

To
Unified Patent Court
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Ihr Zeichen, Ihre Nachricht vom	Unser Zeichen, Sachbearbeiter Rp 504-1.1/2015/GB/VR Mag. Gabriele Benedikter	Durchwahl 4299	Datum 24.07.2015
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Consultation on the Rules of Court fees and recoverable costs Position Paper of the Austrian Economic Chamber

Regarding the draft on the rules of court fees and recoverable costs we took the structure of our members as a basis as well as our judicial system.

Against the background of increasing globalisation, ever faster technological developments and an increasing orientation towards innovation and services, hardly any other industry in recent years has gained in importance as much as the creative sector. Austria ranks, along with Sweden, United Kingdom, Netherlands and Denmark, as one of the leading countries in the EU, which have a highly developed creative economy. One in ten companies in Austria is a member of the creative industries sector, with approximately 36.100 commercial creative enterprises active in 2008, together employing more than 127.000 people, representing 4% of the working population in Austria. Over the last five years, the number of businesses in the creative sector has grown by ten per cent, and revenues have increased by 25 percent to around 18.5 billion Euros.

These companies belong at a high percentage to the group of small and medium-sized enterprises and micro entities, especially when they start their businesses. There is no alternative for a small country like Austria that the fee system provides adequate and specific tools to ensure proper access to justice.

In Austria legal aid is granted when a party is not able to pay the costs without interference of his reasonable maintenance and there is no evidence that the enforcement is malicious or without a reasonable chance. This rule applies also to a party who is not a natural person. If this party and his partners/shareholders are unable to meet the costs in order to commence legal proceedings, they may request legal aid in compliance with the requirements which apply to a natural person. In Austria, we do neither know reimbursements as proposed in alternative 1 nor specific measures which are targeted at special groups. We do not consider it fair that the granting of legal aid is subject to natural people. If it is acknowledged that SMEs and micro entities may need support to ensure proper access to justice, as laid down in Article 36(3) of the UPCA, why create „new“ measures like reimbursements or exemptions of fees? The difference between a natural person and a start up consisting of one natural person is not that big in our opinion to justify variable rules.

The rules 375 - 382 in the draft of the Rules of Procedure of the UPC set provisions regarding legal aid. From our point of view it would be more appropriate to amend point 7 of Rule 370 to support enterprises in their access to justice as mentioned above. In addition alternative 1 may be offered.

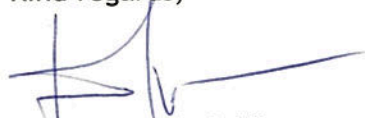
Austria seems to be one of the few Member States mentioned in the draft who operates a value-based system. Court users generally have to pay a certain fee for most of the judicial services. The level of court fees depends on the type and complexity of a case, as well as on the value of the claim. As a consequence, Austria has established a legal aid system, as mentioned above: accessing justice has a cost, but if the users do not have proper financial means to do so, the availability of legal aid means that access to courts is not denied to them. We do not make a difference between a natural person and another party: both of them have to meet the legal requirements as explained above, when they intend to ask for legal aid.

Our court fees for civil cases compared to the proposal are equal; in the field of value-based fees when the value of action is growing, the court fees in Austria seem to be lower.

When it comes to ceilings for recoverable costs, the successful party in Austria is entitled to recover adequate and essential costs incurred in the proceedings. It is the court who specifies which costs should be considered essential.

Basically we appreciate the aim at safeguarding the losing party against excessive cost burdens, but in our opinion the proposal contains insufficient information for an evaluation.

Kind regards,

A handwritten signature in blue ink, appearing to be 'Dr. Rosemarie Schön', with a long horizontal line extending to the right.

Dr. Rosemarie Schön
Abteilungsleiterin