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In-Depth: International Arbitration (formerly The International Arbitration Review) provides an analytical overview of what has occurred in each of the important arbitration jurisdictions during the past year, capturing recent developments while putting them in the context of each jurisdiction's legal arbitration structure and selecting the most important matters for comment.

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Austria

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Summary

Introduction

The Austrian Arbitration Act: history, scope and application

Austria has a long-standing history of arbitration; the first legal provisions in the Austrian Code of Civil Procedure (ACCP) on arbitral proceedings date back to 1895. In 2006, the legislator adopted the Arbitration Amendment Act 2006,[2] thereby modernising the arbitration provisions mostly based upon the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the UNCITRAL Model Law). Although the legislator also maintained certain provisions of the old law (e.g., Section 594(4) on the liability of arbitrators), it is fair to state that Austria considers itself to be a Model Law country. The Arbitration Amendment Act 2013[3] introduced a major revision to the court system with respect to arbitration-related matters (see below). Despite the term 'Arbitration Act', the Austrian arbitration law is contained in Sections 577 to 618 ACCP.

Pursuant to Section 577 ACCP, the Arbitration Act is applicable not only if the seat of arbitration is in Austria (Section 577(1) ACCP) but also in certain instances where the seat is not in Austria or has not yet been determined (Section 577(2) ACCP). Thereby, Austrian courts assume jurisdiction in arbitration matters even when the seat is not (yet) determined to be in Austria. This is the case in particular where a claim is brought despite an existing arbitration agreement (Section 584 ACCP), where interim measures are sought (granting or enforcement, or both, by Austrian state courts: see Sections 585 and 593 ACCP) and in other cases of judicial assistance (Section 602 ACCP).

Arbitration agreements

The definition of an arbitration agreement under Austrian law (Section 581(1) ACCP) resembles that of Article 7 Model Law. Thus, an arbitration agreement may be a separate agreement or a clause contained in a main contract. Both contractual and non-contractual disputes may be subject to arbitration. The jurisprudence (which is confirmed by legal literature) derives from this provision that the following three requirements must be fulfilled for an agreement to qualify as an arbitration agreement under the law: the determination of the parties to the dispute, the subject matter of the dispute that is submitted to arbitration (which can be a certain dispute or all disputes arising out of a certain legal relationship) and an agreement to arbitrate.

Furthermore, Section 581(2) ACCP provides that an arbitration agreement may also be included in statutes – that is, the articles of association of legal entities such as companies or associations – as well as in a testament.

Regarding the form of an arbitration agreement, Austrian law still requires the written form (Section 583(1) ACCP). However, this does not necessarily mean that the arbitration agreement must be signed by both parties: an 'exchange of letters, telefaxes, emails or other means of communications which provide a record of the agreement' also suffices. Apart from the provision in the ACCP, it is generally accepted that Article II of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC) is a

uniform substantive provision in an international context. Thus, the fulfilment of this uniform standard takes precedence over any stricter requirements under national law.[4]

Arbitrability

Section 582(1) ACCP defines the arbitrability ratione materiae of claims as follows: claims of an economic or financial interest that fall within the jurisdiction of the ordinary civil courts; and claims without any economic or financial interest, but for which parties may conclude a settlement agreement. Pursuant to Subsection (2), the following claims may not be subject to arbitration: claims in family law matters and certain claims relating to housing law. Furthermore, other statutory provisions may stipulate other non-arbitrable matters.

Although this is not a question of arbitrability in the narrow sense of the law, matters of employment law (Section 618 ACCP) or those concerning consumers (Section 617 ACCP) are subject to very strict limitations and are thus dealt with under this heading. The requirements are essentially the same for both kinds of persons (consumers and employees) and can be summarised as follows:

1. an arbitration agreement with a consumer or employee can be validly concluded only after a dispute has arisen;
2. the arbitration agreement must be contained in a separate document signed by the consumer or employee in person. Such document may not contain any agreements other than those relating to the arbitration proceedings;
3. prior to the conclusion of the arbitration agreement, the consumer or employee shall receive a written instruction on the major differences between arbitration and litigation before state courts;
4. determination of the seat of arbitration and other requirements as to the venue of the hearing;
5. the seat of arbitration must be at the place of the domicile of the consumer or employee unless it is the consumer or employee who relies on a seat outside of their place of domicile;
6. further grounds for setting aside; and
7. a three-instance system for setting-aside claims.

In conclusion, it is very unlikely that an arbitration agreement with a consumer or an employee is validly concluded in compliance with the above-indicated requirements. Moreover, in arbitration proceedings where individuals are involved, one side might invoke the objection that the individual must be considered as a consumer under the Arbitration Act and that the arbitral award thus runs the risk of being set aside for this reason.

Appointment and challenge of arbitrators

Sections 586 and 587 ACCP stipulate that the parties are free to determine the number of arbitrators and the procedure for appointing them. Absent any agreement of the parties (in particular, any agreement on institutional rules) or if the parties agree on an even number, the number of arbitrators shall be three.

Section 587 ACCP stipulates the default procedure for appointing arbitrators if the parties have not reached agreement on their own procedure. Where a party fails to appoint an arbitrator, or the parties fail to jointly nominate a sole arbitrator or a chair, it is the Austrian Supreme Court that acts as appointing authority (see Section 615 ACCP). It is noteworthy that in multiparty proceedings, where several parties on one side, despite an obligation to do so, fail to jointly appoint their arbitrator, either party may ask the court to step in for the failing side, but not for the side that has appointed its arbitrator in a timely manner (see Subsection (5)). Section 587(6) ACCP is a catch-all provision that applies if, for any reason whatsoever, an arbitrator is not appointed within a reasonable period of time.

Sections 588 and 589 ACCP govern the challenge of arbitrators in accordance with Articles 12 and 13 of the Model Law. Thus, a prospective arbitrator has a duty to disclose any circumstances giving rise to doubts as to their impartiality or independence. The arbitrator also has the duty to remain impartial and independent throughout the proceedings. Unless the parties have agreed on a certain procedure of challenging arbitrators (in particular, by agreement on a set of Arbitration Rules), Section 589(2) ACCP provides for a default procedure. Irrespective of whether there is an agreed procedure of challenge or the default procedure applies, the challenging party may request the Supreme Court to decide on the challenge if it was not successful.

In numerous decisions of the Supreme Court, the question whether a violation of the arbitrator's duty to disclose may constitute a ground for successful challenge has arisen. The Court has confirmed this question in cases where the arbitrator has failed to disclose in a culpable way (very extreme cases). In those decisions, the Supreme Court also explicitly referred to the IBA Guidelines on Conflicts of Interest in International Arbitration as the common international standard.[5]

The court system

Since the revision of the Arbitration Act in 2013, Section 615 ACCP provides that the first and final court instance to rule on setting-aside claims (Section 611 ACCP) and for claims on the declaration of the existence or non-existence of an arbitral award (Section 612 ACCP) is the Austrian Supreme Court (except for matters involving consumers and matters of employment law). Previously, setting-aside proceedings would have undergone three instance proceedings, like any other ordinary civil proceedings. Furthermore, the Supreme Court is also the exclusive instance on all issues regarding the formation of the tribunal and the challenge of arbitrators (i.e., the Third Title of the Arbitration Act). This 2013 revision of the Arbitration Act was preceded by controversial debates among practitioners, scholars and the judiciary. The reason is that the single instance concept is quite exceptional in the Austrian court system. In ordinary civil proceedings, generally, not only is there a monetary threshold to be exceeded (€30,000) but the case to be tried before the Supreme Court must also touch upon a question of substantive or procedural law that is considered to be essential for legal unity, legal certainty or legal development. However, under Section 615 ACCP, any arbitral award rendered in Austria may be challenged before the Supreme Court. Another reason why the 2013 revision is considered to be a slight revolution in the court system is the fact that the Supreme Court itself must conduct evidentiary proceedings where necessary, including the examination of witnesses.

Although not required under the law, the revision of 2013 prompted the internal organisation of the Supreme Court to establish a specialised chamber (consisting of five Supreme Court judges) that is competent for all arbitration-related matters mentioned in Section 615 ACCP (see below). This concentration on a limited number of judges should further enhance the reliability and consistency of the jurisprudence in the field of arbitration.

The introduction of this single instance jurisdiction and the establishment of a specialised chamber within the Supreme Court demonstrate both the Austrian legislators' and the judicature's awareness that the legal infrastructure is essential to foster arbitration proceedings seated in Austria.

Apart from the Supreme Court, the other courts dealing with arbitration matters are the district courts, which rule on requests for interim measures, the enforcement of interim measures, and the enforcement of international and domestic awards, as well as other civil courts (see below).

Interim measures and judicial assistance

Section 585 ACCP mirrors Article 9 of the Model Law and stipulates that it is not incompatible with an arbitration agreement for a party to request an interim measure from a state court. An Austrian district court has international jurisdiction to issue an interim measure during or prior to arbitral proceedings if the debtor has its seat or habitual residence, or if the assets to be seized are located, in the court's district (see above). Thus, it is not necessary that the seat of arbitration is also in Austria. Conversely, the fact that the seat of arbitration is in Austria does not necessarily mean that an Austrian district court is competent to issue an interim measure.

Furthermore, Section 593(1) and (2) ACCP contain the requirements for an arbitral tribunal having its seat in Austria to issue interim or protective measures. Subsections (3) to (6) further govern the enforcement of such measures issued by any tribunal. It is noteworthy that these provisions on enforcement apply to measures issued by tribunals irrespective of whether a tribunal has its seat in Austria (see Section 577(2) ACCP). Thus, the Austrian arbitration law enables the enforcement of interim or protective measures issued by foreign arbitral tribunals without any requirement for exequatur proceedings. In addition, if a measure ordered by the tribunal (whether foreign or domestic) is unknown to Austrian law, the competent enforcement court shall, upon request and after having heard the other side, apply such measure that is most similar to the one ordered by the tribunal.

Under Section 602 ACCP, an arbitral tribunal may ask an Austrian court to perform certain acts for which the tribunal has no authority. Again, Austrian arbitration law enables both foreign and domestic tribunals to make use of such requests, and also includes requests for judicial assistance by other courts, including foreign courts' authorities. Therefore, Section 602 ACCP allows, for instance, a foreign arbitral tribunal to make a request to an Austrian court that the Austrian court ask a court in a third country to perform an act of judicial assistance. The most common acts that a tribunal would request relate to measures of interim or protective measures or measures in the taking of evidence (e.g., summoning witnesses and taking oaths from them).

Setting aside of arbitral awards

Under the Arbitration Act of 2006 (as revised most recently in 2013), any kind of arbitral award may be challenged under Section 611 ACCP. This therefore includes interim awards, partial awards and awards on jurisdiction. The provision distinguishes between legal grounds that must be revoked by the plaintiff seeking to set aside the award and legal grounds that are to be reviewed ex officio (see Section 611(3) ACCP). The reasons for setting aside are contained in Section 611(2) ACCP and may be summarised as follows:

1. lack of an arbitration agreement and lack of arbitrability ratione personae;
2. violation of a party's right to be heard;
3. ultra petita;
4. deficiency in the constitution of the tribunal;
5. violation of the procedural public policy;
6. grounds for reopening civil proceedings;
7. lack of arbitrability ratione materiae; and
8. violation of the substantive public order.

The last two grounds are those that the court must review ex officio.

The time limit to file a setting-aside claim is three months starting from the date of notification of the award (Section 611(4) ACCP). The competent court is, except for matters involving consumers and matters of employment law, the Austrian Supreme Court as first and final instance (Section 615 ACCP).

Recognition and enforcement of arbitral awards

A domestic arbitral award (i.e., an award rendered in Austria) has the same legal effect as a final and binding court judgment (Section 607 ACCP). This means that such an award can be enforced under the Austrian Execution Act (AEA) like any other civil judgment (see Section 1 No. 16 AEA). Once the chair of a tribunal (or, in their absence, any other member of the tribunal) has declared an award as final, binding and enforceable, the award creditor can make a request for execution under the AEA. The competent court is usually the district court in the district in which the debtor has its seat, domicile or habitual residence, or where the assets to be attached are located.

A foreign award (i.e., an award rendered outside of Austria) may be recognised and enforced under the AEA subject to international treaties and acts of the European Union (see Section 614 ACCP) – in particular, the NYC and the European Convention on International Commercial Arbitration of 1961 (the European Convention). Both Conventions are applicable in parallel. Therefore, a creditor can simultaneously rely on either Convention or on both, while a debtor must invoke grounds under both Conventions to be successful. Under the European Convention, the enforcement of a foreign award may be refused if the award was set aside on certain legal grounds. A violation of public policy is, for instance, not a ground recognised under Article IX of the European Convention. Thus, an arbitral award that was set aside for reasons of public policy at the seat of arbitration can, nevertheless, be recognised and enforced in Austria.

There are currently no EU acts applicable to the enforcement of foreign arbitral awards.

A request for exequatur and a request for execution can be jointly filed in the same proceedings under the AEA. The Supreme Court has repeatedly held that in institutional arbitral proceedings, a certified copy of the arbitral award indicating the body or person that has certified the award (including the signatures of the arbitrators) and the reference to the applicable provision under the Arbitration Rules usually suffice to fulfil the formal requirement. In other words, in institutional arbitration, it is not necessary to have the signatures of the arbitrators certified by a local notary and legalised by the local authority (The Hague Apostille). Furthermore, pursuant to Section 614(2) ACCP, it is not necessary to submit the original arbitration agreement or a certified copy thereof as required under Article IV(1)b of the NYC unless the court expressly so requests. Both this legal provision and the Supreme Court's jurisprudence are a clear indication that the recognition and enforcement of foreign arbitral awards in Austria shall not be subject to excessive formal requirements.

Arbitral institution

The Vienna International Arbitral Centre (VIAC) attached to the Austrian Chamber of Commerce is the most renowned arbitral institution in Austria. Its recognition and casework are not limited to its geographical region. It has a strong focus on arbitrations involving parties from Central, Eastern and Southeastern Europe and is, as of July 2019, the second foreign (and first European) arbitral institution recognised as a permanent arbitration institution in Russia, thus having received a Russian government permit. Parties from (East) Asia as well as from the Americas and Africa have appeared in VIAC arbitrations in recent years.[6]

On 1 July 2021, VIAC revised both its Arbitration Rules (the Vienna Rules) and its mediation rules (the Vienna Mediation Rules). The revision of the Vienna Rules was triggered by the drafting of the new VIAC Rules of Investment Arbitration and Mediation (VRI), which also entered into force on 1 July 2021. The VRI are stand-alone investment arbitration and mediation rules, which apply to disputes involving a state, a state-controlled entity or an intergovernmental organisation that arise under a contract, treaty, statute or other instrument. Though based on the Vienna Rules, the VRI contain certain adjustments to account for the unique features and needs of investment disputes involving the participation of sovereign parties and the consideration of public interest issues and matters of public policy. VIAC also provides for specific model clauses regarding investment arbitration (e.g., standard arbitration clause and clause for VIAC as appointing authority or VIAC as administering authority).

As regards the revision of the Vienna Rules, their revision as a result of the drafting of the VRI was taken as an opportunity to also adapt the existing rules for commercial disputes to new needs and developments, and to open up for new business fields such as inheritance disputes for which specific rules were included in Annex 6. The new version of the Vienna Rules provides for VIAC's authority to administer investment proceedings as well as to act as appointing or administrating authority in ad hoc proceedings and to administer proceedings based on unilaterally foreseen arbitration agreements. Further, because third-party funding is more widely used, a definition of third-party funding and further provisions on third-party funding to create the framework for this instrument, mainly to ensure the independence and impartiality of the arbitrators through appropriate disclosure, were included. Also, the Vienna Rules explicitly state that oral hearings may

be conducted in person or by other means (e.g., videoconferencing technology, for which VIAC enacted the Vienna Protocol – A Practical Checklist for Remote Hearings). Finally, the Vienna Rules contain a time limit for the issuance of the award: it shall be rendered no later than three months after the last hearing concerning matters to be decided in an award or the filing of the last authorised submission concerning such matters, whatever is the later. The secretary general may extend this period upon reasoned request or on its initiative.

Year in review

Developments affecting international arbitration

The most important reform under the 2013 revision of the Arbitration Act was the determination of the Austrian Supreme Court as single instance for certain arbitration-related matters (see Section 615 ACCP). It entered into force on 1 January 2014 and applies to all proceedings initiated on or after that date. Simultaneously, the Supreme Court has established a specialised chamber that deals with the matters under Section 615 ACCP (the docket numbers of these decisions start with '18'). As demonstrated below, apart from the matters referred to in Section 615 ACCP (in most instances, setting-aside proceedings, and proceedings relating to the constitution and challenge of arbitral tribunals), a number of other civil matters involve issues of arbitration and may be tried before first and second instance courts with the Supreme Court as final instance. Finally, proceedings on the recognition and enforcement of foreign arbitral awards are usually initiated with district courts, the decisions of which may be appealed and finally also brought before the Supreme Court. Enforcement matters are usually submitted to the chamber specialised in such matters and not to the arbitration chamber. In conclusion, parties can expect that under the Austrian court system relating to arbitration-related matters – in particular, those with a foreign or international context – the Supreme Court will have the final say on certain legal issues of essential importance to the Austrian legal order.

Arbitration developments in local courts

In a decision of August 2023,[7] the Austrian Supreme Court was seized by the plaintiff (and respondent in the arbitration) involved in an ongoing setting-aside proceeding (also initiated by the plaintiff) of an arbitral award; the plaintiff challenged three Supreme Court judges supposed to decide on the setting-aside action based on the following reason. During the arbitration, the defendant in the challenge proceedings (and claimant in the arbitration) requested the appointment of respondent's party-appointed arbitrator by the Supreme Court pursuant to Section 587(2)(4) ACCP because of the inactivity of the respondent. On the basis of this request, the Supreme Court, including the three Supreme Court judges who were later challenged, appointed an arbitrator. The plaintiff argued that these three judges now deciding on whether to set aside the award made by an arbitrator they had previously appointed are not impartial. The plaintiff contended that this prior connection of the judges to the appointed arbitrator undermined their ability to render an unbiased decision regarding the setting-aside of the arbitral award. The Supreme Court rejected

this argument of the plaintiff, referring to the general standard of impartiality. It noted that the relevant threshold for disqualifying a judge is the appearance of bias, meaning that there is reason to doubt the judge's impartiality from an objective point of view, even if the judge is in fact (subjectively) unbiased. However, the Supreme Court found that the plaintiff's allegations regarding the arbitrator's appointment procedure did not qualify as such a circumstance that compromised their impartiality. The court emphasised that unless specific circumstances are presented that suggest bias, there is a presumption of impartiality. Therefore, it rejected the plaintiff's challenge to their impartiality.

In a series of decisions in 2023 and 2024,[8] the Austrian Supreme Court was repeatedly tasked with a setting-aside claim submitted by a party not represented by an attorney. Pursuant to Section 27(1) ACCP, under Austrian procedural law parties are obliged to be represented by an attorney inter alia before courts above the district court level. As set out above, the competent court for deciding on setting-aside claims is the Austrian Supreme Court pursuant to Section 615 ACCP. Thus, the Supreme Court in its decisions emphasised that under Austrian law, parties in proceedings before courts above the district court level are always required to be represented by an attorney, which includes setting-aside claims under Section 611 ACCP.

In another decision of 2023,[9] the Austrian Supreme Court was tasked with deciding on a dispute in relation to a dispute resolution clause contained in a purchase contract between a consumer and an entrepreneur. The concerned dispute resolution clause mandated an expert determination procedure to determine defects in the purchased property.

To provide the relevant context, in its jurisprudence, the Austrian Supreme Court distinguishes between arbitration and expert determination procedures in principle as follows (though the differentiation does not appear to be fully concise when reviewing the respective case law). Arbitration is described as aimed at deciding a legal dispute, while expert determination is characterised as aimed at establishing facts, elements of facts or supplementing the will of the parties. Thus, according to Austrian jurisprudence, experts do not decide what is lawful between the parties but rather merely create the basis for such a decision or a settlement of the dispute by the parties themselves. This legal view is also supported by the majority of Austrian legal literature.

This differentiation holds significance because arbitral awards and expert determination decisions both entail different legal consequences. Arbitral awards are final and binding, enforceable under the New York Convention and only subject to limited grounds for challenge (under Section 611 ACCP). On the other hand, while the expert determination decision is – subject to certain exceptions – binding on the parties and the national courts and arbitral tribunals from a substantive law perspective, they do not provide for an enforceable title. The binding nature of the expert's decision is the legal consequence of the expert determination procedure's purpose to avoid time-consuming and expensive litigation and arbitration. Thus, an expert determination decision is also only subject to challenge if it is manifestly unfair (i.e., evidently in contrast to standards of good faith), or if it is evidently incorrect (i.e., the incorrectness is immediately apparent to a knowledgeable and impartial person). However, not every objective inaccuracy or material irregularity results in such an evidently incorrect decision.

In the present case, the Austrian Supreme Court examined whether a clause, stipulating an expert determination procedure for a purchase contract between a consumer and an entrepreneur violated Section 9(1) of the Austrian Consumer Protection Act, which

prohibits the exclusion or limitation of the consumer's warranty rights before the consumer becomes aware of the defect. The Supreme Court affirmed that while expert determination clauses, in general, have the aim to prevent lengthy and costly legal disputes, they cannot unduly limit consumer rights. In that regard, the Supreme Court emphasised that such expert determination clauses delay the maturity of claims until the expert determination procedure is completed, thus preventing the consumers' ability to pursue their rights promptly through litigation before such decision. Additionally, the Supreme Court highlighted the drawback for consumers in the expert determination procedure, including lack of procedural rights for consumers, such as the ability to challenge evidence or the conduct of the proceedings, or the lack of oral explanation and discussion of the expert's decision. Furthermore, the Supreme Court also made reference to the consumer protection provision relating to arbitration contained in Section 617 ACCP, which even as it is not directly applicable to expert determination proceedings, still indicates the hesitation of the legislator to exclude consumers from litigating their claims before national courts. However, the expert determination procedure, similar to arbitration, submits the adjudication of the dispute, in this case the existence of a defect of the purchased property, to a third party.

Ultimately, the Supreme Court ruled that the expert determination clause in question excessively restricted consumer warranty rights and was therefore invalid in case of a contract between an entrepreneur and a consumer.

Investor–state disputes

Under the ICSID regime, there are currently five cases pending in which an Austrian investor has brought a claim against a state (the respondent states are Argentina, Croatia, Germany and Romania). The most recent claim was filed in November 2021 against Romania. According to news reports, the claim against Romania concerns changes in Romania's legal regime on renewable energy. Based on publicly available sources, there are currently no pending cases by an investor against Austria.

To date, no other cases under Arbitration Rules other than those mentioned above are publicly known.

Outlook and conclusions

The amendment of the Arbitration Act in 2013 and the revision of the Vienna Rules in 2021 demonstrate that Austria and its arbitration community constantly observe trends in international arbitration and improve the legal framework where necessary. These efforts are supported by the jurisprudence, particularly since the Supreme Court has established a special chamber that rules on all matters relating to setting-aside claims and the composition of arbitral tribunals. The Supreme Court also regularly makes reference to international arbitration standards such as, for instance, the IBA Guidelines on Conflicts of Interest in International Arbitration. These overall developments should enable cost- and time-efficient arbitral proceedings and related state court proceedings, both in compliance with international standards and the requirements under the rules of law. Austria (and, in particular, Vienna) is thus considered to be a regional arbitration hub with a strong focus

on countries in the Central and Eastern European and Southeastern European regions. The status of being a recognised hub for international arbitration can also be seen in the opening of a regional office of the Permanent Court of Arbitration in Vienna in April 2022, which adds a further international organisation in Austria.[10]

As regards investor–state arbitrations, developments in recent years have shown that Austrian investors are more and more willing to make use of their rights under investment treaties. This is illustrated, as an example, by the enforcement of an arbitral award of an Austrian investor under the ICSID Additional Facility Rules before the courts of Austria.[11] On 29 May 2020, 23 EU Member States concluded the Agreement for the termination of bilateral investment treaties (BIT) between the Member States of the European Union. According to this Agreement, the concluding Member States terminated their intra-EU BITs and declared, among other things, that 'arbitration clauses should not serve as legal basis for new arbitration proceedings' (Article 5). It is noteworthy that Austria – along with Ireland, Finland and Sweden – did not enter into this Agreement, although Austria had, on the political level, previously expressed its consent to such a common approach of the EU Member States. However, Austria has, as of the time of writing, mutually terminated – in agreement with the respective other EU Member State – its remaining 12 intra-EU BITs.[12] In contrast, while the EU has announced its intention to withdraw from the Energy Charter Treaty, Austria has so far neither terminated nor announced its intention to terminate the Energy Charter Treaty. It remains to be seen whether these developments will have an effect on the willingness of Austrian investors to seek investment protection before investment tribunals.

Endnotes

1. Alexander Zollner is a counsel and Philipp Theiler is an associate at Wolf Theiss. The initial version of this chapter was written by Venus Valentina Wong, partner at Wolf Theiss, who (co-)authored this chapter until 2023. Back to section

2. Federal Law Gazette I 2006/7. Back to section

3. Federal Law Gazette I 2013/118. Back to section

4. See Reiner, 'The New Austrian Arbitration Act',Journal of International Arbitration, Section 583, footnote 38. Back to section

5. Austrian Supreme Court, 17 June 2013, docket number 2 Ob 112/12b, Austrian Supreme Court, 5 August 2014, docket numbers 18 ONc 1/14 p and 18 ONc 2/14 k, see Wong, Schifferl, 'Decisions of the Austrian Supreme Court in 2013 and 2014', in Klausegger et al.,Austrian Yearbook on International Arbitration 2015, 338 et seq.; Austrian Supreme Court, 19 April 2016, docket number 18 ONc 3/15h; Austrian Supreme Court, 15 May 2019, docket number 18 ONc 1/19w. Back to section

6. See https://www.viac.eu/en/statistics. Back to section

7. Austrian Supreme Court, 16 August 2023, docket number 2 Nc 60/23f. Back to section

8 Austrian Supreme Court, 5 February 2023, docket number 18 OCg 1/23f; Austrian Supreme Court, 22 May 2023, docket number 18 OCg 1/23f; Austrian Supreme Court, 14 September 2023, docket number 18 OCg 1/23f and Austrian Supreme Court, 2 February 2024, docket number 18 OCg 1/23f. Back to section

9 Austrian Supreme Court, 23 November 2023, docket number 5 Ob 167/23d. Back to section

10 See https://pca-cpa.org/en/news/new-international-organization-in-austria-opening-of-the-office-of-the-permanent-court-of-arbitration-in-vienna/. Back to section

11 Austrian Supreme Court, 11 January 2023, 18 OCg 2/22a. Back to section

12 See https://www.bmaw.gv.at/Themen/International/Handels-und-Investitionspolitik/Investitionspolitik/BilateraleInvestitionsschutzabkommen-Laender.html and https://www.bmaw.gv.at/Themen/International/Handels-und-Investitionspolitik/Investitionspolitik/Ausser-Kaft-getretene-oesterreichische-BITs.html (both in German). The last remaining intra-EU BIT with the Republic of Lithuania was mutually terminated on 1 December 2022. Back to section

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