

Implementing legislation questionnaire for States Parties

Answers by Austria

30 September 2021

1. Has your Government adopted any national legislation implementing the Rome Statute (“the Statute”), or otherwise enacted legislation pertaining to the Rome Statute?

- Yes.

~~**IF NOT Part A**~~

~~2. What legislative or other efforts, if any, has your Government taken or initiated to implement the provisions of the Statute into national law?~~

~~3. What obstacles, if any, has your Government faced in its efforts to implement the provisions of the Statute? Has your Government managed to overcome such obstacles, and if so, how?~~

~~4. What form of assistance would benefit or has benefitted your Government’s efforts to implement the Statute?~~

IF YES Part B

5. In implementing the Statute, did your Government draft a stand-alone legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

- *The Rome Statute was published in the Austrian Federal Law Gazette III No. 180/2002 on 9 August 2002. In relation, for example, to the substantive crimes of the Rome Statute and the procedural provisions incorporated therein, national legislation was adopted to implement it.*
- *The substantive crimes contained in Part 2 of the Rome Statute have been incorporated into the **Austrian Criminal Code** (for more details see below –Question 6).*
- *As legal basis for cooperation with the ICC, Austria has adopted a stand-alone **Federal Act on Cooperation with the International Criminal Court** (Federal Law Gazette I No. 135/2002, as amended by Federal Law Gazette I No. 2/2008 and Federal Law Gazette I No. 20/2020), providing for:*
- *Part 1: General provisions Section 1-12)*
 - *(e.g.: ICC, MLA, Jurisdiction, Mechanisms of Consultation, Costs, Confidentiality)*
- *Part 2: Special Provisions (Section 13-44)*
 1. *Chapter: Investigations and hearings of the ICC in Austria (Section 13)*
 2. *Chapter: Mutual Legal assistance (Section 14-21)*
 3. *Chapter: Search (Section 22)*
 4. *Chapter: Arrest, surrender and transit (Section 23-31)*
 5. *Chapter: Enforcement of custodial sentences Section 32-40)*
 6. *Chapter: Enforcement of pecuniary sanctions, forfeiture measures and reparation orders (Section 41-42)*
 7. *Chapter: Effect of Decisions of the ICC (Section 43)*
 8. *Chapter: Transfer of Proceedings for offences against the administration of justice (Section 44)*

- Part 3: Final Provisions (Section 45-47)
- In Section 2 para. 3 of its general provisions, the Austrian Act on Cooperation with the ICC refers to the **Extradition and Judicial Assistance Act** (Federal Law Gazette No. 529/1979, last amended by Federal Law Gazette I No. 94/2021) and the **Code of Criminal Procedure (CCP)**; Federal Law Gazette No. 631/1975, last amended by Federal Law Gazette I No. 148/2020), which shall be subsidiarily applicable.

Austria has also concluded an **Agreement with the ICC on the Execution of Sentences of the Court**, Federal Law Gazette III No. 201/2005, which is attached to this questionnaire.

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes into domestic law?

Chapter 25 of the Austrian Criminal Code (CC) incorporates

- a) the crime of genocide (Section 321 CC)
- b) Crimes against humanity (Section 321a CC)
- c) War crimes (Section 321b – 321f CC)
- d) The crime of aggression (Section 321k CC)

into domestic law.

7. Does the implementing legislation incorporate the following aspects of cooperation with the Court and if yes, how?

- Yes, it does as described in the following. According to what has been said under point 5., part of the aspects of cooperation are provided by the Federal Act on Cooperation with the ICC; part of it is provided by the Austrian CCP to which the Act on Cooperation with the ICC subsidiarily refers (e.g. conditions for keeping the person in detention etc.).

(a) Arrest and surrender;

Search: According to Section 22 para. 1 of the Federal Act on Cooperation with the ICC, the Federal Ministry of the Interior shall, upon request of the ICC or if the Austrian authorities otherwise become aware of an arrest warrant by the Court, issue an alert for arrest in respect of the person wanted for surrender to the ICC. The request or arrest warrant must contain the necessary information about the wanted person and the offence with which he or she is charged. If a person wanted by the ICC is arrested in Austria, the Federal Ministry of the Interior shall notify the ICC through INTERPOL.

Arrest and detention: in case of an arrest, the court will decide on provisional arrest on application of the public prosecutor. The detention must be necessary according to the relevant national provisions of the Austrian CCP on the grounds for detention (Section 173 CCP: risk of absconding; danger of obstruction of justice; danger of [re]-offending).

Offer of surrender to the ICC: Even if there is no request from the ICC to surrender a person, national authorities have the possibility to offer surrender of a person to the ICC (in their own initiative): According to Section 23 para. 1 of the Federal Act on Cooperation with the ICC, the Public Prosecutor shall apply to the responsible national court for the person to be questioned if there are reasonable grounds to believe that the person wanted for surrender has committed a criminal offence within the jurisdiction of the ICC. Afterwards the court will submit a statement of the facts to the Federal Ministry of Justice, which in turn will contact the ICC in order to establish whether the ICC is formally going to request the surrender of the person.

Further detention and Surrender: If the ICC formally requests the arrest and the surrender of an accused, the Public Prosecutor shall, according to Section 26 para. 1 of the Federal Act on Cooperation with the ICC, apply to the competent court for the approval of an arrest warrant and the imposition of detention pending surrender. The court shall order the surrender of the accused to the ICC in accordance with the provisions set out by Section 26 paras. 2 to 9. The underlying suspicion and the grounds for detention are not to be examined by the court.

Simplified surrender procedure: this procedure can only apply in case the person wanted agrees to the surrender to the ICC.

Transfer: After the decision to surrender the person to the ICC has become final, the national court shall instruct the security authority to surrender the person to the ICC without delay. Unless there are serious security concerns or the ICC requests other means of transfer, the person shall be transported by air under escort of Austrian officials (Section 27 para 1 Austrian Act on Cooperation with the ICC).

(b) Interim release and release of persons (acquittal, non-confirmation of charges, etc.);

According to Section 24 para. 2 of the Federal Act on Cooperation with the ICC, provisional custody pending surrender may not be imposed or maintained if the purposes of detention can be achieved by concurrent (national) criminal detention, pre-trial detention, or extradition detention. In this case, the court shall order such deviations from detention conditions that are indispensable for the purposes of the provisional custody pending surrender requested by the ICC. In all other respects, the provisions of the CCP on the conditions for pre-trial detention shall apply.

According to Section 24 para. 3 of the Federal Act on Cooperation with the ICC, the provisional custody pending surrender has to be terminated if the request for surrender and the attached documents are not transmitted within 60 days from the date of arrest. The release shall not prevent a new arrest and surrender procedure if the request for surrender and the attached documents are transmitted at a later date.

According to Section 26 para. 5 of the Federal Act on Cooperation with the ICC, pending the order of surrender, the accused has the right to apply for his provisional release. In deciding on such an application, it has to be examined whether, irrespective of the gravity of the crimes charged, there are urgent and exceptional circumstances justifying provisional release. Also, it has to be examined whether the purpose of detention can be achieved by milder means (Section 173 para. 5 CCP; e.g.: vows, instructions, provisional probationary assistance, removal of travel documents / driving licence, bail etc.). Such an application shall not have suspensive effect.

According to Section 28 para. 2 of the Federal Act on Cooperation with the ICC, the provisional custody pending surrender shall immediately end and the detention order revoked if

- 1. the ICC so requests or otherwise revokes its request for surrender,*
- 2. it is determined that the person arrested is not prima facie identical to the person sought or*
- 3. the ICC determines that it lacks jurisdiction or that the proceedings before the Court are inadmissible.*

(c) Cooperation with OTP investigations;

According to Section 2 para. 1 of the Federal Act on Cooperation with the ICC, all members of public authorities at federal level, in particular the courts, public prosecutors' offices, law enforcement and security authorities, are obliged to fully cooperate with the ICC. Para. 2 provides that this obligation shall in particular consist in making available to the ICC information and documents relating to suspected crimes within its jurisdiction, in rendering legal assistance and in transferring accused persons to it, as well as in taking over convicted persons for execution of sentences and in enforcing pecuniary sanctions and forfeiture measures.

(d) Cooperation with the Court on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes;

With regard to the investigative measures in question, there are no specific rules set out by the Federal Act on Cooperation with the ICC. Rather, its Section 14 on mutual legal assistance generally refers to the relevant Austrian domestic law. Hence, the relevant provisions of the Austrian CCP are to be applied. They provide for all of the above-mentioned measures. Measures that are available at national level are available to the ICC under the same conditions.

In terms of procedure, Section 14 para. 3 of the Federal Act on Cooperation with the ICC provides that members and investigators of the ICC and other persons involved in the proceedings, as well as their legal counsels, may, at the request of the ICC, be permitted to be present and to participate in acts of mutual legal assistance. For this purpose, they shall be informed of the place and time of the performance of the acts of mutual legal assistance. According to para. 4, the execution of a request by the ICC for criminal police investigations or information only may also be carried out by the Federal Ministry of the Interior in accordance with Austrian law without referral to the court.

(e) Enforcement of sentences;

The Federal Act on Cooperation with the ICC includes provisions both for the enforcement of custodial sentences (Section 32 et subsequent) as well as for pecuniary sanctions and forfeiture measures (Section 41 et subsequent). In addition, Austria has concluded an Agreement with the ICC on the Execution of Sentences of the Court (Federal Law Gazette III No. 201/2005), which is attached to this questionnaire as Annex.

Custodial sentences: According to Section 32 para. 1 of the Federal Act on Cooperation with the ICC, the Federal Minister for Foreign Affairs may, in agreement with the Federal Minister of Justice, by a declaration addressed to the ICC, express the willingness of the Republic of Austria to accept persons for the enforcement of sentences of imprisonment imposed by the ICC. The declaration may be limited in time with respect to the period of acceptance for execution and may be restricted with respect to the number and type of persons to be accepted. Para. 2 provides for the immediate execution of a custodial sentence imposed by the ICC without any adjustment, though in accordance with Austrian domestic law. Para. 3 provides that the ICC has the authority to supervise the execution of sentences of imprisonment imposed by it. Upon request of the ICC, its members shall be granted access to the enforcement facilities. Para. 4 states that the ICC shall be informed in case a convicted person qualifies for a less severe enforcement measure than imprisonment under Austrian law, i.e. involving work without guard outside a prison. The opinion of the ICC shall be taken into account in the decision whether the less severe enforcement measures are granted or

not. According to para. 5, the convicted persons shall be allowed unhindered and confidential written communication with the ICC.

According to Section 33 of the Federal Act on Cooperation with the ICC, the ICC needs to address a request concerning the enforcement of a custodial sentence in Austria to the Minister of Justice who is only allowed to deny the request if it entailed unacceptable disadvantages for the security and public order of the Republic of Austria. However, it can never deny requests concerning Austrian nationals. Section 33 of the federal act also contains detailed procedural provisions for such a request. Section 34 of the federal act contains the principle of speciality, Section 35 imposes reporting obligations on the prison.

According to Section 36 of the Federal Act on Cooperation with the ICC, the ICC has the sole authority to decide on the conditional release of the convicted, as well as the power to pardon the latter or to reduce the sentence initially imposed. Respective applications are thus to be forwarded to the ICC. The detained person shall be immediately released if the ICC so decides.

The costs are born by Austria (Section 39 of the Federal Act on Cooperation with the ICC).

Pecuniary sanctions and forfeiture measures: Section 41 of the Federal Act on Cooperation with the ICC contains provisions on the enforcement of pecuniary sanctions and forfeiture measures and the procedural aspects related thereto. According to its para. 1, a request by the ICC for the enforcement of a decision imposing a pecuniary sanction or forfeiture measures shall be complied with by the competent court if the pecuniary sanction is expected to be collected within the country or if the property or assets covered by the decision are located within the country.

(f) Witness protection;

The Federal Act on Cooperation with the ICC does not provide for special provisions concerning the protection of victims and witnesses. Therefore, the relevant provisions of the Austrian CCP apply.

Section 162 CCP – Anonymous Answers:

“If because of particular material facts there is reason to fear that the witness or a third person may be exposed to serious danger to life, health, physical integrity, or freedom by stating the name and other information about the person (Section 161 para. 1) or by answering questions from which inferences about the person may be drawn, the witness may be permitted not to answer such questions. In such cases, it is also permissible for the witness to change his or her appearance in a manner that he or she is not recognizable. The witness is, however, not permitted to disguise his or her face in a manner that his or her facial expression cannot be observed since this is vital to assess the credibility of the witness’ answers.”

Section 165 CCP – Adversarial questioning of the accused or a witness:

“(1) Adversarial questioning as well as audio and video recordings of adversarial questioning of the accused or a witness are permissible if there is reason to believe that questioning in a main trial will not be possible for factual or legal reasons.

(2) Adversarial questioning must be carried out by the court at the request of the prosecution authority, applying, *mutatis mutandis*, the provisions under Sections 249 and 250 (Section 104). The court has to afford the prosecution authority, the accused, the victim,

private parties, and their representatives the opportunity to participate in adversarial questioning and to pose questions.

(3) If a victim with special protection needs (Section 66a) or another witness who meets the criteria listed in Section 66a is questioned, or for other purposes to establish the truth, the opportunity to participate must be restricted, upon request by the prosecution authority or ex officio, in a manner that participants in the proceedings (para. 2) and their representatives can follow the questioning using technical audio and video transmission equipment and to exercise their right to pose questions without being present at the questioning. In particular, if special protection needs exist, an expert witness may be commissioned to carry out the questioning. In any event, insofar as possible, care has to be taken that the witness does not encounter the accused and other participants in the proceedings.

(4) Witnesses who are minors and whose sexual sphere might have been violated through the criminal offence the accused allegedly committed must in any case be questioned by the court in the way and manner set out in para. 3, other victims with special protection needs (Section 66a) and witnesses mentioned in Section 156 subpara. 1 as well as witnesses to whom the criteria mentioned in Section 66a para. 1 apply, must be questioned in that manner if requests are made by them or by the prosecution authority.

(5) Prior to questioning, the court must further inform the witness that the transcript may be read out and that audio or video recordings of the questioning may be shown in the main trial, even if in the further proceedings the witness refuses to give testimony. If an expert witness has been commissioned to carry out the questioning (para. 3), the expert witness must provide that information and the information under Section 161 para. 1 to the witness. Regard must be had to the age and condition of the witness in this context. The information provided and statements made in relation to that information must be transcribed.

(5a) If the questioning involves the use of technical audio and video transmission equipment, the recording must in every case be transcribed in full without delay and must be added to the file as a transcript. In cases in which a witness whose sexual sphere might have been violated through the criminal offence the accused allegedly committed is questioned, the recording must be stored by the court (Section 31 para. 1) and must be transferred to the competent court after the indictment has been filed. Contrary to Section 52 para. 1, in such cases there is no right to obtain a copy.

(6) Apart from that, the provisions in this Division apply mutatis mutandis.

Section 10 CCP (...)

(3) During the proceedings, all authorities, institutions and persons engaged in the criminal process have the duty to treat victims with due regard for their personal dignity and respect their interest to keep their personal sphere protected. This specifically concerns the transfer of photographs and the communication of personal information that may lead to their identity being released to a larger number of people without this being warranted for criminal justice purposes. In their decisions about the conclusion of the proceedings, the prosecution authority and the court must always examine the victims' reparation interests and support them to the greatest possible extent.

Rights of victims
Section 66 CCP

(1) Independent of their role as private parties, victims have the right

1. *to be represented (Section 73),*
- 1a. *to receive written confirmation of their report of a crime (Section 80 para. 1),*
- 1b. *to have their special protection needs assessed as soon as possible (Section 66a),*
2. *to access files (Section 68),*
3. *to obtain information about the subject matter of the proceedings and about their principal rights before questioning (Section 70 para. 1),*
4. *to be notified about the progression of the proceedings (Sections 177, para. 5, 194, 197 para. 3, 206 and 208 para. 3),*
5. *to obtain interpretation aid through an interpretation service according to para. 3,*
6. *to participate in the adversarial examination of witnesses and accused (Section 165) and in a re-enactment of the crime (Section 150 para. 1),*
7. *to be present during the main trial, to question the defendant, witnesses and expert witnesses and to be heard concerning their claims,*
8. *to demand resumption of proceedings that were ceased by the prosecution authority (Section 195 para. 1).*

(3) Interpretation aid is to be provided by applying mutatis mutandis the provisions under Section 59. Essential files that have to be translated at the request of the victim include the written confirmation of the report of the crime (Section 80 para. 1), notification of and the reasons for cessation of investigation proceedings (Section 194 para. 2) as well as copies of the verdict and the penal order; in assessing the necessity, the necessity to preserve the rights and interests of the victim (Section 10) substitutes the necessity to preserve the rights of defence.

Special protection needs of victims
Section 66a CCP

(1) Victims have the right to have their special protection needs assessed and determined as soon as possible subject to their age, psychological and health condition as well as the type and specific circumstances of the criminal offence. In any case, victims with special protection needs are those victims,

1. *whose sexual integrity and self-determination might have been violated,*
2. *for whose protection a prohibition to enter and approach could be issued for protection against violence according to Section 38a para. 1 Security Police Act [Sicherheitspolizeigesetz (SPG)],*
3. *who are minors (Section 74 para. 1 subpara. 3 Criminal Code).*

(2) Victims with special protection needs have the right:

- 1. to demand to be interviewed in investigation proceedings by a person of the same gender if possible,*
- 1a. to demand that interpretation services (Section 66 para. 3) be provided by a person of the same sex whenever possible during questioning of the victim in the preliminary proceedings and in the main hearing,*
- 2. to refuse to answer questions concerning details of the criminal offence, if they consider giving their account to be unreasonable, or questions concerning details of most personal private sphere (Section 158 para. 1 subparas. 2 and 3, para. 2),*
- 3. to demand to be interviewed in a considerate manner in investigation proceedings and in the main trial (Sections 165, 250 para. 3), namely that a victim who is a minor whose sexual sphere might have been violated by the accused through the offence he or she is accused of is, in any case, interviewed in the manner described in Section 165 para. 3, if necessary by an expert witness,*
- 4. to demand to exclude the public from the main trial (Section 229 para. 1),*
- 5. to be informed ex officio immediately according to Sections 172 para. 4, 177 para. 5 and 181a,*
- 6. to consult a person who they trust if questioned (Section 160 para. 2).*

(3) If the legal guardian of a victim who is a minor is suspected or convicted of the criminal offence, if there is any other risk of a conflict of interests between the victim who is a minor and his or her legal guardian, or if no legal guardian can assist the victim who is a minor in the criminal process, it must be suggested to the Guardianship Court to assign a legal representative.

(4) A victim who upon request is not afforded the rights under para. 2 must be informed about the reasons.

Section 66b CCP

(1) At their request,

- a) victims within the meaning of Section 65 subpara. 1 lit. a or b,*
- b) victims (Section 65 subpara. 1) of terrorist offences (Section 278c of the Criminal Code),*
- c) victims (Section 65 subpara. 1) of persistent stalking (Section 107a of the Criminal Code), persistent harassment involving telecommunication or computer systems (Section 107c of the Criminal Code) and hate speech (Section 283 of the Criminal Code),*
- d) victims (Section 65 subpara. 1) of criminal defamation (Section 111 of the Criminal Code), accusation of prior offences that have been served or waived (Section 113 of the Criminal Code), insult (Section 115 of the Criminal Code) and false accusation (Section 297 of the Criminal Code), if it can be assumed on the basis of certain*

indications that such an act was committed by means of a telecommunications or computer system and
e) minors who have witnessed violence in the social environment (violence in the family, violence against children)

are entitled to psycho-social or legal support for the proceedings insofar as this is necessary to preserve the rights of the victim, taking into account their personal concerns. Victims whose sexual integrity might have been violated and who are under the age of 14 are afforded psycho-social support for the proceedings in any case.

(2) Psycho-social support for the proceedings includes the preparation of the person concerned for the proceedings and for the emotional stress associated with the proceedings as well as accompanying the person to questioning during investigation proceedings and at trial; legal support for the proceedings includes legal advice and representation by an attorney.

(3) The Federal Minister for Justice is authorized to enter into agreements with established, suitable institutions so that they, after assessing the statutory requirements, provide support for the proceedings to victims the persons referred to in para. 1 and to issue further regulations concerning more detailed provisions on the prerequisites for the commissioning of such institutions and, in agreement with the Federal Minister for Women and Integration in the Federal Chancellery and the Federal Minister for Labour, Family and Youth, on quality standards for support in proceedings, in particular on the initial and further training of persons providing such support.

Right to information

Section 70 CCP

(1) As soon as investigation proceedings are conducted, the criminal investigation authority or the prosecution authority has to inform the victims about their fundamental rights (Sections 66 to 67). This may only be omitted so long as special circumstances give reason to fear that the purpose of the investigations would otherwise be jeopardized. Victims within the meaning of Section 65 subpara. 1 are to be informed no later than their questioning within the meaning of Sections 172 para. 4, 177 para. 5 and 181a about their right to be notified, upon request, about the escape and re-arrest of the escapee (Section 106 para. 4 Corrections Act [Strafvollzugsgesetz (StVG)]) and about the unsupervised exit of the facility or the imminent or recent discharge of the prisoner (Section 149 para. 5 Corrections Act). Section 50 para. 2 applies mutatis mutandis.

(2) No later than before their first questioning victims within the meaning of Section 66b para. 1 lit. a to d are to be informed about the conditions for legal support during the proceedings and victims with special protection needs about their rights under Section 66a.

(3) Once the victim has been informed, the victim may at any stage during the proceedings declare that he or she refrains from receiving further notifications and summons, in which case any further participation of the victim will cease.

Conducting the questioning
Section 160 CCP

(1) Generally, each witness must be questioned individually and in absence of other participants in the proceedings and other witnesses. Persons who due to illness, frailty, or for other compelling reasons are unable to abide by the summons, may be heard at their home or at their other abode.

(2) At the request of the witness, the presence of a person of trust of the witness must be allowed at the questioning. The summons has to state this right. Persons suspected of involvement in the criminal offence, persons questioned or to be questioned as witnesses, and other participants in the proceedings may be excluded from being a person of trust; the same applies to persons who give reason to fear that their presence would impact on the witness giving free and full answers. Persons of trust have a duty to keep their observations in the course of questioning confidential (Section 301 para. 2 Criminal Code).

(3) A person of trust must be brought in in any case when a person suffering mental illness or mental impairment or a person under the age of 14 is questioned.

Section 161 CCP

(1) Prior to the beginning of questioning, the witness must be reminded to answer accurately and in full. Next, the witness must be asked about his or her given name, family name, place and date of birth, occupation, place of residence or other address appropriate for the summons, and about the witness' relation to the accused. If other persons are present, care needs to be taken that the personal circumstances of the witness do not become publicly known.

(2) Subsequently, the witness is asked to provide a coherent description of his or her observations. Next, where applicable, anything unclear or contradictory must be resolved.

(3) Questions that involve presenting the witness with circumstances that are yet to be ascertained through the witness' answers may only be asked if this is necessary to understand the context; such questions and answers given to them must be transcribed verbatim. Questions about criminal court proceedings against the witness, if any, about their outcome as well as questions about circumstances concerning the most private sphere of the witness must not be asked, unless this is vital in the specific circumstances of the case.

Conducting the arrest
Section 172 CCP (...)

(4) If the victim so requested, the victim must be notified immediately of the release of the accused pursuant to this provision and by stating the grounds for release and the more menial means imposed on the accused. However, victims under Section 65 para. 1 subpara. 1 lit. a and victims with special protection needs (Section 66a) must be informed ex officio without delay. The prosecution authority must make these notifications, if the prosecution

authority, after the accused has been placed in a detention facility, declares that it will not request remand; in any other case the criminal investigation authority must make these notifications.

Lifting of remand

Section 177 CCP (...)

(5) If the accused is released, the court must proceed pursuant to Section 172 para. 4 first and second sentence and must notify the criminal investigation authority about this communication.

Escape

Section 181a

The victim, if the victim so requested, must be notified immediately if an accused held in remand has escaped and once the accused has been recaptured. Section 172 para. 4 second sentence applies mutatis mutandis. The detention facility must notify the prosecution authority of the escape and the recapture without delay; the prosecution authority must then notify the victim.

Section 228 CCP (...)

(4) Television and radio recordings and transmissions as well as video recordings and the taking of photographs of court proceedings are prohibited.

Section 229 CCP

(1) The public may be excluded from the main trial, ex officio or at the request of a participant in the proceedings or of a victim,

- 1. because of endangerment of public order or national security;*
- 2. prior to consideration of a defendant's, victim's, witness', or third person's personal or private sphere;*
- 3. to protect the identity of a witness or a third person for one of the reasons set out in Section 162.*

(2) Decisions about an exclusion under para. 1 are made by order of the Court of Lay Assessors at any point during the proceedings. The exclusion may be made for the whole proceedings or any part thereof, insofar as this is necessary because of prevailing interests worthy of protection (para. 1).

(3) Orders by the court under para. 2 and their reasons must be delivered in a public sitting; no separate appellate instruments suspending the further trial are available.

(4) The delivery of a judgment (Sections 259, 260) must always occur publicly.

Section 247a CCP

(1) Witnesses who, because of their age, illness, frailty or who for other relevant reasons, are incapable of appearing before the court, may be questioned by using technical measures for audio and video transmission. The same applies in cases under Section 153 para. 4 if prosecutor and defence counsel agree or if they apply jointly.

Section 250 CCP

(1) In exceptional cases, the presiding judge is authorized to let the defendant exit from the courtroom while a witness or co-accused is examined. As soon as the defendant has returned to the courtroom and has been questioned about the matters raised during the defendant's absence, the presiding judge must inform the defendant about the action taken during the defendant's absence, especially about any testimony that was given during that time.

(2) If the presiding judge fails to inform the defendant accordingly, this must be added before the closing of the evidence proceedings, otherwise the trial will be void.

(3) Victims under Section 65 subpara. 1 lit. a and victims with special protection needs (Section 66a) must be questioned at their request by the presiding judge in the manner set out in Section 165 para. 3; otherwise, when questioning witnesses, the presiding judge has to apply Section 165 mutatis mutandis. In so doing, the presiding judge also has to give members of the Court of Lay Assessors who are not present during questioning the opportunity to follow the questioning of the witnesses and to pose questions to the witnesses.

Section 252 CCP

(1) Transcripts of the questioning of co-accused and witnesses, transcripts of the hearing of evidence, official notes and other official documents which record the testimony of witnesses or co-accused, opinions given by expert witnesses as well as audio and video recordings of the questioning of co-accused or witnesses may only be read out or presented in the following cases, otherwise the trial will be void:

(...)

2a. if witnesses rightfully refuse to give testimony (Sections 156, 157, and 158) and the prosecution authority and the defendant had the opportunity to participate in the questioning by the court (Section 165, 247); (...).

(g) Other forms of cooperation (see in particular Article 93 of the Rome Statute).

According to Section 13 para. 1 of the Federal Act on Cooperation with the ICC, the ICC shall be authorized to examine independently witnesses and accused persons in Austria, as well as to conduct an inspection in public places without making any changes, and to take other evidence. The Federal Ministry for Foreign Affairs shall be notified of this in advance, stating the time and the subject of the investigation. The ICC shall neither apply, nor threaten coercive measures in the conduct of the investigation. Such cases do not require special consent to the performance of duties by members and investigators of the ICC in Austria.

According to para. 2, the ICC shall be authorized to conduct hearings in Austria unless the Federal Minister for Foreign Affairs objects to such a request because of serious concerns affecting the security of the Republic of Austria or the ICC.

Para. 3 states that the Austrian authorities shall assist the members and investigators of the ICC in their independent activities in Austria. In this connection, they may take coercive measures only if a written request for legal assistance has been submitted by the Court and the requested legal assistance has been ordered by the Austrian court. The admissibility and enforcement of such coercive measures shall be governed by Austrian law.

According to Section 16 para 1 of the Federal Act on Cooperation with the ICC, the ICC shall be authorized to directly mail summonses and other documents to persons residing in the Republic of Austria. This shall not exclude service through the intermediary of the Federal Ministry of Justice.

According to Section 18 para. 1 of the Federal Act on Cooperation with the ICC, a person in pre-trial or criminal detention shall, at the request of the ICC, be surrendered to the Court for the purpose of identification, interrogation, examination or other investigative act under conditions to be agreed upon, if he or she consents to the surrender.

According to Section 19 para. 1 of the Federal Act on Cooperation with the ICC, mutual legal assistance shall, at the request of the ICC, be granted by transmitting objects, files or copies of files (photocopies) and by granting access to files. Paras. 2 to 6 contain special provisions for sensitive information in relation to national security, particularly in the context of military intelligence. According to Section 20 of the federal act, information and files, which have been provided to Austria by other states or international organizations, shall only be sent to the ICC with the consent of the latter.

8. Does the implementing legislation designate a channel of communication with the Court?

- *Yes. Section 8 of the Federal Act on Cooperation with the ICC provides for the following:*
- *Communication with the ICC shall, in principle, take place through the intermediary of the Federal Ministry for Foreign Affairs. Case files shall also be transmitted to the ICC through the intermediary of the Federal Ministry for Foreign Affairs if the requests of the ICC have reached the Austrian judicial or administrative authorities by other means.*
- *The courts and public prosecutor's offices shall submit communications addressed to the ICC as well as the execution files to the Federal Ministry of Justice, which is then in charge of forwarding the latter.*
- *In urgent cases and in the context of criminal administrative assistance, direct communication of the Austrian authorities with the ICC or communication through INTERPOL shall be permitted.*

9. Does the implementing legislation create a central national authority or designate a national focal point for cooperation with the Court?

- *The implementing law neither creates a central authority, nor does it set up a focal point, but it regulates the channel of communication (see Section 8 para 2 of the Federal Act on Cooperation with the ICC). Therefore, the Austrian Courts and Prosecution Services will have to communicate through the Federal Ministry of Justice (and the Federal Ministry for Foreign Affairs).*

10. Does the implementing legislation provide for the privileges and immunities of the Court (See in particular Article 48 of the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court)?

- *No. However, Austria ratified the Agreement on the Privileges and Immunities of the Court on 17 December 2003, which is applicable in Austria like a domestic law (Federal Law Gazette III No. 13/2005).*

11. What obstacles, if any, did your Government face in its efforts to implement the provisions of the Statute? How did your Government manage to overcome such obstacles?

- *There were no specific obstacles in implementing the provision of the Statute. However, when preparing the implementing legislation, it has proven to be very helpful to draw on the expertise not only of criminal lawyers, but also of international law experts and experts of international humanitarian law.*

12. Did your Government benefit from any form of assistance in the process of implementing the Statute?

- *In the process of implementing the Statute, the Government benefitted from the excellent cooperation with Austrian Universities, which provided most valuable expertise.*

13. Has your government initiated or considered additional steps for the implementation of the Statute in national legislation?

- *Austria is currently preparing the ratification of the amendments to Section 8 of the Rome Statute adopted during the ASP-16 and ASP-18 and their national implementation.*

**AGREEMENT BETWEEN THE FEDERAL GOVERNMENT OF AUSTRIA AND THE
INTERNATIONAL CRIMINAL COURT ON THE ENFORCEMENT OF SENTENCES OF THE
INTERNATIONAL CRIMINAL COURT**

The Federal Government of Austria (hereinafter referred to as "Austria") and
The International Criminal Court (hereinafter referred to as "the Court"),

PREAMBLE

RECALLING Article 103 of the Rome Statute of the International Criminal Court adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries (hereinafter referred to as "the Rome Statute"), according to which sentences of imprisonment pronounced by the Court shall be served in a State designated by the Court from a list of States which have indicated their willingness to accept sentenced persons;

RECALLING Rule 200 of the Rules of Procedure and Evidence of the Court (hereinafter referred to as the "Rule(s)"), according to which the Court may enter into bilateral arrangements with States with a view to establishing a framework for the acceptance of persons sentenced by the Court, consistent with the Rome Statute;

RECALLING the widely accepted international treaty standards governing the treatment of prisoners including the Standard Minimum Rules for the Treatment of Prisoners approved by ECOSOC resolutions 663 C (XXIV) of 31 July 1957 and 2067 (LXII) of 13 May 1977, the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment adopted by General Assembly resolution 43/173 of 9 December 1988, and the Basic Principles for the Treatment of Prisoners adopted by General Assembly resolution 45/111 of 14 December 1990;

NOTING the willingness of Austria to accept persons sentenced by the Court;

IN ORDER to establish a framework for the acceptance of persons sentenced by the Court and to provide for conditions under which the sentences will be enforced in the territory of Austria;

HAVE AGREED as follows:

Article 1

Purpose and scope of the Agreement

This Agreement shall regulate matters relating to or arising out of the enforcement of sentences imposed by the Court in prison facilities made available by Austria

Article 2

Procedure

1. The Presidency of the Court (hereinafter referred to as "the Presidency"), when notifying Austria of its designation to enforce a sentence in a particular case, shall transmit to Austria the following information and documents:

- a) the name, nationality, date and place of birth of the sentenced person;

- b) a copy of the final judgment of conviction and the sentence imposed;
- c) the length and commencement date of the sentence, including information on any pre-trial detention, and the time remaining to be served;
- d) after having heard the views of the sentenced person, any necessary information concerning the state of his or her health (medical or psychological), including any medical treatment that he or she is receiving.

2. Austria shall submit the notification of the designation to the competent national authorities.

3. The competent national authorities of Austria shall promptly decide upon the Court's designation, in accordance with its national law, and inform the Presidency accordingly.

Article 3 ***Delivery***

The Registrar of the Court, in consultation with the competent national authorities of Austria, shall make appropriate arrangements for the proper conduct of delivery of the sentenced person from the Court to the territory of Austria.

Article 4 ***Enforcement***

1. Subject to the conditions contained in this Agreement, the sentence of imprisonment shall be binding on Austria, which shall in no case modify it.

2. The enforcement of a sentence of imprisonment shall be subject to the supervision of the Court and shall be consistent with widely accepted international treaty standards governing treatment of prisoners.

3. If, after delivery of the sentenced person to the territory of Austria, the Court, in accordance with the Rome Statute and the Rules, orders that the sentenced person appear for a hearing before the Court, the sentenced person shall be transferred temporarily to the Court, conditional on his/her return to the territory of Austria within the period decided by the Court. The time spent at the Court shall be deducted from the overall sentence to be served in Austria.

Article 5 ***Supervision of enforcement***

In order to supervise the enforcement of sentences of imprisonment, the Presidency may, *inter alia*:

- a) when necessary, request any information, report or expert opinion from Austria;

b) where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying Austria, for meeting the sentenced person and hearing his or her views, without the presence of national authorities of Austria;

c) where appropriate, give Austria an opportunity to comment on the views expressed by the sentenced person under paragraph (b) of this article.

Article 6 *Conditions of imprisonment*

1. The conditions of imprisonment shall be governed by the law of Austria and shall be consistent with widely accepted international treaty standards governing treatment of prisoners; in no case shall such conditions be more or less favorable than those available to prisoners convicted of similar offences in Austria.

2. Austria shall notify the Presidency of any circumstances, including the exercise of any conditions agreed when declaring its willingness to be included in the List of States of enforcement, which could materially affect the terms or extent of the imprisonment. The Presidency shall be given at least 45 days' notice of any such known or foreseeable circumstances. During this period, Austria shall take no action that might prejudice its obligations. Where the Presidency can not agree to the aforementioned circumstances, it shall inform Austria and transfer the sentenced person to a prison of another State.

3. When a sentenced person is eligible for a prison programme or benefit available under the national law of Austria which may entail some activity outside the prison facilities, Austria shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.

Article 7 *Inspection*

1. The competent national authorities of Austria shall allow the inspection of the conditions of imprisonment and treatment of the sentenced person(s) by the Court, or an entity designated by it, at any time and on a periodic basis, the frequency of visits to be determined by the Court. A confidential report based on the findings of these inspections shall be submitted to Austria and to the Presidency.

2. Austria and the Presidency shall consult each other on the findings of the reports referred to in paragraph 1 of this article. The Presidency may thereafter request Austria to report to it any changes in the conditions of imprisonment suggested in the report.

Article 8 *Communication*

Communications between a sentenced person and the Court shall be unimpeded and confidential.

Article 9*Ne bis in idem*

The sentenced person shall not be tried before a court of Austria with respect to conduct which formed the basis of crimes for which the person has already been convicted or acquitted by the Court.

Article 10*Rule of speciality*

1. The sentenced person transferred to Austria pursuant to this Agreement shall not be subject to prosecution, punishment or to extradition to a third State for any conduct engaged in prior to that person's transfer to the territory of Austria, unless such prosecution, punishment or extradition has been approved by the Presidency at the request of Austria.

2. A request for approval shall be accompanied by the following documents:

- a) A statement of the facts of the case and their legal characterization;
- b) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;
- c) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;
- d) A protocol containing views of the sentenced person obtained after the person has been informed sufficiently about the proceedings.

3. In the event of a request for extradition made by a third State, Austria shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.

4. The Presidency may, in relation to paragraphs 2 and 3 of this article, request any document or additional information from Austria or the third State requesting the extradition.

5. The Presidency shall make a determination as soon as possible and shall inform the requesting State accordingly. If the request submitted under paragraphs 2 and 3 of this article concerns the enforcement of a sentence, the sentenced person may serve that sentence in Austria or be extradited to a third State only after having served the full sentence pronounced by the Court.

6. Paragraph 1 of this article shall cease to apply if the sentenced person remains voluntarily for more than 30 days in the territory of Austria after having served the full sentence imposed by the Court, or returns to the territory of that State after having left it.

7. The Presidency may authorise the temporary extradition of the sentenced person to a third State for prosecution only if it has obtained assurances which it deems to be sufficient that the sentenced person will be kept in custody in the third State and transferred back to Austria, after the prosecution.

Article 11***Appeal, revision and reduction of sentence***

1. The Court alone shall have the right to decide on any application for appeal and revision in accordance with Articles 105 of the Statute.
2. The Court alone shall have the right to decide any reduction of sentence in accordance with Article 110 of the Statute and Rule 223. It shall rule on the matter after having heard the sentenced person and after having received any relevant information from Austria.

Article 12***Escape***

1. If the sentenced person has escaped, Austria shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record.
2. If the sentenced person escapes from custody and flees the territory of Austria, Austria may, after consultation with the Presidency, request the person's extradition or surrender from the State in which the person is located pursuant to any existing bilateral or multilateral arrangements, or may request that the Presidency seek the person's surrender, in accordance with Part 9 of the Rome Statute.
3. If the State in which the sentenced person is located, agrees to surrender him or her to Austria, pursuant to either international agreements or its national legislation, Austria shall so advise to the Registrar in writing. The person shall be surrendered to Austria as soon as possible if necessary in consultation with the Registrar, pursuant to Rule 225.
4. If the sentenced person is surrendered to the Court, then the Court shall transfer him or her to Austria. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of Austria, designate another State, including the State to the territory of which the sentenced person has fled.
5. In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his/her escape and, where paragraph 4 of this article is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he/she was located shall be deducted from the sentence remaining to be served.

Article 13***Change in designation of State of enforcement***

1. The Presidency, acting on its own motion or at the request of the sentenced person or the Prosecutor, may, at any time, decide to transfer a sentenced person to a prison of another State. In such a case, the Presidency shall notify the sentenced person, the Prosecutor, the Registrar and Austria.
2. A sentenced person shall be entitled, at any time, to apply to the Presidency to be transferred from Austria.

3. If the Presidency decides not to change Austria as State of enforcement, it shall notify the sentenced person, the Prosecutor, the Registrar and Austria.

Article 14
Termination of enforcement

1. The enforcement of the sentence shall cease:
 - (a) when the Court's sentence has been completed;
 - (b) upon the demise of the sentenced person;
 - (c) following a decision of the Court to transfer the sentenced person to another State in accordance with the Rome Statute and the Rules;
 - (d) upon release following proceedings under Article 11.
2. The competent national authorities of Austria shall terminate the enforcement of the sentence as soon as they are informed by the Court of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 15
Transfer of the sentenced person upon completion of the sentence

1. Following completion of the sentence, the sentenced person who is not a national of Austria may, in accordance with the law of Austria, be transferred to a State which is obliged to receive him or her, or to another State which agrees to receive him or her, taking into account any wishes of the person to be transferred to that State, unless Austria authorizes the person to remain in its territory.
2. Subject to the provisions of Article 10, Austria may also, in accordance with its national law, extradite or otherwise surrender the person to a State which has requested the extradition or surrender of the person for purposes of trial or enforcement of a sentence.

Article 16
Impossibility to enforce sentences

1. If, at any time after the decision has been taken to enforce a sentence, further enforcement has, for any legal or practical reasons and beyond the control of the competent national authorities, become impossible, Austria shall promptly inform the Presidency.
2. The Court shall make appropriate arrangements for the transfer of the sentenced person.
3. The competent national authorities of Austria shall allow at least sixty days following the notification of transfer by the Presidency before taking other measures on the matter.

Article 17
Information

1. Austria shall immediately notify the Presidency of the following:
 - (a) the completion of the sentence by the sentenced person, two months prior to the completion of the sentence;
 - (b) if the sentenced person has escaped;
 - (c) if the sentenced person has deceased; and
 - (d) a request of extradition of the sentenced person, including the documents and information referred to in Article 10, paragraph 2.
2. Austria shall notify the Presidency, 30 days before the scheduled completion of sentence served by the sentenced person, the relevant information concerning the intention of Austria to authorize the person to remain in its territory or the location where it intends to transfer the person.
3. Austria shall notify the Presidency of any important event concerning the sentenced person, and of any prosecution of that person for events subsequent to his/her transfer.
4. For purposes of extension of the term of imprisonment in accordance with Rule 146 sub-rule 5 of the Rules, the Presidency may ask for observations from Austria.

Article 18
Costs

1. The ordinary costs for the enforcement of the sentence in the territory of Austria shall be borne by Austria.
2. Other costs, including those for the transport of the sentenced person to and from the seat of the Court and those of any expert opinion or report requested by the Court, shall be borne by the Court.
3. In case of escape, the costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

Article 19
General cooperation

1. The competent national authorities of Austria shall take all necessary measures to ensure the efficient execution of this Agreement and to ensure the appropriate security, safety and protection of the sentenced persons.
2. The Court and Austria shall designate a focal point to facilitate the implementation of this Agreement.

Article 20

Entry into force

This Agreement shall enter into force 30 days after signature.

Article 21
Amendments

This Agreement may be amended in writing, after consultation, by mutual consent of the parties.

Article 22
Termination of the Agreement

Upon consultation, either party may terminate this Agreement, with two months prior written notice. Such termination shall not affect sentences in force at the time of the termination, and the provisions of this Agreement shall continue to apply until such sentences have been completed, terminated or, if applicable, the sentenced person has been transferred in accordance with Article 13 of this Agreement."

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.


Done at The Hague this 27 day of October , 2005 , in duplicate, in the English language.

FOR THE FEDERAL GOVERNMENT OF AUSTRIA:

Karin GASTINGER m.p.

FOR THE COURT:

Philippe KIRSCH m.p.

	Unterzeichner	serialNumber=1026761,CN=Bundeskanzleramt,C=AT
	Datum/Zeit	2017-11-27T11:37:20+01:00
	Prüfinformation	Informationen zur Prüfung des elektronischen Siegels bzw. der elektronischen Signatur finden Sie unter: https://www.signaturpruefung.gv.at Informationen zur Prüfung des Ausdrucks finden Sie unter: https://www.bka.gv.at/verifizierung
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