

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

Enforcement (also termed 'execution' or 'compulsory enforcement' in Austria) is where the power of the State is used to assert enforceable claims and demands.

The Enforcement Code provides for various types of enforcement:

Enforcement to recover monetary claims

Enforcement to ensure that actions are taken or refrained from

Enforcement to recover monetary claims:

In enforcement to recover monetary claims, the creditor's enforcement request must select the assets to be seized (selection of the means of enforcement); here he can choose, inter alia, between enforcement on movable goods, enforcement on receivables, in particular enforcement on salary, and forced sale of real estate by auction.

Enforcement to ensure that actions are taken or refrained from:

In enforcements to ensure that actions are taken or refrained from, the creditor must request the means of enforcement foreseen in the Enforcement Code for enforcement of the claim.

Enforcement for the purposes of injunctive relief is subject to the imposition of a fine upon request of the enforcement court when enforcement is granted. In the event of any further infringement, the enforcement court should, upon request, impose a further fine or a custodial sentence for a total period of up to one year.

To enforce an action which can be carried out by a third party, the petitioning creditor is authorised, at the request of the court, to have the action carried out at the expense of the obligated party.

The claim for an action, which cannot be carried out by a third party and whose execution is exclusively dependent at the same time on the will of the obligated party, is enforced through the imposition—at the request of the court—of a fine or a custodial sentence for a total period of up to six months on the obligated party to execute action.

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

The authorisation of enforcement lies in principle with the appropriate district court (*Bezirksgericht*).

Competent court:

Enforcement on movable goods and enforcement on receivables:

For enforcements on receivables, the court at the general jurisdiction (residence) of the debtor is responsible; for enforcement on movable goods, it depends on where the movable goods are located at the start of enforcement.

Forced sale of real estate by auction:

For the enforcement on real estate (registered in the land registry), the land registry court (*Grundbuchsgesicht*) has jurisdiction.

Upon authorisation of enforcement, the proceedings should be ex officio. The enforcement process is conducted either by the judge (forced sale of real estate) or by the court official (enforcement on movable goods or enforcement on receivables). The court official is a specially trained member of the judicial staff.

The completion steps are set by the bailiffs, who are judicial staff in Austria working neither as self-employed individuals nor as representatives or vicarious agents of the petitioning creditor. They largely act alone until the success or failure of the enforcement proceedings is definite.

The creditor should be invited to submit applications only if the court or the bailiff is unable to continue the proceedings without these or if the proceedings incur costs. The creditor can, however, already provide additional information in the application: for example, in the case of enforcement on salary, he may waive the declaration by the employer as to whether the salary exists and how much it is; in the case of enforcement on movable goods, he may waive the compulsory opening of the dwelling with locksmith's costs, if the debtor is not found.

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

#### 3.1 The procedure

Enforcement to recover monetary claims:

The enforcement process is divided into an authorisation and an enforcement process.

The authorisation of enforcement requires an application by the creditor, in which he selects the means of execution desired for enforcement. If the creditor wishes to recover the claim from an entrepreneur, he usually chooses enforcement on movable goods and submission of a list of assets. Under this procedure, the bailiff tries to recover the payment of the claim, and if this does not succeed, he pledges the objects found. If these do not cover the claim to be recovered, he should ask the debtor to submit a list of assets in which the debtor must list his assets in full.

If the creditor wants to recover the claim from a consumer, he usually chooses enforcement on movable goods, enforcement on salary and submission of a list of assets. The creditor can choose enforcement on salary regardless of whether he knows where the debtor is employed or from whom he receives a salary. If he does not know this, he needs to know the date of birth of the debtor party; the court can then identify the payment office through the Main Association of Austrian Social Insurance Institutions. The first step is the seizure and transfer of the salary of the debtor. If this succeeds, the enforcement on movable goods takes place only upon the request of the creditor. Under this procedure, the bailiff tries to recover the payment of the claim; if this does not succeed, he seizes found objects. If these do not cover the claim to be recovered, he will require the debtor to submit a list of assets detailing his assets in full.

For the enforcement request, the creditor must use a form (E-Form 1) or make a formatted request. No representation by a lawyer is required in order to make an application for enforcement.

#### 3.2 The main conditions

In order to be able to execute enforcement, the petitioning creditor must have an enforceable decision on an enforcement order. Furthermore, a declaration of enforceability is required, which is issued by the enforcement order authority in the court proceedings. The creditor must also know the address of the debtor; he need only give the date of birth if he wants to apply for salary enforcement, but does not know the payment office.

#### **4 Object and nature of enforcement measures**

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

The debtor is liable for obligations through all its assets, insofar as these are not exempt from seizure. However, an enforcement procedure covers only those assets which the creditor wishes to seize and which he therefore specifies in the enforcement application. In enforcement on movable goods, it is sufficient to apply for the seizure of all objects in the possession of the debtor; in enforcement on receivables, the creditor has to specify the third-party debtor, while in enforcement on salary there is an exception. The creditor may state that he does not know the third-party debtor. The court can obtain this from the Main Association of Austrian Social Insurance Institutions if the creditor provides the date of birth of the debtor.

The creditor may also use the following enforcement instruments: receivables other than salary claims; or a share in a limited company of the debtor; or, if the debtor owns real estate, the petitioning creditor can claim forced creation of a lien, forced administration and forced sale by auction.

The assets of the debtor that are exempt from enforcement are listed in the subsection 'Restrictions on enforcement'.

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

The effects of enforcement measures depend on the enforcement instrument:

Enforcement on movable goods:

On the seizable objects, the bailiff establishes a lien; the former are auctioned.

Enforcement on receivables, particularly enforcement on salary:

A right of lien is established on the claim. The debtor is forbidden to dispose of his claim or, in particular, to collect it. The claim, insofar as it is seizable, is surrendered to the creditor.

Forced sale of real estate by auction:

A right of lien is established on the property. From the moment that the commencement of the auction proceedings is recorded in the land register, legal actions by the debtor concerning the property and its accessories, which do not belong to the ordinary administration, are ineffective against the creditors and the bidder. If the debtor sells the property, the authorised auction continues against the purchaser of the property.

Penal consequences are provided when an obligated party conceals, disposes of, sells or damages a part of its assets, or creates a pretext of or recognises a non-existent liability, or otherwise reduces or seems to reduce his assets and, as a result, impedes or diminishes the creditor's satisfaction through enforcement or a pending enforcement procedure. Likewise, an obligated party is punishable if he destroys, damages, defaces, renders unusable or withdraws, in whole or in part, from involvement with an object which was officially seized or taken possession of.

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

Enforcement should continue until such time as it has been successfully concluded or terminated, for instance, because the debtor has paid his debt to the creditor during the enforcement proceedings. Exceptionally, enforcement can be stopped earlier, such as when the creditor pursues enforcement on salary and the debtor changes jobs.

The Enforcement Code also allows for the enforcement process to be deferred. This can happen, in particular, if an action is brought against the invalidity or ineffectiveness of the enforcement title, if the termination of enforcement is requested, if an opposition suit is brought before the court (see under 4), if the enforcement of a decision issued by the court is contested, if a complaint is lodged against the act of enforcement, or if a waiver or amendment of the legally enforceable declaration of enforcement is sought.

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

The right of appeal is granted against the enforcement authorisation (referred to in Austria as the execution authorisation). The appeal should be addressed to the appeal court (higher regional court), but is lodged with the court of first instance (district court). The appeal should be lodged within 14 days.

Representation by a lawyer is generally required. The appeal process is a purely written procedure in which the interdiction of novation applies.

The fact that the debtor has, in the meantime, paid the claim to be recovered can be invoked with an opposition motion or an action to oppose enforcement (and not with an appeal against the authorisation of enforcement). The complaint must be lodged with the court which granted enforcement. An application for deferment of enforcement may be combined with the complaint. If the claim is legally enforced, enforcement should be terminated ex officio.

If enforcement was granted under the simplified authorisation procedure, this took place solely on the basis of the data provided by the petitioning party. In this case, the debtor can show—through an appeal—that an enforcement title covering the enforcement is missing, including confirmation of enforceability, or that the enforcement title does not correspond to the information contained in the application for enforcement. The appeal should be lodged with the court that approved enforcement in the first instance. When the appeal is lodged, the court examines whether an enforcement title covering the claim to be recovered is available. The time-limit for objections is fourteen days.

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

##### **Restrictions on enforcement**

In general, the applicable restriction is that enforcement cannot be carried out to a greater extent than is necessary for the realisation of the claim stated in the enforcement authorisation.

The law provides for certain enforcement restrictions in favour of specific persons or associations of persons:

The property of an establishment in the service of public transport which is under state control may only be subject to appropriate enforcement measures that disrupt public transport services with the consent of its supervisory authority;

prior to the execution of enforcement against a person serving in the Federal Army or the Federal Police, a notification of the enforcement authorisation should be given to the senior officer in command of that person;

in military buildings, the execution of an enforcement requires prior notice to the commander of the building and consultation of their military attaché;

enforcement proceedings against persons enjoying immunity in Austria on the basis of international law, as well as on enforcement objects and on the premises of these persons, may only be carried out by the Federal Ministry of Justice in agreement with the Federal Ministry for Europe, Integration and External Affairs;

enforcement against a municipality or a public or charitable institution may be authorised for the purpose of recovering financial claims only in respect of those assets which can be used to satisfy the creditor without affecting the public interests which it is to protect. If enforcement serves the execution of a contractual lien, this restriction does not apply.

Furthermore, for the protection of the debtor, certain assets are compulsorily exempted, for example:

Enforcement on movable goods:

Items corresponding to a modest lifestyle for personal or household use;

items necessary to train for a profession and for professional practice, as well as learning aids intended for school;

sufficient food and heating materials to cover the needs of the debtor and the family members living with him in the common household for four weeks;  
pets;  
family pictures, letters and other papers as well as the wedding ring of the debtor;  
aids to compensate for a disability and care support for the debtor or the family members living with him in the common household, as well as therapeutic substances and assistive devices which are required in the context of medical therapy;  
religious objects;  
cash up to the amount exempted from seizure until the next payment term of the salary following seizure, if the income of the debtor cannot be seized legally or is seizable only to a limited extent.

The bailiff may also refrain from the seizure of items of low value if it is obvious that the proceeds from the continuation or execution of enforcement will not exceed the costs of enforcement.

Enforcement on monetary claims (enforcement on salary):

Reimbursement of expenses insofar as they cover the extra costs incurred in the exercise of professional activity;  
statutory aid which is granted to cover the extra costs associated with a disability or long-term care, e.g. care allowance;  
statutory aid for the payment of rent or to cover other housing expenses;  
family allowance;  
certain statutory benefits granted on the occasion of the birth of a child, in particular the lump-sum childcare allowance;  
certain types of aid that are granted by the Public Employment Service;  
reimbursement of costs from statutory social security.

In particular, the following are unseizable:

Benefits in kind provided under social security laws;  
the claim to the distribution of matrimonial property and matrimonial savings, insofar as it has not been recognised or judged by an agreement or settlement.  
Earned income, pension benefits and statutory remuneration, which serve to compensate for temporary unemployment or a reduction in earning capacity, can be seized on a limited basis. The unseizable part ('minimum subsistence level') depends on the amount of income and the number of the debtor's maintenance obligations. The unseizable amounts, which are increased annually, are shown in the tables on the website of the Federal Ministry of Justice (<http://www.justiz.gv.at/web2013/html/default/2c9484852308c2a60123ec387738064b.de.html>). The law takes into account the special needs of the debtor or his creditor in individual cases, by allowing—on request—the unseizable allowance to be increased or reduced under certain circumstances. In the case of enforcement on account of a statutory maintenance claim, the amount of the unseizable allowance is reduced by 25% in general.  
In addition, the Tenancy Act (MRG), in the case of an enforcement title on eviction from an apartment subject to the MRG, provides for the protection of the debtor in that eviction must be postponed if the tenant faces homelessness as a result.

Deadlines for enforcement

Deadlines, which are to be set within the applications for enforcement, are not provided, save in exceptional cases (eviction order pursuant to Section 575 of the Austrian Code of Civil Procedure – ZPO). However, the debtor can counter the enforcement with the objection of a statute of limitations which has already entered into force. The statutory period of limitation for claims for which there is a legally binding title of enforcement ('claims awarded by enforceable judgement') ('*Judikatsschulden*'), is generally 30 years from the date of the enforcement title coming into force. If the enforcement title is based on the rights of legal entities governed by public or private law, this limitation period is extended to 40 years. However, an exception exists with respect to services which are only to be paid in the future, provided that the general limitation provisions stipulate a shorter period of limitation.

The statute of limitations is interrupted by any legally binding enforcement authorisation and begins anew with the last enforcement step or the termination of enforcement.

In certain cases, temporary barriers are provided for a further enforcement application or the continuation of the enforcement procedure:

In the event of no seizable objects being found in an enforcement on movable goods, an application by another petitioning creditor for the authorisation of an enforcement on movable goods or authorisation of the new execution is to be granted, but only six months after the last unsuccessful execution attempt, unless a previous attempt at execution is likely to yield results;

The petitioning creditor should be entitled to lodge a claim for enforcement on salary against an unknown third-party debtor only after the approval of an enforcement on movable goods if a year has elapsed since the authorisation; this blocking period does not apply if the petitioning creditor proves that only after his application for the authorisation of an enforcement on movable goods did he learn that the debtor is entitled to seizable salary claims. The debtor is only obliged to submit a more recent list of assets if the creditor proves that the debtor has acquired assets or if more than one year has passed since submission of the list of assets.

The Enforcement Code also recognises deadlines intended to ensure rapid settlement. Thus, the bailiff has to schedule the first enforcement action within four weeks and report back to the creditor on the implementation or the obstacles within four months at the latest. The lien for forced collection, which is granted to the creditor on the basis of an enforcement on movable goods of the debtor, expires after two years if the sales procedure has not been duly continued.

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