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Towards more Effective  
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## Annex I: Enforcement of titles in Germany

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).

An extensive list of objects exempted from attachment may be found in § 811 Civil Procedure Code (*Zivilprozessordnung*, hereinafter: ZPO). Among other things, it includes objects necessary to manage everyday life (including clothes, furniture, TV, laptop, Wi-Fi), food, pets and certain animals as well as objects necessary to work in certain professions (especially pharmaceutical and medical equipment).

## **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 [BE, DE, FR, HR, IT, LT, LU]? In which cases the courts in [BE, DE, FR, HR, IT, LT, LU] do not have jurisdiction over the enforcement proceedings? I.e. rules of international jurisdiction over the enforcement proceedings

According to German law, the competent courts for enforcement proceedings are generally the local courts (*Amtsgerichte*) located at the place where the debtor has his general venue in Germany (§ 828 (2) ZPO). If the debtor does not have a venue in Germany, the local courts at the place where his assets are located is competent (§ 23 ZPO).

## **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 [BE, DE, FR, HR, IT, LT, LU]?

Which rules govern the territorial competence of the courts of the enforcement proceedings in [BE, DE, FR, HR, IT, LT, LU]?

The competence always lies with the enforcement agent at the competent local court. For the court's competence, see above.

### **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?

Generally, enforcement proceedings only commence in case the creditor has applied for such proceeding to start. In case of preliminary enforceability, the creditor is required to provide sufficient security. In order to be enforceable, every legal title needs a certificate of enforceability (*Vollstreckungsklausel*) issued by the competent court. Enforcement will only be possible after the debtor has received the legal title including the certificate of enforceability.

Usually, enforcement is soonest possible two weeks after the debtor has been served with the court ruling in order to provide him the opportunity to comply with his obligations voluntarily (§ 798 ZPO).

### **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 [BE, DE, FR, HR, IT, LT, LU]?

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?

The competent court will only issue one certificate of enforcement in order to avoid concurrent enforcement proceedings. There are no deadlines besides the general rules of limitation applicable for the underlying claim. The competent court will not issue a certificate of enforceability unless the creditor has complied with all requirements.

Generally, third-party rights already have to be addressed during the court proceeding and before the enforcement stage. However, there are certain mechanisms providing legal remedies for third parties affected by enforcement proceedings (see below). Besides from the possibility to raise such remedies, there are no special secondary or ancillary effects.

## **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

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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,

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?

German law provides for suspension of enforcement in several cases: § 775 ZPO describes the German national grounds for terminating and limiting the enforcement proceedings. These include cases where a third party has intervened and has asserted rights of its own, where security has been posted in order to avoid enforcement, or where the debtor has fulfilled its obligation.

Furthermore, the debtor may apply for a termination of the enforcement proceedings by arguing that substantive objections to the claim have arisen after the judgment was handed down (§§ 795, 767 ZPO). An example could be that the debtor, in the meantime, has fulfilled its obligation. Such substantive objections for reasons of chronology cannot have been considered by the court in the Member State of origin. Pre-existing substantive objections, however, cannot be brought forward by means of this remedy (§ 767 (2) ZPO). Local jurisdiction again lies with the courts of first instance at the place of enforcement or at the place of the debtor’s place of residence (§ 767 ZPO).

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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, 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”.

## **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?

Generally, security must only be provided in case of provisional enforceability (see above). The creditor can usually be held liable according to the general rules of German tort law or the rules of unjustified enrichment. A mistake of the enforcement authority during the enforcement proceedings may also give rise to a claim against the state (*Staatshaftungsrecht*).

The debtor has to bear all costs necessary for the enforcement proceeding (§ 788 ZPO). The total cost of the enforcement proceeding is a combination of the court fee and the fee of the enforcement authority.