requesting

Member State to the Central Authority of the requested Member State where the minor is to be placed (Article 82(1) Brussels IIb Regulation). The subsequent national procedure for obtaining consent in each case is governed by the national laws of the Member State in question.

As long as it is not a case where no consent is required (see point 3) or where no different administrative arrangements have been made (see point 4), requests for consent must be transmitted via the Central Authority to the youth welfare authority (see point 2).

Austria has nine provinces that act as youth welfare authorities through various bodies, e.g. the Office of the Provincial Government (Amt der Landesregierung), Municipal Authority (Magistrat), District Authority (Bezirkshauptmannschaft). Consent for cross-border placements is granted by the youth welfare authorities of the area in which the placement will take place.

| Province | Address | Contact person: |
|---------------|--|--|
| Burgenland | Amt der Burgenländischen Landesregierung (Office of the Provincial Government of Burgenland) Abteilung 6 - Soziales und Gesundheit (Department 6 - Social Affairs and Health) Kinder- und Jugendhilfe (Youth Welfare) Europaplatz 1 7000 Eisenstadt post.a6@bgld.gv.at | Daniel Novak daniel.novak@bgld.gv.at |
| Carinthia | Amt der Kärntner Landesregierung (Office of the Provincial Government of Carinthia) Abteilung 4 - Soziale Sicherheit (Department 4 - Social Security) Mießtaler Straße 1 9021 Klagenfurt abt4.kjh@ktn.gv.at | |
| Lower Austria | Amt der Niederösterreichischen Landesregierung (Office of the Provincial Government of Lower Austria) Gruppe Gesundheit und Soziales (Health and Social Affairs) Abteilung Jugendwohlfahrt (Youth Welfare Department) Landhausplatz 1 3109 St. Pölten post.gs6@noel.gv.at | Peter Rozsa peter.rozsa@noel.gv.at |
| Upper Austria | Amt der Oberösterreichischen Landesregierung (Office of the Provincial Government of Upper Austria) Direktion Gesellschaft, Soziales und Gesundheit (Department of Social Affairs and Health) Abteilung Kinder- und Jugendhilfe (Child and Youth Welfare Department) Bahnhofplatz 1 4021 Linz kjh.post@ooe.gv.at | Astrid Mitter-Stöhr astrid.mitter-stoehr@ooe.gv.at |
| Salzburg | Amt der Salzburger Landesregierung (Office of the Provincial Government of Salzburg) Kinder- und Jugendhilfe (Youth Welfare) Fischer-von-Erlach-Straße 47 Postfach 527 5010 Salzburg soziales@salzburg.gv.at | Renate Heil renate.heil@salzburg.gv.at |
| Styria | Amt der Steiermärkischen Landesregierung (Office of the Provincial Government of Styria) Kinder- und Jugendhilfe (Youth Welfare) Hofgasse 12 8010 Graz kinderundjugendhilfe@stmk.gv.at | Andrea Rothmajer andrea.rothmajer@stmk.gv.at |
| Tyrol | Amt der Tiroler Landesregierung (Office of the Provincial Government of Tyrol) Abteilung Kinder und Jugendhilfe (Child and Youth Welfare Department) Leopoldstrasse 3 6020 Innsbruck kiju@tirol.gv.at | Reinhard Stocker-Waldhuber reinhard.stocker@tirol.gv.at |
| Vorarlberg | Amt der Vorarlberger Landesregierung (Office of the Provincial Government of Vorarlberg) Abteilung IVa - Soziales und Integration (Department IVa - Social Affairs and Integration) Fachbereich Jugend und Familie (Youth and Family Affairs) Landhaus Römerstraße 15 6901 Bregenz soziales-integration@vorarlberg.gv.at | Sarah Kammerer, Kathrin Flatz |

2 Please describe shortly the procedure for consultation and the obtaining of consent (including required documents, deadlines, modalities of the procedure, and other relevant details) for cross-border placement of

children within your territory.

The consultation request must be addressed to the competent youth welfare authority via the Central Authority, the Federal Ministry of Justice. The Central Authority transmits the request to the youth welfare authority of the province in which the cross-border placement is planned (see point 1). All details and supporting documents must be translated into German.

Under Article 82 Brussels IIb Regulation, the request must include a report on the minor and the reasons for the proposed placement or provision of care, information on any contemplated funding and any other information considered to be relevant.

All youth welfare authorities consider the following information to be relevant:

- details about the minor, family members (parents, siblings, etc.) and the custody holders;
- reasons why the placement is in the minor's best interests, e.g. because the minor has a particular connection with Austria;
- date of the planned placement and its planned duration;
- details of the institution/foster family (address, contact details) in which the minor is to be placed;
- consent of the institution or foster parent(s);
- full details of the competent authority in the requesting Member State including contact details;
- a binding agreement from the requesting authority to bear the costs;
- proof of health insurance or social security cover.

The competent youth welfare authorities consider the following requirements and information to also be relevant when granting consent but reserve the right to request further information and/or documents in individual cases.

Requirements

Office of the Provincial
Government of
Burgenland

Office of the Provincial
Government of Carinthia

- Suitability of the foster placement

Documents required

- Information on the problem at hand (objectives, findings, assessments, certificates, Court decisions)
- Declaration of consent from the custody holder(s)
- Approval required under immigration law
- Consent of the minor and the custody holder(s)
- Overview of assistance provided so far with upbringing
- Findings, diagnoses, assessments
- Existing contact rights
- Any Court decisions
- Custody decision with the annotation: with the placement of ... in ..., the responsibility for care and upbringing is transferred to the institution/foster family
- Copy of e-card

| | | |
|--|--|---|
| Office of the Provincial Government of Lower Austria | <ul style="list-style-type: none"> • Promotes the minor's best interests and/or there is a reference person in Lower Austria who promotes the minor's best interests • Suitable care placement • Recognition of the professional standards of Lower Austria • Regular review of the support plan, including objectives for upbringing, by the requesting authority • Naming of a contact person in case ending the measure becomes necessary • Pre-established residence status • Clear division of responsibilities between the requesting Member State (type, extent and payment) and the requested Member State (supervision of institution) • Recognition of the professional standards of Upper Austria by the requesting authority | <ul style="list-style-type: none"> • Current reports on physical, emotional, social, academic/professional development • Current medical findings • Copy of essential documents for the minor, e-card • Information on pharmaceutical therapies • Support plan, including support granted so far • Problem description, social and psychological diagnosis, target setting, duration and forecast of the measure • Record of the hearing with the minor regarding the planned measure • Written consent from the custody holder(s) • Agreement on how to organise potential visits |
| Office of the Provincial Government of Upper Austria | <ul style="list-style-type: none"> • Consent from the local competent youth welfare authority in the case of placement • Pre-established residence status • Regular review of the support plan, including objectives for upbringing, by the requesting authority • Naming of a contact person in case ending the measure becomes necessary | <ul style="list-style-type: none"> • Overview of assistance provided so far with upbringing • Findings, diagnoses, reports, assessments • Record of the hearing with the minor • Outline of the contact rights of the biological parents • Formal consent from the custody holder(s) • Court decisions • Copy of essential documents for the minor • Overview of assistance provided so far with upbringing • Medical/psychiatric findings, diagnoses, assessments • Record of the hearing with the minor • Outline of the contact rights of the biological parents • Formal consent from the custody holder(s) • Court decisions • Copy of the minor's e-card |
| Office of the Provincial Government of Salzburg | <ul style="list-style-type: none"> • Consent from the local competent youth welfare authority in the case of placement • Pre-established residence status • Regular review of the support plan, including objectives for upbringing, by the requesting authority • Naming of a contact person in case ending the measure becomes necessary | <ul style="list-style-type: none"> • Consent given by the legal guardians • Court decisions • Medical findings • Handover report from the competent requesting authority (background history, current social and family situation, description of problems and resources, conclusions and forecasts from the social worker, meeting of targets, brief assessment) • Support plan, case history and measures applied so far • Any relevant reports, psychological assessments, etc. • Written consent from the custody holder(s) • Proven consent from the minor regarding the care - unless a hearing seems inappropriate due to the minor's age or (proven) degree of maturity • Copy of the minor's ID card • Future prospects of the minor upon return |
| Office of the Provincial Government of Tyrol | | |

Office of the Provincial
Government of
Vorarlberg

Municipal Authority of
the City of Vienna

- Custody decision with the annotation: with the placement of ... in ..., the responsibility for care and upbringing is transferred to the institution/foster family
- Support provided so far with upbringing
- Support plan agreement; future prospects
- Child and youth psychiatrist's findings/diagnoses and/or psychological assessments
- Hearing with the minor
- Consent from the custody holder(s)
- Findings, diagnoses, reports, assessments
- Record of the hearing with the minor
- Approval required under immigration law

3 Has your Member State decided that consent is not required for cross-border placements of children within your territory where the child is to be placed with certain categories of close relatives? If yes, what are the categories of close relatives?

Similar to placements with a parent (Article 82(1) Brussels IIb), no consent is required for a placement in Austria with the following close relatives:

- grandparents;
- brothers and sisters of the parents;
- adult siblings of the minor.

4 Does your Member State have in place any agreements or arrangements for simplifying the consultation procedure for obtaining consent for the cross-border placement of children?

The Central Authority has no knowledge of any such agreements.

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