

AUSTRIA

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INTERNATIONAL FRAUD & ASSET TRACING
Law Over Borders Comparative Guide 2026

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1. LEGAL FRAMEWORK AND CAUSES OF ACTION

1.1 What are the principal civil causes of action available in cases of fraud?

In Austria, claims arising from fraudulent behaviour can either be based on criminal offences or on civil law provisions. With respect to civil causes, Austrian law offers various legal bases for claims, *inter alia*:

- If damages arise due to a fraudulent behaviour, the damaged party can raise damage claims pursuant to section 1293 et seq. of the Austrian Civil Code (ABGB). Prerequisites are *inter alia*:
 - an unlawful conduct;
 - negligent or intentional behaviour (fault);
 - damage; and
 - a causal link between the unlawful conduct and the damage.
- If a contract has been concluded due to fraudulent misrepresentation (*Arglist*) of the counterpart, the misled party is entitled to request the annulment of the contract pursuant to section 870 ABGB. This requires:
 - an unlawful and intentional misrepresentation of the fraudulent party;
 - that the misled party believed in the misrepresentation; and
 - a causal link between the misrepresentation and the contract conclusion.

Following an annulment, the misled party can request reversal of value transfers based on the laws of unjust enrichment.

The owner of an asset can also request the handover of its asset from any person who is in possession of the asset without a legal title.

1.2 Are there specific statutory regimes addressing fraud, dishonesty or financial crime?

Specific statutory regimes addressing fraud, dishonesty or financial crimes are set out in criminal law. In particular, section 146 et seq. of Austrian Criminal Code (StGB) contain various subcategories of fraud.

The Austrian Criminal Code also covers other kinds of fraudulent behaviour, such as breach of trust (*Untreue*) pursuant to section 153 StGB (i.e. the abuse of authority over another person's assets), embezzlement pursuant to section 133 StGB (misappropriation of another's entrusted assets) as well as various other comparable offences.

2. JURISDICTION AND APPLICABLE LAW

2.1 When will the local courts accept jurisdiction over international fraud claims?

When it comes to civil law claims with respect to parties located in the EU, international jurisdiction is in principle determined pursuant to the Brussels I Regulation. Pursuant to Articles 4 and 63 *leg cit*, the general rule is that Austrian courts are competent if the defendant is domiciled or has its seat in Austria. Furthermore, damage claims can be filed with Austrian courts if either the harmful event occurred or if the place where the direct damage was sustained is in Austria. If the EU regime is not applicable, it has to be assessed pursuant to Austrian national law whether Austrian courts have international jurisdiction.

In criminal law, Austrian courts mainly have jurisdiction if the offence was committed on Austrian territory. An offence is considered to have been committed in Austria if either the criminal act took place or should have taken place in Austria or if the result (e.g. the loss of assets) of the offence occurred or should have occurred in Austria.

2.2 What connecting factors are relevant?

Key connecting factors include the defendant's domicile and, in the case of legal entities, their statutory seat, central administration or the principal place of business. According to Austrian national law, pecuniary claims may be filed with an Austrian court where the defendant owns assets or where the claimed object is located in Austria.

In criminal law, jurisdiction of Austrian courts is in general given if either the criminal act took place or should have taken place in Austria or if the result of the offence occurred or should have occurred in Austria. Hence, Austrian courts are also competent for fraud cases in which the fraudulent act was committed abroad but its results occurred in Austria (and vice versa).

2.3 How do courts approach conflicts of law in fraud and asset tracing cases?

Conflict-of-law issues are primarily resolved under the Rome I and Rome II Regulations. Contractual fraud is generally governed by the law applicable to the contract, while tortious fraud claims are subject to the law of the country where the damage has occurred.

3. ASSET TRACING PRINCIPLES

3.1 What assets can be traced?

In general, Austrian law does not provide for specific claims or legal remedies in respect to asset tracing.

In the context of asset tracing, assets of any kind may be pursued in Austria, with the concept of "assets" being interpreted broadly. The scope covers both tangible and intangible assets, movable and immovable property, including cash, accounts and other bank-related assets, securities, motor vehicles, receivables, all kinds of proprietary rights such as shareholdings, businesses, or intellectual property rights (including patents, copyrights, and concessions).

Since the Criminal Procedure Amendment Act 2024, cryptoassets and virtual currencies have explicitly been defined as assets for these purposes. These include assets managed via wallets and transferable by means of public and private keys.

Moreover, the Austrian Enforcement Act (EO) enables creditors in possession of an enforceable title to apply for the appointment of a so-called enforcement administrator who is *inter alia* entitled to search and attach all kinds of assets and to look into the books and business records of the debtor.

3.2 Is tracing possible through mixed funds?

Asset tracing through mixed funds is usually not possible under Austrian law. Once funds, in particular money, are mixed with other assets, individual

attribution is usually lost. As a result, proprietary restitution claims are usually no longer available. Consequently, claimants must then rely on other claims, such as damage claims or unjust enrichment claims.

With regard to criminal law, the prevailing view follows the same approach, where contaminated and uncontaminated assets are indistinguishably mixed (for example, on bank accounts) contamination may only be assumed if the relevant portion of the assets must, as a matter of arithmetic necessity, also contain illicit proceeds. If a partial transaction can, from a purely mathematical perspective, also originate exclusively from lawful funds, the assets are considered decontaminated. Any other approach would violate the presumption of innocence under Article 6(2) of the European Convention on Human Rights. The Austrian Supreme Court has confirmed that prior indistinguishable mixing may, in any event, preclude forfeiture.

3.3 Are proprietary claims recognised in fraud cases?

Under Austrian law, an owner can have proprietary (*in rem*) claims in cases of fraud. For example, an owner can bring a vindicatory action requesting the handover of a specific asset from the person possessing the asset without legal title. In other cases, enforcing proprietary claims first requires the challenge of an underlying contract, for example in cases of fraudulent misrepresentation.

3.4 How do courts deal with tracing into substituted assets?

Automatic tracing into substituted assets is not recognised under Austrian civil law. Where an original asset is disposed of and replaced, no proprietary right arises with regard to the substitute asset. However, claimants may pursue damage or unjust enrichment claims and request the attachment and realisation of the substituted assets in enforcement proceedings. A common-law style doctrine of substitution does not exist.

With respect to criminal proceedings, Austrian courts take a differentiated approach to tracing into substitutes (surrogate assets) in the context of criminal asset forfeiture. Pursuant to section 20(2) StGB, forfeiture expressly extends to substitute values of the assets originally obtained. A substitute value is deemed to embody the original asset if it can be traced back to it through an unbroken chain of exchange transactions.

Substitute values include, in particular, the proceeds from a sale as well as compensation received in the event of destruction, damage or deprivation of the original asset.

In cases where a substitute value has not been secured or seized, a value-based forfeiture is possible.

4. INTERIM AND PROTECTIVE REMEDIES

4.1 What interim remedies are available to preserve assets?

Interim relief is available primarily by way of injunctions under the Austrian Enforcement Act. Such interim injunctions can secure monetary or non-monetary claims; consequently, potential interim measures may be the prohibition of

disposal of assets, the administration of property, etc. The applicant must credibly demonstrate both the claim and the risk to enforcement/irreparable harm. Common law remedies, such as worldwide freezing orders or search orders, are not available. An interim injunction can be requested before proceedings have commenced, while they are pending or after the proceedings have finished. If no main proceedings are pending when the interim relief is granted, the court will set a certain deadline to initiate such proceedings. If no main proceedings are initiated within the deadline or if the action fails, the respondent is entitled to a no-fault damage claim.

In criminal proceedings, the public prosecutor may order the seizure of assets pursuant to section 110(1) of the Code of Criminal Procedure (StPO). Such measures may serve to secure evidence, private-law claims or asset-related orders, such as forfeiture and confiscation. The scope of such measures also extends to monetary amounts, bank balances and securities.

5. DISCLOSURE AND INFORMATION GATHERING

5.1 What disclosure tools are available to identify assets and wrongdoers?

There is no general discovery in Austrian civil procedure. Disclosure is limited to specific mechanisms, such as targeted document production orders or court-ordered disclosure where claims are sufficiently substantiated. In enforcement proceedings, debtors can be ordered to provide a declaration of assets. In addition, an enforcement administrator can investigate the books and company records and request information and documents from the debtor.

Moreover, in Austria there are several publicly available registers, such as the land register, the trade register, the enforcement and the insolvency register, which can contain useful information for the identification of assets (e.g. real estate property, shareholdings, etc.). However, reviewing some of these registers requires an already existing enforceable title.

Much broader investigative powers exist in criminal proceedings. For example, both the public prosecutor and the court may order the disclosure of information on bank accounts and banking transactions, raids, examination of witnesses, surveillance measures, etc.

5.2 Is pre-action disclosure available?

In general, there is no pre-trial disclosure obligation of assets comparable to the Anglo-American pre-trial discovery. Claims for information can, as a rule, only be enforced in the context of court proceedings and require either a pre-existing civil law obligation to disclose assets or a substantiated suspicion that assets are being concealed or withheld.

6. CROSS-BORDER COOPERATION AND JUDICIAL ASSISTANCE

6.1 Can local courts assist foreign proceedings involving fraud and asset recovery?

Austrian courts may assist and grant judicial assistance in foreign civil and criminal proceedings upon request based on EU law (e.g. the EU Taking Evidence Regulation), international conventions (e.g. the Hague Evidence Convention)

or bilateral treaties. Assistance may include the taking of evidence, service of documents or asset preservation measures. Reciprocity or an applicable EU instrument is usually required.

6.2 How effective is cooperation with foreign courts and regulators?

Within the EU, cooperation is generally efficient and standardised. With non-EU countries, effectiveness largely depends on the applicable treaties.

6.3 Are there treaties or international conventions commonly relied upon?

In addition to the above-mentioned treaties, Austria is *inter alia* signatory to several international treaties, such as the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption, or the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. All of these treaties contain provisions on asset forfeiture and international cooperation.

On a European level, the European Convention on Mutual Assistance in Criminal Matters, together with its Additional Protocol, as well as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and its successor, the Warsaw Convention of 2005, are of particular significance.

7. ENFORCEMENT OF FOREIGN JUDGMENTS AND ORDERS

7.1 Can foreign judgments in fraud cases be recognised and enforced?

In respect of the enforcement of civil law judgments, a differentiation must be made between judgments rendered in EU states and non-EU judgments. While EU judgments, including preliminary injunctions, are in principle recognised pursuant to the Brussels I Regulation without any additional recognition procedure, non-EU judgments require a declaration of enforceability. According to the strict conditions of the Austrian law, enforceability of non-EU judgments is *inter alia* only granted if the judgment is enforceable in its state of origin, if reciprocity is formally guaranteed (typically if a treaty is in place between Austria and the state of origin providing for such reciprocity) and no grounds for refusal are given (e.g. a violation of the Austrian *ordre public*).

When it comes to judgments in criminal proceedings, the Austrian EU Judicial Cooperation Act governs the recognition and enforcement of criminal judgments and decisions rendered in EU Member States. With respect to non-EU states, enforcement is possible only on the basis of multi- and bilateral agreements, such as the European Convention on the International Validity of Criminal Judgments.

7.2 What is the process for enforcing foreign freezing or confiscation orders?

The enforcement of foreign seizure or confiscation orders in Austria also follows differentiated procedures depending on the origin of the decision. With regard to orders issued by EU Member States, Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders is applicable since December 2020. This Regulation is based on the principle of mutual recognition and, as a rule, provides for recognition and enforcement without any further formalities. Moreover, Regulation

(EU) 655/2014 enables creditors to freeze bank accounts in other Member States. Such European Account Preservation Orders are also recognised and enforced in Austria without the need for recognition or declaration of enforceability.

Freezing or confiscation orders from non-EU countries may be recognised and enforced if the prerequisites as stated in Question 7.1, above, are met.

8. INSOLVENCY AND FRAUD

8.1 How does insolvency law interact with fraud and asset recovery claims?

Once insolvency proceedings are opened, pending civil and enforcement proceedings are in principle suspended *ex lege*. Consequently, such claims must be registered in the insolvency proceedings. If the registered claim is not recognised, the creditor must file an action requesting recognition of its claims. Recognised claims are in principle satisfied *pro rata*. However, if a creditor holds rights *in rem* over certain assets within the insolvency estate, the creditor can request either segregation (*Aussonderung*), which removes the asset from the insolvency estate, or separation (*Absonderung*), which gives him priority over the realised proceeds.

8.2 Can insolvency office holders bring fraud or recovery actions?

Insolvency administrators may pursue all financial claims on behalf of the insolvency estate. This *inter alia* includes damage and recovery claims based on fraud as well as the challenging of contracts, legal transactions and legal acts that are detrimental to creditors.

8.3 Can assets dissipated through fraud be clawed back in insolvency?

Dissipated assets can be clawed back by way of challenging legal acts that are detrimental to creditors. In particular, legal transactions and acts that are gratuitous, detrimental to creditors or intentionally harmful may be challenged by the insolvency administrator. Recovered assets in principle form part of the insolvency estate for the benefit of all creditors.

9. CRIMINAL PROCEEDINGS AND CIVIL RECOVERY

9.1 Can criminal proceedings and civil recovery run in parallel?

Criminal proceedings and civil asset recovery can run in parallel. Pursuant to section 67 StPO, a victim may join criminal proceedings as a private party joinder (*Privatbeteiligte*) and assert claims for damages. In the case of a conviction, the court must rule on the civil claims of the private party joinder as well. If the court concludes that the private party joinder's claims have not been sufficiently proven within the criminal proceedings or if the defendant is acquitted, the court may refer the private party joinder to the civil courts.

In addition, a private party joinder can file a separate civil action in parallel. A civil court may suspend the proceedings at its discretion if the outcome of the criminal proceedings is relevant for the civil action. However, the interaction between the two legal instruments must be kept in mind: a criminal conviction may bind the civil court on key issues, whereas an acquittal does not generally have the same binding effect.

9.2 Are there civil confiscation or non-conviction-based forfeiture regimes?

Austrian law does not provide for a standalone civil confiscation without criminal proceedings. Asset forfeiture is generally linked to a criminal conviction. Non-conviction-based forfeiture does not exist.

9.3 Can victims participate in, or benefit from, criminal confiscation?

Victims may participate in confiscated assets as private party joiners in criminal proceedings if the defendant is convicted and if the victim's civil claims are granted. In that case, a forfeiture of the assets is impermissible.

9.4 How are recovered assets distributed to victims?

In the case of forfeiture, victims who have obtained an enforceable title for their claims but have not yet received compensation, have the right to request satisfaction from the assets received by the Republic of Austria through the forfeiture of assets.

10. LIMITATION PERIODS AND DEFENCES

10.1 What limitation periods apply to fraud claims?

According to the general rule, claims become time-barred after 30 years; however, there are various special rules. For example, claims for damages arising from fraud become time-barred after three years pursuant to section 1489 ABGB, calculated from the date on which the injured party becomes aware of both the damage and the perpetrator. Independently of such knowledge, an absolute limitation period of 30 years applies from the occurrence of the damage itself. The same applies in principle in respect of claims for unjust enrichment. By contrast, the right to challenge a contract on grounds of fraudulent misrepresentation pursuant to section 870 ABGB is subject to a general 30-year statute of limitation. Ownership claims are not subject to limitation periods. However, such claims may be lost due to acquisitive prescription (*Ersitzung*).

In criminal law, statute of limitations is governed in sections 57 and 58 StGB. In principle, the limitation period depends on the penalty set forth in each criminal offence. For example, fraud pursuant to section 146 StGB typically becomes time-barred after one year, aggravated fraud pursuant to section 147 paragraphs 1 and 2 *leg cit* is generally time-barred after five years, and particularly serious fraud involving substantial damage pursuant to section 147 paragraph 3 *leg cit* becomes time-barred after 10 years.

10.2 Does fraud suspend or extend limitation periods?

Under Austrian civil law, fraud as such does not automatically suspend or extend limitation periods.

In contrast, in criminal law, repeated acts of fraud may significantly extend the limitation period. Pursuant to section 58 paragraph 2 StGB, a pending limitation period is suspended if, during the limitation period, the offender commits another criminal offence based on the same harmful inclination, such as further acts of fraud.

10.3 What common defences are raised in fraud and tracing cases?

In civil law claims based on fraudulent misrepresentation, the common defence is that the defendant did not deliberately and intentionally deceive the claimant. According to the system of burden of proof, the claimant must prove that the defendant acted intentionally – which is often hard to achieve. Another frequent defence is the denial of causation, claiming that an incorrect or false statement did not actually have an influence on the claimant's decision to enter into a contract.

When it comes to damage claims, frequent defences are that the defendant did not act negligently or intentionally or that the defendant's acts were not causal for the occurred damages, or that the claims are time-barred.

In criminal law, it is likewise often disputed that there was any deception, intent to gain an unlawful benefit or financial loss.

11. REMEDIES AND RECOVERY TOOLS

11.1 What remedies are available upon a successful claim?

Upon successful action, granted claims can be pursued in enforcement proceedings. Depending on the nature of the claim, the EO offers various enforcement measures. If, for example, an asset is to be handed over, the bailiff may take it from the debtor and hand it over to the creditor. If monetary claims shall be enforced, Austrian law provides for the attachment and realisation of bank accounts and other bank-related assets, tangible and intangible assets, movable and immovable property, and proprietary rights such as shareholdings, intellectual property rights, etc.

If an enforcement administrator is appointed, the administrator is entitled to search and attach all kinds of assets and to look into the books and business records of the debtor.

11.2 Can constructive trusts or equitable liens be imposed?

There are no legal instruments such as a constructive trust or equitable liens in Austria.

11.3 How are recovered assets realised and distributed?

In general, recovered assets are realised and distributed in enforcement proceedings. Depending on the nature of the asset, realisation can be done *inter alia* by way of forced sale, auction or forced administration. If a creditor is the owner of a certain asset, he can request the handover of the asset in the enforcement proceedings. Realised proceeds are distributed according to the priority of the creditors.

11.4 Are interest and costs recoverable?

In civil proceedings interest and costs are generally recoverable. Under the Austrian Code of Civil Procedure, the losing party has to reimburse the accrued court and legal fees (based on the Austrian Attorneys' Tariff) to the successful party. If a party is only partially successful, costs are awarded proportionally.

In criminal proceedings, if the defendant is convicted, he must pay the costs of the criminal proceedings. The court initially only determines whether the accused is in principle liable to bear the costs of the proceedings. The exact amount of costs is determined only after the criminal judgment has become final, by way of

a separate decision. The ruling on costs does not form part of the sentencing but is a consequence of the conviction.

The costs of criminal proceedings include, for example, a lump-sum contribution covering expenses not individually specified, including costs of criminal police investigations and official acts required to implement orders of the public prosecutor or the court. They further include expert witness fees, interpreter fees, costs of defence counsel and other representatives, as well as costs related to the enforcement of the criminal judgment.

Moreover, Austrian law provides for reimbursement of the legal fees for the defence in criminal proceedings pursuant to section 393a StPO. This provision grants acquitted defendants or those whose proceedings are discontinued a right to compensation, covering necessary expenses and a lump-sum contribution to their legal fees. In 2024, the statutory maximum amounts for this lump-sum contribution were significantly increased and were raised to EUR 30,000 in proceedings before a panel of lay judges or jury court (previously EUR 10,000), EUR 13,000 in case of proceedings with one judge at the regional court level (previously EUR 3,000), and EUR 5,000 before district courts (previously EUR 1,000).

12. PRACTICAL AND STRATEGIC CONSIDERATIONS

12.1 How claimant friendly is the jurisdiction for fraud and asset recovery?

Under Austrian law, fraud and asset recovery are supported by generally solid procedural instruments. However, in international comparison, Austria is not considered particularly claimant friendly – in particular due to missing pre-trial discovery and strict bank secrecy.

12.2 How quickly can urgent relief be obtained?

Interim injunctions may be granted within a very short period of time in urgent cases, provided the statutory requirements are sufficiently substantiated. Following the ECJ decision *Micallef v. Malta*, Austrian courts, before issuing a decision, usually grant the opposing party the opportunity to reply to an application for interim relief within a short deadline.

12.3 What are the typical costs and funding options (including litigation funding)?

Typical costs of Austrian civil proceedings are court fees which are calculated on the basis of the amount in dispute. The accruing counsel fees must be borne by each party during the pending proceedings; however, the succeeding party is entitled to a reimbursement of its court and counsel fees. Notably, the reimbursement of the legal fees is limited to the calculation bases defined in the Austrian Attorneys' Tariff.

Third-party litigation funding is permitted provided that the funder does not act as a "legal supporter" and does not control the proceedings. Contingency fee arrangements (*pactum de quota litis*) are, as a rule, prohibited and void.

12.4 Are there any local procedural pitfalls practitioners should be aware of?

Key pitfalls include strict pleading requirements, limited disclosure and short appeal deadlines. Late submissions are generally considered precluded by the court.

13. RECENT DEVELOPMENTS AND TRENDS

13.1 Have there been any significant recent cases or legislative reforms?

In 2025, the Austrian Supreme Court clarified that in criminal cases of fraud as self-inflicted damage offences, the deceptive act or omission by the deceived person that causes the financial loss constitutes an intermediate result (*Zwischenerfolg*) pursuant to section 67 paragraph 2 StGB. Consequently, the place where the victim makes or tolerates the loss-causing financial disposition can qualify as the place of the offence. If this place is in Austria, Austrian courts have jurisdiction. This ruling is particularly relevant for cases of cyber fraud, including fraudulent cryptocurrency investment platforms, and significantly expands the practical reach of the Austrian criminal jurisdiction.

13.2 Are courts expanding or restricting asset tracing or recovery tools?

Austrian courts remain cautious. Developments mainly result from EU legislation rather than judicial expansion.

13.3 Are there emerging trends in international fraud litigation in this jurisdiction?

Key trends include cyber fraud, cryptocurrency-related cases and complex jurisdictional issues. Against this backdrop, the Austrian legislator has also incorporated provisions in the EO aiming at the enforcement in cryptoassets.

Parallel proceedings in multiple jurisdictions are increasingly common.

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Alexander Karl is a Dispute Resolution Partner at DORDA. He specialises in commercial and corporate litigation and enforcement, with emphasis on navigating intricate, often cross-border disputes. With a penchant for complexity, Alexander has assumed leadership roles in numerous mass litigations spanning finance, insurance and corporate law domains. Alexander Karl is a trusted advisor for clients seeking to enforce both national and foreign arbitral awards and judgments, with a particular focus on enforcement against states. He frequently appears as a speaker at international conferences, including the recent IBA Annual Event in Toronto (October 2025). Further solidifying his expertise, Alexander Karl is an external lecturer for civil procedure law at the Johannes Kepler University in Linz and has recently authored a new commentary on the Austrian Enforcement Act.



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Robert Keimelmayer is attorney at law at DORDA and specialises in multinational commercial litigation and arbitration and regularly assists clients in the enforcement of domestic and foreign arbitral awards and judgments. In particular, he has in-depth expertise in enforcement proceedings against sovereign entities and states, such as the Republic of Albania or the Russian Federation. Robert Keimelmayer has also taken on a leading role in the defence of respondents in mass litigation, in particular in corporate and telecommunication law disputes, and also assists in the defence of parallel representative actions brought by consumer protection associations. Furthermore, he also focuses on the resolution of complex software disputes, where he has frequently provided strategic and legal expertise to both software vendors and their customers in numerous high-value litigation proceedings. In addition to his legal practice, he is currently a PhD candidate at the University of Vienna focusing on the newly introduced legal framework for the administration of debtors' shares in companies in enforcement proceedings.

FIRM PROFILE

DORDA

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