

[Home](#) > ... > [Taking Legal Action](#) > [European Judicial Atlas In Civil Matters](#) > [European Account Preservation Order](#) > [Austria](#)

European Account Preservation Order

Austria



Austria

Article 50(1)(a) – Courts competent to issue the European Account Preservation Order

The Vienna Inner City District Court (Bezirksgericht Innere Stadt Wien) is competent to issue European Account Preservation Orders, applied for before enforcement proceedings commence, for claims specified in an authentic instrument within the meaning of Article 6(4) of the European Account Preservation Regulation. (Section 423(1) of the Enforcement Code)

In other cases, competence lies with the court before which the enforcement proceedings in connection with which a European Account Preservation Order is to be issued are pending at the time of the first application.

Article 50(1)(b) – Authority designated as competent to obtain account information

Where proceedings for a European Account Preservation Order are pending outside Austria, the authority competent to obtain account information in Austria is the District Court with jurisdiction for the district where the debtor has his or her residence (Wohnsitz) or habitual residence (gewöhnlicher Aufenthalt).

If the debtor has no residence or habitual residence in Austria, the competent authority is the Vienna Inner City District Court (see above under Article 50(1)(a)). Contact details for the Vienna Inner City District Court can be found using the search function on this page (at the very top).

If the proceedings for the issue of a European Account Preservation Order are pending before a court inside Austria, that court is also competent to obtain account information.

Article 50(1)(c) – Methods of obtaining account information

The obligation is accompanied by an in personam order by the court. The court order must oblige the debtor to declare all domestic bank accounts. It must prohibit disposal by the debtor of funds held in the domestic bank accounts covered by the European Account Preservation Order, up to the amount to be preserved under the Order. The court order must also instruct the debtor to cancel all direct debits and standing orders on the basis of which funds are debited from the account to be preserved, in so far as they jeopardise the recoverability of the amount which is to be preserved by the European Account Preservation Order and cannot be met out of amounts not subject to preservation.

Article 50(1)(d) – Courts with which an appeal against refusal to issue the European Account Preservation Order may be lodged

Decisions on any legal challenges have to be taken by the court which issued the European Account Preservation Order. Applications for such remedies must be lodged with that court (see above under Article 50(1)(a)).

Article 50(1)(e) – Authorities designated as competent to receive, transmit and serve the European Account Preservation Order and other documents

Article 10(2), third subparagraph: The competent authority of the Member State of enforcement is the Vienna

Inner City District Court.

Article 23(3): If Austria is merely the Member State of enforcement, the Vienna Inner City District Court is the competent authority to which the documents are to be transmitted.

If the order is issued in Austria, competence for transmission lies with the issuing court. The Vienna Inner City District Court is competent to issue European Account Preservation Orders applied for either before proceedings on the substance are instituted or after they are concluded with a final judgment but before enforcement commences. In other cases, competence lies with the district court (*Bezirksgericht*) or regional court (*Landesgericht*) before which the proceedings on the substance or enforcement proceedings in connection with which a European Account Preservation Order is to be issued are pending at the time of the first application.

Article 23(5) and (6) and Article 27(2): If the Account Preservation Order was issued in Austria, the authority competent for enforcement is the issuing court. (Issuing court: see answer to Article 23(3))

If the Account Preservation Order was not issued in Austria, competence for enforcement lies with the Vienna Inner City District Court.

Article 25(3): In this case, the declaration must be transmitted to the Vienna Inner City District Court.

Article 28(3): In this case, the documents must be transmitted to the Vienna Inner City District Court.

Article 36(5): In this case, the decision must be transmitted to the Vienna Inner City District Court.

Article 50(1)(f) – Authority competent to enforce the European Account Preservation Order

If the Account Preservation Order is issued in Austria itself, the issuing court is also responsible for enforcement.

If the Account Preservation Order is issued in another Member State, competence for enforcement lies with the Vienna Inner City District Court.

Article 50(1)(g) – Extent to which joint and nominee accounts can be preserved

If there is more than one account holder and each of them has the right to use the account individually, as in the case of an ‘either to sign’ account (an ‘*Oder-Konto*’), the claim can still be effectively preserved even if the European Account Preservation Order has been issued against only one of the account holders, because the debtor is entitled to satisfy the debt acting alone.

If the consent of all account holders is required to perform any transaction, however, as in the case of a ‘both or all to sign’ account (an ‘*Und-Konto*’), preservation is a possibility only if the European Account Preservation Order was issued against all the account holders (e.g. where there is joint liability of all account holders).

If proceedings for the issue of a European Account Preservation Order are brought against the trustee of a trust account (*Treuhandkonto*) as debtor, the settlor of the trust may enter an objection under Section 37 of the Enforcement Code (*Exekutionsordnung*). The settlor’s objection will assert that while the account, being a trust, is in the ownership of the debtor, it is not to be considered part of the trustee’s assets, and therefore is not part of the funds available to satisfy the creditor’s claim.

Article 50(1)(h) – Rules applicable to amounts exempt from seizure

The rules applicable to protection against seizure in furtherance of a claim are set out in Sections 290 et seq. of the Enforcement Code, and those on the associated protection of accounts in Section 292i of the same Code; they can be found at <http://www.ris.bka.gv.at/> They are binding law.

Ongoing remuneration and pension payments are subject to preservation only to a limited extent; the size of the part of the claim that cannot be preserved (‘minimum means of subsistence’ (Existenzminimum)) depends on the size of the payments and the number of the debtor’s maintenance obligations. These amounts, which are increased annually, are set out in tables published on the website of the Federal Ministry of Justice (<https://www.bmj.gv.at/>; then select the latest information brochure under Themen (topics) – Zivilrecht (civil law) – Drittschuldnererklärung (third-party debtor declaration).

The rule in Section 292i of the Enforcement Code on 'account protection' is intended to avoid the risk that after the amounts available for seizure have been deducted, the minimum means of subsistence transferred to the account might then be seized afresh. If payments are made to the debtor's account that are subject to seizure only to a limited extent, the seizure is to be suspended upon request in so far as the credit balance on the account corresponds to the part of the income not subject to seizure for the period from the seizure up to the next payment date.

There are also amounts completely exempt from seizure under Section 290 of the Enforcement Code. These include the following categories of payment:

1. payments of expenses where these compensate for additional expenditure actually incurred in the exercise of professional duties;
2. allowances and grants payable by law to cover additional expenditure arising from physical or mental disability, vulnerability or dependency on care;
3. amounts recovered and costs paid in respect of rights to benefits in kind, reimbursements of costs under statutory social security and compensation for expenditure on treatment costs;
4. statutory family allowances.

The right of enforcement shall not be invoked if enforcement is carried out in respect of a claim for which the service is intended to be paid in accordance with the law. The release of amounts from attachment requires an application by the debtor.

Article 50(1)(i) – Fees, if charged by the banks, for the implementation of equivalent national orders or for providing account information, and information on the party liable to pay those fees

Banks are entitled to payment of fixed expenses of EUR 25 for implementing a European Account Preservation Order, just as they are for implementing an interim order (*einstweilige Verfügung*), which is an equivalent instrument under Austrian law.

Upon application from the bank, the court will order the creditor to refund the costs to the bank.

Article 50(1)(j) – The scale of fees or other set of rules setting out the applicable fees charged by any authority or other body involved in the processing or enforcement of the Preservation Order

No separate fees are charged for the processing or enforcement of the Preservation Order or the provision of account information.

Article 50(1)(k) – Ranking, if any, of equivalent national orders

The instruments for securing claims provided for in Austrian enforcement law are basically enforcement for security (*Exekution zur Sicherstellung*) and interim orders (*einstweilige Verfügungen*).

Enforcement for security (Sections 370 et seq. of the Enforcement Code) serves to safeguard a creditor's claim before the claim becomes *res judicata* and is subsequently enforced. For an enforcement for security - as opposed to an interim order - there must be a document which confers title but which is not yet enforceable. Enforcement for security is permissible only to satisfy a pecuniary claim. One of the forms of enforcement for security listed in Section 374(1) of the Enforcement Code is the attachment of receivables (*Pfändung von Forderungen*), where the creditor receives a right of lien (*Pfandrecht*).

In enforcement for security the creditor obtains a lien. Under Article 32 of the EU Account Preservation Regulation, the Preservation Order has the same rank, if any, as an equivalent national order in the Member State of enforcement. Therefore, in order to maintain parallelism with the Austrian instruments, Austrian law provides that the European Account Preservation Order creates a lien if the creditor has already obtained a judgment, a court settlement or an authentic instrument. The fact that a lien is in place must be notified to the bank and the debtor. This ensures consistency with the enforcement for security.

In the case of interim orders to secure pecuniary claims (Sections 378 et seq. of the Enforcement Code), no right of lien or specific ranking is obtained. The party at risk does not need a document conferring title in order to obtain an interim order.

Article 50(1)(l) – Courts or enforcement authority competent to grant a remedy

Decisions on any legal challenges have to be taken by the court which issued the European Account Preservation Order. Applications for such remedies must be lodged with that court (see above under Article 50(1)(a)).

Article 34(1) and (2): If the Account Preservation Order is issued in another Member State, competence for the legal remedy lies with the Vienna Inner City District Court. Applications for such remedies must be lodged with that court.

Article 50(1)(m) – Courts with which an appeal is to be lodged and the time-limit, if any, for lodging the appeal

The form of appeal available against decisions under Articles 33, 34 or 35 of the Regulation is known as the *Rekurs*. Such appeals must be lodged within 14 days with the court that issued the disputed order and must be addressed to the Regional or Higher Regional Court within whose jurisdiction the District or Regional Court concerned falls. Appeals must be signed by a lawyer.

The appeal deadline starts running from the date of service of the written version of the disputed decision.

Article 50(1)(n) – Court fees

Fees are payable for the issue of a European Account Preservation Order only if the application for the order is made in a context other than a trial in a civil court. In addition, a flat-rate fee is payable for appeals against an Account Preservation Order. The provisions on fees are to be found in the Court Fees Act (Gerichtsgebührengesetz) under Fee Item 1, Note 2, Fee Item 2, Note 1a and Fee Item 3, Note 1a. The amount of fees to be paid depends on the amount of the claim and is half the flat-rate fee in civil court proceedings. The legal provisions and tables can be found at <http://www.ris.bka.gv.at/>.

The court fees in question are flat rates.

Article 50(1)(o) – Languages accepted for translations of the documents

None

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