

## **Annex I: Enforcement of titles in [BE, DE, FR, HR, IT, LT, LU]**

This section of the EFFORTS Practice Guide deals with the way judgments (and other enforceable instruments) are forcibly executed against the party against whom enforcement is sought [*hereinafter also the debtor*] for the benefit of the person who pursues the enforcement [*hereinafter also the creditor*] in the Member State addressed. In principle, foreign judgments must be enforced under the same conditions as a judgment given in the Member State addressed. Since it would not be possible to exhaustively cover the enforcement proceedings in civil and commercial matters as regulated by national procedural laws, the issues hereby addressed are limited to specific ones. These have been selected with the scope of presenting to foreign creditors and debtors the essential features of the enforcement proceedings in the Member State concerned, highlighting differences from one Member State to the other. Creditors and debtors involved in cross-border enforcement proceedings are left with the question of how to plan the enforcement and how to react to it. Without the presumption of substituting national expert practitioners in assisting their clients with these procedures, the EFFORTS Practice Guide Enforcement Annex aims at providing more clarity for the end-users and operators in the essential choices relating to cross-border claims enforcement. The rules and procedures hereby addressed are applicable insofar as they are compatible with the relevant EU regulation.

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### **1. Locating the debtor's attachable assets.**

*Planning the enforcement within the EU*

Which are the categories of assets that are not attachable, wholly or in part, under your national procedural law? Are there any specific categories of assets (e.g. assets that might be covered by immunity) which are subject to specific additional requirements or procedures prior to execution?

Can the creditor, either directly or through the assistance of the enforcement agents or other public authorities, find official information regarding the domicile and residence of natural persons within the State? If so, please provide some details on how to access such information (e.g., what is the timeline for such request).

Enforceable instruments shall be enforced by a judicial officer who shall take all available lawful actions to ensure effective enforcement. A judicial officer shall take inventory of the debtor's assets and shall attach specific assets to the extent necessary for the enforcement of the enforcement instrument. The creditor may submit an application to effect recovery out of specific assets where there are alternative options available, which the judicial officer shall take into account without prejudice to the order of recovery, the principle of proportionality, and other statutory restrictions.

Article 664 of the Code of Civil Procedure of the Republic of Lithuania sets out the following order of sequence for the recovery from the assets of a debtor who is a natural person:

1. Recovery shall be made firstly from any mortgaged or pledged property if recovery is being made in favour of the mortgage creditor or mortgagee.

2. Recovery shall be made secondly from the debtor's money, property rights, securities, salary, grants and other income or movable property.

3. Recovery shall be made thirdly from the debtor's immovable property except that referred to in paragraphs 4 and 5 below.

4. Recovery shall be made fourthly from any land designated for agriculture that belongs to the debtor if the debtor's principal business is farming.

5. Recovery shall be made fifthly from the residential housing, which belongs to the debtor and in which he/she lives.

Article 665 of the Code of Civil Procedure of the Republic of Lithuania sets out the following order of sequence for the recovery from the assets of a debtor who is a legal entity:

1. Recovery shall be made firstly from any mortgaged or pledged property if recovery is being made in favour of the mortgage creditor or mortgagee.

2. Recovery shall be made secondly from the debtor's money, property rights, securities, and production (goods) produced, as well as from any other movable or

immovable property not directly used and not adapted for direct use in production except administration premises.

3. Recovery shall be made thirdly from any other property except that referred to in paragraph 4 below.

4. Recovery shall be made fourthly from any real property objects necessary for production as well as from raw materials and materials, milling equipment, facilities, and other principal equipment directly intended for production

The Instruction on the Enforcement of Judgments details that recovery, based on enforcement instruments against natural persons, may not be effected from the following types of assets and items that belong to a debtor under ownership right or as his/her share in joint property and are necessary for the debtor or his/her dependants, unless the debtor so requests in writing:

- household furnishings and household goods, clothing needed by the debtor and his/her dependants (clothing and footwear for each member of the family; kitchen and table utensils that are used (except for items made of precious metals and items of artistic value); furniture (except furniture of artistic value) and bedding, cooking equipment, one refrigerator; if minor children or disabled persons live together with the debtor – the belongings of the children and disabled persons, one computer, one TV set, one means of communication; and things of low value);
- the foodstuffs necessary for the debtor's family to survive;
- if the debtor's principal business is agriculture – fodder for animals not subject to recovery, seed for regular sowing, one animal for milk and one animal for meat consumption;
- the fuel necessary to prepare food and heat the family housing throughout the heating season;
- personal tools of production and trade, as well as the tools and aids necessary for the debtor's own professional work.

The Instruction on the Enforcement of Judgments also states that a judicial officer shall carry out recovery from the funds in the debtor's account opened with a credit, payment and/or electronic money institution (hereinafter – a credit institution) by submitting a binding order to the Cash Restrictions Information System for the coercive write-off of funds. Before submitting such an order for the coercive write-off of funds, the judicial officer shall check electronically in the Information System of Social Assistance for Families whether the person gets any benefits which are not subject to recovery. If the judicial officer finds out that such benefits have been allocated and/or if he/she has other information that the funds, which are not subject

to recovery, are or will be transferred to the debtor's account with a credit institution, the judicial officer shall, in the compulsory order for the coercive write-off of funds, specify the amount of money which the person may dispose of in a calendar month, which shall be equal to the amount of the benefits and/or other funds which are subject to recovery.

If there is no information in the Information System of Social Assistance for Families about the benefits granted to the person and the judicial officer does not have other data that any funds not subject to recovery may be transferred to the person's account opened with a credit institution, before submitting an order for the compulsory write-off of funds to the Information System of Social Assistance for Families, the judicial officer may submit an order to the Register of Property Seizure Acts for the temporary attachment of funds not exceeding the amount of the amount to be recovered and the amount of the enforcement costs. The judicial officer's order for the temporary attachment of monetary funds shall be submitted electronically by using the software for the submission of data to the Register of Property Seizure Acts and shall be automatically transmitted to the Cash Restrictions Information System.

In case the debtor owns immovable property consisting of residential premises or buildings and the debtor does not allow a judicial officer to enter such premises or buildings, the judicial officer shall, before commencing recovery by property administration, apply to the court for permission to enter the debtor's residential premises or buildings to be administered.

The creditor may justify his/her need and apply to the Population Register of the Republic of Lithuania in order to find out the registered place of residence of a person. The judicial officer who enforces a procedural decision is also entitled to obtain such information. The judicial officer may obtain from the registers administered by the State information on the registered place of residence of a particular person, the immovable property registered in his/her name, and the attachments imposed on him/her; the judicial officer may also apply to credit institutions in order to find out how much assets and in which institution are held by the debtor.

## **2. Jurisdiction over the enforcement proceedings.**

*Locating the place where enforcement proceedings may be initiated*

In cases concerning cross-border enforcement, what are the rules that define the jurisdiction of the courts in LT? In which cases the courts in LT do not have jurisdiction

over the enforcement proceedings? I.e. rules of international jurisdiction over the enforcement proceedings

The enforcement actions which take place in the Republic of Lithuania shall be carried out in accordance with the laws of the Republic of Lithuania. Thus, the Lithuanian courts and the officials appointed by the Republic of Lithuania – judicial officers – have jurisdiction to carry out enforcement actions in the Republic of Lithuania. The territorial jurisdiction within the State is determined according to the activity territories of specific courts.

## **2-bis. Territorial competence over the enforcement proceedings.**

*Locating the place where enforcement proceedings may be initiated*

Which rules govern the territorial competence of the enforcement agents in LT?

Which rules govern the territorial competence of the courts of the enforcement proceedings in LT?

If the debtor is a natural person, a judicial officer shall enforce an enforcement instrument according to the place of residence of this person, the location of his/her property or the place of his/her employment. Non-pecuniary enforcement instruments relating to the application of interim measures may, at the request of the creditor, be enforced by a judicial officer according to the place of residence or any other location of the debtor or the creditor. If the debtor is a legal entity, a judicial officer shall enforce an enforcement instrument at the place of the domicile of the debtor or at the location of its property.

Enforcement instruments for the recovery of pecuniary amounts are distributed to judicial officers by the Information System of Judicial Officers (the criteria are detailed in the Instruction on the Enforcement of Judgments). An enforcement instrument shall be assigned to the territory of the activity where the place of enforcement of the enforcement instruments is located. The place of enforcement shall be determined on the basis of the data stated in the enforcement instrument and in the creditor's application to accept the enforcement instrument for enforcement. If the data provided in the enforcement instrument and in the creditor's application do not match, the place of enforcement shall be determined on the basis of the data stated in the creditor's application.

The procedural activities of judicial officers shall be controlled by a judge of the

district court or, where the court is composed of chambers, by a judge of the chamber of the court in the territory whereof the judicial officer's office is situated.

### **3. Preliminary steps and spontaneous compliance.**

*Taking preliminary steps for the enforcement and possibilities to avoid forced execution*

Are there preliminary steps to be taken before starting enforcement proceedings? Is the enforcement authority involved in this phase? How does the debtor receive notice of the upcoming enforcement?

Are there specific instruments for the parties to seek spontaneous or amicable debt recovery to avoid the attachment of her/his assets? What is the deadline, if any, for the debtor to spontaneously comply with her/his obligation and avoid forced execution of the claim?

The creditor is not obliged to apply directly to the debtor for a voluntary enforcement of the judgment before applying to a judicial officer for coercive enforcement.

If no obstacles for the acceptance of the enforcement instrument and commencement of the enforcement proceedings have been identified, the judicial officer shall draw up a warrant to accept the enforcement instrument and open an enforcement file. The warrant to accept the enforcement instrument for enforcement and the calculation of the enforcement costs, and, in cases provided for by law, also a warning letter to comply with the decision, shall be sent to the debtor. In case the debtor's whereabouts are unknown, the debtor is absconding or the service of the warning letter to enforce the judgment is impossible for other objective reasons, the warning letter to comply with the judgment shall be published on the website [www.antstoliai.lt](http://www.antstoliai.lt). The information that the warning letter has been sent or served shall be indicated by the judicial officer in the Information System of Judicial Officers.

A judicial officer shall start enforcement actions: in urgent enforcement cases, no later than on the next working day after the enforcement instrument has been accepted for enforcement; in other cases, no later than within three working days after the enforcement instrument has been accepted for enforcement.

After accepting the enforcement instrument for enforcement, the judicial officer shall issue a warrant to enforce the enforcement instrument and, in the cases provided for by law, also a warning letter to comply with the judgment. Such warrant of the judicial

officer shall explain to the debtor that the debt and the enforcement costs will be recovered coercively, and shall also inform about the service of subsequent procedural documents by means of electronic communications. This warrant shall be sent to the debtor by registered mail.

If there is a risk that the debtor can conceal the assets, after sending a warning letter to the debtor to comply with the judgment, the judicial officer shall attach the debtor's assets or funds and shall issue a reasoned warrant stating the circumstances which make it probable that the assets or funds may be concealed.

In case a judicial officer enforces an electronic enforcement instrument, the judicial officer shall indicate the information about the sending or serving of the warning letter to the debtor and the grounds for the return of the enforcement instrument in the warrant on the closure of the enforcement proceedings and the return of the electronic enforcement instrument when finishing the enforcement proceedings. The return of this warrant by means electronic communications to the creditor or to the authority that has issued the electronic enforcement instrument shall be deemed to be the return of the electronic enforcement instrument.

#### **4. General outline of the enforcement procedure: classification and description of different modes of enforcement.**

*How to proceed with the enforcement (general and brief outline)*

Which is the first act of the enforcement and does it differ from one mode of enforcement to the other? What is the deadline for the creditor to carry out the first measure of execution?

Which is the statute of limitations for the enforcement of a title in LT?

May the competent enforcing authority refuse to proceed with the execution if they consider that the creditor has not complied with the general enforcement requirements, such as e.g., the certainty, maturity and liquidity of certain claims; territorial competence relating to the enforcement authorities; further authorization or other formalities to proceed with the enforcement; etc.? What are the remedies available to the creditor in such scenario?

For monetary enforcement, may the creditor avail her/himself of several concurrent or cumulative enforcement procedures? How does coordination between different enforcement procedures for the same claim/enforcement instrument work? In particular, how does the debtor file an opposition for concurrent or subsequent

enforcement procedures whose total added value exceeds the total sum due according to the judgment?

Are there secondary or ancillary effects or features of the judgments or other enforcement titles to be mentioned (e.g. the right to register a mortgage on the debtor's immovable property or the increasing in the interest rate attached to monetary claims)? In the affirmative, which are the applicable procedures and modes of execution?

Enforcement instruments may be issued in respect of judgments within five years from the date on which the judgment becomes final. The time limit to submit enforcement orders for enforcement under judgments that must be enforced urgently shall be calculated from the first day after the judgment has been rendered. Where periodic payments shall be recovered under a judgment, the period of validity of the enforcement instruments shall be the period for which the payments have been awarded and the time limit shall begin to run from the date on which each payment is due. The limitation period for the submission of an enforcement instrument for enforcement shall be interrupted when such instrument is submitted for enforcement, unless otherwise provided for by law. The limitation period shall be also interrupted if the debtor complies with the judgment in part. After the limitation period has been interrupted, the limitation period shall start anew. The time elapsed before the interruption shall not be included in the new period. In case an enforceable instrument under which recovery has not been effected in full or in part is returned, the new time limit to submit the document for enforcement shall begin to run from the date on which the document is returned to the creditor. The creditor who has missed the time limit for submitting the enforcement instrument for reasons recognised by the court as important may have the time limit renewed by the court, unless otherwise provided for by law.

Upon receipt of an enforcement instrument, a judicial officer shall check, within three working days or immediately in case of urgent enforcement, whether there are no obvious obstacles for the acceptance of the enforcement instrument and for the commencement of enforcement actions. Where there are obstacles for the acceptance of the enforcement instrument for enforcement, the judicial officer shall reject it by his/her warrant and shall return it to the person who submitted it, stating the reasons of the return. In deciding whether there are no obvious obstacles for the acceptance of the enforcement instrument and for the commencement of enforcement actions, the following shall be verified:

- whether the person who submitted the enforcement instrument for enforcement was entitled to do so;
- whether the enforcement instrument is enforceable by the judicial officer;
- whether the content of the enforcement instrument meets the set



requirements (the name of the court that issued the enforcement order, the case where the enforcement order has been issued, the date of the judgment, the operative part of the judgment which is relevant for the recovery, the date the judgment became *res judicata* or an instruction that the judgment should be enforced urgently, the date when the enforcement order was issued, the full name and addresses of the creditor and the debtor, their personal identification numbers, the legal entity identifiers, and the particulars of the credit, payment and/or electronic money institutions, if any). An enforcement order for the recovery of periodic maintenance payments shall in addition state the date of birth of the children), whether the necessary attachments (copies of property attachment documents and other documents in on the case-file as necessary to enforce the judgment have been attached to the enforcement instrument (digital copies for electronic enforcement orders);

- whether the enforcement instrument has been submitted for enforcement within the limitation period for enforcement;
- where an heir submits an enforcement instrument for enforcement after the judgment creditor or debtor has died, whether there has been a succession of rights and obligations after the death of the creditor or the debtor;
- where an enforceable instrument is submitted for enforcement by a successor following the liquidation or reorganisation of the creditor or the debtor who is a legal entity, whether there has been a succession of rights and obligations of the legal entity;
- whether the State Tax Inspectorate, in cases of administrative offences, in so far as they concern recoveries of pecuniary nature, and other authorities and officials who issue decisions that shall be enforced under the civil procedure as set out by laws, have verified that the enforcement instrument submitted has not been enforced and is enforceable under the coercive procedure;
- whether there are no other obvious obstacles for the acceptance of the enforcement instrument for enforcement.

If no such obstacles are identified, the judicial officer shall accept the enforcement instrument by his/her warrant and shall start its enforcement.

A judicial officer shall start enforcement actions: in urgent enforcement cases, no later than on the next working day after the enforcement instrument has been accepted for enforcement; in other cases, no later than within three working days after the enforcement instrument has been accepted for enforcement.

After accepting the enforcement instrument for enforcement, the judicial officer shall issue a warrant to enforce the enforcement instrument and, in the cases provided for

by law, also a warning letter to comply with the judgment. Such warrant of the judicial officer shall explain to the debtor that the debt and the enforcement costs will be recovered coercively, and shall also inform about the service of subsequent procedural documents by means of electronic communications. This warrant shall be sent to the debtor by registered mail.

The same claim may not be enforced using two different enforcement instruments or procedures. However, the same debtor may be subject to two or more different procedural decisions, and they can be administered by different judicial officers.

Measures such as attachment of assets may be applied to enforce a decision, however, enforcement proceedings do not create other secondary effects or features as in the example given in the question.

## **5. Opposition to the enforcement and stay of the enforcement.**

*How to challenge the enforcement in a broad sense (for the debtor)*

In general, which remedies are available under national law to the party against whom enforcement is sought? Which are the national grounds <sup>(1)</sup> for opposition to enforcement or refusal of enforcement? How does the debtor file such claim(s)? *Please note that under Art. 41 Reg. (EU) No 1215/2012 such grounds are applicable as long as they are not incompatible with the grounds referred to in Art. 45 of the same Reg. Also, according to European jurisprudence (Court of Justice, 4 July 1985, case C-220/84, AS-Autoteile Service GmbH vs. Mahlè), grounds for opposition to enforcement do not include “a set-off between the right whose enforcement is being sought and a claim over which the courts of that state would have no jurisdiction if it were raised independently”. How are these requirements interpreted in your jurisdiction?*

Which remedies are available to contest irregularities in the enforcement procedure? Is it possible for the parties to cure irregular acts?

Can the enforcement be stayed under national grounds for stay <sup>(2)</sup> and which is the court before which the request for a stay is to be filed?

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<sup>1</sup> “Examples may include”, according to the Opinion of Advocate General Pikamäe in Case C-568/20, J v H Limited, §46, “challenges to the seizable nature of certain assets or sums of money, the quantum of the debt as a result of payments or set-off occurring after the judgment, irregularities that may affect the enforcement instruments, but also to the existence of the title itself due to the effects of a limitation period or to its enforceability”.

<sup>2</sup> Please note that, unlike national grounds *for refusal*, there is no compatibility clause for national grounds *for stay*. It could be noted that a such clause has been adopted in other European legislative instruments, e.g. in the Reg. (EU) 2019/1111, which states, under Art. 57,

In cases where recognition and enforcement of foreign judgments are sought, a debtor may object by presenting his/her arguments in such proceedings.

A debtor may also lodge a complaint against the procedural actions of the judicial officer to the district court or its chamber at the place of enforcement. The debtor has 20 days to submit such complaint from the performance of the actions at issue. Complaints shall be submitted through the judicial officer, who may accept the complaint and annul the consequences of the actions complained about. The court where such complaint is submitted has the right to apply interim measures, including a stay of enforcement actions. Such complaints are exempt from a stamp duty.

The debtor also has the right to access the enforcement case-file, to contest the ownership or valuation of the property, to make applications and challenges.

## **6. Costs of the enforcement proceedings, liability of the creditor and deposit of a security.**

*Considering potential downsides (for the creditor)*

Is there any liability of the creditor in cases of irregular execution, abuse of forced execution of claims or even for malicious or fraudulent enforcement proceedings?

Please describe the calculation of the costs of enforcement proceedings, their allocation and the rules governing such matter. Are there any court fees or other taxes applicable? Who bears the costs of the procedure in case of anticipatory termination of the enforcement proceedings?

Does the law of enforcement establish that the creditor must post a security in some cases? If so, under which conditions?

If a person who is a creditor causes damage to the debtor by abusing the rights he/she has in enforcement proceedings, the debtor may submit a claim for damages under the general rules of contentious litigation.

Enforcement costs include the following:

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that national grounds for suspension of enforcement, as well as national grounds for refusal of enforcement, "shall apply in so far as they are not incompatible with the application of Articles 41, 50 and 56".

- administrative fees of enforcement proceedings (hereinafter – administrative fees);
- costs incurred by third parties for the services rendered by such parties in particular enforcement proceedings (hereinafter – third party costs);
- remuneration to the judicial officer for the enforcement of enforceable documents set out by laws, statement of factual circumstances under a court order, transfer and service of documents under a court order (hereinafter – remuneration for the judicial officer).

The amounts of enforcement costs set out in the Instruction on the Enforcement of Judgments shall be inclusive of all mandatory taxes.

All the enforcement costs shall be indicated by the judicial officer in the calculation of enforcement costs. Where a judicial officer carries out the recovery of pecuniary amounts under several enforcement instruments, a single calculation of enforcement costs shall be prepared for all enforcement proceedings of a pecuniary nature in relation to the same debtor, except in the cases when the calculation of enforcement costs is sent to the debtor together with the warning to comply with the judgment.

The amounts of administrative fees and the remuneration of a judicial officer for the enforcement of enforcement instruments for the recovery of pecuniary amounts are set out in the Instruction on the Enforcement of Judgments.

The amount of the judicial officer's remuneration is calculated on the basis of the amounts to be recovered. If, after recovery of part of the debt, the enforcement instrument is submitted for enforcement to a judicial officer repeatedly, the amount of the judicial officer's remuneration is calculated in relation to the amount remaining to be recovered.

The judicial officer's remuneration as a percentage is calculated by multiplying the amount to be recovered by the percentage specified in the Instruction. If the amount of the judicial officer's remuneration so calculated is lower than the minimum remuneration set out in the Instruction, the minimum remuneration for the judicial officer shall be recovered.

All enforcement costs, apart from the exceptions set out in the Instruction, shall be recovered from the debtor in the amounts set out in the Instruction, irrespective of whether the creditor has been exempt from enforcement costs or whether they have been reduced or deferred.

The creditor or his/her authorised representative shall be obliged to make an upfront payment of the administrative fees for a judicial officer when submitting an enforcement instrument for enforcement, except for the exceptions set out in the Instruction. If a judicial officer refuses to accept an enforcement instrument, the enforcement costs paid by the creditor shall be returned to the creditor. Where the creditor does not pay the administrative fees when submitting an enforcement instrument for enforcement, the judicial officer shall refuse to accept the enforcement instrument, except in the cases specified.