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German

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Court fees concerning Small Claims procedure

Austria

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Introduction

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Introduction

Under Regulation (EC) No 861/2007 establishing a European Small Claims Procedure, the document instituting proceedings is referred to as a claim (Klage), as is also provided for in national law. Therefore, the Austrian law on court fees does not contain a separate national provision for claims under this Regulation. The claim and the subsequent proceedings at first instance come under **Fee Item 1** (Tarifpost 1) of the Austrian **Court Fees Act** (Gerichtsgebührengesetz), which applies to all national civil proceedings.

What fees are applicable?

In proceedings related to claims under the European small claims procedure at first instance, **Fee Item 1** of the **Court Fees Act** applies, in accordance with Note 1 to Fee Item 1 of the Court Fees Act. This flat fee is payable regardless of whether the proceedings are completed. A reduction (to one quarter) applies only if the claim is immediately withdrawn or rejected before the opposing party is served (Note 3 to Fee Item 1 of the Court Fees Act). Under the Austrian court fees system, only the application instituting the proceedings (in this case, the claim under the European small claims procedure) is subject to a fee in civil proceedings at first instance. There are no additional court fees for further proceedings at first instance.

Under Section 2(1)(a) of the Court Fees Act, the obligation to pay fees arises when the claim under the European small claims procedure is lodged with the court. If the action is subsequently extended, the obligation to pay fees arises with the submission of written pleadings. In negotiations, the obligation to pay fees arises with the recording of the claim extension or a settlement that goes beyond the subject-matter of the claim). The fee must be paid at this time. Applications for exemption from the payment of court fees must also be lodged by way of legal aid (Verfahrenshilfe) by this time at the latest, provided the conditions are met.

Applications for review under Article 18 of the Regulation are free of charge.

How much shall I pay?

The calculation of court fees for proceedings at first instance depends on the value of the subject-matter of the claim (the amount in dispute as indicated in the claim or later in the claim extension) and the number of parties. For illustration, see below the full table of rates under Fee Item 1 of the Court Fees Act (as at 1 October 2013; click here for the current wording of [Section 32](#) of the Court Fees Act):

Fee Item 1	Value of the subject-matter of the claim			Fee payable
	does not exceed	EUR 150		EUR 22
	exceeds	EUR 150 but does not exceed	EUR 300	EUR 43
	exceeds	EUR 300 but does not exceed	EUR 700	EUR 61
	exceeds	EUR 700 but does not exceed	EUR 2 000	EUR 102
	exceeds	EUR 2 000 but does not exceed	EUR 3 500	EUR 163
	exceeds	EUR 3 500 but does not exceed	EUR 7 000	EUR 299
	exceeds	EUR 7 000 but does not exceed	EUR 35 000	EUR 707
	exceeds	EUR 35 000 but does not exceed	EUR 70 000	EUR 1 389
	exceeds	EUR 70 000 but does not exceed	EUR 140 000	EUR 2 779
	exceeds		EUR 210 000	EUR 4 170

		EUR 140 000 but does not exceed			
	exceeds	EUR 210 000 but does not exceed	EUR 280 000	EUR 5 560	
	exceeds	EUR 280 000 but does not exceed	EUR 350 000	EUR 6 949	
	exceeds	EUR 350 000		1.2% of the amount in dispute plus EUR 2 987	

If there are more than two parties, a multi-party surcharge between 10% and 50% may be added under Section 19a of the Court Fees Act.

What happens if I do not pay the court fees on time?

In the event of late payment, a fixed penalty of EUR 21 (as of 1 October 2013) is payable under Section 31 of the Court Fees Act. However, the late payment of the court fee has no influence on the execution of the civil procedure itself. Court proceedings are not dependent upon the payment of court fees - they are conducted in a completely independent manner.

The recovery of court fees by the judicial authority is governed by the Austrian Court Payments Recovery Act (Gerichtliches Einbringungsgesetz). If, as a result of non-payment, a payment order (an enforcement title for the recovery of court fees) must be issued by the judicial authority under Section 6a of the Court Payments Recovery Act, an additional fee of EUR 8 (as at 1 January 2014) applies.

How can I pay the court fees?

The method of payment is regulated in Section 4 of the Court Fees Act. Under Section 4, 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. The bank details of the court are available on the website of the Federal Ministry of Justice (<http://www.justiz.gv.at/>, in the 'Courts' (Gerichte) tab).

Furthermore, all fees may also be paid by **direct debit** if the court (or, in general, the Austrian judicial system) has been authorised to collect the court fees from an account notified by the party owing the fees, and to deposit them in a court account. For this, the application (the claim under the European small claims procedure) must **indicate the account** from which the fees are to be collected and the **authorisation to collect them**, for example by including the reference 'Gebühreneinzug!' or 'AEV!'. For a limited authorisation, the application may also indicate the maximum amount to be debited (Sections 5 and 6 of the Direct Debiting Ordinance (Abbuchungs- und Einziehungs-Verordnung)).

When lodging the claim under the European small claims procedure using the **Austrian e-Justice system** (Elektronischer Rechtsverkehr, ERV), the fees must be paid by direct debit. In this case, the maximum amount to be debited cannot be specified.

What shall I do after the payment?

If the Federal authorities are entitled to claim court fees on submission of the application (the claim under the European small claims procedure) and there is no direct debit authorisation, then proof of payment of the fees (proof of transfer) must be attached to the application (Section 4 of the Court Fees Act). If payment is made by bank card, credit card, deposit or transfer to the account of the competent court, or by direct debit from the party's account, the Austrian Federal Accounting Agency only informs the judicial authority about the booking of payments made to the court account at a later stage. The procedure related to the notice of court fees ends when proof of (full) payment is provided.

In the event of overpayment, a claim for the repayment of overpaid court fees (Section 6c(1)(1) of the Court Payments Recovery Act) can be made within five years.

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