

Consequences of regulatory non-compliance in Austriaⁱ

Market participants in almost every industry need to be prepared to follow the state's regulations concerning their respective business. Regardless of whether your business is a global food producer, a construction company, or a cab company: your business has to follow the rules of the trade, otherwise there will be consequences.

But what are the consequences of not following the rules of your trade in Austria? And does it only concern businesses actually established in Austria?

Part 1: Fines

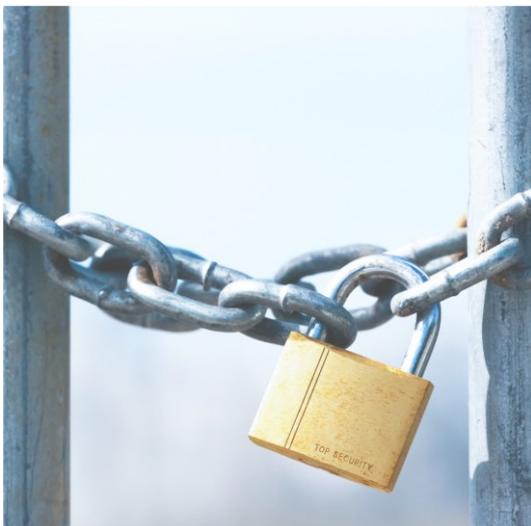


A violation of regulatory provisions will primarily result in a fine. These fines typically appear not to be particularly high. The minimum fine (if any) is often set at only a few hundred Euros and maximum penalties are rarely imposed. At first glance a first offender might not face massive financial consequences. However, these fines are typically imposed for every single violation.

Example: an authority might impose a fine not for mislabelling a food product but a fine for mislabelling every item of this product found in any supermarket. Or the fine might not be imposed for not (“generally”) keeping working time records of the company’s employees but impose a fine for every instance these records were not kept for every single employee. In summary, you may not be facing one five hundred euro fine, but several five hundred euro fines many times over.

Also know that in the vast majority of cases the fines will be imposed on the responsible person and not on the company. Persons responsible are generally (all of) the company’s executives or the responsible trade manager, unless the business has structured its operations specifically and validly appointed a responsible person (*verantwortlicher Beauftragter*). In any case the business will be liable for the payment of the fines (and the costs of the proceedings).

Part 2: Revocation of the trade license



Businesses in Austria generally need some form of permit to conduct their business. For most trades and industries that permit is a trade permit (*Gewerbeberechtigung*) and this trade permit may be more or less easy to obtain (mostly depending on the type of trade but also on the form in which the trade is conducted). However, one general requirement (details vary) for conducting almost every business is that the involved

persons need to be reliable in the eye of the law in order to receive and keep a trade permit respectively hold the position as trade manager (*gewerberechtlicher Geschäftsführer*). Repeated violations of regulations governing that trade can result in the authority initiating revocation proceedings due to the loss of reliability. The same can apply in cases of severe violations of regulations not specifically governing the trade in question.

Repeated violations can therefore cause the need to restructure / restaff operations or – in the worst case – the shutting down of the operations.

Note, similarly to these trade law regulations a company might lose its “reliability” in terms of the Public Procurement Act: unreliable companies may be excluded from procurement proceedings.

Part 3: Unfair competition lawsuits



Non-compliance with laws governing your business can constitute an act of unfair competition: breaking the law might save one's business costs or

entail some other unfair advantage. This exposes your business to lawsuits by competitors who are in compliance with these regulations. Unfair competition claims include cease and desist orders, claims for damages and unwanted publicity in the form of the publication of the court verdict (at the cost of the perpetrator). In fact, the costs associated with such civil lawsuits can exceed any fine the state might impose. And competitors may have and dedicate more resources to finding perpetrators than any authority. In addition, industry associations for the prevention of unfair competition specifically look for market participants who do not comply with applicable regulations



and bring lawsuits against non-compliant competitors.

If your business is established and operating outside of Austria, fines and the threat of your business being shut down, may not be an issue you prioritize. But even if you do not have a business establishment in Austria,

you might be targeted by Austrian competitors, interest groups and associations: promoting and selling your product or service over the internet can be enough to bring your business before an Austrian court. And a verdict against your company can generally be enforced within the European Union.

Conclusion

Businesses are well advised to keep an eye on complying with regulations in order to avoid costly and time-consuming consequences. A single violation is unlikely to immediately endanger your business. But it can be enough to expose you to unfair

competition claims. If your business is facing charges for allegedly violating a regulation, act quickly: typically, the time to react is not more than two weeks. This applies to orders from authorities as well as cease and desist demands and injunctions.

At Sabadello Legal we have extensive experience in defending businesses and managers in proceedings relating to alleged non-compliance with regulatory provisions. We also represent companies in unfair competition claims against competitors. Aside from defending our clients in civil and public-law litigation, we have a strong track record in advising our clients on how to set up effective compliance and control systems to prevent transgressions.

Contact and questions:

RA Mag. Andreas Sabadello +43 1 9971037 office@sabadello.legal

ⁱ This general information is not a substitute for legal advice and does not take into consideration the concrete circumstances of a legal issue you/your business might be facing. This overview was compiled in October 2020 and does not claim to cover all potential issues associated with the topic.

