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Small claims

Austria

Article 25 1 (a) Competent courts

In Austria it is the district courts (*Bezirksgerichte*) that have jurisdiction to hear cases at first instance under Regulation (EC) No 861/2007, as amended by Regulation (EC) No 2421/2015, establishing a European Small Claims Procedure. Geographical jurisdiction is determined, insofar as it is not already determined by the application of Regulation (EC) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, by the Austrian legislation on jurisdiction.

Article 25 1 (b) Means of communication

Claims under Regulation (EC) No 861/2007, as amended by Regulation (EC) No 2421/2015, establishing a European Small Claims Procedure may be lodged on paper or electronically via the electronic legal correspondence system (*Elektronischer Rechtsverkehr* - 'ERV'). The ERV is in principle available to all natural and legal persons, although it needs special software and the involvement of an intermediary agency. An up-to-date list of the intermediary agencies can be found at

<http://www.edikte.justiz.gv.at/edikte/km/kmhlp05.nsf/all/erv>.

Submissions and attachments may also be lodged in electronic form using the citizen's card function (*Bürgerkartenfunktion*) (chip card or mobile phone signature - see <http://www.buergerkarte.at/>) with the online forms available on Austria's Justice website:

<https://portal.justiz.gv.at/at.gv.justiz.formulare/Justiz/index.html>.

Documents may not be submitted using fax or e-mail.

Article 25 1 (c) Authorities or organisations providing practical assistance

Where Austria has international jurisdiction, the parties receive assistance and general information from the appropriate district court.

Article 25 1 (d) Means of electronic service and communication and methods for expressing consent for thereof

The courts can use the Austrian ERV system for electronic service of documents on the parties or their representatives. This is a form of transmission that follows precise technical rules, within a circle of identified users. The ERV is in principle available to all natural and legal persons, although it needs special software and the involvement of an intermediary agency. An up-to-date list of the intermediary agencies can be found at

<http://www.edikte.justiz.gv.at/edikte/km/kmhlp05.nsf/all/erv>.

If service via the ERV is not possible, electronic service of documents can also take place via an administrative department for the service of documents in accordance with Part 3 of the Service of Documents Act (*Zustellgesetz*, sections 28 *et seq.*).

Article 25 1(e) Persons or professions, obliged to accept service of documents or other written communications by electronic means

The persons required to use the Austrian ERV (but not other systems of electronic service) are: lawyers (*Rechtsanwälte*), other persons authorised to represent a defendant in criminal proceedings (*Verteidiger in Strafsachen*), notaries (*Notare*), credit and financial institutions (Sections 1(1) and (2) of the Banking Act – BWG), undertakings within the scope of Section 1(1), points 1, 2, 4, 6, 7 and 8 of the Insurance Supervision Act 2016 (VAG 2016), social insurance institutions (Sections 23 to 25 of the General Social Insurance Act – ASVG, Section 15 of the Self-employed Persons' Social Insurance Act – GSVG, Section 13 of the Farmers' Social Insurance Act – BSVG, Section 9 of the Civil Servants' Health and Accident Insurance Act – B-KUVG, and Section 4 of the Notaries' Insurance Act – NVG, 1972), pension institutions (Section 479 of the General Social Insurance Act – ASVG), the Construction Workers' Leave and Severance Pay Fund (Section 14 of the Construction Workers' Leave and Severance Act – BUAG), the Pharmacy Workers' Salary Fund (Section 1 of the Salary Fund Act 2002), the Insolvency Contingency Fund (Section 13 of the Insolvency Contingency Provision Act – IESG) and IEF Service GmbH (Section 1 of the IEF Act – IEFG), the Confederation of Austrian Social Insurance Institutions (Section 31 of the General Social Insurance Act – ASVG), the Financial Prosecutor (*Finanzprokurator*, who represents the State in certain types of case) (Section 1 of the Financial Prosecutor Act – ProkG), and the bar associations (*Rechtsanwaltskammern*).

Article 25 1 (f) Court fees and the methods of payment

Austrian law on court fees has no separate provisions on the court fees for the European small claims procedure. For the claim and subsequent procedure at first instance, **tariff item 1 (TP 1) of the Court Fees Act (GGG)** applies; for appeal and the subsequent procedure at second instance, **tariff item 2 (TP 2)** of the same Act applies. These are the same fees as for all domestic civil cases.

The court fees are calculated on the basis of the value at issue in the action (value of the original claim, increased by any additional amount by which the claim is extended), or the value at issue on appeal, and the number of parties. The fees currently in force are available in the Federal Legal Information System (<https://www.ris.bka.gv.at/Bundesrecht/>; enter 'GGG' under 'Bundesrecht consolidated' with 'Title, abbreviation', and enter '32' in 'Paragraph').

The methods of payment are laid down in Section 4 of the Court Fees Act, under which fees may be paid by bank card with **ATM function** or by **credit card**, by **deposit** or by **bank transfer** to the account of the competent court, or by **cash deposit** to the same court.

All fees may also be paid by **direct debit**, if the court (or the Austrian judicial system in general) has been authorised to collect the court fees from an account to be notified by the party owing the fees and deposit them in a judicial account, and if the submission specifies at least the **details of the account** from which the fees are to be drawn and the maximum amount that may be debited.

If the claim is submitted using the **ERV** system, the fees must be paid by direct debit. In this case, the maximum amount to be debited cannot be specified.

Article 25 1 (g) Appeal procedure and courts competent for an appeal

In a case brought under Regulation (EC) No 861/2007, as amended by Regulation (EC) No 2421/2015, establishing a European Small Claims Procedure, a judgment given at first instance by a district court is open to appeal (*Berufung*). The appeal must be lodged in writing at the district court which handed down the judgment at first instance within four weeks of service of the judgment. It must be signed by a lawyer (*Rechtsanwalt*). The party must also be represented by a lawyer in the ensuing appeal proceedings.

The decision on costs may be contested by means of an appeal on costs (*Kostenrekurs*) even if the judgment itself is uncontested. Such an appeal must be lodged at the court which handed down the judgment within 14 days of service of the judgment.

Article 25 1 (h) Review of the judgment procedure and courts competent to conduct such a review

Under Section 548(5) of the Austrian Code of Civil Procedure, the court of first instance with jurisdiction for the European small claims procedure is also competent for the review provided for in Article 18 of the Regulation.

A review will be conducted only if it is expressly applied for by the defendant. The defendant's application must give plausible grounds for such a review. The court will consider only the submissions put forward by the defendant. The court need grant an oral hearing only if it considers this necessary.

If, in the court's opinion, the grounds for a review set out in Article 18(1) of the Regulation do not apply, it will reject the application in accordance with Article 18(3), in which case the original judgment remains in force. An appeal on a point of law (*Rekurs*) may be brought against this decision. If, on the other hand, the grounds set out in Article 18(1) do apply, that is, if the court deems the reasons justified, it will declare its original judgment null and void. This decision may not be contested. The litigation reverts to the status which it had before the procedural step declared null and void was taken. During the review procedure under Article 18, the defendant may apply in the Member State of enforcement for a stay or limitation of enforcement under Article 23.

Article 25 1 (i) Accepted languages

In addition to the official language (German), anyone may use Hungarian before the district courts of Oberpullendorf and Oberwart, Slovenian before the district courts of Ferlach, Eisenkappel and Bleiburg, and Croatian before the district courts of Eisenstadt, Güssing, Mattersburg, Neusiedl am See, Oberpullendorf and Oberwart.

Article 25 1 (j) Authorities competent for enforcement

The authorities competent for enforcement and for the purposes of the application of Article 23 are the district courts. Geographical jurisdiction is determined in accordance with the Austrian Enforcement Code (*Exekutionsordnung*).

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