



UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI,
GIURIDICI E STORICO-POLITICI



Towards more Effective
enFORcemenT of claimS in
civil and commercial
matters within the EU
EFFORTS

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Annex I: Enforcement of titles in Italy

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List of abbreviations

“It c.p.c.” – Italian Code of Civil Procedure

“It c.c.” – Italian Civil Code

“d.P.R.” – Regulatory Decree of the President of the Italian Republic

“d.l.” – Urgent or Extraordinary Law Decree (adopted by the Government)

“d.lgs.” – Delegate Legislative Decree (adopted by the Government)

Laws and other legislative or regulatory acts, such as d.P.R.s, are cited “[act] no. [number]/[year of issuance]”.



Introduction

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.

Enforcement of titles in Italy

1. Locating the debtor's attachable assets.

Planning the enforcement within the EU

Before proceeding with the enforcement, creditors should be aware that not all the debtor's assets are attachable. Under Italian law, Arts. 514, 515 and 516 It c.p.c. individuate the goods that are not attachable. Some assets are not attachable at all, such as chairs, fridge, tables for eating, and other home utensils deemed as "necessary" to the debtor or to other people of his family, living with him, pets; the same goes for goods used for religious purposes (Art. 514). Some assets are attachable only partially, such as objects necessary to the work of the debtor, which are attachable for 1/5 of their value and only if the value of the other assets of the debtor is not enough to cover the debt (Art. 515). Some assets are attachable only on certain moments, such as fruits not harvested from the soil (Art. 516).

Art. 545 It c.p.c. indicates which credits are not attachable, such as maintenance credits or pay wages, which are attachable up to 1/5 of the total, or pensions, which



are not attachable under a certain amount (in 2022, € 702.16) and for the rest are subject to the limits provided for salaries.

The enforcement of assets pertaining to public authorities and local administration is subject to some limits. The goods belonging to the “demanio pubblico” (such as beaches, ports and State properties such as certain public streets or motorways: see Art. 822 It c.c.) and other goods belonging to the State (such as military airplanes, cultural goods found in the underground, barracks: see Art. 826 It c.c.) are not attachable. Some specific limitations are provided in relation to some specific public authorities (see Art. 1-*bis* Law no. 720/1982) and local authorities (see Art. 159 d.lgs. no. 267/2000).

As for the residence of natural persons, it can be found in the public database “[Anagrafe Nazionale della Popolazione Residente](#)” or asking to the registry office of the municipality in which the debtor has the residence. The certificate of residence is issued immediately.

There is no official information about the domicile of natural persons.

2. Jurisdiction over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

There are no specific rules on the jurisdiction on enforcement proceedings. According to case law, jurisdiction of the Italian courts over enforcement proceedings depends on the presence of the assets or of the goods to be attached within the territory of Italian Republic¹.

If the asset to be attached is a credit and the third party debtor is resident in Italy, but the debtor is resident abroad, it is debated if there is enforcement jurisdiction. According to an opinion it would be relevant the fact that the credit arose in Italy or that it is to be fulfilled in Italy²; according to a second one, the jurisdiction depends on the residence of the third within Italy and jurisdiction is to be affirmed also if the debtor has residence abroad³; another solution denies the enforcement jurisdiction because the internal competence is of the court of the residence of the debtor

¹ Cass. 5.11.1981, n. 5827.

² Russo, *La nuova competenza in materia di espropriazione presso terzi*, in *Giur. it.*, 2015, 1776.

³ Saletti, *Competenza e giurisdizione nell'espropriazione di crediti*, in *www.judicium.it*, p. 18



(see *infra* §2(2-*bis*)) and such provision would be relevant also in determining the jurisdiction⁴.

2-bis. Territorial competence over the enforcement proceedings.

Locating the place where enforcement proceedings may be initiated

The competence of enforcement agents depends on the territorial competence of the court for which they operate. Thus, when bringing a request to the competent enforcing agent for fulfilling certain acts of the enforcement procedure, creditors should refer to the desk/office for the enforcing agents at the court competent for the enforcement proceedings (localized as follows).

The territorial competence of the courts of the enforcement proceedings is regulated by Arts. 26 and 26-*bis* It c.p.c. For enforcement on movable and immovable goods, it is competent the court of the place in which they are located. For execution on the debtor's right to payment towards a third party (monetary claims of the debtor, thereby including her/his bank accounts, qualified as a "credit" towards the bank, or payments due by the debtor's employer), it is competent the court of the place of residence, domicile or registered office of the debtor. For enforcement on vehicles, motor vehicles and trailers it is competent the court of the residence, domicile or office of the debtor. For enforcement of obligations to perform or not to perform it is competent the court of the place where the obligation has to be fulfilled.

3. Preliminary steps and spontaneous compliance.

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

Prior to the first act of the enforcement, the creditor has to serve on the debtor the enforceable title and the writ of execution ("atto di precetto"), which informs the debtor that enforcement proceedings will start if s/he does not comply with the obligation within ten (10) days (or a longer term indicated by the creditor). At this stage, the enforcement authority is not involved.

⁴ Giussani-Cassiani, *Il pignoramento di crediti di debitori esteri e l'art. 26-bis c.p.c.*, in *Riv. dir. proc.*, 2018, p. 1193.



The debtor can avoid the attachment of his/her assets by paying the amount due before the first act of the enforcement.

Even after the creditor has asked the bailiff to proceed with the attachment of the debtor's goods, the debtor can avoid the attachment by paying the debt plus legal costs delivering the sum to the bailiff, who will in turn deliver the sum to the creditor (see Art. 494 It c.p.c.).

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)

The first act of enforcement is:

- i) the attachment of goods or credits, in relation to expropriation;
 - i.a) in case of movable goods, the bailiff searches the goods at the premises of the debtor and chooses the goods to be attached and describes them in a record, indicating in it also the order to the goods; if the debtor is not present a copy of the order is given to a relative present in the place or to the janitor or, in absence of them too, it is posted on the door of the place where the goods have been attached;
 - i.b) in case of immovable goods, the bailiff serves the writ of attachment on the debtor, ordering not to dispose of a specified immovable good and then a copy of such writ is registered in the Revenue Authority ("Ufficio di pubblicità immobiliare"); the good is attached at the moment the writ of attachment is served on the debtor;
 - i.c) in case of credits, the bailiff serves the writ of attachment on the debtor and on the third debtor, ordering not to dispose of the credit; the attachment has effect at the moment the writ of attachment is served;
- ii) the access by the bailiff to the place where the goods are in order to find and to deliver them to the petitioner, for the enforcement of delivery of movable goods;
- iii) the service of the notice with which the bailiff informs the debtor of the day in which he will proceed going to the place of the execution in order to transfer the possession of the immovable good to the petitioner, for enforcement by release of immovable goods;
- iv) the deposit of a motion in order to have the enforcement court determine the way to enforce the judgement, for enforcement of obligations to perform or not to perform.

The enforcement proceedings needs to be started within ninety (90) days from the service of the writ of execution ("atto di precetto"). This means that the first act of enforcement above indicated has to be put in place within this deadline. In the negative, the writ of execution becomes ineffective (the creditor should serve a new



writ of execution on the debtor if s/he wants to proceed with the enforcement). It is to be noted that, in case an opposition against the writ of execution is brought (see *infra* § 5), this ninety (90) days term is suspended until the opposition is decided.

The statute of limitations for the enforcement of a title depends on the limitation period provided for the right object of the enforcement. However, in case of judgments that order performance the statute of limitations for the enforcement is of ten years from the moment the judgement is final, even if the limitation period for the underlying credit is shorter.

The enforcement authority can refuse to proceed with the enforcement in case of lack of jurisdiction, competence or of the existence of an enforceable title. If the enforcement is refused by the bailiff, the creditor can request the court to order to him/her proceed, by filing a petition under the general rule contained in Art. 486 It c.p.c. If the judge of the enforcement in turn refuses to proceed with the enforcement, the creditor can challenge such refusal filing a formal opposition (Art. 617 It c.p.c.), that will be decided by another judge belonging to the same tribunal.

For the enforcement of pecuniary claims, the creditor can avail her/himself of several cumulative enforcement procedures. The debtor can file a motion before the enforcement judge in order to have them limited in case the total added value exceeds the sum due according to the enforcement title. If such request is granted, the court limits the attachment of the debtor's goods to the one chosen by the creditor or, lacking such indication, by the court itself. Pending more than one enforcement proceedings, there is no provision that regulates before which enforcement judge the motion has to be filed; only in case one of the multiple pending enforcement procedures concerns the enforcement on real estate goods, the competence to hear the motion is of the judge of such procedure (see Art. 483 It c.p.c.).

There are no specific ancillary effects of all enforcement titles generally considered. The possibility to register a mortgage is provided for judgements that order performance. In order to register a mortgage an authentic copy of the judgment has to be produced to the Registry for immovable goods of the Revenue Authority.

As to the interest rate related to monetary claims, the parties should note that the lodging of a motion relating to a pecuniary claim based on a contract entails the increase of the interest rate in the event that such claim is successful, effective from the date of the act instituting the proceedings. It is debated if this provision applies only to claims for repayments or for contractual damages as well.

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



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

For the opposition to enforcement proceedings, the debtor has two remedies: *i*) the opposition to the enforcement (“opposizione all’esecuzione”) (Art. 615 It c.p.c.) and *ii*) the formal opposition (“opposizione agli atti esecutivi”) (Art. 617 It c.p.c.).

The first remedy allows the debtor to contest the attachability of the goods or the right of the creditor to proceed with the enforcement (Art. 615 It c.p.c.). The opposition can be founded on several grounds, such as, for example, the fact that the creditor is not the person indicated in the title or the lacking of a valid enforceable title.

The extent of the possibility to contest the right to proceed on the ground that the substantial right does not exist is different depending on whether the enforceable title is judicial or non-judicial. In case of judicial enforceable titles, the right to levy execution can be challenged only for facts regarding the existence of substantial right occurred after the issuing of the title by the court (for example, the payment by the debtor occurred after issuance of the judicial title). In case of non-judicial enforceable titles, the grounds for opposition can regard the existence of the substantial right, even if the facts upon which the debtor relies occurred before the issuance of the title.

The second remedy is aimed at challenging the irregularities of the enforcement proceedings (Art. 617 It c.p.c.).

The way of filing the two oppositions depends on the moment the claim is filed. After the service of the “atto di precetto” and before the enforcement proceedings is started, the opposition is served on the creditor and the procedure will be regulated by the ordinary proceedings (Art. 163 ff. It c.p.c.). The competent court for opposition to the enforcement is determined in consideration of the value or the matter of the claim and it can therefore be the *Giudice di pace* or the *Tribunale*. On the contrary, the competence for formal opposition (Art. 617 It c.p.c.) is always of the *Tribunale*. After the first act of the enforcement, the opposition is filed before the enforcement judge, who will fix a hearing. At the hearing the judge will decide the possible request to suspend the enforcement proceedings and it will indicate the court before which the opposition proceedings has to be continued. In case of opposition to the enforcement, the competent court depends on the value or on the matter of the opposition; in case of formal opposition, the competence is always of *Tribunale*, but the opposition will proceed before another judge of the same office. The parties of the enforcement procedure have to resume the opposition before the court indicated as competent by the enforcement judge and within a term indicated by the same judge. In case the opposition is not resumed by any party within such term, it is considered terminated.



The lodging of an opposition gives the debtor the right to ask the judge of the enforcement to stay the enforcement or to limit the enforceability of the title. Such possibility changes depending on the moment in which the opposition is lodged. If the opposition is lodged after the first act of the enforcement proceedings, the judge has only the power to stay the enforcement proceedings. However, if the opposition is lodged before the first act of the enforcement, by way of an opposition to the writ of execution under Art. 615 co. 1 It c.p.c., the debtor could ask the judge to exercise her/his power to limit the enforceability of the title (and, as a consequence, if the enforcement proceedings are otherwise brought before another court, such proceedings would have to be stayed). In order to have the stay granted, the debtor has to prove that the opposition is well-grounded or that she/he will suffer serious damages. The decision on the stay can be challenged before the same court, sitting in bench.

In case of a judicial title, the stay of the enforcement proceedings (or of the enforcing authority of the title) can be ordered also if the judgment is challenged. If it is appealed, the competent appellate court will grant the stay in case the motion to stay is based on serious and founded grounds. If the judgment is challenged before the Court of Cassation, the same judge which issued the judgement can order the stay in case of serious and irreparable damage that the debtor will suffer if the judgment would be enforced. In these cases, no recourse is given against the decision on the stay.

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

Considering potential downsides (for the creditor)

The creditor who starts an enforcement proceedings without the normal prudence is responsible for damages in case it is found that the right for which the enforcement proceedings has been started does not exist (see Art. 96, co. 2 It c.p.c.).

In case of expropriation of goods, the costs incurred to proceed with the enforcement are placed on the debtor but the creditor can recover such costs only on the proceeds of the forced sale of the attached goods, being the costs not recoverable in other ways (see Art. 95 It c.p.c.).

In relation to the enforcement for the delivery of movable goods or release of immovable property and of obligations to perform or not perform, the enforcement court may order the debtor to pay the costs only upon the request of the creditor.



In case of anticipatory termination of the enforcement proceedings, costs are borne by the creditor, who anticipated such costs.

The legal fees are determined by Ministerial Decree no. 55/12 and vary depending on the value of the claim to be enforced. The average legal fees vary from € 212.00 (for claims up to € 1,100.00) to € 3,020.00 (for claims between € 260,001.00 and € 520,000.00). For claims of a higher value, the legal fees are determined in a percentage of 30% higher than the previous tier of value and so on.

Other costs of the enforcement proceedings are the fixed court fee (“contributo unificato”) to be paid at the beginning of the proceedings (of the maximum amount of € 278.00, depending on the type on enforcement sought); the fees due to the expert who can be appointed to determine the value of the goods attached, the amount of which depends on the value of the goods and the complexity of the assessment; the fees due to the bailiff.

The creditor is required to post a security in some cases: i) when the enforcement of the judgement is subject to a security by order of the judge (see Art. 478 It c.p.c.), such as when it is granted the provisional enforceability of a summary order (“decreto ingiuntivo”) or ii) when the creditor is authorized by the president of the court to start the enforcement proceedings before the term of ten (10) days after the service of the “atto di precetto” and the president of the court places a security (see Art. 482 It c.p.c.). In such cases it is up to a wide judicial discretion to provide the security.