

cyberDOC and e-Government: the electronic archive of Austrian notaries

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Notaries as part of the Austrian legal system

Following the tradition of Roman law the Austrian notaries are a legal profession separate from lawyers (advocates) with specific tasks of dealing with non-contentious matters assigned to them by law, such as the creation of notarial deeds, public protocols, certification of signatures, authentication of documents and copies, protesting delinquent cheques and bills of exchange, establishing notarial last wills and testaments, and winding up the estate of the deceased as public trustees appointed by the estate courts, for instance.

The number of notaries public throughout Austria is limited to 460, each of them having a geographical district allocated by statute. As a result, notaries cover the whole area of the Republic of Austria. The appointment of a notary is made by the Ministry of Justice based on the seniority of notarial candidates once a notary retires or dies. The 460 notaries employ about 3000 professionals and clerical staff. In Austria a notary public is not able to combine practice as a notary with that of a lawyer (as is allowed in Germany) or with any other activity.

Notarial deeds

Notarial deeds are documents created by a notary public in a particular solemn form required by law for their validity. The lack of the formal requirements of a notarial deed results in the business or transaction contemplated in the deed being null and void. Amongst other things the form of a notarial deed is required for the memorandum and articles of companies, the assignment (transfer) of shares in a limited company, minutes of shareholders' annual general meetings in stock corporations, prenuptial agreements, gifts between spouses, establishment of a foundation and directly enforceable debt instruments, for example.

A notarial deed is created in one single original

to be kept by the notary in his or her files. The deed will state who is entitled to receive authenticated copies from the notary. Up to the end of 1999, notaries kept the original deeds in special archives, which were transferred upon death or retirement to the State Bar of Notaries for further safekeeping.

Electronic archive

In 1999 the State Bar of Notaries and Siemens Austria incorporated a for profit joint venture company by the name "CyberDOC GmbH". CyberDOC GmbH is owned by the State Bar of Notaries with a 51 per cent shareholding and Siemens Business Services GmbH with 49 per cent. Each shareholder has provided a managing director and the two managers can only represent CyberDOC jointly. Cyberdoc can be found on the web at www.cyberdoc.at.

CyberDOC GmbH was set up to create and administer an electronic archive and depository of all notarial deeds executed after 1 January 2000. The notary deposits all deeds in protected electronic form online upon completion. The data is protected against unauthorised access in two ways. First, via the encrypted digital signature issued by an independent authority and, secondly, each and every document retrieval is recorded and can be tracked to the retrieving source. It is compulsory for Notaries to register all new notarial documents in the electronic archive. However, until all citizens have been furnished with a digital signature, which will take around 2 or 3 years, all documents have to be archived in paper form as well. Once digital signatures have been fully implemented throughout Austria, notarial documents will be solely electronically created and processed. For the moment, paper documents are transferred into electronic form by scanning, and until documents are solely electronically created and processed, both the paper and electronic forms of a notarial document are considered to be the original.

The costs of the deposition incur additional

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charges over and above the normal fees and expenses that are charged by the notary. As of October 2003, about 300,000 documents had been deposited with Cyberdoc.

As from 1 January 2000, all Austrian notaries are part of the dedicated extranet of CyberDOC GmbH. At the time of writing, it is a closed system and only notaries have access to the online electronic archive for both depositing and retrieving documents, however it will be changed to an open system in the future. Upon a party with the right to obtain a copy making application to the notary, he or she will obtain access to the archive online and print a copy in paper form for authentication as a true copy of a notarial deed. Datacom Austria GmbH is responsible for the encryption and security of the system for obtaining access to and storing documents tagged with an electronic signature, which guarantees the notary's identity. Datacom Austria GmbH is wholly owned by Telekom Austria AG and is the leading provider in electronic data exchange solutions, and the only provider of e-signatures in Austria.

The electronic archive provides many advantages to both the public and the notaries. Amongst other advantages, the archive is permanent and does not require any transfer upon a notary's retirement or death; access is fast; no time is wasted in searching through paper archives for files which have been lying in storage for many years; the document is safe and protected; each authorized notary throughout the country can obtain access to the document, and not only by the notary who first created the document. In view of the benefits to the public, notaries are now offering to store documents other than notarial deeds in the CyberDOC electronic archive, in particular personal documents such as birth certificates, marriage certificates and citizenship and immigration papers. As a result, a certified copy of any of these documents can be obtained from any notary without having to produce the original.

As requested by the State Bar of Notaries, it is impossible to undertake changes to any document stored in the archive. The system's security is extensive and has been so developed that the electronic signature ensures total document protection. Hash procedures have also been incorporated to prevent the copying or altering of saved documents and for encryption purposes, the best qualified codes presently available for private use have been engaged.

Not only all 10 new member states in Central and Eastern Europe which will be joining the European Union in May 2004, but also three of the states which have applied to join the Union wish to adopt the Austrian CyberDOC system. They believe the system will not only enhance their own legal systems but also, and in particular, it will offer foreign investors a high degree of comfort and protection of their legal interests. In the past, foreign investors were sometimes reluctant to proceed with investments in Central and Eastern Europe due to the lack of legal reliability of corporate deeds and real estate transactions. A CyberDOC archive combined with a strong legal profession of notaries will avoid these problems and encourage badly needed foreign investments in some of these countries. The strong presence of Siemens in these countries will certainly also help.

Platform for e-government

Meanwhile the Austrian parliament has already enacted the Electronic Signature Act (Signaturgesetz BGBl. I No. 190/1999) and, at the time of writing, the e-Government Act "e-Government Gesetz" is before parliament. On the basis of these statutes there is the intention to issue citizen smart cards that will allow the carrier to make full use of the speed and convenience of e-government. At the same time, CyberDOC GmbH is developing a safe and reliable form for opening up their extranet to the internet, thereby allowing controlled access to the documents stored in the electronic archive.

If everything proceeds as anticipated in 2004, the Austrian citizen will be able to go to the office of the district authority, present his or her citizen card, and apply for a passport to be collected ten minutes later. The authority will be able to verify, online, the identity of the applicant; check their birth certificate, nationality and other details, such as the children to be included in the passport, against the documents kept by CyberDOC. Further checks can include whether there is any criminal record with the central police computer; verify the address with the electronic register of residences and satisfy any other legal prerequisites for a passport without having to rely on any document or information supplied by the applicant. The entire data file comprising the document and any other encrypted attributes is closed with a special seal – a Message Authentication Code (MAC). Periodical checks of MACs undertake tests to ensure that files remain

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untouched. The citizen card will be the key to the personal data and when handed back to the applicant, the data stored with CyberDOC will no longer be available to the authorities. Likewise the information available in CyberDOC will be available for use in other areas of e-government such as issuing permit and licences, tax assessments, certificates, and the like.

The independence and professionalism of the Austrian notaries will be a safeguard that the CyberDOC system is outside the political domain and its use for e-government will not prejudice the constitutional rights and prevent the state from turning into "Big Brother". ■

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