

# **Consumer market study on the functioning of the real estate services for consumers in the European Union**

Country fiche – AUSTRIA

## General information

|   |  |
|---|--|
| <b>Country</b>                            | <b>AUSTRIA</b>   |
| <b>Researcher name</b>                    | Erwin SCHÖN (Civil Law Notary Substitute)  |
| <b>Researcher contact details (email)</b> | erwin.schoen@gmx.net   |
| <b>Main Sources Used</b>                  | Main Source for the relevant legislation:<br><br>(Official) Legal Information System “Rechtsinformationssystem” of the Republic of Austria, Federal Chancellery ( <a href="http://www.ris.bka.gv.at">www.ris.bka.gv.at</a> ) |
| <b>Receipt of blank country fiche</b>     | May 9 <sup>th</sup> , 2017   |
| <b>Return of completed country fiche</b>  | May 23 <sup>rd</sup> , 2017  |

### Explanation Regarding Certain Used Terms:

#### Civil Law Notary Public:

Notary according to the model of the Latin Notariat (comprehensive general as well as specific legal formation, comparable to judge, public prosecutor and attorney, with public powers granted by the state on the field of legally significant documentation, expert advisers/representatives of parties<sup>1</sup>) - as opposed to Common Law notaries; public, because appointed by the Minister of Justice and due to the public powers conferred upon them – public as opposed to i.e. church notaries or other (former) private notaries.

#### Legal Friend:

Lawyer (mainly restricted by legislation to Civil Law Notaries Public and attorneys) representing/advising parties for payment.

#### One-Stop-Shop:

In the context of this country fiche: a lawyer (Civil Law Notary Public or attorney) who acts as unique legal professional service provider for the parties of a transaction, undertaking comprehensive (i.e. the entire necessary as well as useful) legal drafting/representation/advice etc. (including also all relevant taxes) for parties regarding a certain transaction –as opposed to the involvement of several lawyers or tax accountants, rendering each only partial services.

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<sup>1</sup> See e.g. <http://www.uinl.org/146/fundamental-principles-of-the-latin-type-notarial-system->; the term ***notary-at-law*** (Civil Law tradition) in opposition to ***notary public*** (Common Law tradition) might possibly be helpful to better notice the fundamental difference between these two completely different professional profiles.

**Advance-summary as help for a better understanding of the subsequent Tables:**

- The Austrian **real estate market** (sales / leases) ‘exploded’ around the year 2010, i.e. in the sense of an **‘ongoing boom’** regarding the **number of purchases** of real estate property and the relevant purchase prices; this applies also for the height of the rental fees;
- **Real estate agents** are **regularly involved**, however, more and more parties try to find contractual partners via internet platforms in order to avoid agents and their fees;
- Theoretically, a real estate purchase or lease could be carried out by the parties without support of a legal professional – **in practice**, however, the applicable law is far too complicated so that **legal support by a Civil Law Notary Public or an attorney** is the rule (only specialized companies / public institutions carry out their transactions themselves – but need Civil Law Notaries Public / attorneys for Selbstberechnung of real estate taxes/fees);
- Transfer of real estate property is traditionally a field of law for which the population makes use of the **hereto specialized Civil Law Notary Public** (according to the legislative professional profiles of Civil Law Notaries Public on the one hand – ‘legal precaution’ – and of attorneys on the other – ‘enforcement of rights’);
- **Civil Law Notaries Public** – according to their professional profile (‘legal precaution’) - carry through the entire transaction as **‘legal, certification as well as tax/fees one-stop-shop’**;
- Due to the professional profile of **Civil Law Notaries Public**, their legal services as one-stop-shop helps to **significantly avoid overall costs** (no need for an attorney of each party – instead: Civil Law Notary Public as ‘legal friend’ of all parties);
- **Mandatory notarial contracts:** apart from donation promises nearly no practical significance for real estate purchase contracts;
- **Attorneys** – although not their main field of legal services according to the professional profile (‘enforcement of rights’) - can also carry through the entire transaction **as ‘legal as well as tax/fees one-stop-shop’**; the **certification of signatures** is in such cases in practice done by **Civil Law Notaries Public**;
- If an **attorney** acts as one-stop-shop, s/he usually represents **only one party** so that the **other parties usually charge their own attorneys or Civil Law Notaries Public** to represent them (examination, control) in order to avoid disadvantages;
- The basic additional costs of a real estate purchase are:
  - *Grunderwerbsteuer* (‘buyer-tax’);
  - *Immobilienwertsteuer* (‘seller-tax’);
  - *Grundbuchs-Eintragungsgebühr* (‘buyer-fee’);

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- Fees for certification of signatures;
- Fees of Civil Law Notary Public / attorneys.
- **Selbstberechnung:** state (tax and court administration) rely on Civil Law Notaries Public / attorneys as to calculation, collection, transfer and information regarding real estate relevant taxes and fees ('outsourcing') -> Where parties (also real estate specialised parties) want rapid carrying through of a transaction – which is nearly always the case – they have to charge Civil Law Notaries Public / attorneys at least with Selbstberechnung of the real estate taxes/fees;
- **PRACTICE:** Given the high standards of qualification, required practice, mandatory continued education and institutional professional control (Chambers of Notaries/Attorneys) as well as the mandatory indemnity insurance, Austrian real estate transactions via Civil Law Notaries Public / attorneys are in practice rapid, reliable and satisfactorily for the involved parties as well as the State (tax and court authorities);
- On each level of a real estate transaction Civil Law Notaries Public assure, due to their professional profile, formation and training, the protection of the involved consumers;
- Moreover, Civil Law Notaries Public / attorneys are legally charged with the avoidance of **money laundering and terrorism financing** (detailed professional regulations) so that they are in this respect a sustainable and indispensable support to the State in this combat.

## 1. Regulatory background

### 1.1 Level of regulation in the country

| <b>Table 1: Level of regulation</b>                       |  |   |   |
|---|--|---|---|
|   | <b>Level of regulation (e.g. strictly regulated, framework regulation, partly regulated, non-regulated, deregulated)</b>   | <b>Source of relevant legislation</b>   | <b>Ongoing discussion on regulation/deregulation (if applicable): current state of affairs and main arguments in the debate</b> |
| Real estate transactions <sup>2</sup>                     | Partly regulated<br>(E.g. legal restrictions as to agricultural/forestral real estate property; acquisition by third-country-foreigners; acquisition for use as holiday domicile)  | Grundverkehrsgesetze of the nine Bundesländer   | -   |
| Notary system (or lawyer/conveyancer system) <sup>3</sup> | Theoretically, no Civil Law Notary Public or attorney required for conveyancing.<br>Practically, however, nearly no conveyancing without Civil Law Notary Public or attorney (due to complex and numerous implications as to civil, administrative, tax and fees law);<br>The population traditionally appreciates Austrian Civil Law Notaries Public' specialisation in conveyancing - seen as 'the typical legal conveyancing partner' -> high market share in conveyancing market.<br>Only a few kinds of real estate contracts require Civil Law Notary Public, e.g. sales, credit or barter contracts between spouses; donation contracts regarding which the handing over of the donation object has not yet taken place; basically, contracts of blind parties.<br>-----<br>Notary system: strictly regulated | Allgemeines Bürgerliches Gesetzbuch,<br>Grundbuchsgesetz,<br>Notariatsaktsgesetz<br><br>Notariatsordnung and various professional Richtlinien | -   |

<sup>2</sup> E.g. limitations or prohibitions of certain transactions; specific formality requirements etc.

<sup>3</sup> Only in countries where notaries do not exist or do not have a monopoly on conveyancing.

**Table 1: Level of regulation**

|                             |                  |  |   |
|-----------------------------|------------------|--|---|
| Profession of estate agents | Partly regulated | Gewerbeordnung, Maklergesetz, Immobilitentreuhänder-Verordnung - Zugangsvoraussetzungen, Standes- und Ausübungsregeln für Immobilienmakler | - |
|-----------------------------|------------------|--|---|

## 1.2 National legislation

**Table 2: List of national legislation**

| List of national legislation                              | Classification of national legislation                                   | Content of the national legislation   |
|---|--|---|
| Allgemeines Bürgerliches Gesetzbuch                       | Real estate transactions   | Principle: acquisition of real property rights through inscription in Grundbuch (contract establishes only right to transfer).                              |
| Grundbuchsgesetz and lateral legislation to the Grundbuch | Real estate transactions   | Regulation of the Grundbuch; requirements for the documents to be transmitted to the Grundbuch.   |
| Grundverkehrsgesetze of the Bundesländer                  | Real estate transactions   | Restrictions and modalities regarding certain kinds of real estate property respectively certain kinds of acquiring parties (See above Table 1).            |
| Bauträgervertragsgesetz                                   | Real estate transactions – purchase of not yet existing purchase objects | Protection of buyers, especially with view to risk of insolvency of sellers.  |
| Bauordnungen of the Bundesländer                          | Real estate transactions   | Some Bauordnungen (building regulations) contain restrictions in case of divisions of Bauplätze (building site) inscribed in the Grundbuch (Land Registry). |
| Grunderwerbsteuergesetz                                   | Real estate transactions   | Tax on acquisition of real estate property ('buyer-tax').   |
| Einkommensteuergesetz                                     | Real estate transactions   | Tax on gains as to acquisition and alienation of real estate property ('seller-tax').   |
| Gerichtsgebührengesetz                                    | Real estate transactions   | Court fees for Grundbuch-inscriptions   |

**Table 2: List of national legislation**

|                                      |  |  |
|--------------------------------------|--|--|
| Konsumentenschutzgesetz              | Real estate transactions between entrepreneurs and consumers   | Protection regulations for consumers   |
| Maklergesetz and lateral legislation | Real estate agents; sellers and buyers / landlords and tenants | Framework regulations for real estate agents and the contractual relationship with real estate agency parties. |

### 1.3 Implementation of relevant EU legislation

**Table 3: Implementation of relevant EU legislation**

| EU legislation   | Implementation achieved? | Implementation of EU legislation at the national level (e.g. the name of the law)             | Source of the national implementation legislation | Content of the national legislation in keywords  | Which parts of the EU legislation have <u>not</u> been transposed? |
|--|--------------------------|---|---|--|--|
| Directive 2005/29/EC on unfair commercial practices (UCPD) | Yes                      | Bundesgesetz über den unlauteren Wettbewerb Verbraucherbehörden-Kooperationsgesetz            | Bundesgesetzblatt (www.ris.bka.justiz.gv.at)      | Bundesgesetz über den unlauteren Wettbewerb:<br>comprehensive implementation of content of Directive;<br>recourse to court aid in case of violations (forbearance, damages);<br>judicial and administrative fines;<br>Verbraucherbehörden-Kooperationsgesetz:<br>competent consumer authority:<br>Bundeswettbewerbsbehörde | None   |
| Directive 93/13/EEC on unfair terms in consumer contracts  | Yes                      | EU-membership since 1995<br>Konsumentenschutzgesetz<br>Verbraucherbehörden-Kooperationsgesetz | Bundesgesetzblatt (www.ris.bka.justiz.gv.at)      | Comprehensive implementation of content of Directive;<br>Verbraucherbehörden-Kooperationsgesetz:<br>competent consumer authority:<br>Bundeskartellanwalt   | None   |
| Directive 2008/122/EC on the                               | Yes                      | Teilzeitnutzungsgesetz<br>Verbraucherbehörden-Kooperationsgesetz                              | Bundesgesetzblatt (www.ris.bka.justiz.gv.at)      | Comprehensive implementation of content of Directive;  | None   |

**Table 3: Implementation of relevant EU legislation**

|   |     |  |   |  |      |
|---|-----|--|---|--|------|
| protection of consumers, in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts |     |  |   | competent consumer authority:<br>Bundeskartellanwalt                               |      |
| Directive 2010/31/EU of Energy Performance of Buildings Directive   | Yes | Mainly:<br>Energieausweis-Vorlage-Gesetz<br><br>(see also:<br>Bundes-Energieeffizienzgesetz,<br>Energieeffizienz-Richtlinienverordnung)  | Bundesgesetzblatt<br>(www.ris.bka.justiz.gv.at) | Comprehensive implementation of content of Directive, applicable since 01/12/2012. | None |
| Directive 2005/36/EC on Recognition of Professional Qualifications, as last amended by Directive 2013/55/EU                   | Yes | Anerkennungs- und Bewertungsgesetz,<br>Abschlussprüfer-Aufsichtsgesetz,<br>Apothekengesetz,<br>Ärztegesetz,<br>Ärztinnen-/Ärzte-EU-Qualifikationsnachweis-Verordnung 2014,<br>Beamten-Dienstrechtsgesetz,<br>Bühnen-Fachkenntnisse-Verordnung, Europäisches Rechtsanwalts-gesetz, EWR-Psychologengesetz,<br>EWR-Psychotherapiegesetz,<br>EWR-Psychotherapieverordnung,<br>Fachausbildung der Sicherheitsfachkräfte und die Besonderheiten der sicherheitstechnischen | Bundesgesetzblatt<br>(www.ris.bka.justiz.gv.at) | Comprehensive implementation of content of Directive                               | None |

**Table 3: Implementation of relevant EU legislation**

|  |  |  |  |  |  |
|--|--|--|--|--|--|
|  |  | <p>Betreuung für den untertägigen Bergbau,<br/>         Fachkenntnisnachweis-Verordnung,<br/>         Forstgesetz,<br/>         Gesundheits- und Krankenpflegegesetz,<br/>         Gesundheits- und Krankenpflege-EWR-Qualifikationsnachweis-Verordnung 2008,<br/>         Gesundheitsberuferegister-Gesetz,<br/>         Gewerbeordnung,<br/>         Hebammengesetz,<br/>         Hebammen-EWR-Qualifikationsnachweis-Verordnung 2008,<br/>         Kardiotechnikergesetz,<br/>         Land- und forstwirtschaftliches Landeslehrer-Dienstrechtsgesetz,<br/>         Landeslehrer-Dienstrechtsgesetz,<br/>         Medizinische Assistenzberufes-Gesetz,<br/>         Medizinischer Masseur- und Heilmasseurgesetz,<br/>         MTD-Gesetz,<br/>         Musiktherapiegesetz,<br/>         Pharmazeutische Fachkräfteverordnung,<br/>         Psychologengesetz 2013,<br/>         Psychotherapiegesetz,<br/>         Rechtsanwaltsordnung,<br/>         Sanitättergesetz,</p> |  |  |  |
|--|--|--|--|--|--|

**Table 3: Implementation of relevant EU legislation**

|                                       |     |  |  |  |      |
|---------------------------------------|-----|--|--|--|------|
|                                       |     | Schulunterrichtsgesetz für Berufstätige, Kollegs und Vorbereitungslehrgänge, Tierärztegesetz, Universitätsgesetz 2002, Vertragsbedienstetengesetz 1948, Wirtschaftstreuhandberufsgesetz 2017, Zahnärzte-EWR-Qualifikationsnachweis-Verordnung 2008, Zahnärzte-EWR-Qualifikationsnachweis-Verordnung 2008, Zahnärztegesetz, Zahnärztekammergesetz, Zeugnisformularverordnung. |  |  |      |
| Mortgage Credit Directive, 2014/17/EC | Yes | Mainly:<br>Bankwesengesetz<br><br>Hypothekar- und Immobilienkreditgesetz<br><br>(see also:<br>Finanzmarktaufsichtsbehördengesetz, FMA-Kostenverordnung 2016, Gewerbeordnung, Nationalbankgesetz 1984, Sanierungs- und Abwicklungsgesetz, Standesregeln für Kreditvermittlung, Versicherungsaufsichtsgesetz 2016).  | Bundesgesetzblatt (www.ris.bka.justiz.gv.at) | Bankwesengesetz, Hypothekar- und Immobilienkreditgesetz:<br>Comprehensive implementation of content of Directive | None |

## 1.4 Communications and strategy papers

| <b>Table 4: Communications and strategy papers</b>  |  |                         |               |                |  |
|---|--|-------------------------|---------------|----------------|--|
| <b>Communication or strategy paper</b>  | <b>Have the following communications and strategy papers been referred to in national documents?</b> | <b>Name of document</b> | <b>Source</b> | <b>Content</b> | <b>Differences with respect to communications and strategy papers listed in the first column</b> |
| COM(2015) 550 final Communication of the Commission Upgrading the Single Market: more opportunities for people and business | No   | -                       | -             | -              | -  |
| COM(2013)676 Communication from the Commission on evaluating national regulations on access to professions                  | No   | -                       | -             | -              | -  |
| COM(2016)820 Communication from the Commission on reform recommendations for regulation in professional services            | No   | -                       | -             | -              | -  |
| European Consumer Agenda  | No   | -                       | -             | -              | -  |
| Consumer Programme 2014-2020  | No   | -                       | -             | -              | -  |

National legislation refers only to EU-legislative acts, not to communications or strategy papers.

## 2. General market information

### 2.1 Key market data

| Table 5: Key market data   |  |
|--|--|
| General market situation (e.g. trends in the market, recent developments in the market, price fluctuations, etc.)  | Remarkable increase in real estate prices and rental fees since approximately 2010; comparison 2016:2010 = 141,32:100,00 (= price increase Housing Price Index) <sup>4</sup>   |
| Total value of residential transactions for <b>buying and renting</b> for the year 2015 (2014 or 2013 depending on the latest available data) expressed in EUR | No detailed data available; <sup>5</sup><br>2016: € 11,13 bn value of private household purchases regarding houses and flats;<br>2016: 3.860,000.00 households (main residence); hereof approx. 50% occupied by owners and approx. 43% by tenants; <sup>6</sup><br>2014: 50,700 residential immovable property transactions (2013: 41,100; 2012: 43,100; 2011: 43,590; 2010: 44,700); <sup>7</sup><br>comparison 2016: 2010 = 141,32:100,00 (=price increase Housing Price Index) <sup>8</sup> |
| Ratio house owners – tenants (i.e. the percentage of households that are owners resp. tenants of dwelling units)   | 2016:<br>Approx. 1.930,000.00 house-and-flat-owners-households (appr. 48%)<br>Appr. 43% lease-households (appr. 9% use based on other legal titles than ownership or tenancy).   |

<sup>4</sup> Statistik Austria (Statistics Austria): [https://www.statistik.at/web\\_en/statistics/Economy/Prices/house\\_price\\_index/080523.html](https://www.statistik.at/web_en/statistics/Economy/Prices/house_price_index/080523.html)

<sup>5</sup> Detailed statistic information might possibly be obtained from Statistik Austria (Statistics Austria): [https://www.statistik.at/web\\_en/statistics/index.html](https://www.statistik.at/web_en/statistics/index.html)

<sup>6</sup> Statistik Austria (Statistics Austria): [http://www.statistik.at/web\\_de/services/publikationen/7/index.html?includePage=detailedView&sectionName=Wohnen&pubId=476](http://www.statistik.at/web_de/services/publikationen/7/index.html?includePage=detailedView&sectionName=Wohnen&pubId=476)

<sup>7</sup> Statistik Austria (Statistics Austria): [https://www.statistik.at/web\\_en/nomenu/searchresults/index.html](https://www.statistik.at/web_en/nomenu/searchresults/index.html)

<sup>8</sup> Statistik Austria (Statistics Austria): [https://www.statistik.at/web\\_en/statistics/Economy/Prices/house\\_price\\_index/080523.html](https://www.statistik.at/web_en/statistics/Economy/Prices/house_price_index/080523.html)

**Table 5: Key market data**

|   |  |   |
|---|--|---|
| <p>Usage of land (Quotas for built land, agricultural land, "wild land" (forests, lakes etc.)</p> | <p>2015: appr.<br/>                     30,1% agricultural land,<br/>                     44,1% forests,<br/>                     11% other kinds of usage (rocks and rubble / traffic / low vegetation / company operation areas / glaciers / spare time and recreation / wasting assets / cemeteries),<br/>                     9,4% Alps,<br/>                     2,1% gardens,<br/>                     0,6% vineyards,<br/>                     1,8% waters,<br/>                     0,9% building areas.</p> |   |
| <p>Average prices of residential property</p>   | <p><i>According to the type of property</i></p> <ul style="list-style-type: none"> <li>• <i>Average flat of ca. 70 sqm</i></li> <li>• <i>Terrace house of ca. 100 sqm</i></li> <li>• <i>Detached (one family house) of ca. 150 sqm</i></li> </ul>  | <p>Fundamental differences are observed between regions;<sup>9</sup> highest prices in Vienna, Salzburg, Tirol, Vorarlberg; average prices in Oberösterreich, Niederösterreich; prices below average in Burgenland, Steiermark, Kärnten; Austrian average 2016: 10 € 2,552/m<sup>2</sup> for an apartment; € 1,346/m<sup>2</sup> for a house;<br/>                     see for details as to different types of immoveable property in different types of regions in Austria (the statistical categories of immoveable property do not correspond to the three asked categories): Statistik Austria (Statistics Austria), <a href="http://www.statistik.at/web_en/statistics/Economy/Prices/average_property_prices/index.html">http://www.statistik.at/web_en/statistics/Economy/Prices/average_property_prices/index.html</a> (data basis: 2012-2016); categories of Statistics Austria partly not congruent with categories asked for in country fiche;<br/>                     Statistics Austria could not provide data to answer concrete country fiche questions.</p> |

<sup>9</sup> Detailed statistic information might possibly be obtained from *Statistik Austria* (Statistics Austria): [https://www.statistik.at/web\\_en/statistics/index.html](https://www.statistik.at/web_en/statistics/index.html)

<sup>10</sup> *Statistik Austria* (Statistics Austria): [https://www.statistik.at/web\\_en/statistics/Economy/Prices/average\\_property\\_prices/113003.html](https://www.statistik.at/web_en/statistics/Economy/Prices/average_property_prices/113003.html) and [http://www.statistik.at/web\\_de/presse/112997.html](http://www.statistik.at/web_de/presse/112997.html)

**Table 5: Key market data**

|  |   |  |
|--|---|--|
|  | <p><i>According to the type of location</i></p> <ul style="list-style-type: none"> <li>• <i>Capital city</i></li> <li>• <i>Urban areas</i></li> <li>• <i>Rural areas</i></li> </ul>   | <p>See for details as to different types of immovable property in different types of regions in Austria (the statistical categories of immovable property do not correspond to the three asked for categories): <i>Statistik Austria</i> (Statistics Austria), <a href="http://www.statistik.at/web_en/statistics/Economy/Prices/average_property_prices/index.html">http://www.statistik.at/web_en/statistics/Economy/Prices/average_property_prices/index.html</a> (data basis: 2012-2016); categories of Statistics Austria partly not congruent with categories asked for in country fiche;<br/>Statistics Austria could not provide data to answer concrete country fiche questions;</p> <p>Some illustrative examples (based on Statistics Austria: <a href="http://www.statistik.at/web_de/statistiken/wirtschaft/preise/immobilien_durchschnittspreis_e/index.html">http://www.statistik.at/web_de/statistiken/wirtschaft/preise/immobilien_durchschnittspreis_e/index.html</a>):<br/>2016:<br/><u>Vienna (capital):</u><br/>70m<sup>2</sup>, with balcony, year of construction beginning with 1991, average for Vienna (23 very different districts): € 4.854,44/m<sup>2</sup><br/>house with 150m<sup>2</sup> living area, ground with 480-660m<sup>2</sup>, year of construction beginning with 1991, average for Vienna (23 very different districts): € 4.898,67/m<sup>2</sup><br/><u>Salzburg (urban):</u><br/>70m<sup>2</sup>, with balcony, year of construction beginning with 1991: € 4.595,00/m<sup>2</sup><br/>house with 150m<sup>2</sup> living area, ground with 490-700m<sup>2</sup>, year of construction beginning with 1991: € 6.415,00/m<sup>2</sup><br/><u>Kirchdorf an der Krems (Upper Austria) (rural):</u><br/>70m<sup>2</sup>, with balcony, year of construction beginning with 1991: € 1.723,00/m<sup>2</sup><br/>house with 150m<sup>2</sup> living area, ground with max. 760m<sup>2</sup>, year of construction beginning with 1991: € 1.710,00/m<sup>2</sup>.</p> |
| <p>Price development of residential property</p> | <p><i>According to the type of property</i></p> <ul style="list-style-type: none"> <li>• <i>Average flat of ca. 70 sqm</i></li> <li>• <i>Terrace house of ca. 100 sqm</i></li> <li>• <i>Detached (one family house) of ca. 150 sqm</i></li> </ul> | <p>Austrian average 2016: 11</p> <ul style="list-style-type: none"> <li>• Apartments: 2016:2015 = -0,31%;</li> <li>• Houses: 2016:2015 = +1,7%.</li> </ul>   |

<sup>11</sup> Statistik Austria (Statistics Austria): [http://www.statistik.at/web\\_de/presse/112997.html](http://www.statistik.at/web_de/presse/112997.html)

**Table 5: Key market data**

|  |   |   |
|--|---|---|
|  | <p>According to the type of location</p> <ul style="list-style-type: none"> <li>• Capital city</li> <li>• Urban areas</li> <li>• Rural areas</li> </ul> | <p>See for details as to different types of immovable property in different types of regions in Austria (the statistic categories of immovable property do not correspond to the three asked for categories): <i>Statistik Austria</i> (Statistics Austria), <a href="http://www.statistik.at/web_en/statistics/Economy/Prices/average_property_prices/index.html">http://www.statistik.at/web_en/statistics/Economy/Prices/average_property_prices/index.html</a> (data basis: 2012-2016); Categories of Statistics Austria partly not congruent with categories asked for in country fiche; Statistics Austria could not provide data to answer concrete country fiche questions.</p> |
| Development of price index (Housing price index if existing, otherwise Consumer price index) | Housing Price Index, average rate of change 2016: 8,5% (2015: 4,9%; 2014:3,5%; 2013: 5,2%; 2012: 7,3%; 2011: 6,3%) <sup>12</sup>                        |   |

## 2.2 Service providers

**Table 6: Service providers**

|                                    | Total number of firms         | Total number of professionals      | Total number of employees | Branch offices per firm | Market concentration in % of turnover | Average turnover per firm (expressed in EUR) |
|------------------------------------|-------------------------------|------------------------------------|---------------------------|-------------------------|---------------------------------------|--|
| Estate agents                      | Approx. 4,500                 | N/A                                | N/A                       | N/A                     | N/A                                   | N/A  |
| Lawyer/Advocates/Solicitor         | Approx. 6,100                 | N/A                                | N/A                       | N/A                     | N/A                                   | N/A  |
| Notary (= Civil Law Notary Public) | 514<br>( <i>Amtsstellen</i> ) | 507<br>(Civil Law Notaries Public) | Approx. 3,000             | N/A                     | N/A                                   | N/A  |
| Licensed conveyancers              | Not in existence in Austria   |                                    |                           |                         |                                       |  |
| Architects                         | N/A                           | Approx. 5,200                      | N/A                       | N/A                     | N/A                                   | N/A  |

<sup>12</sup> Statistik Austria (Statistics Austria): [https://www.statistik.at/web\\_en/nomenu/searchresults/index.html](https://www.statistik.at/web_en/nomenu/searchresults/index.html)

| Table 6: Service providers      |     |     |     |     |     |     |
|---------------------------------|-----|-----|-----|-----|-----|-----|
| Surveyor                        | N/A | N/A | N/A | N/A | N/A | N/A |
| Engineers                       | N/A | N/A | N/A | N/A | N/A | N/A |
| Other relevant service provider | N/A | N/A | N/A | N/A | N/A | N/A |

### 3. Roles of professionals and services in the real estate market

| <b>Table 7: Role of professionals in the real estate market</b>   |   |                                       |   |   |  |  |                                    |
|---|---|---------------------------------------|---|---|--|--|------------------------------------|
|   | <b>Estate agent</b>   | <b>Property valuator<sup>13</sup></b> | <b>Lawyer/ Advocate/ Solicitor</b>  | <b>Notary</b>   | <b>Bank</b>  | <b>Technical expert (architect, engineer, surveyor)</b>        | <b>Other relevant professional</b> |
| Main function: does the professional typically work independently or as part of a firm or another organisation? | Independent   | Independent                           | Independent   | Independent   | Independent  | Independent  | N/A                                |
| Extent of engagement (at which point(s) does each professional intervene in the process?)                       | Before conclusion of contract                                       | Before conclusion of contract         | Required documents, permissions, taxes and fees as well as Grundbuch.       | See detailed description below the Table  | Before conclusion of contract and afterwards (financing of purchase price) | Before conclusion of contract (examination of purchase object) |                                    |
| Mandatory involvement   | No  | No                                    | No  | For certain kinds of contracts, in principle also for blind parties.                | No   | No   |                                    |
| How are their fees/charges structured   | Usually a certain percentage of the price; legislative maximum fees | Basically: free agreement             | Legislative fees (tariffs) (Rechtsanwaltstarifgesetz, Notariatstarifgesetz) | Legislative maximum fees (tariffs) (Rechtsanwaltstarifgesetz, Notariatstarifgesetz) | Basically: free agreement  | Basically: free agreement                                      |                                    |

<sup>13</sup> In some EU countries, the real estate property valuers are regulated as a profession that is separate from estate agents (e.g. Hungary, Lithuania, Latvia); their services might be obligatory, especially when taking mortgage loans.

**Table 7: Role of professionals in the real estate market**

|  |                                      |  |  |  |  |  |  |
|--|--------------------------------------|--|--|--|--|--|--|
|  | (Immobilien<br>maklerveror<br>dnung) |  |  |  |  |  |  |
|--|--------------------------------------|--|--|--|--|--|--|

**Extent of engagement of Notaries:**

Often already before conclusion of contract (in the phase of offer and acceptance):

(a) If real estate agents are involved and, therefore, the very basic sales contract (agreement on sales object and price) is concluded through the written acceptance of a written offer, the Austrian Civil Law Notaries' Public involvement regularly starts with the acceptance of the offer.

(b) If there is no involvement of real estate agents and no written offer-acceptance-step, the Austrian Civil Law Notaries' Public involvement regularly starts already in the pre-contractual phase (one party or both parties seeking notarial information, help and advice).

Mainly immediately after conclusion of contract;

One-stop-shop for parties regarding required documents, permissions, taxes and fees as well as Grundbuch;

Specific specialisation in real estate transactions;

Certification of signatures (required for Grundbuch) - specific public interest in legal certainty/reliability of signatures – guaranteed by Civil Law Notary Public (e.g. authenticity/identity of signing persons – legal capacity);

See as to the special role of the Civil Law Notaries as guarantors of the public interest for example the very recent Piringer-decision of the EU-Court of Justice (ECJ, Case C-342/15, 09/03/17 (Piringer)<sup>14</sup>).

Fees for notaries:

Fees according to Notariatstarifgesetz and Rechtsanwaltstarifgesetz are maximum fees (maximum fees are calculated on basis of value, e.g. purchase price).

<sup>14</sup> ECJ, Case C-342/15, 09/03/17 (Piringer):

'[...] notarial activities pursue objectives in the public interest, in particular that of guaranteeing the legality and legal certainty of documents concluded between individuals, constitutes an overriding reason in the public interest capable of justifying restrictions of Article 49 TFEU resulting from the particular features of the activities of public notaries, such as the restrictions which derive from the procedures by which they are appointed, the limitation of their numbers and their territorial jurisdiction, or the rules governing their remuneration, independence, disqualification from other offices and protection against removal, provided that those restrictions make it possible for those objectives to be attained and are necessary for that purpose.'

#### 4. Land registration

| <b>Table 8: Land registration</b>                                      |  |
|--|--|
| Responsible authority(ies) dealing with land registration              | District Courts (Bezirksgerichte) as Grundbuch-Courts  |
| Actors involved in the registration procedure and their main functions | Normally: Civil Law Notary Public / Attorney + District Courts (there mainly: Rechtspfleger (specifically formed court staff))   |
| Intermediate steps of the registration procedure, if applicable        | Various prerequisites for registration as to administrative/tax/fees law (e.g. various necessary administrative or court proceedings, leading to official confirmations / approvals which are prerequisites for validity of the legal transactions - depending on the concrete case, e.g.: agricultural property, forestal property, acquisition by foreigners, participation of minor parties, participation of other parties with disabilities). |

## 5. The process to buy or sell a property

### 5.1 Main steps in the transaction process to buy or sell a property

| <b>Table 9: Main steps of the process to buy or sell a property</b> |   |                   |   |
|---|---|-------------------|---|
| <b>Main steps</b>   | <b>Main function</b>  | <b>Applicable</b> | <b>National specificities/additional functions/main actors</b>  |
| Estate agent services   | Matching the parties  | Yes               | No  |
| Alternative matching devices  | Matching the parties  | Yes               | Newspapers, internet platforms.   |
| Preliminary contract  | Securing the transaction before the final contract is concluded                                   | Yes               | <p>Preliminary contracts (pre-contracts) would legally be possible (e.g. 'Punktation', 'Verabredung eines künftigen Vertrages'), but are in practice hardly ever applied - instead the practice works mainly with written offers and acceptances. (In particular circumstances sale option contracts are established, which are, however, not comparable to pre-contracts).</p> <p>Offer and acceptance = conclusion of contract;<br/>                     afterwards detailed deed (Civil Law Notary Public / attorney, especially with all requirements for the Grundbuch);<br/>                     certification of signatures (in most cases: Civil Law Notary Public – only sometimes District Courts);<br/>                     Background: Civil Law Notaries Public regularly (less expensive than District Courts).</p> |
| Preliminary checks (land register, administrative permits)          | Ensuring that the buyer knows all legal obligations and relevant features related to the property | usual             | <p>Real Estate Agent;</p> <p>Civil Law Notary Public (impartial, 'legal friend' for all parties) or attorneys of parties (partial, 'legal friend' only of the own client).</p>  |
| Drafting the sales contract and/or deed of conveyance               | Summarising the agreement of the parties  | Yes               | <p>Civil Law Notary Public (impartial, 'legal friend' for all parties) or Attorneys of parties (partial, 'legal friend' only of the own client - one drafting the deed, the others examining it for their clients).</p>   |

**Table 9: Main steps of the process to buy or sell a property**

|   |  |       |  |
|---|--|-------|--|
| Legal advice or counselling               | Ensuring that the transaction is valid and that the parties know about their rights and duties | usual | Civil Law Notary Public (impartial, 'legal friend' for all parties) or Attorneys of parties (partial, 'legal friend' only of the own client).  |
| Certification of signatures               | Ensuring the validity of the agreement   | Yes   | Civil Law Notary Public (impartial, 'legal friend' for all parties) or (rarely) District Courts  |
| Contract execution (transfer of payment)  | Executing the contract (and securing that both parties perform their obligations)              | Yes   | Civil Law Notary Public (impartial, 'legal friend' for all parties). or Attorney (basically partial, 'legal friend' only of the own client – as fiduciary, however, obliged to all parties of the fiduciary agreement).  |
| Contract execution (transfer of property) | Executing the contract (and securing that both parties perform their obligations)              | Yes   | Civil Law Notary Public (impartial, 'legal friend' for all parties) or Attorneys of parties (partial, 'legal friend' only of the own client – one as executor, the others as controllers).   |
| Registration                              | Making the transaction visible to third parties and the public                                 | Yes   | District Court as Grundbuch-Court<br>Registration application filed by:<br>Civil Law Notary Public (impartial, 'legal friend' for all parties) or attorneys of parties (partial, 'legal friend' only of the own client – one as executor, the others as controllers) |

**Table 9: Main steps of the process to buy or sell a property**

|   |  |     |   |
|---|--|-----|---|
| Taxation (esp. transfer tax)              | Creating revenue for the state                     | Yes | <p>'Selbstberechnung und Abfuhr':<br/>                 Calculation, collection, formalities (information) and transfer of funds to tax/court administration regarding taxes for sellers and buyers and Grundbuch-fees regarding buyer (as alternative to long-lasting proceedings of tax/court authorities);<br/>                 Payment of taxes/fees is prerequisite for Grundbuch-registration – without registration in Grundbuch basically no acquisition of real estate rights:</p> <p>Civil Law Notary Public (impartial, 'legal friend' for all parties)<br/>                 or<br/>                 Attorneys of parties (partial, 'legal friend' only of the own client – one as executor, the others as controllers)</p> |
| Post-transaction controls (if applicable) | Securing that the contract is duly executed        | Yes | <p>Civil Law Notary Public (impartial, 'legal friend' for all parties)<br/>                 or<br/>                 Attorneys of parties (partial, 'legal friend' only of the own client – one as executor, the others as controllers)</p>  |
| Other steps                               | All other necessary steps for transfer of property | Yes | <p>Gathering (application, legal remedies) of all required civil law / administrative law permissions, allowances etc. in the respective civil law / administrative proceedings under the law applicable to each individual case (e.g. Grundverkehrsrecht, agricultural proceedings, forestal proceedings, documents required for Wohnungseigentum, succession proceedings, guardian proceedings etc.):<br/>                 Civil Law Notary Public (impartial, 'legal friend' for all parties)<br/>                 or<br/>                 attorneys of parties (partial, 'legal friend' only of the own client – one as executor, the others as controllers).</p>   |

## 5.2 Sale contract and transfer of ownership

| Table 10: Contract of sale and transfer of ownership       |   |  |   |  |
|--|---|--|---|--|
| Main steps   | Actors involved per intermediate step; is the intervention of a professional service provider usual or mandatory?   | Payment details <sup>15</sup>  |   | Typical risks associated to these steps, if relevant |
|  |   | Payments expressed:<br>• In EUR as % of total purchase price <u>and</u><br>• As a fixed amount if available (add if VAT applies)                   | When is the payment made  |  |
| Estate agent services or alternative matching devices      | Usually real estate agent or offering platforms (newspapers, internet platforms)  | Usually:<br>in EUR as % of total purchase price + VAT<br><br>(Maximum fees laid down in <i>Standes- und Ausübungsregeln für Immobilienmakler</i> ) | After conclusion of the contract, in practice often after signing of the detailed purchase deed | No   |
| Preliminary contract (usual)                               | Usual<br>In the form of offer and acceptance<br>Often intervention by a real estate agents,<br>Sometimes individual deeds drafted by Civil Law Notaries Public or attorneys | N/A  | N/A   | N/A  |
| Preliminary checks (land register, administrative permits) | Real estate agent;<br>Civil Law Notary Public (impartial, 'legal friend' for all parties)<br>or<br>attorneys of parties<br>(partial, 'legal friend' only of the own client) | Usually part of the overall services, no separate payment  | N/A   | N/A  |
| Drafting the sales contract and/or deed of conveyance      | Civil Law Notary Public (impartial, 'legal friend' for all parties)<br>or<br>attorneys of parties   | Usually part of the overall services, no separate payment  | N/A   | N/A  |

<sup>15</sup> Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

**Table 10: Contract of sale and transfer of ownership**

|                             |   |   |     |     |
|-----------------------------|---|---|-----|-----|
|                             | (partial, 'legal friend' only of the own client - one drafting the deed, the others examining it for their clients)                                   |   |     |     |
| Legal advice or counselling | Civil Law Notary Public (impartial, 'legal friend' for all parties)<br>or<br>attorneys of parties<br>(partial, 'legal friend' only of the own client) | Usually part of the overall services, no separate payment<br><br>Exception:<br>Attorneys who are charged with examining the draft deeds and accompanying the parties as 'controllers' of a contract drafting and executing attorney are paid for this kind of service after completion of their task. | N/A | N/A |
| Certification of signatures | Civil Law Notary Public (impartial, 'legal friend' for all parties)<br>or<br>(rarely) District Courts   | Usually part of the overall services of the Civil Law Notary Public, no separate payment;<br>if Civil Law Notary Public is only charged with certification of signatures (instead of overall drafting and executing): payment after certification of signatures.                                      | N/A | N/A |

| Table 10: Contract of sale and transfer of ownership                            |  |   |     |     |
|---|--|---|-----|-----|
| Contract execution (transfer of payment and registration; transfer of property) | Civil Law Notary Public (impartial, 'legal friend' for all parties)<br>or<br>attorney (basically partial, 'legal friend' only of the own client – as fiduciary, however, obliged to all parties of the fiduciary agreement)  | As a rule, Civil Law Notary Public /attorney executes the entire contract – payment after completion of the overall services;<br>Exception: usually payment by instalments in case of Baurägerverträge under Baurägervertragsgesetz | N/A | N/A |
| Registration in land register or similar device                                 | District Court as <i>Grundbuch-Court</i><br>Registration application filed by:<br>Civil Law Notary Public (impartial, 'legal friend' for all parties)<br>or<br>attorneys of parties (partial, 'legal friend' only of the own client – one as executor, the others as controllers)  | Usually payment of Grundbuch-fees after signing of Grundbuch-deed upon Selbstberechnung through Civil Law Notary Public / attorney  | N/A | N/A |
| Taxation (esp. transfer tax)  | ' <i>Selbstberechnung und Abfuhr</i> ':<br>Calculation, collection, formalities (information) and transfer of funds to tax/court administration regarding taxes for sellers and buyers and <i>Grundbuch-fees</i> regarding buyer (as alternative to long-lasting proceedings of tax/court authorities);<br>payment of taxes/fees is prerequisite for Grundbuch-registration – without registration in Grundbuch basically no acquisition of real estate rights:<br><br>Civil Law Notary Public (impartial, 'legal friend' for all parties)<br>or<br>attorneys of parties (partial, 'legal friend' only of the own client – one as executor, the others as controllers) | Usually payment of Grundbuch-fees after signing of Grundbuch-deed upon Selbstberechnung through Civil Law Notary Public / attorney.   | N/A | N/A |

**Table 10: Contract of sale and transfer of ownership**

|             |  |  |     |     |
|-------------|--|--|-----|-----|
| Other steps | Gathering (application, legal remedies) of all required civil law / administrative law permissions, allowances etc. in the respective civil law / administrative proceedings under the law applicable to each individual case (e.g. Grundverkehrsrecht, agricultural proceedings, forestal proceedings, documents required for Wohnungseigentum, succession proceedings, guardian proceedings etc.):<br>Civil Law Notary Public (impartial, 'legal friend' for all parties)<br>or<br>attorneys of parties (partial, 'legal friend' only of the own client – one as executor, the others as controllers). | Usually part of overall services - payment after completion. | N/A | N/A |
|-------------|--|--|-----|-----|

No general payment-data available (fundamental regional differences, no Austrian standard-height of payments, height of payments depending moreover on the concrete type of immoveable property – e.g. simple property, property connected with Wohnungseigentum, agricultural property, forestal property etc. - and, consequently, scale of complicacy and work effort)

#### ▲ Information on the legal position of a tenant occupying the dwelling to be sold.

As far as the specific protection granted by Mietrechtsgesetz is applicable, the above rule does not apply.

As far as Mietrechtsgesetz is not applicable, the rule does not apply either, new landlord as well as tenant are entitled however to extraordinary termination of the lease contract.

#### Mandatory intervention – Practice:

Professional advice/counselling/services by one or several real estate agents, by a Civil Law Notary Public (charged with taking care of all parties' interests) or by attorneys is, basically, not mandatory regarding real estate transactions (with already above mentioned few exceptions as to certain kinds of contracts respectively blind parties – those exceptions are, however, in practice of marginal importance).

Nonetheless, parties charge, as a general rule, these professions with their assistance – reason: factual as well as legal aspects of real estate transfers are too complicated and too important to be dealt with and handled by ordinary parties (only parties with specialised knowledge and expertise both in factual as

well as legal aspects, such as banks or large companies with own respective departments, handle real estate transactions themselves, accompanied by Civil Law Notaries Public as to the required certification of signatures).

**Fees:**

- Civil Law Notary Public / attorneys normally paid after completion of services, sometimes payments by instalments (e.g. Bauträgerverträge according to *Bauträgervertragsgesetz*);
- Taxes and *Grundbuch-fees* paid after conclusion of the deed of transfer;
- Other fees (e.g. for administrative documents) paid upon receipt of invoice.

5.3 Professional services performed in the real estate market related to buying and selling a property

| Table 11: Professional services performed in the real estate market related to buying and selling a property |   |                                  |   |   |
|--|---|----------------------------------|---|---|
| Services in the real estate market   | Minimum standards for information provided by law, if applicable  | Service providers involved       | Quality of involvement (mandatory, optional; if optional: usual or not) | Fees expressed: <ul style="list-style-type: none"> <li>• In EUR as % of total purchase price <u>and</u></li> <li>• As a fixed amount (if available)</li> </ul>  |
| Estate agent services or alternative matching devices  | Necessary information – all circumstances that are essential for the assessment of the transaction (i.e.: depending on individual circumstances of each case) (§ 3 Maklergesetz, § 30b Konsumentenschutzgesetz) | Estate agent                     | Optional  | Basically as % of total purchase price (Maximum fees laid down in <i>Standes- und Ausübungsregeln für Immobilienmakler</i> : §§ 12 and 15-27 (detailed regulations, maximum fees depending on a number of various factors). |
| Provision of mandatory information before the start of the transaction, if applicable                        | e.g.: Energieausweis-Vorlagegesetz  | e.g.: Energy performance experts | e.g.: energy performance: mandatory involvement of respective experts   | Usually: fixed amount respectively amount calculated on basis of individual effort; (costs depending on every single enterprise offering the energy efficiency certificate).  |
| Preliminary contract (usual)   | Not usual – instead: offer and acceptance   | ---                              | ---   | ---   |

**Table 11: Professional services performed in the real estate market related to buying and selling a property**

|  |   |   |  |  |
|--|---|---|--|--|
| Preliminary checks (land register, administrative permits)     | ---   | Real estate agent / Civil Law Notary Public / Attorneys.  | Optional   | ---  |
| Drafting the sales contract and/or deed of conveyance          | ---   | In Practice: Civil Law Notary Public or Attorney of one party (drafting attorney regularly controlled by attorneys of other parties).   | Optional   | Drafting only one part of the 'one-stop-shop'-services   |
| Legal advice or counselling                                    | Civil Law Notary Public (impartial, 'legal friend' for all parties)<br><br>or<br><br>attorneys of parties<br><br>(partial, 'legal friend' only of the own client - one drafting the deed, the others examining it for their clients). | In Practice: Civil Law Notary Public or Attorney of one party (drafting attorney regularly controlled by attorneys of other parties).   | (Optional)   | (Part of the 'one-stop-shop'-services)   |
| Certification of signatures                                    | ---   | In Practice: Civil Law Notary Public (rarely: District Courts; in a few parts of Austria - for historic reasons – also 'Legalisatoren', i.e. persons with public power in certification of signatures). | certification 'mandatory' (without certification no registration in 'Grundbuch') | Immediate payment, if certification is not part of the 'one-stop-shop'-services (e.g.: if contract is drafted and carried through by an experienced company); apart from such cases: part of the 'one-stop-shop'-services. |
| Contract execution (transfer of payment; transfer of property) | Civil Law Notary Public (impartial, 'legal friend' for all parties)   | In Practice: Civil Law Notary Public or   | (optional)   | (Part of the 'one-stop-shop'-services)   |

**Table 11: Professional services performed in the real estate market related to buying and selling a property**

|  |   |  |            |  |
|--|---|--|------------|--|
|  | or<br>attorneys of parties  | Attorney of one party<br>(drafting attorney<br>regularly controlled by<br>attorneys of other<br>parties)   |            |  |
| Registration in land register<br>or similar device | (partial, 'legal friend'<br>only of the own client<br>- one drafting the deed,<br>the others examining it<br>for their clients) | (In Practice:<br>Civil Law Notary Public<br>or<br>Attorney of one party<br>(drafting attorney<br>regularly controlled by<br>attorneys of other<br>parties) | (optional) | (Part of the 'one-stop-shop'-services) |
| Taxation (esp. transfer tax)                       | In Practice in most cases<br><i>Selbstberechnung</i>  | In Practice:<br>Civil Law Notary Public<br>or<br>Attorney of one party<br>(drafting attorney<br>regularly controlled by<br>attorneys of other<br>parties). | (optional) | (Part of the 'one-stop-shop'-services) |
| Other services                                     | Civil law / administrative<br>law permissions etc.  | In Practice:<br>Civil Law Notary Public<br>or<br>Attorney of one party<br>(drafting attorney<br>regularly controlled by<br>attorneys of other<br>parties). | (optional) | (Part of the 'one-stop-shop'-services) |

No payment-data available. (Fundamental regional differences, no Austrian standard-height of payments)

## 5.4 Creating a Mortgage

**Table 12: Mortgage requirements**

| Main steps to create a mortgage                                   | Actors/institutions involved  | Minimum standards for information   | Additional requirements for consumer mortgages, if relevant | Fees expressed:<br>• In EUR as % of total purchase price <u>and</u><br>• As a fixed amount (if available) | Typical risks associated to these steps, if relevant |
|---|---|---|---|---|--|
| Conclusion of credit and mortgage agreement with lender (bank)    | Contract parties;<br>Sometimes (e.g. if contract between private persons): Civil Law Notary Public<br>or<br>attorney of one party (regularly controlled by attorneys of other parties)  | Hypothekar- und Immobilienkreditgesetz, Konsumentenschutzgesetz (e.g.: purposes for which credit pay be used, types of sureties, possible duration of credit, detailed information on type of interest rate; see as an example the list in § 7 Hypothekar- und Immobilienkreditgesetz). | <i>Konsumentenschutzgesetz</i>                              | Not existing  | Not existing   |
| Insertion of mortgage in the land register, usually at first rank | In Practice:<br>Civil Law Notary Public -> Certification of signatures and insertion of deed in electronic deeds archive of the Austrian Chamber of Notaries;<br>Registration of mortgage: application by bank; if mortgage part of a real estate transaction (e.g. sales contract): application by Civil Law Notary Public or attorney |   |   |   |  |

**Table 12: Mortgage requirements**

|  | (together with all other deeds of the transaction).   |  |  |  |  |
|--|---|--|--|--|--|
| Credit sum paid to mortgagor (buyer) or seller | In Practice:<br>Credit sum paid to Civil Law Notary Public or attorney as trustee of the real estate transaction (e.g. sales contract). |  |  |  |  |

No payment-data available (Fundamental regional differences, no Austrian standard-height of payments):

Example for costs of a mortgage agreement according to applicable notarial/attorney tariff:

- Mortgage sum € 100.000,00: drafting of agreement: € 1.189,10;
- Mortgage sum € 200.000,00: drafting of agreement: € 2.002,50
- Mortgage sum € 300.000,00: drafting of agreement: € 2.815,90
- Mortgage sum € 400.000,00: drafting of agreement: € 3.629,30;

The costs of the necessary certification of signatures (required for the registration in the Grundbuch) and the costs for the necessary application to the *Grundbuch*, including costs for scanning of the deed and electronic transfer), are also governed by the various applicable tariffs (notarial/attorney/court tariffs).

## 6. The process to rent or let a property

### 6.1 Main steps in the transaction process to rent and let a property

| Table 13: Main steps of the process to rent and let a property                                     |  |
|--|--|
| Main steps   | Process involved   |
| Finding and matching landlords and tenants   | Real estate agent or private search (newspapers, internet platforms, etc.).  |
| Information search by landlords or tenants (e.g. about salary, outstanding debts)                  | It depends on individual parties (e.g.: <i>Grundbuch</i> , consultation of real property administration, confirmation of employer, consultation of interest protection associations for landlords respectively tenants). |
| Inspection of the property by tenants (in some cases with the help of professionals)               | Personal inspection (sometimes repeated, sometimes with support by real estate agents or other informed persons - depends on individual parties).  |
| Delivery of mandatory information to tenants prior to the conclusion of the contract (if relevant) | <i>Energieausweis-Vorlagegesetz</i>  |
| Delivery of energy performance certificate to tenant   | see above  |
| Provision of additional guarantees to landlord, if relevant  | -  |
| Conclusion of the contract in the usual form (e.g. oral, written, preformulated)                   | In practice: written lease agreements (due to the strict Mietrechtsgesetz and the dangers for landlords contained therein).  |
| Rent payment and deposit (e.g. bank account)   | Usual: three monthly rents as deposit.   |
| Registration of the contract in the land register (e.g. excluded, optional or mandatory)           | Optional – usual regarding long-term leases (not for 'normal' leases) – registration recommendable.  |

**Frequent:** parties sign contract without legal professional advice – legally highly dangerous due to very complicated respective legislation; parties who want to be safe, have their contract drafted and carried through by Civil Law Notary Public or attorneys.

The legal professional acts as one-stop-shop for all necessary and useful steps (drafting of documents, signing, certification of signatures, mandatory state fees, *Grundbuch*).

## 6.2 Rent contract

| Table 14: Rent contract   |   |   |                          |  |
|---|---|---|--------------------------|--|
| Main steps  | Actors involved per intermediate step; is the intervention of a service provider mandatory?   | Payment details <sup>16</sup>   |                          | Typical risks associated to these steps, if relevant |
|   |   | Payments expressed: <ul style="list-style-type: none"> <li>In EUR as % of total purchase price <u>and</u></li> <li>As a fixed amount if available (add if VAT applies)</li> </ul> | When is the payment made |  |
| Finding and matching the parties  | Optional – often real estate agents   | In Practice:<br>% of price, due upon conclusion of contract – see above as to real estate agent fees  | Conclusion of contract   | N/A  |
| Information search by landlord on tenant (e.g. about salary, outstanding debts)                   | Parties themselves, interest protection associations, Civil Law Notary Public, attorneys;<br>Not mandatory.   |   |                          | N/A  |
| Inspection of the property by tenant (in some cases with the help of professionals)               | Parties themselves, interest protection associations;<br>Not mandatory.   |   |                          | N/A  |
| Delivery of mandatory information to tenant prior to the conclusion of the contract (if relevant) | E.g. as to energy performance - parties themselves, interest protection associations, Civil Law Notary Public, attorneys;<br>Help of professionals not mandatory. |   |                          | N/A  |
| Delivery of energy performance certificate to tenant  | Parties themselves, interest protection associations, Civil Law Notary Public, attorneys;<br>Help of professionals not mandatory.                                 |   |                          | N/A  |
| Conclusion of the contract in the usual form (e.g. oral, written)                                 | If parties seek legal certainty (renting law specifically complicated in Austria):  |   |                          | N/A  |

<sup>16</sup> Payment shall be considered as the 'discharge of an obligation by its settlement equal to the monetary value of the debtor's obligation' while fees can be defined as 'a charge for services rendered' (Retrieved from: <http://www.investorwords.com/3634/payment.html>, <http://www.investorwords.com/1922/fee.html>). Payment, therefore, includes both the cost of the service and the fees for the service in question.

**Table 14: Rent contract**

|   |   |  |  |     |
|---|---|--|--|-----|
|   | drafting of contract through Civil Law Notary Public or attorney of one party (regularly controlled by attorneys of other parties);<br>Not mandatory. |  |  |     |
| Rent payment and deposit (e.g. bank account)  | Parties themselves;<br>Help of professionals not mandatory.   |  |  | N/A |
| Registration of the contract in the land register or other device (excluded, optional or mandatory) | Not frequent; Civil Law Notary Public, attorneys;<br>Help of professionals not mandatory.   |  |  | N/A |

### 6.3 Professional services performed in the real estate market related to renting and letting a property

**Table 15: Professional services performed in the real estate market related to renting and letting a property**

| <b>Services in the real estate market</b>   | <b>Minimum standards for information provided by law, if applicable</b>   | <b>Service providers involved</b>  | <b>Quality of involvement (e.g. mandatory; exclusive rights)</b> | <b>Fees expressed:</b> <ul style="list-style-type: none"> <li>• In EUR as % of total purchase price <u>and</u></li> <li>• As a fixed amount (if available)</li> </ul> |
|---|---|--|--|---|
| Finding and matching landlords and tenants  | Necessary information – all circumstances that are essential for the assessment of the transaction (i.e.: depending on individual circumstances of each case) ( <i>§ 3 Maklergesetz, § 30b Konsumentenschutzgesetz</i> ). | Often real estate agents   | Optional   | In Practice:<br>% of price, due upon conclusion of contract – see above as to real estate agent fees.   |
| Information search by landlords or tenants (e.g. about salary, outstanding debts) | It depends on individual parties (e.g.: Grundbuch, consultation of real property administration, confirmation of employer, consultation of interest protection  | Parties themselves, interest protection associations, Civil Law Notary Public, attorneys | Not mandatory  |   |

**Table 15: Professional services performed in the real estate market related to renting and letting a property**

|  |  |   |   |                                       |
|--|--|---|---|---------------------------------------|
|  | associations for landlords respectively tenants).  |   |   |                                       |
| Inspection of the property by tenants (in some cases with the help of professionals)               | Personal inspection (sometimes repeated, sometimes with support by real estate agents or other informed persons - depends on individual parties) | Parties themselves, interest protection associations  | Not mandatory   |                                       |
| Delivery of mandatory information to tenants prior to the conclusion of the contract (if relevant) | e.g.:<br><i>Energieausweis-Vorlagegesetz</i>   | Parties themselves, interest protection associations, Civil Law Notary Public, attorneys  | Help of professionals not mandatory   |                                       |
| Conclusion of the contract in the usual form (e.g. oral, written, preformulated)                   | In practice: written lease agreements (due to the strict Mietrechtsgesetz and the dangers for landlords contained therein)                       | If parties seek legal certainty (renting law specifically complicated in Austria):<br>drafting of contract through Civil Law Notary Public or attorney of one party (regularly controlled by attorneys of other parties). | Not mandatory   |                                       |
| Rent payment and deposit (e.g. bank account)   | N/A  | Parties themselves  | Help of professionals not mandatory   | Usual: three monthly rents as deposit |
| Registration of the contract in the land register (e.g. excluded, optional or mandatory)           | N/A  | Not frequent; Civil Law Notary Public, attorneys  | Optional – usual regarding long-term leases (not for 'normal' leases) – registration recommendable. |                                       |

## 7. Professional services regulation: notaries

### 7.1 Market entry and structure regulation

**Table 16: Market entry and structure regulation**

|                                       | <b>Regulation</b>  |   |
|---------------------------------------|--|---|
| <b>Subjective requirements</b>        | <i>Qualifications (diplomas, exams, concours) required to become a notary in your country:</i>           | Nationality: Austrian, EU, EEA or Switzerland;<br>Accomplished studies of Austrian law;<br>notary examination (two parts, each written and oral), requiring notarial practice;<br>7 years of practice.<br>(§§ 6 and 6a <i>Notariatsordnung</i> )  |
| <b>Objective requirements</b>         | <i>Do numerus clauses and other objective requirements exist?</i>  | State aims to offer population a Civil Law Notary Public as ‘legal friend’ in every region of the country -<br>> nationwide system of notariats, controlled as to number and place by Minister of Justice;<br>Minister of Justice appoints the Civil Law Notary Public for a specific notariat on basis of 3 appointment proposals:<br>by the respective regional Chamber of Notaries, by the respective Landesgericht (Provincial Court) and the respective Oberlandesgericht (Superior Provincial Court). |
| <b>Citizenship requirements</b>       | <i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i> | Nationality: Austrian, EU, EEA or Switzerland;<br>The appointment proposals try to find ‘the best man/woman for the respective notariat’, i.e. taking into account all personal qualifications for the notariat in need of a notary.  |
| <b>Inter-professional cooperation</b> | <i>Are forms of collaboration between notaries and other professionals allowed and usual?</i>            | No:<br>due to the specifically high public confidence bestowed on and required of Austrian Civil Law Notaries, they have to be completely independent (no diminution/impairment of reliability and impartiality through personal economic ties).  |
| <b>Business structure</b>             | <i>Are notary associations/corporations allowed?</i>   | Yes (however, not too frequent in practice; in the legal form of Gesellschaften bürgerlichen Rechts (GesBR) or Offenen Gesellschaften (OG) or Kommanditgesellschaften (KG); in practice mostly as association between two Civil Law Notaries Public or between a Civil Law Notary Public and his/her Notarsubstitut).   |

| Table 16: Market entry and structure regulation |   |  |
|---|---|--|
| Geographical limitations                        | Are there limitations with respect to the area in which the notary can exercise his/her activities (e.g. at the regional or municipal level)? | State aims to offer population a Civil Law Notary Public as 'legal friend' in every region of the country - nationwide system of notariats, controlled as to number and place by Minister of Justice; (Background: avoidance of geographical distribution parallel to attorneys (concentration in cities, no / only few attorneys in rural regions;)<br>However no 'geographical protection', i.e.: in the area of a notariat other Civil Law Notaries Public and attorneys are allowed to render their legal services;<br>Civil Law Notaries Public should work in another notariat's area only if so required by parties;<br>This means: the population definitely has a Civil Law Notary Public at disposition, but does not have to make use of his services = 'nationwide geographical offer, but no compulsion'. |
|   | Are these limitation restricted to specific tasks?  | No   |

**Important additional information as to notarial system:**

- Long-term notarial formation (two large examinations, requirement of several years of notarial practice) and long-term notarial practice before first appointment (first appointment at the age of approx. 42-50 years) makes sure that population has Civil Law Notaries Public at disposition who have gathered lots of 'on-the-job-practice', have experienced lots of different notarial cases as well as clients;
- Notarial obligation to be continued and regular advanced training (controlled by regional Chambers of Notaries) guarantees up-to-date knowledge, information and expertise;
- Strict impartiality, objectivity and obligation to comprehensive counselling guarantees Civil Law Notary Public as 'legal friend' of all parties involved, not only of the party who has first charged him, so that parties do not need own legal advisers to avoid disadvantages;
- This saves to a fundamental extent overall legal service costs;
- (in comparison to situations in which one party charges an attorney and all other parties charge their own attorneys to control the first attorney in order to avoid own disadvantages).

7.2 Market conduct regulation

| Table 17: Market conduct regulation |  |  |
|-------------------------------------|--|--|
|                                     | Regulation   |  |
| Exclusive rights                    | Specify for which transactions or parts of them only notaries may act against payment. | Regarding real estate transactions – mainly, but nearly without practical significance:<br>sales, credit or barter contracts between spouses;<br>donation contracts regarding which the handing over of the donation object has not yet taken place;<br>basically, contracts of blind parties (with exceptions). |

**Table 17: Market conduct regulation**

|                                |  |  |
|--------------------------------|--|--|
|                                |  | Donation-point of practical importance, other points of nearly no practical importance (only very few cases).  |
| Duty to provide services       | <i>Are notaries allowed to refuse a request to act?</i>  | Regarding real estate transactions: no refusal where the law requires Notariatsakt (Notariatsaktsgesetz) – nearly no practical importance<br>Civil Law Notaries Public are within the scope of § 1 Notariatsordnung ('public part' of the notarial profession) obliged to act; here the relationship between client and Civil Law Notary Public can be compared to the relationship between citizen and court/administrative authority). |
| Professional standards         | <i>How are professional standards regulated? What are the tasks of the professional representation (e.g. Chamber of Notaries) in this context?</i> | Notariatsordnung and numerous professional Directives; Regional Chamber of Notaries as controlling instance; Disciplinary proceedings carried through by regional Chamber of Notaries / Court instances.   |
| Mandatory intervention         | <i>Is the intervention of a notary required for the registration procedure?</i>  | No   |
| Compulsory indemnity insurance | <i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the insurance?</i>  | Yes / € 400,000.00   |
| Continuing education           | <i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>  | Yes / yes  |
| Advertising restrictions       | <i>Are there limitations on advertising?</i>   | 'Honour and dignity of the profession' to be observed (e.g. no aggressive or mass advertising, e.g. on buses, no ridiculous advertising, all advertising has to conform to the high appreciation by the part of the population for Civil Law Notaries Public in Austria and must not be 'cheap', 'loud' or the like)   |
| Fee regulation                 | <i>Fees system</i>   | Drafting of deeds: application of notarial tariff system; Selbstberechnung, applications: attorney tariff system; tariffs as maximum fees; less fees allowed (individual agreements); limit to the bottom: unfair competence; Parties/participants have to bear; Fees in most cases calculated on basis of value of transaction.   |

8. Professional services regulation: lawyers or other licensed conveyancers (only relevant if legally admitted to perform real estate transactions and/or to assist the conclusion of tenancy agreements)

8.1 Market entry and structure regulation

| Table 18: Market entry and structure regulation |  |  |
|---|--|--|
|   | Regulation   |  |
| Subjective requirements                         | <i>Conditions (diplomas, exams, concours) required to become a lawyer in your country.</i>   | See Civil Law Notaries Public – attorneys (§§ 1 ff <i>Rechtsanwaltsordnung</i> ):<br>Attorneys: 1 examination instead of 2 examinations<br>Attorneys: required practice: 5 instead of 7 years.<br><br>(§§ 1 ff <i>Rechtsanwaltsordnung</i> ) |
| Objective requirements                          | <i>Do numerus clauses and other objective requirements exist?</i>  | No   |
| Citizenship requirements                        | <i>Are foreign candidates admitted de iure and also de facto under the same conditions as nationals?</i>   | See Civil Law Notaries Public  |
| Inter-professional cooperation                  | <i>Are forms of collaboration between lawyers and other professionals allowed and usual?</i>   | No   |
| Business structure                              | <i>Are lawyer associations/corporations allowed?</i>   | Yes (often as <i>Gesellschaften mit beschränkter Haftung (GmbH)</i> ); in practice often associations of appr. 2-10 attorneys).  |
| Geographical limitations                        | <i>Are there limitations with respect to the area in which the lawyer can exercise his/her activities (e.g. at the regional or municipal level)?</i> | Regarding real estate transactions: no   |
|   | <i>Are these limitation restricted to specific tasks?</i>  | No   |

## 8.2 Market conduct regulation

**Table 19: Market conduct regulation**

|                                | <b>Regulation</b>  |  |
|--------------------------------|--|--|
| Exclusive rights               | <i>For which transactions or parts of them only lawyers may act against payment</i>  | Regarding real estate transactions: no exclusive rights of attorneys.  |
| Neutrality                     | <i>Is the lawyer allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees apply and which party has to bear them?</i> | Basically yes – in practice, however, attorneys – due to their occupational profile (partiality for their client) - point out that they exclusively represent one party (e.g. to a sales or lease contract); in this case, the unrepresented parties frequently mandate each of their own representatives (Civil Law Notaries Public or attorneys) at their own cost. Height and bearing of fees in those exceptional cases in which attorney acts in the interest of more than one party: individual agreement. |
| Duty to provide services       | <i>Are lawyers allowed to refuse a request to act?</i>   | Yes (attorneys are free to reject cases that they do not want) – the contract between an attorney and his/her client is a private contractual relationship; Civil Law Notaries Public, to the contrary, are within the scope of § 1 Notariatsordnung ('public part' of the notarial profession) obliged to act; here the relationship between client and Civil Law Notary Public can be compared to the relationship between citizen and court/administrative authority.   |
| Professional standards         | <i>How are professional standards regulated? What are the tasks of the professional representation (e.g. Chamber of Lawyers/Advocates) in this context?</i>        | Rechtsanwaltsordnung and Disziplinarstatut; Regional Chamber of Attorneys as controlling instance; Disciplinary proceedings carried through by Regional Chamber of Attorneys.  |
| Compulsory indemnity insurance | <i>Is indemnity insurance compulsory? If yes, what is the indicative amount of the insurance?</i>  | Compulsory for Civil Law Notaries Public and attorneys - € 400,000.00.   |
| Continuing education           | <i>Do forms of continuing education exist? If yes, is continuing education mandatory?</i>  | Yes / yes.   |
| Advertising restrictions       | <i>Are there limitations on advertising?</i>   | 'Honour and dignity of the profession' to be observed (compare Civil Law Notaries Public – generally speaking: lower level of appreciation by part of population allows broader advertising than is tolerated for Civil Law Notaries Public).  |
| Fee regulation                 | <i>Lawyer fee system</i>   | Drafting of deeds: application of notarial tariff system; <i>Selbstberechnung</i> , applications: attorney tariff system; tariffs as maximum fees; less fees allowed (individual agreements); limit to the bottom: unfair competence.  |

## 9. Professional services regulation: estate agents

### 9.1 Market entry and structure regulation

**Table 20: Market entry and structure regulation**

|                                       | <b>Regulation</b>   |  |
|---------------------------------------|---|--|
| <b>Subjective requirements</b>        | <i>Qualifications (level and duration of education and training, diplomas, exams, traineeships or professional experience requirements, concours) required to become an estate agent in your country.</i>   | Formation or examination (in detail: § 1 <i>Immobilientreuhänder-Verordnung</i> ): university or Fachhochschul-examination regarding estate agency + at least 1 year of estate agency practice; or completed studies of economics or law + at least 1 year of estate agency practice + <i>Befähigungsprüfung</i> ; or minor formations + longer practice + <i>Befähigungsprüfung</i> ; or <i>Befähigungsprüfung</i> and <i>Ergänzungsprüfung</i> Bauträger). |
| <b>Objective requirements</b>         | <i>Do numerus clauses and other objective requirements exist?</i>   | Indemnity insurance € 100,000.00 per case.   |
| <b>Licence requirements</b>           | <i>Are estate agents licenced or do they work as employees?</i>   | In practice, most real estate agents act as independent entrepreneurs, partly with employees.  |
| <b>Citizenship requirements</b>       | <i>Is unlimited access to the profession granted to foreign professionals de iure and de facto?</i>   | No   |
| <b>Inter-professional cooperation</b> | <i>Are estate agents allowed to exercise another profession or business activity? Is inter-professional cooperation regulated?</i>  | Yes / No.  |
| <b>Business structure</b>             | <i>Share of estate agent acting as sole practitioners and as companies (if data are available)? Can the agent be employed by another agent or establish a partnership with other agents? Are there any restrictions on the corporate structure of a real estate enterprise (such as voting rights reserved to qualified members of a profession, shareholding requirements etc.)?</i> | N/A.   |

**Table 20: Market entry and structure regulation**

|                          |  |    |
|--------------------------|--|----|
| Geographical limitations | <i>Are there limitations with respect to the area in which the estate agent can exercise his/her activities (e.g. at the regional or municipal level)?</i> | No |
|                          | <i>Are these limitation restricted to specific tasks?</i>  | No |

## 9.2 Market conduct regulation

**Table 21: Market conduct regulation**

|                                | <b>Regulation</b>   |  |
|--------------------------------|---|--|
| Neutrality                     | <i>Is neutrality regulated? Is the agent allowed to act on behalf of both parties involved in the transaction? In this case, what type of fees applies and which party bears these?</i>                                       | Double representation allowed / individual agreement (maximum fees: §§ 11 ff Standes- und Ausübungsregeln für Immobilienmakler).   |
| Professional standards         | <i>How are professional standards regulated? Are entities or associations ensuring the professional representation and respect of rules of good practice (e.g. association of real estate professionals)?</i>                 | <i>Immobilientreuhänder-Verordnung – Zugangsvoraussetzungen; Standes- und Ausübungsregeln für Immobilienmakler (www.ris.bka.gv.at);</i><br>No 'ensuring' professional entities or associations (only Gewerbebehörde as general controlling authority). |
| Compulsory indemnity insurance | <i>Is indemnity insurance compulsory for estate agents? If yes, what is the indicative amount of the insurance?</i>   | Yes / € 100,000.00 (in detail: § 117/7 Gewerbeordnung).  |
| Continuing education           | <i>Do forms of continuing education exist? If yes, is continuing education mandatory? What are the requirements related to the content and duration of continuing education? What are the consequences of non-compliance?</i> | N/A  |
| Advertising restrictions       | <i>Are there limitations on advertising?</i>  | N/A  |

| Table 21: Market conduct regulation                                  |  |  |
|--|--|--|
| Fee regulation   | <i>Are fees limited by statute? Which party is responsible for their payment?</i>  | Individual agreement (maximum fees: §§ 11 ff <i>Standes- und Ausübungsregeln für Immobilienmakler</i> ) / basically: who charges the agent, pays.<br>(Maximum fees: §§ 12 and 15-27 (detailed regulations, maximum fees depending on a number of various factors). |
| Compulsory membership in professional bodies/compulsory registration | <i>Is membership in professional bodies compulsory? If so, what are the membership conditions and the membership fees? Does the professional body have a supervisory or another important regulatory role?</i> | No   |

10. The real estate market

10.1 Transaction costs for sample transactions

| Table 22: Transaction costs VAT excluded |                            |                               |                             |                         |                         |   |
|--|----------------------------|-------------------------------|-----------------------------|-------------------------|-------------------------|---|
|  | Estate agent <sup>17</sup> | Technical services (if usual) | Legal services              | Land register fee       | Transfer tax/stamp duty | Total usual transfer costs  |
| €100,000 sales price (no mortgage)       | € 3,000.00 (net)           | N/A                           | € 1,000.00 – 2,000.00 (net) | € 1,100.00              | € 3,500.00              | Sum of amounts on left side + various administrative/expert fees (e.g. <i>Grundverkehrsrecht, Forstrecht, Pfllegschaftsrecht, Sachwalterschaftsrecht, Wohnungseigentumsrecht</i> etc.). |
| €100,000 sales price + 100.000€ mortgage | € 3,000.00 (net)           | N/A                           | € 1,000.00 – 2,000.00 (net) | € 1,100.00 + € 1,200.00 | € 3,500.00              |   |
| €250,000 sales price (no mortgage)       | € 7,500.00                 | N/A                           | € 2,500.00 – 3,750.00       | € 2,750.00              | € 8,750.00              |   |
| €250,000 sales price + 250,000€ mortgage | € 7,500.00                 | N/A                           | € 2,500.00 – 3,750.00       | € 2,750.00 + € 3,000.00 | € 8,750.00              |   |
| €500,000 sales price (no mortgage)       | € 15,000.00                | N/A                           | € 5,000.00                  | € 5,500.00              | € 17,500.00             |   |
| €500,000 sales price + €500,000 mortgage | € 15,000.00                | N/A                           | € 5,000.00                  | € 5,500.00 + € 6,000.00 | € 17,500.00             |   |
| %VAT applicable                          | Yes                        | N/A                           | Yes                         | No                      | No                      |   |

<sup>17</sup> An agent usually receives a percentage of the transaction value.

## 10.2 Transaction features

| Table 23: Transaction features |  |  |   |
|--------------------------------|--|--|---|
| Transaction / service          | Party bearing the costs of intermediation service (buyers or sellers, landlords or tenants)<br>Costs expressed:<br><ul style="list-style-type: none"> <li>• In EUR as % of total purchase price <u>and</u></li> <li>• As a fixed amount (if available)</li> </ul>  | Fees as expressed in the contract:<br><ul style="list-style-type: none"> <li>• In EUR as % of total purchase price <u>and</u></li> <li>• As a fixed amount (if available)</li> </ul> | Possible hidden costs faced by buyers or tenants, if applicable |
| Estate agents                  | Usually both parties equally / % of price  | Usually 3% of price (net)  | N/A   |
| Technical services             | N/A  | N/A  | N/A   |
| Legal services                 | Usually: buyer/tenant – seller usually bears costs regarding Immobilienertragsteuer (purchase contract) and cancellation of encumbrances   | Notary and attorney tariffs as maximum; usually 1 - 2,5% of price (net).   | N/A   |
| Land register fees             | As a % of price: (applicant = buyer owes fees; usually parties agree that buyer bears fees). The parties agree in practice nearly always that the buyer bears these fees and this tax. Accordingly, it can be stated:<br>(a) In practice the buyer makes the application to the Grundbuch and, therefore, owes as well as actually bears (as agreed) the Grundbuch fees.<br>(b) The Grunderwerbsteuer is owed by seller and buyer to the State, but in practice, as agreed, is nearly always borne by the buyer. | Ownership: 1,1%<br>Mortgage: 1,2%  | No  |
| Taxes on conveyancing          | % of price ( <i>Grunderwerbsteuer</i> ) (seller and buyer owe the tax, usually the parties agree that the buyer bears it)  | 3,5% of price ( <i>Grunderwerbsteuer</i> )   | No  |
| Transfer taxes                 | See before   | See before   | No  |

## 10.3 Taxes during the process of buying and selling a property

| <b>Table 24: Taxes related to buying and selling a property</b> |                             |   |   |
|---|-----------------------------|---|---|
|   | <b>Relevance of the tax</b> | <b>When to pay the tax as part of the process of buying or selling</b>  | <b>Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount if available)</b> |
| Registration tax <sup>18</sup>                                  | No                          | -   | -   |
| Mortgage tax  | No                          | -   | -   |
| Cadastral tax   | No                          | -   | -   |
| Stamp tax   | No                          | -   | -   |
| Transfer tax (tax on the acquisition of property)               | Yes                         | Conclusion of contract establishes tax duty – payment in practice usually shortly after signing of deed ( <i>Selbstberechnung</i> ) | 3,5%  |
| Archives tax  | No                          | -   | -   |

<sup>18</sup> Registration taxes are public levies associated with the registration act. They are not to be confused with registration fees, i.e. the payment required by the registration office to carry out the registration. Registration fees are contained in Table 10.

**Table 24: Taxes related to buying and selling a property**

|                    |   |  |            |
|--------------------|---|--|------------|
| <p>Other taxes</p> | <p><i>Immobilienwertsteuer</i> (paid by seller)</p> | <p>Receipt of price establishes tax duty – Selbstberechnung has to comprise Grunderwerbsteuer (buyer), Grundbuchs-Eintragungsgebühr (buyer) as well as Immobilienwertsteuer (seller) (= Civil Law Notary Public or attorney controlled by attorneys of other parties calculates, collects and transfers the 3 respective amounts and sends the legally required information regarding the transaction in a standardized way (FinanzOnline-internet portal of the Austrian finance administration) to the tax authority;<br/>as an alternative the transaction could be adverted to the tax authority which would then issue a tax decision and after payment a confirmation of payment – this means, however, in practice a prolongation of the transaction of around 6-9 months: only after receipt of the payment confirmation can the Grundbuch-application be filed given that the application has to contain either a Selbstberechnungs-annotation or alternatively the tax authority's payment confirmation – in brief: without payment of taxes/fees no Grundbuch-registration and thus no acquisition of real estate property)</p> | <p>N/A</p> |
|--------------------|---|--|------------|

#### 10.4 Taxes during the process of renting and letting a property

**Table 25: Taxes related to renting or letting a property**

|   | <b>Relevance of the tax</b> | <b>When to pay the tax in the process of renting or letting</b>  | <b>Tax amount (expressed in EUR as % of total purchase price <u>and</u> as a fixed amount if available)</b> |
|---|-----------------------------|--|---|
| Registration tax  | No                          |  |   |
| Stamp tax   | No                          |  |   |
| Other taxes concerning the use of the property, if applicable | Yes                         | <i>Bestandvertragsgebühr</i> according to § 33 TP 5 <i>Gebührengesetz</i> , conclusion of contract establishes duty to pay fees. | 1% of the 'value' (detailed legal regulation on how to calculate the 'value')                               |

## 11. Consumer situation in the market

### 11.1 Consumer rights

| Table 26: Consumer rights  |                                  |  |
|--|----------------------------------|--|
| <p>Are there specific consumer rights in the context of real estate transactions and residential tenancies in your country?<br/>In particular: are residential tenants treated as consumers?</p> | <i>With respect to buyers</i>    | Only if there is a contract between 'entrepreneur' (business) and 'consumer' according to <i>Konsumentenschutzgesetz</i> ;<br><i>Energieausweis-Vorlagegesetz</i> tries to ensure sufficient information for buyer;<br>In addition (specific field of sales contracts): <i>Bauträgervertragsgesetz</i> serves the protection of the buyer in a similar way as <i>Konsumentenschutzgesetz</i> protects 'consumers'. |
|  | <i>With respect to sellers</i>   | Only if contract between 'entrepreneur' and 'consumer' according to <i>Konsumentenschutzgesetz</i> .   |
|  | <i>With respect to tenants</i>   | Only if contract between 'entrepreneur' and 'consumer' according to <i>Konsumentenschutzgesetz</i> ;<br><i>Energieausweis-Vorlagegesetz</i> tries to ensure sufficient information for tenant;<br><i>Mietrechtsgesetz</i> = specific tenancy Act.  |
|  | <i>With respect to landlords</i> | Only if contract between 'entrepreneur' and 'consumer' according to <i>Konsumentenschutzgesetz</i> .   |
| If relevant, which existing marketing practices are non-compliant with national consumer legislation?  | N/A                              |  |
| If relevant, which existing marketing practices are non-compliant with EU consumer legislation?  | N/A                              |  |
| Are there existing marketing practices detrimental to consumers, even if not necessarily illegal, in both domestic and cross-border transactions?  | N/A                              |  |

## 11.2 Consumer complaints

| Table 27: Consumer complaints  |   |
|--|---|
| How often do <b>buyers and sellers</b> complain due to arising legal issues (e.g. invalid contract, missing information, hidden defects, missing building permit, and delay in payment)?   | N/A   |
| How often do <b>tenants and landlords</b> complain due to arising legal issues (e.g. invalid contract, missing information, increase of rent, termination of the contract without proper notice)?  | N/A   |
| Are consumer complaints against a professional service provider frequent, in particular as regards the fees and quality or service?  | N/A   |
| To whom can consumers complain (e.g. local or national administration, consumer protection agencies)? Moreover, through which means (e.g. formal letter, online form)? Is the procedure effective (in particular: average time needed for reply, solutions available for redress)? | Basically: courts / complaint;<br>relatively new: Alternative-Streitbeilegung-Gesetz - 8 Alternative Dispute Settlement Institutions (AS-Stellen) - suspension of prescription period - see EU-directive 2013/11/EU - however not applicable to sales contracts regarding real estate property. |

### Basic information as to Civil Law Notaries Public in this context:

Due to notarial intervention, there are, in practice, very few complaints/Court cases pertaining to the validity of the contract and other issues that were examined by the Civil Law Notary Public.

As public officers, Civil Law Notaries Public are subject to close control by State authorities, i.e. the public Chamber of Notaries as well as the court system (both as disciplinary institutions). Complaints are handled efficiently by the Chambers and, if necessary, by the competent Courts.

In addition, the Civil Law Notary Public is liable for any negligent or deliberate professional fault. Compulsory professional insurance ensures that any damage will be redressed and that the clients are compensated. In practice, there are very few cases in which the compulsory professional insurance has to compensate clients.

Consumers without technical, legal and tax knowledge sometimes might feel that the real estate market (including also the mortgage market) in Austria seems difficult to understand. High values are involved in this specific market and this implies a need for detailed, subtle and reliable legislative regulation, which entails that parties need to be advised by technical, legal and tax experts. Given the high standard of legislation in this context, including also the broadly and very highly appreciated system of the Austrian Grundbuch, the real estate market in Austria generally works in practice highly efficiently and reliably.