



# Austria

e-manual appendix





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## **What is enforced**

In Austria various kinds of claims may be enforced, including monetary claims and non-monetary claims, such as claims for the purpose of obtaining acts and omissions. The enforcement of monetary claims represents the “lion’s share” of conducted enforcement cases in practice.

Monetary claims will be enforced by enforcement on immovable property, such as the constitution of an enforced mortgage in the Landbook, further the enforced administration of immovable property or at least, as the strongest intervention, the foreclosure.

Enforcement on movable property can include enforcement on movable items, enforcement of monetary claims such as bank deposits or salaries, pensions, public support such as unemployment benefits, sickness benefits, further the enforcement of the right of restitution of movable property and performance of movable assets and finally the enforcement of „other“ property rights, such as rental rights, company rights, patent rights. The various kinds of exploitation of the attached rights may recover the claim of the creditor.

Austrian enforcement law also covers other types of enforcement, besides the above described, namely the enforcement of non-monetary claims, such as enforcement for the purpose of obtaining acts and omissions, for example handing over movable assets; eviction or enforcement of obligations to act, refrain from acting or suffer action.

So far, besides all the above-described possibilities of enforcement of claims, which are already approved by an enforceable title, it is also possible to apply enforcement acts to secure monetary claims, if there is actually no enforcement title existing yet or the enforcement title is not enforceable due to remedies, that means the time limit of the performance order and/or for appeal has not yet expired. Freezing allows attachment but not final enforcement acts like selling of property, distribution of collected money and others.

Ajar to the possibilities to secure monetary claims, there are further proceedings to ensure claims in case of delayed reaction (injunctions). Injunctions provide legal protection on a provisional basis even before or during a legal dispute or even during an enforcement procedure. Injunctions fall outside the enforcement proceedings because they do not concern the enforcement of an enforcement order, but are included in the Austrian Enforcement Regulation.

The possibilities for enforcing claims – as described above – in Austria are regulated in the “Enforcement Code”.

## Who enforces

The enforcement procedure is conducted at district courts (§ 18 EO). Depending on the type of enforcement there are the following responsibilities:

The enforcement on immovable property is based on “lex rei sitae” (competent court where the Landbook is situated), while the enforcement of claims is dedicated to the general jurisdiction of the debtor (residence) of the third-party debtor, place of deposit granted for the claim. Any other enforcement action is dependent on the place where the enforced movable property is situated and/or the place where the first enforcement act (implementing measure) is set.

### Responsibilities at the District Court:

1. The Judge (B-VG “Bundesverfassungsgesetz” Federal Constitution) is responsible for: foreclosure, enforced administration of immovable property, enforcement for the purpose of obtaining acts and omissions. “Non-monetary claims”, detention, declaration of enforceability of foreign enforcement titles, freezing, injunctions.
2. The Jurisdiction officer: (§ 17 Rechtspflegergesetz)<sup>1</sup> is responsible for: enforcement on movable property, enforced mortgage, partly for freezing enforcement.
3. The Judicial officer is a Public officer serving at the court. In general his administrative duties include support to judges, prosecutors and jurisdiction officers, conducting of case-registers, book keeping, court fee collection, authentication of signatures, bailiffs, ushers etc.
4. The Bailiff<sup>2</sup> (§ 24 EO), carries out enforcement measures in accordance with the instructions of the judge or the jurisdiction officer. He is responsible for practical enforcement on movable assets, the attachment, seizure and sale of movable objects, eviction, participation in foreclosure, provides a statement disclosing all assets of the debtor, presenting the debtor to the judge in case the debtor refuses a statement.

## Enforcement procedure

To initiate an enforcement procedure, it is necessary for the creditor to file an application to the court. To ensure successful application, some formal conditions have to be obeyed and certain information has to be

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1. The jurisdiction officer is a specialized officer, with full jurisdiction in the following areas of responsibility: Enforcement, Insolvency cases, Civil cases – payment orders, Landbook, Commercial Book, Peacelaw cases.

2. In this summary for the Enforcement Atlas project, the bailiff is mentioned as judicial officer. In Austria the bailiff is one of the professions within the area of judicial officers.

included in the application such as: the names of the parties, the claim, the enforcement method, the enforcement title and at least some additional information depending on the chosen enforcement method.

Parties in the enforcement procedure (ZPO "Zivilprozessordnung" Code of Civil Procedure): any person who has Capacity to sue and to be sued, any person who is contractually capable, has capacity to act in person and has an enforceable enforcement title.

### **Duration of enforcement procedure**

The duration of an enforcement procedure depends on several factors, most importantly the Debtor's ability and willingness to pay, and the choice of enforcement means.

Most of the applications are delivered via electronic filing system. Applications will be processed immediately. In most cases, the creditor already receives the first decision of the court on the enforcement procedure the following day. Notification of enforcement authorisations to the debtor takes longer because they are mainly notified by postal letter.

### **Cost of enforcement procedure**

(GGG "Gerichtsgebührengesetz" Court Fee Law, VGebG "Vollzugsgebührengesetz" Enforcement Fee Law)

#### Flat fees (GGG):

The fees for the enforcement procedure are based on the claim. For example:

- for applications on claims from 0 to 150 EUR, the applicant has to pay EUR 18.
- for applications on claims of EUR 35.000, the applicant has to pay EUR 187. The court fee is based on the claim.

#### Appeal:

The fees of appeal are calculated as 150% on the fees for the application to the 1<sup>st</sup> instance court.

The fees for revision (appeal to the supreme court) are calculated as 200 % on the fees for the application to the 1<sup>st</sup> instance court.

#### Enforcement fees (VGebG):

Additional fees have to be calculated for the bailiff, some of which are performance related. For example:

- If the Bailiff receives a payment of EUR 150, the additional performance fee shall be 5%.

- for payments of EUR 50 000, one has to calculate a fee of 0.3% on the amount of payment.
- for any performance of the bailiff the debtor has to pay no less than EUR 6. Attachment acts cost EUR 6.
- for acceptance of a statement disclosing all assets the bailiff shall to receive EUR 2.

Travel expenses of the bailiff (VGebG): depends on the distance from the court to the place of enforcement. Urban public transport fee is EUR 1,10, whereas for a very scarcely populated rural area it is EUR 3,60.

### **Legal basis for enforcement law**

- Enforcement Code (Exekutionsordnung, EO, EGEO)
- Secondary Acts: RpfIG (Law on jurisdiction officer), Law on Enforcement Fees, Real Estate Assessment Regulation
- Civil Procedure Code (Zivilprozessordnung, ZPO)
- JN (Jurisdiktionsnorm), GOG (Court Organisation Law, Gerichtsorganisationsgesetz), Geo (By-Laws for Courts)
- Constitutional law
- Sources of European law, in particular EuGVVO, EuVTVO, EuMahnVO, EuBagatellVO, EuUVO, EuSchMaVO, EuKoPfVO

