



UNIVERSITÀ DEGLI STUDI DI MILANO

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GIURIDICI E STORICO-POLITICI



Towards more Effective
enFORceMENT of claimS in
civil and commercial matters
within the EU EFFORTS
Project JUST-JCOO-AG-
2019-881802

<https://efforts.unimi.it>

With financial support from
the Civil Justice Programme
of the European Union

In partnership with:



Max Planck Institute
LUXEMBOURG
for Procedural Law



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Template for the EFFORTS Practice Guide for cross-border enforcement of judgments, court settlements and authentic instruments under the Reg. (EU) No 1215/2012

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I. Outgoing

When [BE, DE, FR, HR, IT, LT, LU] is the Member State of origin

A. Outgoing judgments

When a party wishes to invoke a judgment or seeks its enforcement in another Member State, s/he shall produce certain documents, depending on each specific case, that shall be obtained in the Member State of origin, according to the applicable procedures and rules: (1) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; (2) the certificate issued pursuant to Art. 53, either in the standard version or with mandatory information (see Art. 42(1)(b) and Art. 42(2)(b)-(c) BI bis Reg.); (3) a translation or a transliteration of the contents of the certificate or a translation of the judgment.

1. How and when to obtain a copy of the judgment which satisfies the conditions necessary to establish its authenticity. See Art. 37(1)(a) and Art. 42(1)(a)-(1)(b) BI bis Reg. Which kinds of copy satisfy the conditions necessary to establish the authenticity of a judgment? Which is the competent authority/desk to deliver it? How can the parties obtain such a copy (are there any procedural steps or conditions to be mentioned in particular)? Are there any applicable fees or other taxes and how should the applicant settle such payments?

Decisions made by German courts have to be submitted in an execution copy pursuant to Art. 317 (2)-(5) German Civil Code (*Zivilprozessordnung*, hereinafter: ZPO). The application for such a copy has to be filed with the law clerk at the court which has issued the judgement in the first place (*Urkundsbeamter der Geschäftsstelle*). An execution paper cannot be issued electronically.

2. How and when to ask for the certificate issued pursuant to Article 53. See Art. 37(1)(b) and Art. 42(1)(b)-(2)(b) BI bis Reg. The certificate attached in the Annex I, concerning a judgment in civil and commercial matters, contains the indication of the court of origin (name, address, and other relevant information), of the parties (identification of the claimant and of the defendant) and information regarding the judgment (date and reference number, if a default judgment, service of the judgment on the defendant, terms of the judgment and interests, information on the kinds of obligations contained in the judgment (monetary or otherwise), judgment ordering a provisional/protective measure, information on the costs and applicable interests).

The certificates in Annexes I and II pursuant to Art. 53 and 60 Brussels I bis Regulation respectively shall be issued by a court or a notary (§ 1110 ZPO). While a hearing of the debtor is generally not required, the certificate will have to be served to the debtor *ex officio* (§ 1111 (1) ZPO). The debtor can then proceed against the issuance of the certificate by means of the domestic remedy against the issuance of a certificate of enforceability (*Vollstreckungsklausel*) under national law (§ 1111 (2) in conjunction with §§ 732 and 768 ZPO). The creditor's remedies are accordingly those under national law (§ 1111 (2) in conjunction with §§ 567, 731 ZPO and in the event of a notary § 54 Notarization Law (*Beurkundungsgesetz*, hereinafter: BeurkG).

2 bis. Specific information for the enforcement. For the purposes of enforcement in a Member State of a judgment given in another Member State, the certificate shall certify that the judgment is enforceable and contain an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest. Furthermore, when the judgment orders a provisional, including protective, measure the certificate shall contain a description of the measure and certify that the court has jurisdiction as to the substance of the matter and that the judgment is enforceable in the Member State of origin.

Arts. 2(a) and 42(2)(c): provisional measure ordered without the defendant being summoned to appear. When a provisional, including protective, measure was ordered without the defendant being summoned to appear, the creditor shall provide the competent authority of the Member State addressed also with proof of service of the judgment.

Ex-parte interim measures are only issued under German law in exceptional circumstances providing for extraordinary urgency (§ 937 (2) ZPO). The defendant will be immediately informed, including his options to challenge the interim measure.

2 ter. Enforceability of the judgment. A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required

Art. 44(2): suspension of the enforceability. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

Art. 51(1): ordinary appeal against an enforceable judgment. The court of the Member State addressed to which an application for refusal of enforcement is submitted may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired.

Generally, only a final judgement which is not appealable will be enforceable. However, German law also provides for provisional enforceability which requires the provision of appropriate security by the claimant. Additionally, German law requires a certificate of enforceability (*Vollstreckungsklausel*) in order to start enforcement proceedings. In case of an outgoing judgement under the Brussels I bis Regulation, the certificate of enforceability is replaced by the certificates in Annexes I and II pursuant to Art. 53 and 60 Brussels I bis Regulation.

Enforcement may be terminated based on the grounds provided for in § 775 ZPO. This includes a successful appeal against the judgement (only relevant in case of provisional enforceability) or insolvency.

As described above, the debtor can proceed against the issuance of the certificate by means of the domestic remedy against the issuance of a certificate of enforceability (*Vollstreckungsklausel*) under national law (§ 1111 (2) in conjunction with §§ 732 and 768 ZPO). The creditor's remedies are accordingly those under national law (§ 1111 (2) in conjunction with §§ 567, 731 ZPO and in the event of a notary § 54 BeurkG).

2 quater. Art. 55: judgment ordering payment of a penalty. A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin.

German law permits an order to pay a penalty only at the enforcement stage and only to the state in case the defendant is obliged either to do or not do a certain act (§ 888 ZPO). It does not, however, know a penalty comparable to the French concept of *astreinte* (a penalty, which has to be paid to the other party). As Art. 55 Brussels I bis Regulation is tailored to fit only the *astreinte*, most German legal scholars argue that it is inapplicable for the penalty as it is known to German enforcement law.

3. How and when to obtain a translation or a transliteration of the contents of the certificate or a translation of the judgment. See Art. 37(2) and 42(3)-(4) BI bis Reg.

Translation or transliteration of the contents of the certificate. The court or authority before which the judgment is invoked or the competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Art. 57, a translation or a transliteration of the contents of the certificate ⁽¹⁾.

Translation of the judgment. The court or authority before which the judgment is invoked may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation. In addition, the competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation.

Translations will not be provided by the court. Judgements have to be translated by translators certified by the EU.

¹ Please note that the translation or the transliteration of the certificate issued pursuant to Art. 53 shall be into the official language of the Member State addressed under Art. 57(1) as well as any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept under Art. 57(2) BI bis Reg.

B. Outgoing authentic instruments and court settlements

Authentic instruments

When a party seeks the enforcement of an authentic instrument in another Member State, s/he shall produce (1) an enforceable authentic instrument that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. How and when to obtain an authentic instrument which satisfies the conditions necessary to establish its authenticity.

1 *bis*. **Enforceability of the authentic instrument.** An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 58).

Art. 44(2): suspension of the enforceability. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the authentic instrument is suspended in the Member State of origin.

The most relevant enforceable authentic instrument under German law is the publicly authenticated declaration of the German notary (§§ 1 et seq. BeurkG, §§ 1, 20 BNotO). Further instruments include a settlement concluded between lawyers and a settlement which has been reached by the conciliation bodies for the settlement of competition disputes. The parties may agree at any time to suspend enforceability.

2. How and when to ask for the certificate issued pursuant to Article 60 for authentic instruments.

The certificate pursuant to Art. 60 Brussels I bis Regulation shall be issued by a court or a notary (§ 1110 ZPO). While a hearing of the debtor is generally not required, the certificate will have to be served to the debtor *ex officio* (§ 1111 (1) ZPO). The debtor can then proceed against the issuance of the certificate by means of the domestic remedy against the issuance of a certificate of enforceability (*Vollstreckungsklausel*)

under national law (§ 1111 (2) in conjunction with §§ 732 and 768 ZPO). The creditor's remedies are accordingly those under national law (§ 1111 (2) in conjunction with §§ 567, 731 ZPO and in the event of a notary § 54 BeurkG.

Court settlements

When a party seeks the enforcement of a court settlement in another Member State, s/he shall produce (1) an enforceable court settlement that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. How and when to obtain a court settlement which satisfies the conditions necessary to establish its authenticity.

1 *bis*. **Enforceability of the court settlement.** A court settlement which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 59).

Art. 44(2): suspension of the enforceability. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the court settlement is suspended in the Member State of origin.

From a procedural point of view, a court settlement requires certain formalities, such as an appropriate protocol drawn up by the court, the reading of such protocol to the parties, its approval by the parties and the judge's signature (§§ 160 (3), 162, 163 ZPO). Alternatively, the parties may submit a written settlement agreement to the court or the court itself may provide the parties with a written proposal for a settlement, which the parties may subsequently accept (§ 278 (6) ZPO). Further, a settlement agreement is only possible if all material requirements necessary to conclude a valid contract under German law are met.

A court settlement is immediately enforceable (§ 794 (1) ZPO). It may be challenged based on the reasons provided for in general contract law.

2. How and when to ask for the certificate issued pursuant to Article 60 for court settlements.

The same rules as for the certificate in respect of an authentic instrument apply. Therefore, see above.

II. Incoming

When [BE, DE, FR, HR, IT, LT, LU] is the Member State addressed

When a party wishes to invoke a judgment in the Member State addressed or seeks its enforcement, s/he shall invoke it before the courts of the Member State addressed or follow the procedure for the enforcement of judgments of the Member State addressed. The procedure for the enforcement of claims in Germany is dealt with in the Annex “Enforcement procedure”. In addition to national rules, the Regulation provides that enforcement must be preceded by (1) service of the judgment and of the certificate. Furthermore, the creditor may avail her/himself of: (2) the right to apply for a decision that there are no grounds for refusal of recognition as referred to in Art. 45; (3) the power to proceed to any protective measures which exist under the law of Germany; (4) the request for adaptation of a measure or an order which is not known in the law of Germany. On the other hand, the person against whom enforcement is sought (or, in case of the refusal of recognition, any interested party) may fight the recognition or the enforcement of the judgment issued in another Member State, either filing a claim for opposition to enforcement under national rules (which also will be dealt with in the Annex “Enforcement procedure”) or (5) filing a claim for refusal of recognition or enforcement, also with the power to apply for the measures under Art. 44(1). The person against whom enforcement is sought may also (6) apply for the suspension of the enforcement proceedings pursuant to the grounds of suspension provided for by national law (to the extent that they are not incompatible with the Regulation, see Art. 41(2)) or in cases where the enforceability of the judgment has been suspended in the Member State of origin in accordance with Art. 44(2) BI bis Reg.

1. Service of the judgment and the certificate prior to the enforcement. Alongside the conditions and the procedural steps applicable under the law of the Member State addressed, the Regulation requires the creditor to take a number of steps before proceeding with the enforcement. First, the certificate issued pursuant to Art. 53 BI bis Reg. shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43(1)). The certificate should be served on that person within a reasonable time before the first enforcement measure (Whereas (32)).

Generally, service of the certificate and of the judgment before the enforcement takes place could be classified as cross-border service, i.e., “service from one Member State to another Member State”, according to the definition given by the Service Regulation ⁽²⁾, applicable from 1 July 2022. However, in case the person against whom recognition or enforcement is sought is domiciled in the Member

² Whereas (6) of the Reg. (EU) 2020/1784 of the European parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).

State of enforcement, such service could be out of the scope of application of the Service Regulation and therefore national rules on service could be applicable.

Once the claimant has provided the competent enforcement court with the relevant documents, they will be served to the defendant *ex officio* according to the general German rules on service. In case the defendant is not domiciled in Germany, the rules of the European Service Regulation apply.

1 bis. Language. Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, s/he may request a translation of the judgment ⁽³⁾ if the judgment is not written in or accompanied by a translation into the official language of the Member State in which s/he is domiciled or a language that s/he understands (Art. 43(2)).

Where such translation is requested, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought (Art. 43(2)).

The only official language is German.

1 ter. Art. 41(3): authorized representative in the Member State addressed.

Although German law generally provides for a mandatory representative in case the proceeding is conducted either by a regional court (*Landgericht*), State Supreme Court (*Oberlandesgericht*) or federal court (§ 78 ZPO), this is not the case for enforcement proceedings. Therefore, a representative is not mandatory for enforcement proceedings.

2. Protective measures. An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.

³ Creditors should be aware that translation of the certificate, unlike the translation of the judgment, is not strictly required at this stage of the enforcement but may be requested just afterwards by the enforcement authorities, according to Art. 42(3).

Generally, German law provides for attachment measures (*Arrest*) and interim injunctions (*einstweilige Verfügung*). Note however, that German law does not count the preservation of evidence or the provision of security as protective measures. These are separate procedures provided for only in limited circumstances.

3. Adaptation. If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests (Art. 54). How, and by whom, the adaptation is to be carried out should be determined by each Member State (Whereas (28)).

In the event that the foreign title requires enforcement measures unknown to the Member State in which enforcement is sought, adaptation is required (Art. 54 Brussels I bis Regulation). The relevant implementation provisions refer to various institutes of national law which provide the debtor with a remedy against the manner in which the enforcing institutions (court, enforcement officer, etc.) practically enforce a title. These remedies apply *mutatis mutandis* for adaptation (§ 1114 ZPO).

The German legislator assumes, as can be seen from the possibilities of challenge under § 1114 ZPO, that every enforcement body is authorised to make a corresponding adjustment. The decisive consideration seems to have been that the adjustment is comparable in its effects to the interpretation of an initially unclear title and that it is thus to be made by the body that is competent in each case anyway. Practically, a court decision will often be brought about in the result anyway.

4. Claim for refusal of recognition or enforcement. On the application of the party against whom enforcement is sought (or, in case of refusal of recognition, of any interested party), the recognition or the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist. The party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of Germany, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in

that law. The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present (Whereas (30)).

Procedure. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted (Art. 47(1)).

Competence for applications for refusal of recognition or enforcement (Art. 45 (4) and 47 (1) Brussels I bis Regulation respectively) lies with the regional court (*Landgericht*) (§ 1115 (1) ZPO) at the debtor's place of residence or, in the event that the debtor does not reside in Germany, at the place of enforcement (§ 1115 (2) ZPO). The court's decision can be reviewed by means of the remedy of complaint subject to a time limit (*sofortige Beschwerde*) (§ 1115 (5) in conjunction with § 567 (1) No. 1 ZPO).

4 bis. Authorised representative in the Member State addressed. The party seeking the refusal of a judgment given in another Member State shall not be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

No, there is no obligation to have a representative in Germany.

4 ter. Grounds for refusal. National grounds for refusal of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)) ⁽⁴⁾.

The grounds "for refusal or suspension of enforcement" addressed in Article 41 (2) are summarized in Germany in § 775 ZPO ("suspension or limitation of enforcement").

⁴ For guidance see, amongst others: "This means that domestic grounds relating to, for example, the disproportionality of enforcement means, prohibitions on seizing certain (primary) goods or abuse of rights, or indeed set-off, may generally be allowed. However, for example disputes on the service of documents or a violation of jurisdiction rules beyond those set out in the Regulation, or a re-examination of the facts or the applicable law are not allowed.", X. KRAMER, *Cross-border enforcement and the Brussels I-bis Regulation: towards a new balance between mutual trust and national control over fundamental rights*, in *Netherlands International Law Review*, 2013, p. 360.

These grounds are each based on appeals by the debtor or third parties raising formal (§§ 765a, 766, 793 ZPO) and substantive objections (§§ 767, 771 ZPO) to enforcement.

4 quater. Appeal. The decision on the application for refusal may be appealed against by either party. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged. The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

The court's decision can be reviewed by means of the remedy of complaint subject to a time limit (*sofortige Beschwerde*) (§ 1115 (5) in conjunction with § 567 (1) No. 1 ZPO). Competence for this appeal lies first with the originally competent of first instance and subsequently, in case the court refuses to change its position, with the court of second instance. The person wanting to file for a complaint is free to submit his application either to the court of first or of second instance. The relevant time limit is two weeks starting from the court's initial decision.

4 quinquies. Measures under Art. 44(1) BI bis Reg.

In Germany, the Regional Court (*Landgericht*) has exclusive jurisdiction (§ 1115 (1) ZPO). Applications to suspend or limit enforcement or to make enforcement conditional on the provision of security are decided by interim injunction (1115 (6) ZPO). The regional court in whose district the debtor is domiciled has jurisdiction, in case the debtor is not domiciled in Germany, the regional court in whose district enforcement is to take place.

5. Claim for a decision that there are no grounds for refusal of recognition. According to Art. 36(2), the application for a decision that there are no grounds for refusal of recognition as referred to in Art. 45 is presented in accordance with the procedure provided for in Subsection 2 of Section 3 of the Regulation.

The procedure is governed by § 1115 ZPO. For details, see above.

6. **Suspension of the enforcement.** National grounds of suspension of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)).

6 bis. **Enforceability suspended in the Member State of origin.**

Pursuant to Art. 44 (2) Brussels I bis Regulation, the Member State in which enforcement is sought shall suspend the enforcement proceedings in the event of a suspension of the title's enforceability in the Member State of origin. In line with the Regulation, § 1116 ZPO stipulates that a request for suspension has to be filed by the debtor. Pursuant to the latter provision, the domestic rules on termination or limitation of the enforcement proceedings and on the repeal of already effected enforcement measures apply *mutatis mutandis* (§ 1116 in conjunction with §§ 775 et seq. ZPO).

7. **Measures for the indirect enforcement (payment orders).** Art. 55 establishes the rules for recognition of a judgment given in a Member State which orders a payment by way of a penalty. However, it does not cover the case in which the incoming judgment has not a payment order attached to it. It may be possible that the competent authorities of the Member State of the enforcement have the power to issue measures of indirect enforcement.

There are no measures of indirect enforcement available.