



Spain

e-manual appendix





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What is enforced

The enforcement procedure aims for the creditor to coercively obtain payment of an amount of money; to enforce the handing over of an asset; to impose an action or oblige someone to refrain from acting.

In order to commence the procedure, the creditor needs an enforceable title. In Spain, directly enforceable titles in civil and commercial matters include:

- (i) court decisions which contain an order of payment/handing over assets/ act or refrain from acting
- (ii) arbitration awards
- (iii) mediated settlement agreements reached out of court
- (iv) resolutions approving court settlement and other agreements reached during the proceedings
- (v) conciliation minutes in labour law matters, and
- (vi) authentic instruments documenting mortgages and certain pledges.

Who enforces

The enforcement is typically carried out in court, during enforcement procedures, in which a judge and a judicial officer participate. Most of the enforcement activity is carried out by the judicial officers, with the exception of those powers specifically attributed to the court.

In addition, there is a special extrajudicial enforcement procedure for mortgaged immovable property which is carried out by a notary.

Enforcement procedure

The procedure is initiated at the request of the interested party with a document, addressed to the court. The court decides on the request. The debtor may object, based on a number of reasons.

Once the enforcement procedure is opened, the judicial officer orders enforcement measures, including the attachment of specific assets, and adopts measures to localize other debtor's assets. For this purpose, the judicial officers addresses a communication to all relevant third parties and also utilizes electronic means of investigation, i.e. the so-called *punto neutro judicial* (<http://www.poderjudicial.es/cgpj/es/Temas/e-Justicia/Servicios-informaticos/Punto-Neutro-Judicial/>) to obtain certain information, including on immovable property, taxation, social security, or bank accounts.

There are several processes, depending on the kind of claim. These include the sale of the assets in a way commonly agreed by the parties, through a specialized entity, or in public e-auction (<https://subastas.boe.es/>).

In the course of the enforcement procedure, the debtor has the right to appeal decisions made by the court or the judicial officer. The enforcement procedure is finalized with the complete satisfaction of the applicant. The closure is approved by decree of the judicial officer.

Duration of enforcement procedure

The time limit to commence enforcement procedures is 5 years. Once it is initiated, however, there is no time limit to finalize it.

According to the last available information, judicial civil enforcement procedures in Spain last 38 months in average. Of course, enforcement time depends on the enforceable title. For example, it is 47,6 months for arbitral awards or 38,3 months for foreclosure procedures (see <http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/ch.Estimacion-de-los-tiempos-medios-de-duracion-de-los-procedimientos-judiciales.formato1/?idOrg=20&anio=2019&territorio=Espa%C3%BlA&proc=Asuntos%20civile>).

Cost of enforcement procedure

Enforcement costs include (i) initiation fee (which is not always applicable) of a fixed amount of EUR 200; (ii) lawyer's fees and solicitor's tariffs; (iii) announcements or edicts that are mandatory during the proceedings; (iv) remuneration of independent experts (e.g. independent valuator); and (v) tariffs paid to registers or notaries.

There is publicly available information on the regulated tariffs of, for example, notaries, registers or solicitors. In the case of lawyer's fees, each of the bars have criteria for such fees for procedural costs purposes.

The creditor, in the application for the opening of enforcement procedures for monetary claims, determines the amount to be enforced, increased by maximum 30% (5% in foreclosure procedures of the debtor's habitual residence), to cover also the enforcement costs. The attachment of the debtor's assets is carried out to cover such increased amount.

During the procedure, each party pays the costs in the moment they arise (typically the creditor, but may be the debtor for procedural acts at their request), with the exception of the party who benefits from legal aid.

As a general rule, the debtor is in charge of all enforcement costs and therefore must reimburse them to the creditor in the moment of liquidation. If the debtor is a beneficiary of legal aid, they are liable to pay the enforcement costs incurred by the creditor if, in the three following years, their revenues increase over a certain threshold established by the law.

