

## 1 Existence of an order for payment procedure

### 1.1 Scope of procedure

The Austrian Code of Civil Procedure includes a fully tried and tested order for payment procedure (*Mahnverfahren*) for payment claims. Most payment claims in Austria are processed online in a simplified, fast-track order for payment procedure.

#### 1.1.1 What types of claims are eligible (e.g. only pecuniary claims, only contractual claims etc.)?

The order for payment procedure is limited to payment claims other than those which have to be decided in a special type of 'non-contentious' procedure (*Ausserstreitverfahren*). The order for payment procedure is incompatible with the principle behind the non-contentious procedure, which requires the court to clarify all facts relevant to its decision *ex officio*, i.e. without an application by a party. As special procedural requirements also apply to cases involving social security law and claims based on cheques or bills of exchange, these cannot be enforced under the order for payment procedure.

#### 1.1.2 Is there an upper limit regarding the value of the claim?

The order for payment procedure has been limited to amounts in dispute of up to EUR 75,000 since 1 July 2009. Claims for amounts over that limit must be filed under the 'ordinary' civil procedure in the form of preparatory pleadings.

#### 1.1.3 Is the use of that procedure optional or obligatory?

The order for payment procedure is mandatory in Austria for claims up to the limit referred to above.

#### 1.1.4 Is the procedure available if the defendant lives in another Member State or in a third country?

The Austrian order for payment procedure cannot be used if the defendant is domiciled or habitually resident or has its registered office abroad. Such disputes must be settled under the 'ordinary' civil procedure. Depending on the claim, the court with jurisdiction will either ask the defendant to submit a defence within four weeks or set a date for a hearing.

Alternatively, payment claims against defendants resident in another Member State may be enforced under the European order for payment procedure.

### 1.2 Competent court

Payment claims for amounts of up to EUR 15,000 (since 1 January 2013) must be filed with a District Court (*Bezirksgericht*). Claims for amounts over EUR 15,000 must be filed with a Court of First Instance, unless they come under the special jurisdiction of the District Courts.

Jurisdiction under the Austrian order for payment procedure is governed by the general rules, i.e. there are no special jurisdiction rules. See the fact sheet on the 'Jurisdiction of the courts' for information on Austrian jurisdiction rules. Information on which court has jurisdiction for specific civil cases can be found on the Austrian Federal Ministry of Justice website under '*e-Justice*' ('*Gerichtssuche*' (Court search)).

The Vienna District Court for Commercial Matters (*Bezirksgericht für Handelssachen*) has sole jurisdiction in Austria for proceedings under the European order for payment procedure.

### 1.3 Formal requirements

#### 1.3.1 Is the use of a standardised form obligatory? (if yes, where can that form be obtained?)

Payment claims must be submitted using a standard form. Different forms are used for order for payment proceedings in Austria depending on whether the payment claim is being enforced under the 'ordinary' order for payment procedure, through order for payment proceedings through a labour court or under the European order for payment procedure. Forms are available to download from the Federal Ministry of Justice website under '*Bürgerservice*' or can be completed online.

#### 1.3.2 Is representation by a lawyer required?

Claimants applying for payment orders for amounts in dispute of over EUR 5,000 must have legal representation. This does not apply in cases which must by law be heard by a District Court (i.e. by a court with subject-matter jurisdiction), regardless of the amount in dispute. In such cases, legal representation is a 'relative' requirement, i.e. parties may act on their own behalf but, if they wish to be represented, they must be represented by a lawyer.

There is no requirement for legal representation under the European order for payment procedure.

#### 1.3.3 In how much detail do I have to describe the reason for the claim?

Requirements governing the contents of an application for a payment order do not essentially differ from the requirements governing claims filed under the 'ordinary' procedure. However, claimants need not substantiate the legal grounds on which the claim is based in an application for a payment order.

Nevertheless, the circumstances referred to in support of the claim must be described in sufficient detail to identify the claim and derive a specific demand (i.e. the application has to be 'convincing').

#### 1.3.4 Is it necessary to present written evidence of the claim at issue? If yes, which documents are admissible as proof?

The order for payment procedure in Austria is a procedure under which there is no obligation to produce evidence. Therefore no documents need to be submitted in support of the claim in order to apply for a payment order. However, claimants who obtain or who try to obtain a payment order fraudulently, by including false or incomplete information in their application, will be fined under the Austrian Code of Civil Procedure.

### 1.4 Rejection of application

The court merely carries out a summary evaluation of the application. It does not check that the contents are accurate; it merely assesses the legal merits of the claim (i.e. whether the claim is 'convincing'). If the application for a payment order meets the requirements in terms of form and content (i.e. it contains a specific demand, states the facts from which the demand can be derived, cites evidence and details of jurisdiction and allows the claim to be identified), the court will issue a payment order. There is no provision in the Austrian Code of Civil Procedure for applications for payment orders to be rejected on formal grounds. If the court considers that the requirements for a payment order have not been met, it will immediately initiate 'ordinary' proceedings; it will not reject the application. However, in the case of certain formal shortcomings, the court may first initiate a correction procedure by ordering the claimant to remedy the shortcomings.

### 1.5 Appeal

As the Austrian Code of Civil Procedure does not provide for applications for payment orders to be rejected and automatically transfers them to the 'ordinary' procedure, there is no need for a right of appeal.

## **1.6 Statement of opposition**

The deadline for objecting to a payment order is four weeks, starting on the date of service of a written copy of the payment order on the defendant. The court cannot extend or shorten this deadline.

Objections to payment orders granted by a Court of First Instance (in cases where the amount in dispute is between EUR 15,000 and EUR 75,000) must take the form of a defence. This means that the objection must contain a specific demand and a description of the facts and circumstances in support of the objection, together with evidence in support of the defendant's assertions. Legal representation is mandatory for the purpose of lodging objections before the court.

Legal representation is not mandatory for the purpose of lodging an objection in proceedings before a District Court (i.e. for amounts in dispute of up to EUR 15,000 or, if the court has subject-matter jurisdiction, up to EUR 75,000). For written objections, it suffices in such proceedings for the defendant to send a signed letter to the court which granted the payment order, stating that he/she intends to lodge an objection to the payment order. There is no requirement, as in proceedings before a Court of First Instance, for the defendant to substantiate his or her objection. The defendant may also register an objection orally at the court which granted the payment order or at the District Court in the district where he/she is resident.

### **1.7 Effect of statement of opposition**

If the defendant lodges an objection in time, the payment order lapses and the court automatically transfers the appeal to the 'ordinary' procedure and hears the allegations in the claim and the objections to them.

### **1.8 Effect of lack of statement of opposition**

The order for payment procedure in Austria is a one-step procedure. If the defendant does not contest the payment order or fails to do so on time, it automatically becomes enforceable without the need for another application by the claimant. There is therefore no provision in law for a decision by a second court.

#### **1.8.1 What needs to be done in order to obtain an enforceable decision?**

The court confirms of its own motion that the payment order is enforceable. The claimant can use a certified copy of the payment order to initiate enforcement proceedings against the defendant.

#### **1.8.2 Is this decision final or is there still a possibility for the defendant to appeal against that decision?**

Payment orders issued under the Austrian order for payment procedure can only be contested by lodging an objection. The defendant has no other rights of appeal. The decision on costs contained in the payment order may be contested by the claimant and the defendant within 14 days of service in an appeal on costs (*Kostenrekurs*). The defendant can claim for serious irregularities in service of the payment order at any time, by applying for the confirmation of enforceability to be cancelled. Defendants who were prevented by unavoidable and unforeseeable events from lodging an objection on time can apply, within 14 days of removal of the obstacle which caused them to miss the deadline for objection, for the previous position to be restored.

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