

 EU
ENFORCEMENT
ATLAS

Austria

Narrative National Report

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PART I: LEGAL FRAMEWORK

I.1 Legislation affecting civil enforcement

The main legal basis for conducting enforcement proceedings in Austria is the “Exekutionsordnung” (Enforcement regulation – Enforcement Code, EO). The way in which civil judgements (enforcement titles) issued by an EU Member State can be enforced in Austria is regulated by the EuGVVO. The EuUVO contains provisions on the enforcement of maintenance claims. The Foreign Maintenance Act (AUG) contains provisions on the recovery and enforcement of international alimony claims.

In addition to the Enforcement Code, the Code of Civil Procedure (ZPO) regulates enforcement proceedings.

Based on the Enforcement Code, enforceable decisions of courts and administrative authorities can be enforced by the state.

The Insolvency Code regulates insolvency proceedings concerning legal and natural persons.

I.1.1 Liens

I.1.1.1 Mortgage¹

The enforced lien against the debtor is constituted in the Austrian Landbook, based on an enforceable title and an enforcement application. The constitution of the enforced mortgage (right in rem) must be approved by the competent jurisdiction officer (“Diplomrechtspfleger”)² and registered into the Landbook.

I.1.1.2 Lien on movable property³

Liens can be based on movable goods, income, other monetary claims, such as bank accounts or amounts of money from an inheritance, but also on rights. Other monetary claims may be, for example, balances on bank accounts or funds from an inheritance. Liens on movable property are regulated in the Enforcement Regulation (Enforcement Code).

I.1.1.3 Insolvency⁴

The Insolvency Code (“Insolvenzordnung” – IO) refers to legal (companies etc.) and natural persons (individuals). High Courts are competent for insolvency cases concerning legal persons like companies, trusts, self-employed entrepreneurs. The cases at the High Court are assigned to judges. District Courts are competent for insolvency cases concerning natural persons (individuals). At the District Courts, the

¹ § 87 EO. The mortgage is constituted by entry (constitution by “Intabulation”). “Registration” or “recording” are not known in the Austrian Landbook system. The law provides that rights like ownership or mortgages can be “intabulated” (“entered” in the Landbook) – this constitutes (establishes) a “right in rem”. In the following “registering” and “recording” reflect “constitution of rights in rem”.

² “Diplomrechtspfleger” is a public officer, performing the registration as the competent body in Austria.

³ § 253 EO.

⁴ “Insolvenzordnung” (Insolvency Law – Insolvency Code, IO).



insolvency cases are carried out by jurisdiction officers (“Diplomrechtspfleger”).

If a person runs a company which has filed for bankruptcy and is also, at the same time, insolvent as a natural person, the competent court is the High Court – due to the bankruptcy of the company.

1.1.1.4 Collection of fines, fees, costs in civil and criminal proceedings⁵

1.1.1.4.1 Civil proceedings

Court fees in civil proceedings are based on the “Gerichtsgbührengesetz – GGG” – Law on Court Fees. In all civil procedures including enforcement cases, peace law cases, commercial-book cases, Landbook cases etc., court fees are calculated by the competent court clerk. If the calculated and notified court fees are not paid within a certain timeframe, the clerk shall issue a payment order. After the payment order has been set into force the claim shall be forwarded to a Central Fee Collection Service (“Einbringungsstelle”)⁶. The Central Fee Collection Service, then, becomes the creditor and applies for enforcement at the District Courts. The preferred means of enforcement in these cases are attachment of movable properties, enforcement of claims and attachment of immovable properties (enforced mortgage).

1.1.1.4.2 Criminal proceedings

Similar to civil proceedings, court fees in criminal cases are required by the court clerk. This includes court fees and pecuniary penalties (fines). If fees and penalties (fines) are not paid in time, the claim shall be forwarded to the Central Fee Collection Service, in the same way as in civil proceedings.

Court fees in criminal cases are defined in the Law on Court Fees. Fines are mostly based on regulations found in the Criminal Law.

I.2 Enforceable titles

I.2.1 What is an enforcement title

An enforcement title is the legal basis for granting the right to enforce a claim and carrying out enforcement proceedings.

An enforcement title can usually be issued in the form of a final and enforceable decision by a court (civil and criminal judgements), an administrative authority or as a notarial deed. Enforceability exists if an agreed or statutory time limit for the performance of an action (mostly payment) has expired and the action hasn’t taken place.

The period for the performance of the action is included in the enforcement title.

I.2.2 Which documents are enforcement titles

- Judgments, settlements, payment orders;
- Peace law court decisions, such as alimony claims, family maintenance claims, and others;

⁵ “Gerichtliches Einbringungsgesetz” (Law on Court Fee Collection, GEG).

⁶ This service collects court fees for the Austrian judiciary in general.



- Judgements of criminal courts;
- Decisions of administrative authorities (related to taxes, public social insurance claims);
- Immediate enforceable notarial deeds (enforcement subpoena);
- Arbitral court decisions;
- Others.

Public enforcement (power of the state) can only be used on the basis of the titles included in the Enforcement Code. mandatory claims based on private bills, agreements etc. need to be included in a civil court decision before the claim or demand can be enforced.

Cheques, drafts or agreements resulting from mediation are not enforcement titles.

In any case, to be enforceable, the title must contain the performance (payment) order and the deadline for appeal must have expired. Enforceability must be confirmed on the title by the competent public authority.

1.2.3 Exceptions

1.2.3.1 “Freezing” order

In this type of enforcement, the time limit of the performance order and/or for appeal has not expired yet. Freezing allows attachment but not final enforcement acts, like selling of property, distribution of collected money and others.

1.2.3.2 Injunction (“Interim measures”)

In this type of proceedings, an enforceable title does not exist yet. It is sufficient if the claimant (endangered party) suggests a certain risk of losing their claim in case of delayed reaction.

1.3 Service of documents to parties and third parties⁷

In practice, the first notification in an enforcement case is the notification of the enforcement order to the parties. The enforcement court notifies the creditor, the debtor and, depending on the means of enforcement, for example, third-party debtors or other administrative authorities. The debtor and third-party debtors are notified by proof of notification.

Physical service of the notification is performed almost exclusively by the Austrian post office. Besides some very rare exceptions, the Austrian judiciary does not operate its own physical notification service. The electronic data for the postal items are handed over to the Federal Computing Centre. In the Federal Computing Centre, postal items are printed and circulated centrally for the entire federal territory. The letters shall then be handed over from the Federal Computing Centre to the Austrian post office.

⁷ “Zustellgesetz” (Notification Law); “Zivilprozessordnung” (Code of Civil Procedure); “Geschäftsordnung” (Regulation of Court Administration).



The delivery process is documented electronically: The receipt (proof of notification) of the letter (notification) shall be signed by the recipient on a hand-held terminal. The notification data are forwarded into the electronic case-file system at the court. The data sets are then available in the relevant case files. The jurisdiction officer or the judge can check and confirm the proper notification of the judicial decision and confirm the validity of *res judicata*.

Usually, the notification goes to the recipient's address (residence). Instead of the intended recipient, other people may accept the notification letter. Alternative recipients may be any adult residing at the same address or an employee/the employer of the official recipient that are willing to accept the notification.

This acknowledgement of receipt or delivery shall be sent digitally by the post office to the court (from the hand-held device to the application via computing centre) and is an official document. The date and time of notification that are returned as a part of the data sent to the court initiate the calculation of the appeal period.

As mentioned above, in exceptional cases, the service of a document may be performed by court services. This is usually done by a bailiff. The delivery process shall be documented on a delivery sheet or registered by protocol.

Possible cases for service by a court official could be:

- delivery by the Austrian postal service is not possible because the addressee resides outside the postal service area;
- the addressee avoids service – in particular cases, the judge or jurisdiction officer orders this special service;
- in other sensitive cases, if ordered by judge or jurisdiction officer.

Service of notifications is firstly performed by electronic delivery (two ways electronic filing system – ERV). This option is mandatory for lawyers, notaries, banks, insurance companies etc. These legal professionals use the electronic filing system to send (all kind of) applications to the court. The same digital route is used for the notification. The system provides a digital confirmation of all kinds of notifications.

In the case of private persons, the Austrian judiciary provides electronic services based on registration at a public notification service. The person's registration is done by means of a mobile phone signature or a citizen's card (as a kind of electronic identity). Electronic service allows both the receipt of data and the lodging of an application by private persons before public authorities.

1.3.1 Elements to be included in the (enforcement) documents to be served⁸

A description of the content of such documents may be found below:

- Headline (Republic of Austria, Court ...);
- Enforcement order (second headline);
- Names of the parties;

⁸ §§ 54, 63 EO.



- Type of enforcement;
- Enforcement title;
- Issuing authority (reference number, date of issuance);
- Date of enforceability;
- The amount of the capital claim, together with costs and interest;
- In case of enforcement of claims, the third-party debtor;
- Remarks and details for claim calculation;
- Court and judge/jurisdiction officer;
- Instructions to the parties.

I.4 Legal remedies, appeal and objection⁹

The debtor has the possibility to challenge the enforcement measures by legal remedies, which are described below.

The enforcement proceedings are initiated by means of an application. The application has to be approved by the competent judge/jurisdiction officer (“Diplomrechtspfleger”).

The enforcement order given by the relevant authority is subject to appeal by the creditor, the debtor and the third-party debtor. The general legal deadline for appealing in enforcement proceedings is 14 days. The appeal (in Austria “Rekurs” - recourse) is decided by the Regional High Court as second instance court (court of appeal), in a procedure conducted exclusively in writing.

There is also the possibility to object against the enforcement order issued under the “simplified enforcement procedure”. If a “simplified enforcement order” (order without the title being provided) was issued, the objection triggers the submission of the enforcement title. The simplified approving procedure means that the enforcement order was issued solely on the basis of the data provided by the requesting party. This specific objection can only be filed by the debtor. It needs to be stressed that it is not the debtor who has to provide proof, but this is instead the task of the creditor. He/she has to be instructed by court (“Diplomrechtspfleger”) to submit the title concerned as proof to the “Diplomrechtspfleger”. In this case, the deadline for submission is very short (5 days). The decision is made by the court of first instance, and, specifically, by the judge/jurisdiction officer who has signed the enforcement order.

All appeals and recourses require the involvement (assistance) of a lawyer. Objections can be filed by debtors themselves without legal assistance.

If a jurisdiction officer has issued an enforcement decision the parties can resort to a legal remedy. This leads to the review of the decision by the competent judge.

Appeals against the enforcement orders are not related to the authority that issued

⁹ §§ 514 – 528a ZPO, §§ 54c, 65 EO, §§ 11, 12 RpfLG §§ 514 – 528a ZPO, §§ 54c, 65 EO, §§ 11, 12 RpfLG.



the title (jurisdiction orders, administrative, social or financial orders issued by competent authorities).

All court decisions issued during all stages of the enforcement proceedings may be subject to appeal by the parties (creditor, debtor, third party debtor etc.).

In enforcement cases, the first instance court is the competent District Court. The Regional Court (High Court) is the second instance (appeal, recourse) court and the Supreme Court is the third and last instance court.

Austrian law recognises the civil remedies of “opposition on substantive grounds” (“*Oppositionsklage*” – opposition suit), “opposition on formal grounds” (“*Impugnationsklage*” – impugnation suit) and “third party action” (“*Exszindierungsklage*” – impugnation suit).

In addition to appeal, Austrian legislation also recognizes the possibility of filing an objection, for example in case the debtor has, in the meantime, paid the claim to be recovered or a motion to oppose enforcement (the appeal is directed against the authorization of enforcement). The opposition must be lodged before the court which granted enforcement. An application for deferment of enforcement may be combined with the complaint or the application for termination. If the claim is fully paid, and payment is proved by the debtor, enforcement should be terminated *ex officio*.

I.5 Postponement, suspension and termination of enforcement

The reasons for postponement and termination of the enforcement procedure are described below.

I.5.1 Postponement

Postponement of enforcement actions may be requested by the creditor, but in most cases is requested by the debtor. The creditor may request postponement of enforcement if they have entered into a payment agreement with the debtor. In this case, no financial security for the postponement of the enforcement action is required by the debtor. If the debtor does not honour the agreement, the enforcement proceedings may continue after 3 months at the earliest. If the debtor objects to the enforcement order in cases of a “simplified enforcement order”, enforcement shall be postponed without providing financial concerning the objection security until a final decision has been issued. Another reason for postponement under the regulations for “simplified enforcement order” is that the debtor has not been notified through the enforcement order. In this case, enforcement shall be postponed until the enforcement order has been finally served to the debtor.

If the creditor’s claim has been subject to a settlement, enforcement shall be suspended until it is definitively settled. Other reasons for postponement include:

- Actions for the annulment of the enforcement title;
- Application for “*restitutio in integrum*” in the title procedure;
- Annulment of enforceability of the enforcement title.

A financial security shall be provided by the debtor if the creditor runs the risk of not

being satisfied due to the effects of the postponement of the enforcement.

I.5.2 Termination

Termination of enforcement is possible for the following reasons:

- Full payment of the claim and additional related costs;
- Successful and final appeal against the enforcement procedure;
- Final revocation of the enforcement title or its enforceability.

Postponement and termination of enforcement procedures may be requested at any time by the creditor.

Enforcement may be postponed/terminated upon application by the debtor under the following conditions:

- The claim has been paid;
- The appeal/recourse was decided in favour of the debtor;
- The title has been successfully terminated by the debtor.

Enforcement may be postponed/terminated upon application by the third-party debtor, based on their statement that the enforcement of the claim is inadmissible.

The bailiff shall postpone enforcement of movable assets under the following conditions:

- The debtor provides proof of payment to the bailiff;
- The creditor waives enforcement;
- The bailiff has agreed that the debtor will cover the claim by instalment.

The consequences are delays in the enforcement proceedings.

I.6 Counter enforcement

An approved enforcement proceeding shall not be influenced directly by an “opposition”/counter enforcement claim.

If the debtor has a claim against the creditor (counterclaim), this counterclaim can only be enforced by filing a separate enforcement case, even if claim and opposition (counter-) claim originate in the same judicial decision.

Counter-enforcement is also excluded after the end of the enforcement proceedings.

In theory, parallel enforcement proceedings between the creditor and the debtor are possible. In this case, the proceedings are separate from each other.

I.7 Objects and exemptions on enforcement¹⁰

I.7.1 Guaranteeing a fair standard of living¹¹

In the case of enforcement of monetary claims, in order to ensure an adequate

¹⁰ §§ 250, 291a/291b EO.

¹¹ § 291a EO.



standard of living for the debtor, the minimum subsistence level is in principle used in the attachment of wage claims. The amount of the attachment threshold depends on the net income of the debtor, so that the amount of the attachment depends on their income and hence on their standard of living. The frequency the salary is paid on is also considered. In Austria, salaries and pensions are typically paid 14 times within a year. Unemployment and sickness benefits are paid only 12 times a year. The number of maintenance obligations (maximum 5) is also considered when determining the attachment limit. Also pension benefits and statutory remuneration (for compensation for temporary unemployment or a reduction in earning capacity), can be seized on a limited level only. The unseizable part (minimum subsistence level) depends on the amount of income and the number of the debtor's maintenance obligations. These unseizable amounts, which are increased annually, are published on the website of the Federal Ministry of Justice of Austria.

In the case of enforcement of movable assets, the attachment restriction rules provide that the debtor is to be provided with personal and simple items necessary for living and food. In addition, there are limitations on attachment, which derive from the nature of the person's vocation. In this case, necessary production items and materials up to EUR 750 shall not be attached (§ 250 EO). This means, that the following movable assets are exempted:

- Items corresponding to a modest lifestyle for personal or household use;
- Items necessary to train for a profession and for professional practice, as well as learning aids intended for school;
- Sufficient food and heating materials to cover the needs of the debtor and the family members living with him/her in the common household for four weeks;
- Pets;
- Family pictures, letters and other papers, as well as the wedding ring of the debtor;
- Aids to compensate for a disability and care support for the debtor or the family members living with him in the common household, as well as therapeutic substances and assistive devices which are required in the context of medical therapy;
- Religious objects;
- Cash up to the amount exempted from seizure until the next payment term of the salary following seizure, if the income of the debtor cannot be seized legally or is seizable only to a limited extent.

1.7.2 Enforcement against State assets

Austrian law has certain restrictions regarding State owned property:

- The property of an establishment in the service of public transport which is under state control may only be subject to appropriate enforcement measures that disrupt public transport services with the consent of its supervisory authority;

- In military buildings, the execution of an enforcement requires prior notice to the commander of the building and consultation of their military attaché;
- Enforcement against a municipality or a public or charitable institution may be authorized for the purpose of recovering financial claims only in respect of those assets, which can be used to satisfy the creditor without affecting the public interests which they are meant to protect. If enforcement serves to execute a contractual lien, this restriction does not apply, nor does it apply when enforcement is pursued to force acts and omissions.

1.7.3 Enforcement against foreign states/embassy staff¹²

Enforcement proceedings against persons enjoying immunity in Austria on the basis of international law, as well as on enforcement objects and on the premises of these persons, may be carried out only through the Federal Ministry Justice in agreement with the Federal Ministry of Foreign Affairs. It would also cover goods from other countries or international organisations in the custody of a foreign country in Austria.

1.7.4 Tax credits

The attachment of tax credits is carried out directly by the tax authority without recourse to a court, if it is a financial claim.

1.8 (Court) penalties and fines

During the enforcement procedure, the bailiff may not impose penalties like fines. If necessary, the bailiff may exclude the debtor from the attachment activity. In special cases the bailiff may ask for assistance by the police.

In the case of property auctions, it is possible to prevent bid-rigging by exclusion of specific persons from the bidding process.

The court (judge) may impose fines to the above-mentioned persons.

1.8.1 Enforcement to force acts and omissions¹³

By contrast to enforcement procedures for the collection of monetary claims, there are also enforcements carried out to force a person to do something or to refrain from doing it. In this case, the competent judge may threaten a fine when an enforcement order is not complied with. If the debtor fails to comply with the order, a fine may be imposed. In cases of repeated incompliance, the fines will be repeated and increased. The amount of these fines depends on the financial capacity of the debtor.

1.8.2 Penalty for wilful misbehaviour¹⁴

In the event of wilful misbehaviour relating to initiation of the enforcement procedure, compensation has to be paid to the debtor and a penalty shall be imposed to the creditor (amounting to at least EUR 100).

Wilfully filed (initiated) injunctions may be fined too.

¹² § 31 EO.

¹³ § 353 ff EO.

¹⁴ § 54g EO.

I.8.3 Imposition of detention¹⁵

If the debtor fails to provide a statement disclosing all assets (“Vermögensverzeichnis”) they might be brought before the judge. If the debtor refuses to provide the statement, the judge may impose detention on him/her.

I.9 Access to information on the domicile and assets of the debtor

I.9.1 Inquiry into assets

There are public databases in Austria from which information on the assets of legal persons, such as companies, and private individuals can be retrieved.

The most important and efficient are the following:

- **Landbook:** The (public) Landbook consultation provides an insight into immovable property assets, including encumbrances.
- **Commercial Register:** The register provides information on the legal relationship concerning companies and persons. By consulting the commercial register, a person can also be found, for example, as a director or partner of a company.
- **Trade register:** If a company or person has registered a trade, it can be found in this register.
- **Beneficial ownership register**
- **Ediktsfile:** This includes information on companies and persons subject to insolvency procedures and auctions as well as a lot of additional publicly accessible information.
- **Residence register:** This register provides information on current and previous registration addresses of individuals.

I.9.2 Conditions of access to databases

In general, access to the above-mentioned databases is open to the general public. In some exceptional cases one might need to specify a legal interest to access information on the registers. Information from some public databases is subject to a fee.

I.9.3 Statement disclosing all assets

There is the possibility that information on the debtor’s assets that has come to the fore in one procedure may be reused in other cases against the same debtor.

If the creditor cannot ultimately be satisfied as a result of enforcement procedures, the debtor must, as a last step, submit a statement of assets.

PART II: ORGANIZATION OF ENFORCEMENT

II.1 The status of the judicial officer

¹⁵ § 48 EO.



II.1.1 The jurisdiction officer (“Rechtspflegergesetz”)¹⁶

The enforcement proceedings must be initiated by means of an application. The application for enforcement of monetary claims on movable properties, monetary claims and other rights must be approved by the competent jurisdiction officer. Unlike bailiffs and clerks, the jurisdiction officer is an independent party in each jurisdiction. In theory, the head (judge) of the specific court department is entitled to give instructions to the jurisdiction officer.

II.1.2 The judicial officer

The judicial officer is a public officer serving at the court, performing administrative duties, such as support for judges, prosecutors and jurisdiction officers, managing case-registers, performing book keeping, court fee collection and authentication of signatures.

Bailiffs are a professional subcategory of judicial officers.

II.1.2.1 Bailiff¹⁷

The judicial officer (bailiff) works under the authority of the jurisdiction officer. Bailiffs are court officers or court clerks; they are not employees of private companies. Bailiffs (judicial officers) do not have decisive competence. Within their area of responsibility, the bailiff is free to conduct the enforcement procedure in practice in the most efficient way to achieve the best results possible.

The entire enforcement procedure (with the exception of appeals) is conducted at the level of the District Courts. Attachments, auctions of movable properties, distribution of proceeds from the auctions, statements disclosing assets, protocols etc. are all performed by judicial officers (bailiffs).

The bailiff is a court officer who follows the instructions of the jurisdiction officer and, in certain cases, those of judges but is also largely autonomous in the context of enforcement procedures. They should avoid any delays, in accordance with the timeline set in the court’s order until the enforcement order is executed or it is evident that the enforcement order cannot be fulfilled. In accordance with the laws in force, the first attachment activity of movable properties must take place within 4 weeks.

The bailiff has the following special powers:

- Ordering advance payment for expected costs;
- Requesting assistance for the enforcement by other bailiffs in the District Court.

In case of misbehaviour or misuse of power the bailiff may be subject to disciplinary and/or penal sanctions. Legal complaints from the debtor against the bailiff are dealt

¹⁶ § 17 RpfLG. The jurisdiction officer is a special educated officer, practically exercising full jurisdiction in the following areas of responsibility: enforcement, insolvency cases, civil cases – payment orders, Landbook, Commercial Book, peace law cases.

¹⁷ §§ 24, 25 EO. In this summary for the Enforcement Atlas, the bailiff is mentioned as a judicial officer. In Austria the bailiff is a professional subcategory of judicial officers.

by the jurisdiction officer.¹⁸

Complaints concerning misbehaviour of a bailiff are dealt with by the president of the court or by the “Leitungseinheit” – Steering Unit. This Unit is located at the Higher Regional Court (“Oberlandesgericht”).¹⁹

II.2 Supervision over enforcement

The supervision of bailiffs is performed as follows:

a) Judges and Jurisdiction Officers:

- verify the legality of the enforcement measures;
- check whether enforcement is carried out by the bailiff in accordance with the mandate;
- review the protocols and attachment reports;
- decide on enforcement complaints.

b) “Steering Unit” for Bailiffs at the Higher Regional Court (“Leitungseinheit Gerichtsvollzug” – LEG):

- This department is headed by a judge. Its operational tasks are carried out by staff with specific professional competence.
- The Unit is a supervisory body. It deals with complaints relating to cases of misbehaviour of bailiffs in enforcement activities.
- Bailiffs shall be assisted in the performance of enforcement orders, thus ensuring the swift and efficient performance of enforcement orders.
- Checking the settlement of payments from the debtors (proceeds) and the claims for fees calculated by the bailiffs. Miscalculations are identified and necessary repayments are ordered.

c) Internal Revision:

- The Internal Revision department is located at the Higher Regional Court. Casefiles and calculations kept by bailiffs at the courts are assessed and recorded in a report. The judge or jurisdiction officer shall give their assessment on this procedure.
- The key challenge for the Internal Revision is to optimise enforcement procedures and to prepare proposals for improvement, if necessary.

II.3 Access to the premises²⁰

The bailiff is legally entitled to enter the premises of the debtor’s residence without their consent. The debtor must be informed in advance of the imminent opening. In

¹⁸ §§ 61, 68 EO.

¹⁹ § 78 GOG “Gerichtsorganisationsgesetz” – Court Organisation Law.

²⁰ § 26 EO.

the apartment, they may open sealed containers and search clothes.

The bailiff is responsible for the practical enforcement acts. In the event of harassment or threats by the debtor or generally in the area of intended attachment, the bailiff may request the assistance of the police. They may also do so for preventive purposes. They may expel interfering persons from the place of enforcement and only allow authorised persons to have access.

If the debtor is not present and has already been informed of the imminent enforcement act, their residence may be opened by a locksmith.²¹ If the residence is opened by a locksmith (in the absence of the debtor), two trustworthy adult witnesses must be present (in addition to the bailiff). If the door-lock of the entrance of the residence of the debtor is changed, the bailiff has to ensure the access of the debtor by forwarding (depositing) a matching key.

II.4 Obstructing the judicial officer from carrying out enforcement

If the debtor is expected to cause a disturbance during impending enforcement acts or if the debtor obstructs the bailiff during enforcement, the bailiff may request assistance from the police without prior consultation with the judge/jurisdiction officer.

If the debtor refuses to provide a statement disclosing all assets (assets register), the bailiff may immediately and compulsively refer the debtor to the judge/jurisdiction officer for the submission of the statement of assets without any further judicial mandate. If the debtor refuses to file a statement disclosing all assets in court, the judge may impose detention on the debtor.²²

II.5 Time of enforcement²³

The bailiff decides themselves on the time of the enforcement acts, as they can best estimate from experience when the debtor will most likely be present.

Attachments may also take place on Saturdays, Sundays and public holidays and from 22.00 to 6.00 a.m. This is conditional on an unsuccessful enforcement attempt on working days between 6.00 and 22.00, or in urgent cases, if the purpose of enforcement cannot be achieved otherwise.

II.6 Mediation

The bailiff has a total of 4 weeks from the date of delivery of the enforcement file and the included enforcement order to perform the first enforcement action. The final activity has to be performed no later than 4 months after the first enforcement act.²⁴

Based on the enforcement order, which also includes the order to attach, seize and sell movable properties, the bailiff must carry out the entire procedure, including auction and transfer of the proceeds to the court or creditor, independently.²⁵

²¹ § 26a EO.

²² § 48 EO.

²³ §§ 26a, 252a EO.

²⁴ § 252 d EO.

²⁵ § 249ff EO.



During this period, the bailiff may enter into agreements with the debtor in respect of payments in instalments. They may ask the creditor to declare that the claim is open, in order to ensure that the claim (including all fees and sub-claims) is paid completely by the debtor.

The bailiff may mediate an agreement between the claimant and the debtor on a case-by-case basis. However, mediation is not a mandatory task for the bailiff.

By law the bailiff has to notify the debtor about an incoming enforcement act as soon as the enforcement file has been handed over to him. This notification contains of a brief overview of the outstanding claim, together with an invitation to contact the bailiff in order to negotiate a payment agreement. This notification must also indicate to the debtor that contacting the bailiff may prevent an enforcement act on the spot.

As a result, there is an additional possibility for the debtor to prevent enforcement measures.

PART III: ENFORCEMENT PROCEDURES

III.1 Initiation and end of the enforcement procedure

III.1.1 Enforcement title²⁶

For the initiation of the enforcement proceedings, a decision issued by a court, an administrative authority and other public bodies, public insurance institutions or civil public notaries appointed for that purpose is necessary. This decision must contain the order to the debtor. Only when the time-limit for performance has expired the decision can be confirmed as enforceable. In principle, the enforcement procedure depends on an application by the creditor. The creditor has to deliver information about the enforceable assets of the debtor.

III.1.2 Excursus: Enforcement for seizure - “Freezing”²⁷

Under certain conditions enforcement proceedings can be initiated even though the time limit for performance (of the debtor) has not expired yet. In the case of freezing, the enforcement proceeding may be initiated, but the procedure ends with the attachment. The enforcement of the assets can be concluded and realised if the enforcement order becomes enforceable. Therefore, in the absence of a final and enforceable decision, no enforcement proceeding can be concluded in Austria.

III.1.3 Judgements required for enforcement proceedings

If a person has an unpaid invoice in Austria, they cannot immediately initiate enforcement proceedings. They have to file a civil case concerning the claim to the court. They must define their claim against the debtor and obtain a court decision. The civil court decision has to come into legal force and to become enforceable as a precondition to initiate the enforcement proceedings. The declaration of enforceability is issued by the court, which is the enforcement order authority in the court proceedings. The creditor must also provide the address of the debtor (or, in

²⁶ § 1 EO.

²⁷ § 370 – 377 EO.



case of attachment on salary, also the date of birth, if they do not know the payment office so that the enforcement court is able to send requests to the social insurance authority to find out information concerning the debtor's employment).

The enforceability of a court decision or a judicial or administrative decision shall be confirmed directly on the document. To receive such a confirmation of legal force and enforceability no additional application is required. The confirmation of enforceability is, in principle, issued by the judge or jurisdiction officer from whom it originates.

III.1.4 Choice of enforcement method²⁸

In principle, the creditor selects the enforcement methods which they consider to be the most efficient. For example, if they can assume or even know that the debtor is working and receives a salary, they shall apply for enforcement of the claim – in this case focused on the salary. If the debtor owns real estate there appear several options. It is possible to inscribe an enforced mortgage on the property of the debtor at the Landbook. This covers the general intention to secure the claim in the sense of freezing. If the debtor wants to receive their claim as soon as possible, they might intent to go for foreclosure. The comparison between the inscription of an enforced mortgage and the foreclosure shows that the mortgage is cheaper. Foreclosure means to cover at least part of the claims; a mortgage is a kind of “last notice” – before foreclosure.

The creditor may also opt for more than one method of enforcement, in order to obtain payment from the debtor in the foreseeable future. However, there is a legislative body which regulates the relationship between the enforcement methods used and the amount of the claim.²⁹

If the creditor does not have knowledge of the debtor's assets, they may instruct the bailiff to find assets as part of an enforcement on movable properties.

The creditor is at any time able and entitled to withdraw the request of enforcement.

III.2 Enforcement against movable assets to settle pecuniary claims³⁰

III.2.1 Attachment against movable assets³¹

The creditor applies for enforcement of movable assets (properties). The jurisdiction officer has to perform a legal check of the filed enforcement case. If the formal application is correct, the jurisdiction officer approves the enforcement, including the methods thereof, and orders the bailiff to perform the attachment, as claimed by the creditor.

That means that the jurisdiction officer is entitled to give orders to the bailiff who has to carry out enforcement measures. They carry out their duties in the context of the enforcement procedure largely independently, within the legal framework. On the one hand, the legal provisions provide them a time frame within which they should

²⁸ § 54 EO.

²⁹ § 14 EO.

³⁰ §§ 249 – 345 EO.

³¹ §§ 249 – 289 EO.

achieve the best possible result. On the other hand, they are free to determine the day and time on which they will carry out the enforcement measures, because they mostly have knowledge about the financial situation of the debtors and their assets. Bailiffs have to find a date for their performance when an enforcement act is most effective. The bailiff may use various means to check the debtor's financial situation. Besides other options, the bailiff may check all kinds of public registers, such as residence register, Landbook, commercial register and so on. Additional information may be derived from interviews with the neighbours of the debtor or other sources.

III.2.2 Responsibilities

III.2.2.1 Judges

They may issue detention orders, in the theoretical case that the obliged party refuses to submit a list of assets.

III.2.2.2 Jurisdiction officers

Their responsibilities include review of the creditor's request for legality, authorisation and initiation of enforcement and instructing the bailiff to enforce.

III.2.2.3 Bailiffs

The enforcement file remains with the bailiff until the enforcement procedure (attachment and sale of assets) have been completed. The sale of the attached properties may be done on the spot or via internet.

The creditor (mostly represented by a lawyer) has the opportunity to join the bailiff at the place of enforcement during the official act, to enter the place of enforcement or the premises of the debtor together with the bailiff – even against the debtor's will – and thus to view the debtor's circumstances; the creditor has the opportunity to provide further information to the bailiff.

The bailiff establishes a lien on the seizable items.

If the debtor pays the claim to the bailiff, the enforcement procedure ends immediately.

If the debtor is unable to pay, but in possession of valuable items such as electrical appliances, jewellery, car, the bailiff may proceed with the enforcement act until attachment and subsequently auction of those items.

If there are no recoverable assets, the bailiff shall draw up a list of assets, which may provide the creditor with further information such as bank accounts, company holdings etc.

Based on this information, the creditor can then choose the appropriate means of enforcement for further enforcement proceedings.

III.2.3 Inventory (stock)³²

In case of attachment of properties, the bailiff shall draw up a list of the items found and attached, together with a precise description of the assets, the date of

³² § 256 EO.



attachment, the claim for which they were attached, the creditor and the trade mark, type, colour, size and estimate of the assets. This list is known as the attachment record. The inventory cannot be carried out before an enforcement authorisation is granted.

III.2.4 Estimation (evaluation procedure)³³

The bailiff shall determine the value of the items, in case of items which they usually attach and when they are aware about a serious market value.

However, in the case of items which the bailiff cannot evaluate, because they are special items or gold, for example, the bailiff must appoint an expert to make the estimate. The bailiff is free to choose this expert. In the normal course of an auction of movable property, the expert shall estimate the value at the auction date. In other cases, such as costing facilities or warehouses, it is common practice to make the estimate before the auction date. This may also be done upon request of the creditor.

Only an expert sworn by the court is entitled to estimate.

This estimate shall be entered in the attachment record. At auction, the half of this estimate serves as the basis for the lowest bid.

In principle, all goods in the debtor's area are deemed to be their property and may be attached, even if they are co-owned by the debtor and their spouse or partner. If a third party claims to own the assets attached, the claim of the third party's property is noted in the attachment record by the bailiff. The third party must forward an evidence of ownership to the creditor, who will then discontinue the enforcement procedure in respect of these assets. If necessary, the claim of a third party has to be clarified by a separate civil case.

III.2.5 Possibilities for recovery³⁴

Movable assets (properties) are liquidated by auction. The bailiff shall determine the place of auction. The place where the highest yield can be achieved shall be chosen. This can be on the internet, in an auction hall or in the place where the attached properties are located or stored.

The lowest bid is calculated on the basis of half the amount of the estimate. The auction shall continue until a higher bid is no longer submitted. The highest bidder shall receive the acceptance of his bid.

III.2.6 Online auction³⁵

The bailiff has the possibility to sale attached items via internet. In this case, the items have to be already estimated and shall be seized. They have to be described, some photos have to be added, the lowest bid and the note of exclusion of warranty has to be mentioned, the process of shipping have to be described, the deadline for auction has to be mentioned. In some cases, it is possible to buy immediately without auction. Information about this has to be published too.

³³ § 275 EO.

³⁴ §§ 270, 272, 277, 277a ff EO.

³⁵ § 277a – c EO.

III.2.7 Request for transfer³⁶

If a person does not wish to wait for the auction, they may, at the latest 14 days before the auction date, apply to take over the seized property against the lodging of a security of 25 % of the estimated value and against payment of all the enforcement costs. To that end, the consent of the debtor, the creditors and the parties who have acquired a lien on those goods is required.

III.2.8 Free-hand sales³⁷

An application for a free-hand sale can be submitted by the creditor or the debtor to the enforcement court, 14 days at the latest before the auction date. Again, a security of 25 % of the estimated value must be lodged by a designated purchaser that is willing to pay the specified purchase price. After lodging the security, the auction date is cancelled.

A special procedure may be applied in case of recovery of saving books, shares, (live-) insurance titles, bills of exchange, cheques and others. In the case of such documents, where the right to recover is subject to possession of the particular document, the bailiff is obliged to seize these assets. The bailiff enters the seized assets (documents) in an attachment record. For the realisation of the claim based on the seized documents the legal transfer for recovery is necessary. The bailiff shall be ordered by the judge or the jurisdiction officer for the transfer.

III.2.9 Distribution of proceeds³⁸

A hearing shall be held before the proceeds can be distributed among the creditors. Creditors must lodge their claims at that hearing and the debtor must (shall/should – and practically never does) help to clarify the correctness and ranking of creditors' claims on the proceeds. If the parties do not agree with the distribution of the proceeds with regard to the amount and ranking dedicated, they may object. If possible, the judge or the jurisdiction officer has to initiate an agreement between the parties, otherwise the appeal shall be finally decided in the proceeds distribution decision.

Before the proceeds are distributed, the costs of estimating, transporting of the seized goods to appropriate auction venues and auctioning and the bailiff's fee are deducted.

The rank of satisfaction depends on the time of attachment. If more than one creditors have the same rank, they receive their share of the proceeds in relation to the amount of the claim, including interest and costs.

III.3 Attachment on the bank account of the debtor³⁹

III.3.1 Rules of jurisdiction

The attachment takes place in the context of the enforcement of the claim, i.e., the debtor's claim against a bank is attached in the form of a deposit in one or more

³⁶ § 271 EO.

³⁷ § 271a EO.

³⁸ §§ 285, 286 EO.

³⁹ § 294 EO.



accounts. It is also possible to attach several bank accounts held by the debtor in several banks at the same time. It is even possible that the creditor may not have any information about the banks with which the debtor holds accounts. It is sufficient for the creditor to specify just the name of the bank. It is not necessary to know the details of the account of the debtor to successfully apply for enforcement. This information has to be noticed to the court by the involved bank.

All types of accounts can be attached, such as current accounts and savings accounts.

In the Austrian enforcement system, the jurisdiction officer (“Diplomrechtspfleger”) has the obligation to decide about this type (method) of enforcement. They are responsible for the approval of the attachment and for enforcement by “transfer for recovery”. The attachment and enforcement take place at the same time, which means that the application the creditor has filed covers attachment and enforcement at once.

The jurisdiction officer shall review the creditor’s application for attachment. In addition to the general content of an enforcement application, such as the name of the creditor and the name of the debtor, the amount of the claim, the enforcement title, also information specific to that enforcement, such as the name and address of the bank and (if available) the account number. Furthermore, the amount of the credit in the bank account is not to be disclosed by the creditor. It is not even necessary to know whether the debtor has an account with the specified bank and whether there is in fact credit. The procedure resembles a situation of fishing in muddy waters and hoping that a fish will actually be stitched.

III.3.2 Attachment

The attachment takes place by notification of the enforcement decision to the bank. If the debtor actually holds a bank account, the account shall be attached on the date on which the enforcement decision is notified to the bank. The time of attachment is important because it is decisive for the ranking of satisfaction. The account shall be blocked by the bank and the debtor shall no longer be able to withdraw money. The prohibition usually lasts for 4 weeks. After this timeframe the bank has to transfer the balance to the creditor. The attachment covers only the amount of money that is available at the account at the moment of attachment. It is a “single action attachment” (ad hoc); the money that will be transferred in the future is not attached.

After transfer of the balance the account will then be free again for the debtor. If the creditor wishes to have further credit balances from the debtor, they must submit a new application.

If an account exists at the time of attachment, but there is no credit in it, enforcement becomes ineffective. If money is transferred to this account after that date, the account is blocked for the debtor, but the credit is not automatically transferred to the creditor. The account remains blocked during the above-mentioned 4 weeks prohibition phase.

In the enforcement application, the creditor may request that the bank discloses whether there has been an attachment and the amount attached. The bank is then

obliged to provide the creditor with the relevant information, and, in any case, it has to notice the court.

The debtor may require the court to lift the prohibition of disposal of the account if it proves, by producing bank statements, that a payment has been made to that account for a limited amount of money, such as salary payments. This is the responsibility of the jurisdiction officer: they calculate the amount of money to be left to the debtor until the next payment of their salary, in order to ensure the necessary subsistence level for them and their dependants until the next regular payment of the salary.⁴⁰

This method of enforcement shall be carried out by transfer for recovery. The creditor is authorised to demand payment from the bank on behalf of the debtor. This authorisation is set out in the enforcement order in such a way as to prohibit the debtor from disposing of the preserved debt, in particular the recovery of the debt. The bank, as a third-party debtor, is not allowed to pay the attached claim to the debtor. In addition, the bank is ordered to pay the amounts withheld only after four weeks from the date of notification of the enforcement decision to the claimant, which results from the fact that this type of enforcement is normally carried out under the simplified legal procedure; the enforcement title is not checked (chance to apply).

Only in certain cases the attachment of the debtor's bank accounts is performed by the bailiff, i.e., when the bailiff finds savings certificates with the debtor. They seize the certificates and take it to the court. Recovery shall be effected by decision of the jurisdiction officer, which authorises the bailiff to recover the claim from a savings certificate.

III.4 Enforcement against savings deposits and current accounts

The description of enforcement and foreclosure was set out in Chapter III.3, as attachment and enforcement in deposits and current accounts is decided jointly by the court in an order, namely the enforcement authorisation.

III.5 Enforcement on immovable property⁴¹

There are 3 ways to access the debtor's immovable property:

- Entry of an enforceable lien on the debtor's property in the Landbook (constitution of enforced mortgage);⁴²
- Performance of an enforced administration of immovable property, e.g., house, apartment, agriculture land;⁴³
- Foreclosure of immovable property.⁴⁴

In the first two options, the debtor's immovable property is preserved. The constitution of an enforced mortgage is equivalent to freezing (constitution of a satisfaction rank in case of foreclosure). The enforced administration leads to payment

⁴⁰ § 292i EO.

⁴¹ §§ 97 – 239 EO.

⁴² §§ 87 – 96 EO.

⁴³ §§ 97 – 132 EO.

⁴⁴ §§ 133 – 239 EO.

of the debts arising from the proceeds. The third option leads to the loss of ownership by the debtor.

It is important to note that all immovable properties are subject to registration in the Austrian Landbook; there are no immovables unregistered.

III.5.1 Rules on jurisdiction

The jurisdiction officer is competent for the enforcement procedure for constitution (“Intabulation” at the Landbook) of an enforced mortgage on the debtor’s immovable property. Enforced administration and foreclosure fall within the competence of judges.

III.5.2 Seizure

In case of foreclosure, the Austrian legal framework regarding enforcement describes the possibility of attachment by “Intabulation” of a remark in the Landbook and publishing the beginning of the foreclosure procedure via internet and in local papers. A right of lien is established on the property. Generally, it is not foreseen that the debtor has to leave his properties during the ongoing enforcement procedure. However, from the moment that the seizure is registered in the land register, legal actions by the debtor concerning the property and its accessories, which are outside the scope of ordinary administration, are ineffective against the creditors and the bidder. If the debtor sells the property, the authorized auction continues against the purchaser of the property.

After the auction, the immovable property will be transferred to the new owner (buyer).

If the debtor refuses to leave the property, the new owner is entitled to apply for eviction.

III.5.3 Valuation process⁴⁵

An expert, who shall be appointed by the court (enforcement judge), has to estimate the value of an immovable property. The cost of estimation must be prepaid by the creditor of the leading foreclosure case.

The Austrian Enforcement Regulation describes the principle of “only one foreclosure case” per debtor. That means that after the first application, all afterward incoming applicants have to join the “leading” enforcement case. They must adopt the auctioning process in the same position as it is at the time of accession. From then on, acceding creditors will have the same rights as if the proceedings had been initiated at their request. In this case, the prepayment of the estimation costs shall be paid by the creditor of the leading enforcement application.

If the advance payment has been made to the court, a court-sworn expert shall be asked to estimate the property and the accessories. The expert shall, on his own initiative, obtain the necessary documents from the authorities, such as unit value, property tax and taxes, in order to draw up their report, provided that the debtor

⁴⁵ §§ 140 – 145 EO.



provides them with all the necessary documents. The authorities are obliged to provide the expert with additional documents if necessary.

The creditor, the debtor and any person with rights and obligations on the property shall be summoned. The expert is entitled to enter the immovable property and to freely move in it. The date of the estimation has to be notified to the debtor and third parties living in the property.

An estimation of the market value of the property is made. Rights and obligations on the immovable property have to be taken into account in the evaluation by the expert.

An amount of 50 % of the estimation value shall be the lowest bid at the foreclosure auction.

III.5.4 Public auction⁴⁶

Regarding different options for the sale of the attached immovable property, the Austrian Enforcement Regulation provides only one option for the sale of attached immovable property (legal sales conditions).⁴⁷

The enforcement court has to set a date for the public inspection of the enforced property. This inspection must be tolerated by the debtor and, if necessary, by third parties. If access is not possible, it may be enabled by the public power (court, police, bailiff).

The enforcement auction normally takes place at the court. In exceptional cases, it may also be carried out at the place where the property is located. The auction has to be conducted by the enforcement judge. It is their duty to ensure calm and order, to prevent illicit arrangements, intimidation and other obstruction of offerings. It is a responsibility of the enforcement judge to rule on the objections and applications by the parties. The judge must give notice of the amount of the taxes, fees and charges prior to the invitation to tender and, by way of other information, provide information on the property upon questioning. Subsequently, those present will be invited to bid if they are able and willing to deposit a “Vadium” (security) of 10 % of the estimation. Auctioning will continue as long as higher bids are made. If no higher bid is made after two requests, the closing of the auction shall be announced by the judge and the auction shall be awarded to the highest bidder.

III.5.5 Payment of sales price⁴⁸

If no objection is raised against the award of the auction and no overbid has been made, the highest bidder shall pay the highest bid into an account opened for that particular purpose within 2 months. The “Vadium” (security) of the highest bidder remains at the court and is taken as the first rate of payment.

III.5.6 Delivery of the property to the purchaser

Once the auction has been awarded to the buyer and the highest bid has been fully paid, the buyer is entitled to have the land transferred. If the former owner refuses to

⁴⁶ §§ 177 – 183 EO.

⁴⁷ § 146 EO.

⁴⁸ § 152 EO.

leave the property, the new owner may apply to the court for eviction. The new owner is not allowed to remove the existing owner from the property by their own authority, to proceed to replacement without consulting the existing owner or to remove property.

III.5.7 Distribution of funds among creditors⁴⁹

After the highest bid has been fully paid, a date shall be set for the hearing on the distribution of the highest bid. The hearing takes place at the court. All persons with rights and burdens on the auctioned property have to be invited. The buyer of the property may also participate, but there is no legal obligation to do so. During that hearing, the claims and the order in which they are to be satisfied are discussed, and the debtor must provide the information requested by the present parties, which is necessary to verify the accuracy and order of priority of the claims. Based on the results of that negotiation, a distribution decision is taken, and the shares of the proceeds are distributed to the beneficiaries. Firstly, the costs are deducted, then the previous claims, e.g., municipal, taxes etc. and the balance is distributed among the creditors after the pledge and the ratio of their claims, as recorded at the hearing.

III.6 Enforcement against wages and other permanent pecuniary income⁵⁰

III.6.1 Attachment of salary or other regular income of the debtor and transfer for recovery (enforcement of claims)

The regular income of the debtor can be attached. These are mainly wages and salaries, as well as pensions and unemployment benefits. It also includes, for example, income from recurring benefits under insurance contracts, claims pensions, legal alimony, recurring benefits out of special contracts.

The attachment also includes special payments (holiday and Christmas bonuses). An Austrian employee receives 14 salaries per year that can be attached. The same goes for advanced and additional payments.

The creditor can request enforcement on salary also in case they are not familiar with the employer of the enforcement debtor. In such case in the request for enforcement, they have to mention the date of birth of the enforcement debtor. Based on this, the court can identify the payment office through the Main Association of Austrian Social Insurance Institutions.

III.6.2 Rules of jurisdiction

The jurisdiction officer of the District Court is responsible for the enforcement of claims. The attachment and enforcement shall be carried out in one step. Enforcement is effected by transfer for recovery. The creditor is authorised to demand payment from the employer on behalf of the debtor. This authorisation is set out in the enforcement (authorisation) order in such a way as to prohibit the debtor from disposing of the preserved debt, in particular the recovery of the debt. The employer,

⁴⁹ §§ 209 – 236 EO.

⁵⁰ §§ 290 – 294a, 299 – 303 EO.



as a garnishee, is prohibited from paying the attached claim to the debtor. In practice, the employer transfers the attachable (and attached) part of the debtor's salary to the creditor after the statutory time limit has expired (4 weeks, see attachment of savings deposits).

III.6.3 Obtaining information from the employer

The employer is obliged to provide information on the attachment of the claim to the creditor. This information is called a "garnishee declaration". The employer must provide this information within 4 weeks of notification of the enforcement authorisation. A form providing the necessary overview of the nature and scope of this information is available. The main points are the amount of the salary, the number of creditors already earmarked for enforcement and the claims of these creditors, the existence and number of maintenance obligations, and whether the debtor has received advances. There is also the possibility for creditors to waive this third-party debtor declaration, as it is subject to payment.

If no information is provided in good time, the creditor is entitled to bring an action against the garnishee.

III.6.4 Rights and obligations of the employer

The employer may retain advances which they have made to the debtor before the attachment was done, but may do so below the minimum subsistence level. The attachment is to be carried out by the employer by taking into account the attachment limit (minimum subsistence).

The employer must calculate the minimum subsistence figure and transfer the amount to be attached to the attachment creditor each month until the claim has been fully settled. If that amount has been reached according to the employer's calculations, they shall indicate this to the creditor and inform them that they will no longer take the ban into account, until the creditor notifies whether there is an amount missing and how much this is.

It is also required to submit a third party debtor's declaration to the creditor and to the court within a period of 4 weeks, unless the creditor waives such a declaration. The employer may claim costs for the garnishee declaration.

The employer must take into account the order of priority of claims, which concerns both executive and contractual liens on labour income.

If the employment relationship is terminated, the employer usually announces this. However, they are not obliged to do so.

The employer may retain the costs of calculating the amounts to be seized.

III.6.5 Method of attachment

The attachment takes place by notification of the enforcement order to the employer (garnishee). The receipt of the enforcement order determines the rank of satisfaction of the claim (ranking principle).

III.6.6 Debtor's rights and obligations



The amounts excluded from attachment are defined by law as the minimum subsistence level. The minimum subsistence level may change from time to time because it is calculated according based on the annual inflation rate. There are also benefits which are generally excluded from enforcement, such as statutory allowances, family allowances and expenses allowances.

The debtor must inform the employer of their maintenance obligations.

In certain circumstances, the debtor may obtain an increase of the minimum subsistence level (sickness, incident, particularly extensive maintenance obligations). On the other hand, the minimum subsistence level may also be reduced, e.g., in the case of maintenance enforcement.

III.7 Attachment under the debtor's debtor⁵¹

III.7.1 Jurisdiction rules

The jurisdiction officer of the District Court is responsible to carry out “other enforcement” of the claim, namely enforcement against the debtor's debtor. The attachment and enforcement are carried out in one step. The enforcement takes effect by transfer for recovery. The creditor is authorised to require the debtor to pay the amount on behalf of the debtor. This authorisation is described in the enforcement authorisation order; it prohibits the debtor to dispose of the attached debt, especially the recovery of the debt. The garnishee is prohibited from paying the debtor.

III.7.2 Obtaining information from the debtor's debtor

Information on possible debtors of the debtor can be obtained by the creditor from a submitted list of assets, since the debtor must also include their claims against third parties in the list of assets. They may include rental income, which may be found out by requiring the debtor to list their tenants with their name and address, or income from a contract for the provision of services etc. The creditor may also be aware of the existence of a claim by the debtor against another debtor from the private sphere or from previous legal proceedings in which the creditor was also involved.

III.7.3 Rights and obligations of the debtor's debtor

The debtor's debtor is entitled to file an appeal against the “other enforcement” of the claim.⁵²

III.7.4 Method of attachment

As in the case of attachment of salaries and other permanent pecuniary claims, the attachment takes place by notification of the enforcement order to the debtor's debtor (garnishee); the above-mentioned principle of priority also applies here.

III.7.5 Creditor's rights and obligations

In the application for enforcement, the creditor must specify the debtor's name and address, as well as the nature and amount of the claim. There is no need to specify

⁵¹ § 294 EO.

⁵² For detailed information about the appeal see Chapter I.4.



the amount of the claim of the debtor's debtor to the debtor. It is sufficient to be referred to approximately, as "more or less". The creditor has to request a prohibition imposed on the debtor and a prohibition on performance imposed on the debtor's debtor. This is the case for all types of claim enforcement. The creditor is legally entitled to receive the debtor's claim in transfer for recovery.

III.8 Enforcement against shares⁵³

The debtor's securities (shares) in another company may be enforced in the following way.

III.8.1 Jurisdiction rules

The enforcement of shares falls under the competence of the bailiff and is carried out by the method of enforcement of movable assets.⁵⁴ The jurisdiction officer approves the creditor's enforcement application and, following that, he/she instructs the bailiff to carry out the enforcement.

III.8.2 Obtaining information about the shares

The bailiff requests information about this kind of assets from the debtor on the spot. If nothing else is found to be attachable, the debtor must submit a list of assets, in which the shares are to be indicated.

If the creditor is aware about shares in the debtor's possession, they may apply for attachment of shares or, at the latest at the time of enforcement, inform the bailiff of any shares held by the debtor, and have the attachment carried out.

III.8.3 Debtor's rights and obligations

The debtor has no serious chance to protect their shares against attachment. TO the contrary, they are obliged to notify the bailiff or the creditor about this kind of assets. Shares are not subject to attachment restrictions. However, the attachment and enforcement can only be carried out up to the amount of the claim. The debtor must provide the shares if they have it stored in their environment.

III.8.4 Method of attachment and enforcement

The bailiff records and describes the shares in an attachment record. The expected proceeds must be calculated and recorded. They seize the shares.

In terms of recovery, the sale takes place through the intermediary of a trading agent or the bailiff themselves, at the price of the stock exchange, to the party who first reported (direct sale). If more than one person appears for the sale, the rules of auction must be observed and the shares are transferred to the highest bidder.

III.8.5 Creditor's rights and obligations

There are no restrictions on the attachment and enforcement of shares. They may be attached and enforced up to the amount of the claim.

III.9 Other attachment procedures

⁵³ § 268 EO.

⁵⁴ The procedure of the enforcement of movable assets was described in Chapter III.2.



III.9.1 Enforcement of “other property rights”⁵⁵

The attachment is carried out by means of an application by the creditor. The court orders the debtor to refrain from any disposition of the “other property right”. Where, by virtue of that right, a particular person was obliged to provide benefits, the attachment takes effect when that person has been notified of the prohibition imposed on the liable person. Depending on the nature of the rights attached, the bailiff may record the attached “other property rights”.

Upon the creditor’s request, the court determines the method of realisation of the preserved right. Prior to the realisation, the court has to set a hearing with the creditor, the debtor and other involved parties.

The object of enforcement is any “other property right” which is part of the debtor’s assets and which is usable, i.e., in particular transferable and attachable. This may include:

- Shares in immovable and movable property held by the debtor;
- Entitlement to rescission of joint property and, as a result, application for auction of the entire share of the property;
- Debtor’s rights in companies, cooperatives, business;
- Tenancy rights, contents of a safe deposit box;
- Patent rights, copyrights, property rights of the heir.

Depending on the nature of the attachment, recovery may be effected by auction, enforced administration or authorisation.

III.9.2 Attachment of extraordinary claims⁵⁶

Bonds denominated to the name of the debtor representing a monetary claim, orders such as cheques or bills of exchange, life insurance policies denominated in bearers, savings certificates may also be the object of attachment.

The attachment is carried out by the bailiff and a report on the attachment is drawn up. The bailiff seizes this kind of documents.

The enforcement is realised by transfer for recovery.⁵⁷ This is only permissible up to the total amount of the claim. If the value of the document exceeds the claim, the creditor must provide security for the excess. The document is then discharged to the creditor with a court declaration of transfer. With regard to savings certificates, the bailiff is empowered by the court to recover the claim from the savings certificate; they may, for example, dissolve a savings account at the bank.

III.9.3 Attachment of the right of restitution and performance of movable assets⁵⁸

The object of this type of enforcement is a right “in rem” or obligatory rights, such as

⁵⁵ §§ 331 – 345 EO.

⁵⁶ § 296 EO.

⁵⁷ §§ 304, 305, 319, 319a EO.

⁵⁸ § 325 EO.

the right of restitution of movable properties which are attachable, have a value and are not in the custody of the debtor, but are held by a third party that does not tolerate the attachment.

If, for example, the debtor's savings book is held by a third party, enforcement is carried out by means of an enforcement of claim, which means that the third party is notified with a prohibition order. The lien on the property to be surrendered arises when it is handed over to the bailiff. The rank of the attachment is based on the time of receipt of the prohibition order by the garnishee.

Recovery is effected by handing over the assets of the debtor held by a third party to the bailiff.

III.10 Handing over movable assets⁵⁹

III.10.1 Description of the procedure

This type of enforcement falls under the competence of judges. The enforcement application must specify the object to be handed over by the debtor, which must also be in the debtor's custody. The object to be handed over must be specified in enforcement title as well. The objects must be handed over by the debtor to the bailiff at the place where they are located. The bailiff hands them over to the creditor. If the assets cannot immediately be transferred to the creditor, the bailiff shall take care of the custody. The enforcement is concluded with the removal of the object from the debtor.

III.10.2 Supply of replacement assets

Handing over of replacement objects instead of the original is not foreseen in the legal framework regulating enforcement.

III.10.3 Organisation of the procedure

Enforcement for restitution is carried out only based on an application by the creditor, which requires a corresponding enforcement title. The judge is competent for this procedure. The bailiff is involved in the operative part of this enforcement procedure. The creditor shall be present at the enforced handover of the assets for legal and practical reasons.

III.10.4 Creditor's rights and obligations

If the bailiff removes the wrong object from the debtor, the creditor is entitled to submit a complaint to the competent judge.

III.10.5 Debtor's rights and obligations

The provisions for protection against attachment that are applicable in the case of enforcement of movable properties are not applicable in the case of handing over movable assets. The return of non-seizable properties may also be enforced.

If the debtor denies that they owe the property to be handed over, they may submit a complaint to the competent (enforcement) judge.

⁵⁹ § 346 EO.



If the debtor considers that they have already fulfilled their obligations, they may file a civil case on opposition or request the termination of the enforcement procedure.

The debtor may also request deferment of enforcement.

III.10.6 What should be done if the movable assets cannot be found? (§ 346a EO)

If the objects to be issued cannot be found with the debtor, the latter must indicate to the court or the bailiff where the object is located. In certain cases, they might state that they do not possess or know where the assets are. The purpose of this statement of assets is to determine where the property is located. If the debtor refuses to declare the assets, they may be presented by the bailiff to the court (judge) for submission of the list of assets. In the event of further refusal, detention may even be imposed to the debtor.

III.11 Enforcement in reinstatement of employee to work

In Austria, there is no possibility to force an employer to reinstate the debtor in the context of an enforcement procedure.

However, a debtor may have been dismissed by the employer, such as seasonal workers in winter breaks, and then re-employed by the original employer. If this is the case, then the lien extends to the income after the interruption, if it lasted for not more than one year.

III.12 Eviction⁶⁰

II.12.1 Description of the eviction procedure

The eviction (enforcement) procedure is based on a decision of a civil court on the matter. The court competent for evictions is the court of the location of the immovable property (*lex rei sitae*). The creditor must submit their application to the competent court for authorisation of enforcement of the eviction. Eviction has to be decided by a judge.

During eviction, movable objects as well as persons that are relatives to the debtor may be removed from the evicted property. After successful eviction, the property is handed over to the creditor. The bailiff assigns the date of eviction and is monitoring the clearing of the property from movable assets of the evicted debtor. At the end of the enforcement, the bailiff hands over the immovable property to the creditor.

II.12.2 Creditor's and debtor's rights and obligations

The creditor must ensure free entry to the immovable property at the announced time of eviction. They must also provide labour resources and means of transport. If the debtor is not present at the eviction and has not taken care of the above-mentioned resources, the bailiff shall arrange for custody at the expense of the debtor.

The provisions on protection against enforcement, which exempt certain assets from attachment, do not apply to evictions. The case law indicates circumstances where eviction should not be enforced, for example in wintertime or for certain social

⁶⁰ § 349 EO.



reasons.

In certain cases, evictions may be withheld or delayed. Two independent criteria are used for the relevant assessment: whether the debtor is at risk of homelessness and whether the eviction can be expected to be postponed for the creditor.

Another reason for postponing an eviction is the fact that minor children also live in the property to be evicted. The reasons must be specified by the debtor in a request for deferment. By law, deferment may be granted twice and for no longer than 3 months per request. After one year from the end of the performance (eviction) period, no postponement of the eviction is possible.

The movable assets which are removed during the eviction may also be attached by the bailiff, if requested by the creditor. In that case, the attached movables must be recorded in an attachment record. The movable assets may either remain at the custody of the debtor or have to be stored finally covered by the creditor. The costs of storage of the movables may be prepaid by the creditor. Final liability lies with the debtor. If the debtor does not overtake their stored movables, they may be sold by auction. The result of the auction should at least cover the storage costs.

III.13 Enforcement of obligations to act, refrain from acting or suffer action⁶¹

In the case of enforcement of a decision on division of immovable properties, the effectuation of the division title (real division) needs to be supported by a judge.

The abolition of an owner community includes both movable and immovable property. The title of division is required to determine the kind of division, which can either be real (physical) or civil. In the case of physical division, the land is divided into separate parts by surveillance. In practice, parties prefer civil division, a procedure which is similar to foreclosure, but less formalistic. The most important legal precondition is to involve all owners (shared owners) into the civil procedure.

Regarding enforcement of a civil judgment requiring the debtor to carry out a particular act, to suffer action or to refrain from certain action, the following methods of enforcement are available:

a) Enabling other (acceptable) actions⁶²

If the debtor is obliged to act, a civil court decision authorising the obligation must be issued, which constitutes the enforcement title. If the debtor refuses to act accordingly, the creditor may apply for substitution of the obliged act. The creditor shall execute the act by somebody they have hired (third party) and the expenses for the substituted act may be enforced against the debtor.

In the application for enforcement, the creditor must specify the act which they wish to be authorised to perform in place of the debtor. The performance must be clearly identified and specified in the enforcement title, and the enforcement court has to examine whether the application for enforcement is covered by the enforcement title.

⁶¹ §§ 353 – 355 EO.

⁶² § 353 EO.



Enforcement of the obligation to act is realised with the authorisation of the creditor to perform (or to have it performed by a third party). If the debtor objects, the creditor may be supported by a bailiff; if necessary, with the assistance of the police.

Enforcement of the obligation to act may be postponed.

b) Enforcement of unrepresentable acts⁶³

An unrepresentable act cannot be carried out by any third party. It must be performed by the debtor.

Enforcement begins with the setting of a time-limit under the threat of a fine. If the time-limit for performance of an unrepresentable act has expired, the fine shall be enforced. By application of the creditor, a new deadline and more severe means of public force must be envisaged.

Following the imposition of a financial fine, a prison sentence up to a maximum of 6 months may be imposed.

c) Refraining from acting or suffering action⁶⁴

While proceedings under a) and b) require active behaviour on behalf of the debtor, proceedings under c) require passive behaviour.

If the debtor fails to comply with the injunction requirement in the enforcement order, the creditor may apply for enforcement once the enforcement order has become enforceable, by means of a criminal decision contained in the enforcement order. However, there is no penalty in this case, as opposed to what is provided in the case of enforcement of unrepresentable acts.

The judge is the competent decision-making body in this case.

III.14 Sequestration of goods⁶⁵

III.14.1 Custody⁶⁶

Attachment, seizure (including custody and storage) and sale (by auction) of movable properties (goods) are provided in the Austrian Enforcement Code.

The creditor is required to apply for custody. The request may be included in the application of enforcement. An application may also be filed separately during the enforcement proceeding, even after attachment (additional custody), when custody is deemed necessary because of the kind of attached goods; in this case, the creditor has to assert danger. The judge or the jurisdiction officer evaluate the necessity of additional custody.

If the bailiff finds items which they can easily take with them, they may take them to court for custody.

⁶³ § 354 EO.

⁶⁴ § 355 EO.

⁶⁵ In the context of enforcement of judgements, sequestration procedure as a type of confiscation, is not included. Bailiffs are involved in the auction of confiscated criminal evidence assets after closing a criminal case.

⁶⁶ § 259 EO.

When goods, which have not been taken immediately for custody by the bailiff, are found, the creditor has to supply means of transportation.

The creditor has to pay costs of custody or transport to custody in advance.

When immediate custody is not possible, measures may be set to prevent removal by the debtor. These may include, for example, vehicle clamp on wheels, the bailiff taking the key and the type certificate or the registration certificate.

The custodian may be at a state institution or at an auction house or also the creditor themselves. The custodian is bound by instruction and liable to the debtor (or a third person) in case of damage or loss of the goods. Usually, a career or company of warehouse keeper is determined as the custodian. It is the bailiff who finally chooses the proper institution.

The beginning of custody has to be recorded in the attachment log.

There is no legal tariff for the costs of custody.⁶⁷ They have to be prepaid by the creditor and in case of numerous creditors a percentage of the costs is paid by each of them.

Custody is concluded by the sale or the determination of the enforcement proceeding.

III.15 Enforcement of foreign enforceable documents from non-EU States⁶⁸

While recent enforcement orders from EU countries no longer need to be declared enforceable in Austria, if they are already enforceable in the country of origin, this does not apply to enforcement orders from non-EU countries.

For the enforcement of foreign enforceable documents from non-EU countries, a declaration of enforceability is required before the enforcement proceedings can be initiated.

The declaration of enforceability presupposes that reciprocity is guaranteed by national treaties or regulations.

The procedure for verifying the enforceability of a foreign enforcement order is not conducted in the context of the enforcement procedure. This procedure is additional to the title procedure carried out abroad, under domestic law. It could be described as a unilateral written procedure which precedes the initiation of the enforcement procedure. It is a very short procedure; the authorisation for enforcement follows immediately afterwards.

At the time of the application, the creditor must present the enforcement order in its full version in the original form or in copy produced by the issuing authority.

If the enforcement title is written in another language, a translation into German must accompany the full content of the enforcement title. However, the mere production of a translation of the title is not sufficient.

⁶⁷ Similar to the costs for estimation: "GebAG" (Fee Requirement law).

⁶⁸ §§ 79 – 86 EO.



This procedure falls within the jurisdiction of the judge, who only decides whether enforceability can be granted for Austria, but not on the substance of the case. There is no hearing. A decision on the declaration of enforceability shall be taken and served to the parties. The intervention of a lawyer is not necessary.

It is the decision-making body responsible for subsequent enforcement proceedings that is competent to confirm the enforceability of the foreign title, i.e., the competent court, is a District Court.

The declaration of enforceability of a particular enforcement order shall be made by means of an order, which shall apply to all subsequent enforcement proceedings under that particular order in Austria. This means that the foreign instrument does not have to be declared enforceable every time for each subsequent enforcement procedure. Instead, in any subsequent application for enforcement, the creditor relies on the order granting the foreign instrument enforceability for Austria.

In practice, an application for enforcement is combined with an application for a declaration of enforceability of the foreign instrument. As such, the judge declares enforceability by order and at the same time grants enforcement, and the competent jurisdiction officer proceeds by ordering further enforcement acts.

Enforcement may begin before the declaration of enforceability has become final, but certain enforcement acts can be performed only after the declaration of enforceability.

The parties may appeal against the order declaring the foreign enforcement order enforceable. The appeal must be signed by a lawyer and is submitted for judgment before the High Court of Appeal. At the request of both parties, the enforcement procedure may be interrupted by the imposition of a security; the enforcement procedure may not be terminated until the declaration of enforceability has been rescinded.

PART IV: ENFORCEMENT COSTS

IV.1 The costs of enforcement⁶⁹

The costs of the enforcement procedure include various fees, explained in more detail in the sub-Chapters below. Some of the basic types of fees are the following:

1. Flat fees:⁷⁰ The flat-rate fees depend, in principle, on the amount of the claim pursued and the type of procedure. These application fees shall cover the court's public costs. An application for attaching, seizing and selling of movable properties is more expensive than an application on enforcement of claims (most commonly used in the case of salaries). Court fees cannot be refunded even if not all applied activities have been carried out. If an enforcement application is withdrawn before the first activity has been set from the court, a refund of 50% of the flat fee may be received.

⁶⁹ "Gerichtsbührengesetz" (Court Fees Law – GGG).

⁷⁰ TP 4 GGG.



2. Bailiff's fees:⁷¹ Enforcement (bailiff's) fees may be fixed amounts and, in some cases, estimated as a percentage based on the success of their intervention.

3. Landbook "Intabulation" fees (especially for mortgage):⁷² Landbook "Intabulation" fees (especially for mortgage) are required to be paid in addition to the flat fee, if the enforcement order leads to an enforced mortgage "Intabulation".

4. Third party costs (experts, custody):⁷³ The amount of expert's fees is reviewed and determined by the court on the basis of the law.

IV.1.1 Initial charges

Flat-rate fees are payable when filing an enforcement application. Enforcement application fees are (mostly) prepaid by the creditor. According to the relevant legal provisions, the enforcement cost must finally be paid by the debtor as part of the enforcement decision. The creditor bears the risk of enforcement in all cases where the enforcement itself fails to be fruitful.

The following exceptions are provided:

1. Legal Aid;
2. Exemption from fees for minors recovering their maintenance;
3. Enforcement application fees based on labour law jurisdiction up to a value of EUR 2.500;

In the first two cases, the creditor's obligation to pay the fees is shifted to the debtor, namely the debtor is ordered to pay the fees directly by the enforcement court. In these cases, the creditor does not have to pay the fees in advance.

If an enforcement application is based on a labour law title the application is free of charge.

Flat fees cover all necessary steps (except of bailiff's fees, mortgage fees, and prepayments for valuation and storage) within the entire enforcement proceeding. Usually, the flat fee has to be paid in advance. No further fees should be paid to the court for the continuation of the enforcement application. In that regard, it is irrelevant how long and extensive the procedure may be, before the payment of the claim can be achieved. This applies to all types of enforcement procedures.

IV.1.2 Bailiff's costs⁷⁴

Financial coverage of the activities of bailiffs in the enforcement procedure is not included in the flat fee for enforcement. The bailiff receives remuneration for the acts carried out and compensation for their travel costs, as well as remuneration for successful intervention – especially for the debtor's payment. The bailiff receives a

⁷¹ VGebG.

⁷² TP 9 GGG.

⁷³ GebAG. This legal instrument applies for experts' costs, for example related to estimation of value, but not for other costs related to enforcement actions, such as costs for locksmith, which are covered by submitting an invoice proving the real costs.

⁷⁴ "Vollzugsgebührengesetz" (Enforcement Fee Law - VGebG).



percentage based on the amount of the payment or the distribution pool, in case of sale (auction) of property.

The fees paid to the bailiff in the event of successful enforcement (payment of the full amount, auctioning of the seized property) are, by their very nature, more lucrative than those paid for the enforcement acts which have been carried out without a positive outcome for the creditor (for example: locked premises, moved debtors, no attachable property found, statement disclosing all assets).

On special occasions the bailiff receives additional payments that are not covered by the flat fees, such as introduction of the administrator in cases of enforced administration, introduction of the valuation expert and the buyer in cases of foreclosure, performance of eviction.

IV.1.3 Expenses of third parties

The expenses of third parties during the enforcement procedure are to be covered by the creditor in advance. They are determined as additional enforcement costs and are forwarded to the debtor.

Expenses of third parties are neither paid by the bailiff nor by the jurisdiction officer or judge.

Examples of third party costs include costs of locksmith for unlocking the premises of the debtor, costs for assessment of immovable properties by experts and storage costs.

IV.1.4 Reimbursement of enforcement measures

In principle, the debtor must reimburse all the costs of the enforcement measures to the creditor. In enforcement proceedings, the sum of these enforcement costs is added to the amount of the claim.

There may be exceptions from the reimbursement principle, for example, in case of annulment of the enforceability of the enforcement title.

IV.1.5 Incentive fee for implementation (enforcement (bailiff) fee)

See Chapter IV.1.2.

IV.1.6 Advance payment

If the creditor does not fulfil the obligation arising from the orders for advance payment, the enforcement procedures may be stopped and closed based by decision of the jurisdiction officer/judge.

Other public bodies (such as Ministries, federal administration bodies, municipalities etc.) are not released from court fees.

IV.1.7 Lawyer's costs⁷⁵

There is no legal obligation to be represented by a lawyer. Nevertheless, a large number of creditors are represented by lawyers, who charge their clients according to

⁷⁵ "Rechtsanwaltstarifgesetz" (Lawyer's Fee Law – RATG).



the Lawyers' Tariff Regulation. The costs charged by lawyers are precisely recorded in the applications submitted by them and the determination of those costs is requested from the court. The Court of First Instance shall verify the accuracy and determine the costs. These costs are then included in the enforcement order as an amount added to the claim that has been described.

Lawyers may charge costs both for the application initiating an enforcement procedure and for any subsequent application. Costs for initial applications are higher than costs for subsequent applications.

There are corresponding tariffs for each type of procedure.

IV.1.8 Other costs

Costs related to third party debtors in the enforcement of claims for third party debtors' statements within a specified time limit, as well as costs of calculating the deductions, are included in this category.

PART V: LINKS, LITERATURE AND SOURCES

Exekutionsordnung (Enforcement Regulation – Enforcement Code, EO)
Gerichtliches Einbringungsgesetz (Law on Court Fee Collection, GEG)
Gerichtsorganisationsgesetz (Court Organisation Law, GOG)
Geschäftsordnung (Regulation of Court Administration)
Insolvenzordnung (Insolvency Law – Insolvency Code, IO)
Rechtsanwaltstarifgesetz (Lawyer's Fee Law, RATG)
Vollzugsgebührengesetz (Enforcement Fee Law, VGebG)
Zivilprozessordnung (Code of Civil Procedure, ZPO)
Zustellgesetz (Notification Law)