

ANNEX 24

- Country Report AUSTRIA

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**- DG FOR JUSTICE, FREEDOM
AND SECURITY -**

**Study on the Transparency of Costs of Civil Judicial
Proceedings in the European Union**

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Team Leader**

- COUNTRY REPORT -

- AUSTRIA -

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COUNTRY REPORT

Preliminary notes

Introduction

The increase in the movement of people within the European Union inevitably leads to a potential increase in the number of cross-border disputes and disputes between people from different nationalities. Therefore, it becomes more and more necessary to make the costs of justice more transparent as well as the costs of access to justice affordable to citizens and the information on such costs or sources of costs easily accessible. Thus, one clearly defined objective of the European Union is to guarantee access to justice for its citizens and to increase costs transparency and information to citizens and standardize costs between Member States to facilitate the access to justice.

Therefore, the aim of this study is to help to create an effective European Area of Justice. The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of people is ensured. To this end, the European Union has already adopted various measures in the field of judicial cooperation in civil and commercial matters that are necessary for the proper function of the internal market.

In general, the costs of preparation of civil or commercial matters are hard to estimate. They depend on various factors. First of all, with respect to the legal costs under Austrian procedural law, a distinction must be made between (i) court fees (“Gerichtsgebühren”), (ii) attorneys’ fees (“Rechtsanwaltsgebühren”) and (iii) cash expenditure (“Barauslagen”) including costs for the translation of documents, costs for interpreters/translators, travel expenses for witnesses or experts’ costs.

This report shall give an overview of all costs which may accrue during civil proceedings. All court procedures involve costs, but the course of proceeding may differ from case to case. Whereas the court fees can be calculated in advance, the attorney's fees can only be roughly estimated as they predominately depend on the course of the court proceedings e.g. on the amount in dispute, on the number of written submissions, on the number and duration of hearings. With respect to cash expenditure, these costs vary from case to case and are dependant on the nature of the litigation, whether an expert, translator/interpreter or witnesses are necessary or not.

Executive Summary

1 Summary of the mains sources of costs

The costs for matters before civil courts comprise (i) court fees (“Gerichtsgebühren”), (ii) attorneys’ fees (“Rechtsanwaltsgebühren”) and (iii) cash expenditure (“Barauslagen”).

The court fee must be paid at the time of filing the legal action at the competent court. The amount to be paid depends upon the value of the claim and amounts to approximately 1.2 % of its value. The court fees cover the whole costs of the respective instance, irrespective of how many hearings take place. The court fees are calculated on the basis of a defined, graduated fee scheme as set forth in the Austrian Act on Court Fees (“Gerichtsgebührengesetz” - “GGG”, which is a federal law), thus, court fees can be calculated in advance.

Lawyer’s fees are basically determined according to the agreement between the client and his or her lawyer, e.g. often hourly rates, billing according to the amount in dispute and calculated on the basis of a defined, graduated fee scheme as set forth in the Austrian Lawyer’s Tariff Act (“Rechtsanwaltstarifgesetz” - “RATG”, which is a federal law), lump sum agreements or caps are also sometimes agreed. The attorney’s fees according to the Lawyer’s Tariff Act, essentially, depend on (i)

the amount in dispute, (ii) the number of written submissions and (iii) the number and duration of hearings. As the remuneration may be freely agreed, a higher or lower remuneration than that provided for by the Lawyer's Tariff Act may be agreed between lawyer and client but is, however, of no relevance to the opposing party. The costs, which the losing party has to reimburse to the winning party according to Austrian procedural law in civil proceedings, are calculated on the basis of the Lawyer's Tariff Act. They can only be claimed by the party and not its lawyer. If the claimant is completely successful against the defendant, then he may claim reimbursement for all his legal and court costs against the losing party (as stated in the tariff). It is only if the claimant has been partially successful that the costs of both sides are allocated in relation to either side's success.

Apart from the court fees and the attorney's fees, further costs in the form of cash expenditure ("Barauslagen") may arise during the proceedings, e.g. costs for the translation of documents, costs for an interpreter, travel expenses for witnesses or experts' costs, which are set forth in the Austrian Law on Entitlement of Fees ("Gebührenanspruchsgesetz" - "GebAG").

Whereas the court fees can be calculated in advance, the attorney's fees and cash expenditure to be reimbursed by the losing party can only be roughly estimated since they predominately depend on the course of the court proceedings

2 Level of transparency in the sources of costs

The level of transparency in the sources of costs is rather high. The costs for matters before civil courts, which must be reimbursed by the losing party, comprise (i) court fees ("Gerichtsgebühren") according to the Act on Court Fees, (ii) attorneys' fees ("Rechtsanwaltsgebühren"), according to the Austrian Lawyer's Tariff Act, which are both federal law provisions, and/or (iii) cash expenditure ("Barauslagen") such as costs for the translation of documents, costs for an interpreter, travel expenses for witnesses, or experts' costs. Nevertheless, the lawyers' costs the winning party is entitled to receive are thus completely clear, these costs can of course differ from the fees charged by the lawyer of the winning party to his or her client depending on their agreement. With regard to the latter the level of transparency will depend upon the actual agreement

3 Determination of the amounts of costs

The final decision of the court determines the litigation costs, which shall normally be borne by the unsuccessful party, who is obliged to pay the costs of their own attorney, in addition to the costs incurred by the other party. The parties are entitled to appeal against the costs decision.

As stated above, the claimant must pay the court fee at the time of filing the legal action at the competent court of first instance. If he is successful with his claim, the losing party has to reimburse the court fee.

The attorney's fees, which have to be reimbursed to the winning party, are calculated on the basis of a defined, graduated fee scheme as set forth in the Austrian Lawyer's Tariff Act ("RATG") and basically, depend on (i) the amount in dispute, (ii) the number of written submissions and (iii) the number and the duration of hearings.

Please note, the attorney's fee to be reimbursed to the winning party does not necessarily correspond to the fees the attorney of the winning party actually invoices to his client as the former depend on a defined fee scheme, whereby the latter depend on a respective fee arrangement between the client and his attorney. Cash expenditure must be reimbursed to the winning party as well. Experts, translators and interpreters have to invoice their note of fees to the competent court. The judge reviews the note of fees, to determine if the invoiced costs are justified and in accordance with the Law of Entitlement on Fees.

4 Level of transparency in determining the actual costs

The increase in the movement of people within the European Union inevitably leads to a potential increase in the number of cross-border disputes and disputes between people from different nationalities. Therefore, it becomes more and more necessary that the costs of justice are transparent, that the costs of access to justice are affordable to citizens and that information on such costs or sources of costs is also easily accessible.

The level of transparency in determining the actual costs with respect to other Member States of the European Union is rather high. The costs for lawyers' services depend on the actual agreement between the client and his or her lawyer and vis-à-vis other parties in the proceedings. The costs that have to be reimbursed depend on the Lawyers Tariff Act. The latter, as well as court costs and other costs, are determined by federal laws, which are easily accessible for everybody (e.g. through the Legal Information System of the Republic of Austria (RIS) <http://www.ris.bka.gv.at/>). The actual costs according to the tariff will depend on the type of proceedings, the amount in dispute, and various other factors, e.g. on the number of written submissions, on the number and the duration of hearings as well as the necessity of translators, experts and witnesses. The court fees, however, are fixed according to the amount in dispute and the type of proceedings. The full amount must always be paid irrespective of how long proceedings will take.

As regards costs, according to the tariff, the duration of the court proceedings is a particular determining factor as to how much the procedural costs will be. The duration of the court proceedings predominately depend on the course of the proceedings. The average duration of court proceedings can be roughly estimated to be about one to two years in the case of first instance proceedings, eight months as regards second instance proceedings and six months as regards third instance proceedings. However, this average duration may materially vary from case to case and is therefore hard to predict.

Moreover, cash expenditure in connection with experts and translation are not transparent, vary from case to case and are difficult to predict.

5 Proportion of each identified cost on the overall cost of civil judicial proceedings

The proportion of each identified cost on overall volume of activity is hard to estimate as well. It depends on the actual fee agreement, the nature of litigation as well as of the stage of proceeding.

6 Proportion of each identified cost on the overall volume of activity

Costs for experts' opinions and translators' costs are constant and are not dependent on the value of disputed claim. The costs of an expert opinion depend on the complexity of the opinion.

Costs for lawyers' depend on the agreement between the lawyer and his or her client. Therefore the proportion of each identified cost on the value of disputed claim depends on the individual agreement between client and lawyer. As set out above, e.g. hourly rates, fee agreements on the basis of the Lawyers Tariff Act and lump sum or cap agreements are common. If the fees are agreed on the basis of the Lawyers Tariff Act, for example, the amount to be paid depends on the value of the claim and will amount to approximately 1.2 % of the claim's value. Each legal action before court can, according to the tariff, include a supplement to the base fee according to TP 1 through TP 3C RATG (the so called "Einheitssatz") of 50 % or 60% respectively 100 % or 120% for actions and statements of defence or court hearings , respectively 150% or 180% for an appeal (this covers all telephone conferences and correspondence with the opponent as well as travel expenses). It is also possible to additionally charge the costs incurred for mailing, telephone, databank research, copies and travel expenses, as long as the supplement regulation (the so called "Einheitssatz") does not apply.

Please note that as remuneration can be freely agreed between the lawyer and his or her client a higher, respectively lower, remuneration than that provided for by the Lawyer's Tariff Act may be agreed, but is of no relevance to the opposing party. The court decides upon the reimbursement of costs to the winning party according to the Lawyers Tariff Act (see above)..

7 Proportion of each identified cost on the value of disputed claim

If foreign legal entities or individuals appear before Austrian courts, they are treated equally to Austrian parties, but they may be required by court order to

provide a security for costs by way of money or securities deposit upon application by the defendant. Such a security cannot, however, be required, if reciprocity is ensured by way of an international treaty. Claimants from EU-Member States and other countries, which are signatories to the Hague Convention on Litigation or several other bilateral treaties, do not have to provide any security for costs.

Moreover, the official language before the courts is German and all foreign documents must be translated into the German language, thus additional translating costs may accrue in cross-border disputes.

In connection with lawyers' and court fees there are no specificities in relation to cross-border disputes according to the Austrian Lawyer's Tariff Act ("RATG")

8 Specificities in relation to EU cross-border disputes

There are no data available in the respect of the proportion of each identified cost on the overall costs of civil judicial proceedings. The cost of civil judicial proceedings are hard to estimate and it merely depends on the fee agreement, the nature of litigation as well as on the stage of proceeding

9 Recommendations for EU action/national action

The increase in the movement of people within the European Union inevitably leads to a potential increase in the number of cross-border disputes and disputes between people from different nationalities. To avoid errors arising in the transmission of claims the following recommendations shall be considered:

There are special summary proceedings both on the Civil and District Court level ("Landes- und Bezirksgericht") for monetary claims not exceeding EUR 30,000 (Civil Court) and EUR 10,000 (District Court), respectively: the judge issues an order against the defendant. This is all, however, conditional and becomes ineffective if the defendant challenges it within due time (4 weeks). In that case ordinary

proceedings will be initiated. An expeditious form of court proceeding is also available in actions to recover monies due from cheques and bills of exchange.

This kind of summary proceeding is not legally allowed, if the defendant has his/her domicile or habitual residence in another country. In the case at hand, the claimant always has to file a “common” action at the competent court.

The European regulation for payment procedure allows similar summary proceedings in cross-border cases where at least one of the parties has his/her domicile or habitual residence in another EU-Member State and has been adopted in July 2007.

Furthermore, the establishment of a European Small Claims Procedure has been proposed by the European Commission , in order to further facilitate and speed up cross-border litigation on small claims. So far, however, it has not been agreed.

In the course of the proceedings, a defendant, who is not only temporarily habitually resident in another country, always has to appoint a service agent (“Zustellbevollmächtigten”), to whom all documents shall be served.

Another important issue in this regard, is the adequate service of the action. The claimant has to ensure, that the action is served properly, otherwise the claimant could lose its right to claim due to limitation of claim.

10 Relationship between the costs of justice, the transparency in the costs of justice and access to justice

Because of the rising number of cross-border disputes or in disputes involving EU citizens residing in a Member State who are not nationals, transparency about litigation costs is a major theme at the moment. Transparency over costs is part of increasing the efficiency of the justice system and is closely linked to access to justice.

Especially in cross-border litigation, parties often do not know which costs may accrue. This may lead to citizens not exercising rights that they otherwise would exercise if litigation costs were more transparent. Increasing the transparency of

costs in the European Area of Justice facilitates access to justice by enabling citizens to factor such costs into their decision-making processes.

Especially in cases with a small amount in dispute, individuals often do not sue because of the intransparency of procedural costs and the difficulties in gathering the necessary information. To achieve a high standard of transparency, the appropriate details of costs to be charged shall be made public and the important differences in levels and sources of costs from each Member State shall be itemized.

In Austria the necessary information is easily accessible. The costs for lawyers' services depend on the actual agreement between client and lawyer and vis-à-vis other parties in proceedings the costs that have to be reimbursed depend on the Lawyers Tariff Act. The latter as well, as court costs and other costs are determined by federal laws, which are accessible for the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>. Further information is available, for example, at the information office of the Austrian Ministry of Justice on general questions regarding costs and at the website of the Austrian Bar www.rechtsanwaelte.at on lawyers' remuneration (brochure "Dein Recht ist kostbar" including examples of standard fee-agreements). Lawyers can obtain initial information on the individual case at the Austrian courts and the Bar Associations of Austria free of charge.

On a European level the European judicial network (EJN) in civil and commercial matters (http://ec.europa.eu/civiljustice/index_en.htm) and the European Judicial Atlas in civil matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm) provide information about legal aid in EU-Member States in different EU-languages.

11 Conclusions and recommendations

In Austria the necessary information regarding procedural costs is easily accessible. The costs for lawyers' services depend on the actual agreement between client and lawyer and vis-à-vis other parties in proceedings the costs that have to be

reimbursed depend on the Lawyers Tariff Act. The latter as well, as court costs and other costs are determined by federal laws, which are accessible for the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>. Further information is available, for example, at the information office of the Austrian Ministry of Justice on general questions regarding costs and at the website of the Austrian Bar www.rechtsanwaelte.at on lawyers' remuneration (brochure "Dein Recht ist kostbar" including examples of fee-agreements).

From our point of view, the existing Austrian regulations related to civil proceedings costs are sufficient and we do not see a need for a uniform European regulation. Thus, we believe that an initiative on part of the European Commission in order to create a uniform regulation is not necessarily required.

In order to promote the transparency on the European level, we recommend to create a website, where each member state shall provide all respective provisions in each language of the European Union, but at least in English, and gives detailed information about the costs, which may accrue during a civil proceeding.

Presently on the European level the European judicial network (EJN) in civil and commercial matters (http://ec.europa.eu/civiljustice/index_en.htm) provide information about 18 legal topics and it has prepared the general information, Community law and international law pages and the general structure of the national pages. Moreover, the European Judicial Atlas in civil matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm) which allows easy access to the details of the courts and authorities responsible for implementing a variety of Community instruments (transmission of judicial documents, obtaining evidence abroad, legal aid, etc.) in the Member States. It also contains the various forms provided for by Community instruments, which can be filled in and transmitted online.

From our point of view the EJN is the convenient forum to improve cost transparency in the European Union and therefore this web site should be extended accordingly..

Detailed Draft Report

1 General Questions

1.1 Level of information on the transparency of fees and costs of justice

The increase in the movement of people within the European Union inevitably leads to a potential increase in the number of cross-border disputes and disputes between people from different nationalities. Therefore, it becomes more and more necessary to make the costs of justice more transparent as well as the costs of access to justice affordable to citizens and information on such costs or sources of costs easily accessible.

The transparency of costs is rather low with respect to other Member States of the European Union. Increasing the transparency of costs in the European Area of Justice facilitates access to justice by enabling citizens to factor such costs into their decision-making processes which is very important in guaranteeing access to justice.

Particularly the duration of court proceedings is a determining factor in assessing the extent of procedural costs. The duration of the court proceedings predominately depend upon the course of the proceedings. The average duration of court proceedings can be roughly estimated to be about one to two years as regards

first instance proceedings, eight months as regards second instance proceedings and six months as regards third instance proceedings. However, this average duration may materially vary from case to case and can therefore hardly be predicted.

Moreover, cash expenditure in connection with experts and translators is quite intransparent and often difficult to understand, varies from case to case and is not easy to predict.

In Austria the necessary information is easily accessible. The costs for lawyers' services depend on the actual agreement between client and lawyer. Vis-à-vis other parties in proceedings the costs that have to be reimbursed depend on the Lawyers Tariff Act. The latter as well as court costs and other costs are determined by federal laws, which are accessible to the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>. Further information is available, for example, at the information office of the Austrian Ministry of Justice on general questions regarding costs and at the website of the Austrian Bar www.rechtsanwaelte.at on lawyers' remuneration (brochure "Dein Recht ist kostbar" including examples of fee-agreements). Lawyers can obtain initial information on the individual case at the Austrian courts and the Bar Associations of Austria free of charge.

On a European level the European judicial network (EJN) in civil and commercial matters (http://ec.europa.eu/civiljustice/index_en.htm) and the European Judicial Atlas in civil matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm) provide information about civil and commercial law proceedings and legal aid in EU-Member States in different EU-languages. .

1.2 Transparency perception

There are no studies about the perception of cost transparency, especially in connection with cross-border cases, available.

Please note that the Bar Associations in Austria (Rechtsanwaltskammern) help people facing difficulties in accessing justice. The Bar Associations offer first legal advice free of charge.

Someone who cannot afford to pay the costs of proceedings without causing a risk to their daily existence, will receive legal-aid upon application at the competent court. This means that they are fully or partly (temporarily) exempt from paying fees and (temporarily) assigned a lawyer free of charge. As a result, socially disadvantaged persons also have access to the law. They must pay these costs only to the extent and as soon as their financial situation improves within the three years following the proceedings.

Each lawyer who is admitted to the register of lawyers (“Rechtsanwaltsliste”) must take on legal-aid cases from time to time (“Verfahrenshilfe”). When working under the legal-aid scheme, lawyers do not receive a fee and are only entitled to a refund of the necessary cash expenses from the state.

Every year, the Federal Ministry of Justice transfers an adequate lump sum to the Bar Association in order to cover the services provided by lawyers as legal-aid counsel. This money is used for pension payments to retirees and surviving dependants.

1.3 Solutions to improve transparency

First of all, the Member States of the European Union should be required to prepare a translation of their judicial system procedures and relevant costs in English.

As second step, each Member State should provide a schedule in connection with the costs of justice in the language of the country and in English, to be published online.

In cross-border cases, it would be very helpful to require the claimant to provide the respondent with information on the judicial system of the country in which the litigation is brought.

Therefore, for example in Austria, the Austrian Federal Ministry of Justice should issue a brochure with all relevant and necessary information about the costs of justice before Austrian courts. The brochure should also be available online.

A possible way of reducing translation and interpretation costs might be to allow multiple language proceedings, unless both the parties and the judge are able to speak the language fluently. Moreover, documents in English must not be mandatorily translated, as long as the judge can understand the respective documents.

In my opinion, proposals, like codifying a general European text governing the proceedings, creating specific procedures for cross border litigation or establishing ad hoc European courts including judges from relevant countries to the litigation would be rather unrealizable and unenforceable before courts in all Member States of the European Union.

1.4 Fairness of costs

As a main principle of Austrian procedural law, the losing party has to reimburse the winning party for the court fees, the attorney's fees and any additional costs for experts or translators up to the amounts specified in the Lawyer's Tariff Act ("RATG"). The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part. Every party pays for its own legal representation. Moreover, many parties carry legal costs insurance.

In my opinion this principle is fair, because the winning party does not bear the costs of enforcing their rights

1.5 Conclusions and recommendations

In Austria the necessary information is easily accessible. The costs for lawyers' services depend on the actual agreement between client and lawyer and vis-à-vis other parties in proceedings the costs that have to be reimbursed depend on the Lawyers Tariff Act. The latter as well, as court costs and other costs are determined by federal laws, which are accessible for the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>. Further information is available, for example, at the information office of the Austrian Ministry of Justice on general questions regarding costs and at the website of the Austrian Bar www.rechtsanwaelte.at on lawyers' remuneration (brochure "Dein Recht ist kostbar" including examples of fee-agreements).

From our point of view, the existing Austrian regulations related to civil proceedings costs are sufficient and we do not see a need for a uniform European regulation. Thus, we believe that an initiative on part of the European Commission in order to create a uniform regulation is not necessarily required.

In order to promote the transparency on the European level, we recommend to create a website, where each member state shall provide all respective provisions in each language of the European Union, but at least in English, and gives detailed information about the costs, which may accrue during a civil proceeding.

Presently on the European level the European judicial network (EJN) in civil and commercial matters (http://ec.europa.eu/civiljustice/index_en.htm) provide information about 18 legal topics and it has prepared the general information, Community law and international law pages and the general structure of the national pages. Moreover, the European Judicial Atlas in civil matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm) which allows easy access to the details of the courts and authorities responsible for implementing a variety of Community instruments (transmission of judicial documents, obtaining evidence abroad, legal aid, etc.) in the Member States. It also contains the various forms provided for by Community instruments, which can be filled in and transmitted online.

From our point of view the EJN is the convenient forum to improve cost transparency in the European Union and therefore this web site should be extended accordingly.

2 Court fees

2.1 General

Court fees are calculated as a specific percentage of the value in dispute or as a lump sum for disputes of low value. The court fees are calculated on the basis of a defined, graduated fee scheme as set forth in the Austrian Act on Court fees

(“Gerichtsgbührengesetz” - “GGG”). Up to an amount of EUR 363,360 the court fees are calculated as fixed costs, after this the court fees are calculated in proportion to the amount in dispute. In all civil litigation the level of the court fees depends on the amount in dispute. Court fees are due at the time of filing of an action (an appeal) and have to be paid by the claimant (the appellant). The court fees cover the whole costs of the respective instance, irrespective of how many hearings take place. In case of an appeal of the decision, court fees have to be paid for each further instance (second and third instances).

Court fees are foreseeable for each party because they are always calculated based on a fixed scheme according to the Austrian Act on Court fees. In general, the public is well informed about court fees.

In connection with cross border litigation, no further specific costs occur because foreign legal entities or individuals are treated equally to Austrian parties before Austrian courts. The Austrian Act on Court Fees is applicable in the same manner as for national litigation.

2.2 Cost of bringing an action in the courts

As stated above, court fees are calculated on the basis of the Austrian Act on Court fees. For a better overview, below an abstract of the Act is provided to demonstrate more clearly which costs will accrue. Please be aware, that this scheme is only applicable for civil, commercial and labour law matters.

Amount in dispute up to EUR	TP 1 Court Fees First Instance EUR
150	19
360	37

730	52
2,180	87
3,630	140
7,270	257
36,340	607
72,670	1,191
145,350	2,384
218,020	3,577
290,690	4,769
363,360	5,962
exceeding 363,360	1.2 % of the amount in dispute plus 1,661

The court fees cover the whole costs of the respective court, irrespective of how many hearings take place. However, they do not cover additional costs for experts or translators etc.

2.3 Other proceedings costs

In respect to court fees, no other proceeding costs accrue.

2.4 Costs of legal recourses (Appeals...)

As stated above, court fees are calculated on the basis of the Austrian Act on Court fees. For a clearer overview, below is provided an abstract of the Act to better understand which costs will accrue.

Amount in dispute up to EUR	TP 2 Court Fess Second Instance EUR	TP 3 Court Fees Third Instance EUR
150	15	Appeal is not possible
360	33	Appeal is not possible
730	58	Appeal is not possible
2,180	117	175
3,630	233	292
7,270	467	584
36,340	934	1,168
72,670	1,753	2,337
145,350	3,507	4,676

218,020	5,260	7,014
290,690	7,014	9,352
363,360	8,768	11,690
exceeding 363,360	1.8 % of the amount in dispute plus 2,443	2.4 % of the amount in dispute plus 3,258

2.5 Costs of ADR

In Austria it is possible to settle disputes by the use of a mediator. In general, every kind of dispute can be settled by mediation. The purpose of mediation is to settle a dispute without bringing the claim before court. In Austria no general rules exist regarding who must bear the costs of mediation and the levels of these costs. It should be clarified in advance who will bear the costs which accrue during ADR proceedings. Furthermore, it is advisable, to agree upon the costs with the mediator (in Austria mediation services can be provided by persons admitted according to federal law - Austrian Mediation law; in principle everybody who can prove they possess the necessary education and skills and is listed in the mediators-list of the Austrian Ministry of Justice can act as a mediator) before starting the mediation process.

The costs accrued depend on the individual agreement between the parties and their mediators as well as on the nature of the litigious proceedings and the amount in dispute.

In general, a court confirmed settlement is treated as a judgement for enforcement purposes. In order to obtain such an enforceable title, the out of court settlement must be notarially or judicially legalised. For a better overview, see the schedule below:

TP 11 Certifications and Authentications Fee	
EUR	
a)	1. Certifications of signatures, per signature, for assessment basis up to
	to
360.....	2
730.....	6

3,630	11
7,270	23
36,340	34
72,670	46
exceeding 72,670 per part of further 72,670	plus 23
each	
2. in case, value is not determinable	4
b) Certifications of copies presented by parties (also for cover sheet, if applicable, per part of every page	
	2
c) 1. Recording of documents regarding legal acts which are subject to judicial authentication	
2. Recording of last wills	
3. Recording of protests of bills and cheques.....	
4. Transcript from the notary archive	

Notary Fees for bilateral agreements

Assessment basis EUR		Tariff EUR			Maximum tariff EUR
up to	70	7.60			7.60
up to	150	15.10			15.10
up to	1,090	4.40	per part of further	70	72.30
up to	2,180	13.00	per part of further	180	150.30
up to	4,360	19.10	per part of	360	264.90

			further		
up to	7,270	32.10	per part of further	730	393.30
up to	21,800	40.30	per part of further	1,820	715.70
up to	72,670	48.40	per part of further	3,630	1,393.30
up to	363,360	96.80	per part of further	7,270	5,265.30
up to	726,7303	96.80	per part of further	36,340	6,233.30
up to	3,633,640	96.80	per part of further	72,670	10,105.30
exceeding	3,633,640	10,105.30			

The Civil Procedure Code recognizes another form of ADR in the way of private settlement of certain disputes by arbitration tribunals outside the state court system. In a written arbitration contract or contract clause parties may submit a specific litigation or a dispute arising from a specific legal relationship to arbitration. The parties must also conclude a contract with the arbitrators regulating the rights and duties. Provided that minimum procedural standards are observed, state courts will enforce the arbitral award. The costs of such proceedings are based upon the Rules of Arbitration. For example in Austria the Vienna Rules ("Wiener Regeln") are the most frequently used rules.

According to the Vienna Rules, the costs of the proceedings consist of the following elements:

- The costs of arbitration, which includes registration fess, administrative costs, arbitrators' fees and cash outlay (such as travel and expenses of arbitrators, costs of service of documents, rent,); and
- The costs of the parties, that is to say, the appropriate expenses of the parties for their representation and other outlay related to the arbitration proceedings.

For a better overview see the schedule of arbitration costs according the Vienna Rules below.

SCHEDULE OF ARBITRATION COSTS

Registration Fee: EUR 2,000

Administrative Charges

Amount in Dispute in euros				Rate in euros	
from	to				
0	100.000	3.000			
100.001	200.000	3.000	+ 1,5%	of excess over	100.000
200.001	500.000	4.500	+ 1 %	of excess over	200.000
500.001	1,000.000	7.500	+ 0,7%	of excess over	500.000
1,000.001	2,000.000	11.000	+ 0,4%	of excess over	1,000.000
2,000.001	5,000.000	15.000	+ 0,1%	of excess over	2,000.000
5,000,001	10,000.000	18.000	+ 0,05%	of excess over	5,000.000
over	10,000.000	20.500	+ 0,01%	of excess over	10,000.000

Fees for Sole Arbitrators

Amount in Dispute in euros				Rate in euros	
from	to				
0	100.000		6 %	minimum fee:	1.000
100.001	200.000	6.000	+ 3 %	of excess over	100.000
200.001	500.000	9.000	+ 2,5%	of excess over	200.000
500.001	1,000.000	16.500	+ 2 %	of excess over	500.000
1,000.001	2,000.000	26.500	+ 1 %	of excess over	1,000.000
2,000.001	5,000.000	36.500	+ 0,6%	of excess over	2,000.000
5,000.001	10,000.000	54.500	+ 0,4%	of excess over	5,000.000
10,000.001	20,000.000	74.500	+ 0,2%	of excess over	10,000.000
20,000.001	100,000.000	94.500	+ 0,1%	of excess over	20,000.000
over	100,000.000	174.500	+ 0,01%	of excess over	100,000.000

Fees stipulated in the
Notary Tariff Act
(*“Notariatstarifgesetz”*)
for such official acts.

2.6 Costs of legal Aid proceedings

In general, legal aid is granted to persons who are partly or totally unable to meet the costs of proceedings, including the costs of bringing an action before court as a result of their economic situation.

The recipients of legal aid must refund the fees, in whole or in part, if their financial situation has substantially improved within three years after the proceedings. Please note, the losing party always has to cover the fees of the winning party.

At first, any person, who thinks they meet the requirements for obtaining legal aid, must file an application with the competent court. The court makes its decision with respect to the economic situation of the applicant. The economic situation of a person is assessed in the light of various objective factors such as income, capital or family situation, including an assessment of the resources of the people who are financially dependant on the applicant. Currently the minimum living wage in Austria is EUR 726 per month. If the court does not decide in favour of the applicant, they have the right to appeal against this decision, but the amount in dispute must be more than EUR 2,000.

But if the party who obtains legal aid loses the case, the party has to reimburse the successful party's procedural costs..

2.7 Costs of fast track proceedings

There are special summary proceedings ("fast track proceedings") both on the Civil and District Court level ("Landes- und Bezirksgericht") for monetary claims not exceeding EUR 30,000 (Civil Court) and EUR 10,000 (District Court), respectively: the judge issues an order against the defendant. This is all, however, conditional and becomes ineffective if the defendant challenges it within due time (4 weeks). In that case ordinary proceedings will be initiated. An expeditious form of court proceeding is also available in actions to recover monies due from cheques and bills of exchange. These kinds of proceedings are cost- and time saving, because only the court fees pursuant the Act on Court Fees have to be paid and a fast decision can be obtained.

This kind of summary proceeding is not legally allowed, if the defendant has his/her domicile or habitual residence in another country. In the case at hand, the claimant always has to file a “common” action at the competent court.

The European regulation for payment procedure allows similar summary proceedings in cross-border cases where at least one of the parties has his/her domicile or habitual residence in another EU-Member State and has been adopted in July 2007.

Furthermore, the establishment of a European Small Claims Procedure has been proposed by the European Commission , in order to further facilitate and speed up cross-border litigation on small claims. So far, however, it has not been agreed..

2.8 Costs of Group action proceedings

The Austrian Code of Civil Procedure (“Zivilprozessordnung - ZPO”) does not provide for a special proceeding for complex class action litigation. However, Austrian consumer organizations (“Verein für Konsumenteninformation - VKI”) and the Federal Chamber of Labour (“Bundesarbeitskammer”) have, in recent years, brought claims on behalf of hundreds or even thousands of consumers. This technique, is labelled as “class action Austrian style”, allows for a significant reduction of overall costs. The Austrian Supreme Court has confirmed the legal admissibility of these lawsuits under the condition that all claims are essentially based on the same grounds.

The Austrian Parliament has unanimously requested the Austrian Federal Minister for Justice to examine the possibility of new legislation providing for a cost-effective and appropriate way to deal with mass claims. Together with the Austrian Ministry for Social Security, Generations and Consumer Protection, the Justice Ministry opened the discussion with a conference held in Vienna in June, 2005. With the aid of a group of experts from many fields, the Justice Ministry began drafting the new law in September, 2005. With the individual positions varying greatly, the process is still pending

However, court fees are not dependent to how many parties take part at the proceeding..

2.9 Payment

The court fees are charged by the court for the initiation of the proceedings and are due when filing the claim, the appeal, or applying for enforcement.

Normally the costs are paid via bank transfer or cash, if an action is personally filed at the competent court..

2.10 E-justice

With the implementation of electronic communication with the courts, official documents can be submitted in automated form (for example default actions).

In Austria automated dunning procedures are possible. As soon as a party receives all necessary information to issue a court order, this data is transferred to a data carrier using special dunning software. The data carrier is then sent to the court. The courts usually deal with the data carrier on the same day or the day following delivery. Next, the court issues the court order and sends it to the debtor on the same day. When using the automated dunning procedure, it is not necessary to pay court order costs using court fee stamps (which must be purchased at the local court). If court fee stamps are not used, payment must be made via bank transfer within 2 to 5 weeks. The court order will be delivered only after the fees have been paid. With the automated dunning procedure court fees are first due after the court order has been issued.

Court fees must be paid by the debtor if the claim has been enforced successfully. The court fees associated with the court order must be paid directly after requesting a court order. If the legal court order is successful, then the debtor pays and costs are enforced by the debtor..

2.11 Impact of the number of hearings on costs

As stated above, the court fees cover the whole costs of the respective instance, irrespective of how many hearings take place..

2.12 Transcription costs

Generally, transcription costs are included in court fees. The Austrian Act on court fees does not know transcription fees..

2.13 Conclusions and Recommendations

In Austria the necessary information is easily accessible. The court fees are calculated on the basis of a defined, graduated fee scheme as set forth in the Austrian Act on Court fees (“Gerichtsgebührengesetz” - “GGG”), which is accessible for the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>. Further information is available, for example, at the information office of the Austrian Ministry of Justice on general questions regarding costs and at the website of the Austrian Bar www.rechtsanwaelte.at .

From our point of view, the existing Austrian regulation is sufficient and we do not see a need for a uniform European regulation. Thus, we believe that an initiative on part of the European Commission in order to create a uniform regulation in respect to court fees is not necessarily required.

In order to promote the transparency on the European level, we recommend to create a website, where each member state shall provide all respective provisions in each language of the European Union, but at least in English, and gives detailed information about the costs, which may accrue during a civil proceeding.

Presently on the European level the European judicial network (EJN) in civil and commercial matters (http://ec.europa.eu/civiljustice/index_en.htm) provide information about 18 legal topics and it has prepared the general information, Community law and international law pages and the general structure of the

national pages. Moreover, the European Judicial Atlas in civil matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm) which allows easy access to the details of the courts and authorities responsible for implementing a variety of Community instruments (transmission of judicial documents, obtaining evidence abroad, legal aid, etc.) in the Member States. It also contains the various forms provided for by Community instruments, which can be filled in and transmitted online.

From our point of view the EJM is the convenient forum to improve cost transparency in the European Union and therefore this web site should be extended accordingly..

3 Lawyers' consulting and representation fees

3.1 General

As a basic principle the fees are freely negotiable between client and lawyer. Common are fees on an hourly basis, lump-sum agreements and caps or fee-agreements on the basis of the Lawyers Tariff Act ("Rechtsanwaltstarifgesetz" - "RATG"). Also contingency fees can be agreed in principle. Lawyers, however, are not allowed to agree to receive a percentage of the amount won in the proceedings (i.e. quota litis) because this is not permitted under Austrian civil law.

The Lawyers Tariff Act includes a defined, graduated fee scheme depending on (i) the amount in dispute, (ii) the number of written submissions and (iii) the number and the duration of hearings. The Lawyers Tariff Act is necessary as a basis for the decision of the courts on the reimbursement of costs the losing party has to pay to the winning party according to procedural law in civil proceedings ("Zivilprozessordnung"- "ZPO", Austrian Code of Civil Procedure); it provides limited and predictable costs. The prevailing party is to be reimbursed by the defeated party according to the success rate. If a party is defeated entirely, they must bear the entire costs, which include the court fee and the fees of their own and the prevailing party's lawyer. The court issues the cost decision as part of the judgement. Thus, the costs awarded are enforceable. Therefore, it is possible that

attorneys charge different fees for one and the same action, depending on what was agreed with the client. Please note that the level of fees that has to be reimbursed according to the court decision may thus be different from the fees that the prevailing party has agreed with its lawyer.

Besides the Lawyers Tariff Act the AHK (“Allgemeine Honorar-Kriterien”), issued by the Austrian Bar (“Österreichischer Rechtsanwaltskammertag” - “ÖRAK”), exist. They have been issued in order to enable the Bar Associations (“Rechtsanwaltskammern”) and the Courts to control the amount of fees charged to the client according to the criteria set out therein. In case of doubt, the client can consult the competent Bar Association for easy access to information on lawyers’ remuneration and cost reimbursement. The costs for lawyers’ services depend on the actual agreement between client and lawyer. Vis-à-vis other parties in proceedings the costs that have to be reimbursed depend on the Lawyers Tariff Act. The latter as well as court costs and other costs are determined by federal laws which are publicly accessible online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>. Further information is available, for example, at the information office of the Austrian Ministry of Justice on general questions regarding costs and information on lawyers’ remuneration can be found at the website of the Austrian Bar www.rechtsanwaelte.at (brochure “Dein Recht ist kostbar” including examples of standard fee-agreements). First information on the individual case can be obtained at the Austrian courts and the Bar Associations in Austria by lawyers free of charge.

3.2 Fees depending on the nature of the litigation

As set out above, fees can be freely agreed between client and lawyer, whereby they might also take into account the nature of the litigation. Lawyers’ fees according to the Lawyers Tariff Act, which is, as already stated above, the basis for the courts’ decision on the reimbursement of costs and can also be the basis of an individual agreement between lawyer and client, depend on the nature of the litigation. The fees according to the Lawyers Tariff Act or other relevant federal law provisions are limited for social reasons, especially with regard to specific types of litigation (for example proceedings regarding maintenance or proceedings between employer and employee).

3.3 Fees depending on the type of lawsuit or proceedings

As set out above, fees can be freely agreed between client and lawyer, whereby they might also take into account the nature of the litigation. Lawyer's fees according to the Lawyers Tariff Act, which is, as already stated above, the basis for the courts decision on the reimbursement of costs and can also be the basis of an individual agreement between lawyer and client, depend on the nature of the litigation. The fees according to the Lawyers Tariff Act or other relevant federal law provisions are limited for social reasons, especially with regard to specific types of litigation (for example proceedings regarding maintenance or proceedings between employer and employee)..

3.4 Fees depending on the value of the claim

As stated above, attorney's fees can, in principle, be agreed freely between client and lawyer, whereby they might also take into account the value of the claim.

In order to illustrate calculation of fees according to the Lawyers Tariff Act, which is, as already explained above, the basis for the courts' decision on the reimbursement of costs and can also be the basis of an individual agreement between lawyer and client, please find in the following some explanation:

In general, legal opinions are charged according to TP 2, 3A, 3B or 3C RATG, depending on the complexity of the subject matter. Very simple announcements to court are charged according to TP1, simple claims pursuant to TP 2, claims, statements of defence, writs and court meetings according to TP 3A, proceedings before courts of second instance pursuant to TP 3B and proceedings before the supreme court according to TP 3C RATG.

For court hearings the regular base fee TP 3A is charged for the first hour and half of the base fee for each additional hour.

Telephone conversations, conferences, letters and commissions are charged according to TP 5, 6, 7 or 8 RATG. An attorney is entitled to charge the costs incurred for mailing, telephone, databank research, copies and travel expenses, as long as the supplemental regulation (the so called "Einheitssatz") does not apply.

The other method is to add a supplemental fee (“Einheitssatz”) to the base fee according to TP 1 through TP 3C RATG of 50% or 60%, respectively 100 % or 120% for actions and statement of defense or court hearings¹, respectively 150% or 180% for an appeal that covers all the telephone conferences and correspondence with the opponent as well as travel expenses. Furthermore, fees according to RATG including the supplemental fee (“Einheitssatz”) limit the amount of the attorneys’ fee which must be refunded to the prevailing party by the defeated party.

The fees of enforcement proceedings are charged according to TP 1, TP 2 or TP 3A RATG. A supplementary fee (“Einheitssatz”) of 50 or 60% respectively 100% or 120% (depending on the sum of the enforceable judgement) is added to the base fee according to TP 1 through TP 3A RATG which covers all telephone conferences and correspondence with the opponent.

TP 1 EUR	TP 2 EUR	TP 3 A EUR	Amount in dispute up to EUR	TP 3 B EUR	TP 3 C EUR
2,70	11,90	23,30	40	29,10	34,90
3,80	17,60	34,90	70	43,50	52,30
4,90	23,30	46,40	110	58,00	69,60
5,50	25,70	51,20	180	64,00	76,60
6,00	29,10	58,00	360	72,40	86,80
7,30	34,90	69,60	730	86,80	104,10
9,70	46,40	92,70	1.090	115,80	138,90
10,60	52,30	104,10	1.820	130,10	156,30
11,90	58,00	115,80	3.630	144,60	173,50
14,20	69,60	138,90	5.450	173,50	208,20
17,60	86,80	173,50	7.270	216,70	260,10
23,30	115,80	231,20	10.170	2889,00	346,70
26,00	127,70	254,50	11.620	318,10	381,60
28,70	139,60	277,80	13.070	347,20	416,50
31,40	151,50	301,10	14.520	376,30	451,40
34,10	163,40	324,40	15.970	405,40	486,30
36,80	175,30	347,70	17.420	434,50	521,20
29,50	187,20	371,00	18.870	463,60	556,10
42,20	199,10	394,30	20.320	492,70	591,00
44,90	211,00	417,60	21.770	521,80	625,90
47,60	222,90	440,90	23.220	550,90	660,80

¹ Applicable in connection with court hearings, when the competent court is not located at the same place as the office of the attorney.

50,30	234,80	464,20	24.670	580,00	695,70
53,00	246,70	487,50	26.120	609,10	730,60
55,70	258,60	510,80	27.570	638,20	765,50
58,40	270,50	534,10	29.020	667,30	800,40
61,10	282,40	557,40	30.470	696,40	835,30
63,80	294,30	580,70	31.920	725,50	870,20
66,50	306,20	604,00	33.370	754,60	905,10
69,20	318,10	627,30	34.820	783,70	940,00
71,90	330,00	650,60	36.340	812,80	974,90
2,00	330,50	651,60	37.340	814,10	976,40
72,10	331,00	652,60	38.340	815,30	977,90
72,20	331,50	653,60	39.340	816,60	979,40
72,30	332,00	654,60	40.340	817,80	980,90
72,40	332,50	655,60	41.340	819,10	982,40
72,50	333,00	656,60	42.340	820,30	983,90
72,60	333,50	657,60	43.340	821,60	985,40
72,70	334,00	658,60	44.340	822,80	986,90
72,80	334,50	659,60	45.340	824,10	988,40
72,90	335,00	660,60	46.340	825,30	989,90
73,00	335,50	661,60	47.340	826,60	991,40
73,10	336,00	662,60	48.340	827,80	992,90
73,20	336,50	663,60	49.340	829,10	994,40
73,30	337,00	664,60	50.340	830,30	995,90
73,40	337,50	665,60	51.340	831,60	997,40
73,50	338,00	666,60	52.340	832,80	998,90
73,60	338,50	667,60	53.340	834,10	1.000,40
73,70	339,00	668,60	54.340	835,30	1.001,90
73,80	339,50	669,60	55.340	836,60	1.003,40
73,90	340,00	670,60	56.340	837,80	1.004,90
74,00	340,50	671,60	57.340	839,10	1.006,40
74,10	341,00	672,60	58.340	840,30	1.007,90
74,20	341,50	673,60	59.340	841,60	1.009,40
74,30	342,00	674,60	60.340	842,80	1.010,90
74,40	342,50	675,60	61.340	844,10	1.012,40
74,50	343,00	676,60	62.340	845,30	1.013,90
74,60	343,50	677,60	63.340	846,60	1.015,40
74,70	344,00	678,60	64.340	847,80	1.016,90
74,80	344,50	679,60	65.340	849,10	1.018,40
74,90	345,00	680,60	66.340	850,30	1.019,90
75,00	345,50	681,60	67.340	851,60	1.021,40
75,10	346,00	682,60	68.340	852,80	1.022,90
75,20	346,50	683,60	69.340	854,10	1.024,40
75,30	347,00	684,60	70.340	855,30	1.025,90
75,40	347,50	685,60	71.340	856,60	1.027,40
75,50	348,00	686,60	72.340	857,80	1.028,90
75,60	348,50	687,60	73.340	859,10	1.030,40
75,70	349,00	688,60	74.340	860,30	1.031,90
75,80	349,50	689,60	75.340	861,60	1.033,40

75,90	350,00	690,60	76.340	862,80	1.034,90
76,00	350,50	691,60	77.340	864,10	1.036,40
76,10	351,00	692,60	78.340	865,30	1.037,90
76,20	351,50	693,60	79.340	866,60	1.039,40
76,30	352,00	694,60	80.340	867,80	1.040,90
76,40	352,50	695,60	81.340	869,10	1.042,40
76,50	353,00	696,60	82.340	870,30	1.043,90
76,60	353,50	697,60	83.340	871,60	1.045,40
76,70	354,00	698,60	84.340	872,80	1.046,90
76,80	354,50	699,60	85.340	874,10	1.048,40
76,90	355,00	700,60	86.340	875,30	1.049,90
77,00	355,50	701,60	87.340	873,60	1.051,40
77,10	356,00	702,60	88.340	877,80	1.052,90
77,20	356,50	703,60	89.340	879,10	1.054,40
77,30	357,00	704,60	90.340	880,30	1.055,90
77,40	357,50	705,60	91.340	881,60	1.057,40
77,50	358,00	706,60	92.340	882,80	1.058,90
77,60	358,50	707,60	93.340	884,10	1.060,40
77,70	359,00	708,60	94.340	885,30	1.061,90
77,80	359,50	709,60	95.340	886,60	1.063,40
77,90	360,00	710,60	96.340	887,80	1.064,90
78,00	360,50	711,60	97.340	889,10	1.066,40
78,10	361,00	712,60	98.340	890,30	1.067,90
78,20	361,50	713,60	99.340	891,60	1.069,40
78,30	362,00	714,60	100.340	892,80	1.070,90
78,40	362,50	715,60	101.340	894,10	1.072,40
78,50	363,00	716,60	102.340	895,30	1.073,90
78,60	363,50	717,60	103.340	896,60	1.075,40
78,70	364,00	718,60	104.340	897,80	1.076,90
78,80	364,50	719,60	105.340	899,10	1.078,40
78,90	365,00	720,60	106.340	900,30	1.079,90
79,00	365,50	721,60	107.340	901,60	1.081,40
79,10	366,00	722,60	108.340	902,80	1.082,90
79,20	366,50	723,60	109.340	904,10	1.084,40
79,30	367,00	724,60	110.340	905,30	1.085,90
79,40	367,50	725,60	111.340	906,60	1.087,40
79,50	368,00	726,60	112.340	907,80	1.088,90
79,60	368,50	727,60	113.340	909,10	1.090,40
79,70	369,00	728,60	114.340	910,30	1.091,90
79,80	369,50	729,60	115.340	911,60	1.093,40
79,90	370,00	730,60	116.340	912,80	1.094,90
80,00	370,50	731,60	117.340	914,10	1.096,40
80,10	371,00	732,60	118.340	915,30	1.097,90
80,20	371,50	733,60	119.340	916,60	1.099,40
80,30	372,00	734,60	120.340	917,80	1.100,90
80,40	372,50	735,60	121.340	919,10	1.102,40
80,50	373,00	736,60	122.340	920,30	1.103,90
80,60	373,50	737,60	123.340	921,60	1.105,40

80,70	374,00	738,60	124.340	922,80	1.106,90
80,80	374,50	739,60	125.340	924,10	1.108,40
80,90	375,00	740,60	126.340	925,30	1.109,90
81,00	375,50	741,60	127.340	926,60	1.111,40
81,10	376,00	742,60	128.340	927,80	1.112,90
81,20	376,50	743,60	129.340	929,10	1.114,40
81,30	377,00	744,60	130.340	930,30	1.115,90
81,40	377,50	745,60	131.340	931,60	1.117,40
81,50	378,00	746,60	132.340	932,80	1.118,90
81,60	378,50	747,60	133.340	934,10	1.120,40
81,70	379,00	748,60	134.340	935,30	1.121,90
81,80	379,50	749,60	135.340	936,60	1.123,40
81,90	380,00	750,60	136.340	937,80	1.124,90

	TP 1 EUR	TP 2 EUR	TP 3 A EUR	TP 3 B EUR	TP 3 C EUR
Amount in Dispute ("AiD") exceeding EUR 36.340,-- up to EUR 363.363,--	AiD x 0,1 1.000 + 68,266	AiD x 0,5 1.000 + 311,83	AiD 1.000 + 614,26	AiD x 1,25 1.000 + 767,375	AiD x 1,5 1.000 + 920,39

Amount in dispute exceeds EUR 363.363,-	AiDx0,05 1.000 + 86,432	AiDx0,25 1.000 + 402,66	AiDx0,5 1.000 + 795,92	AiDx0,625 1.000 + 994,50	AiDx0,75 1.000 + 1192,88
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3.5 Fees depending on the jurisdiction

In Austria, as already stated above, in relation to the client and his or her lawyer the individual agreement is relevant according to the applicable law of the respective jurisdiction. In relation to the losing party vis-à-vis the prevailing party the Lawyers Tariff Act provides the essential basis for the courts decision on reimbursements of costs according to the relevant Austrian procedural law provisions (see above)..

3.6 Legal aids cases

In general, legal aid is granted to persons who are partly or totally unable to meet the costs of proceedings, including the costs of representation before court as a result of their economic situation.

The recipients of legal aid must refund the fees, in whole or in part, if their financial situation has substantially improved within three years after the proceedings. Please note, the losing party always has to cover the fees of the winning party.

At first, any person, who thinks they meet the requirements for obtaining legal aid, must file an application with the competent court. The court makes its decision with respect to the economic situation of the applicant. The economic situation of a person is assessed in the light of various objective factors such as income, capital or family situation, including an assessment of the resources of the people who are financially dependant on the applicant. Currently the minimum living wage in Austria is EUR 726 per month. If the court does not decide in favour of the applicant, they have the right to appeal against this decision, but the amount in dispute must be more than EUR 2,000.

If the court decides that the legal aid includes the assistance of a lawyer, the Austrian Bar Association selects a lawyer from among its members, by alphabetical order. However, the applicant may propose a lawyer himself. Although this proposal is not binding on the Bar Association, it will in general accept a well-founded proposal (e.g. if the lawyer is willing and already familiar with the case). But if the party who obtains legal aid loses the case, the party has to reimburse the successful party's procedural costs.

3.7 Contingency fees

As a basic principle the fees are freely negotiable between client and lawyer. Common are fees on an hourly basis, lump-sum agreements and caps or fee-agreements on the basis of the Lawyers Tariff Act (“Rechtsanwaltstarifgesetz” - “RATG”). Also contingency fees can be agreed in principle. Lawyers, however, are not allowed to agree to receive a percentage of the amount won in the proceedings (i.e. quota litis) because this is not permitted under Austrian civil law..

3.8 Payment

Payment of fees depends on the individual agreement. In general, attorneys’ fees are payable after the attorney has invoiced his note of fees, usually via bank transfer.

3.8.1 Retainers

This is dependant upon the agreement

3.9 Conclusions and recommendations

In Austria the necessary information is easily accessible. The costs for lawyers’ services depend on the actual agreement between client and lawyer and vis-à-vis other parties in proceedings the costs that have to be reimbursed depend on the Lawyers Tariff Act. The latter as well, as court costs and other costs are determined by federal laws, which are accessible for the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>. Further information is available, for example, at the information office of the Austrian Ministry of Justice on general questions regarding costs and at the website of the Austrian Bar www.rechtsanwaelte.at on lawyers’ remuneration (brochure “Dein Recht ist kostbar” including examples of fee-agreements).

From our point of view, the existing Austrian regulations related to civil proceedings costs are sufficient and we do not see a need for a uniform European regulation. Thus, we believe that an initiative on part of the European Commission in order to create a uniform regulation is not necessarily required.

In order to promote the transparency on the European level, we recommend to create a website, where each member state shall provide all respective provisions in each language of the European Union, but at least in English, and gives detailed information about the costs, which may accrue during a civil proceeding.

Presently on the European level the European judicial network (EJN) in civil and commercial matters (http://ec.europa.eu/civiljustice/index_en.htm) provide information about 18 legal topics and it has prepared the general information, Community law and international law pages and the general structure of the national pages. Moreover, the European Judicial Atlas in civil matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm) which allows easy access to the details of the courts and authorities responsible for implementing a variety of Community instruments (transmission of judicial documents, obtaining evidence abroad, legal aid, etc.) in the Member States. It also contains the various forms provided for by Community instruments, which can be filled in and transmitted online.

From our point of view the EJN is the convenient forum to improve cost transparency in the European Union and therefore this web site should be extended accordingly.

4 Bailiff fees

4.1 General

In Austria bailiffs are called judicial officers "Rechtspfleger" that are court employees, who in certain cases are equally as important as judges, although they are not considered as one of the legal professions in the narrow sense. Rather, they are court employees with special training who have been assigned certain tasks, clearly defined by law, in first instance civil law jurisdiction (e.g. default actions, certain execution cases, land register and inheritance matters).

These judicial officers are an indispensable pillar of the judiciary. More than one quarter of all decisions made at district courts in Austria are made by judicial officers.

Judicial officers are assigned the handling of certain first instance transactions under civil law, under the ambit of the Federal Constitution Act and the Judicial Officers Act ("Rechtspflegergesetz"), in order to ease the workload of judges. They are bound to the instructions of the judge responsible for the case according to the distribution of court business, who may also reassume the handling of the case at any time and at any stage in the proceedings. Judicial officers may only issue court orders. The judges themselves may grant appeals against these orders and the remedy also exists of requiring submission of the case to a judge.

This scope of judicial officers' competence includes, inter alia, default actions, confirming the legal effects and the enforceability of rulings by judges in their field of work, decisions on application for legal aid and performing official acts on the basis of requested judicial assistance by a domestic court or a domestic authority.

Judicial officers have a particularly comprehensive workload in forced-collection proceedings and in personal bankruptcy cases. In addition, they maintain the land register and the commercial register. Other areas of responsibility are probate and custody proceedings (non-litigious matters).

Bailiffs may be appointed to be responsible for one or several of these working areas. Each field of work requires special training and separate appointment as a judicial officer for the specific field.

In Austria no provision exists which determines the judicial officers' fees; they are included in court fees. The court fees are charged by the court for the initiation of the proceedings and are due when filing the claim, the appeal, or applying for enforcement.

4.2 Ante judgment

The scope of competence of ante judgments comprise, inter alia, decisions on applications for legal aid in proceedings under the competency of judicial officers and performing official acts on the basis of requested judicial assistance by a domestic court or a domestic authority. Moreover, judicial officers maintain the land register and commercial register. Other areas of responsibility are probate and custody proceedings (non-litigious matters).

4.3 During proceedings

The scope of competences of judicial officers comprises, inter alia, default actions, application for legal aid and performing official acts on the basis of requested judicial assistance by a domestic court or a domestic authority.

4.4 Post proceedings

Judicial officers are responsible for confirming the legal effects and the enforceability of rulings by judges in their field of competency.

4.5 Payment

In Austria there exists no provision which sets out judicial officers' fees; they are included in court fees.

4.5.1 Retainer

Does not exist in respect to bailiff fees. .

4.6 Conclusions and recommendations

As stated above, in Austria no provision exists which determines the judicial officers' fees; they are included in court fees. The court fees are charged by the

court for the initiation of the proceedings and are due when filing the claim, the appeal, or applying for enforcement.

Nevertheless, in Austria the necessary information is easily accessible. The court fees are calculated on the basis of a defined, graduated fee scheme as set forth in the Austrian Act on Court fees (“Gerichtsgebührengesetz” - “GGG”), which is accessible for the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>.

From our point of view, the existing Austrian regulation is sufficient and we do not see a need for a uniform European regulation. Thus, we believe that an initiative on part of the European Commission in order to create a uniform regulation in respect to bailiff’s respectively court fees is not necessarily required.

In order to promote the transparency on the European level, we recommend to create a website, where each member state shall provide all respective provisions in each language of the European Union, but at least in English, and gives detailed information about the costs, which may accrue during a civil proceeding.

Presently on the European level the European judicial network (EJN) in civil and commercial matters (http://ec.europa.eu/civiljustice/index_en.htm) provide information about 18 legal topics and it has prepared the general information, Community law and international law pages and the general structure of the national pages. Moreover, the European Judicial Atlas in civil matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm) which allows easy access to the details of the courts and authorities responsible for implementing a variety of Community instruments (transmission of judicial documents, obtaining evidence abroad, legal aid, etc.) in the Member States. It also contains the various forms provided for by Community instruments, which can be filled in and transmitted online.

From our point of view the EJN is the convenient forum to improve cost transparency in the European Union and therefore this web site should be extended accordingly..

5 Expert fees

5.1 General

The Austrian Act on Entitlement of Fees (“Gebührenanspruchsgesetz” 1975) is applicable to experts’ fees. This regulation contains general rules which are applicable for all experts. Moreover, it includes a specific compensation system for doctors, anthropologists, dentists, veterinarians, experts for chemical analysis and experts for motor vehicles.

The website of the Austrian Association of Sworn and Certified Experts (www.sachverstaendige.at) provides detailed information about costs (sample fee notes), how to become a sworn and certified expert and a list of all authorized sworn and certified experts. This website is very informative and easily accessible to the public.

5.2 Fees (medical experts, technical transports experts...)

The amount of fees depends on the complexity of the opinion. For a better overview, please find below a sample note of fees which is provided at www.sachverstaendige.at by the Association of Sworn and Certified Experts and is generally used by court experts.

SAMPLE NOTE OF FEES

Name, Address of the Expert
Number

Reference

To:

District Court/Civil Court

[Address]

Reference: Reference Number

Legal Matter/Criminal Case

Note of Fees

for(description of expert services) according to GebAG 1975 (Law on Entitlements of Fees)

Fee for file study (§36) first volume (€ 6,50 to € 38,40) further volume(s) (up to € 33,90) if necessary: again file study for ...	€ ... € ...
Travel expenses (§ 28 Para 2) Use of one's own car a) ...(description of route) on ..., ... km á € 0,376 b) if applicable: any other travel activities (see above)	€ ... € ...
Costs for accommodation (§ 29) (listing of costs)	€ ...
Costs for consulting an assistant (§ 30) hours á € ..., for ...(description of assistance/function: e.g. preparation of inspection on ..., examination on ...), calculation according to (citation of calculation method of the compensation/hourly rate) Travel expenses and costs for accommodation for assistants	€ ... € ...
Other expenses (§ 31) a) costs for photographs (§ 31 Z 1) ... copies á € ... b) costs for copies (§ 31 Z 1), e.g. copies of files etc, ...copies á € ... c) costs for materials used in the course of examination (§ 31 Z 2) ... d) costs for the use of external equipment and devices (§ 31 Z 4)	€ ... € ... € ... € ...
Compensation for working days lost (§§ 32 Para 1, 33) a) examination on ... in, travel time, ...hours á € 19,40 b) Notification (summoning) of parties	€ ...

involved, posting, transit time, ... hours á € 19,40	€ ...
c) transmission of expert opinion to the court, posting, if necessary: handing in of expert opinion at the court, travel time, ...hours á € 19,40	€ ...
d) trial on ..., travel time, ... hours á € 19,40 or ...hours á € 24,10 respectively (more than 30 km, § 33)	€ ...
Fees for efforts regarding findings and expert opinion (§ 34 Para 1/ § 34 Para 2) Listing of expert services and the relevant circumstances regarding the assessment (findings report, elaboration of the expert opinion, execution of the expert opinion; but also fee structure, attestation of higher extrajudicial fees etc.), ... hours á € ... if applicable tariff according to § ... If applicable listing of several expert opinions, Hours á € ... fees for efforts regarding the supplemental expert opinion, annotation etc (§ 35 Para 2 in connection with § 34 Para 1/§34 Para 2 and/or tariff) When reviewing another expert opinion, consider § 37 Para 1!	€ ... €... € ...
Compensation for the participation in a hearing (§ 35 Para 1) a) investigations carried out by order of court on ... in..., ... hours á € 28,90 b) juridical inspection on, in, ... hours á € 28,90 c) oral hearing (trial) on, hours á € 28,90	€ ... € ... € ...
Expenses for setting up a clean version of findings and expert opinion (§ 31 Z 3) ... pages original copy á € 1,70 ... copy pages á € 0,50	€ ...
Postage (§ 31 Z 5) a) for ... letters (summons etc.) b) for returning of files	€ ... € ...
Subtotal	€ ...
VAT (§ 31 Z 6) [20 %]	€ ...
Total	€ ...
Rounded according to § 39 Para 2	<u>€ ...</u>

5.3 Payment

The expert must invoice his note of fees to the court within 14 days after he has finished giving his opinion. In general, the fees are paid via bank transfer.

5.3.1 Retainers

Before the expert starts to work on his opinion, the court generally orders that both parties have to make an advance payment (“Kostenvorschuss”) to the court. The amount of the advance payment depends upon the complexity of the case and the scale of the opinion the expert has to render. The judge orders, in accordance with his experience, the amount the parties have to deposit. If the deposited amount is not sufficient a further advance payment can be ordered..

5.4 Legal aid cases

In general, legal aid is granted to persons who are partly or totally unable to meet the costs of proceedings, including the costs of experts as a result of their economic situation.

The recipients of legal aid must refund the fees, in whole or in part, if their financial situation has substantially improved within three years after the proceedings. Please note, the losing party always has to cover the fees of the winning party.

At first, any person, who thinks they meet the requirements for obtaining legal aid, must file an application with the competent court. The court makes its decision with respect to the economic situation of the applicant. The economic situation of a person is assessed in the light of various objective factors such as income, capital or family situation, including an assessment of the resources of the people who are financially dependant on the applicant. Currently the minimum living wage in Austria is EUR 726 per month. If the court does not decide in favour of the applicant, they have the right to appeal against this decision, but the amount in dispute must be more than EUR 2,000. .

5.5 Reimbursement of experts' fees

The prevailing party is to be reimbursed by the defeated party according to the success rate. If a party is defeated entirely, they must bear the entire costs of the expert. The court renders the cost decision as part of the judgement. Thus, the awarded costs are enforceable. Practical questions

5.6 Practical questions

Applicants who wish to be appointed as court experts must prove professional experience in their area of expertise. Moreover, the expert must have substantial knowledge of the most important principles of Austrian procedural law, know how to write an expert's opinion and must furnish proof of five years of professional work during the period immediately preceding registration if they have a master's degree or 10 years professional experience in their area of expertise without a master's degree. Moreover they must have full legal capability and be trustworthy. The application for registration in the list of sworn and certified court experts must be submitted to the president of the Court of First Instance ("Landesgericht") in the district of the applicant's regular residence or place of professional activity. In the course of the registration proceedings, the president responsible for the registration will charge a commission with preparing an expert opinion on whether the registration requirements have been fulfilled.

5.7 Conclusion and recommendations

In Austria the necessary information is easily accessible. The website of the Austrian Association of Sworn and Certified Experts (www.sachverstaendige.at) provides detailed information about costs (sample fee notes), how to become a sworn and certified expert and a list of all authorized sworn and certified experts. This website is very informative and easily accessible to the public. The Austrian Act on Entitlement of Fees ("Gebührenanspruchsgesetz" 1975) which regulates the expert's fees is accessible for the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>.

Nevertheless, it is hard to predict the costs of an expert’s opinion, because it always depends on the complexity of the opinion. From our point of view, the existing Austrian regulations could be improved in order to make the expert’s fees more predictable and this might be achieved by a uniform European regulation..

6 Translation and interpretation fees

6.1 General

The Austrian Act on Entitlement of Fees (“Gebührenanspruchsgesetz” 1975) is applicable to translators and interpreters in respect of their fees.

In practise, translation and interpretation costs are calculated based on an agreement between the party and the translator.

The website of the Austrian Association of sworn and certified translators and interpreters (www.gerichtsdolmetscher.at) provides detailed information about costs (sample note of fees), how to become a sworn and certified translators/interpreters and a list of all authorized sworn and certified translators/interpreters. This website is very informative and easily accessible to the public.

6.2 Translation fees

		Tariff:	€ 1.09 to € 1.38
		Minimum fees:	€ 30
2	Danish Bulgarian Czech Turkish	Basis for calculation:	50 to 55 characters per line
		Tariff:	€ 1.16 to € 1.60
		Minimum fees:	€ 38

	Portuguese Russian Slovakian Hungarian Greek Dutch Norwegian Polish Romanian		
3	Arabic Persian Swedish Albanian Ukrainian Finnish	Basis for calculation:	50 to 55 characters per line
		Tariff:	€ 1.38 to € 2.03
		Minimum fees:	€ 51 to 58
4	Chinese Latin Macedonian Vietnamese Japanese Korean Other world languages	Tariff:	Upon request

6.3 Interpretation fees

According to the Law on Entitlement of Fees an interpreter receives a fee amounting to EUR 20,90 per hour and half of the base fee for each additional hour. If the interpretation is highly complex, the interpreter may charge a fee amounting to EUR 26,20 per hour and half of the base fee for each additional hour.

The schedule below shows the average fees of interpreters:

	Language groups	Translation services	
1	Bosnian English	Simultaneous interpretation/day	€ 445
	Italian Croatian	Consecutive interpretation/day	€ 480
	French Slovenian	Minimum fees:	€ 305
	Spanish	Interpretation at business meetings/day	€ 425

	Serbian	Minimum fees:	€ 130
2	Danish	Simultaneous interpretation/day	€ 490
	Bulgarian		
	Czech	Consecutive interpretation/day	€ 555
	Turkish		
	Portuguese	Minimum fees:	€ 330
	Russian	Interpretation at business meetings/day	€ 435
	Slovakian		
Hungarian	Minimum fees:	€ 145	
Greek			
Dutch			
Norwegian			
Polish			
Romanian			
3	Arabic	Tariff:	Upon request
	Persian		
	Swedish		
	Albanian		
	Ukrainian		
	Finnish		
4	Chinese	Tariff:	Upon request
	Latin		
	Macedonian		
	Vietnamese		
	Japanese		
	Korean		
	Other world languages		

6.3.1 Retainer

The party that needs the translation must bear the costs of such translation and pay them directly to the translator. In general, all necessary translation costs are deemed as cash expenditure in the course of the proceedings. In the event an interpreter is required before court, the court orders advance payment (“Kostenvorschuss”) by the party who needs the interpreter. The amount of the advanced payment depends upon the type of interpretation which is requested.

6.4 Payment

According to a main principle of Austrian procedural law, the losing party has to reimburse the winning party for all additional costs incurred due to translators and interpreters. The respective cost entitlements have to be apportioned pro rata if a party wins in a part and loses in part.

6.5 Practical questions

Applicants must prove professional experience as interpreters and/or translators. Graduates of university departments of “translator and interpreter training” must furnish proof of two years of professional work, all other applicants proof of five years of professional work during the period immediately preceding registration. To work as a court interpreter not only calls for an impeccable command of German and a foreign language, but also requires knowledge of the principles of Austrian legal procedure and of the legal and court procedures of the country where the chosen language is the official language, as well as an extensive knowledge of the terminology of law and commerce both in German and in the foreign language. Furthermore, a thorough knowledge of the terminologies of other fields such as medicine, technology etc. is required.

Translating must be mastered both from German into the foreign language and from the foreign language into German.

As far as written expression is concerned, a faultless mastery of German and a foreign language regarding grammar, syntax and spelling are basic requirements.

Extreme carefulness, accuracy and correctness of the translation are of extreme importance since a court interpreter is a certifying officer who in their capacity affixes an official seal to the translation. If certified translations are incorrect, an action for damages may be filed. Another important prerequisite for the work of court interpreters is flexibility and resourcefulness.

The application for registration in the list of sworn and certified court interpreters must be submitted to the president of the court of first instance in the district of the applicant's regular residence or place of professional activity. In the course of the registration proceedings, the president responsible for the registration will charge a commission with preparing an expert opinion on whether registration requirements have been fulfilled.

6.6 Legal aid cases

Sections 63 to 73 of The Austrian Code of Civil Procedure ("Zivilprozessordnung" - "ZPO") regulate legal aid.

In general, legal aid is granted to persons, who are partially or totally unable to meet the costs of proceedings, including the costs of experts as a result of their economic situation.

The recipients of legal aid must refund the fees, in whole or in part, if their financial situation substantially improves within the three years following the proceedings. Moreover, the losing party always has to cover the fees of the winning party.

At first, any person, who thinks they meet the requirements for obtaining legal aid, must file an application with the competent court. The court makes its decision with respect to the economic situation of the applicant. The economic situation of a person is assessed in the light of various objective factors such as income, capital or family situation, including an assessment of the resources of the people who are financially dependant on the applicant. Currently, in Austria the monthly minimum living wage is approximately EUR 726. If the court does not decide in favour of the applicant, they have the right to appeal against this decision, but the amount in dispute must be more than EUR 2,000. .

6.7 Reimbursement

Due to Austrian procedural law the losing party has to reimburse the winning party for the procedural costs, (respective cost entitlement has to be apportioned pro rata if a party wins in part and loses in part) therefore the losing party has to bear all necessary costs of the translator/interpreter.

6.8 Conclusion and recommendations

In Austria the necessary information is easily accessible. The website of the Austrian Association of sworn and certified translators and interpreters (www.gerichtsdolmetscher.at) provides detailed information about costs (sample note of fees), how to become a sworn and certified translators/interpreters and a list of all authorized sworn and certified translators/interpreters. This website is very informative and easily accessible to the public. The Austrian Act on Entitlement of Fees (“Gebührenanspruchsgesetz” 1975) which regulates the translator’s and interpreter’ s fees is accessible for the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>.

In practise, translation and interpretation costs are calculated based on an agreement between the party and the translator. From our point of view, the existing Austrian regulation is sufficient and we do not see a need for a uniform European regulation. Thus, we believe that an initiative on part of the European Commission in order to create a uniform regulation in respect to translator’s and interpreter’s fees is not necessarily required.

7 Witness Compensation

7.1 General

According to the Austrian Act on Entitlement of Fees (“Gebührenanspruchsgesetz” 1975) witnesses have the right to be compensated for their losses in connection with their obligation to testify. Witnesses are compensated for all necessary costs, which occur in connection with their journey, accommodation and working days lost

7.2 Fees

Witnesses are compensated for all necessary costs, which occur in connection with their journey, accommodation and working days lost. According to the Law on Entitlement of Fees witnesses are entitled to:

Compensation:	EUR 12,10 per hour
Accommodation:	breakfast: EUR 3,40 (only if a witness leaves before 7 a.m.), lunch: EUR 7,30 (leaves 11 a.m. and finishes after 2 p.m.), dinner: EUR 7,30 (only if a witness finishes after 7 p.m.)
Costs of public transportation:	According to the official prices of public transportation; or kilometre allowance amounting EUR 0,376 per kilometre

Moreover, if a witness is a dependant employee they obtain their actual foregone income, unless he can proof its actual loss sustained.

7.3 Legal aids cases

In general, legal aid is granted to persons, who are partially or totally unable to meet the costs of proceedings, including the costs of witness as a result of their economic situation.

The recipients of legal aid must refund the fees, in whole or in part, if their financial situation substantially improves within the three years following the

proceedings. Moreover, the losing party always has to cover the fees of the winning party.

At first, any person, who thinks they meet the requirements for obtaining legal aid, must file an application with the competent court. The court makes its decision with respect to the economic situation of the applicant. The economic situation of a person is assessed in the light of various objective factors such as income, capital or family situation, including an assessment of the resources of the people who are financially dependant on the applicant. Currently, in Austria the monthly minimum living wage is approximately EUR 726. If the court does not decide in favour of the applicant, they have the right to appeal against this decision, but the amount in dispute must be more than EUR 2,000.

7.4 Payment

Witnesses are entitled to apply for compensation within fourteen days of the final date of the hearing before the competent court. Normally, a witness applies for the compensation directly after the hearing has taken place. The person responsible for the witness compensation is the treasurer (“Kostenbeamte”), who pays out the compensation in cash or via bank transfer. These costs are deemed as cash expenditures in course of the proceedings and the losing party has to reimburse them to the winning party.

7.5 Practical questions

In general, every natural person can be called as a witness. Some exceptions exist regarding clerical workers, public officials and mediators, who cannot be called as witnesses if they would violate their duty of confidentiality.

In general, the judge hears the witness without them taking an oath, but the judge is obliged to remind the witness of their duty to tell the truth. In Austria, usually, testimonies may only be collected orally and the judge is competent to collect testimonies in the course of the hearing.

The taking of evidence in EU cross-border litigation is possible in two different ways:

- (i) the Austrian court requests the competent court of another member state to take evidence; or
- (ii) the Austrian court requests evidence be taken directly in other member states.

Requests shall be transmitted by the court before which the proceedings have been commenced directly to the competent court of another member state for the purpose of taking of evidence. The request must be made using a form in accordance with the regulation. The request can be drawn-up in the official language of the requested member state. In Austria it is also allowed to draw-up requests in English. The requested court shall execute the request without delay and, at the latest, within ninety days of receipt of the request and shall execute the request in accordance with the law of the requesting court. It is also possible that representatives, such as experts or members of the judicial personnel of the requesting court participate while evidence is taken by the requested court.

The possibility of taking of evidence directly by the requesting court is only allowed if it can be performed on a voluntary basis without the need of coercive measures. In general, the execution of the request is free of charge. Nevertheless, if the requested court requires so, the requesting court shall ensure the reinforcement of the occurred costs without delay, of the minimum fees paid to experts and interpreters and all costs which have been occasioned as a result of the use of special forms.

The taking of evidence in all other cross border litigation is dependant on whether agreement permits it under international law.

7.6 Conclusions and recommendations

According to the Austrian Act on Entitlement of Fees (“Gebührenanspruchsgesetz” 1975) witnesses have the right to be compensated for their losses in connection with their obligation to testify. Witnesses are compensated for all necessary costs, which occur in

connection with their journey, accommodation and working days lost. In Austria the necessary information is easily accessible. The Austrian Act on Entitlement of Fees (“Gebührenanspruchsgesetz” 1975) which regulates the compensation for witnesses and is accessible for the public online at the Legal Information System of the Republic of Austria <http://www.ris.bka.gv.at/>.

From our point of view, the existing Austrian regulation is sufficient and we do not see a need for a uniform European regulation. Thus, we believe that an initiative on part of the European Commission in order to create a uniform regulation in respect to compensation for witnesses is not necessarily required.

8 Pledges and security deposits

8.1 General

Section 56 of the Austrian Code of Procedure states that pursuant to this act securities must be deposited by way of cash or securities deposit. Only in cases where a security deposit is not possible/available can the judge order deposit of a pledge.

The law requires security deposits, inter alia, in connection with foreign claimants, injunctions, to secure a regular payment, for interim measures or due to suspension of an appeal.

The most common cases where a security has to be deposited are in connection with foreign legal entities or individuals (“aktorische Kautiion”) or preliminary injunctions (“einstweilige Verfügung”).

Although foreign parties are treated equally to Austrian parties, they may be required by court order to provide a security for costs by way of cash or securities deposit upon application by the defendant. Such a security cannot, however, be required if reciprocity is ensured by way of an international treaty. Claimants from EU-Member States or other countries which are signatories to The Hague Convention on Litigation or several other bilateral treaties do not have to provide any security for costs.

In cases of preliminary injunctions, in order to prevent the party against which the preliminary injunction is issued from suffering any unjustified damage due to the preliminary injunction, the applicant can be required to provide a security.

8.2 Fees

In case of an “aktorische Kautio”, which does not apply to claimants from EU-Member States or other countries which are signatories to The Hague Convention on Litigation or several other bilateral treaties (see above), the applicant has to determine the required security amount of the cash or security deposit in its statement of defence. The amount is calculated according to the estimated procedural costs in connection with the amount in dispute.

In the case of a preliminary injunction, the amount of the security is calculated in accordance with the possible unjustified damage due to the preliminary injunction. The applicant for the preliminary injunction has to deposit the security

8.3 Payment

In general, a deposit has to be paid in cash or in securities. Only in cases where a security deposit is not possible/available can the judge order deposit of a pledge.

8.4 Conclusion and recommendations

As stated above, claimants from EU-Member States or other countries which are signatories to The Hague Convention on Litigation or several other bilateral treaties do not have to provide any security for costs. Thus, a further regulation is not required, from our point of view..

9 Court decisions

9.1 Cost of notification

Final judgments with which the debtor does not voluntarily comply will be enforced by the courts. The procedure is generally written and governed by the investigation principle. In the first stage (“Bewilligungsverfahren”), the judgment creditor (“Exekutionsgläubiger”) files an application for enforcement, which the district court examines as to its admissibility and subsequently grants. In the second stage (“Vollzugsverfahren”), the executable judgement is enforced.

In Austria, most enforcement cases concern pecuniary claims. Execution concerning movable property of the judgment debtor is carried out by means of attachment and subsequent sale by the court’s execution officer acting on the creditor’s request. Frequently claims (e.g. for wage payments) are attached and assigned to the judgment creditor by court order.

Execution of immovable property may be carried out by entering a mortgage in favour of the creditor into the land register, forced administration and ultimately forced sale in court auction.

Concerning non-pecuniary claims, objects owed by the debtor may be taken away from him and given to the creditor. Certain actions owed by the debtor may be taken away by the creditor at the debtor’s expense. Acts or omissions of the debtor himself may also be enforced through fines or imprisonment.

The debtor is protected by provisions exempting certain assets, claims and parts of wage income (minimum living wage - “Existenzminimum”) from execution proceedings.

Even during the enforcement proceedings, the debtor still has the possibility of opposing enforcement. He may do this by raising objections against the claim upon which the judgement is based (section 35 of the Austrian Enforcement Act - “Exekutionsordnung” - “EO”) or by making objection against the authority to enforce the claim (section 36 EO). Furthermore, third parties may also raise objections on the basis of them having rights to the objects which are the subject of the enforcement proceedings (section 37 EO).

For a better overview, see the schedule concerning the court fees below:

Amount in dispute up to EUR	TP 4a Court Fees Execution movable property EUR	TP 4b Court Fees Execution immovable property EUR
150	14	29
360	32	37
730	37	48
2.180	51	68
3.630	68	95
7.270	87	145
36.340	126	209
72.670	152	336
exceeding 72.670	Plus 152	plus 172

The lawyers' fees for enforcement proceedings are charged according to the individual agreement between the client and his or her lawyer.

If calculation on the basis of the Lawyers Tariff Act has been agreed as the basis for the courts decision on cost reimbursement the following tariffs apply: TP1 (very simple announcements to court), TP2 (simple claims), TP3 A (claims, statements of defence, writs and court meetings). To the base fee according to TP 1 through TP 3A RATG a supplement ("Einheitssatz") of 50% or 60% (depending on the sum of the enforceable judgement) is added which covers all telephone conferences and correspondence with the opponent. (see schedule provided under lawyers' fees). For court hearings the regular base fee (TP3A) is charged for the first hour and half of the base fee for each additional hour.

Recognition and enforcement of foreign judgments is regulated by the Enforcement Act and in bilateral and multilateral treaties. Council Regulation No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters applies to all member states of the European Union

except Denmark. For Denmark, Switzerland and Lichtenstein the Lugano Convention on Jurisdiction and Enforcement, is applicable.

The European Union has created a European enforcement order for uncontested claims, which includes the principle of mutual recognition of decisions in civil and commercial matters. The first stage includes the abolition of the *exequatur* (“Abschaffung des Vollstreckbarerklärungsverfahrens”) which means that if a judgement has been certified as a European enforcement order in a member state of origin it must be recognised and enforced in other member states without the need for a declaration and without any possibility of opposing its recognition.

This procedure offers significant advantages in the recognition of enforcement of judgements in civil and commercial matters in that there is no need for approval by the court of a second member state with the delays and expenses that this entails.

When a court in a member state has passed judgement on an uncontested claim with the absence of participation of the debtor in the proceedings, the abolition of any checks in the member states of enforcement is inextricably linked to the existence of sufficient guaranties which observes the rights of the defendant.

These principles are not applicable to:

- (i) the status or legal capacity of natural persons, rights and property arising out of a matrimonial relationship, wills and succession; or
- (ii) bankruptcy proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; or
- (iii) social security; or
- (iv) arbitration.

A judgment on an uncontested claim delivered in a member state can, upon application at any time at the court of origin, be certified as a European enforcement order if:

- (i) the judgement is enforceable in the member state of origin;
- (ii) the judgement does not conflict with order public;
- (iii) the claim is uncontested.

Moreover, where a judgement includes an enforceable decision on the amount of costs related to the court proceedings, including the interest rates, it is certified as a European enforcement order also with regard to the costs unless the debtor has

specifically objected to his obligation to bear such costs in the course of the court proceedings, in accordance with the law of the member state of origin.

Therefore, no additional costs accrue in connection with the recognition and enforcement of foreign judgments in connection with uncontested claims.

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9.2 Cost of obtaining an authenticated decision

In Austria there are no authentication costs for court decisions..

10 Civil Legal aid

10.1 General

Sections 63 to 73 of The Austrian Code of Civil Procedure (“Zivilprozessordnung” - “ZPO”) regulate legal aid (the provisions of the European Legal aid directive 2003/8/EC have already been implemented in the ZPO).

Legal aid (“Verfahrenshilfe”) is given to parties who cannot afford to litigate without endangering their livelihood (minimum living wage - “Existenzminimum”), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or the attorney is provided at reduced cost or free of charge. If possible, the party has to repay the legal aid within three years of the proceedings.

All necessary procedural costs such as interpretation, translation of documents, court fees and attorneys’ fees are covered by legal aid..

10.2 Conditions of grant

In general, legal aid is granted to people who are partly or totally unable to meet the costs of proceedings, including the costs of experts, as a result of their economic situation. Moreover, legal entities are also entitled to apply for legal aid but only under the circumstances that all of the economic parties involved are

without resources (e.g. limited liability company: all shareholders, limited partnership: all limited partners).

A party, who thinks they meet the requirements for obtaining legal aid, has to file an application at the competent court. The court makes its decision taking into account the economic situation of the applicant. The economic situation of someone is assessed in the light of various objective factors such as income, capital or family situation, including an assessment of the resources of the people who are financially dependant upon the applicant. Currently the monthly minimum living wage in Austria is approximately EUR 726. If the court does not decide in favour of the applicant, they have the right to appeal against this decision, but the amount in dispute must more than EUR 2,000.

Payment of court fees, lawyer's fees, expert's fees, witness fees and translator's or interpreter's fees are either postponed or waived. . If possible, the party has to repay any legal aid provided within three years, which is dependant on an improvement in the economic situation of the party who has received legal aid. The court can also fix monthly instalments to pay back the legal aid received.

If the party who has received legal aid loses the proceedings, they have to bear the costs of the winning party for his or her lawyer, as set forth in the Austrian Act on Lawyers' fees, the court fees and all disbursements, which were necessarily required for the proceedings. Only his own procedural costs are deferred until his economic situation has improved within a period of three years.

10.3 Strings attached

The applicant has to give detailed information about their current assets. This includes a statement about their current housing conditions, their net income, possession of real estate, savings, securities, the existence of life- and legal insurance, miscellaneous assets like patents- or copyrights, jewellery and vehicles, debts and obligations to support..

10.4 Practical questions

In general, the approval of legal aid lasts for the whole dispute, including all appeals filed against the lower court decisions. Please note, the granted legal aid can be withdrawn during the trial if (i) the economic situation of the applicant has changed; or (ii) the information in the application form given by the applicant is proven to be false.

Moreover, legal aid covers the enforcement of court decisions only if the time period between the court decision and the enforcement is no more than one year.

According to the European Agreement on the Transmission of Applications for Legal Aid, implemented by BGBl 1982/190, every person who has his habitual residence in the territory of one of the contracting parties and who wishes to apply for legal aid in the territory of another contracting party may submit his application in the state where he has habitually resided (or his legal representative).

The transmitting authority shall assist the applicant in assuring that the application is accompanied by all the documents known by it to be required to enable the application to be determined. It shall also assist the applicant in providing any necessary translation of the documents.

All documents forwarded in pursuance of the present agreement shall be exempt from legislation or any equivalent formality.

The application for legal aid and the documents attached hereto and any other communication shall be drawn-up in the official language or in one of the official languages of the receiving authority or be accompanied by a translation into that language. Each contracting party shall nevertheless accept an application for legal aid and the documents attached hereto and any other communication when they are drawn-up in English or in French or accompanied by translation into one of these languages.

Moreover all member states shall grant legal aid without discrimination to Union citizens and third country nationals residing lawfully in a member state.

10.5 Conclusion and recommendations

In Austria the necessary information is easily accessible. Information in order to obtain legal aid is accessible for the public at various websites inter alia at the website of Federal Ministry of Justice <http://www.bmj.gv.at/service/index> and of the Austrian Bar <http://www.rechtsanwaelte.at>.

From our point of view, the existing Austrian regulations related to civil proceedings costs are sufficient and we do not see a need for a uniform European

regulation. Thus, we believe that an initiative on part of the European Commission in order to create a uniform regulation is not necessarily required.

The Austrian provision which regulates the requirements to obtain legal aid is based upon the European Agreement on the Transmission of Applications for Legal Aid, implemented by BGBl 1982/190, thus a further initiative of the European Union is not necessarily required.

Moreover, on the European level the European judicial network (EJN) in civil and commercial matters (http://ec.europa.eu/civiljustice/index_en.htm) provide information about the requirements of obtaining legal aid in all Member States.

11 Personal experience

11.1 Are there insurances to cover the risks of litigation in civil proceedings?

Yes. In general, legal protection insurance is taken out by individuals or companies for protection from any civil and/or criminal actions brought by other individuals or companies against them or alternatively to insure against the costs of pursuing legal action against others.

In Austria, legal protection insurance is typically purchased as an add-on to household or vehicle insurance although it can also be purchased individually as well.

11.2 What are the average costs of these insurances?

The average costs depend on the type of insurance, chosen and on the level of indemnification to be covered. Other determining factors are whether the

insurance is subject to individual, business men/entities or drivers as well as the amount retained for the insurers account.

Thus, the average insurance premium for an individual is to be estimated between EUR 70 and EUR 200 per year.

11.3 Would such insurances work in cross-border disputes (intra EU)? Is the Insurance premium more expensive to cover cross-border disputes?

Pursuant to Article 4 of the Austrian General Terms for legal protection insurance the insurance protection covers the whole (geographical) territory of Europe. The fact that the dispute is cross-border has no influence on insurance premiums.

11.4 What part of the costs do these insurances usually cover?

In general insurance pays for court fees, lawyers' fees, experts' fees, travel expenses of witnesses and other costs arising in legal actions, up to the level of the indemnification, which is defined in the respective policy of the insurer. The costs for legal consultation before filing a law suit are also covered.

12 Case studies

12.1 Case study 1 - Family law - Divorce (excluding division of matrimonial property)

In the following Case Study please advise the party that files for divorce on litigation costs.

Case A - National situation: a couple gets married. Later they separate and agree to a divorce.

Case B - Transnational situation: Two nationals from a same Member State (Member State A) get married. The marriage is celebrated in Member State A. After the wedding, the couple moves to live and work in another Member State (Member State B) where they establish their residence. Shortly thereafter the couple separates with the wife returning to Member State A and the husband remaining in Member State B. The couple agrees to a divorce. Upon her return to Member State A, the wife immediately files for a divorce before the courts of Member State B².

Assumption: Member State B is Austria

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	€ 210	non	non	First instance € 278 Second instance € 418	non	non	Yes. The parties can agree on an out of court settlement. Afterwards, they need to file at the District Court an application for consensual divorce pursuant section 55a of the Marriage Act ("Ehegesetz")	€ 198 for application and € 198 for the settlement or € 297 if real estate is transferred in connection with the settlement.
Case B	€ 210	non	non	First instance € 278 Second instance € 418	non	non	Yes The parties can agree on an out of court settlement. Afterwards, they need to file at the District Court an application for consensual divorce pursuant section 55a of the Marriage Act ("Ehegesetz")	€ 198 for application and € 198 for the settlement or € 297 if real estate is transferred in connection with the settlement.

Assumption:

- Only A is represented by an attorney in first instance;
- The marriage is divorced due to mutual fault, whereas the fault of B preponderate (2:1);
- Then B mandates an attorney in order to appeal against the decision of first instance, whereas the appeal is unsuccessful;

² N.B : Article 3 of Regulation EC n°2201/2003 provides that: "In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there"

- pursuant RATG the base value for amount in dispute is € 4.360,--

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	<p>First Instance: Parties can only be represented by a lawyer or by themselves. It is not allowed to be represented by a third party (the so called "relative Anwaltpflicht")</p> <p>In second and third instance a representation is compulsory</p>	<p>A: his own attorney fees: EUR 2.049,74; compensation of fees by B: EUR 1.1318,90 remaining fees: EUR: 921,84</p> <p>B: his own attorney fees: EUR 582,96 compensation of fees to A: EUR 1.1318,90 remaining fees: EUR: 2.154,86</p>	no	no	no	no	no
Case B	<p>First Instance: Parties can only be represented by a lawyer or by themselves. It is not allowed to be represented by a third party (the so called "relative Anwaltpflicht")</p> <p>In second and third instance a representation is compulsory</p>	<p>A: his own attorney fees: EUR 2.049,74; compensation of fees by B: EUR 1.1318,90 remaining fees: EUR: 921,84</p> <p>B: his own attorney fees: EUR 582,96 compensation of fees to A: EUR 1.1318,90 remaining fees: EUR: 2.154,86</p>	no	no		no	no

Assumption: two witnesses in second hearing: each € 12,10 + transportation costs

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	yes	<p>Witnesses get compensated for all necessary costs, which occur because of the travel, accommodation and working day lost</p> <ul style="list-style-type: none"> - € 12,10 per hour - travel: public transportation according to the official prices. - Accommodation: breakfast: € 3,40 (only if witness goes on journey before 7 a.m., 	Does not exist	-	-	-

		lunch: € 7,30 (before 11 a.m. and finish after 2 p.m), dinner: € 7,30 (finish his journey after 7 p.m.) € 24,20+ travel				
Case B	yes	See above. Eventually higher transportation costs + accommodation	All members of the EU are exempted from the obligation to provide securities.	-	-	-

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Legal aid is given after application at the competent court to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	yes	The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part	Higher attorneys fees in connection with fee arrangements (the reimbursement only covers attorneys fees according to the RATG	If possible, the party always has to repay legal aid within three years.
Case B	Legal aid is given after application at the competent	Legal aid is given to parties who cannot afford to litigate	Legal aid is given to parties who cannot afford to litigate	yes	The respective cost entitlements have to be apportioned pro rata if a party wins	Higher attorneys fees in connection with fee	If possible, the party always has to repay legal aid within

	court to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years	without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years		in part and loses in part	arrangements (the reimbursement only covers attorneys fees according to the RATG	three years.
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Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	If there are documents which are not in German language	Per page € 13 according to the Law on Entitlements of Fees. See schedule under point 6.2.	If there are parties/ witnesses who are not able to speak German	Per hour € 20,9 for each further hour € 10,60 according to the Law on Entitlement of Fees. See schedule under point 6.3.	Non	Non
Case B	If there are documents which are not in German language	Per page € 13 according to the Law on Entitlements of Fees. See schedule under point	If there are parties/ witnesses who are not able to speak German	Per hour € 20,9 for each further hour € 10,60 according to the Law on Entitlement of	non	non

		6.2.		Fees. See schedule under point 6.3.		
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12.2 Case Study 2 - Family law - Custody of the children (excluding alimony questions)

In the following Case Study please advise the suing party on litigation costs by completing the table below.

Case A - National situation: Two persons have lived together unmarried for a number of years. They have a three year old child when they separate. A court decision grants custody of the child to the mother and a right of access to the father. The mother sues to limit the father's right of access.

Case B - Transnational situation where you are a lawyer in Member State A: Two persons have lived together unmarried in a Member State (Member State B) for a number of years. They have a child together but separate immediately after the child's birth. A court decision in Member State B gives the child's custody to the mother with a right of access to the father. The mother and the child move to live in another Member State (Member State A) as authorized to do so by the Court decision and the father remains in Member State B. A few years later, the mother sues in Member State A to change the father's right of access³.

Assumption: Member State B is Austria

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	-	-	-	-	-	-	yes	Subject to agreement between the

³ N.B : Article 8 of Regulation EC n° 2201/2003 provides that : "The courts of a Member State shall have jurisdiction in matters of parental responsibility over a child who is habitually resident in that Member State at the time the court is seized."

								attorney and his client
Case B	-	-	-	-	-	-	yes	Subject to agreement between the attorney and his client

Assumption: both parties are represented by a lawyer, one action, one statement of defense, two court hearings in first instance; Father prevails;
 Base value for amount in dispute: 1. Instance: € 730,--
 2. Instance : € 7.270,--

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	<p>First Instance: is not compulsory</p> <p>Second Instance: Parties can only be represented by a lawyer or by themselves. It is not allowed to be represented by a third party (the so called "relative Anwaltpflicht")</p> <p>Third Instance: Representation is compulsory</p>	Mother has to pay the fees of her attorney as well as the fees of the father's attorney: EUR 863,--	No	Non	Non	The usage of an expert is not compulsory but in most cases the judge asks for a psychological expert advice	See sample note of fees under point 5.2 above.
Case B	<p>First Instance: is not compulsory</p> <p>Second Instance: Parties can only be represented by a lawyer or by themselves. It is not allowed to be represented by a third party (the so called "relative Anwaltpflicht")</p> <p>Third Instance: Representation is compulsory</p>	Mother has to pay the fees of her attorney as well as the fees of the father's attorney: EUR 863,--	Non	Non	non	The usage of an expert is not compulsory but in most cases the judge asks for a psychological expert advice	See sample note of fees under point 5.2 above.

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	yes	<p>Witnesses get compensated for all necessary costs, which occur because of the travel, accommodation and working day lost</p> <ul style="list-style-type: none"> - € 12,10 per hour travel: public transportation according to the official prices. - Accommodation: breakfast: € 3,40 (only if witness goes on journey before 7 a.m., lunch: € 7,30 (before 11 a.m. and finish after 2 p.m), dinner: € 7,30 (finish his journey after 7 p.m.) <p>€ 24,20+ travel</p>	Does not exist	-	-	-
Case B	yes	<p>Witnesses get compensated for all necessary costs, which occur because of the travel, accommodation and working day lost</p> <ul style="list-style-type: none"> - € 12,10 per hour travel: public transportation according to the official prices. - Accommodation: breakfast: € 3,40 (only if witness goes on journey before 7 a.m., lunch: € 7,30 (before 11 a.m. and finish after 2 p.m), dinner: € 7,30 (finish his journey after 7 p.m.) <p>Eventually higher transportation costs + accommodation</p>	All members of the EU are exempted from the obligation to provide securities.	-	-	-

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?

<p>Case A</p>	<p>Legal aid is given after application at the competent court to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.</p>	<p>Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.</p>	<p>Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.</p>	<p>yes</p>	<p>The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part</p>	<p>Higher attorneys fees in connection with fee arrangements (the reimbursement only covers attorneys fees according to the RATG</p>	<p>If possible, the party always has to repay legal aid within three years.</p>
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Case B	Legal aid is given after application at the competent court to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years	yes	The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part	Higher attorneys fees in connection with fee arrangements (the reimbursement only covers attorneys fees according to the RATG	If possible, the party always has to repay legal aid within three years.
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Case	Translation	Approximative cost ?	Interpretation	Approximative cost ?	Other costs specific to cross-border disputes ?	Approximative cost?
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	If there are documents which are not in German language	Per page € 13 according to the Law on Entitlements of Fees. See schedule under point 6.2.	If there are parties/ witnesses who are not able to speak German	Per hour € 20,9 for each further hour € 10,60 according to the Law on Entitlement of Fees. See schedule under point 6.3.	Non	Non
Case B	If there are documents which are not in German language	Per page € 13 according to the Law on Entitlements of Fees.	If there are parties/ witnesses who are not able to speak German	Per hour € 20,9 for each further hour € 10,60 according to	non	non

		See schedule under point 6.2.		the Law on Entitlement of Fees. See schedule under point 6.3.		
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12.3 Case Study 3 - Family law - Alimony

In the following Case Study please advise the suing party on litigation costs by completing the table below.

Case A - National situation: Two persons have lived together unmarried for a number of years. They have a three year old child when they separate. A court decision grants custody of the child to the mother. The only outstanding dispute relates to the amount of the alimony owed to the mother by the father for the support and education of the child. The mother sues on this.

Case B - Transnational situation where you are a lawyer in Member State A: Two persons have lived together unmarried in a Member State (State B). They have a three year old child. They separate. A court decision in Member State B gives the child's custody to the mother. With the agreement of the father, the mother and the child move to live in another Member State (Member State A) where they establish their residence.

An outstanding dispute remains. This relates to the amount of the alimony owed to the mother by the father for the support and education of the child. The mother sues on this in Member State A⁴.

⁴ NB Article 5 of COUNCIL REGULATION (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provides that: "in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties"

Case Study	Court				Appeals		ADR	
		Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?
Case A	The court fees are calculated in respect to 0,5 % of the value of increased alimony to multiply with 36 Assumption: The amount of the alimony will increase € 50 per month: The court fees are € 9	-	-	Same calculation system	-	-	yes	Subject to agreement between the attorney and his client
Case B	The court fees are calculated in respect to 0,5 % of the value of increased alimony to multiply with 36 Assumption: The amount of the alimony will increase € 50 per month: The court fees are € 9	-	-	Same calculation system			yes	Subject to agreement between the attorney and his client

Assumption: both parties are represented by a lawyer, 2 hearings take place;
Mother prevails;
Base value for amount in dispute: triple annual payment of increased alimony

Case Study	Lawyer				Expert		Cost
		Average costs	Bailiff		Pre-judgment costs	Post-judgment costs	
	Is representation compulsory ?		Is representation compulsory ?				

Case A	<p>First Instance: is not compulsory Second Instance: Parties can only be represented by a lawyer or by themselves. It is not allowed to be represented by a third party (the so called “relative Anwaltspflicht”)</p> <p>Third Instance: Representation is compulsory</p>	EUR 1.599,36	yes			The usage of an expert is not compulsory but in most cases the judge asks for a psychological expert advice	See sample note of fees under point 5.2 above.
Case B	<p>First Instance: is not compulsory Second Instance: Parties can only be represented by a lawyer or by themselves. It is not allowed to be represented by a third party (the so called “relative Anwaltspflicht”)</p> <p>Third Instance: Representation is compulsory</p>	EUR 1.599,36	yes			The usage of an expert is not compulsory but in most cases the judge asks for a psychological expert advice	See sample note of fees under point 5.2 above.

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	yes	<p>Witnesses get compensated for all necessary costs, which occur because of the travel, accommodation and working day lost</p> <ul style="list-style-type: none"> - € 12,10 per hour - travel: public transportation according to the official prices. - Accommodation: breakfast: € 3,40 (only if witness goes on journey before 7 a.m., lunch: € 7,30 (before 11 a.m. and finish after 2 p.m), dinner: € 7,30 (finish his journey after 7 p.m.) <p>€ 24,20+ travel</p>	Does not exist	-	-	-
Case B	yes	<p>See above.</p> <p>Eventually higher transportation costs + accommodation</p>	All members of the EU are exempted from the obligation to provide securities.	-	-	-

Case	Legal Aid			Reimburse ment			
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	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Legal aid is given after application at the competent court to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	yes	The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part	Higher attorneys fees in connection with fee arrangements (the reimbursement only covers attorneys fees according to the RATG	If possible, the party always has to repay legal aid within three years.

Case B	Legal aid is given after application at the competent court to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years	yes	The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part	Higher attorneys fees in connection with fee arrangements (the reimbursement only covers attorneys fees according to the RATG	If possible, the party always has to repay legal aid within three years.
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Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	If there are documents which are not in German language	Per page € 13 according to the Law on Entitlements of Fees. See schedule under point 6.2.	If there are parties/ witnesses who are not able to speak German	Per hour € 20,9 for each further hour € 10,60 according to the Law on Entitlement of Fees. See schedule under point 6.3.	Non	Non
Case	If there are documents which	Per page € 13 according to	If there are parties/ witnesses who are	Per hour € 20,9	non	non

B	are not in German language	the Law on Entitlements of Fees. See schedule under point 6.2.	not able to speak German	for each further hour € 10,60 according to the Law on Entitlement of Fees. See schedule under point 6.3.		
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12.4 Case Study 4 - Commercial law - Contract

In the following Case Study please advise the seller on litigation costs by completing the table below.

Case A - National situation: A company delivered goods worth 20.000 euros. The seller has not been paid because the buyer considers that the goods do not conform to what was agreed. The seller believes that the goods conform to what was agreed and asks for payment in full because he asserts that the goods were purpose made and he will not be able to sell them to someone else.

The seller decides to sue to obtain the full payment of the price.

Case B - Transnational situation: A company whose head office is located in Member State B delivers goods worth 20.000 euros to buyer in Member State A. The contract is subject to Member State B's law and written in Member State B's language. This seller has not been paid because the buyer located in Member State A considers that the goods do not conform to what was agreed. The seller believes that the goods conform to what was agreed and asks for payment in full because he asserts that the goods were purpose made and he will not be able to sell them to someone else. The seller decides to sue in Member State A to obtain full payment of the price as provided under the contract with the buyer.

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	€ 607	-	-	First Instance € 934 Second Instance € 1168	-	-	yes	Subject to agreement between the attorney and his client
Case B	€ 607	-	-	First Instance	-	-	yes	Subject to

				€ 934 Second Instance € 1168				agreement between the attorney and his client
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Assumption: - one action, one statement of defense, 2 further court briefs;
- three court hearings take place;
- The Seller wins in first and second instance

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	yes	EUR 8.870,42	Only for conformation of legal effect and enforceability	non	non	The usage of an expert is not compulsory but in most cases the judge asks for an expert's advice	Depends on the complexity of the opinion
Case B	yes	EUR 8.870,42	Only for conformation of legal effect and enforceability	non	non	The usage of an expert is not compulsory but in most cases the judge asks for an expert's advice	Depends on the complexity of the opinion

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	yes	Witnesses get compensated for all necessary costs, which occur because of the travel, accommodation and working day lost <ul style="list-style-type: none"> - € 12,10 per hour - travel: public transportation according to the official prices. - Accommodation: breakfast: € 3,40 (only if witness goes on journey before 7 a.m., lunch: € 7,30 (before 11 a.m. and finish after 2 p.m), dinner: € 7,30 (finish his journey after 7 p.m.) 	Does not exist	-	-	-

		€ 24,20+ travel				
Case B	yes	See above. Eventually higher transportation costs + accommodation	All members of the EU are exempted from the obligation to provide securities.	-	-	-

Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Legal aid is given after application at the competent court to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	yes	The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part	Higher attorneys fees in connection with fee arrangements (the reimbursement only covers attorneys fees according to the RATG	If possible, the party always has to repay legal aid within three years.
Case B	Legal aid is given after application at the competent court to parties who cannot afford to litigate	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence),	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence),	yes	The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part	Higher attorneys fees in connection with fee arrangements (the reimbursement only covers	If possible, the party always has to repay legal aid within three years.

	without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years	provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years			attorneys fees according to the RATG	
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Case	Translation		Interpretation		Other costs specific to cross-border disputes ?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	If there are documents which are not in German language	Per page € 13 according to the Law on Entitlements of Fees. See schedule under point 6.2.	If there are parties/ witnesses who are not able to speak German	Per hour € 20,9 for each further hour € 10,60 according to the Law on Entitlement of Fees. See schedule under point 6.3.	Non	Non
Case B	If there are documents which are not in German language	Per page € 13 according to the Law on Entitlements of Fees. See schedule under point 6.2.	If there are parties/ witnesses who are not able to speak German	Per hour € 20,9 for each further hour € 10,60 according to the Law on Entitlement of Fees. See schedule under point 6.3.	non	non

12.5 Case Study 5 - Commercial law - Responsibility

In the following Case Study please advise the customer on litigation costs by completing the table below.

Case A - National situation: A heating equipment manufacturer delivers a heater to an installer. The installer on-sells (and installs) the heater to a customer to equip his/her house. The house catches fire shortly thereafter. Every participant (heating equipment manufacturer, installer, end-customer) is insured. The origin of the fire is contested. Nobody wants to compensate the customer.

The customer decides to sue for full compensation the heating equipment manufacturer, the heating equipment installer and the insurance companies.

Case B - Transnational situation: A heating equipment manufacturer in a Member State B delivers heater to an installer in a Member State C. The installer on-sells the heater (and installs) the heater to a customer in Member State A to equip his/her house. The house catches fire shortly thereafter. Each participant (heating equipment manufacturer, installer, end-customer) is insured by an insurance company in its own Member State. The origin of the fire is contested. Nobody wants to compensate the customer.

The customer decides to sue in Member State A for full compensation the heating equipment manufacturer, the heating equipment installer and the insurance companies in Member State A.

Assumption: A claims EUR 10.444,43 as compensation for damage; B disputes their fault and claim for EUR 554,48 as counterclaim; the parties file despite of the action two further written court briefs; 5 court hearings take place

Case Study	Court			Appeals			ADR	
	Initial court fees	Transcription fees	Other fees	Initial court fees	Transcription fees	Other fees	Is this option open for this type of case?	Costs
Case A	€ 607	-	-	2. Instance € 934 3. Instance € 1.168	-	-	yes	Subject to agreement between the attorney and his client
Case B	€ 607	-	-	2. Instance € 934 3. Instance € 1.168	-	-	yes	Subject to agreement between the attorney and his client

Assumption: - one action, one statement of defense, 2 further court briefs;
- three court hearings take place; decision of the court: default allocation: 1:1

Case Study	Lawyer		Bailiff			Expert	
	Is representation compulsory ?	Average costs	Is representation compulsory ?	Pre-judgment costs	Post-judgment costs	Is use compulsory ?	Cost
Case A	yes	A: EUR 4.886,52 B : EUR 4.933,20	Only for conformation of legal effect and enforceability	non	non	The usage of an expert is not compulsory but in most cases the judge asks for an expert's advice	Depends on the complexity of the opinion
Case B	yes		Only for conformation of legal effect and enforceability	non	non	The usage of an expert is not compulsory but in most cases the judge asks for an expert's advice	Depends on the complexity of the opinion

Case	Witness compensation		Pledge or security		Other fees	
	Are witnesses compensated ?	Cost	Does this exist and when and how is it used ?	Cost	Description	Cost
Case A	yes	<p>Witnesses get compensated for all necessary costs, which occur because of the travel, accommodation and working day lost</p> <ul style="list-style-type: none"> - € 12,10 per hour - travel: public transportation according to the official prices. - Accommodation: breakfast: € 3,40 (only if witness goes on journey before 7 a.m., lunch: € 7,30 (before 11 a.m. and finish after 2 p.m), dinner: € 7,30 (finish his journey after 7 p.m.) <p>€ 24,20+ travel</p>	Does not exist	-	-	-

Case B	yes	See above. Eventually higher transportation costs + accommodation	All members of the EU are exempted from the obligation to provide securities.	-	-	-
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Case	Legal Aid			Reimbursement			
	When and under which conditions is it applicable?	When is support total ?	Conditions ?	Can the winning party obtain reimbursement of litigation costs?	If reimbursement is not total what is percentage in general ?	What costs are never reimbursed?	Are there instances when legal aid should be reimbursed to the legal aid organisation ?
Case A	Legal aid is given after application at the competent court to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	yes	The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part	Higher attorneys fees in connection with fee arrangements (the reimbursement only covers attorneys fees according to the RATG)	If possible, the party always has to repay legal aid within three years.

Case B	Legal aid is given after application at the competent court to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years.	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years	Legal aid is given to parties who cannot afford to litigate without endangering their livelihood (minimum of subsistence), provided that their litigation is not patently frivolous or without chance of success. Payment of costs is either delayed or waived, or attorney is provided at reduced costs or free of charge. If possible, the party has to repay legal aid within three years	yes	The respective cost entitlements have to be apportioned pro rata if a party wins in part and loses in part	Higher attorneys fees in connection with fee arrangements (the reimbursement only covers attorneys fees according to the RATG	If possible, the party always has to repay legal aid within three years.
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Case	Translation		Interpretation		Other costs specific to cross-border disputes?	
	When and under which conditions is it necessary ?	Approximative cost ?	When and under which conditions is it necessary?	Approximative cost ?	Description	Approximative cost?
Case A	If there are documents which are not in German language	Per page € 13 according to the Law on Entitlements of Fees. See schedule under point 6.2.	If there are parties/ witnesses who are not able to speak German	Per hour € 20,9 for each further hour € 10,60 according to the Law on Entitlement of Fees. See schedule under point 6.3.	Non	Non
Case B	If there are documents which are not in German language	Per page € 13 according to the Law on Entitlements of Fees. See schedule under point 6.2.	If there are parties/ witnesses who are not able to speak German	Per hour € 20,9 for each further hour € 10,60 according to the Law on Entitlement of Fees. See schedule under point 6.3.	non	non

