



Euler Hermes

# Collection Profile Austria

## Collecting in Austria

- The payment behavior of domestic companies is good and the EU legal framework provides reliable tools when it comes to late payment issues.
- The court system is efficient and reliable overall, but pre-legal action conducted by specialists remains the most effective method of collecting debt.
- Austrian insolvency law aims to rescue companies in order to increase the chances of recovering debts. About 20% of opened insolvency proceedings are finalized through fulfilled reorganization plans providing a minimum quota of 20%. However, it is rare for unsecured creditors to recover significantly where reorganization fails or bankruptcy proceedings are started from the beginning.

## Collection complexity



## Complexity relating to

Notable      Severe  
→

Payments



Court proceedings



Insolvency proceedings



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## General information

### Availability of financial information

The level of transparency in Austria is very high meaning financial information is highly reliable and fairly available through specialized providers. Corporations must publish their annual financial statements of the previous year with the Commercial Register (Firmenbuch) within at latest nine months of the current business year. The importance and implementation of corporate governance is also spreading. Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. Grades are part of our core knowledge and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

### Main corporate structures

Liability for business debts is determined by legal structures, which are described as follows:

- Sole Proprietorship is commonly relied upon for small scale operations because it is based on the personal qualities of the sole proprietor who personally owns the business assets. As a result, the proprietor is fully liable for the business' activities and debts.
- General partnerships (Offene Gesellschaft, OG) and limited partnerships (Kommanditgesellschaft, KG) allow partners to conduct business together but offer different liability thresholds. Unless a Limited Partnership is set up, indeed, the partners' liability for liabilities established under the firm name of the partnership is joint and unlimited, even if one partner generates business debts without the other partners' knowledge or consent. The partners establish their mutual liabilities and rights in a specific 'partnership agreement' but do not create a separate legal entity.
- Limited Liability Companies (Gesellschaft mit beschränkter Haftung, GmbH) are the most popular business structures as they may be set up by one or more shareholder, whose liability is limited to their capital contribution. The minimum capital requirement is EUR 35,000, although it has been reduced to EUR 10,000 for start-ups for the first ten years. Of the requirements, 50% must be paid in cash.
- Joint-Stock Corporations offer a more complex structure (Aktiengesellschaft, AG) which allows for shares to be traded on a stock exchange. There is a EUR 70,000 minimum capital requirement, a supervisory board is compulsory and the shareholders' assemblies are subject to strict formal requirements.
- Foreign businesses willing to settle in Austria may set up a Branch Office (Zweigniederlassung), but such structures remain dependent on the parent company and offer no liability limitation. Alternatively, autonomous subsidiary companies tend to be set up through Limited Liability Companies.
- Joint Ventures are also a common business or investment vehicles in large development or infrastructure projects. These often take the form of collaborative partnerships (Arbeitsgemeinschaft) and rely on a Joint Venture agreement to define the specific role and liability of each participant, but no incorporation is required.

### Days Sales Outstanding (DSO):

Payments in Austria take 35 days on average.



### Regulatory environment

Austria has an efficient federal judicial system composed of local Courts of General Jurisdiction (Ordentliche Gerichte) divided in multiple Regional (Landesgerichte) and District (Bezirksgerichte) Courts of First Instance, each competent with precise subject matter (competition issues are for instance dealt with by the Kartellgericht, commercial matters in Vienna fall under the strict jurisdiction of the Handelsgericht, etc.).

There are also four Appellate Courts (Oberlandesgerichte) and three Supreme Courts with specific jurisdictions in constitutional (Verfassungsgericht), administrative (Verwaltungsgerichtshof), civil and criminal cases (Oberste Gerichtshof). Austria has no Case Law mechanism and the judges are thus not bound by precedent rulings while reaching their decisions. Nevertheless it is usual to consider the jurisdiction of the supreme courts.

Subject matter jurisdiction (Sachliche Zuständigkeit) depends on either the nature of the claim (Eigenzuständigkeit) or on the value of the dispute (Wertzuständigkeit). Commercial disputes involving amounts not exceeding EUR 15,000 fall under the jurisdiction of District Courts. Commercial disputes in excess of this amount would rather fall under the jurisdiction of Regional Courts. Representation by an Austrian attorney-at-law is compulsory for claims in excess of EUR 5,000 and at Regional Courts or higher courts.

## Getting Paid

### Days Sales Outstanding (DSO)

The payment behavior of Austrian companies is very good. According to a survey in 2016 by KSV, the leading association for the protection of creditors' rights, 76% of Austrian companies pay within the stipulated payment terms. Payments in Austria take 29 days on average.

### Late payment interest

Late payment interest may be claimed from the day following the due date. In fact, the Late Payment law which entered into force on 1 March 2013 has transposed the Recast Directive on Late Payment 2011/7/EU which stipulates that payments in the EU must be made within 60 days, thus introducing an Eighth Chapter on Money Transfers (Achter Abschnitt Zahlungsverzug) into the Fourth Book of the Austrian Commercial Code.

The domestic rule is stricter than the EU requirements: in business-to-business transactions no payment terms should exceed 60 days. In addition, interest on late payment is to be calculated by adding at least 9.2% above the base lending rate set by the Oesterreichische National Bank. The applicable base lending rate is established on 1 January and 1 July for each half-year and is -0.62% as of 1 January 2017.

### Debt collection costs

In line with the Recast Directive 2011/7/EU and according to §458 UGB, creditors are furthermore entitled to charge recovery costs (Inkassokosten) of EUR 40 flat, but amounts exceeding EUR 40 would depend on the efforts necessary and effective delays in obtaining payment. They are subject to §1333 ABGB which states that the "Inkassokosten" must be proportionate.

### Ownership protection

Retention of Title provisions (Eigentumsvorbehalt) are widely used in Austria to state expressly that ownership of traded goods will only be transferred to the buyer once payment has been fully made. Failure

to pay allows the seller to repossess the goods. Often, the provisions would only operate as long as the goods remain clearly identifiable. In Austria, however, extended Retention of Title provisions (verlängerter Eigentumsvorbehalt) allow the preservation of ownership despite the manufacturing process. The point is especially relevant where the debtor has become insolvent and insolvency proceedings are being conducted.

It should be noted that 'All monies clauses' – which normally aim at retaining ownership of goods until the buyer has settled all its outstanding debts with the creditor – are not valid in Austria.

Although they remain essentially used in relation to insolvency proceedings, Retention of Title provisions could finally be used as a negotiation tool as a means to either collect debts or recuperate goods.

### Payments

- Sepa bank transfers are among the most popular payment means as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically.
- For export transactions, transfers are usually guaranteed through an Export Credit Insurance policy, which helps minimize the risk of sudden or unexpected customer insolvency. Euler Hermes' worldwide network of risk offices monitors the financial well-being of your customers and grants them a specific credit limit up to which you may trade and claim should something go wrong.
- Alternatively, Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) also constitute reliable guarantees which can be interpreted as a sign of good faith since they can be triggered as a 'payment of last resort' if the client fails to fulfil a contractual commitment. Generally speaking, bank guarantees can be obtained fairly rapidly even though they may be expensive depending on the issuing institution. Down payments and security deposits (Pfand) are also common.
- Bills of Exchange (Wechsel) and Documentary Credits are not common as these are excessively formal. Checks can be canceled easily by the issuers and thus hardly constitute reliable payment methods or enforceable debt recognition titles.



#### Late payment interest:

As a general rule, business-to-business transactions must be paid within 30 calendar days upon receipt of the invoice.



## Collecting overdues

### Amicable action

#### Negotiating

Even though Austrian tribunals are efficient, amicable settlement opportunities and fast-track proceedings should first be considered as effective alternatives to ordinary legal action. In addition, before starting legal proceedings against a debtor, assessment of assets is important as it allows verification as to whether the company is still active and whether recovery chances are good. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it indeed becomes impossible to enforce a debt (see below).

### Legal action

#### Ordinary proceedings

Fast-track procedures (Mahnverfahren) are compulsory if the creditor solely demands payment of a claim which does not exceed EUR 75,000. The creditor requests the local court to issue a Payment Order (bedingter Zahlungsbefehl) instructing that the claim, including interest and court costs, must be paid within fourteen days. These proceedings are simplified and accelerated in the sense that claims may be submitted electronically at a reasonable cost. In addition, a lawyer is not necessary unless the claim exceeds EUR 5,000. If the defendant does not bring a defence (Einspruch erheben) within four weeks, the Order becomes enforceable immediately by a bailiff (Gerichtsvollzieher). Otherwise, the case will be dealt with on its merits through ordinary legal action. Similarly, ordinary proceedings must be conducted before the District Court when the claim exceeds EUR 75,000 (see below).

When the debtor has assets in other EU Member States, a European Payment Order procedure facilitating the recovery of undisputed debts (under Regulation EC No 1896/2006) may also be triggered. In this case, the demanding party may request the Vienna Commercial Court to issue an Order to Pay which will then be enforceable in all European Union countries (except Denmark) without exequatur proceedings.

If the amicable phase fails or if the debtor questions the claim, the option of starting legal proceedings remains. Usually a final demand (Anwaltsmahnung) will be served to the debtor, however, the creditor may immediately file a claim with the court (Klage). The parties are then invited to exchange views and evidence, the judge organizes hearings which the parties must attend, and renders a final judgement. Legal action before Austrian tribunals is fairly quick and reliable.

Tribunals would usually order remedies in the form of specific performance (orders to deliver or perform), declaratory judgments (as to the validity of a contract for instance), but the courts cannot award punitive damages.

#### Necessary documents

Signed Power of Attorney (to be sent by email in advance and original via post), list of open items, copies of invoices, delivery notes/ CMR, dunning letter, relevant correspondence, signed order documentation, and general terms and conditions.

#### Time limitations

According to Austrian law, most (but not all) commercial claims must be brought within three years starting from when the obligation is due. Beyond this, legal action will not be granted because time limitations are considered a matter of substantive rather than procedural law.

#### Precautionary measures

In exceptional circumstances (which remain difficult to prove), precautionary measures in the form of preliminary injunctions may be awarded to preserve the status quo and protect evidence pending a final and enforceable judgment. Such decisions may be rendered ex parte (without the debtor being present) and on the merits, before or during the proceedings.

#### Lodging an appeal

In most cases, judgments are deemed final and enforceable after the first instance. Nonetheless, claims may be brought into appeal on grounds of procedural irregularities, errors of law, and errors of fact (although in practice Courts of Appeal would rarely agree to reconsider evidence). The decision rendered in the second instance may also be appealed before the Supreme Court (Revisionsrekurs), which strictly focuses on legal interpretation issues.

#### Enforcing court decisions

judgment becomes enforceable as soon as it becomes final (i.e. when appeals are no longer available). If the debtor fails to comply with the decision, an application for enforcement may be filed with the District Court. Enforcement would then take place through attachment orders, garnishment orders, but also through the compulsory administration or the seizure and sale of the debtor's assets.

#### Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.





### How long could legal action take?

The average duration of litigation proceedings in Austria is reasonable compared to other European countries. Legal dunning procedures could take eight to twelve weeks, ordinary legal proceedings could last up to a year in most cases, reaching two years for the most complex disputes. Average enforcement proceedings take between ten and twelve months. Overall, executory titles last for thirty years and can be reactivated multiple times within this period. There is normally no differentiation between domestic and international litigation proceedings brought before Austrian courts.

### How much could this cost?

As a general rule, Austrian law authorizes the successful party to have its legal expenses and lawyers' fees refunded by the defeated party, and may seek to add the interest and debt collection costs to the debt's outstanding balance. Court fees are payable by the plaintiff when launching proceedings against the defendant, and they depend on the amount in dispute (e.g. for first instance proceedings, the fee is EUR 707 for claims within the range of EUR 7,000 to EUR 35,000; for claims exceeding EUR 350,000

the fee is 1.2% of the claim plus EUR 2,987). The fees for appeal proceedings and for Supreme Court proceedings are calculated at even higher rates.

Lawyers' fees are calculated within a statutory framework (Rechtsanwaltstarifgesetz). Typically, the costs for the largest disputes may reach 5 to 10% of the claim. Contingent fees, whereby legal professionals are entitled to receive a percentage on the final award, are prohibited by law. This prohibition does not normally apply to litigation-funding companies.

### Litigation @ Euler Hermes

Should legal action be necessary, Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

## Alternatives to legal action

### Alternative Dispute Resolution methods (ADR)

Alternative Dispute Resolution mechanisms are commonly used to settle business disputes in Austria. In particular, arbitration is often viewed as being more efficient than ordinary lawsuits because it offers expeditious confidential proceedings together with a binding award on the merits. Arbitrators may also grant interim relief. To be enforced, arbitral awards must be recognized by the courts through an exequatur proceeding (see below). The International Court of Arbitration of the Austrian Federal Economic Chamber (Vienna) is also a renowned arbitration venue.

### Foreign forums

A foreign forum is rather uncommon for debt-related disputes in Austria, but the country is a signatory to the Rome I Regulation on the law applicable to contractual obligations, which stipulates that the parties to a contract may, by mutual agreement, choose the law applicable to this contract, and select the court that will have jurisdiction over disputes. It is however essential that the agreement be characterized by an international connection (for example, one party has elected domicile in another country, or the place of execution is located abroad), and that a jurisdiction clause is drafted to this effect according to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters.

### Enforcing foreign awards

As previously mentioned, using foreign forums in order to obtain enforceable decisions against domestic debtors is rather unusual because domestic courts are efficient in providing timely decisions. Nonetheless, foreign decisions issued against foreign debtors may be recognized and enforced in Austria if the debtor has property or income in the country.

If the judgment qualifies as an uncontested claim, it can be enforced directly (i.e. without registration) by use of an EEO provided that the debtor has identified assets in the country. A European Small Claims Procedure (as provided by Regulation EC 861/2007) aiming at eliminating intermediate steps may similarly be relied upon while enforcing decisions up to EUR 2,000. According to Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, a judgement given in a member state shall be recognized in the other member states without any special procedure being required. In order to start enforcement procedures, it is required to have a copy of the judgement which satisfies the conditions necessary to establish its authenticity and a certificate issued pursuant to Article 53.

If the claim is disputed, the procedure for registering an EU judgment with domestic courts is relatively simple. The judgment holder must apply to the relevant court for the judgment to be registered and

provide the court with, among other documents, an authenticated copy of the judgment, a certified translation of the judgment and, if interest is claimed, a statement confirming the amount and rate of interest at the date of the application and going forward. Once the judgment has been registered, the judgment can be enforced as if it were issued by domestic courts (according to the Recast Regulation EC 1215/2012, such an exequatur procedure is no longer required from January 2015). On the other hand, judgments rendered in foreign countries outside the EU would normally be recognized and enforced provided that the issuing country is party to a bilateral or multilateral agreement with Austria. In other words, judgments issued in foreign countries with which Austria has no reciprocity agreements would be unenforceable. Austria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. Therefore, domestic courts also ought to recognize and enforce decisions rendered through international arbitration proceedings.

## Handling insolvent debtors

Insolvency in Austria is a matter of cash flow and balance sheet alike. Indeed, the Insolvency Law Amendment Act of 2010 (Insolvenzrechtsänderungsgesetz 2010 - IRÄG 2010, which created a uniform Insolvency Act known as Insolvenzordnung – IO) considers a debtor insolvent when it is illiquid, i.e. when it is permanently unable to pay its outstanding debts, but illiquidity may also be characterized when the debtor's assets cannot satisfy all the creditors. Austrian Insolvency law essentially aims at restructuring the debt through an insolvency plan (Sanierungsplan). Failure of the debtor to file a petition for bankruptcy within 60 days following the occurrence of an insolvency situation constitutes a criminal offence demanding the director's personal liability. Insolvency proceedings would normally commence as soon as the debtor is held insolvent (upon request of the creditors or of the debtor itself) through a court order. Once the proceedings are opened, the creditors must submit their claim to the court within a time period established by the court.

### Insolvency proceedings

#### Out-of-Court proceedings

Out-of-Court workouts often constitute a means to obtain recapitalization loans (in exchange for a secured creditor status) while preserving confidentiality. However receivers in Austria have long considered these secured loans as being disadvantageous to the bankrupt debtor's estate and workouts have thus been rarely used. Since 2010, the amendment has attempted to improve the situation by promoting debt restructuring, however, Out-of-Court could now become more frequent.

#### Restructuring the debt

The debtor may file for a 'Sanierungsverfahren ohne Eigenverwaltung' (reorganization proceeding with the debtor not in possession) if they



are able to pay at least 20% of the debt, payable within two years from the acceptance of the plan. Administration rights will be passed to a court-nominated receiver (Masseverwalter). Reorganization is also available with the debtor in possession under the supervision of a restructuring trustee (Sanierungsverfahren mit Eigenverwaltung), if they offer a minimum quota of 30%. In any case, the plan must be validated by a majority of creditors with voting rights present at the hearing and by a majority of creditors holding at least 50% of all claims present at the hearing. In other words, all creditors (even those who voted against the plan) have to accept a restructuring plan with a potential write-off of up to 80%. If the restructuring plan is not accepted by the creditors or granted by the court, the name of the proceedings is simply changed in the Internet Insolvency Gazette to bankruptcy proceedings (Konkursverfahren). All types of proceedings are always part of a single unitary procedure. Clearly, the 2010 amendment has strongly influenced the creditor's legal position: e.g. there is a bar on dissolving contracts upon which the continuation of the business depends, lasting for the first six months. Such contracts may only be dissolved for grave and weighty reasons; however, the deterioration of the debtor's financial situation is never such a reason. On the other hand, bilateral contracts neither fulfilled by the debtor nor his contractual partner may be dissolved by the trustee. Court proceedings with regard to the insolvent estate are interrupted with the opening of the proceedings and may only continue after lodging the claim and its contestation in the hearing for proving debts. Any steps of enforcement for the time of insolvency pending are inadmissible. Secured creditors may be prevented from enforcing their collateral (Aussonderung) during a six months period after opening the proceeding if such enforcement endangers the debtor's continuation. In addition, this restriction might be waived if enforcement of the collateral avoids personal or economical disadvantages of the creditor.

### Winding up proceedings

By contrast with reorganization proceedings, bankruptcy proceedings (Konkursverfahren) aim to realize the various creditors' rights equitably, since each creditor ought to receive the same percentage of their claim. The proceedings are led by a trustee in bankruptcy (Masseverwalter) who takes control of the business, sells the assets and divides the proceeds among the creditors. As a general rule, it is rare for unsecured creditors to significantly recover their debt following bankruptcy proceedings, and pre-legal action ought to be considered as the most efficient means to collect as long as the debtor is not declared bankrupt.

### Priority rules

Unsecured creditors may enforce court orders against a debtor as long as no insolvency proceedings have been opened. Once insolvency proceedings commence, as previously mentioned, all claims against the debtor are stayed and enforcement becomes impossible. In case of liquidation, the debtors' assets are divided among creditors, giving priority to secured creditors. Expenses flowing from the insolvency

proceedings and contract debts, for instance, constitute priority claims. Employees' claims are dealt with separately, through a public insolvency protection fund. Unsecured creditors' claims would then be considered.

### Cancellation of suspect transactions (clawback)

In addition, the receiver may appeal against various types of transactions concluded over the last ten years prior to the liquidation date (for instance, transactions favoring one creditor over the others, unfair loans, fraudulent transactions, etc). Such transactions would then be void.

### How long could insolvency proceedings take?

Insolvency proceedings (including fulfilment of a confirmed reorganization plan as the reorganization proceedings are terminated with the occurrence of finality of the confirmation) last for two years on average.

### Necessary documents

Power of Attorney (signed in advance and sent via email, while the original must be sent via post later on), open item list, invoice copies, terms and conditions, and fresh statement of account, showing total due amount.



### Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.



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