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### European Account Preservation Order

Germany

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

The court with territorial competence to issue an Account Preservation Order in cases where the creditor has already obtained an authentic instrument is the court in whose district the instrument was drawn up.

The subject-matter competence of the courts follows the general provisions of German law on the organisation of courts and the applicable codes of judicial procedure. The court with jurisdiction in a particular case can be found using the search tool at the beginning of this website.

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

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

The contact details of the Federal Office of Justice are as follows:

Bundesamt für Justiz

Adenauerallee 99-103

53113 Bonn

Germany

Tel.: +49-228 99 410-40

Email: [EU-Kontenpfändung@bfj.bund.de](mailto:EU-Kontenpfändung@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 Federal Office of Justice can ask the Federal Central Tax Office ( *Bundeszentralamt für Steuern* ) to access the following data at credit institutions:

account number;

date on which the account was opened and closed;

name and date of birth of the account holder; and

names of the authorised users.

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

An appeal against a refusal to issue an Account 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 higher court.

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

The Local Courts ( *Amtsgerichte* ) referred to in Article 50(1)(a) are competent to receive, transmit and serve the Order and other documents.

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

The Local Court competent for enforcement under the general provisions of the Code of Civil Procedure is competent to enforce an Account Preservation Order. 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

With regard to the preservation of funds held in joint accounts, the following applies:

If, according to the records of the bank with which the account is held, the authorised users are allowed to dispose of the account credit balances only jointly ('and' accounts), the attachment order must be addressed to all account holders.

If the debtor is allowed to dispose of the account credit balance alone ('or' accounts), the funds in the account are subject to preservation like funds held in an individual account of the debtor.

Credit balances in nominee accounts that the debtor can dispose of on behalf of a third party are subject to seizure against the debtor under German national law. In such cases, the Account Preservation Order must be directed against the trustee (the debtor).

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

Protection from seizure in payment accounts is provided by means of a seizure-exempt account ( *Pfändungsschutzkonto* ) (Section 850k of the Code of Civil Procedure). The effects of the seizure-exempt account are governed by Sections 899 et seq. of the Code of Civil Procedure.

The amounts referred to in Section 850c(1) and (2) of the Code of Civil Procedure are to be found in the Notice on seizure-exempt thresholds ( *Pfändungsfreigrenzenbekanntmachung* ). The amounts are adjusted on 1 July of each year. The rules can be accessed or consulted on the website <http://www.gesetze-im-internet.de/>.

#### 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 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 costs ( *Gerichtskostengesetz* ) and in the Law on court costs in family cases ( *Gesetz über Gerichtskosten in Familiensachen* ). The above-mentioned laws can be accessed and consulted free of charge at [http://www.gesetze-im-internet.de/bundesrecht/gkg\\_2004/gesamt.pdf](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 above-mentioned laws, we refer you to the reply regarding 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' costs ( *Gerichtsvollzieherkostengesetz*, *GvKostG* ). The above-mentioned law can be accessed 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 on 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 11 is charged under Item 100 of the schedule of costs to the Law on enforcement agents' costs (*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 (Item 711 KV GvKostG). If the enforcement agent serves the Order by other means, a fee of EUR 3.30 is charged (Item 101 KV GvKostG). Postal costs will be charged in full for service with proof of service (*Zustellungsurkunde*) (Item 701 KV GvKostG). A lump sum amounting to 20% of the fees charged for each assignment will be charged to cover any other cash expenses but will not be less than EUR 3.00 and not more than EUR 10.00 (Item 716 KV GvKostG).

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

No fee will be charged for the activities of the information authority under Article 14 of Regulation (EU) No 655/2014, without prejudice to the reply regarding Article 50(1)(n) specifying the increase in court fees chargeable in procedures for obtaining a Preservation Order within the meaning of Article 5(1)(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 court that issued the Preservation Order is competent to grant remedies under Article 33(1) of Regulation (EU) No 655/2014.

The court competent to grant the remedies of the debtor under Article 34(1) or (2) of Regulation (EU) No 655/2014 is the Local Court competent to enforce the Order under 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 appeal against decisions on legal remedies provided for under Article 37 of Regulation (EU) No 655/2014 can be lodged with the court that issued the decision on a remedy or, if that court is a court of first instance, with a higher court.

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

The time limit for lodging an appeal starts to run on the date when the decision to be appealed is served on the person concerned.

#### **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 costs (GKG) and/or Section 28 of the Law on court costs in family cases (FamGKG).

(a) A fee rate of 1.5 is normally applied 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 schedule of fees to the Law on court fees (*Kostenverzeichnis zum Gerichtskostengesetz, KV GKG*). 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 of the Code of Civil Procedure, 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 judicial staff, a flat-rate fee of EUR 3.50 is charged for each service if the same level of jurisdiction involves more than 10 cases of service or service is instigated by the creditor (Item 9002 KV GvKostG).

In a 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 in each case at the discretion of the Court (Section 53 GKG in conjunction with Section 3 of the Code of Civil Procedure).

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

(b) Where at first instance a Local Court gives a ruling as a family court, a fee rate of 1.5 is generally applied, in accordance with Item 1420 KV FamGKG. Where the entire procedure is terminated without a final decision, the fee rate is reduced to 0.5 (Item 1421 KV FamGKG).

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 for each service if the same level of jurisdiction involves more than 10 cases of service or service is instigated by the creditor (Item 2002 KV FamGKG).

In a procedure on appeal, a fee rate of 2.0 is applied (Item 1422 KV FamGKG). Where the entire procedure is terminated by withdrawal of the appeal before the statement of grounds of the 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 decision, the fee rate is 1.0 (Item 1424 KV FamGKG).

The value of the claim is determined in each case on an equitable basis (Section 42(1) FamGKG).

The fee applies as soon as an unconditional decision as to costs is made or the procedure is terminated in another way (Section 11 FamGKG).

(c) Where at first instance a Labour Court (*Arbeitsgericht*) gives a ruling, a fee rate of 0.4 is generally applied for the procedure (Item 8310 KV GKG). If an order is issued under Sections 91a or 269(3), third sentence of the Code of Civil Procedure, the fee rate is normally 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 for each service if the same level of jurisdiction involves more than 10 cases of service or service is instigated by the creditor (Item 9002 KV GKG).

In a 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 of the Code of Civil Procedure).

The fee falls due as soon as an unconditional decision as to costs is made or the procedure is terminated in another way (Section 9 GKG).

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

A fee of EUR 22 is charged in a procedure for obtaining a Preservation Order within the meaning of Article 5(b) of Regulation (EU) No 655/2014 (Item 2111 KV GKG). If, during the procedure, an application is made to obtain account information, the fee is increased to EUR 37 (Item 2112 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.

A fee of EUR 33 is charged for applications to terminate or limit enforcement (Item 2119 KV GKG).

A fee of EUR 33 is charged for appeals that are rejected or dismissed (Item 2121 KV GKG). If an appeal is only partially rejected or dismissed, the court may, on the basis of equitable considerations, reduce the fee by half or decide not to impose the fee.

The fee falls due as soon as the application for a European Preservation Order, or for termination or limitation of enforcement, or an appeal is lodged before the Court (Section 6 GKG).

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

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

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