



# Bulgaria

e-manual appendix





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## What is enforced

The enforcement of civil titles in the Republic of Bulgaria is an integral part of the civil procedure, which governs all disputes related to civil rights (including, but not limited to, property, contractual, commercial, tort, family, probate etc.). Judicial officers (enforcement agents) who perform such enforcement duties are affiliated with the judicial system, rather than being part of an administration. Enforcement agents, once licensed, have independent status, their primary duty being to follow and obey the law. In practical terms, the ruling of an enforcement agent on a matter of one's competence may be altered or revoked by a court of law upon objection or appeal. Enforcement agents do not have administrative subordination for the purpose of control of the legitimacy of their acts. The prerogatives of an enforcement agent are limited to the power of the title. An enforcement agent may conduct enforcement solely against the property rights of a person (in certain instances of a person's successors) designated by the title as a debtor, in quantitative measurements corresponding to the amount of the debt.

An enforceable title under Bulgarian legislation is either a writ of execution issued by a judicial authority, or any other (documentary) instrument explicitly listed by a statute as formal grounds to initiate enforcement proceedings. The two major categories of enforceable titles are:

1. Titles issued and/or sanctioned by the courts of law. Entails two basic categories of grounds for execution, based on which an order for enforcement may be granted:
  - i. Judicial decrees resulting from a civil litigation, processed through two-instance judicial proceedings, initiated by filing of a claim and accomplished by judicial decree, based on the evidence and arguments presented to the court in open hearing.
  - ii. Enforcement orders, based either on small claims (up to BGN 25.000), claims for repossession of an encumbered item or authoritative instruments explicitly stipulated by law. Such filings are sanctioned by court in closed summary proceedings. Such a "fast track" instrument would "evolve" into full capacity enforcement title absent contestation by defendant upon service.
2. Titles originating from public dues, enforceable under the CPC (Bulgarian Civil Procedure Code) by judicial officers based on delegation stipulated in the Tax Revenue and Social Security Procedure Act:
  - audit report
  - tax return for tax liabilities or mandatory social security contributions and acts for correction of tax returns

- decision issued by the customs authorities
- penal administrative decree which has entered into force
- decisions, judgments and orders of the courts, which have entered into force, as well as decisions of the European Commission, the Council of the European Union, the Court of Justice and the European Central Bank

The titles listed above do not require a writ for execution to be enforced. The title is the legal source of enforcement prerogatives for bailiffs. A bailiff may limit or restrain certain rights of debtor as much and as long as the title is active and must immediately stay or cease compulsory action in case the title is respectively suspended or rendered void by a competent authority. Bailiff's actions must also be commensurable in terms of both quantitative dimensions and intensity of enforcement with the amount of the debt as well as the extent of debtor's compliance. Exceeding these standards of professional moderation (established both statutorily and in terms of professional ethics and tradition) may invoke respective sanctions resulting from disciplinary action, lawsuit for damages or both.

### **Who enforces**

The current legislation of Bulgaria provides for a dual system of judicial enforcement: state enforcement agents (SEA) within the structure of the district courts, and private enforcement agents (PEA) who are independent legal professionals, licensed by the Minister of Justice and organized within the Bulgarian Chamber of Private enforcement agents. The state enforcement agent's jurisdiction is limited to the jurisdiction of the district courts, their office being part of the court's structure. PEAs jurisdiction encompasses the territorial jurisdiction of the respective provincial court. There are 28 provincial courts in Bulgaria. The quota for PEAs for certain district is 1 PEA per 30 000 people for the respective district.

The status and the structure of either type of enforcement agent is governed by the Judicial Authority Act for the SEA and by the Private Enforcement Agents Act for the PJO. The Civil Procedure Code of Bulgaria (CPC) regulates both types of enforcement agents in regards to the procedural rules concerning their enforcement prerogatives and the procedural instruments of their professional activity. In terms of right to information pertinent to cases, prerogatives to enforce, due cooperation and support by authorities as well as job related functional immunity, the status of SEA and PEA is the same.

## **Enforcement procedure**

Judicial enforcement is initiated by filing a petition accompanied by a writ of execution (or another enforceable document). In the case of a writ issued on the basis of an order for immediate enforcement – the order and the document(s) on the basis of which the order has been issued must accompany the petition.

The initial (filing) petition must state the manner of execution, i.e. the restrictive measures and the respective asset (movables, realty, receivables etc.) upon which to be imposed. Filing creditor may employ one or several enforcement approaches or in the case of a private judicial officer, he may authorize PEA to investigate debtor's assets and determine the enforcement method. State enforcement agents do not have the prerogative to undertake enforcement (both protective measures and direct execution) by their own discretion, without an explicit request by the creditor.

The means or "instruments" of enforcement are regulated by the Civil Procedure Code. The list of these measures of statutory compulsion is considered exhaustive, no enforcement approach outside the scope of the Code would be deemed legitimate.

Attachment on the bank account, wages, permanent pecuniary income and/or other receivables of the debtor: attachment of receivables is the most commonly used method of debt enforcement. The main types of attachments are of a bank account, of salary or pension and attachments of receivables owed to debtor by a third party. In larger legal perspective, by virtue of the attachment, the third-party owing money to the debtor (regardless whether a bank holding debtor's savings, an employer owing wages or debtor's debtor owing certain payment) bears the obligation to pay the respective amount to bailiff and is liable for disposing off any such monies after the attachment in any other way. Attachment on the debtor's receivables is imposed by sending an attachment notice to the third liable party. Debtor also must be formally notified. The attachment on the debtors' funds is imposed on the third liable party from the day of service of the notice for attachment.

Enforcement against movable assets to settle pecuniary claims: enforcement against movable assets is a sequence of several consecutive actions, namely: attachment, inventory, appraisal and public sale (auction). The CPC provides that the attachment of a movable assets must be effected through inventory by the judicial officer. From statutory standpoint, the attachment is accomplished setting the description of the item in the inventory record, regardless whether debtor is notified of the fact. Attachment may also be imposed by sending a notice of the attachment to the debtor on the condition that the item is definitively individualized.

Enforcement against shares: in practice, this is rarely an effective method, and not widely used. That is due to the limitations of the Bulgarian stock trading in general as well as to the lack of tradition in that particular commercial area. The attachment takes effect for the company from the moment the attachment notice is received. The attachment encumbers all property rights denominated by the securities under distraint. Following the attachment, depending on the type of shares, subject to attachment, the creditor have the options to:

- press claims against the corporation, and indirectly towards other shareholders with the ultimate purpose to satisfy the debt within the limits of debtor's share;
- request either an assignment of the claim on the security for collection or instead of a payment or alternatively – a public sale of said securities.

Enforcement on immovable property: enforcement on any real property in Bulgaria, is conducted by bailiffs beginning with levying a distraint, through the inventory, appraisal and the carrying out the public sale of the property, till the disbursement of the proceeds from the public sale. The prerogatives of the enforcement agent are limited within the power granted by the title as well as subject to compliance with statutory debtor's protection. Unlike other European jurisdictions, notaries are not involved in the sale or the finalization of property transfer, banks are not authorized to disburse money constituting the price of the auctioned property and judges (with the exception of adjudicating an appeal) are not involved in the imposition of the distraint.

Eviction: "eviction" or "entry into procession", as would be the direct Bulgarian translation in the context of the enforcement procedure under CPC, is a process of removing a party (either physical or legal person) altogether with any family members and/or employees, any personal belongings thereof, as well as any other items bearing either substantive or symbolic meaning of possession on behalf of the person against whom (or which) the title for eviction is issued.

### **Duration of enforcement procedure**

It is difficult to predict the length of the enforcement process as it very much depends on the specific case.

## Cost of enforcement procedure

Due to the fact that Bulgaria maintains a dual system of enforcement agents –state bailiffs who are salaried civil servants within the system of the district courts, and private enforcement agents who are self-employed professionals licensed by the Minister of Justice – there are two sources of regulation for their fees, both based on the same provisions of the Civil Procedural Code. Both tariffs are similar in concept (nature and structure of fees), with the amount of the fees being practically the same.

According to the tariff there are two basic types of fees: *fixed* (“*simple*”) fees, which are collected for a certain procedural action (opening a case, serving summons, etc.) and “*proportional*” fees, which by design are fees based on performance, i.e. based on estimated value of inventoried property, or amounts collected as result of enforcement. There are also “*additional*” fees meant to compensate enforcement operations performed during holidays and outside regular business hours.

The fee under item 26 of Tariff (same fee stipulated under item 53 of the Tariff for state fees) is a proportional fee based on the collected amount, and in practical terms is calculated and deducted from the collected amount upon disbursement. The fee is the major source of compensation for the costs and resources, incurred in the enforcement process and plays the role of “incentive” or “success” fee. It is a complex two-component fee defined in an ascending scale:

- a) (based on interest) up to BGN 100 – BGN 10;
- b) from 100 to 1000 BGN – 10 BGN + 10 %for the sum above 100 BGN;
- c) from 1000 to 10 000 BGN – 100 BGN + 8 %for the sum above 1000 BGN;
- d) from BGN 10,000 to BGN 50,000 – BGN 820 + 6 %for the amount exceeding BGN 10,000;
- e) from BGN 50,000 to BGN 100,000 – BGN 3220 + 4 %for the amount exceeding BGN 50,000;
- f) over BGN 100,000 – BGN 5220 + 2 % for the sum above BGN 100,000.

