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Hoe kan ik de naleving van een uitspraak afdwingen?

How to enforce a court decision

Duitsland

1 What does enforcement mean in civil and commercial matters?

Compulsory enforcement (*Zwangsvollstreckung*) is the procedure used to enforce a private-law claim by public compulsion. 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 seqq.* 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 seqq.* 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 his 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 (§§ 13, 828 ZPO).

The local court in whose district the plot of land is located is competent as the court of enforcement for forced sale and receivership (§ 869 ZPO in conjunction with § 1 ZVG).

A mortgage to secure a claim is registered by the local court where the land register (*Grundbuch*) is kept (§ 867 ZPO, § 1 of the Land Register Code (*Grundbuchordnung*)).

The trial court of first instance is competent for enforcement to ensure that actions are taken, permitted or refrained from (§§ 887, 888, 890 ZPO).

In all other cases, enforcement is carried out by the bailiff (*Gerichtsvollzieher*) (§ 753 ZPO).

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 (§ 704 ZPO), provisional attachment (*Arrest*) and interim orders (*einstweilige Verfügungen*, (§§ 929, 936 ZPO) and the other enforceable documents listed in § 794 ZPO; this includes not only court orders but also settlements reached before an arbitration board (*Vergleiche vor Gütestellen*), settlements concluded 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 (§ 766 ZPO) or an immediate complaint (§ 793 ZPO).

No legal representation is in principle required (§ 78 ZPO).

The focus of the bailiff's activities is on enforcement against movable property. Here 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 his primary duties is to take from the debtor a sworn statement of assets. Other areas of competence include:

the recovery of movable and immovable property (eviction);

overcoming resistance on the part of the debtor to actions that he is required to permit;

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.

A bailiff is a court officer in a *Land*, and is under the administrative supervision of the presiding judge of the local court. However, he is functionally independent in the exercise of his enforcement duties: this administrative supervision may not be used to exert influence over him. The measures taken and cost statements drawn up by the bailiff can be challenged by bringing an objection (*Erinnerung*). The same applies if the bailiff refuses to execute an order. Complaints against the nature of the compulsory enforcement (objections) are heard 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 EUR 28.60 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 (which may be a local auction or an Internet auction accessible to the public via an auction platform), or for realisation in some other way, a further fee of EUR 57.20 is payable, in accordance

with point 300 of the schedule of fees. As a basic principle, a supplement for time is also charged, in accordance with 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 EUR 22.00 for each additional hour or fraction thereof. In addition, there are the bailiff's expenses, especially in the form of travel expenses (point 711 of the schedule of fees).

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 (e.g. 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') (§§ 829, 835 ZPO). 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 EUR 22.00 is payable for the proceedings on the application in accordance with point 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 EUR 36.30 for taking the statement of assets, in accordance with 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 a claim, a fee is payable, in accordance with point 14121 of the schedule of fees annexed to the Court and Notaries' Costs Act (*Gerichts- und Notarkostengesetz* – GNotKG), at the fee rate of 1.0 based on the value of the claim to be secured (§ 53(1) of the Act). A table of fees for values of up to EUR 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 EUR 110.00 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, § 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 (§ 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 (§ 54(2) of the Court Costs Act). A table of fees for values up to EUR 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 EUR 110.00 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 EUR 132.00 overall and a minimum of EUR 66.00 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 (§ 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 EUR 28.60, 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, in accordance with 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 EUR 22.00 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 EUR 150.00 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 EUR 22.00 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 EUR 22.00 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 his claim. This may be a final judgment that is no longer open to appeal or provisionally enforceable (§ 704 ZPO) or one of the documents listed in § 794 ZPO (e.g. a judicial settlements (*gerichtlicher Vergleich*), an enforcement order (*Vollstreckungsbescheid*), or a notarial deed). As a general rule, the document must contain a court certificate of enforceability (*Vollstreckungsklausel*) certifying the enforceability of the document (§ 724 ZPO). A court certificate of enforceability is required only in exceptional cases for enforcement orders, provisional attachment orders and interim orders (§ 796 ZPO; §§ 929(1), 936 ZPO). In addition, enforcement may only commence if the document has already been served to the debtor or is served at the same time (§ 750(1) ZPO).

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.

§ 811 ZPO 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. §§ 850 *et seqq.* ZPO provide for certain amounts that cannot be attached, as the debtor needs them to provide for his subsistence. Credit balances can be protected in an 'account exempted from attachment' (*Pfändungsschutzkonto*, § 850k ZPO). Certain amounts exempt from attachment are held in these accounts irrespective of the origin of the credit balance (§§ 899 *et seqq.* ZPO).

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 (§ 804(1) ZPO). 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, the third party may no longer pay the debtor; he can settle a claim that has been assigned to a creditor for deduction from the debtor's claim only to the creditor, and this releases him from his own debt. A third party who breaches this obligation faces 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 his property by means of a third-party objection (*Drittwiderspruchsklage*, § 771 ZPO).

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 § 197 of the Civil Code (BGB). The creditor can commence enforcement proceedings at any time during that 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. It follows that there is also no specific remedy in this connection.

The debtor can contest the measures sought against him as part of the enforcement proceedings. He can bring an objection (*Erinnerung*) against the manner of the enforcement. He can lodge an immediate complaint (*Beschwerde*) against a decision taken in proceedings where there has been no hearing (§§ 793, 567 ZPO). This complaint must be lodged within a period of 2 weeks at the court whose decision is opposed or at the appellate court.

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 (e.g. creditor or third-party debtor).

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 enable the debtor to live a dignified life, see question 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*, § 803 ZPO).

Annex 1

Commercial value up to EUR ...	Fee Table B EUR ...	Commercial value up to EUR ...	Fee Table B EUR ...	Commercial value up to EUR ...	Fee Table B EUR ...
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

Amount claimed up to EUR ...	Fee ... EUR ...	Amount claimed up to EUR ...	Fee ... EUR ...
500	38.00	50 000	601.00
1 000	58.00	65 000	733.00

1 500	78.00	80 000	865.00
2 000	98.00	95 000	997.00
3 000	119.00	110 000	1 129.00
4 000	140.00	125 000	1 261.00
5 000	161.00	140 000	1 393.00
6 000	182.00	155 000	1 525.00
7 000	203.00	170 000	1 657.00
8 000	224.00	185 000	1 789.00
9 000	245.00	200 000	1 921.00
10 000	266.00	230 000	2 119.00
13 000	295.00	260 000	2 317.00
16 000	324.00	290 000	2 515.00
19 000	353.00	320 000	2 713.00
22 000	382.00	350 000	2 911.00
25 000	411.00	380 000	3 109.00
30 000	449.00	410 000	3 307.00
35 000	487.00	440 000	3 505.00
40 000	525.00	470 000	3 703.00
45 000	563.00	500 000	3 901.00

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