

Ref.No.: 2021-0.203.678

Notification by Austria in accordance with Article 117 of the EPPO Regulation

1. Competent Authorities

Articles EPPO Regulation	Competent national authorities
5(6), 28(1)–(2)/(4), 31(4), 91(6)	Police, customs and fiscal authorities as specified in Annex C. In addition, the EPPO can ask any authority, including prosecution authorities (cf. Annex C), for legal assistance (Amtshilfe) in case of specific investigative measure.
10(3)(d), 24(2)–(3), 25(1) to (5), 26(7), 27(2) to (8), 34(1) to (3)/(5) to (7)	In respect of Articles 10 and 34 the EPPO should refer the case to the competent prosecution service. The competent prosecution service will also be in charge of reporting obligations under Article 24 (2) and (3) . Article 25 para 1 applies to all national authorities, which could otherwise exercise their competence. Article 27 para 2 will be applicable to all law enforcement authorities (involved in the investigation reported in accordance with Article 24(2)). In respect of Article 25 para 2 the EPPO should contact the national prosecution service in case a criminal investigation has already been initiated. In case of a report where no investigation has been initiated yet the EPPO should refer to police, fiscal or customs authorities (Annex C). Article 25 para 3 and 4 : public prosecution offices

	<p>Article 25 para 5 and Article 26 para 7: the reporting authority in the respective case. National law provides for various notification obligations for prosecution authorities in case of perpetrators that belong to specific professional groups. Further details can be found in the Intranet of the Ministry of Justice that will be available to EDPs and the European Prosecutor.</p> <p>For purposes of EPPO's investigation the following obligations can be highlighted:</p> <p><u>Public officials:</u> the competent authority in charge of personnel issues has to be notified (Sec. 76 para 5 Criminal Procedure Code)</p> <p><u>Auditor</u> (of annual accounts): Abschlussprüferaufsichtsbehörde (https://www.apab.gv.at/) in accordance with Sec. 80 Abschlussprüfer-Aufsichtsgesetz (APAG)</p> <p><u>Attorneys at law and attorney candidates:</u> the competent attorney (Kammeranwalt) at the competent Bar Association (Sec. 24 Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter)</p> <p><u>Notaries and notary candidates:</u> notifications in accordance with Sec. 182 Abs. 3 und 4 Notariatsordnung to the competent Association (Notariatskammer) and the competent Court of Appeal</p> <p><u>Accountants and tax consultants:</u> notification of the competent Association in accordance with Sec. 182 Wirtschaftstreuhänderberufsgesetz 2017 (Kammer der Steuerberater und Wirtschaftsprüfer)</p> <p><u>Stock market traders:</u> Notification in accordance with Sec. 72 Börsegesetz of the authority for financial market supervision (Finanzmarktaufsicht)</p> <p>In case of <u>investigations regarding market manipulation or insidertrading</u> (Sec. 163 or 164 Börsegesetz) notification obligations in relation to the authority for financial market supervision (Finanzmarktaufsicht) are applicable</p> <p>Article 27 para 3 to 8: the competent prosecution authority</p>
24(1)	Direct applicability to all public authorities in Austria.
24(8)	See Article 34 – referrals to competent public prosecution service
25(6) (cross-referenced in Art. 39(3))	Supreme Court (Art. 25(6))/Prosecutor's General Office (Art. 39(3)) (both the highest judicial authorities in criminal procedure)
33(2)	Not applicable, EDP can issue an EAW.
36(6)	Not applicable, in relation of disciplinary proceedings see notification in respect of Art. 39 (4).
39(4)	National law provides for various notification obligations for prosecution authorities in case of perpetrators that belong to specific professional groups. Further details can be

	<p>found in the Intranet of the Ministry of Justice that will be available to EDPs and the European Prosecutor.</p> <p>For purposes of EPPO's investigation the following obligations can be highlighted:</p> <p><u>Auditor</u> (of annual accounts): Abschlussprüferaufsichtsbehörde (https://www.apab.gv.at/) in accordance with Sec. 80 Abschlussprüfer-Aufsichtsgesetz (APAG)</p> <p><u>Public officials</u>: the competent authority in charge of personnel issues has to be notified (Sec. 76 para 5 Criminal Procedure Code)</p> <p><u>Attorneys at law and attorney candidates</u>: the competent attorney (Kammeranwalt) at the competent Bar Association (Sec. 24 Disziplinarstatut für Rechtsanwälte und Rechtsanwaltsanwärter)</p> <p><u>Notaries and notary candidates</u>: notifications in accordance with Sec. 182 Abs. 3 und 4 Notariatsordnung to the competent Association (Notariatskammer) and the competent Court of Appeal</p> <p><u>Accountants and tax consultants</u>: notification of the competent Association in accordance with Sec. 182 Wirtschaftstreuhandberufsgesetz 2017 (Kammer der Steuerberater und Wirtschaftsprüfer)</p> <p><u>Stock market traders</u>: Notification in accordance with Sec. 72 Börsegesetz of the authority for financial market supervision (Finanzmarktaufsicht)</p> <p>In case of investigations regarding <u>market manipulation or insidertrading</u> (Sec. 163 or 164 Börsegesetz) notification obligations in relation to the authority for financial market supervision (Finanzmarktaufsicht) are applicable.</p>
40(1)	The public prosecution service that would be competent for the investigation if the EPPO had not initiated an investigation
96(6)	In respect of resources and equipment: the President of the Vienna Court of Appeal is competent.
104(7)	<p>The court that is in charge during the investigation phase.</p> <p>We would like to highlight that the surrender agreement with Norway and Iceland as well as the Trade and Cooperation Agreement with the UK copy more or less the provision from the Framework Decision on the European Arrest Warrant. The procedure differs largely from traditional extradition proceedings. According to national legislation, the EPPO is in charge of issuing an arrest warrant under the mentioned agreements that the Union concluded as is the case for the European Arrest Warrant.</p>

2. Notification of national substantive criminal law provisions

- der Betrug nach §§ 146 bis 148 StGB, soweit dadurch die finanziellen Interessen der Union geschädigt wurden oder hätten werden können,

- der Förderungsmisbrauch nach § 153b StGB, soweit dadurch die finanziellen Interessen der Union geschädigt wurden oder hätten werden können,
- der ausgabenseitige Betrug zum Nachteil der finanziellen Interessen der Europäischen Union nach § 168c StGB bzw. nach § 168f StGB (idF StrEU-AG 2021),
- die missbräuchliche Verwendung von Mitteln und Vermögenswerten zum Nachteil der finanziellen Interessen der Europäischen Union nach § 168d StGB bzw. nach § 168g StGB (idF StrEU-AG 2021),
- die missbräuchliche Vergabe von Mitteln und Vermögenswerten zum Nachteil der finanziellen Interessen der Europäischen Union nach § 153 StGB oder § 302 StGB,
- Wettbewerbsbeschränkende Absprachen bei Vergabeverfahren zum Nachteil der finanziellen Interessen der Europäischen Union nach § 168b StGB,
- die Bestechlichkeit nach § 304 StGB, soweit dadurch die finanziellen Interessen der Union geschädigt wurden oder hätten werden können,
- die Vorteilsannahme nach § 305 StGB, soweit dadurch die finanziellen Interessen der Union geschädigt wurden oder hätten werden können,
- die Bestechung nach § 307 StGB, soweit dadurch die finanziellen Interessen der Union geschädigt wurden oder hätten werden können,
- die Vorteilszuwendung nach § 307a StGB, soweit dadurch die finanziellen Interessen der Union geschädigt wurden oder hätten werden können,
- der Schmuggel nach § 35 Abs. 1 FinStrG und die Hinterziehung von Eingangsabgaben nach § 35 Abs. 2 und 3 FinStrG,
- die Abgabenhehlerei nach § 37 Abs. 1 FinStrG,
- der Schmuggel oder die Hinterziehung von Eingangsabgaben als Mitglied einer Bande oder unter Gewaltanwendung nach §§ 35, 38a FinStrG,
- der Abgabenbetrug nach § 39 FinStrG, soweit diesem ein Schmuggel, eine Hinterziehung von Eingangsabgaben oder eine vorsätzliche Abgabenhehlerei zugrunde liegt
- der grenzüberschreitende Umsatzsteuerbetrug nach § 40 FinStrG
- die Geldwäscherei nach § 165 StGB, wenn die Vortat eine der oben genannten Taten ist.

3. Notification of limitations to specific investigative measures

3.1. Interception of telecommunication

In respect of Article 30 para 1 lit. e Austria would first like to present the requirements under Sec 135 para 3 of the criminal procedure Code for intercepting telecommunications:

“Surveillance of communication is permissible,

1. if and so long there is strong suspicion that the person affected by the disclosure has kidnapped or otherwise taken control of another person and if the disclosure of data is limited to messages believed to be transmitted, received, or sent by the accused during the deprivation of liberty,
2. if it is to be expected that the disclosure can contribute to inquiries about a criminal offence committed intentionally and punishable by imprisonment for more than six months and if the owner of the technical device that is or will be the source or destination of the transmission of messages consents,
3. if this appears necessary for the inquiry about a criminal offence committed intentionally and punishable by imprisonment for more than one year or if the inquiry or prevention of a criminal offence committed or planned as part of a criminal association, terrorist association, or criminal organization (§§ 278 to 278b Criminal Code) would otherwise be significantly obstructed and
 - a) if the owner of the technical device that is or will be the source or destination of the transmission of messages is under strong suspicion for a criminal offence committed intentionally and punishable by imprisonment for more than one year or for a criminal offence under §§ 278 to 278b of the Criminal Code, or
 - b) because of particular material facts it is believed that the person under strong suspicion for the offence (lit. a) will be using or will establish a connection to the technical device;
4. if because of particular material facts it is expected that through the disclosure the whereabouts of an accused who has absconded or is absent and who is under strong suspicion of having intentionally committed a criminal offence punishable by imprisonment for more than one year can be established.”

3.2. Controlled deliveries

In respect of Article 30 para 1 lit. f Austria would first like to present the requirements under Sec 9 para 5 of the Criminal Procedure Code and Sec. 72 para 2 of the Federal Act for Judicial Cooperation in Criminal Matters with Member States of the European Union for controlled deliveries:

Sec. 99 para 5: “In cases involving controlled delivery, i.e. the transportation of objects out of, into, or through the territory of Austria without a requirement that the prosecution authority intervenes pursuant to § 2 para. 1, §§ 71 and 72 of the Federal Act for Judicial Cooperation in Criminal Matters with Member States of the European Union [Bundesgesetzes über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union (EU-JZG)] apply mutatis mutandis.

Sec. 72 para 2 Federal Act for Judicial Cooperation in Criminal Matters with Member States of the European Union: “Upon a request by a Member State or in agreement with another Member State a controlled delivery through Austria or from Austria to another Member State shall be granted if

1. the reasons underlying the controlled delivery or the foreign criminal proceedings meet the prerequisites for issuing a European arrest warrant, and
2. the controlled delivery will promote the clearing up of such offences or the exploration of a person who is involved in committing the offences in more than a subordinate position.”

For both investigation measures mentioned above the following applies: they are generally permissible unless for offences mentioned in ANNEX B or with the restrictions mentioned therein.

Art. 30 para 3 lit e EPPO Regulation – interception of telecommunication

For criminal acts without intention, the interception of telecommunication cannot be ordered at all.

For acts committed intentionally, the following restrictions apply:

Not permitted for the following criminal acts even with consent of the person that is subject of the investigative measure	Permitted in case of consent of the person that is subject of the investigative measure
§ 89 StGB	§ 91 (2) 2. Fall StGB
§ 91 (2) 1. Fall StGB	§ 91 (2a) StGB
§ 91a StGB	§ 94 (1) StGB
§ 95 (1) 1. Fall StGB	§ 95 (1) 2. Fall
§ 110 (1) StGB	§ 96 (1) 1. Fall StGB
§ 111 (1) StGB	§ 96 (3) StGB
§ 113 StGB	§ 105 (1) StGB
§ 115 (1) StGB	§ 107 (1) StGB
§ 116 StGB	§ 107a (1) StGB
§ 118 (1) StGB	§ 107c (1) StGB
§ 118 (2) StGB	§ 108 (1) StGB
§ 118 (3) StGB	§ 109 (1) StGB
§ 118a (1) StGB	§ 111 (2) StGB
§ 119 (1) StGB	§ 120 (1) StGB
§ 119a (1) StGB	§ 120 (2) StGB
§ 120 (2a) StGB	§ 120a (2) StGB
§ 120a (1) StGB	§ 121 (2) StGB
§ 121 (1) StGB	§ 121 (3) StGB
§ 121 (1a) StGB	§ 122 (2) StGB
§ 122 (1) StGB	§ 153a StGB
§ 125 StGB	§ 153c (1) StGB
§ 126a (1) StGB	§ 159 (2) StGB
§ 126b (1) StGB	§ 160 (1) StGB
§ 126c (1) StGB	§ 160 (2) StGB
§ 127 StGB	§ 177d StGB
§ 132 (1) StGB	§ 181b (3) StGB
§ 133 (1) StGB	§ 193 (1) StGB
§ 134 (1) StGB	§ 193 (2) StGB
§ 134 (2) StGB	§ 193a (1) StGB
§ 135 (1) StGB	§ 195 (1) StGB
§ 136 (1) StGB	§ 200 StGB
§ 137 StGB	§ 207a (3) 1. Fall StGB
§ 141 (1) StGB	§ 207a (3a) 1. Fall StGB
§ 146 StGB	§ 207b (1) StGB
§ 148a (1) StGB	§ 208 (1) StGB
§ 149 (1) StGB	§ 208 (2) StGB

§ 149 (2) StGB	§ 208a (1a) StGB
§ 149 (3) StGB	§ 211 (1) StGB
§ 150 (1) StGB	§ 212 (3) StGB
§ 151 (1) StGB	§ 215 (2a) StGB
§ 152 (1) StGB	§ 218 (2a) StGB
§ 153 (1) StGB	§ 223 (1) StGB
§ 153b (1) StGB	§ 223 (2) StGB
§ 162 (1) StGB	§ 224a StGB
§ 163 StGB	§ 225a StGB
§ 164 (1) StGB	§ 227 (1) StGB
§ 164 (2) StGB	§ 229 (1) StGB
Alle Privilegierungen nach § 166 (1) und (2)	§ 235 StGB
§ 168 (1) StGB	§ 236 (1) StGB
§ 168 (2) StGB	§ 236 (2) StGB
§ 168a (1) StGB	§ 237 StGB
§ 168c (1) StGB	§ 241b StGB
§ 168c (2) StGB	§ 241c StGB
§ 168d (1) StGB	§ 241e (3) StGB
§ 181a StGB	§ 241f StGB
§ 184 StGB	§ 241h StGB
§ 188 StGB	§ 247a (2) StGB
§ 189 (2) StGB	§ 248 (1) StGB
§ 190 (1) StGB	§ 265 (1) StGB
§ 190 (2) StGB	§ 265 (2) StGB
§ 191 StGB	§ 283 (4) StGB
§ 196 (1) StGB	§ 284 StGB
§ 198 (1) StGB	§ 289 StGB
§ 199 StGB	§ 292 (2) StGB
§ 211 (3) StGB	§ 293 (1) StGB
§ 218 (1) StGB	§ 293 (2) StGB
§ 218 (1a) StGB	§ 295 StGB
§ 218 (2) StGB	§ 297 (1) 1. Fall StGB
§ 219 StGB	§ 301 (3) StGB
§ 231 (1) StGB	§ 315 StGB
§ 231 (2) StGB	§ 1 (1) und 2 PornoG
§ 248 (2) StGB	§ 27 (1) SMG
§ 262 (2) StGB	§ 30 (1) SMG
§ 263 (1) StGB	§ 28 (3) Anti-DopingG
§ 263 (2) StGB	§ 82b (7) AMG
§ 264 (1) StGB	§ 101 (1) BWG
§ 266 (1) StGB	§ 63 DSGVO
§ 268 StGB	§ 115 (1) FremdenpolG
§ 271 (1) StGB	§ 117 (2) FremdenpolG
§ 272 (1) StGB	§ 118 (2) FremdenpolG
§ 273 (1) StGB	§ 9 (2) Informationssicherheitsgesetz
§ 285 StGB	§ 71a ChemG
§ 292a StGB	§ 168 (1) Gaswirtschaftsgesetz 2011

§ 298 (1) StGB	§ 37 (1) ImmoInvFG
§ 301 (1) StGB	§ 81 (1) LMSVG
§ 301 (2) StGB	§ 57 (1) PostmarktG
§ 303 StGB	§ 11 (1) SanktionenG 2010
§ 314 StGB	§ 19a 2. Fall VersG
§ 317 StGB	§ 48 (1) WehrG
§ 2 PornoG	§ 58 (1) ZivilDG
§ 15 (1) PornoG	§ 58 (1a) ZivilDG
§ 27 (2) SMG	§ 58 (2) ZivilDG
§ 30 (2) SMG	
§ 28 (1) Anti-DopingG	
§ 28 (2) Anti-DopingG	
§ 117 (1) FremdenpolG	
§ 118 (1) FremdenpolG	
§ 9 (1) Informationssicherheitsgesetz	
§ 27 (6) MRG	
§ 27 (7) MRG	
§ 1 NotzeichenG	
§ 2 Uniform-VerbotsG	
§ 28 E-GeldG	
§ 168a (2) Gaswirtschaftsgesetz 2011	
§ 81 (3) LMSVG	
§ 108 (1) TKG	
§ 19a 1. Fall VersG	
§ 47 WehrG	
§ 57 (1) WeinG	
§ 31 (1) ZivMediatG	

For all other criminal acts committed intentionally, interception of telecommunication is permissible.

Art. 30 Abs. 3 lit. f EPPO Regulation – controlled delivery

Not permitted for the following criminal offences
§ 88 (1) StGB
§ 88 (2) StGB
§ 89 StGB
§ 91 (2) 1. Fall StGB
§ 91a StGB
§ 95 1. Fall StGB
§ 110 (1) StGB
§ 111 (1) StGB
§ 113 StGB
§ 115 (1) StGB
§ 116 StGB
§ 118 (1) StGB

§ 118 (2) StGB
§ 118 (3) StGB
§ 118a (1) StGB
§ 119 (1) StGB
§ 119a (1) StGB
§ 120 (2a) StGB
§ 120a (1) StGB
§ 121 (1) StGB
§ 121 (1a) StGB
§ 122 (1) StGB
§ 125 StGB
§ 126a (1) StGB
§ 126b (1) StGB
§ 126c (1) StGB
§ 127 StGB
§ 132 (1) StGB
§ 133 (1) StGB
§ 134 (1) StGB
§ 134 (2) StGB
§ 135 (1) StGB
§ 136 (1) StGB
§ 137 StGB
§ 141 (1) StGB
§ 146 StGB
§ 148a (1) StGB
§ 149 (1) StGB
§ 149 (2) StGB
§ 149 (3) StGB
§ 150 (1) StGB
§ 151 (1) StGB
§ 152 (1) StGB
§ 153 (1) StGB
§ 153b (1) StGB
§ 162 (1) StGB
§ 163 StGB
§ 164 (1) StGB
§ 164 (2) StGB
Alle Privilegierungen nach § 166 (1) und (2)
§ 168 (1) StGB
§ 168 (2) StGB
§ 168a (1) StGB
§ 168c (1) StGB
§ 168c (2) StGB
§ 168d (1) StGB
§ 177e StGB
§ 181a StGB
§ 181c (1) StGB

§ 181c (3) StGB
§ 181e (1) StGB
§ 183 StGB
§ 184 StGB
§ 188 StGB
§ 189 (2) StGB
§ 190 (1) StGB
§ 190 (2) StGB
§ 191 StGB
§ 196 (1) StGB
§ 198 (1) StGB
§ 199 StGB
§ 211 (3) StGB
§ 218 (1) StGB
§ 218 (1a) StGB
§ 218 (2) StGB
§ 219 StGB
§ 231 (1) StGB
§ 231 (2) StGB
§ 248 (2) StGB
§ 262 (2) StGB
§ 263 (1) StGB
§ 263 (2) StGB
§ 264 (1) StGB
§ 266 (1) StGB
§ 268 StGB
§ 271 (1) StGB
§ 272 (1) StGB
§ 273 (1) StGB
§ 285 StGB
§ 292a StGB
§ 298 (1) StGB
§ 301 (1) StGB
§ 301 (2) StGB
§ 303 StGB
§ 314 StGB
§ 317 StGB
§ 34 FinStrG
§ 36 FinStrG
§ 37 Abs 3 FinStrG
§ 2 PornoG
§ 15 (1) PornoG
§ 27 (2) SMG
§ 30 (1) SMG
§ 28 (1) Anit-DopingG
§ 28 (2) Anti-DopingG
§ 117 (1) FremdenpolG

§ 118 (1) FremdenpolG
§ 9 (1) Informationssicherheitsgesetz
§ 27 (6) MRG
§ 27 (7) MRG
§ 1 NotzeichenG
§ 2 Uniform-VerbotsG
§ 80 (4) AußWG
§ 28 E-GeldG
§ 168a (2) Gaswirtschaftsgesetz 2011
§ 81 (3) LMSVG
§ 82 (1) LMSVG
§ 82 (3) LMSVG
§ 108 (1) TKG
§ 19a 1. Fall VersG
§ 47 WehrG
§ 57 (1) WeinG
§ 57 (3) WeinG
§ 31 (1) ZivMediatG