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# Practical Guide for EU, EEA and Swiss Lawyers on Service and Establishment

## AUSTRIA

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*If an error is identified, please bring it to the attention of the CCBE which will correct it, where appropriate.*

Structure	Information received
<b>1. Establishment</b>	
1.1. Registration with Host Bar	<p>To register with the local Bar to your intended practice, you need:</p> <ul style="list-style-type: none"><li>• an address of your office in Austria</li><li>• a completed application form (which you receive from the local bar);</li><li>• a certificate of attestation from your home bar or law society;</li><li>• an evidence of existing professional indemnity insurance;</li><li>• Registration fee: approximately 300 € (varies from regional Bar to regional Bar)</li><li>• Membership fee (varies from regional Bar to regional Bar)</li><li>• Including any other fees relating to establishment</li></ul> <p>Under <a href="http://www.rechtsanwaelte.at">www.rechtsanwaelte.at</a> you can find the links to the local bars and thus the registration forms and relevant information</p> <p><i>Relevant national provision:</i></p> <p>§ 10 of the „Bundesgesetz über den freien Dienstleistungsverkehr und die Niederlassung von europäischen Rechtsanwältinnen und Rechtsanwälten sowie die Erbringung von Rechtsdienstleistungen durch international tätige Rechtsanwältinnen und Rechtsanwälte in Österreich (EIRAG)“</p>
1.2. Title	You must practice under your home title.

	<p><i>Relevant provision:</i> § 12 EIRAG</p>
1.3. Salaried practice	<p>Employment as lawyer only is permitted to another lawyer or law firm.</p> <p><i>Relevant provision:</i> § 16 EIRAG and § 21g Rechtsanwaltsordnung (RAO)</p>
1.4. Legal Form and Shareholding	<p>Must correspond with the core principles laid down for Austrian lawyers: no MDPs, no ABSs and no participation of non-lawyers (where no exception applies, i.e. widows, children) in joint practice.</p> <p><i>Relevant provision:</i> § 16 EIRAG Rechtsanwaltsordnung (RAO)</p>
1.5. Joint Practice	<p>As gro <i>Relevant provision:</i> § 16 EIRAG Rechtsanwaltsordnung (RAO) up of lawyers permitted – limits see before.</p>
1.6. Areas of Activity	<p>Representation of clients before all courts and administrative authorities. Advise in the law of home and host state and European and International law.</p> <p><i>Relevant provision:</i> § 8 EIRAG Rechtsanwaltsordnung (RAO)</p>
1.7. Practice Rules	<p>Where the representation and defence are reserved to lawyers (i.e. claim exceeding € 5.000,00 or criminal proceeding before the Landesgericht), you need to work in conjunction with a host lawyer (Einvernehmensanwalt). The conjunction has to be agreed between you and the host state lawyer and must be proven to the court in the first filing in order to hold it valid.</p> <p><i>Relevant provision:</i> § 14 EIRAG Rechtsanwaltsordnung (RAO)</p>
1.8. Principle of Double Deontology	<p>As established lawyer, you are subject to the regulations not only by your home bar but also by your host bar.</p> <p><i>Relevant provision:</i> § 17 EIRAG Rechtsanwaltsordnung (RAO)</p>
1.9. Disciplinary proceedings	<p>See above.</p>
1.10. Insurance (professional indemnity insurance, social security, etc.)	<ul style="list-style-type: none"> <li>Professional Indemnity Insurance: must comply with the rules for Austrian lawyers: minimum coverage: € 400.000,00 / € 2,400.000,00 for “Gesellschaft mit beschränkter Haftung” or other legal form, where liability is limited.</li> <li>Social security: you may waive payment in pension scheme if you continue to contribute in your home pension scheme (A1-form / „certificate of coverage”) – the regional host Bar will inform you.</li> </ul>

	<p><i>Relevant provision:</i></p> <p>§ 15 EIRAG Rechtsanwaltsordnung (RAO)</p>
1.11. Fees	<p>Austrian rules apply, in general lawyer and client can agree on a fee, however the agreement has to comply with civil and professional law; otherwise (in lack of an agreement), the Lawyers' Fees Act (RATG) and the General Fee Criteria for Lawyers (AHK) apply.</p> <p><i>Relevant provision:</i></p> <p>§ 1152 ABGB, § 879 ABGB, § 934 ABGB, §§ 16-19a RAO, §§ 15 ff RL-BA 2015, §§ 1ff RATG, §§ 1ff AHK</p>
1.12. Continuing Legal Education	<p>Required.</p> <p><i>Relevant provision:</i></p> <p>§ 10 (6) EIRAG Rechtsanwaltsordnung (RAO)</p>
1.13. Bar membership	<p>By registration, you become member of the local bar. However, you are not electable to a representative body of the bar; you are not entitled to train young lawyers (Rechtsanwaltsanwärter) or to render legal aid.</p> <p><i>Relevant provision:</i></p> <p>§ 13 EIRAG Rechtsanwaltsordnung (RAO)</p>
1.14. Conditions for the Acquisition of the Title of a 'National Lawyer'	<ul style="list-style-type: none"> <li>• Effective practice for three years in Austrian law; this practice must be proven by a list of cases submitted to the bar, and the bar may request you to explain the provided data for proof.</li> </ul> <p><i>Relevant provision:</i> § 18 ff EIRAG</p> <ul style="list-style-type: none"> <li>• Effective practice for three years but practice in Austrian law for less time; you may prove your knowledge in Austrian law before the bar in a discussion in order to verify whether you have sufficient practice with regard to Austrian law and legal practice.</li> </ul> <p><i>Relevant provision:</i> § 20 EIRAG</p> <ul style="list-style-type: none"> <li>• Establishment via the Professional Qualification Directive: Aptitude Test (see below point 3.2).</li> </ul> <p><i>Relevant provision:</i> § 21 EIRAG</p>
<b>2. Services</b>	
2.1. Under home title & representation before courts	<ul style="list-style-type: none"> <li>• Service under your home title – before courts and administrative authorities</li> <li>• Courts and administrative authorities may require proof that you are a lawyer in your home state</li> <li>• Before first rendering service in Austria, you have to inform the competent local bar, which also can request to prove of your registration as lawyer in your home state.</li> </ul>

	<ul style="list-style-type: none"> <li>Where the representation and defence are reserved to lawyers (i.e. claim exceeding € 5.000,00 or criminal proceeding before the Landesgericht), you need to work in conjunction with a host lawyer (Einvernehmensanwalt). The conjunction has to be agreed between you and the host state lawyer, and must be proven to the court in the first filing in order to hold it valid.</li> <li>If you have no address for service in the host state, you may be required to appoint a person authorized to accept service.</li> </ul> <p><i>Relevant provision: § 2 ff EIRAG</i></p>
2.2. Deontology	<p>You are subject to the rule in the host state and subject to disciplinary supervision of the bar.</p> <p><i>Relevant provision: § 7 EIRAG</i></p>
2.3. Fees	<p>Austrian rules apply, in general lawyer and client can agree on a fee, however the agreement has to comply with civil and professional law; otherwise (in lack of an agreement), Lawyers' Fees Act (RATG) and the General Fee Criteria for Lawyers (AHK) apply.</p> <p><i>Relevant provision:</i></p> <p>§ 1152 ABGB, § 879 ABGB, § 934 ABGB, §§ 16-19a RAO, §§ 15 ff RL-BA 2015, §§ 1ff RATG, §§ 1ff AHK</p>
<b>3. Acquisition of the national lawyer's title</b>	
3.1. Via Establishment Directive	<p>See above point 1.14</p>
3.2. Via Professional Qualification Directive	<p>Pass the aptitude test: see Articles 13-14 of Directive 2005/36 on recognition of professional qualifications</p> <p>Test content: § 30 ff EIRAG – written test (civil law case and criminal or administrative law case) and oral test on legal skills and deontology.</p> <p>Any useful information on how to prepare it: seminars are available</p> <p>See § 24 ff EIRAG: preconditions and venue of the test.</p>
<b>4. Practicalities</b>	
4.1. Practical information	<ul style="list-style-type: none"> <li>You can find information on the court system, addresses, contacts and opening hours of all Austrian courts under: <a href="http://www.justiz.gv.at">www.justiz.gv.at</a></li> <li>It is recommended to arrive at least 15 minutes beforehand, because you have to pass the security check, which can be time consuming. Some of the Court houses are bigger than others, consider the time spent for searching the appropriate courtroom</li> <li>Once you find the appropriate courtroom, please wait outside. You will be invited in</li> </ul>

	<ul style="list-style-type: none"> <li>• Before the Austrian courts, lawyers are not required to wear a gown in the courtroom (however in criminal cases in the magistrate's court and in a jury trial it is recommended)</li> <li>• As a lawyer for the plaintiff you and your client sit on the right side, as a lawyer for the defendant you and your client sit on the left side from the judge's point of view</li> <li>• It is required to stand when the judge walks in. The same applies, when you are pleading before the criminal court.</li> <li>• Contacts to and information on the organization of the Austrian Bar are available under: <a href="http://www.rechtsanwaelte.at">www.rechtsanwaelte.at</a>. All relevant provisions (i.e. European Lawyer's Act) are found under "Gesetzestexte"</li> </ul>
4.2. National organisation	<p>The nine regional bars in Austria are public corporations and as such autonomous self-governing bodies of the lawyers and trainee lawyers in their respective state. They manage their affairs in plenary assemblies and through their board. Their tasks include entries in the list of lawyers and trainee lawyers, fee management, old-age and survivors' pensions of their members and service activities as well as monitoring of compliance with professional obligations of lawyers and trainee lawyers by the Disciplinary Council. The umbrella organisation of the regional bars is the Austrian Bar ("Österreichischer Rechtsanwaltskammertag", ÖRAK), a public body based in Vienna. It is responsible for the protection of the rights and affairs of the profession in a general context as well as for their representation.</p>
4.3. Reference to national legislation with other languages available + links	<p>All Austrian provisions can be found on the website of the Legal Information System: <a href="https://www.ris.bka.gv.at">https://www.ris.bka.gv.at</a>. On the website of the Austrian Bar you can find all relevant provisions concerning lawyers: <a href="https://www.rechtsanwaelte.at/buergerservice/infocorner/gesetzestexte/">https://www.rechtsanwaelte.at/buergerservice/infocorner/gesetzestexte/</a></p>
4.4. Reference to existing national guides	<p><i>(information missing)</i></p>
4.5. Reference to services available for lawyers in that jurisdiction	<p><i>(information missing)</i></p>
4.6. Contact information	<p>The contact information of the nine regional Bars in Austria is available under <a href="https://www.rechtsanwaelte.at/en/bar/regional-bars/">https://www.rechtsanwaelte.at/en/bar/regional-bars/</a></p>