



Germany

European Account Preservation Order - Germany

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

The designated courts are *Amtsgerichte* (Local Courts) and *Landgerichte* (Regional Courts).

The body competent to issue an Account Preservation Order at local level in cases where the creditor has already obtained an authentic instrument is the court in whose district the instrument was drawn up.

The determination of competence with regard to jurisdiction of the courts in relation to subject matter follows the general provisions of German law on the constitution of courts and the applicable codes of judicial procedure.

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

The authority designated as competent to obtain account information pursuant to Article 14 of Regulation (EU) No 655/2014 is the *Bundesamt für Justiz* (Federal Office of Justice).

The contact details of the *Bundesamt für Justiz* are as follows:

Bundesamt für Justiz

Adenauerallee 99-103

53113 Bonn

Germany

Tel.: +49-228 99 410-40

Email: EU-Kontenpfaendung@bfj.bund.de

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

To obtain account information pursuant to Article 14 of Regulation (EU) No 655/2014, the *Bundesamt für Justiz* can request the *Bundesamt für Steuern* (Federal Central Tax Office) to access the following data at credit institutions:

the date on which an account is opened and closed and the name of the account holder as well as the date of birth in the case of individuals.

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

The designated courts are *Amtsgerichte* (Local Courts), *Landgerichte* (Regional Courts), *Oberlandesgerichte* (Higher Regional Courts) *Arbeitsgerichte* (Labour Courts) and *Landesarbeitsgerichte* (Higher Labour Courts).

An appeal against a refusal to issue the Preservation Order can be lodged with the court that rejected the application or, if the court that rejected the application is a court of first instance, with a court of higher instance.

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

The designated courts are *Amtsgerichte* (Local Courts).

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

The designated courts are *Amtsgerichte* (Local Courts).

The court that is competent to enforce a Preservation Order is the competent local court under the general provisions. However, if the Order was issued by a German court, that court is competent to enforce the Order.

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

Money on accounts which, according to the documents of the bank at which the account is held, are not controlled solely by the debtor is subject to German national law on seizure, without prejudice to any rights of the other parties with a power of control.

Money on accounts of the debtor that can be controlled by a third party on behalf of the debtor is subject to seizure against the debtor under German national law.

Money on accounts of a third party that can be controlled by the debtor on behalf of that third party is not subject to seizure against the debtor under German national law.

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

Germany's national rules on amounts exempt from seizure are found in Sections 850k and 850l of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO):

These are as follows:

'Section 850k Account exempted from attachment

(1) Where the balance credited to the debtor's account with a credit institution, such account being exempted from attachment, is attached, the debtor may dispose of the balance up to the amount of the monthly allowance pursuant to Section 850c(1), 1st sentence, in conjunction with Section 850c(2a), up to the end of the respective calendar month; in this regard, the balance is not subject to attachment. The balance in the sense of the 1st sentence includes any balance that may not be paid to the creditor or lodged until the expiry of the period provided for by Section 835(4). Insofar as, within the respective calendar month, the debtor has not disposed of the balance in the amount that is exempt from attachment pursuant to the 1st sentence, this balance shall not be subject to attachment in the next calendar month, in addition to the balance exempted from attachment under the 1st sentence. The 1st to 3rd sentences shall apply mutatis mutandis where the balance credited to a current account of the debtor has been attached, and such current account is converted to an account exempted from attachment prior to expiry of 4 weeks following service of the court order to transfer.

(2) In all other regards, the attachment of the credit balance is deemed to have been ordered subject to the proviso that the following amounts are not subject to attachment, thus increasing the allowance pursuant to subsection (1):

1. The amounts exempted from attachment pursuant to Section 850c(1), 2nd sentence, in conjunction with Section 850c(2a), 1st sentence, where

a) the debtor is paying maintenance to one or several persons as per statutory obligations, or

b) the debtor is receiving monetary benefits pursuant to the 2nd or 12th Book of the Social Code for persons living with him in a household as defined by Section 7(3) of the 2nd Book of the Social Code or Sections 19, 20, 36, 1st sentence, or Section 43 of the 12th Book of the Social Code, vis-à-vis whom the debtor is not obligated to pay maintenance in accordance with statutory provisions;

2. Non recurrent monetary benefits as defined by Section 54(2) of the 1st Book of the Social Code and monetary benefits serving to compensate the additional expenditures resulting from a physical disability or ill health, as defined by Section 54(3) number 3 of the 1st Book of the Social Code;

3. Child benefits or any other monetary benefits received with regard to children, unless these are attached due to a child's claim to maintenance payments regarding whom the benefits are being granted, or regarding whom the benefits are taken into account.

For the amounts governed by the 1st sentence, subsection (1), 3rd sentence, shall apply *mutatis mutandis*.

(3) The amount that the execution court has left unattached in the attachment order shall take the stead of the amounts exempted from attachment under subsection (1) and subsection (2), 1st sentence, number 1 if the balance is attached due to the claims designated in Section 850d.

(4) The execution court may determine an amount to be exempted from attachment, upon the corresponding petition being filed, that deviates from the amounts set out in subsection (1), subsection (2), 1st sentence, number 1 and subsection (3). Sections 850a, 850b, 850c, 850d(1) and (2), Sections 850e, 850f, 850g and 850i as well as Sections 851c and 851d of the Code as well as Section 54 subsection (2), subsection (3) numbers 1, 2 and 3, subsections (4) and (5) of the 1st Book of the Social Code, Section 17 (1), 2nd sentence, of the 12th Book of the Social Code and Section 76 of the Income Tax Act (Einkommensteuergesetz) are to be applied *mutatis mutandis*. In all other regards, the execution court has the authority to deliver the orders designated in Section 732(2).

(5) The credit institution is under obligation vis-à-vis the debtor to perform under the contractual arrangements in place as concerns the credit balance that is not subject to attachment in accordance with subsections (1) and (3). This shall apply to the amounts not subject to attachment pursuant to subsection (2) only insofar as the debtor proves – by submitting a certificate of his employer, the institution making payment of the child benefits (Familienkasse), the authority making subsistence payments or any suitable person or authority in the sense of Section 305(1) number 1 of the Insolvency Statute (Insolvenzordnung, InsO) – that the credit balance is not subject to attachment. The performance by the credit institution to the debtor has redemptive effect if it is not aware, also not due to gross negligence on its part, that the certificate is incorrect. Where the debtor is unable to submit proof as stipulated by the 2nd sentence, the execution court is to determine the amounts in accordance with subsection (2) upon the corresponding petition being filed. The 1st to 4th sentences also apply with a view to any lodged amounts.

(6) Where a monetary benefit pursuant to the Social Code or child benefits are credited to an account exempted from attachment, the credit institution may set off the claim arising by the credit only from those claims, or offset only those claims from such credit, for a period of fourteen (14) days from the date on which such amount was credited, to which it is entitled as remuneration for managing the account or based on dispositions over the account by the beneficiary within that period of time. Up to the amount of the credit balance remaining thereafter, the credit institution is not authorised, for a period of 14 days from the date on which the amount was credited, to refuse to implement payment instructions for lack of funds if the beneficiary proves, or if it is otherwise known to the credit institution, that the amount credited is a monetary benefit granted pursuant to the Social Code, or that it consists of child benefits. The remuneration of the credit institution for its management of the account may also be set off against amounts pursuant to subsections (1) to (4).

(7) In the agreement on which the management of a current account is based, the customer, this being an individual, or his legal representative may agree with the credit institution that the current account is to be managed as an account exempted from attachment. The customer may demand at any time that the credit institution manage his current account as an account exempted from attachment. Where the balance credited to the current account has already been attached, the debtor may demand that the current account be kept as an account exempted from attachment as per the beginning of the 4th bank working day following the date on which he made the corresponding declaration.

(8) Every person may maintain only one account exempted from attachment. In the contractual arrangements, the customer is to assure the credit institution that he is not maintaining any other account exempted from attachment. The credit institution may notify information services that it is managing an account exempted from attachment for the customer. The information services may use this information only to provide information to credit institutions making the corresponding inquiries in order to check the

veracity of the assurance made in accordance with the 2nd sentence hereof, as to whether or not the person concerned is maintaining an account exempted from attachment. Even if the data subject grants his consent, it is not admissible to collect, process, and use the data for any other purpose than that set out in the 4th sentence.

(9) Where, contrary to the stipulations of subsection (8), 1st sentence, a debtor maintains several current accounts as accounts exempted from attachment, the execution court will order, upon a creditor filing the corresponding petition, that only the current account the creditor has designated in the petition will remain an account exempted from attachment. The creditor is to demonstrate to the satisfaction of the court that the pre-requisites set out in the 1st sentence have been met by submitting the corresponding declarations by the 3rd-party debtors. The debtor will not be heard. The decision is to be served on all 3rd-party debtors. Upon the decision being served on those credit institutions managing current accounts that have not been determined as accounts exempted from attachment, the effects set out in subsections (1) to (6) shall cease.

Section 850l Order as to amounts being non-attachable that have been credited to accounts exempted from attachment

Upon the debtor filing a corresponding petition, the execution court may order that the credit balance on the account exempted from attachment not be subject to attachment for a term of up to 12 months if the debtor proves that, in the 6 months preceding the date on which he filed the petition, the vast majority of the amounts credited to the said account were non-attachable amounts, and if the debtor demonstrates to the satisfaction of the court that it can be expected that the vast majority of the amounts to be credited to the account in the coming 12 months likewise will be non-attachable amounts. The court may refuse to issue this order if this is contravened by overriding interests of the creditor. The order is to be reversed, upon a creditor filing the corresponding petition, if the pre-requisites therefor are no longer given, or if the order is contravened by the creditor's overriding interests.'

The amounts taken into account in Section 850k(1), 1st sentence, pursuant to Section 850c(1), 1st sentence, in conjunction with Section 850c(2a) ZPO currently result from the Notice on attachment-exempt thresholds of 27 April 2015, which is attached as [Annex](#) to this information note; reference is made to the Notice in this regard.

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

Under German national law, banks may not charge fees for the implementation of equivalent national orders or for providing account information.

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

The fees chargeable by the courts involved in the processing or enforcement of a Preservation Order under Regulation (EU) No 655/2014 are laid down in the Law on court fees (*Gerichtskostengesetz*) and in the Law on court fees in family matters (*Gesetz über Gerichtskosten in Familiensachen*, FamGKG). The above law can be found and consulted free of charge at http://www.gesetze-im-internet.de/bundesrecht/gkg_2004/gesamt.pdf and <http://www.gesetze-im-internet.de/bundesrecht/famgkg/gesamt.pdf>.

For a summary of the fees chargeable under the laws mentioned above, we refer you to our reply to Article 50(1)(n).

The fees chargeable by the enforcement agents involved in the processing or enforcement of a Preservation Order under Regulation (EU) No 655/2014 are laid down in the Law on enforcement agents (*Gerichtsvollzieherkostengesetz*, GvKostG). The above law can be found and consulted free of charge at <http://www.gesetze-im-internet.de/bundesrecht/gvkostg/gesamt.pdf>.

Fees are charged for serving a European Account Preservation Order issued in Germany to the bank if an enforcement agent has to serve it in Germany. If the enforcement agent serves a Preservation Order in person, a fee of EUR 10 is charged under Item 100 of the list of fees in the Law on enforcement agents (*Kostenverzeichnis zum Gerichtsvollzieherkostengesetz*, KV GvKostG), as well as the travel costs based on the distance travelled by the enforcement agent: EUR 3.25 for up to 10 km, EUR 6.50 for between 10 km and 20 km, EUR 9.75 for between 20 km and 30 km, EUR 13 for between 30 km and 40 km and EUR 16.25 for over 40 km (under Item 711 KV GvKostG). If the enforcement agent serves it by other means, a fee of EUR 3.00 is charged (under Item 101 KV GvKostG). Postal costs will be charged in full for service with proof of service (under Item 701 KV GvKostG). A lump sum will be charged to cover any cash expenses in the amount of 20% of the fees charged for each Order, but not less than EUR 3.00 and not more than EUR 10.00 (under Item 716 KV GvKostG).

This applies in cases where the court that issued the Preservation Order in Germany calls on the services of an enforcement agent in order to serve the Order to the debtor at the instigation of the creditor.

No fee will be charged for consulting the information authority under Article 14 of Regulation (EU) No 655/2014, without prejudice to our reply to Article 50(1)(n) specifying the increase in court fees chargeable in procedures for obtaining a Preservation Order within the meaning of Article 5(b) of Regulation (EU) No 655/2014.

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

The ranking of account seizures based on decisions under national law which are equivalent to decisions under Regulation (EU) No 655/2014 is determined by the date on which they are served on the bank, with earlier seizure orders taking precedence over those served later.

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

The following courts are competent in the case of remedies under Article 33(1) of Regulation (EU) No 655/2014.

The designated courts are *Amtsgerichte* (Local Courts), *Landgerichte* (Regional Courts), *Oberlandesgerichte* (Higher Regional Courts) *Arbeitsgerichte* (Labour Courts) and *Landesarbeitsgerichte* (Higher Labour Courts).

The following courts are competent in the case of remedies under Article 34(1) or (2) of Regulation (EU) No 655/2014.

The designated courts are *Amtsgerichte*.

The court that issued the Preservation Order is competent in respect of the remedies under Article 33(1) of Regulation (EU) No 655/2014.

In the case of remedies of the debtor under Article 34(1) or (2) of Regulation (EU) No 655/2014, the court competent to enforce the order is the competent local court under the terms of the general provisions.

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

The following courts are competent in the case of appeals within the meaning of Article 37 of Regulation (EU) No 655/2014.

The designated courts are *Amtsgerichte* (Local Courts), *Landgerichte* (Regional Courts), *Arbeitsgerichte* (Labour Courts) and *Landesarbeitsgerichte* (Higher Labour Courts).

The right to appeal against decisions on legal remedies as provided for under Article 37 of Regulation (EU) No 655/2014 can be exercised with the court that issued the decision on a remedy or, if the court that issued the decision on the remedy is a court of first instance, with a court of higher instance.

The appeal must be lodged within a period of one month.

The period for lodging an appeal starts to run on the date that the person concerned is notified of the decision against which the appeal is to be made.

Article 50(1)(n) – Court fees

In procedures under Article 5(a) of Regulation (EU) No 655/2014:

The amount of the fee is determined each time on the basis of the amount in dispute and the relevant fee rate using the calculation method laid down in Section 34 of the Law on court fees (GKG) and/or Section 28 of the Law on court fees in family matters (FamGKG).

For the procedure for obtaining a European Preservation Order under Article 5(a) of Regulation (EU) No 655/2014, in accordance with Item 1410 of the list of fees for the Law on court fees (*Kostenverzeichnis Gerichtskostengesetz*, KV GKG), a fee rate of 1.5 is normally applied. In certain cases in which the processing workload for the court is lower, a reduced fee rate of 1.0 is applied (Item 1411 KV GKG). If an order is issued under Sections 91a or 269(3), third sentence ZPO, a higher fee rate of 3.0 is normally applied (Item 1412 KV GKG).

The fee for the procedure also covers applications by the debtor for remedies within the meaning of Article 33 of Regulation (EU) No 655/2014 with a view to the European Preservation Order being revoked or modified. For service with proof of service, a registered letter with acknowledgement of receipt or processing by a court official, a fee of EUR 3.50 is charged if the same instance involves more than 10 cases of service or service is instigated by the creditor (Item 9002 KV GvKostG - Law on enforcement agents, *Gerichtsvollzieherkostengesetz*).

In the procedure on appeal, a fee rate of 1.5 is applied (Item 1430 KV GKG). Where the entire procedure is terminated by withdrawal of the appeal, the fee rate is reduced to 1.0 (Item 1431 KV GKG).

The value of the claim is determined each time at the discretion of the Court (Section 53 GKG in conjunction with Section 3 ZPO).

The fee applies as soon as the application for a European Preservation Order or a claim is brought before the Court (Section 6 GKG).

Where at first instance a Local Court (*Amtsgericht*) gives a ruling as a family court, a fee rate of 1.5 is generally applied, in accordance with Item 1420 of the list of fees of the Law on court fees in family matters (KV FamGKG). Where the entire procedure is terminated without final judgment, the fee rate is reduced to 0.5 (Item 1421 KV GKG).

The fee for the procedure also covers applications by the debtor for remedies within the meaning of Article 33 of Regulation (EU) No 655/2014 with a view to the European Preservation Order being revoked or modified. For service with proof of service, a registered letter with acknowledgement of receipt or processing by a court official, a fee of EUR 3.50 is charged if the same instance involves more than 10 cases of service or service is instigated by the creditor (Item 2002 KV FamGKG).

In the procedure on appeal, a fee rate of 2.0 is applied (Item 1422 KV GKG). Where the entire procedure is terminated by withdrawal of the appeal before the Grounds of Appeal is received by the court, the fee rate is reduced to 0.5 (Item 1423 KV FamGKG). In other cases where the procedure is terminated without judgment, the fee rate is 1.0 (Item 1424 KV FamGKG).

The value of the claim is determined in each case *ex aequo et bono* (Section 42(1) FamGKG).

The fee applies as soon as an unconditional ruling is given on the fees or the procedure is terminated in any other way (Section 11 FamGKG).

Where an Labour Court (*Arbeitsgericht*) gives a ruling at first instance, a fee rate of 0.4 is applied for the procedure (Item 8310 KV GKG). If an order is issued under Sections 91a or 269(3), third sentence ZPO, the fee rate is in principle increased to 2.0 (Item 8311 KV GKG).

The fee for the procedure also covers applications by the debtor for remedies within the meaning of Article 33 of Regulation (EU) No 655/2014 with a view to the European Preservation Order being revoked or modified. For service with proof of service, a registered letter with acknowledgement of receipt or processing by a court official, a fee of EUR 3.50 is charged if the same instance involves more than 10 cases of service or service is instigated by the creditor (Item 9002 KV GKG).

In the procedure on appeal, a fee rate of 1.2 is applied (Item 8330 KV GKG). Where the entire procedure is terminated by withdrawal of the appeal, the fee rate is reduced to 0.8 (Item 8331 KV GKG).

The value of the claim is determined each time at the discretion of the Court (Section 53 GKG in conjunction with Section 3 ZPO).

The fee applies as soon as an unconditional ruling is given on the fees or the procedure is terminated in any other way (Section 9 GKG).

In the procedure under Article 5(b) of Regulation (EU) No 655/2014 and in all procedures concerning applications to limit or terminate enforcement of a Preservation Order:

In the procedure for obtaining a Preservation Order under Article 5(a) of Regulation (EU) No 655/2014, a fee of EUR 20 is charged (Item 2111 KV GKG). If, during the procedure, an application is made to obtain account information, the fee is increased to EUR 33 (Item 2122 KV GKG).

The fee for the procedure also covers applications by the debtor for remedies within the meaning of Article 33 of Regulation (EU) No 655/2014 with a view to the European Preservation Order being revoked or modified.

For applications to terminate or limit enforcement, a fee of EUR 30 is charged (Item 2119 KV GKG).

For appeals that are rejected or dismissed, a fee of EUR 30 is charged (Item 2121 KV GKG). If the appeal is only partially rejected or dismissed, the court may *ex aequo et bono* reduce the fee by half or decide not to charge it.

The fee applies as soon as the application for a European Preservation Order, or for termination or limitation of enforcement, or a claim is brought before the Court (Section 6 GKG).

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

For documents addressed to a court or competent authority in accordance with Regulation (EU) No 655/2014, no language other than German is permitted.

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