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Recognition and Enforcement of Foreign Arbitral Awards in Austria

In the realm of international dispute resolution, a profoundly significant but often underestimated stage is the enforcement process. This article provides practical insights for legal professionals and stakeholders to shed light on the principles and intricacies of the recognition and enforcement process of foreign arbitral awards in Austria.

1. Introduction and Applicable Laws

Austrian enforcement law differentiates between foreign and domestic arbitral awards. An arbitral award is considered foreign if the seat of the arbitration is located outside of Austria.

In principle, the Austrian Enforcement Act (in the following referred to as "**AEA**") governs the entire enforcement proceedings. However, to the extent that international treaties or laws of the European Union apply, these take precedence over the respective provisions of the AEA.

Austria has ratified several treaties on mutual recognition and enforcement of arbitral awards, the most significant being the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (in the following referred to as "**NYC**"). In addition, other bi- or multilateral treaties may serve as a basis for enforcement applications in Austria. Unless stipulated otherwise (in the relevant treaties), parties may rely on several applicable treaties when filing an enforcement application in order to enhance their chances of success. Due to its practical significance, however, this article will primarily focus on the enforcement requirements contained in the NYC.

While domestic arbitral awards are directly enforceable in Austria, foreign arbitral awards must undergo a two-step procedure:

- (i) foreign arbitral awards need to be declared enforceable (*Vollstreckbarerklärung*) to obtain the status of an enforceable title in Austria, and
- (ii) the actual enforcement of the arbitral award must be granted (*Exekutionsbewilligung*).

Both steps can be applied for in one and enforcement courts can rule on these jointly.

2. Application for a Declaration of Enforceability

Parties seeking enforcement of foreign arbitral awards need to file an application for obtaining a declaration of enforceability. While the NYC explicitly refers to "*recognition and enforcement*", Austrian law foresees no special recognition procedure, *i.e.*, foreign arbitral awards are typically recognized automatically without a separate application or procedure. Only in cases where an objection is raised by the opposing party, the grounds for refusing recognition (and enforcement) under Art V NYC are examined (see Point 3. below).

Together with the application, parties seeking enforcement need to submit the **duly authenticated original of the foreign arbitral award or a duly certified copy thereof** (Art IV(1)(a) NYC). The required authentication can be issued by an Austrian authority (where the enforcement shall take place) or the country where the arbitration was seated. However, the Austrian Supreme Court recommends to always obtain an authentication from an Austrian authority (*e.g.*, from an Austrian notary or an

Austrian consular or diplomatic representative) in order to avoid the risk that the evidential value of the document authenticated abroad is questioned.

Alternatively, various arbitration rules (such as the Vienna Rules 2021) stipulate that arbitral awards may be authenticated by an official of the arbitration institution, *e.g.*, by the secretary general. Austrian case law considers such an authentication to be sufficient if the applicable arbitration rules provide for such an authentication possibility.

If the foreign arbitral award is not issued in German language, the Austrian enforcement court may require a **translation** of the entire award (including any authentication thereof) into German language by a court sworn translator (Art IV(2) NYC). While it is not required that such a translator is certified in Austria (*allgemein beeideter und gerichtlich zertifizierter Dolmetscher*), it is generally recommendable to choose an Austrian court sworn translator. This is because otherwise, the party seeking enforcement would need to provide proof that the translator has been appointed by a court of his or her country of residence (and such an appointment must also be certified).

When seeking enforcement of a foreign arbitral award in Austria, it is **not necessary to submit the arbitration agreement** (as an original or certified copy) except if explicitly requested by the enforcement court (Section 614(2) Austrian Code of Civil Procedure). This is generally only the case if the enforcement court has doubts as to the arbitration agreement's existence.

Art IV NYC conclusively stipulates the necessary evidence to be provided by parties seeking enforcement of foreign arbitral awards. However, other bi- or multilateral treaties on which enforcement applications may be based can foresee further or different requirements (*e.g.*, provision of a certificate confirming the validity and enforceability of the arbitral award issued by the competent court at the seat of the arbitration).

3. Grounds for Refusing Recognition and Enforcement

Foreign arbitral awards are to be recognized and declared enforceable if there are no grounds for refusal. While any applicable bi- and multilateral treaties on recognition and enforcement of foreign arbitral awards generally prevail over the provisions of the AEA, it is worth noting that Section 408 AEA mentions the following grounds for refusal: (i) when the respondent did not have the possibility to participate in the arbitration proceedings, (ii) when the enforcement concerns an act which would be unlawful or unenforceable under Austrian law, or (iii) when Austrian public policy would be violated.

The practically most important grounds for refusal of recognition and enforcement are contained in Art V NYC. These can be divided into grounds that need to be invoked and proven by the party against which enforcement is sought on the one hand, and those that may be considered *ex officio* by the enforcement court on the other hand. The latter concerns cases where the subject-matter of the dispute is not arbitrable in Austria and public policy violations. In respect to public policy, the Austrian Supreme Court generally takes a restrictive approach by considering only the fundamental principles of Austrian law.

4. Enforcement Procedure, Duration and Costs

The enforcement proceedings need to be initiated before the district court (*Bezirksgericht*) where the party against which enforcement is sought has its registered seat or where the respective assets are located. The district courts decide on applications for obtaining a declaration of enforceability and a grant of the actual enforcement without hearing the opposing party (Sections 54 and 410 AEA). In general, the first instance decision can be obtained rather quickly (usually within two to four weeks) provided that all relevant documents are submitted.

The first instance decision can be appealed against before the competent regional court (*Landesgericht*) within four weeks. In the appeal proceedings, parties against which enforcement is sought have the right to be heard and may also invoke grounds for refusal of recognition and enforcement of the foreign arbitral award (Art V NYC). In case a party has its registered seat abroad and the appeal proceedings represent the first possibility for that party to participate in the enforcement proceedings, the four-week appeal period doubles for that party. As long as there is no final and binding decision on the appeal, actions aiming to liquidate the assets of the debtor cannot be taken (whereas protective measures, such as attachments, may still be pursued; Section 412(2) AEA).

Typically, appeal decisions are issued within six to twelve months. Under certain (extraordinary) conditions, the appeal decision may be subject to a further appeal to the Austrian Supreme Court (acting as the third and last instance). The Austrian Supreme Court usually decides within three to six months.

Enforcement courts have discretion to stay the enforcement proceedings in case the foreign arbitral award is subject to pending set aside proceedings and the debtor has appealed the decision declaring the arbitral award enforceable (Section 411(5) AEA). In this respect, enforcement courts primarily take into account the chances of the foreign arbitral award actually being set aside as this may constitute a ground for refusing recognition and enforcement (Art V(1)(e) NYC).

In case the enforcement proceedings are stayed until a final decision in set aside proceedings is rendered, enforcement courts may order the party against which enforcement is sought to provide adequate security if requested by the other party (Section 411(5) AEA and Art VI NYC).

In general, applications for obtaining a declaration of enforceability do not trigger any court fees. However, applications for a grant of the actual enforcement generally trigger court fees in the amount of 0.27% of the value of the claim to be enforced (Section 32 Austrian Court Fees Act).

5. Summary

Austrian law can be considered very arbitration friendly. Among other benefits, it provides for a fast and efficient enforcement mechanism with regards to foreign arbitral awards.

The enforcement of foreign arbitral awards consists of two steps: (i) an application for obtaining a declaration of enforceability (so that the foreign arbitral award represents a directly enforceable title in Austria), and (ii) an application for a grant of the actual enforcement measures. Both steps can be applied for in one and enforcement courts can rule on these jointly.

If enforcement applications are based on the NYC, parties must submit (i) a duly authenticated original or certified copy of the arbitral award and (ii) a certified translation thereof. The submission of the underlying arbitration agreement is typically only required if there are doubts as to its existence.

Austrian enforcement proceedings are comparably fast and effective, with the first instance decision being issued typically within two to four weeks without hearing the opposing party. If an appeal is raised, the appeal decision is usually issued within six to twelve months. In appeal proceedings, parties against which enforcement is sought may raise grounds for refusal of recognition and enforcement of arbitral awards (*e.g.*, pursuant to Art V NYC). Under specific (limited) circumstances, the Austrian Supreme Court may be available as the third and last instance.

Applications for obtaining a declaration of enforceability do not trigger any court fees. However, applications for a grant of the actual enforcement generally trigger court fees in the amount of 0.27% of the value of the claim to be enforced.

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