


Member State law - Austria

 Please note that the original language version of this page [de](#) has been amended recently. The language version you are now viewing is currently being prepared by our translators.

Introduction – This page provides information on the Austrian legal system and an overview of Austrian law.

Sources of law

Austrian law is primarily **written law**. Customary law plays only a very restricted role. The judgments of the highest courts provide valuable guidance for the application of the law, and are of great importance, but judge-made law is not formally recognised as a source of law.

The Austrian **constitution** declares that generally recognised rules of international law form part of Austrian federal law, and provides for **international treaties** to be incorporated into the Austrian legal system, with or without specific legislation. The ranking of treaty provisions within the domestic legal system is determined by their content.

In order to be approved in the Lower House of Parliament (*Nationalrat*), international treaties that amend or supplement the constitution require the same special majorities as federal constitutional laws. Treaties that amend or supplement statute law require the same quorums as statutes.

In principle, the Federal President concludes international treaties at the request of the federal government or of the federal minister empowered by it. Political treaties and treaties that amend or supplement legislation require the prior consent of the Lower House. The Federal President may empower the federal government or the responsible members of the federal government to conclude categories of international treaties which are not political and do not amend or supplement legislation.

In accordance with the Austrian federal constitution, each of the **nine federal provinces** (*Bundesländer*) is subject to its own **provincial constitutional law** in addition to federal constitutional law. Provincial constitutional law must not be inconsistent with federal constitutional law, and is therefore **subordinate** to it. But in principle there is no such order of precedence between federal and provincial statute. Since 1988, provinces have been able to conclude international treaties in matters falling within their jurisdiction. In foreign affairs, however, the federal government continues to take precedence.

Types of legal instrument - hierarchy of sources of law

Federal constitutional legislation must be passed by a majority of two thirds of the votes cast in the Lower House, at least half the members being present. The legislation must be expressly designated as a 'constitutional act' or 'constitutional provision'.

Federal statute law requires the presence of at least one third of the members of the Lower House and an absolute majority of the votes cast.

1. The guiding principles of the federal constitution

The following guiding principles of the federal constitution are the most important provisions in the Austrian legal system:

- the democratic principle,
- the principle of the separation of powers,
- the principle of the rule of law,
- the republican principle,
- the federal principle, and
- the liberal principle.

Together these guiding principles form what is known as the **fundamental constitutional order** (*verfassungsrechtliche Grundordnung*).

They are of great constitutional importance. Any major amendment of the federal constitution must be approved by referendum as part of the legislative process. The abandonment of any of the guiding principles, or a substantial change to the relationship between them, is regarded as a comprehensive revision of the constitution.

2. Primary and secondary EU law

The **accession of Austria to the European Union** on 1 January 1995 required a comprehensive revision of the Austrian federal constitution. Since Austria's accession, the legal system has been based not only on Austrian constitutional law but also on European Union law. The prevailing view is that **EU law takes precedence** over domestic law and also over ordinary federal constitutional law, but not over the guiding principles of the federal constitution

3. 'Ordinary' federal constitutional law

Constitutional law lays down the rules of the political game, as it specifies:

- the legislative procedure,
- the status of the highest bodies within the state,
- the relationship between the federal government and the provinces in lawmaking and the application of the law, and
- the control of government activity by the law courts.

4. Federal statute

The fundamental principle of the rule of law laid down in the constitution requires that the application of the law in public administration and in the courts must be conducted in accordance with statute. The federal constitution divides legislative powers between the federal government and the provinces.

5. Regulations

Regulations (*Verordnungen*) are **general legal provisions made by administrative authorities** which are binding on all persons subject to the law. The constitution confers a general authorisation to make implementing regulations fleshing out the rules laid down in more general provisions, usually in statute law. Regulations may amend or supplement statute only where there is express authorisation in the constitution.

6. Decisions

Decisions (*Bescheide*) are primarily administrative acts applying the law which are addressed only to specified persons.

Institutional framework

The legislature

The federal constitution divides powers between the federal government and the provinces, and various bodies are involved in the legislative process.

Federal statute law has to pass both houses of parliament, **the Lower House** (*Nationalrat*) **and the Upper House** (*Bundesrat*). The 183 members of the Lower House are directly elected by the people. The Upper House is elected by the provincial councils (*Landtage*). As a rule the Upper House is entitled only to enter a suspensory objection to a bill.

Provincial statute law is enacted by the provincial councils.

The legislative process

Bills may be submitted to the Lower House:

- by members of the Lower House itself
- by the federal government
- by the Upper House.

A citizens' initiative must be laid before the Lower House if it is signed by 100 000 voters, or by one sixth of the voters in three federal provinces.

In practice **most legislation originates with the federal government**. Federal government bills must be approved by the federal government (in cabinet) unanimously. They are drafted by the responsible minister, and before they are approved by the government comments are invited from other bodies, such as provinces or interest groups.

After being passed in the Lower House bills require the assent of the Upper House. (Federal finance bills do not have to be submitted to the Upper House.) The Chancellor then submits the bill to the President for **authentication**.

The Lower House may resolve that a **referendum** is to be held on a bill. A referendum may also be required by a majority of the members of the Lower House. The bill, which has already passed the Lower House, must then be approved by referendum before it is authenticated. A referendum is also required for a comprehensive revision of the constitution.

The President certifies that an act has been passed in accordance with the constitution by signing it. That **authentication** must be countersigned by the Chancellor.

Once the Chancellor has countersigned it, federal legislation is published in the *Bundesgesetzblatt* (Federal Law Gazette). Unless a federal act itself makes express provision providing for retroactive effect or specifying the date when it is to come into force, it **comes into force** at the end of the day of the publication and distribution of the issue of the Federal Law Gazette publishing it.

An act can be repealed either expressly or by the passing of new legislation whose content is inconsistent with the earlier provision (*lex posterior derogat legi priori*). Specific rules take precedence over general rules (*lex specialis derogat legi generali*). The period of validity of an act may also be stated from the outset.

Legal databases

Coordinated and operated by the Federal Chancellor's Office, the [Legal Information System of the Republic of Austria](#) (*Rechtsinformationssystem des Bundes* — RIS) gives online access to Austrian legislation.

Is access to the database free of charge?

The [Legal Information System of the Republic of Austria](#) (RIS) is free of charge.

Brief description of content

The RIS database provides information on:

- **Federal law**

1. Federal law
2. Authentic version of the *Bundesgesetzblatt* (Federal Law Gazette) since 2004
3. *Bundesgesetzblatt* (Federal Law Gazette) 1945 – 2003
4. Law gazettes 1848–1940
5. Law gazettes 1780–1848
6. German law gazettes 1938–1945
7. Draft bills
8. Government bills

- **Provincial law**

1. Provincial law
2. Current provincial law gazettes for the provinces with the exception of Lower Austria and Vienna

- **Municipal law**

Only selected documents from Carinthia, Lower Austria, Salzburg, Styria and Vienna

- **Judgments**

1. Constitutional Court (*Verfassungsgerichtshof*)
2. Administrative Court (*Verwaltungsgerichtshof*)

3. The list of legislative acts (*Normenliste*) drawn up by the Administrative Court
4. Judgments of the Supreme Court (*Oberster Gerichtshof*), the higher regional courts (*Oberlandsgerichte*) and other courts
5. Independent administrative tribunals (*Unabhängige Verwaltungssenate*)
6. Independent Finance Tribunal (*Unabhängiger Finanzsenat*)
7. Court of Asylum (*Asylgerichtshof*)
8. Independent Federal Asylum Tribunal (*Unabhängiger Bundesasylsenat*)
9. Environmental Tribunal (*Umweltsenat*)
10. Federal Communications Board (*Bundeskommunikationssenat*)
11. Procurement review authorities (*Vergabekontrollbehörden*)
12. Appeals Tribunal (*Berufungskommission*) and Supreme Disciplinary Commission (*Disziplinaroberkommission*)
13. Data Protection Commission (*Datenschutzkommission*)
14. Supervisory Tribunal for Employees' Representation (*PersonalvertretungsAufsichtskommission*)
15. Equal Treatment Commissions (*Gleichbehandlungskommissionen*)
 - **General circulars (*Erlasse*)**
 1. Circulars issued by federal ministries
 2. Circulars issued by the Federal Ministry of Justice

Some Austrian laws are also available in English.

More information can be found on the website of the [Legal Information System of the Republic of Austria](#).

Related links

[Legal order – Austria](#)

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