

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

Enforcement is the execution of court judgments and other enforcement orders (debt instruments, public deeds [*atti pubblici*] and authenticated private deeds for specific services). At this stage (which is still subject to judicial proceedings) the forces of law and order may intervene if the debtors fail to meet their obligations of their own accord.

2 Which authority or authorities are competent for enforcement?

Responsibility for enforcement lies with the ordinary courts. An application for refusal of enforcement as referred to in Article 47(1) of Regulation (EU) No 1215/2012 (Brussels I Regulation [recast]) must also be submitted to an ordinary court.

In order to implement a judgment of an ordinary court where the debtor is a public authority, the creditor may bring a special action before a regional administrative court (a *giudizio di ottemperanza* [compliance procedure] – Articles 112 et seq of the Code of Administrative Procedure). This procedure is not mandatory; rather, it constitutes an alternative to direct enforcement by an ordinary court and, unlike that of an ordinary court, requires the judgment that is to be enforced to have become final. The following information refers to the ordinary enforcement procedure.

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

Possession of an enforcement order is a necessary and sufficient condition for initiating enforcement action. Typically, enforcement orders are provided for in law under Article 474 of the Code of Civil Procedure and are of two types: judicial orders and extra-judicial orders. Judicial orders include judgments, acts and decisions issued by a court during or at the end of court proceedings. Extra-judicial orders include debt instruments, public acts and authenticated private deeds created by the parties without the intervention of a court.

3.1 The procedure

Before initiating enforcement, the creditor must notify the debtor of the enforcement order and serve on him or her a writ (*precetto*), which is an injunction on the debtor to comply within a deadline of at least 10 days, and a warning that failure to do so will result in enforcement in accordance with Article 480 of the Code of Civil Procedure.

Enforcement may not start prior to that deadline, unless the President of the Court authorises immediate enforcement as a matter of urgency (Article 482 of the Code of Civil Procedure).

Article 480 of the Code of Civil Procedure governs the content of such writs, in which the creditor must provide an address within the municipality in which the court with jurisdiction over the enforcement is located. If such an address is not provided, appeals against the writ are brought in the court of the place where the order was served, and notifications are served on the creditor by the registry of that court.

Once these formalities have been completed, the enforcement process can begin. There are three types of enforcement proceedings in Italy.

1) Distraint, which involves the seizure and sale or allocation of the debtor's assets or outstanding claims in order to obtain the money to pay the creditor. Seizure is conducted by the bailiff on presentation of the served enforcement order and writ, and must take place within 90 days of the date when the writ was served, but not before the deadline set therein; if it does not, the writ will lapse (Article 481). Legal representation is necessary at this stage.

The seizure order prevents the debtor from protecting the seized assets and claims from the credit guarantee being sought. It becomes null and void if allocation or sale is not requested of the court competent for enforcement within 45 days of its emission.

2) Obligation to transfer certain assets (*esecuzione per consegna e rilascio*), in which the bailiff either gives the creditor the specified movable property to which he or she is entitled, or removes the debtor from the immovable property.

3) Performance of an affirmative or negative obligation (*esecuzione degli obblighi di fare e di non fare*) requires an appeal to be lodged at the court of enforcement, which will determine how the obligation is to be fulfilled and appoint a bailiff and the persons responsible for fulfilling the obligation (e.g. a construction company) at the debtor's expense.

Enforcement aims to ensure that, with the assistance of the police, unfulfilled obligations are discharged. It may be used both for financial debts and for obligations to deliver movable property or release immovable property, and for affirmative or negative obligations.

Furthermore, Article 614-bis of the Code of Civil Procedure allows the court which issues a non-money judgment to charge the creditor a fee for any infringement, non-compliance or delay in the enforcement of the order. This measure may also be applied by the court responsible for enforcement after the writ has been served.

3.2 The main conditions

A necessary and sufficient condition for initiating enforcement is the possession of an enforcement order containing a right that is 'certain, of a fixed amount and due' (*certo, liquido ed esigibile*) (Article 474). The degree of 'certainty' varies depending on the nature of the enforcement order: judgments do not have to be final for them to be enforced, as a judgment at first instance is provisionally enforceable until it is overturned by the court of appeal. 'A fixed amount' means that the amount has been (or can be) calculated as opposed to being discretionary. 'Due' means that the amount is past-due and is not subject to suspensive terms and conditions.

4 Object and nature of enforcement measures

In the course of the procedure the enforcement court issues various types of measure – normally orders (*ordinanze*). They range from measures necessary to lay down the rules for the proper conduct of the proceedings to measures that assign right of use, e.g. the decree (*decreto*) assigning the seized property to the person who bought it at auction or who was the highest bidder.

4.1 What types of assets can be subject to enforcement?

The following may be subject to expropriation: a) movable property, b) immovable property, c) the debtor's claims and movable property that the debtor keeps on the premises of third parties, d) shares in companies.

Obligations to surrender movable property and to release immovable property, and affirmative and negative obligations may also be enforced.

4.2 What are the effects of enforcement measures?

Enforcement for sums of money begins with a seizure order, which means that the seized assets are unavailable to the debtor against whom enforcement is being sought. Any acts governing the transfer of that money will therefore be null and void and cannot be used to prevent enforcement.

4.3 What is the validity of such measures?

They serve as operational enforcement measures for the purpose of satisfying the claims made, hence they cannot be used as evidence for investigations.

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

The legal system allows appeals by the debtor (and/or third parties subject to enforcement) against the acts and decisions relating to enforcement procedures. Appeals can produce two different types of ruling:

- appeal against enforcement (*opposizione all'esecuzione*) (Articles 615 and 616 of the Code of Civil Procedure), where the right to proceed with enforcement (i.e. the existence of the creditor's right to proceed with enforcement or the seizure of certain assets) is challenged;
- appeal against enforcement acts (*opposizione agli atti esecutivi*) (Articles 617 and 618 of the Code of Civil Procedure), where procedural errors (i.e. the legality of the documents involved in the enforcement procedure) are challenged.

An appeal brought against enforcement or enforcement acts that is lodged before enforcement begins is defined as an appeal against a writ (*opposizione a precetto*), because it is initiated in response to the document giving advance notice of enforcement: the appeal is brought against the writ by means of an application to the court with jurisdiction in the matter, or over the amount and the geographical area, in accordance with the general provisions of the Code. If enforcement has already begun or the seizure order has already been served, the appeal against enforcement or against enforcement acts is made by lodging a specific appeal with the enforcement court. The court may order enforcement to be suspended pending a decision on the appeal, although such suspension is not automatic.

As with all judgments at first instance, a judgment on appeal may be challenged.

Third parties who claim to have rights in rem over seized property may appeal to the enforcement court until the property is sold or assigned.

The relevant legal provisions are Articles 615, 616, 617, 618 and 619 of the Code of Civil Procedure.

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

In addition to items declared unseizable under special legislation and pursuant to Article 514 of the Code of Civil Procedure, the following cannot be seized:

- 1) sacred objects and items used in the practice of a religion;
 - 2) wedding rings, clothes, household linen, beds, dining tables and chairs, wardrobes, chests of drawers, refrigerators, stoves and ovens (gas or electric), washing machines, household and kitchen utensils and a piece of furniture to hold them, sufficient to meet the needs of the debtor and his or her household; however, this does not include furniture of significant value (except beds), including valuable antiques and items of confirmed artistic worth;
 - 3) the food and fuel necessary to sustain the debtor and the other persons mentioned in the previous paragraph for one month; however, this does not include furniture of significant value (except beds), including valuable antiques and items of confirmed artistic worth;
- Weapons and other items that the debtor must keep in order to provide a public service, medals, letters, records and family papers in general, as well as manuscripts (except where they form part of a collection), and pets and animals used for therapeutic or care purposes cannot be seized.

The law also declares unseizable, inter alia: State-owned property, non-disposable assets owned by the State or another public body, property covered by matrimonial property regimes, the property of ecclesiastical institutions, and religious buildings.

Pursuant to Article 671 of the Code of Civil Procedure, the following cannot be seized for debtor claims against third parties:

- (a) maintenance payments, except for purposes of maintenance, but only with the authorisation of the president of the court or a judge delegated by him or her, and only for a share to be determined by decree;
- (b) charitable or subsistence allowances to persons classed as poor and payments for maternity, sickness or funeral costs owed by insurance funds, social-security bodies and charitable institutions;
- (c) the sums owed by private persons by way of wages, salaries or other payments relating to an employment relationship (including those owed for redundancy) may be seized for maintenance payments to the extent authorised by the president of the court or by a judge delegated by him or her; for other types of income, up to a fifth of these sums may be seized; simultaneous seizures resulting from a combination of the grounds cited above may not account for more than half of those sums;
- (d) an annuity, if constituted free of charge, where there is provision that the amount needed in order to meet the creditor's essential needs should not be subject to seizure;
- (e) the sums payable by an insurer to the holder or beneficiary of an insurance policy, subject – with respect to the premiums paid – to the provisions on the revision of acts detrimental to creditors and to the collation, charging and reduction of gifts;
- (f) sums payable for pensions, allowances that serve as pensions or other retirement benefits cannot be seized for an amount corresponding to twice the maximum amount of the monthly social allowance, with a minimum of EUR 1 000; the share in excess of that amount may be seized within the limits laid down in point (c);
- (g) special welfare and assistance funds (including non-contributory ones) set up by a business owner on the basis of payments made by the business owner's or the employees' creditors.

Sums due by way of wages, salaries and other payments relating to employment or work (including those for redundancy and for pensions) and allowances that serve as pensions or other retirement benefits may also, when credited to a bank or post-office account opened in the debtor's name be subject to seizure for an amount in excess of three times the social allowance in cases where the account is credited prior to the seizure; where the account is credited on or after the date of seizure, such sums may be subject to seizure within the limits described above and those laid down in special legislation.

It is for the debtor to assert that the property or claim is exempt from seizure by appealing against the enforcement (Article 615 of the Code of Civil Procedure).

Enforcement action cannot succeed if the limitation period of the claim has fully expired. The limitation period is generally 10 years, but this may vary depending on the right in question (for example, the limitation period for compensation for non-contractual damage is 5 years). The law also lays down different limitation periods depending on the type of legal act proving the claim on which the enforcement is based. For example, the limitation period for a claim established in a court judgment is 10 years, even though for this type of claim the law generally lays down a shorter time period.

At the creditor's request the President of the Court within the jurisdiction of which the debtor has his or her residence, domicile, dwelling, or registered office may authorise performance by electronic means of the search for the assets to be seized (Article 492-bis of the Code of Civil Procedure). This means that the bailiff can search the debtor's assets and claims through the tax register and the public authorities' databases. Forms of payment in instalments to cover the value of a seizure (*conversione del pignoramento*) have also been introduced in cases where movable property has been seized.

Link to the Italian Code of Procedure: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1940-10-28;1443>

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Last update: 05/07/2024

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