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German

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National legislation

Austria

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

Legal sources

Austrian law is primarily written (*gesetztes*) law. By contrast, customary law plays only a very limited role. The judgments of the highest courts provide valuable guidance for the application of the law, and are of major 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 Nationalrat (the lower house of the Austrian Parliament), 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 so empowered by the government. Political treaties and treaties that amend or supplement legislation require the prior consent of the Nationalrat. The Federal President may empower the federal government or the relevant members of the federal government to conclude certain categories of international treaties which are not political and do not amend or supplement legislation.

Under Austria's Constitution, each of the **nine 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 laws and the laws of the provinces. Since 1988, states 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 instruments – hierarchy of norms

Federal constitutional legislation must be passed by a majority of two thirds of the votes cast in the Nationalrat, with at least half the members being present.

In addition, the legislation thus created must be expressly designated as a 'constitutional act' or 'constitutional provision'.

By contrast, a valid resolution on a provision based on Federal statute law requires the presence of at least one third of the members of the Nationalrat and an absolute majority of the votes cast.

1. Guiding principles of the Constitution

The following guiding principles (*Grundprinzipien*) of the Austrian Constitution are the most important provisions in the country's 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. If a **major amendment of the Constitution** results in the abandonment of any of the guiding principles, or substantially changes the relationship between those principles, this is regarded as a comprehensive revision of the Constitution and **requires the holding of a referendum**.

2. Primary and secondary EU law

The **accession of Austria to the European Union** on 1 January 1995 entailed a comprehensive revision of the Austrian Constitution. Since Austria's accession, the legal system has been based not only on Austrian constitutional law but also on EU law (**constitutional dualism**). 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 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 the legislative process and the application of the law, and
- the control of government action by the courts of public law.

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 the law. The 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 laws. Regulations may amend or supplement laws 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 the persons named in those decisions.

Institutional framework

The legislature

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

The Nationalrat enacts federal legislation, usually with the involvement of the **Bundesrat** (the upper house of the Austrian Parliament). The 183 members of the Nationalrat are directly elected by the people. The Bundesrat, however, is elected by the provincial councils (*Landtage*). As a rule the Bundesrat is entitled only to enter a suspensory objection to a draft law.

Provincial law is enacted by the provincial councils.

The legislative procedure

Draft laws may be submitted to the Nationalrat as follows:

by the members of the Nationalrat itself (private draft law)

by the federal government (government draft law), or

by the Bundesrat.

In addition, a citizens' initiative must be submitted to the Nationalrat for discussion if it is signed by 100 000 voters, or by one sixth of the voters in three provinces.

In practice, most **legislative initiatives** originate with the **federal government**. Federal government draft laws must be approved by the federal government (in cabinet) unanimously. They are drafted by the relevant minister, and before they are approved by the government comments are invited from other bodies, such as provinces or other stakeholders.

After being passed in the Nationalrat, draft laws require the assent of the Bundesrat. (Federal finance draft laws do not have to be submitted to the Bundesrat – federal sovereignty of the Nationalrat.) The Chancellor then submits the draft laws to the President for **authentication**.

The Nationalrat may resolve that a **referendum** is to be held on a draft law. A referendum may also be required by a majority of the members of the Nationalrat. In such case, a draft law which has already passed the Nationalrat must then be approved by referendum before it is authenticated. A referendum is also required for any 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 then be countersigned by the Chancellor.

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

An act can be repealed either expressly (formal derogation) or by the passing of new legislation whose content is inconsistent with the earlier provision (material derogation), without formally directing that the earlier provision is no longer in force (*lex posterior derogat legi priori*). Specific rules take precedence over general rules (*lex specialis derogat legi generali*). The period of validity of a law may also be stated from the outset.

Legal databases

The [Rechtsinformationssystem des Bundes](#) (Legal Information System of the Republic of Austria), operated by the **Federal Ministry of Digital and Economic Affairs**, provides online access to Austrian legislation.

Is access to the database free of charge?

Access to the [Rechtsinformationssystem des Bundes](#) is free of charge.

Brief description of contents

The **Legal Information System of the Republic of Austria** provides information on:

Federal law

Federal law (consolidated version)

Authoritative version of the Austrian Federal Law Gazette (*Bundesgesetzblatt*) since 2004

Austrian Federal Law Gazette 1945-2003

Imperial and Federal Law Gazettes (*Reichs-, Staats- and Bundesgesetzblatt*) 1848-1940

Collections of laws and regulations 1740-1848 (external)

German Law Gazettes (*Reichsgesetzblatt*) 1919-1945 (external)

Draft laws (*Begutachtungsentwürfe*)

Government draft laws (*Regierungsvorlagen*)

Provincial law

Provincial law (consolidated version)

Authoritative and non-authoritative provincial law gazettes (*Landesgesetzblätter*) (various time periods)

Municipal law: selected legal provisions of municipalities of the following provinces:

Carinthia (all municipalities)

Lower Austria

Upper Austria

Salzburg

Styria

Vienna

Judgments

Constitutional Court (*Verfassungsgerichtshof*)

Administrative Court (*Verwaltungsgerichtshof*)

The list of legislative acts (*Normenliste*) drawn up by the Supreme Administrative Court

Judgments of the Supreme Court (*Oberster Gerichtshof*), the higher regional courts (*Oberlandsgerichte*), the regional courts (*Landesgerichte*), the district courts (*Bezirksgerichte*) and the Supreme Patent and Trade Mark Court (*Oberste Patent- und Markensenat*), and international judgments

Federal Administrative Court (*Bundesverwaltungsgericht*)

Regional Administrative Courts (*Landesverwaltungsgerichte*)

Federal Fiscal Court (*Bundesfinanzgericht*) (external)

Data Protection Authority (prior to 2014: Data Protection Commission)

Disciplinary Commissions, Supreme Disciplinary Commission, Appeals Tribunal (*Disziplinarkommissionen, Disziplinaroberkommission, Berufungskommission*)

Supervisory Authority for Employee Representation (*Personalvertretungsaufsichtsbehörde*) (prior to 2014: Supervisory Tribunal for Employee Representation (*Personalvertretungs-Aufsichtskommission*))

Equal Treatment Commissions (*Gleichbehandlungskommissionen*) from 2014

Equal Treatment Commissions (*Gleichbehandlungskommissionen*) from 2008 (external)

Financial documentation, Independent Finance Tribunal (*Unabhängiger Finanzsenat*) (external)

Independent Administrative Tribunals (*Unabhängige Verwaltungssenate*) – selected rulings from 1991 to 2013

Asylum Court (*Asylgerichtshof*) – July 2008 to 2013

Independent Federal Asylum Board (*Unabhängiger Bundesasylsenat*) – selected rulings from 1998 to end of June 2008

Environmental Tribunal (*Umweltsenat*) – selected rulings from 1994 to 2013

Federal Communications Board (*Bundeskommunikationssenat*) – selected rulings from 2001 to 2013

Procurement review bodies (*Vergabekontrollbehörden*) – selected rulings to 2013

Rulings of the Supreme Court and Court of Cassation in Civil and Criminal Matters (1885-1897) (external)

Collection of the rulings of the Austrian Imperial Court (*Reichsgericht*) 1869-1918 (external)

Collection of the rulings of the Austrian Administrative Court (*Verfassungsgerichtshof*) 1919-1979 (external)

Collection of the rulings of the Austrian Administrative Court (*Verfassungsgerichtshof*) 1876-1934 (external)

Other proclamations:

Examination regulations for master craftsmen and professional competence exams pursuant to the Industrial Code (*Gewerbeordnung*)

Official provisions of the social insurance system – authoritative from 2002

Healthcare infrastructure plans (ÖSG, RSG)

Official veterinary bulletins (OVB) from 15.9.2004

General circulars (*Erlässe*)

Circulars issued by federal ministries

Directives and circulars issued by the Federal Ministry of Finance (external)

Circulars issued by the Federal Ministry of Labour, Social Affairs, Health and Consumer Protection (*Bundesministerium für Arbeit, Soziales, Gesundheit und Konsumentenschutz*) in social insurance matters (external)

Austrian Laws

Some Austrian laws are also available in English.

Further information

Further information can be found on the website of the [Rechtsinformationssystem des Bundes](#).

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