



EURAVOCAT LAW HANDBOOK

DEBT COLLECTION IN AUSTRIA

From our member in Salzburg



1. Extrajudicial collection of monetary claims

If a contractual partner is in default of payment, the first step should be to issue an out-of-court reminder and demand payment within a reasonable period. If one proceeded directly with legal action without a prior reminder, one would run the risk that the opponent would (immediately) acknowledge the claim and in this

case the plaintiff would have to bear all the costs of the legal proceedings. In order to minimise the expense and risk, it is therefore advisable to first issue an out-of-court reminder of the payment obligation. However, for the subsequent judicial assertion it is not necessary to point out that in the event of fruitless expiry of the reasonable grace period, legal action will be taken.

If the debtor is in default, the payment of default interest at the rate of 4 % p.a. can be demanded according to §§ 1000 iVm 1333 ABGB (Austrian Civil Code). For B2B transactions, Art 8 (6) directive on combating late payment in commercial transactions provides for at least 8% above the sum of the reference rate. The Austrian legislator has implemented this EU requirement in Section 456 of the Austrian Commercial Code (UGB), according to which a claim to 9.2% above the prime rate exists in the event of default in B2B transactions if the debtor is responsible for the delay. The debtor bears the burden of proof that he is not responsible for the delay.

2. Judicial collection of monetary claims

2.1 Dunning procedure:

Monetary claims up to EUR 75,000.00 must be asserted in a simplified procedure with an action for payment order. This is submitted to the court exclusively electronically and is also

processed electronically. In such action the claim must only be asserted conclusively; the presentation or offer of evidence is not necessary. The court will then electronically issue an order for payment (without a hearing), which, according to experience, will be served on the defendant within 1-2 weeks. From the date of service, the defendant has 14 days to pay the claim or to file an objection within 4 weeks. If the defendant does not file an objection, the court issues a legally valid and enforceable copy of the payment order within 1-3 weeks after the expiration of the deadline. Accordingly, the order for payment procedure lasts approximately 6-9 weeks without an objection. For payment orders up to EUR 5,000.00 a special fast track procedure is available under the European Small Claims Procedure.

2.2 Ordinary civil proceedings:

If the claim amounts to more than EUR 75,000.00 or if the debtor raises an objection to an order for payment or if the claim does not consist of money, the ordinary civil proceedings shall be conducted. In this case, the plaintiff shall file a short-form complaint and offer or already submit evidence. The court then serves the complaint on the defendant with a request to respond. In many cases, the court schedules a hearing at the time of service of the complaint, which is 1-3 months after the service of the complaint. Prior to the first hearing, the parties usually file another written statement, so that each party prepares a total of 2 written statements prior to the 1st hearing. At the first hearing, the judge attempts to settle the dispute through court settlement. If a

settlement is reached at the first hearing, it is recorded in court. As an incentive for the settlement of the dispute, the procedural fee to be paid to the court is reduced to half. If no settlement is reached, the further program of the proceedings is discussed and any experts are appointed.

2.3 Fees:

In civil proceedings, the principle of success applies. The party who loses the case must pay the costs of both legal representatives according to the lawyer's tariff and the fee incurred for the court proceedings. If only half of the lawsuit is successful, the parties share the (total) cash expenses incurred and each party must pay its own representation costs. If one party prevails by 75%, the losing party shall pay 75% of the (total) cash expenses incurred and 50% of the opposing party's representation costs - measured according to the attorney's rate.

In Austrian civil proceedings, every pleading and every hearing that is necessary for the appropriate prosecution of the case is compensated in accordance with the lawyer's tariff. The tariff is graduated according to the amount in dispute. The loser of a lawsuit must pay the winning party the costs according to the lawyer's tariff. It is possible to make a fee agreement with one's own client that deviates from the lawyer's tariff, e.g. settlement according to an hourly rate (to be freely agreed). There are no punitive damages in Austria.

3. Enforcement procedure

The enforcement procedure in Austria was comprehensively amended as of 01.07.2022 and is regulated in the Austrian Execution Code (EO).

If an enforceable title must be enforced, the application for enforcement must be submitted to the district court in whose district the debtor is domiciled.

With regard to the means of enforcement used, the Execution Code distinguishes between the (small) execution package (Sec. 19 EO) and the (large) extended execution package (Sec. 20 EO).

3.1 The small execution package

The small execution package includes (i) the inquiry to the social security institution whether the obligor has recurring claims such as salary/wage from an employment relationship or from an old-age pension; (ii) the visit of the residence by the bailiff in order to seize realizable objects; (iii) the obtaining of a list of assets in which the obligor must truthfully state his assets; false statements are subject to the penal code.

3.2 he large execution package

This can only be applied for if the claim exceeds EUR 10,000.00 or the small execution package has been unsuccessful. The large execution package covers all types of execution on the movable

assets of an obligor. In addition, an administrator is appointed who is granted extended rights of information and inspection, which is intended to ensure efficient execution (Sec. 81 EO). The administrator is entitled to a remuneration determined by law (sec. 82 EO). It remains to be seen whether this institution will prove its worth, especially since it has only been in existence since 01.07.2022 and therefore hardly any empirical values exist.

3.3 Execution on immovable property

If an enforceable pecuniary claim exists, a lien may be created on a property of the obligor or on a share of the property belonging to the obligor, a super-possession or a building right pursuant to Sec. 88 EO upon application of the enforcing creditor. The real estate or the rights thereto may be realized by auction in the event of non-payment of the execution title.

Facit:

Honsig & Küenburg has many years of experience in debt collection. Several major banks and institutional clients have relied on HONSIG & KÜENBURG's expertise for decades and appreciate the high success rates that are only possible through the fast, individual and persistent conduct of enforcement proceedings. If there are no valuable realizable assets with the debtors, experience shows that in many cases claims can also be fully recovered through salary executions. The query for recurring income is very efficient in the case of employed persons.

4. Insolvency of the obligor

If a debtor is unable to pay 95% of the enforceable debts within 3 months (in the case of companies) or 1 year (in the case of private individuals), the bailiff shall determine that the party is manifestly unable to pay (Sec. 49a EO) and shall publish this fact in the Edict File Austria (<https://edikte.justiz.gv.at/edikte>). In the event of manifest insolvency, all enforcement measures shall be suspended. Only under certain circumstances, enforcement may then be continued by means of an application.

If there is no possibility of continuation of the enforcement, the debtor and the creditor have the possibility to file for insolvency. If the assets of the debtor are not sufficient to pay for the insolvency proceedings, the application is rejected for lack of assets. Then continuing the enforcement is possible, but often unsuccessful due to lack of available assets. If the assets are sufficient to pay the insolvency proceedings, the insolvency is opened, published in the online Edict File Austria and all known creditors are notified. In insolvency proceedings, a distinction must be made between insolvencies of natural persons and legal entities.

4.1 Insolvency of a natural person

In this case, the natural person has to propose a payment of a certain quota within 3 years (so-called payment plan). There is no

minimum quota. The creditors present then vote on this payment plan. Each creditor has the right to vote on the amount of his claim.

If the payment plan is accepted and fulfilled by the debtor, a discharge of residual debt takes place after 3 years.

If the payment plan is not accepted, the debtor can, under certain conditions, still discharge himself from debt within 3 years by means of a repayment plan. In any case, a discharge of residual debt takes place after 5 years, whereby it is only the effort to repay and not a minimum quota that is important here.

4.2 Insolvency of a legal entity

Legal entities and partnerships without a personally liable natural person must file an application for the opening of insolvency proceedings within 60 days in the event of insolvency or overindebtedness (Sec. 69 (2) IO).

If insolvency proceedings have been opened, it is possible to prevent liquidation by means of reorganization proceedings. In this case, at least the repayment of 20% of the insolvency claims must be offered within 2 years. The creditors present at the insolvency meeting decide whether to accept the reorganization procedure. If no agreement is reached, the assets of the legal entity are liquidated and the company is wound up.

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@HONSIG & KUENBURG
Attorneys at Law

SIGMUND-HAFFNER-GASSE 16

5020 SALZBURG

Phone: + 43 / 662 / 88 31 71

Fax: + 43 / 662 / 88 31 61

Email: ra@kuenburg.com

URL : www.honsig.kuenburg.com

https://euravocat.com/?page_id=464

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