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# How to enforce a court decision

 Germany

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European Judicial Network  
(in civil and commercial  
matters)

## 1 What does enforcement mean in civil and commercial matters?

Compulsory enforcement (*Zwangsvollstreckung*) is the procedure used to compulsorily enforce or secure creditors' claims against debtors. The power to enforce lies with the State, which operates through its representatives by virtue of its sovereign authority.

Various measures are available for enforcement of the creditor's claim:

- Attachment (*Pfändung*) of goods
- Attachment of claims and other assets held by the debtor (in particular, the attachment of bank accounts or the attachment of earnings)
- Statement of assets by the debtor (*Vermögensauskunft*)
- Coercive measures (*Zwangsmassnahmen*) to ensure that goods are surrendered or to ensure that actions are taken or refrained from
- Registration of a mortgage to secure a claim (*Sicherungshypothek*)
- Forced sale (*Zwangsversteigerung*)
- Receivership (*Zwangsverwaltung*).

Compulsory enforcement in Germany is regulated mainly by §§ 704 *et seq.* of the Code of Civil Procedure (*Zivilprozessordnung* - ZPO) and by the Act on Forced Sales and Receivership (*Gesetz über die Zwangsversteigerung und Zwangsverwaltung* - ZVG).

§§ 946 *et seq.* ZPO contain provisions relating to Regulation (EU) No 655/2014, which regulates the cross-border enforcement of claims between EU Member States.

## 2 Which authority or authorities are competent for enforcement?

The local court (*Amtsgericht*) in whose district the debtor has their place of residence is competent as the court of enforcement for enforcement matters relating to claims and other assets. If the debtor has no place of residence in Germany, the court in whose district the assets are located is competent (Sections 13, 23 and 828 of the Code of Civil Procedure).

The local court in whose district the plot of land is located is competent as the court of enforcement for forced sale and receivership (Section 869 of the Code of Civil Procedure in conjunction with Section 1 of the Act on forced sale and receivership (*Gesetz über die Zwangsversteigerung und Zwangsverwaltung*)).

A mortgage to secure a claim is registered by the land registry office at the seat of the local court where the land register is kept (Section 867 of the Code of Civil Procedure, Section 1 of the Land Register Code (*Grundbuchordnung*)).

The trial court of first instance is competent to enforce performance of, acquiescence to or refraining from

performance of actions (Sections 887, 888, 890 of the Code of Civil Procedure).

## 3 What are the conditions under which an enforceable title or decision may be issued?

### 3.1 The procedure

The procedure depends on the respective enforcement measure applied for. Enforcement takes place on the basis of final judgments which are no longer open to appeal or which are provisionally enforceable (Section 704 of the Code of Civil Procedure), provisional attachment (*Arrest*) and interim orders (*einstweilige Verfügungen*, (Sections 929, 936 of the Code of Civil Procedure) and the other enforceable documents listed in Section 794 of the Code of Civil Procedure; this includes not only court orders but also, in particular, settlements reached before an arbitration board (*Vergleiche vor Gütestellen*), settlements drawn up by lawyers (*Anwaltsvergleiche*), and notarial deeds (*notarielle Urkunden*). The enforcement measure can be applied for from the competent body using the enforceable document.

The courts decide on the creditor's application, typically without previously hearing the debtor in order to avoid jeopardising the success of enforcement. The right to be heard is granted as part of the measure. The decision on the application is issued in the form of an order. The court's decisions can be appealed against by means of an objection (Section 766 of the Code of Civil Procedure) or an immediate complaint (Section 793 of the Code of Civil Procedure).

No legal representation is in principle required (Section 78 of the Code of Civil Procedure).

The focus of the bailiff's activities is on enforcement against movable property. In the context of amicable settlements (Section 802b of the Code of Civil Procedure), the bailiff is empowered in principle to allow the debtor to pay in instalments, and is responsible for ensuring that the enforcement procedure is brought to a timely and effective conclusion. One of the bailiff's primary duties is to take from the debtor a sworn statement of assets. In addition, the bailiff is responsible for:

- the recovery of movable and immovable property (eviction);
- overcoming resistance on the part of the debtor to actions to which debtors are required to acquiesce;
- the service at the request of a party of documents required for the compulsory enforcement;
- the enforcement of orders for provisional attachment and interim orders (where this is not a matter for the court);
- the enforcement of an arrest warrant following refusal to provide the statement of assets.

The bailiff is a court officer in a *Land*, and is under the administrative supervision of the presiding judge of the local court. In the exercise of their enforcement duties bailiffs are an independent judicial body and, in principle, exercise their official authority autonomously. The measures taken and cost statements drawn up by the bailiff may be challenged under Section 766 of the Code of Civil Procedure. The same applies if the bailiff refuses to execute an order. Objections to the nature of the compulsory enforcement (*Erinnerung*) are decided upon by the court with jurisdiction for the enforcement.

Costs of enforcement measures:

The law provides for different methods of enforcement, depending on the claim to be secured. The different enforcement measures carry different costs:

- a. Attachment of goods:

Where the right to payment of a specific sum of money has been accepted, the creditor can ask the bailiff to enforce payment. A fee of €31.20 is payable for the attachment of the debtor's movable assets by the bailiff, in accordance with point 205 of the schedule of fees (*Kostenverzeichnis - KV*) annexed to the Bailiffs' Costs Act (*Gerichtsvollzieherkostengesetz - GvKostG*). For the sale of the attached goods, for public auction in person or through an Internet auction accessible to the public via an auction platform, or for realisation in some other way, a further fee of €62.40 is payable, in accordance with point 300 of the schedule of fees to the Bailiffs' Costs Act. As a basic principle, a supplement for time is also charged, in accordance with point 500 of the schedule of fees to the Bailiffs' Costs Act, if the report drawn up by the bailiff indicates that the execution of the official act took

more than 3 hours. The supplement amounts to €24.00 for each additional hour or fraction thereof. In addition, there are the bailiff's expenses, notably in the form of travel expenses (point 711 of the schedule of fees to the Bailiffs' Costs Act).

- b. Attachment of claims held by the debtor:

An order to pay a sum of money can also be secured by an application to the court for attachment of a claim held by the debtor (for example, to payment of earnings) and its assignment to the creditor, with payments to be deducted from the debt (*zur Einziehung*, 'for collection') or the assignment to be in settlement of the creditor's claim on the debtor (*an Zahlungs statt*, 'in lieu of payment') (Sections 829, 835 of the Code of Civil Procedure). As a rule, the attachment and assignment of a claim are applied for jointly and combined in an attachment and assignment decision. A fee of €24.00 is payable for the proceedings on the application under 2111 of the schedule of fees annexed to the Court Costs Act (*Gerichtskostengesetz* - GKG). Also payable are the costs incurred by the bailiff for service of the attachment and assignment decision to the third-party debtor and the debtor.

- c. Taking a statement of assets:

The bailiff charges a fee of €39.50 for taking the statement of assets, under point 260 of the schedule of fees annexed to the Bailiffs' Costs Act.

- d. Enforcement against immovable property:

Compulsory enforcement against the debtor's immovable property takes the form of a mortgage entered in the land register, or forced sale or receivership of the property.

For the entry of a mortgage in the land register to secure the debt, a fee is payable under point 14121 of the schedule of fees to the Court and Notary Costs Act (*Gerichts- und Notarkostengesetz* - GNotKG), at the fee rate of 1.0 based on the value of the debt to be secured (Section 53(1) of the Court and Notary Costs Act). A table of fees for values of up to €3 million is given in Annex 1.

The court fees for proceedings pursuant to the Act on Forced Sales and Receivership are determined by Part 2, Section 2, Subparts 1 and 2 of the schedule of fees annexed to the Court Costs Act. A fee of €120.00 is payable for a decision on an application for an order for the forced sale of land or on a request to join the proceedings. There is also a fee for the proceedings as such, a fee for holding at least one auction with a call for bids, a fee for concluding the sale, and a fee for distributing the proceeds; each of these fees amounts to a rate of 0.5. The fees for the proceedings and for holding the auction are determined by reference to the value of the property accepted by the court of enforcement (market value, Section 54(1) of the Court Costs Act). The fees for distributing the proceeds are determined on the basis of the successful bid, net of interest, including the value of any rights outstanding in accordance with the terms of the auction (Section 54(2) and (3) of the Court Costs Act). The fee for concluding the sale must also take into account the amount that would result in the bidder being considered satisfied by the proceeds from the sale of the plot (Section 54(2) of the Court Costs Act). A table of fees for values up to €500 000 is given in Annex 2. In addition to the fees, the expenses incurred in the proceedings are charged separately, in accordance with Part 9 of the schedule of fees annexed to the Court Costs Act; these include the costs payable for a surveyor's valuation of the market value of the property in accordance with the Judicial Remuneration and Compensation Act (*Justizvergütungs- und -entschädigungsgesetz* - JVEG) (point 9005 of the schedule of fees annexed to the Court Costs Act).

A fee of €120.00 is payable for a decision on the application for a receivership order or on a request to join the proceedings. The receivership itself is subject to an annual fee at a rate of 0.5, with a minimum of €144.00 overall and a minimum of €72.00 in each of the first and last calendar years. The amount of the fee is determined by reference to the total income from the receivership (Section 55 of the Court Costs Act).

- e. Recovery and coercive measures to ensure that actions are taken, permitted or refrained from:

If the debtor is required to surrender movable property, the property must be recovered from the debtor by the bailiff and handed over to the creditor. For this official act, the bailiff charges a fee of €31.20, in accordance with point 221 of the schedule of fees annexed to the Bailiffs' Costs Act. In addition to that fee a supplement for time is charged under point 500 of the schedule, if the report drawn up by the bailiff indicates that the execution of the official act took more than 3 hours. The supplement amounts to €24.00 for each additional hour or fraction

thereof.

If the debtor is required to surrender immovable property, the bailiff has to take possession from the debtor and give possession to the creditor (eviction). A fee of €163.50 is charged in accordance with point 240 of the schedule of fees annexed to the Bailiffs' Costs Act. Here too a supplement for time of €24.00 is charged, in accordance with point 500 of the schedule, for each additional hour or fraction thereof, if the execution of the official act takes more than 3 hours. In addition, the bailiff's expenses pursuant to Subpart 7 of the schedule of fees annexed to the Bailiffs' Costs Act are also charged, including the costs of necessary services provided by third parties, such as removals or the services of a locksmith.

In the proceedings before the court to compel performance of an action (whether it can be performed only by the debtor or can be performed by another person in his or her place), to permit an action, or to refrain from an action, a court fee is payable amounting to €24.00 in each case, in accordance with point 2111 of the schedule of fees annexed to the Court Costs Act.

### 3.2 The main conditions

Enforcement measures upon the request of the creditor are only admissible if the creditor is in possession of an enforceable document establishing their claim. This may be a final judgment that is no longer open to appeal or provisionally enforceable (Section 704 of the Code of Civil Procedure) or one of the documents listed in Section 794 of the Code of Civil Procedure (for instance, a judicial settlement (*gerichtlicher Vergleich*), an enforcement order (*Vollstreckungsbescheid*), or a notarial deed). As a general rule, the document must contain an order for enforcement (*Vollstreckungsklausel*) certifying the enforceability of the document (Section 724 of the Code of Civil Procedure). An order for enforcement is required only in exceptional cases of enforcement orders, provisional attachment orders and interim orders (Section 796 of the Code of Civil Procedure; Sections 929(1), 936 of the Code of Civil Procedure). In addition, enforcement may only commence if the document has already been served to the debtor or is served at the same time (Section 750(1) of the Code of Civil Procedure).

## 4 Object and nature of enforcement measures

### 4.1 What types of assets can be subject to enforcement?

The debtor's movable assets, claims and other property rights and real property can be subject to enforcement.

Section 811 of the Code of Civil Procedure specifies certain assets that cannot be attached. The aim is to allow the debtor and his household to retain the minimum essential for personal or professional use, for example.

Restrictions on attachment also apply to the debtor's earned income. Sections 850 *et seq.* of the Code of Civil Procedure provide for certain amounts that cannot be attached, as debtors need them to provide for their subsistence. Credit balances can be protected in an 'account exempted from attachment' (*Pfändungsschutzkonto*, Section 850k of the Code of Civil Procedure). Specific amounts exempt from attachment are held in these accounts irrespective of the origin of the credit balance, and in addition evidence can be provided to the credit institution of further amounts exempt from attachment (Sections 899 *et seq.* of the Code of Civil Procedure).

### 4.2 What are the effects of enforcement measures?

- In relation to the debtor

Enforcement of a monetary claim against the movable property of the debtor takes place through attachment and realisation of the attached property. The attachment is an official act which leads to the confiscation of the object attached. Among other effects, confiscation deprives the debtor of the power to dispose of the object attached.

- In relation to the creditor

The creditor acquires a right of lien (*Pfandrecht*) on the object attached as a result of the attachment (Section 804(1) of the Code of Civil Procedure). The right of lien resulting from attachment establishes a right to use the object attached and to be satisfied from the proceeds.

- In relation to third parties

Where claims held by the debtor against a third party are attached and assigned, this 'third-party debtor' must no longer pay the debtor; the debtor can discharge their debt to the creditor only by paying the debt transferred to the latter for recovery. A third-party debtor who breaches this obligation may face the risk of an action for damages.

If the bailiff has attached movable property belonging not to the debtor but to a third party, the third party can oppose the attachment of this property by means of a third-party objection (*Drittwiderspruchsklage*, Section 771 of the Code of Civil Procedure).

#### 4.3 What is the validity of such measures?

Claims that are no longer open to appeal and claims under enforceable settlements or deeds are subject to a 30-year limitation period under Section 197 of the Civil Code (*Bürgerliches Gesetzbuch* - BGB). The creditor can commence enforcement proceedings at any time during that period. In particular, the following applies to the limitation period: under Section 212(1)(2) of the Civil Code, the limitation period again begins to run if the creditor applies for court or administrative enforcement within that period or if such an act is carried out. The time which has elapsed up to that point is thus disregarded for the purposes of calculating the limitation period.

### 5 Is there a possibility of appeal against the decision granting such a measure?

There is no procedure under German law for the general granting of enforcement for domestic instruments. It follows that there is also no specific remedy in this connection.

Foreign instruments which are to be enforced in Germany under bilateral or multilateral international treaties generally require a declaration of enforceability from a German court. Jurisdiction lies with the regional court in whose district the debtor is resident (Section 3 of the Act for the implementation of international treaties and for the implementation of European Union agreements on recognition and enforcement in civil and commercial matters (*Gesetz zur Ausführung zwischenstaatlicher Verträge und zur Durchführung von Abkommen der Europäischen Union auf dem Gebiet der Anerkennung und Vollstreckung in Zivil- und Handelssachen*)). If the debtor is not resident in Germany, the court in whose district enforcement is to be carried out has jurisdiction. The court takes a decision without hearing the debtor (Section 6(1) of the Act for the implementation of international treaties and for the implementation of European Union agreements on recognition and enforcement in civil and commercial matters). Under Section 11 of the Act for the implementation of international treaties and for the implementation of European Union agreements on recognition and enforcement in civil and commercial matters, an appeal may be lodged against the regional court's decision on the application for an enforcement order. The appeal is lodged by submitting a notice of appeal or by making a statement to be entered in the minutes. The appellate court is the Higher Regional Court.

However, European orders for payment under Regulation (EC) No 1896/2006, European Enforcement Orders certified in another EU Member State under Regulation (EC) No 805/2004 and instruments issued in another EU Member State in proceedings under Regulation (EC) No 861/2007 or Regulation (EU) No 1215/2012 do not require a declaration of enforceability by a German court (Section 794 of the Code of Civil Procedure).

In enforcement proceedings, debtors may bring an appeal against measures and decisions which adversely affect them. They may lodge an objection (*Erinnerung*) against the manner of the enforcement (Section 766 of the Code of Civil Procedure). They may lodge an immediate complaint (*sofortige Beschwerde*) against a decision taken in proceedings where there has been no hearing (Sections 793, 567 of the Code of Civil Procedure). This complaint must be lodged within a period of 2 weeks at the court whose decision is opposed or at the appellate court.

However, in the case of foreign instruments subject to a declaration of enforceability, this applies only once the enforcement order has been made.

The application for such a remedy has no impact on the continuation of the enforcement proceedings initiated; there is no suspensory effect.

The remedies (objection and immediate complaint) are also available to the other parties to the proceedings (for example, creditors).

## 6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?

The attachment of all of the debtor's assets (*Kahlpfändung*) is not permitted. Various safeguards are in place that are intended to ensure that debtors and their dependent relatives have the necessary means of subsistence, see 4.1 above.

There is also a prohibition on attaching more than is necessary to satisfy the creditor and to cover the costs of enforcement (prohibition on excessive attachment (*Verbot der Überpfändung*, Section 803 of the Code of Civil Procedure)).

### Annex 1 (Annex 2 to Section 34(3) of the Court and Notary Costs Act)

Commercial value up to €...	Fee Table B €...	Commercial value up to €...	Fee Table B €...	Commercial value up to €...	Fee Table B €...
500	15.00	200 000	435.00	1 550 000	2 615.00
1 000	19.00	230 000	485.00	1 600 000	2 695.00
1 500	23.00	260 000	535.00	1 650 000	2 775.00
2 000	27.00	290 000	585.00	1 700 000	2 855.00
3 000	33.00	320 000	635.00	1 750 000	2 935.00
4 000	39.00	350 000	685.00	1 800 000	3 015.00
5 000	45.00	380 000	735.00	1 850 000	3 095.00
6 000	51.00	410 000	785.00	1 900 000	3 175.00
7 000	57.00	440 000	835.00	1 950 000	3 255.00
8 000	63.00	470 000	885.00	2 000 000	3 335.00
9 000	69.00	500 000	935.00	2 050 000	3 415.00
10 000	75.00	550 000	1 015.00	2 100 000	3 495.00
13 000	83.00	600 000	1 095.00	2 150 000	3 575.00
16 000	91.00	650 000	1 175.00	2 200 000	3 655.00
19 000	99.00	700 000	1 255.00	2 250 000	3 735.00
22 000	107.00	750 000	1 335.00	2 300 000	3 815.00
25 000	115.00	800 000	1 415.00	2 350 000	3 895.00
30 000	125.00	850 000	1 495.00	2 400 000	3 975.00
35 000	135.00	900 000	1 575.00	2 450 000	4 055.00
40 000	145.00	950 000	1 655.00	2 500 000	4 135.00
45 000	155.00	1 000 000	1 735.00	2 550 000	4 215.00
50 000	165.00	1 050 000	1 815.00	2 600 000	4 295.00
65 000	192.00	1 100 000	1 895.00	2 650 000	4 375.00
80 000	219.00	1 150 000	1 975.00	2 700 000	4 455.00
95 000	246.00	1 200 000	2 055.00	2 750 000	4 535.00
110 000	273.00	1 250 000	2 135.00	2 800 000	4 615.00
125 000	300.00	1 300 000	2 215.00	2 850 000	4 695.00
140 000	327.00	1 350 000	2 295.00	2 900 000	4 775.00
155 000	354.00	1 400 000	2 375.00	2 950 000	4 855.00
170 000	381.00	1 450 000	2 455.00	3 000 000	4 935.00
185 000	408.00	1 500 000	2 535.00		

### Annex 2 (Annex 2 to Section 34(1), third sentence of the Court Fees Act)

Sum in dispute up to €...	Fee €...	Sum in dispute up to €...	Fee €...
500	40.00	50 000	638.00
1 000	61.00	65 000	778.00
1 500	82.00	80 000	918.00
2 000	103.00	95 000	1 058.00
3 000	125.50	110 000	1 198.00
4 000	148.00	125 000	1 338.00
5 000	170.50	140 000	1 478.00
6 000	193.00	155 000	1 618.00
7 000	215.50	170 000	1 758.00
8 000	238.00	185 000	1 898.00
9 000	260.50	200 000	2 038.00
10 000	283.00	230 000	2 248.00
13 000	313.50	260 000	2 458.00
16 000	344.00	290 000	2 668.00
19 000	374.50	320 000	2 878.00
22 000	405.00	350 000	3 088.00
25 000	435.50	380 000	3 298.00
30 000	476.00	410 000	3 508.00
35 000	516.50	440 000	3 718.00
40 000	557.00	470 000	3 928.00
45 000	597.50	500 000	4 138.00

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