

ANNEX 33

- Country Report GERMANY

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IMPLEMENTED BY



DEMOLIN, BRULARD, BARTHELEMY

- HOCHÉ -

FOR



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

**Jean ALBERT
Team Leader**

- COUNTRY REPORT -

- GERMANY -

**Submitted by Michael Bonsau
Country Expert**

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ANNEXE 1 Questionnaire completed for the implementation of this study

COUNTRY REPORT

Preliminary notes

The following German country report is part of the European Commission project “Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union.”

The context of the study is the creation of an effective European Area of Justice. The affirmation of a European Area of Justice means that EU citizens have an easy access to justice. Access to justice by EU citizens remains hindered by a number of factors one of which is the lack of transparency in the costs of civil judicial proceedings.

Thus, this report reflects the German system of costs in civil litigation proceedings. The information given in the report (and the attached questionnaire) is based on a research and legal status of October 2007.

Introduction

The determination of the costs of legal proceedings in German is generally clear and transparent. This is due to the major reform of the German laws on the costs of justice in 2004. The reform had the aim to make the costs law easier and more transparent. This aim has been achieved to a large extent.

The German law on costs of civil judicial proceedings is based on two general principles:

According to the first one, court fees as well as lawyers' fees are generally determined by two factors: the value of the claim (value in dispute) and the stadium (in particular the instance) and kind of proceeding.

All relevant laws and regulations include special schedules and tables by which court as well as lawyers' fees can be easily determined.

This system allows to predict the costs of litigation precisely and, at the same time, informs about the (cost) risk of the proceedings.

The second general principle states that the defeated party has to bear all costs. This policy makes the allocation of proceeding fees fair and reasonable. To the extent a claim is justified the claimant will always be reimbursed for his expenses.

Executive Summary

1 Summary of the mains sources of costs

The costs of legal proceedings basically consist of court fees and extrajudicial costs.

The basic sources for court fees consisting of fees and expenses are:

- German Code of Civil Procedure (Zivilprozessordnung - "ZPO")
- Court Fees Act (Gerichtskostengesetz - "GKG") and its annexes
- Costs Act (Kostenordnung - "KostO")

Fees are issued for the proceedings itself. They commonly arise for specified procedural stages. The amount of the fees does not depend on the expenses incurred but mostly on a digressive schedule which is related to the amount in dispute (i.e. value of the claim). In contrast to this, court expenses comply with the disbursements arising. These are, for example, costs for witnesses and experts or transcription fees.

Extrajudicial costs are any expenses incurred by the parties, especially those for the lawyers, travelling expenses or costs for experts prior to the judicial proceedings. Since 1 July 2004 (effective date), lawyer's fees are regulated in the

- German Lawyers' Remuneration Act (Rechtsanwaltsvergütungsgesetz - "RVG")¹

Pursuant to the RVG, lawyer fees are generally determined by the claim value. Notwithstanding, parties are free to negotiate specific hourly fee rates, which differ from the statutory fees. However, agreeing to so called contingency fees (i.e. fees, which depend on the performance of the litigation) is not allowed.

The allocation of the costs is part of the final judgement (so called Kostenentscheidung).

2 Level of transparency in the sources of costs

From a lawyer's point of view, German law cost regulations and provisions are transparent. Plenty of German (legal) literature provides information and schedules on costs of justice. All relevant laws are easily accessible via the internet (e.g. http://www.gesetze-im-internet.de/gkg_2004/index.html - full text of the Court Fees Act, Gerichtskostengesetz "GKG"). Many courts have information offices to provide assistance. Consumers or employees will receive help from special consumer protection facilities (Verbraucherschutzseinrichtungen) or from employees' unions and associations (Gewerkschaften).

3 Determination of the amounts of costs

German litigation costs are determined by the value of the claim, the type and the course of the proceedings (court fees and lawyer fees), or by the amount of effort involved (expert fees, bailiff fees, witness compensation etc.).

Court fees and lawyer fees are firstly calculated by the claim value (if specific hourly fee rates were not negotiated in the latter case). Therefore the relevant laws and provisions, namely the Court Fees Act "GKG" and the Lawyers' Remuneration Act "RVG", contain schedules from which a so-called "single fee" can

¹ Prior to the RVG, the lawyer's fees were stipulated in the "BRAGO", "Bundesgebührenordnung für Rechtsanwälte".

be taken. The “single fee” has to be multiplied by a particular factor, depending on the type (e.g. general civil law, family law, labour law) and the course of the proceedings (main proceedings, appeal etc.). Schedules, setting out the respective factors, are also provided with the GKG and the RVG.

With respect to regular first instance main proceedings, the (single) court fee has to be multiplied by the factor 3. Assuming a claim value of EUR 5.000 and a resulting single court fee of EUR 121 (pursuant to sec. 34 GKG)², the overall court costs would amount to EUR 363 for example (single fee multiplied by the factor 3).³ In the same case, lawyer fees of each party would amount to EUR 752,50 (pursuant to the regulations of the RVG and under the condition that specific hourly rates were not negotiated)⁴.

Other costs (especially expert fees, bailiff fees etc.) are determined by the amount of effort involved. While expert fees are calculated per hour and difficulty (between EUR 50 and EUR 99 per hour), bailiff fees are determined per act (up to EUR 49 per act). The full amount of these costs therefore depends on the complexity of each case and it is not possible to give an average sum.

4 Level of transparency in determining the actual costs

The determination of German proceeding costs is generally clear and transparent. In 2004 there was a major reform of the German laws on the costs of justice, with the objective of making the costs law easier and more transparent. To a large extent these goals have been achieved.

As a basic principle, court fees and lawyer fees are determined by the value of the claim. Therefore, all relevant laws and regulations include special schedules and tables by which fees can be easily determined⁵. The compensation of witnesses and the remuneration of bailiffs or experts (if needed) are calculated due to their

² A schedule is provided under number 2.2 of the detailed report.

³ In the case of an early end to the proceedings, due to a settlement between the parties or a withdrawal of action etc., the factor would be reduced subsequently (here to 1).

⁴ Schedules are provided under numbers 3.1 et seqq. of the detailed report.

⁵ See below nos. 2 (court fees) and 3 (lawyer fees) of the detailed report for more information about the determination of those costs.

expenses (i.e. on a per hour basis and/or depending on the level of difficulty). All fees are statutory and are set out in the respective regulations and provisions.

Most courts and many organisations (for example special consumer protection facilities “Verbraucherschutzseinrichtungen”) will provide free assistance by determining the costs of a possible litigation. Several websites provide general information about costs of justice and some even include special cost-calculators by which court fees and lawyer fees can be determined on the basis of the estimated claim value, for example:

- Free German website of the ministry of justice of North Rhine Westphalia “NRW”, providing a multiplicity of brochures as well as a cost calculator (<http://www.justiz.nrw.de/WebPortal/BS/Hilfen/index.php>)
- Free German website of the magazine “Spiegel”, providing a cost calculator (<http://www.spiegel.de/wirtschaft/0,1518,237919,00.html>)
- Free service of the German ministry of justice in collaboration with “juris”, providing nearly all German laws and regulations online (<http://bundesrecht.juris.de/index.html>)

However, the named websites and most regulations and provisions are only available in the German language. Therefore the transparency in cross-border issues could be hindered.

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

It is very difficult to give an (average) proportion of each identified cost in the overall costs of a German litigation process. The proportions of the various costs will mainly depend on the circumstances of each single case.

As stated above, German court fees and lawyer fees are mainly determined by the value of the claim. Other costs, such as bailiff fees, expert fees (if needed) or the

compensation of witnesses, are dependent on their efforts and are usually calculated by per hour. In the event that these (extrajudicial) costs are marginal (in particular, if an expert is not needed), court fees would amount to approximately 20% of the overall costs, whilst lawyers fees would add up to 80% of the overall costs.⁶ These findings can be completely different in more complex cases, for example if a large amount of expertise is needed. In those cases, expert fees can amount to the largest part of the overall costs (due to a high number of hours worked on the case).

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

As stated above, both court fees and lawyer fees are determined by the value (amount) of the claim. With an increasing value, the amount of these fees increases, but non-proportionally (i.e. their portion in the claim value decreases). Their proportion of the overall volume of activity (including the claim value) will change from case to case (with different claim values). Providing an average proportion (applying for most cases) is not possible.

In fact, other costs, such as bailiff fees, expert fees or the compensation of witnesses are not dependent on the value of the disputed claim, but determined by the actual effort involved (usually calculated on a per hour basis). Thus, these costs largely depend on the complexity and the special circumstances of each case and it is not possible to specify an average.

For these reasons, it is not possible to give the proportion of each identified cost in the overall volume of activity (i.e. the proportion of each cost with respect to the amount claimed and the total expenses that the claim generates).

⁶ In detail: Assuming a fictive value of claim of EUR 50,000, overall costs (i.e. both parties' court fees and lawyer fees) would amount to EUR 6598. Of this amount, lawyer fees would add up to EUR 5230 (which is equal to about 80%), while court fees would aggregate to EUR 1368 (which is equal to about 20%).

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

By the same token, the German system does not allow an indication of the proportion of each identified cost with respect to the value of the disputed claim. Court and lawyer fees are non-proportional in relation to the value of the claim.

For example: Assuming that the claim value amounts to EUR 5,000, lawyer fees for both parties will amount to approximately 30% (EUR 1505⁷) of this amount, while with a fictive claim value of EUR 50,000, lawyer fees will only amount to 10% (EUR 5230⁸) of the claim value. This is similar to the court fees: In the first case, these will amount to 7% (EUR 363), while in the latter case with a claim value of EUR 50,000, court fees will only amount to 3% of the value of the dispute.

Other costs - as stated above - depend on the actual efforts exerted, and thus largely on the complexity and the circumstances of each case. Generally speaking, it is possible for a case with a “small value of claim” to require a large expertise, the costs of which may even exceed the claimed amount. Thus, the determination of average costs or the determination of an estimated proportion in the value of the disputed claim is not possible either.

8 Specificities in relation to EU cross-border disputes

General speaking, the systems of determining the costs of justice are not harmonized across the EU. Thus, transparency is hard if not impossible to achieve. Therefore, it is still difficult (without professional assistance) to conduct a lawsuit in another member state and even to estimate the expected costs of such litigation prior to the proceedings.

EU cross-border disputes (i.e. with one party from a foreign EU state) which take place in Germany and before a German court, generally have no influence on the cost structure and are treated in the same way as national litigation proceedings

⁷ Exclusive of VAT.

⁸ Exclusive of VAT.

would be treated. In particular, the same regulations and provisions will apply. However, additional costs could arise from special notification costs (in the event that a notification to another EU state is needed) and translation or interpretation costs (if a party is not able to communicate in the German language). While notification costs are determined by fixed amounts, translation and interpretation fees are determined by the actual effort involved (translation fees per characters “Anschläge” and difficulty, interpretation fees on a per hour basis). Therefore, in cases of very complex files or week long hearings, translation and interpretation costs can amount to a major sum.

9 Recommendations for EU action/national action

Especially within cross-border litigation proceedings, problems can arise due to a lack of transparency. Systems for determining the costs of justice are not harmonized across the EU. For as long as there is no EU-wide harmonization of the national systems and the creation of a conform EU-system on litigation costs, at least the following points will contribute to a better transparency between the different systems:

- Centralize the information on the operation and costs of justice
- Require Member States to provide a translation of the presentation of their judicial system procedures and relevant costs
- Codify European texts governing the proceedings (as a last step before an EU-wide harmonization)

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

As costs of justice are precisely determined by legal regulation they are totally foreseeable. Although estimating the costs is difficult for the litigating parties themselves, the costs of justice can exactly be predicted by lawyers. The clear

legal regulation enables the parties to assess the risk of litigation arising from its costs and, therefore, supports access to justice.

Further, costs depend on the value of the claim. As in case of a lower value of claim the parties will only have to bear lower fees, the proportion between the economic potential of the parties and costs of justice guarantees that justice remains accessible.

In addition to that, costs have to be born exclusively by the losing party. As a result, justified claims can never be prevented from execution by the amount of court fees. Thus, the principle of determination of the cost debtor itself assures access to justice.

11 Conclusions and recommendations

Overall, the German system on costs of justice can be regarded as fair and transparent system. All kinds of costs are precisely determined by legal regulation.

As a basic principle, the main costs (especially court- and lawyer fees) depend on the value of the claim. Therefore, laws and regulations contain specific schedules and tables by which costs and fees can be easily calculated. Although estimating the costs might be difficult for the litigating parties themselves, the maximum costs of justice can be calculated by their lawyers or other specialised facilities (e.g. consumer protection facilities, “Verbraucherschutzseinrichtungen”). The clear legal regulation enables the parties to assess the risk of litigation arising from its costs and, therefore, supports access to justice. Where the personal or economic situation does not permit the party to afford the costs of litigation, the German system grants legal aid (“ Prozesskostenhilfe”).

Notwithstanding, the systems of determining the costs of justice are not harmonised across the European Union. Thus, especially within cross-border litigation proceedings, problems can arise due to a lack of transparency.

Detailed Report

1 General Questions

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

General speaking, there is no problem with the transparency of German fees and costs of justice. There is a wide spread of information sources available. The overall level of information can be seen as good therefore.

For example, plenty of German (legal) literature and websites provide information and schedules on costs of justice (compare below table). Furthermore, many courts have information offices arranged, which provide assistance. Consumers or employees will receive help from special consumer protection facilities (Verbraucherschutzeinrichtungen) or from employees' unions and associations (Gewerkschaften). Of course it is possible to instruct a lawyer, who will estimate lawyers fees and court fees before a case/claim will be filed.

Some examples were chosen:

Type of information ⁹	Source /name /price	Description
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⁹ Be aware that this selection is subjective and has no impact on the quality of other information sources.

Legal literature	“Kostengesetze” published by Peter Hartmann, 2007 (about EUR 100)	General commentary on German litigation costs
Legal literature	“Kostentafeln” published by German Bar Association, 2006 (about EUR 30)	Practical information about litigation costs, providing schedules where costs can be easily read off
Website (free)	“ http://www.justiz.nrw.de/WebPortal/BS/Hilfen/index.php ”	Website of the ministry of justice of North Rhine Westphalia, providing a multiplicity of brochures as well as a cost calculator
Website (free)	“ http://www.spiegel.de/wirtschaft/0,1518,237919,00.html ”	Website of the magazine “Spiegel”, providing a cost calculator
Website (free)	“ http://bundesrecht.juris.de/index.html ”	German ministry of justice in collaboration with “juris”, providing nearly all German laws and regulations online
Private website	“ http://www.beck-online.de ”	Large legal research database, including case law, many legal literature

1.2 Transparency perception

The German system on legal costs is generally considered a very transparent and clear system. This, of course, reflects a lawyer’s point of view.

Even so, there are no discussions currently apparent about the transparency and clearness of German litigation costs. On the one hand, in 2004 there was a major reform of the German laws on the costs of justice, with the objective of making the costs law easier and more transparent. To a large extent these goals have been achieved. On the other hand, the major part of litigations and court proceedings is already conducted with the assistance of a lawyer, who is able and obliged to inform a client about the costs and risks of potential court proceedings.

Overall, the transparency perception can be classified as good in Germany.

1.3 Solutions to improve transparency

Still, most provided information and literature with respect to litigation costs, is only available in German language. Especially within cross-border litigations problems can arise due to a lack of information and transparency. Moreover,

systems of determining costs of justice are not harmonized across the EU. A full transparency is hard if not impossible to achieve.

Nevertheless, the following points will contribute to a better transparency and information between the different systems:

- Centralize the information on the operation and costs of justice
- Require Member States to provide a translation of the presentation of their judicial system procedures and relevant costs
- Codify European texts governing the proceedings (as a last step before an EU-wide harmonization)

1.4 Fairness of costs

As one of the basic principles of the German proceeding cost system the prevailing party is generally allowed to reclaim its costs and expenses (at the statutory rates) from the opposite party at the end of the litigation. More generally, the basic rule is that a party has to bear such a share of the costs of the proceedings (including the other party's attorney fees at the statutory rates) as corresponds to the extent of its defeat (i.e. if the plaintiff claimed EUR 90,000 and the claim is sustained only with regard to EUR 60,000, the defendant would have to bear 2/3 and the plaintiff 1/3 of the costs).

However, German law stipulates several restrictions to the reimbursement of the winning party, in order to protect the opposite party for abusive claims or (only) damaging claims. For example, a winning party is not entitled to demand reimbursement, if there was not any cause for a complaint or any court proceedings (cf. section 91 of the German Code of Civil Procedure - "Zivilprozessordnung "ZPO").

The concept works well in Germany, based on a system of reimbursement limited to statutory (i.e. transparent) fees. So far the German system can generally be called a fair system.

1.5 Conclusion and recommendations

The level of transparency of German litigation costs is high. All costs and fees are explicitly regulated by law. Plenty of literature and websites provide information to the determination of costs and their sources, too. Furthermore, just in 2004 a large reform took place, with the objective to make the German system more transparent and clear. Most of these goals were achieved now.

Nevertheless, most information and literature is only available in German language, which may lead to a lack of information and transparency in cross-border litigations.

2 Court fees

2.1 General

The basic sources for court fees consisting of general fees and other expenses are the:

- German Code of Civil Procedure (Zivilprozessordnung - "ZPO")
- Court Fees Act (Gerichtskostengesetz - "GKG") and its annexes
- Costs Act (Kostenordnung - "KostO")

General court fees are issued for the proceedings themselves. They commonly arise for specified procedural stages. The amount of the fees is firstly depending on the amount in dispute (i.e. value of the claim). Therefore, the Court Fees Act "GKG" contains a digressive schedule from which a so-called "single fee" can be taken (according to the value of the claim). Along with the claim value, the general court fee is primarily depending on the course and the type of the proceedings. Thus, this "single fee" has to be multiplied by a particular factor, depending on the type (e.g. general civil law, family law, labour law) and the course of the proceedings (main proceedings, appeal etc.).

Additionally to these general fees, other costs can occur, resulting from expenses for witnesses and experts or transcription fees.¹⁰ In contrast to the general court fees, these expenses correspond to the actual costs which have actually arisen (i.e. usually on per hourly rates; bailiff fees are calculated per act).

Both costs, the general fees and other accruing expenses, have to be paid by the claimant in advance when filing the claim (in part, these will be estimated, for example expert fees, if needed).

2.2 Cost of bringing an action to the courts

The costs of bringing an action to the courts first depend on the specified value of the claim, which is subject matter of the court proceedings. The German Court Fees Act “GKG” provides with its annex 2 a schedule from which a so called “single fee” can be taken (based on the value of the claim)¹¹:

claim value up to EUR ...	fee EUR ...	claim value up to EUR ...	fee EUR ...
300	25	19.000	265
600	35	22.000	288
300	45	25.000	311
1.200	55	30.000	340
1.500	65	35.000	369
2.000	73	40.000	398
2.500	81	45.000	427
3.000	89	50.000	456
3.500	97	65.000	556
4.000	105	80.000	656
4.500	113	95.000	756
5.000	121	110.000	856
6.000	136	125.000	956
7.000	151	140.000	1.056
8.000	166	155.000	1.156
9.000	181	170.000	1.256
10.000	196	185.000	1.356
13.000	219	200.000	1.456
16.000	242	230.000	1.606

This “single fee” then has to be multiplied by a special factor for each type of proceeding (i.e. family law, civil law etc.).

¹⁰ See below for more information regarding these costs.

¹¹ Pursuant to sec. 34 and annex 2 of the GKG. The original schedule reaches up to a claim value of EUR 500.000. Due to lack of space, the stated table was reduced to a maximum claim value of EUR 230.000.

For example: Assuming a claim value of EUR 5,000, the single court fee would amount to EUR 121. For example, within normal first instance main proceedings the fee has to be multiplied by the factor 3. So, overall court costs would amount to EUR 363 (single fee multiplied by the factor 3) in this case. However, in the case of an early end to the proceedings, due to a settlement between the parties or a withdrawal of action etc., the factor would be reduced subsequently (here to 1). General court fees then would only amount to EUR 121.

Within ordinary court proceedings (generally all civil law litigations) the claimant has to pay the so calculated fees in advance, when the claim is filed. Within some other court proceedings (e.g. labour law proceedings) an advance payment is not required, so that full court fees will have to be paid by the losing party only at the end of the proceedings.

2.3 Other proceedings costs

Other proceeding costs may result from special expenses, for example from expert fees, bailiff fees, witness compensation, transcription costs or, usually within cross-border proceedings, from additional translation and interpretation costs.

These costs do not depend on the value of the disputed claim, but are determined by the amount of effort involved. While expert fees are calculated per hour and difficulty (between EUR 50 and EUR 99 per hour), bailiff fees are determined per act (up to EUR 49 per act) for example. The full amount of these costs therefore depends on the complexity of each case and it is not possible to give an average sum.¹²

2.4 Costs of legal recourses (Appeals...)

As the court's fees on the first level (instance) of jurisdiction stated above, the costs of legal recourses are primarily determined by the value of the claim. Pursuant to the German Court Fees Act "GKG" a single fee has to be calculated with respect to the claim value. The single fee is exactly the same on each level of jurisdiction (provided that the claimed amount in dispute has not increased). The

¹² See below for more detailed information to these costs.

“single fee” has to be multiplied by a particular factor, which increases with each level of jurisdiction.

In detail (applies to main proceedings):

- on the first level of jurisdiction, the factor amounts to 3¹³
- on the second level of jurisdiction, namely in appeal proceedings (“Berufung”), the factor amounts to 4¹⁴
- on the third level of jurisdiction, namely in appeals on points of law (“Revision”), the factor amounts to 5¹⁵

In the above assumed case with a fictive claim value of EUR 5,000 and the resulting single fee of EUR 121 (pursuant to sec. 34 and annex 2 of the GKG), court fees on the second level would amount to EUR 484 (multiplied with the factor 4) and on the third level of jurisdiction to EUR 605 (multiplied with the factor 5).

Again, the calculated fees are to be paid in advance. In the case of an early end to the proceedings, due to a settlement between the parties or a withdrawal of action etc., the factor would subsequently be reduced (to 1 fee) as well. General court fees for the appeal then would only amount to EUR 121. However, additional costs could arise from other expenses, for example from expert, bailiff or transcription fees.

2.5 Costs of ADR

Costs of Alternative Dispute Resolution (ADR) can result from arbitration, mediation and conciliatory (“Schlichtungsverfahren”) proceedings as possible ADR methods.

Arbitration proceedings are generally regulated by sections 1025 et seq. ZPO (German Code of Civil Procedure). The provisions of the GKG concerning (regular) court fees are not applicable. Therefore parties are able respectively have to agree on allocation and amount of the arbitration costs (especially on the arbitrator’s fees). If the parties failed to agree to an arbitrator’s fee (with the arbitrator), fees

¹³ Pursuant to nr. 1210 of annex 1 to the GKG (“Kostenverzeichnis”)

¹⁴ Pursuant to nr. 1220 of annex 1 to the GKG (“Kostenverzeichnis”)

¹⁵ Pursuant to nr. 1230 of annex 1 to the GKG (“Kostenverzeichnis”)

will be defined by objective criteria, for example by customary fees (cf. section 612 paragraph 2 of the German Civil Code “BGB”). In the case that the parties failed to agree on the allocation of the costs, the arbitration court is entitled to decide thereon (pursuant to section 1057 ZPO). Frequently such decision will be based on the general rule that each party has to pay such share of the costs as corresponds to the degree in which it has been defeated.

In mediation and other conciliatory proceedings parties have to agree on costs and the allocation of costs, too. There are no special laws that would apply.

2.6 Costs of legal aid proceedings

If one party is entitled to get legal aid (so, if party is “in need”) , state will adopt court’s fees of the party full or in part (cf. section 114 ZPO). The benefiting party is generally obliged repay the (full) amount by instalments.

2.7 Costs of fast track proceedings

Court fees of fast track proceedings (i.e. preliminary injunctions for example) are determined by the value of the claim, too. At first, pursuant to the German Court Fees Act “GKG”, a single fee has to be calculated with respect to the claim value (with the respective schedule provided by the GKG for “regular” court fees, see above for an example). The single fee is exactly the same as on each level of main proceedings (provided that the claimed amount is the same). Changes only results from the particular factor, by which the calculated “single fee” has to be multiplied by.

In detail :

- within first instance fast track proceedings, factor amounts to 1.5
- within second instance fast track proceedings factor amounts to 4

- in the case of an early end to the proceedings, due to a settlement between the parties or a withdrawal of action etc., the factor would subsequently be reduced to 1 fee.

2.8 Costs of group actions proceedings

Typical “class actions” are not yet allowed in Germany. However, German law provides a similar proceeding type, called “Streitgenossenschaft” (pursuant to sections 59 et seq. of the German Code of Civil Procedure). Costs of such proceedings are individual determined for each participant according to the general rules (see above) again, and therefore do not differ from regular proceeding costs (i.e. costs are determined by the value of the claim and the level of jurisdiction).

2.9 Payment

The calculated court fees have generally to be paid full and in advance (before the beginning of the proceedings) by the claimant. As matter of fact the statement of claim is only served upon the defendant if the court fees have been paid.

The court fees can be paid by bank transfer. Another accepted method is the payment by special value vouchers, which can be bought from the court in advance (so called “Gerichtskostenmarken” or “Gerichtskostenstempler”).

2.10 E-justice

Online court proceedings as well as online ADR proceedings are generally not allowed by German law.

Notwithstanding in special cases it is possible to organise a court hearing by video conferencing if the parties have agreed to such procedure before (c.f. section 128a ZPO). E-Mails within court proceedings are only allowed by using a so called digital signature as set forth in the German Law on Signatures (“Signaturgesetz”).

2.11 Impact of the number of hearings on costs

The number of hearings does not impact the court's fees in one and the same instance. Only in the case of an appeal additional costs will arise¹⁶.

2.12 Transcription costs

In addition to the regular court fees, each court is permitted to charge further expenses ("Auslagen") including transcription costs. These costs are regulated by the German Court Fees Act (Gerichtskostengesetz "GKG"), more specifically in no. 9000 of its annex 1 (cost register - Kostenverzeichnis "KV").

Expenses, which arise from actions that a court conducts upon the parties' application have to be paid in advance. In opposition to that, actions that have to be undertaken officially can not be omitted when parties do not pay in advance. In spite of this, the court can determine that one of the parties is to advance expenses.

2.13 Conclusions and recommendations

The German system on determining court fees is generally clear and transparent.

German court fees are firstly depending on the amount in dispute (i.e. value of the claim). Along with the claim value, court fees are depending on the course and the type of the proceedings. Therefore, the relevant laws and regulations provide schedules and tables by which fees can be determined.

Other costs can only result from expenses for witnesses and experts or transcription fees. In contrast to the general court fees, determined by the claim value, these expenses correspond to the actual costs which have actually arisen (i.e. usually on per hourly rates; bailiff fees are calculated per act).

¹⁶ See above 2.4 for more information about the costs of appeals.

Both costs have to be paid by the claimant in advance, when filing the claim (in part, these will be estimated, for example expert fees, if needed). But, the full costs can be generally reclaimed from the opposite party, if the claimant prevails (as basic principle of German proceeding law, litigation costs has to be borne by the losing party).

3 Lawyers' consulting and representation fees

3.1 General

Lawyers' fees are generally based on the legal regulations of the German Lawyers' Remuneration Act (Rechtsanwaltsvergütungsgesetz "RVG"). However, client and attorney are free to negotiate higher fees than those specified in the RVG. But such agreement must be in writing. Agreements on so called contingency fees (i.e. fees, which depend on the outcome of the litigation) are not allowed.

Statutory lawyers fees pursuant to the RVG are determined by the claim value ("Gegenstandswert"). Therefore, the RVG contains a specific schedule from which a so-called "single fee" can be taken (according to the claim value):¹⁷

Claim value up to EUR ...	Fee	Claim value up to EUR ...	Fee
300	25	13,000	526
600	45	16,000	566
900	65	19,000	606
1,200	85	22,000	646
1,500	105	25,000	686
2,000	133	30,000	758
2,500	161	35,000	830
3,000	189	40,000	902
3,500	217	45,000	974
4,000	245	50,000	1,046
4,500	273	65,000	1,123
5,000	301	80,000	1,200
6,000	338	95,000	1,277
7,000	375	110,000	1,345
8,000	412	125,000	1,431

¹⁷ Pursuant to sec. 13 and annex 6862 of the RVG. The original schedule reaches up to a claim value of EUR 500.000. Due to lack of space, the stated table was reduced to a maximum claim value of EUR 155.000.

9,000	449	140,000	1,508
10,000	486	155,000	1,585

Along with the claim value, lawyer fees are determined by the type and the course of the litigation. Thus, the calculated “single fee” has to be multiplied by a particular factor, depending on the type (e.g. general civil law, family law, labour law) and the course of the proceedings (main proceedings, appeal etc.).

For example: Assuming a claim value of EUR 5,000, the single fee would amount to EUR 301. Within normal first instance main proceedings, the lawyer charges a fee for having commenced the proceedings, which consists of the “single fee” multiplied by the factor 1,3. In addition to that, the lawyer has to be paid a fee in the amount of the “single fee” multiplied by the factor 1,2 for having attended the oral hearing. So, lawyers’ fees would amount to EUR 752,5 (without VAT; “single fee” multiplied by the factor 1,3 added to the “single fee” multiplied by the factor 1,2) in this case.

3.2 Fees depending on the nature of the litigation

Like court fees, lawyers’ fees are generally determined by the claim value, (pursuant to the RVG and in the case, that special per hour rates were not negotiated) and so they differ from case to case. The nature of the (civil) litigation does in general not impact on the amount of the fees.

3.3 Fees depending on the type of lawsuit or proceedings

As stated above, lawyers’ fees depend on the value of the claim and a special factor (multiplier), determined by the Lawyers’ Remuneration Act (RVG), which changes corresponding to the type of proceedings (e.g. between interim injunctions, dunning procedures or main procedures).

For example: The factor in the case of dunning procedures amounts to 1 (cf. no. 3305 of annex 1 to the RVG: first application for a court order - Mahnbescheid), while the factor in the case of a first instance main procedure amounts to 2.5 (including general fees “Verfahrensgebühr” and special court fees “Terminsgebühr”, cf. nos. 3100, 3104 of annex 1 to the RVG).

This factor has to be multiplied by the “single fee” that corresponds to the claim value and can be determined by a special schedule (cf. section 13 RVG and its annex 2). The “single fee” of a claim value of EUR 5000 amounts to EUR 301, for example (cf. section 13 RVG).

3.4 Fees depending on the value of the claim

As stated above and pursuant to the Lawyers’ Remuneration Act (RVG) most lawyers’ fees depend on the value of the claim. Notwithstanding, each lawyer is free to negotiate different fees, for example calculated by a per hour rate. But it is not permitted to agree on a remuneration, which is based on the outcome of the lawsuit to the effect that the lawyer receives no remuneration if his party is defeated and receives a percentage of the judgement amount if his party prevails (notwithstanding that, German legislation is planning a revision of this statute until 2008).

3.5 Fees depending on the jurisdiction

Lawyers’ fees also depend on the jurisdiction. In fact, the “single fee” (determined by the claim value - see above) remains the same, whereas the factor (multiplier) increases. So, in the case of second instance main proceedings (after the appeal of one of the parties) the factor amounts to 2.8 (cf. nos. 3200, 3202 of annex 1 to the RVG; in opposite to 2.5 for the first instance).

With regard to Alternative Dispute Resolution (ADR) proceeding fees are usually negotiated between the parties.

3.6 Legal aid cases

Where legal aid (“Prozesskostenhilfe”) was granted to a party (if party is “in need”), it also covers all regular lawyer fees of the beneficiary. However,

the beneficiary is generally obliged to repay after the proceedings the (full) amount of the legal aid by instalments (if possible).

3.7 Contingency fees

Pursuant to section 49b paragraph 2 of the German Lawyer's Code (Bundesrechtsanwaltsordnung "BRAO") and, unlike in the US, lawyers are not allowed to agree on fees considering the outcome of the proceedings. The German legislator is planning a revision of this statute until 2008.

3.8 Payment

Generally speaking, lawyers' fees are payable at the end of the mandate. Within court proceedings fees are payable when the court has decided on the costs (cf. section 8 para. 1 RVG). The accepted payment method depends on the individual agreements with the lawyer. But in most cases the payment method will be bank transfer or cheque.

3.8.1 Retainer

Lawyers are free to demand adequate up front payments and often do so (pursuant to sec. 9 of the RVG). Usually, the amount of the retainer depends on the personal and economic situation of the client and the value of the disputed claim. Thus, an average amount cannot be indicated.

3.9 Conclusions and recommendations

Overall, the determination of German lawyer fees can be regarded as transparent and clear.

As court fees and statutory lawyers fees are determined by the claim value, the level of jurisdiction and the type of proceedings. All relevant laws and regulations provide schedules and tables by which these fees can be easily (from a lawyer's point of view) determined. Additionally, plenty of literature as well as websites provide information and assistance to the calculation of (possible) costs.

Notwithstanding, lawyer and client are free to negotiate higher fees on a per hour basis, which averagly range from about EUR 180 to EUR 500 per hour (depending on the reputation of the lawyer and the personal and economic situation of the client). The negotiation of contingency fees is not allowed, even if a discussion currently takes place in Germany to that point.

4 Bailiff fees

4.1 General

Bailiff fees within respectively following court proceedings are regulated by the "Gerichtsvollzieherkostengesetz" (GvKostG) and its annex 1 "Kostenverzeichnis" (KV). The bailiffs' functions are to serve documents and to execute enforceable titles. Bailiff fees are charged by act and amount to EUR 0 to 49, on average.

4.2 Ante judgment

Prior to judicial proceedings, bailiff fees usually only arise from the service of interim injunctions ("einstweilige Verfügung"; cf. sections 916 et seq. of the German Civil Procedure Code - ZPO). In this case the bailiff is entitled to a fee of EUR 7.50 per notification/service.

4.3 During proceedings

Generally, during court proceedings an intervention of the bailiff is not required. All required notifications respectively service of documents will be carried out by the court itself. Only in some cases of interim injunction proceedings the enforcement of the interim injunction requires that the (interim) decision of the court is served by a bailiff (cf. 928 et seq. ZPO). Again, a fee of EUR 7.50 per notification will apply in this case.

4.4 Post proceedings

After a court's decision the bailiff is competent to execute judgements/injunctions when the item to be seized belongs to the movable property of the debtor (pursuant to section 808 ZPO) or when the debtor has to release a particular immovable asset or a ship (pursuant to section 885 ZPO). The bailiff's enforcement fees are generally determined by the GvKostG (cf. section 9 and its annex to the GvKostG) and range between EUR 12.50 and EUR 100 per act.

4.5 Payment

In the case of enforcement acts, bailiff fees are to be borne by the losing party (judgement debtor). Notwithstanding, fees have to be advanced by the constituent party (judgement creditor) who afterwards can claim reimbursement. The usual payment method will be bank transfer.

4.5.1 Retainer

The party who requests a bailiff to become active generally has to pay the bailiff's fees in advance but generally can subsequently claim reimbursement.

4.6 Conclusions and recommendations

Bailiff fees are determined by German statutory law. The fees are charged by act and can range up to EUR 49 per act. All possible acts are listed in the “Gerichtsvollzieherkostengesetz” - GvKostG (respectively in its annex). The related fee can be easily read off by the provided schedule within.

5 Expert

5.1 General

The reimbursement of court appointed experts is generally regulated by the so called “Justizvergütungs- und entschädigungsgesetz” (JVEG). An expert’s opinion or expertise is necessary when the court needs conclusions and hypothesis based on special professional knowledge to make sure whether a party’s statement can be true (within a hearing of evidence - “Beweiserhebung”). Thus, the expert usually acts before the court as a witness (often by providing a written expertise).

5.2 Fees

Expert fees vary depending on the different subjects of the expertise (e.g. soundproofing, cause of car accidents, medical or psychological expertises etc.). The fees, determined by the JVEG, are calculated based on hourly rates and range between EUR 50 and EUR 95 per hour (pursuant to section 9 JVEG).

5.3 Payment

Fees of experts which have been appointed by the court are part of the regular court costs. They have to be paid in advance in case of one of the parties applying for a prove by expert. Finally, the party that loses the proceedings has to bear the expert costs among the whole court fees.

5.3.1 Retainer

As part of the regular court costs the experts' fees are payable by the applicant (in general the claimant) in advance. When the case is won, the winning party is generally entitled to reclaim those costs from the opposite party (cf. section 91 ZPO).

5.4 Legal aid cases

In case, the party's personal or economic situation does not permit her/him to pay the costs of litigating she/he may apply for legal aid, which will be granted under certain conditions (on application, if there is a sufficient chance to win etc.). However the party will generally have to refund the corresponding amount later (payable by instalments).

If legal aid was granted to one party, it covers all of the party's court fees, including the expert fees (according to section 114 et seq. ZPO).

5.5 Reimbursement of experts' fees

As part of the regular court costs, the winning party is generally entitled to reclaim all its expenses and costs (including experts' fees which were paid in advance) from the opposite (losing) party, pursuant to section 91 ZPO.

5.6 Practical questions

In general, the expert is chosen by the court (pursuant to section 404 ZPO). If there are certified experts available, the court is only allowed to choose a not certified one under particular circumstances. Nevertheless, if the parties agree on an expert of their choice the court is obliged to accept this decision. In most cases, a

certified expert will be preferred, because his certification proves that the expert fulfils particular personal and professional requirements.

Accredited experts from other EU member states are not automatically accredited before German courts as well. However, reports and statements of those experts can be accepted by German Courts, but German law does not contain any obligation to do so.

5.7 Conclusions and recommendations

Expert fees (rates) are determined by German statutory law. Fees vary depending on the different subjects of the expertise (e.g. soundproofing, cause of car accidents, medical or psychological expertises etc.). The fees, determined by the JVEG, are calculated based on hourly rates and range between EUR 50 and EUR 95 per hour (pursuant to section 9 JVEG). This system has proved as general fair and transparent system in Germany.

6 Translation and interpretation fees

6.1 General

Translation and interpretation fees are also regulated by the “Justizvergütungs- und Entschädigungsgesetz (JVEG), in particular in sections 8 et seq. JVEG.

Within German court proceedings a translation or interpretation is usually required if non-German speaking parties or witnesses are a party to the proceedings or when documents are used that are not written in German. However, the translation (of documents) or the interpretation (of statements) is not strictly required by German law, but rests in the discretion of each court. So it is the court’s choice, whether a translation or interpretation is needed or not.

6.2 Translation fees

Translation fees (within court proceedings) are determined by the JVEG. The fees are generally calculated per characters (“Anschläge” - for every 55 characters fees increase by EUR 1.25 in the case of normal complexity, otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). The minimum fee amounts to EUR 15 (per translation act).

6.3 Interpretation fees

Interpretation fees are also regulated by the JVEG, according to which interpreters’ fees are calculated based on an hourly rate, which generally amounts to EUR 55 (cf. section 9 para. 3 JVEG).

6.3.1 Retainer

As part of the regular court costs translation and interpretation fees are generally payable by the applicant (in general the claimant) in advance (if those costs could be foreseen). Having terminated the proceedings the winning party is generally entitled to reclaim those costs from the opposite party (cf. section 91 ZPO).

6.4 Payment

The translation and interpretation fees are payable with the court fees. The court fees can be paid by bank transfer or cash. Another accepted method is the payment by special value vouchers, which can be bought from the court in advance (so called “Gerichtskostenmarken” or “Gerichtskostenstempler”). After the court’s decision the full costs are to be borne by the losing party.

If a translation or interpretation has been ordered by one of the parties (which directly paid the translation or interpretation fees), these fees are part of the party’s expenses and can be reclaimed from the opposite party when the case is won (cf. section 91 ZPO).

6.5 Practical questions

The court may demand certified translations of some documents (e.g. all kinds of deeds and personal documents as certificate of birth etc.). In these cases only an accredited translator is allowed to translate those documents. General speaking, every graduate translator (by diploma) can be accredited by the courts (on application).

Before interpreting a court statement (by any party or witness) the interpreter has to take an oath (pursuant to section 189 of the German Judicature Act, “Gerichtsverfassungsgesetz” - “GVG”).

6.6 Legal aid cases

Translation and interpretation fees are covered by legal aid if legal aid was granted to the party.

Legal aid is generally admitted to a party when her/his personal or economic situation does not permit her/him paying the costs of the litigation. However, the party will generally have to refund the corresponding amount later (payable by instalments).

6.7 Reimbursement

The reimbursement for all costs and expenses arising from the litigation which the prevailing party can claim also includes all necessary translation and interpretation fees (cf. section 91 ZPO).

6.8 Conclusions and recommendations

Translation and interpretation fees are statutory law as well. Fees are generally determined and calculated per characters (translation fees) or per hour (interpretation fees). Additionally, translation fees are depending on the difficulty grade of the translation. This is a clear and transparent regulation.

7 Witness Compensation

7.1 General

The witness compensation for acting before a court is generally regulated by the JVEG in the German law and thereafter part of the regular court costs.

The witness compensation includes a special fringe benefit (“Aufwandsentschädigung”), which especially consists of the compensation for time lost in hearings, the loss of earnings, the expenses of travel etc.

7.2 Fees

Regarding loss of earnings and lost time in hearings, the compensation is calculated per hour (cf. section 20 et seq. JVEG). The minimum compensation rate amounts to EUR 3 per hour, if the witness does not suffer any loss of earnings¹⁸. In case the witness is confronted with a loss of wages her/his compensation is calculated in relation to his gross salary, but can not exceed EUR 17 per hour (cf. section 22 JVEG). Witnesses who are keeping house for several persons are to reimburse at an amount of EUR 12 per hour.

. Other expenses, for example those for travel etc. are recovered at their actual amount (cf. section 5 JVEG).

¹⁸ Pursuant to section 20 JVEG.

7.3 Payment

The compensation will only be paid upon the application of the witness. In the case of an witnesses' application directly following the oral hearing, compensation will be paid in cash. Otherwise witness has to claim for compensation within three months after the hearing. In this case, compensation will usually be paid by bank transfer.

7.4 Practical questions

The authenticity of a witness' testimony can be demonstrated by affirming the testimony on oath (pursuant to section 391 ZPO). In general it is the free decision of the court to administer an oath to the witness. The court shall administer an oath if it leads to a better finding of the truth and parties do not disagree.

The proceedings are regulated in sections 478-484 ZPO. After the court's decision to put a witness under oath, the court is committed to instruct the witness about the effects of an oath (cf. section 480 ZPO). After that the witness has to take the adjuration (Eidesformel - cf. section 481 ZPO). Sworn testimonies can only be collected orally.

7.5 Conclusions and recommendations

Witnesses are compensated for their efforts. The compensation is usually calculated on a per hour rate. Such rates can vary between EUR 3 and EUR 17 per hour dependent on the disadvantages the witness suffers and, therefore, relating to her/his actual occupation and salary. This is a clear and fair regulation, which achieves that witnesses are reimbursed corresponding to their actual time effort and losses.

8 Pledges and security deposits

8.1 General

Pledges and security deposits are required within or after court proceedings in several cases. Especially these are:

- Enforcement of a decision which is not yet legally binding, see sections 709, 711, 719, 732, 769, 771 ZPO (Code of Civil Procedure)
- Enforcement of a decision after applying for “restitutio in integrum” or executing a sentence under reserve, see section 707 ZPO
- To cover the risk of delayed enforcement, see sections 711, 712, 720a Abs. 3, 923 ZPO
- To cover the risk which derives from the suspension of execution, see sections 707, 719, 732, 769, 771 Abs. 3 ZPO
- The suspension of interim injunctions can be dependent on the provision of a pledge or other security deposit, see sections 925 Abs. 2, 939 ZPO
- To protect the defendant of not being able to claim reimbursement of the costs of litigation in foreign countries, see section 110 ZPO
- When an agent of necessity or representative without proving her/his authority is acting, see section 89 ZPO
- To protect the parties of a sequestrator’s acts, see section 153 Abs. 2 of the Compulsory Auction Law (Zwangsvorsteigerungsgesetz - “ZVG”)

8.2 Fees

There are no fixed amounts of pledges and security deposits determined by German law. Each court determines the amount in its sole discretion. It has to take into account the amount required to preserve the vulnerable party from suffering damages. Nevertheless, the parties can modify the determination by agreement.

8.3 Payment

Pledges and security deposits are generally payable to the court that has determined the amount. In the case of a favourable decision for the party that has

paid the costs, the party is not entitled to claim any interest on the deposited amounts from the losing party.

According to sections 109, 715 ZPO, the depositor may only claim restitution of the original amount of the security deposit or the suspension of the pledge under particular circumstances.

8.4 Practical questions

The court may decide in its sole discretion whether a security deposit or a pledge is to be provided. In the case that neither the court has determined any particular means of securing the claim nor the parties made an agreement in this respect, section 108 ZPO states that a pledge or a deposition of money or stocks can take place.

Only in particular cases of the debtor of the sentence seeking to avoid enforcement (pursuant to sections 711, 712 ZPO) a security deposit is the only possibility to do so.

A security deposit or a pledge is automatically requested, (1) when an agent of necessity or representative without proving her/his authority is acting, (see section 89 ZPO), and (2) when certain decisions which still are not legally binding are executed (see section 709 ZPO).

The defendant can claim a security deposit or pledge when the claimant is not resident in a member state of the European Union or the European Economic Area (pursuant to section 110 ZPO). In this case the party has to claim the security by means of an exception during the trial.

8.5 Conclusions and recommendations

The regulation of pledges and security deposits is transparent. The court's discretion concerning their amount is closely linked to the damages the potentially affected party might suffer.

Nevertheless, the parties can modify the determination by agreement.

9 Court decisions

9.1 Cost of notification

The average costs of the notification of court decisions amount up to EUR 19. In cross border litigation these costs will possibly increase due to additional translation costs.

According to German law, court decisions do not have to be translated even if they are served in foreign countries indeed. But in this case the Hague convention on Service of Judicial Documents and the Hague Convention on Civil Procedure require that documents served formally have to be translated. According to the European regulation on service a translation is not required, when the recipient understands the language of the state of court.

9.2 Cost of obtaining an authenticated decision

The costs for obtaining an authenticated decision do not differ from the above stated and so they generally amount up to EUR 19.

10 Legal aid

10.1 General

Legal Aid is regulated by sections 114 et seq. ZPO (Code of Civil Procedure).

Legal aid is generally granted to one party in the case, that the party's personal or economic situation does not permit her/him paying the costs of the litigating. Legal

aid can also be granted to a (German) entity or association which can be party in a litigation (pursuant to section 116 ZPO).

Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court's fees and bailiff's fees in the case a bailiff acts during the proceedings.

If ADR leads to an enforceable title and therefore can be enforced pursuant to the regulations of the ZPO (Code of Civil Procedure), legal aid may be granted to cover its costs.

The court decides at the same time whether it grants legal aid and whether the party will have to refund it. Therefore, it determines the extent of instalments which the party will have to repay or the single amount of a payment which is to provide out of the current property. Determining the extent of the reimbursement the court can only take into account the party's current property. Nevertheless there is the possibility to change the amount of the refunding when the personal and economic situation of the party changes fundamentally.

Example: a person obtains legal aid/at the same time the court determines that he will have to refund EUR 30 per month/the party wins the proceeding and the judge allocates him damages up to EUR 50.000the party enforces the money/now the court may change its decision about the payment of instalments and make the party pay all due costs at once

10.2 Conditions of grant

Especially the following conditions have to be fulfilled before granting legal aid to one party:

- There must be a sufficient chance of the party being successful in pursuing or defending her/his right
- The party must not bring forward the litigation arbitrarily, which means that there must not be a process which would never be led by a party that couldn't claim legal aid
- The party is not able to bear the costs of litigation on its own

- The party has filed an application for legal aid

Pursuant to section 115 ZPO (Code of Civil Procedure) the party has to use its own property and possibilities before being entitled to legal aid, and in this context refers therefore to section 88 of the Social Welfare Law (Bundessozialhilfegesetz). This means that the party will have to use its own property first, with the exception of public welfare receipts to secure living, old-age provisions, equipment to keep up his/her professional practice or an adequate sized estate he/she is living on.

10.3 Strings attached

In some cases the party which has received legal aid is obligated to repay legal aid after the end of the proceedings full or in part.

10.4 Practical questions

Legal aid can only be permitted within German court proceedings.

As regards access to legal aid by entities or persons from other EU Member States there is to be mentioned that foreign natural persons can receive legal aid under the same conditions as residents whereas foreign (as well as German) entities are not granted legal aid at all.

The court' s decision on legal aid is subject to judicial review. The respective party as well as the treasury can appeal in order to have the court's original decision reviewed.

Whether legal aid is granted has to be decided independently for each level of jurisdiction (i.e. instance). However, if the opponent party appeals, the court has not to consider the chances of success of the proceedings any more when it decides whether to grant legal aid (cf. section 119 ZPO - Code of Civil Procedure).

Pursuant to section 124 ZPO (Code of Civil Procedure) the court may revoke its decision on legal aid, e.g. in the case that the benefiting party has intentionally given wrong information on her/his personal or economic situation or the issue of litigation.

10.5 Conclusions and recommendations

The regulation of legal aid has turned out to be clear as well as fair:

The conditions under which legal aid is granted are precisely determined by law. They guarantee that legal aid is only rendered in case of financial need and for non abusive purposes. The criteria which the economic situation of the party is evaluated by are clearly stated. This also applies to the factors which have to be taken into account when determining the refund of legal aid, which depends on the party' s current property.

As legal aid covers all costs of litigation except the opponent's claims for reimbursement if the party loses it is indispensable to provide the access to justice.

11 Personal experience

In cross border issues we usually involve our own lawfirms' lawyers residing in foreign jurisdictions or recommended local firms. The local firms obtain case information through us and draft the documents on this basis. Of course this causes additional costs (because two lawfirms are involved, instead of one).

Futhermore most clients are confronted with several difficulties in cross border litigation, for example searching a foreign lawyer, the transparency of foreign legal rules etc., which can have a deterrent effect and prevent persons or sometimes even entities from initiating cross border litigation.

12 Case studies

12.1 Case study 1 (Family law - Divorce)

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 B¹⁹.

12.2 Case Study 2 (Family Law - Custody of the children)

Please advise the suing party on litigation costs.

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

¹⁹ 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"

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 access²⁰.

12.3 Case Study 3 (Family Law - Alimony)

Please advise the suing party on litigation costs.

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 A²¹.

12.4 Case Study 4

Please advise the seller on litigation costs.

²⁰ 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."

²¹ 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 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.

12.5 Case Study 5

Please advise the customer on litigation costs.

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.

12.6 Tables (Answers to each study)

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 1A	Presuming a claim value of EUR 5.000 (the value of the claim is mainly determined by the income of the spouses and therefore differs from case to case), the costs will amount to EUR 242	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	1 st appeal: EUR 363; 2 nd appeal: EUR 484	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	No, a divorce can only be declared by state courts	-
Case 1B	Presuming a claim value of EUR 5.000 (the value of the claim is mainly determined by the income of the spouses and therefore differs from case to case), the costs will amount to EUR 242	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	1 st appeal: EUR 363; 2 nd appeal: EUR 484	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	No, a divorce can only be declared by state courts	-
Case 2A	Court costs in child custody cases are not regulated by the GKG, but by the KostO as a different procedure is to apply: pursuant to secs. 94, 30 KostO court fees are about EUR 26	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	Pursuant to sec. 131 KostO, the appeal would cost in case of its rejection EUR 13, in case of a withdrawal EUR 6,50 and in case the appeal is forwarded in favour of the child, costs do not accrue.	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	There is no practice concerning ADR dealing with child custody	-

Case Study	Court			Appeals			ADR	
Case 2B	Court costs in child custody cases are not regulated by the GKG, but by the KostO as a different procedure is to apply: pursuant to secs. 94, 30 KostO court fees are about EUR 26	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	Pursuant to sec. 131 KostO, the appeal would cost in case of its rejection EUR 13, in case of a withdrawal EUR 6,50 and in case the appeal is forwarded in favour of the child, costs do not accrue.	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	There is no practice concerning ADR dealing with child custody	-
Case 3A	Court fees are based on the amount of the claimed alimony; do these reach EUR 3.000 court fees will amount to EUR 267	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	Presuming a claim value of EUR 3.000, 1 st appeal: EUR 356; 2 nd appeal: EUR 445	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	There is no practice concerning ADR dealing with alimony	-
Case 3B	Court fees are based on the amount of the claimed alimony; do these reach EUR 3.000 court fees will amount to EUR 267	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	Presuming a claim value of EUR 3.000, 1 st appeal: EUR 356; 2 nd appeal: EUR 445	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	There is no practice concerning ADR dealing with alimony	-
Case 4A	EUR 864	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	1 st appeal: EUR 1.152; 2 nd appeal: EUR 1.440	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	Yes. Commercial disputes can be solved by arbitration or mediation	Costs are depending on the institution that arranges the arbitration proceedings. But, presuming a claim value of EUR 20.000, arbitration costs will amount to EUR 8.396 averagely, in detail: EUR 476 for administrative costs; EUR 3.120 for the chief judge; EUR 2.400 for each associate judge involved. Costs for Mediation will perhaps amount to half of the arbitration costs. Costs are usually calculated on a per hour basis, determined by the nature of the dispute and the number of its parties.

Case Study	Court			Appeals			ADR	
Case 4B	EUR 864	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	1 st appeal: EUR 1.152; 2 nd appeal: EUR 1.440	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	Yes. Commercial disputes can be solved by arbitration or mediation	Costs are depending on the institution that arranges the arbitration proceedings. But, presuming a claim value of EUR 20.000, arbitration costs will amount to EUR 8.396 averagely, in detail: EUR 476 for administrative costs; EUR 3.120 for the chief judge; EUR 2.400 for each associate judge involved. Costs for Mediation will perhaps amount to half of the arbitration costs. Costs are usually calculated on a per hour basis, determined by the nature of the dispute and the number of its parties.
Case 5A	Presuming damages of EUR 30.000, court fees would amount to EUR 1.020	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	1 st appeal: EUR 1.360; 2 nd appeal: EUR 1.700	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	Yes. Commercial disputes can be solved by arbitration or mediation	Costs are depending on the institution that arranges the arbitration proceedings. But - presuming a claim value of EUR 30.000 - arbitration costs will amount to EUR 10.119 averagely, in detail: EUR 714 for administrative costs; EUR 3.705 for the chief judge; EUR 2.850 for each associate judge involved. Costs for Mediation will perhaps amount to half of the arbitration costs. Costs are usually calculated on a per hour basis, determined by the nature of the dispute and the number of its parties.

Case Study	Court			Appeals			ADR	
Case 5B	Presuming damages of EUR 30.000, court fees would amount to EUR 1.020	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	1 st appeal: EUR 1.360; 2 nd appeal: EUR 1.700	EUR 0,50 per page for the first 50 pages, after this EUR 0,15 per page	-	Yes. commercial disputes can be solved by arbitration or mediation	Costs are depending on the institution that arranges the arbitration proceedings. But - presuming a claim value of EUR 30.000 - arbitration costs will amount to EUR 10.119 averagely, in detail: EUR 714 for administrative costs; EUR 3.705 for the chief judge; EUR 2.850 for each associate judge involved. Costs for Mediation will perhaps amount to half of the arbitration costs. Costs are usually calculated on a per hour basis, determined by the nature of the dispute and the number of its parties.

Case Study	Lawyer	Average costs	Bailiff	Pre-judgment costs	Post-judgment costs	Expert	
						Is use compulsory?	Cost
Case 1A	Yes, pursuant to sec. 78 of the German Code of Civil Procedure - "ZPO"	Depending on the value of litigation, therefore mainly determined by income of the spouses. Presuming a claim value of EUR 5.000 lawyer fees would amount to EUR 391,30	No. Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Interim injunctions are not possible in this case (within divorce proceedings).	In this case a bailiff's acting is not required because the sentence which declares the divorce is self-executing. An (additional) execution by a bailiff is not needed.	No	If psychological- or medical expertise is needed, expert fees will amount to EUR 85 per hour
Case 1B	Yes.	Depending on the value of litigation, therefore mainly determined by income of the spouses. Presuming a claim value of EUR 5.000 lawyer fees would amount to EUR 391,30	No. Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Interim injunctions are not possible in this case (within divorce proceedings).	In this case a bailiff's acting is not required because the sentence which declares the divorce is self-executing. An (additional) execution by a bailiff is not needed.	No	If psychological- or medical expertise is needed, expert fees will amount to EUR 85 per hour
Case 2A	No	EUR 245,70	Bailiff may be required for enforcing the delivery of the child, but not for enforcing the limitation of the father's right of access. Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Litigation about the right of access can not be accompanied by interim injunctions (pursuant to secs. 916 et seqq. of the German Code of Civil Procedure - "ZPO")	Enforcement of the delivery of a child would amount to EUR 40	No	For example, psychological expertise, which might be required to decide about child custody would amount to EUR 85 per hour

Case Study	Lawyer		Bailiff			Expert
Case 2B	No	EUR 245,70	Bailiff may be required for enforcing the delivery of the child, but not for enforcing the limitation of the father's right of access. Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Litigation about the right of access can not be accompanied by interim injunctions (pursuant to secs. 916 et seq. of the German Code of Civil Procedure - "ZPO")	Enforcement of the delivery of a child would amount to EUR 40	No For example, psychological expertise, which might be required to decide about child custody would amount to EUR 85 per hour
Case 3A	No, only if claim value reaches EUR 5.000	In the case of a claim value of EUR 3.000, lawyer fees amount to EUR 245,70	Bailiff is required for enforcing the decision, if the item to be seized belongs to the movable property of the debtor (pursuant to sec. 808 ZPO). Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Up to EUR 49 per act.	Up to EUR 49 per act.	No Depending on the type of expertise: in case of medical/psychological expertise, fees will amount to EUR 85 per hour
Case 3B	No, only if claim value reaches EUR 5.000	In the case of a claim value of EUR 3.000, lawyer fees amount to EUR 245,70	Bailiff is required for enforcing the decision, if the item to be seized belongs to the movable property of the debtor (pursuant to sec. 808 ZPO). Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Up to EUR 49 per act.	Up to EUR 49 per act.	No Depending on the type of expertise: in case of medical/psychological expertise, fees will amount to EUR 85 per hour
Case 4A	Yes	EUR 839,80	Bailiff is required for enforcing the decision, if the item to be seized belongs to the movable property of the debtor (pursuant to sec. 808 ZPO). Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Up to EUR 49 per act.	Up to EUR 49 per act.	No Depending on the type of expertise and therefore on the nature of the goods. For example, fees for the expertise of construction goods would amount to EUR 70 per hour whereas the expertise of jewellery goods would only amount to EUR 60 per hour

Case Study	Lawyer		Bailiff			Expert
Case 4B	Yes	EUR 839,80	Bailiff is required for enforcing the decision, if the item to be seized belongs to the movable property of the debtor (pursuant to sec. 808 ZPO). Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Up to EUR 49 per act.	Up to EUR 49 per act.	No Depending on the type of expertise and therefore on the nature of the goods. For example, fees for the expertise of construction goods would amount to EUR 70 per hour whereas the expertise of jewellery goods would only amount to EUR 60 per hour
Case 5A	No, only if claim value reaches EUR 5000	In the case of a claim value of EUR 30.000, lawyer fees amount to EUR 985,40	Bailiff is required for enforcing the decision, if the item to be seized belongs to the movable property of the debtor (pursuant to sec. 808 ZPO). Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Up to EUR 49 per act.	Up to EUR 49 per act.	Yes. Fees for the expertise of heating-, electric devices or the causes of fire in general, would amount to EUR 65-70 per hour
Case 5B	Yes	In the case of a claim value of EUR 30.000, lawyer fees amount to EUR 985,40	Bailiff is required for enforcing the decision, if the item to be seized belongs to the movable property of the debtor (pursuant to sec. 808 ZPO). Notifications are initiated from the court via telecommunication services or judiciary services. Costs are generally reimbursed by the party that bears litigation costs (i.e. notifications via telecommunication services are to reimburse completely; notifications via judiciary services have to be paid with EUR 7,50 per act)	Up to EUR 49 per act.	Up to EUR 49 per act.	Yes. Fees for the expertise of heating-, electric devices or the causes of fire in general, would amount to EUR 65-70 per hour

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
Case1A	Yes. Regarding the loss of earnings and lost time in hearings, the compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	Compensation amounts to EUR 3 per hour at minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with EUR 12 per hour. Other expenses made, are compensated by their actual amount	In this case, a pledge or security is not imaginable	-	-	-
Case1B	Yes. Regarding loss of earnings and lost time in hearings, the compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	Compensation amounts to EUR 3 per hour at minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with EUR 12 per hour. Other expenses made, are compensated by their actual amount	Pursuant to sec. 110 ZPO, defendant is entitled to claim a security deposit if the claimant is not resident of an European Union member state (respective European Economic Area)	Depending on the amount which is necessary to prevent defendant from damages resulting from the proceedings.	-	-
Case2A	Yes. Regarding loss of earnings and lost time in hearings, the compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	Compensation amounts to EUR 3 per hour at minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with EUR 12 per hour. Other expenses made, are compensated by their actual amount	In this case, a pledge or security is not imaginable	-	-	-
Case2B	Yes. Regarding loss of earnings and lost time in hearings, the compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	Compensation amounts to EUR 3 per hour at minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with EUR 12 per hour. Other expenses made, are compensated by their actual amount	A Pledge or security is not imaginable in this case	-	-	-
Case3A	Yes. Regarding loss of earnings and lost time in hearings, the	Compensation amounts to EUR 3 per hour at	A pledge or security deposit is required in the case of the	Depending on the amount which is necessary to	-	-

Case	Witness compensation		Pledge or security		Other fees	
	compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with EUR 12 per hour. Other expenses made, are compensated by their actual amount	preliminary execution (“vorläufige Vollstreckung”) of the decision (cf. secs. 708, 709 ZPO)	prevent defendant from damages resulting from the preliminary execution (in general, it will be equal to the amount of the executable claim and its interests as well as the costs of execution)		
Case3B	Yes. Regarding loss of earnings and lost time in hearings, the compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	Compensation amounts to EUR 3 per hour at minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with EUR 12 per hour. Other expenses made, are compensated by their actual amount	A pledge or security deposit is required in the case of the preliminary execution (“vorläufige Vollstreckung”) of the decision (cf. secs. 708, 709 ZPO)	Depending on the amount which is necessary to prevent defendant from damages resulting from the preliminary execution (in general, it will be equal to the amount of the executable claim and its interests as well as the costs of execution)	-	-
Case4A	Yes. Regarding loss of earnings and lost time in hearings, the compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	Compensation amounts to EUR 3 per hour at minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with EUR 12 per hour. Other expenses made, are compensated by their actual amount	A pledge or security deposit is required in the case of the preliminary execution (“vorläufige Vollstreckung”) of the decision (cf. secs. 708, 709 ZPO)	Depending on the amount which is necessary to prevent defendant from damages resulting from the preliminary execution (in general, it will be equal to the amount of the executable claim and its interests as well as the costs of execution)	-	-
Case4B	Yes. Regarding loss of earnings and lost time in hearings, the compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	Compensation amounts to EUR 3 per hour at minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with EUR 12 per hour. Other expenses made, are compensated by their actual amount	Pursuant to sec. 110 ZPO, defendant is entitled to claim a security deposit if claimant is not resident of an European Union member state (respective European Economic Area)	Depending on the amount which is necessary to prevent defendant from damages resulting from the proceedings.	-	-
Case5A	Yes. Regarding loss of earnings and lost time in hearings, the compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	Compensation amounts to EUR 3 per hour at minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with	A pledge or security deposit can be required in the case of a preliminary execution (“vorläufige Vollstreckung”) of the decision (cf. secs. 708, 709 ZPO)	Depending on the amount which is necessary to prevent defendant from damages resulting from the preliminary execution (in general, it will be equal to the amount of the	-	-

Case	Witness compensation		Pledge or security		Other fees	
		EUR 12 per hour. Other expenses made, are compensated by their actual amount		executable claim and its interests as well as the costs of execution)		
Case5B	Yes. Regarding loss of earnings and lost time in hearings, the compensation is calculated per hour (pursuant to sec. 20 et seq. JVEG). Expenses for travel etc. are recovered by their actual amount (cf. sec. 5 JVEG).	Compensation amounts to EUR 3 per hour at minimum. The hourly rate is calculated by the loss of earnings but does not exceed a limit of EUR 17 per hour. Housekeeping is compensated with EUR 12 per hour. Other expenses made, are compensated by their actual amount	Pursuant to sec. 110 ZPO, defendant is entitled to claim a security deposit if claimant is not resident of an European Union member state (respective European Economic Area)	Depending on the amount which is necessary to prevent defendant from damages resulting from the proceedings.	-	-

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 1A	<p>1. The Party has a sufficient chance for being successful in pursuing or defending its right</p> <p>2. Party does not forward litigation arbitrarily, which means that there must not be a process which would never be led by a party that couldn't claim legal aid</p> <p>3. Party is not able to bear the costs of litigation itself</p> <p>4. Party has made an application for legal aid</p>	<p>Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court fees and bailiff fees (if needed). Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.</p>	<p>The court decides at the same time whether it grants legal aid and whether the recipient will have to refund it.</p>	<p>Litigation costs of a divorce are usually divided equally, see sec. 93a ZPO</p>	<p>Litigation costs of a divorce are usually divided equally, see sec. 93a ZPO</p>	-	<p>Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by monthly instalments) on the basis of party's current property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).</p>
Case 1B	<p>1. The Party has a sufficient chance for being successful in pursuing or defending its right</p> <p>2. Party does not forward litigation arbitrarily, which means that there must not be a process which would never be led by a party that couldn't claim legal aid</p> <p>3. Party is not able to bear the costs of litigation itself</p> <p>4. Party has made an application for legal aid</p>	<p>Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court fees and bailiff fees (if needed). Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.</p>	<p>The court decides at the same time whether it grants legal aid and whether the recipient will have to refund it.</p>	<p>Litigation costs of a divorce are usually divided equally, see sec. 93a ZPO</p>	<p>Litigation costs of a divorce are usually divided equally, see sec. 93a ZPO</p>	-	<p>Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by monthly instalments) on the basis of party's current property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).</p>
Case 2A	<p>1. The Party has a sufficient chance for being successful in pursuing or defending its right</p> <p>2. Party does not forward litigation arbitrarily, which means that there must not be a process which would never be led</p>	<p>Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court fees and</p>	<p>The court decides at the same time whether it grants legal aid and whether the recipient will have to refund it.</p>	<p>Court has to decide about the allocation of costs (according to equitable discretion - "billigem Ermessen"). It may even decide that costs will not be claimed.</p>	<p>Court has to decide about the allocation of costs (according to equitable discretion - "billigem Ermessen"). It may even decide that costs will not be claimed.</p>	-	<p>Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by monthly instalments) on the basis of party's current</p>

Case	Legal Aid			Reimbursement			
	by a party that couldn't claim legal aid 3. Party is not able to bear the costs of litigation itself 4. Party has made an application for legal aid	bailiff fees (if needed). Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.					property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).
Case 2B	1. The Party has a sufficient chance for being successful in pursuing or defending its right 2. Party does not forward litigation arbitrarily, which means that there must not be a process which would never be led by a party that couldn't claim legal aid 3. Party is not able to bear the costs of litigation itself 4. Party has made an application for legal aid	Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court fees and bailiff fees (if needed). Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.	The court decides at the same time whether it grants legal aid and whether the recipient will have to refund it.	Court has to decide about the allocation of costs (according to equitable discretion - "billigem Ermessen"). It may even decide that costs will not be claimed.	Court has to decide about the allocation of costs (according to equitable discretion - "billigem Ermessen"). It may even decide that costs will not be claimed.	-	Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by monthly instalments) on the basis of party's current property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).
Case 3A	1. The Party has a sufficient chance for being successful in pursuing or defending its right 2. Party does not forward litigation arbitrarily, which means that there must not be a process which would never be led by a party that couldn't claim legal aid 3. Party is not able to bear the costs of litigation itself 4. Party has made an application for legal aid	Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court fees and bailiff fees (if needed). Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.	The court decides at the same time whether it grants legal aid and whether the recipient will have to refund it	Generally losing party is obliged to pay costs of the litigation (cf. sec.91 ZPO). But if one party has provoked or caused the alimony proceedings by not informing about its property, it might have to bear litigation costs complete or in part (pursuant to sec. 93d ZPO).	Generally losing party is obliged to pay costs of the litigation (cf. sec.91 ZPO). But if one party has provoked or caused the alimony proceedings by not informing about its property, it might have to bear litigation costs complete or in part (pursuant to sec. 93d ZPO).	-	Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by monthly instalments) on the basis of party's current property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).
Case 3B	1. The Party has a sufficient chance for being successful in pursuing or defending its right 2. Party does not forward litigation arbitrarily, which means that there	Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs	The court decides at the same time whether it grants legal aid and whether the recipient	Generally losing party is obliged to pay costs of the litigation (cf. sec.91 ZPO). But if one party has provoked or caused the	Generally losing party is obliged to pay costs of the litigation (cf. sec.91 ZPO). But if one party has provoked or caused the	-	Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by

Case	Legal Aid			Reimbursement			
	<p>must not be a process which would never be led by a party that couldn't claim legal aid</p> <p>3. Party is not able to bear the costs of litigation itself</p> <p>4. Party has made an application for legal aid</p>	<p>include lawyer's fees, court fees and bailiff fees (if needed).</p> <p>Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.</p>	<p>will have to refund it.</p>	<p>alimony proceedings by not informing about its property, it might have to bear litigation costs complete or in part (pursuant to sec. 93d ZPO).</p>	<p>alimony proceedings by not informing about its property, it might have to bear litigation costs complete or in part (pursuant to sec. 93d ZPO).</p>		<p>monthly instalments) on the basis of party's current property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).</p>
Case 4A	<p>Entities are granted legal aid when</p> <p>1. the costs of litigation can not be born neither by the entity itself nor by the economically involved persons and</p> <p>2. when the omission of litigation would be contrary to general interests (see sec. 116 ZPO)</p>	<p>Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court fees and bailiff fees (if needed).</p> <p>Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.</p>	<p>The court decides at the same time whether it grants legal aid and whether the recipient will have to refund it.</p>	<p>Pursuant to sec. 91 ZPO, losing party has to bear costs of litigation</p>	<p>Pursuant to sec. 91 ZPO losing party has to bear costs of litigation. If both parties lose partly the reimbursement rate is based on the loss ratio.</p>	-	<p>Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by monthly instalments) on the basis of party's current property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).</p>
Case 4B	<p>Entities are granted legal aid when</p> <p>1. the costs of litigation can not be born neither by the entity itself nor by the economically involved persons and</p> <p>2. when the omission of litigation would be contrary to general interests (see sec. 116 ZPO)</p>	<p>Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court fees and bailiff fees (if needed).</p> <p>Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.</p>	<p>The court decides at the same time whether it grants legal aid and whether the recipient will have to refund it</p>	<p>Pursuant to sec. 91 ZPO, losing party has to bear costs of litigation</p>	<p>Pursuant to sec. 91 ZPO losing party has to bear costs of litigation. If both parties lose partly the reimbursement rate is based on the loss ratio.</p>	-	<p>Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by monthly instalments) on the basis of party's current property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).</p>

Case	Legal Aid			Reimbursement			
Case 5A	<p>Entities are granted legal aid when</p> <p>1. the costs of litigation can not be born neither by the entity itself nor by the economically involved persons and</p> <p>2. when the omission of litigation would be contrary to general interests (see sec. 116 ZPO)</p>	<p>Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court fees and bailiff fees (if needed). Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.</p>	<p>The court decides at the same time whether it grants legal aid and whether the recipient will have to refund it.</p>	<p>Pursuant to sec. 91 ZPO the losing party bears the costs of litigation.</p>	<p>Pursuant to sec. 91 ZPO losing party has to bear costs of litigation. If both parties lose partly the reimbursement rate is based on the loss ratio.</p>	-	<p>Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by monthly instalments) on the basis of party's current property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).</p>
Case 5B	<p>Entities are granted legal aid when</p> <p>1. the costs of litigation can not be born neither by the entity itself nor by the economically involved persons and</p> <p>2. when the omission of litigation would be contrary to general interests (see sec. 116 ZPO)</p>	<p>Legal aid only covers the party's costs and not the opponent's claims for reimbursement if the party loses. The party's costs include lawyer's fees, court fees and bailiff fees (if needed). Dependent on the person's property the court decides whether and how much of the legal aid the party will have to refund.</p>	<p>The court decides at the same time whether it grants legal aid and whether the recipient will have to refund it.</p>	<p>Pursuant to sec. 91 ZPO the losing party bears the costs of litigation.</p>	<p>Pursuant to sec. 91 ZPO losing party has to bear costs of litigation. If both parties lose partly the reimbursement rate is based on the loss ratio.</p>	-	<p>Court decides at the same time whether it grants legal aid and whether the party will have to refund it. In the latter case, court will determine the amount to be refunded (payable as a single amount or by monthly instalments) on the basis of party's current property. In the case of a fundamental change of the personal and economic situation of the party, court is entitled to modify its decision and to determine a new amount to be refunded (if possible).</p>

Case	Translation		Interpretation		Other costs specific to cross-border disputes?	
	When and under which conditions is it necessary?	Approximated cost?	When and under which conditions is it necessary?	Approximated cost?	Description	Approximated cost?
Case 1A	As the official language is German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages have to be translated into German - this does not apply to certificates used as proof	Translation costs are estimated per characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	Interpretation is generally necessary when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the enlistment of an interpreter according to its best judgement.	The fees amount to EUR 55 per hour (cf. sec. 9 para. 3 JVEG).	None.	-
Case 1B	As the official language is German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages have to be translated into German - this does not apply to certificates used as proof	Translation costs are estimated per characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	Interpretation is generally necessary when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the enlistment of an interpreter according to its best judgement.	The fees amount to EUR 55 per hour (cf. sec. 9 para. 3 JVEG).	None.	-
Case 2A	As the official language is German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages have to be translated into German - this does not apply to certificates used as proof	Translation costs are estimated per characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	Interpretation is generally necessary when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the enlistment of an interpreter according to its best judgement.	The fees amount to EUR 55 per hour (cf. sec. 9 para. 3 JVEG).	None.	-
Case 2B	As the official language is German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages have to be translated into German - this does not apply to certificates used as proof	Translation costs are estimated per characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	Interpretation is generally necessary when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the enlistment of an interpreter according to its best judgement.	The fees amount to EUR 55 per hour (cf. sec. 9 para. 3 JVEG).	None.	-
Case	As the official language is	Translation costs are estimated per	Interpretation is generally necessary	The fees amount to EUR 55 per	None.	-

Case	Translation		Interpretation		Other costs specific to cross-border disputes?	
3A	German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages have to be translated into German - this does not apply to certificates used as proof	characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the enlistment of an interpreter according to its best judgement.	hour (cf. sec. 9 para. 3 JVEG).		
Case 3B	As the official language is German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages have to be translated into German - this does not apply to certificates used as proof	Translation costs are estimated per characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	Interpretation is generally necessary when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the enlistment of an interpreter according to its best judgement.	The fees amount to EUR 55 per hour (cf. sec. 9 para. 3 JVEG).	None.	-
Case 4A	As the official language is German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages have to be translated into German - this does not apply to certificates used as proof	Translation costs are estimated per characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	Interpretation is generally necessary when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the enlistment of an interpreter according to its best judgement.	The fees amount to EUR 55 per hour (cf. sec. 9 para. 3 JVEG).	None	-
Case 4B	As the official language is German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages have to be translated into German - this does not apply to certificates used as proof	Translation costs are estimated per characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	Interpretation is generally necessary when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the enlistment of an interpreter according to its best judgement.	The fees amount to EUR 55 per hour (cf. sec. 9 para. 3 JVEG).	None.	-
Case 5A	As the official language is German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages	Translation costs are estimated per characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity	Interpretation is generally necessary when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the	The fees amount to EUR 55 per hour (cf. sec. 9 para. 3 JVEG).	None.	-

Case	Translation		Interpretation		Other costs specific to cross-border disputes?	
	have to be translated into German - this does not apply to certificates used as proof	otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	enlistment of an interpreter according to its best judgement.			
Case 5B	As the official language is German (section 184 of the German Judicature Act - "GVG") declarations in foreign languages have to be translated into German - this does not apply to certificates used as proof	Translation costs are estimated per characters ("Anschläge" - for every 55 characters fees will increase by EUR 1.25 in the case of normal complexity otherwise by EUR 1.85 and EUR 4 in very difficult cases respectively, cf. sec. 11 JVEG). In each case the minimum fee amounts to EUR 15.	Interpretation is generally necessary when one or more parties of the litigation are not able to communicate in German (sec. 185 GVG). Court decides on the enlistment of an interpreter according to its best judgement.	The fees amount to EUR 55 per hour (cf. sec. 9 para. 3 JVEG).	None.	-

13 Insurance

13.1 General

Several German insurers provide legal expenses insurances, inter alia to cover the risks of litigation in civil proceedings. The specific range of each insurance (i.e. number and types of claims covered by the insurance), depend on the individual agreements and the general conditions of insurance, laid down in the policy. In connection with civil litigations, insurances typically grant protection for all kinds of contractual disputes, work related disputes, disputes about accommodation respectively lease agreements, estate and other properties, etc.

13.2 Costs

It must be understood that costs for such insurance depend on its specific coverage (i.e. the kinds of claims which should be covered by the insurance or whether an equity contribution ("Eigenbeteiligung") has been agreed). Thus, average costs are varying between EUR 250 (mostly covering private

damages between EUR 100.000 and EUR 150.000) and EUR 400 (mostly covering business “professional” damages as well, and up to higher amounts) per year.

In addition to the ordinary court fees (of the insurant and, if needed, of the opponent), an insurance usually covers the lawyers’ fees, expert and witness fees, bailiff fees, respectively, in case of alternative dispute resolution (ADR), arbitration and mediation fees (but only to the amount of the court fees which would otherwise have accrued) and the costs of the litigation/arbitration opponent to the amount the insurant has to bear them.

13.3 Cross-border disputes

Most insurances provide protection in cross-border disputes, but predominantly limited to disputes within the EU (i.e. insurance covers the risks/costs of proceedings in another member state). In general a world-wide legal protection is only provided under the premise that the insurant does not stay more than six weeks in the foreign state. Such cross-border protection is usually part of the standard package and therefore has not much influence on the insurance premium.
