



Poland

e-manual appendix





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What is enforced

If the debtor (*defendant*)¹ does not abide by the enforcing title voluntarily, the creditor (*claimant*)² is entitled to initiate the judicial enforcement proceedings in order to get the claim enforced. The fundamental legal act which regulates judicial enforcement proceedings in civil matters is the Code of Civil Proceedings of 17 November 1964 (CCP), in particular Part III of the Code entitled “Enforcement Proceedings”³.

As a rule, the compulsory judicial enforcement is carried out on the basis of an enforceable title. An enforceable title is a writ of execution with an enforceability clause, unless the law provides otherwise. The writ of execution is an official document acknowledging the existence and scope of an executable claim of the creditor such as:

- 1) a court’s or legal secretary’s final decision or subject to immediate enforcement, as well as the settlement made before the court;
- 2) other judgments, settlements and acts enforceable by means of judicial enforcement;
- 3) a legally specified notarial deed.

The enforceability clause is a court deed which includes the court statement that the writ entitles to enforcement and, if necessary, defines its scope.

Who enforces

Enforcement matters belong to the competence of the district courts and the enforcement agents acting thereby. Except for actions specifically reserved for the courts, enforcement actions are mainly conducted by enforcement agents. The fundamental legal act which especially regulates the enforcement agent’s legal status, his/her rights and obligations, activities, disciplinary procedures and sanctions, rules on supervision, the organization and competences of professional body is the Law of 22 March 2018 on enforcement agents (LEA). The enforcement agents’ costs are regulated in the Law of 28 February 2018 on enforcement agents’ costs (LEAC).

The enforcement agent is entrusted with the following enforcement tasks:

- 1) enforcement of court decisions in cases regarding monetary and non-monetary claims and securing claims, including European

¹ A party against whom enforcement is sought. In civil cases, the defendant is usually a debtor, but the two terms are not synonymous.

² A party seeking enforcement in civil cases, the claimant is usually a creditor, but the two terms are not synonymous as the claimant may equally well seek the enforcement of an “obligation to do” or “to refrain from doing”.

³ Art. 758-1088 CCP.

- account preservation orders;
- 2) enforcement of other enforceable titles and writs of execution, which are subject to enforcement without providing an enforceability clause;
 - 3) enforcement of orders to secure evidence and provisions ordering the issue of evidence in proceedings regarding intellectual property;
 - 4) enforcement of orders to secure inheritance or make an inventory;
 - 5) performing tasks specified in other laws.

Besides enforcement activities, the enforcement agents also perform non-enforcement actions such as:

- 1) service of documents at the order of the court or the plaintiff request obliged by the court;
- 2) recipient current address determination - at the request of the entity indicated above;
- 3) drawing up a statement of facts;
- 4) official supervision over voluntary public auctions at the request of the auction organizer.

An enforcement agent is a public functionary who acts by the district court. In one district may operate more than one enforcement agent. The enforcement agent is a self-employed professional of public trust.

The enforcement agents run their office and may not act in any cooperation form. The enforcement agents are represented at the national level by the National Council of Judicial Officers (Krajowa Rada Komornicza) and at the level of appellate courts by 11 regional chambers. The current list of the enforcement agents and search option is available on the National Council official website <https://www.komornik.pl/>. A creditor may choose the enforcement agent within appellate court district except for the cases of execution against real estate and the cases to which regulations on execution against real estate respectively apply. If chosen, the enforcement agent operates outside the limits of his/her court enforcement district. The possibility of accepting the cases by the chosen enforcement agents is strictly regulated.

The enforcement agent remains a public authority in the scope of performing enforcement and security proceedings activities. The enforcement agent is obliged to follow legal regulations and remains under constant court control and professional body supervision as well as the Ministry of Justice and the courts presidents' administrative supervision. His/her actions may be appealed (challenged) during the enforcement procedure to the court.

Enforcement procedure

There are three possible ways to initiate enforcement proceedings: at the request of the creditor, ex officio or on demand of the competent authority. The most common way of initiating enforcement proceedings is initiation at the request of the creditor. The motion to initiate enforcement proceedings is submitted to the competent court or the enforcement agent by the creditor referred to in the enforceable title in writing (it is the most common method) or orally to be entered in the records. The motion submitted in writing should satisfy general conditions required from statements of claim. The motion should be accompanied by the original enforceable title and signed by the creditor. When submitted, the motion is subject to examination against formal requirements by the enforcement authority. Any missing data is to be provided within a week, otherwise the motion will be returned. Formal requirements for such motion include indicating the creditor and the debtor as well as description of the benefits which are to be enforced in accordance with the enforceable title.

Indication of the debtor's assets by the creditor is not mandatory. If not indicated, the enforcement agent is obliged to determine the debtor's assets. If the creditor does not indicate the property allowing for satisfaction of the benefit, the enforcement agent ex officio: 1) determines the debtor's assets to the extent known to him from other proceedings conducted either on the basis of publicly available sources of information or registers to which he has electronic access; 2) calls on the debtor to submit a list of assets.

The initiation of enforcement of real estate and some other specific assets is possible only at the creditor request. The enforcement agent applies the method of enforcement least burdensome for the debtor. If the enforcement of one part of the debtor's property is sufficient to satisfy the creditor, the debtor may request the suspension of the enforcement of the remaining part. The requested benefit should be clearly specified (amount of principal and secondary debts). For interest, the starting date must be provided. Methods of enforcement are regulated in the CCP provisions. For the enforcement of pecuniary performances, proceedings may be conducted against: movables, remuneration from work, bank accounts, other claims, other property rights, real estate, simplified enforcement against real estate, sea vessels, by administration order, by sale of a business or a farm.

The enforcement of non-pecuniary performances includes: delivery of movables, delivery of a real estate or ship or emptying premises, conduct of actions which the other party cannot do, refraining from certain actions or not interfering with the creditor's action.

There are some objects exempted during enforcement in order to guarantee the debtor a decent living standard. At the same time, the creditors rights must also be taken into consideration. Any party or participant of the proceedings may file a motion to secure claims. Proceedings to secure claims, auxiliary to court examination proceedings, are aimed to provide protection to beneficiary before the case is closed with a judgment.

Duration of enforcement procedure

Time needed for a debt to be recovered by the enforcement agent depends on many factors. The enforcement agent must act in accordance with the legal regulations and carry out enforcement in accordance with an enforceable title. The enforcement agent is obliged to act without delay. When requested an advance payment the enforcement agent is obliged to take action not later than within 7 days from the payment and to transfer to the creditor the recovered sums within 4 days (14 when recovered from the bank account, immediately when enforcement of maintenance and disability pensions). The procedure will last until the creditor recovers his/her debt and the costs of the procedure are repaid. Some enforcement methods are more time consuming than others. Current statistics show increase in cases dealt with between 6 and 12 months or more.

Cost of enforcement procedure

As a rule, the costs of enforcement procedure are borne by the debtor. However, there are some exceptions, when the creditor is ordered to pay enforcement agents' costs, especially in case of unsuccessful enforcement. The creditor is also obliged to pay an advance so the enforcement agent starts an enforcement procedure, which may not exceed PLN 60 for correspondence. In the case of successful enforcement, it is returned to the creditor together with the enforced benefit⁴. Since 1 January 2019, a new law on enforcement agents' costs is in force, which sets out new amounts of enforcement agents' costs, the rules for their incurring and the procedure to be followed. The new regulation applies to enforcement proceedings commenced on 1 January 2019 (the date of initiation will be decisive). However, previous provisions⁵ continue to apply to the cases initiated and unfinished before this date⁶. The enforcement agent costs include enforcement agent's expenses and fees⁷. The catalog of expenses is

⁴ Except for the costs of traveling outside the judicial officer court area which remains creditor expense.

⁵ Law of 29 August 1997 on judicial officers and enforcement.

⁶ Art. 52 LEAC.

⁷ Art. 2 LEAC.

regulated and closed⁸. The enforcement agents' fees are relative (proportional) or fixed. The new regulation set the basic rate of the relative fee of 10 % of the value of the enforced cash. A relative fee range of at least PLN 150.00 and a maximum of PLN 50,000.00. A party may apply to the court for the exemption from the costs (which then are covered by the State) as well as for and the reduction of fees.

⁸ Art. 6 LEAC.

