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European Union's Justice Programme (2014-2020)*



**UNI
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Application of the European Order for Payment Procedure and the European Small Claims Procedure in national proceedings

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Training sessions

- **1st round of trainings**
 - European Order for Payment Procedure
 - Webinars on 4.12.2020 & 11.12.2020
- **2nd round of trainings**
 - European Small Claims Procedure
 - Webinars on 22.1.2021 & 29.1.2021
- **3rd round of trainings**
 - European Order for Payment Procedure & European Small Claims Procedure
 - Seminar on 30.9.2021 & 1.10.2021 in Rijeka
 - Webinar on 28.10.2021 & 29.10.2021 in Graz

European Order for Payment Procedure

- **Competent court**

- **§ 252 ZPO** (“Zivilprozessordnung” = Code of Civil Procedure): District Court for Commercial Matters in Vienna (“Bezirksgericht für Handelssachen Wien”)
→ exclusive jurisdiction

- **Estimated costs**

- **Art 25 EOPP-Regulation:** The total court fees of a EOPP and ordinary civil proceedings – following the filing of a statement of opposition to the European order for payment – shall not exceed the court fees of ordinary civil proceedings without a preceding EOPP in that Member State.
- For proceedings on applications for a European Order for Payment, **TP 1** (“Tarifpost 1”; tariff item) of the **GGG** (“Gerichtsgebührengesetz”; Court Fees Act) shall apply in the first instance.

European Order for Payment Procedure

Tarif
I. Zivilprozesse

Tarifpost	Gegenstand	Höhe der Gebühren
1	I. Pauschalgebühren in zivilgerichtlichen Verfahren erster Instanz bei einem Wert des Streitgegenstandes	
	bis 150 Euro	25 Euro
	über 150 Euro bis 300 Euro	48 Euro
	über 300 Euro bis 700 Euro	68 Euro
	über 700 Euro bis 2 000 Euro	114 Euro
	über 2 000 Euro bis 3 500 Euro	182 Euro
	über 3 500 Euro bis 7 000 Euro	335 Euro
	über 7 000 Euro bis 35 000 Euro	792 Euro
	über 35 000 Euro bis 70 000 Euro	1 556 Euro
	über 70 000 Euro bis 140 000 Euro	3 112 Euro
	über 140 000 Euro bis 210 000 Euro	4 670 Euro
	über 210 000 Euro bis 280 000 Euro	6 227 Euro
	über 280 000 Euro bis 350 000 Euro	7 783 Euro
	über 350 000 Euro	1,2% vom jeweiligen Streitwert zuzüglich 4 203 Euro
	II. Pauschalgebühren im sozialgerichtlichen Verfahren für die Beiziehung eines vom Bundesministerium für Justiz (Justizbetreuungsagentur) zur Verfügung gestellten Dolmetschers	196 Euro je Sprache

European Order for Payment Procedure

- **Estimated costs**

- Civil proceedings at first instance → only the application **initiating** the proceedings triggers a fee obligation
- No additional court fees are incurred for the further proceedings in the first instance
- The obligation to pay fees arises upon **receipt** of the application for a European order for payment by the court
- The application for a **review in exceptional cases** (Art 20 EOPP) is **free of charge**

Service

National service measures

- Austrian legislator decided to pass a **separate law for service**
- **“Zustellgesetz” (Service of Documents Act)**: regulates the service of documents within the scope of sovereign administration and applies to all courts and administrative authorities
- The ZustG was intended to **standardize the legal provisions** on service in various legal matters
 - Another goal was to simplify the delivery process and the delivery system by making it more economical

Service

Electronic service

- Relevant for **professional party representatives**, since service on them must be effected by electronic legal communication ("elektronischer Rechtsverkehr")
- Attorneys (as well as notaries, credit and financial institutions, experts, interpreters, the state financial procurator's office, etc.) are therefore **obligated to use the facilities of electronic legal service**
- Any other person → electronic service can be used **voluntarily**

Service

Electronic service

- Court must **order service**
- Service shall be effected via an **electronic service** to the electronic service address of the addressee
- § 89d GOG (“Gerichtsorganisationsgesetz”; Law on the organization of courts): The **time of service** of court decisions and submissions transmitted electronically shall be the working day following the day on which they are received by the electronic service of the addressee
- The submission shall be made by means of **legal software**. A submission shall be deemed to have been filed with the court when its data have been received by the Federal Computing Center ("Bundesrechenzentrum")
- **Fax and e-mail** are not admissible forms of electronic legal communication

Austrian Order for Payment Procedure

- **Mandatory written** (preliminary) **procedure** for certain monetary claims
- Court issues a **conditional order for payment** (“bedingter Zahlungsbefehl”) on the basis of the information provided by the claimant and after a regularly limited examination
- The defendant has the option of **paying** the amount claimed or **lodging a statement of opposition**
- If **no statement of opposition** is lodged → order for payment comes into legal force
- If a **statement of opposition** is lodged → ordinary proceedings are initiated
- **Competence:** judicial officer (not the judge!)

Austrian Order for Payment Procedure

Differences EOPP – Austrian Order for Payment Procedure

- Austrian order for payment procedure is only applicable if the **defendant** has his **domicile, habitual residence or seat in Austria**;
§ 244 (2) ZPO *e contrario*
- EOPP covers **cross-border situations** in the sense of Art 3 EOPP:
“For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.”

Austrian Order for Payment Procedure

Differences EOPP – Austrian Order for Payment Procedure

- Scope of application of the Austrian procedure includes actions exclusively seeking payment of a sum of money **not exceeding EUR 75.000.-**
- **No value limit** in the scope of the EOPP:
 - Art 4 EOPP: The European order for payment procedure applies to the collection of pecuniary claims in civil and commercial matters (Art 2 [1] EOPP) **for a specific amount that have fallen due** at the time when the application for a European order for payment is submitted.
- Austrian Order for Payment: **obligatory**
- EOPP: **optional**

Austrian Order for Payment Procedure

Differences EOPP – Austrian Order for Payment Procedure

- Austrian order for payment procedure: defendant has the right to file a statement of opposition
 - If the statement of opposition is lodged, the order for payment shall cease to have effect (§ 249 ZPO) and a transfer to ordinary civil proceedings shall follow.
- EOPP: defendant has the right to file a statement of opposition
 - If the statement of opposition is lodged within the time limit laid down in Article 16 (2) EOPP, the proceedings shall continue before the competent courts of the Member State of origin **unless the claimant has explicitly requested that the proceedings be terminated in that event.**

European Small Claims Procedure

- **Estimated costs**
 - **TP 1** (“Tarifpost”, tariff item) of the “Gerichtsgebührengesetz” (Court Fees Act) applies to the **claim** and the **subsequent proceedings at first instance**
 - The **value of the claim** is decisive for the amount of the fee
- **Counterclaims**
 - Form A (Art 5 [6] ESCP-Regulation)
 - „Counterclaim“: Art 8 (3) Brussels-Ia-Regulation *„arising from the same contract or facts on which the original claim was based.“*
 - If requirements for a counterclaim are fulfilled → the court of the main claim shall have jurisdiction
 - Counterclaim shall be sent to the claimant within 14 days of receipt
 - Claimant shall have 30 days from service to respond to the counterclaim
 - If he fails to do so → judgment
 - Answer of the claimant shall be sent to the defendant within 14 days after receipt.

European Small Claims Procedure

- **Counterclaims**
 - If the counterclaim **does not fall within the scope**
 - Claimant has to be **informed** and **national law** applies
 - § 548 (3) ZPO: A counterclaim which does not fall within the scope of the Regulation shall be **dismissed**
 - Exception: Counterclaims which do not fall within the scope of the Regulation **only due to their value of the claim exceeding EUR 5.000,-**
- **Effect of a counterclaim on the value of the claim**
 - **Main rule**: claim and counterclaim are separate claims for purpose of valuation
 - **Counterclaim exceeds limit of EUR 5.000,-**: Art 5 (7) ESCP
 - Claim and counterclaim shall not proceed in the European Small Claims Procedure
 - The **proceedings shall be continued** in accordance with national law

European Small Claims Procedure

- **Possible remedies against judgement**
 - The Regulation **leaves it to each Member State to decide** whether it allows **appeals** at all against judgments issued by its courts under the ESCP.
 - **Austrian legislator** has not created any implementing provisions regarding the appeal procedure
 - Domestic regulations of the law on appeals apply
 - Appeal (“Berufung”) according to § 461 ZPO
 - Recourse (“Rekurs”) according to § 514 ZPO



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Thank you for your attention!