



Germany

Narrative National Report

Author: Pierre Holzwarth, Judicial Officer, Bailiff at the district court Heilbronn

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TABLE OF ABBREVIATIONS	
AO	Abgabenordnung
BGB	Bürgerliches Gesetzbuch
BMG	Bundesmeldegesetz
DepotG	Depotgesetz
DG-GvKostG	Durchführungsbestimmungen zum Gerichtsvollzieherkostengesetz
EGZPO	Gesetz betreffend die Einführung der Zivilprozessordnung
EUVTVO	Unbestrittene-Forderungen- Vollstreckungstitel-Verordnung
EU	Europäische Union
FamFG	Gesetz über das Verfahren in Familiensachen
GVGA	Gerichtsvollziehergeschäftsanweisung
GVG	Gerichtsverfassungsgesetz
GvKostG	Gerichtsvollzieherkostengesetz
GNotKG	Gerichts- und Notarkostengesetz
HGB	Handelsgesetzbuch
JBeitrO	Justizbeitrungsordnung
StGB	Strafgesetzbuch
StPO	Strafprozessordnung
StVG	Straßenverkehrsgesetz
WEG	Gesetz über das Wohnungseigentum
ZVG	Gesetz über die Zwangsversteigerung und die Zwangsverwaltung
ZPO	Zivilprozessordnung

INTRODUCTION

An important prerequisite for the proper functioning of the European legal area is that a citizen or a company has the possibility to enforce an enforcement order issued by a national authority in another EU member state. The aim of the present work should therefore be to improve the enforcement of judgments in Europe by explaining in detail the processes and regulations within Germany.

Although many changes have been brought about over the past few years, there are still practical problems with regards to the enforcement of judgments issued by one country in another country of the European Union. The diversity of national laws and the lack of harmonization of national laws on civil enforcement procedures make it difficult to implement the right to enforcement, which should be guaranteed in a cross-border situation. Even today, it is not easy for European companies and citizens



to have a court order or a general enforcement order enforced in another member state, although its enforceability is recognized in the country of origin. The main difficulty lies in the diversity and peculiarity of the processes to be applied to enforcement proceedings. Unfortunately, such difficulties can cause litigants to feel unfairly treated and let down.

The present report therefore pursues two basic goals. On the one hand, it is intended to provide European citizens with the information necessary for the enforcement of judgments in the territory of other member states. This can significantly improve access to legal protection. On the other hand, it is intended to provide the European enforcement agents with the tools they need to strengthen mutual trust and thereby achieve better cooperation.

PART I: LEGAL FRAMEWORK

I.1 Legislation affecting civil enforcement

As far as foreclosure is concerned, the Code of Civil Procedure (ZPO) distinguishes between foreclosure due to monetary claims (sections 803 - 882 a ZPO) and enforcement for the sake of surrendering goods and for acts or omissions (sections 883-898 ZPO). This distinction is preceded by general regulations (sections 704-802 ZPO).

According to §§ 803 - 871 ZPO, the ZPO distinguishes between the enforcement of movable property (§§ 803-863 ZPO) and immovable property (§§ 864-871 ZPO), since enforcement is understandably different.

As a result, enforcement is differentiated not only according to the objects of enforcement but also according to the enforcement bodies.

The types of enforcement are accordingly not assigned to a single enforcement body and the following enforcement bodies can be distinguished: the enforcement agent (§ 753 (1) ZPO), the enforcement court (§764 ZPO), the trial court of first instance (§§ 887, 888, 890 ZPO) and the land registry (§867 Abs. 1 ZPO).

The enforcement agent is mainly responsible in the area of enforcement (§§ 808 - 827 ZPO) and in the surrender of goods (§§ 883 and 885 / 885a ZPO).

Enforcement of monetary claims in real estate (forced administration and auction) as well as claims and other rights (surrender claims and other rights, §§ 857 - 860 ZPO) are transferred to the enforcement court with the exception of the registration of the security mortgage, for which the land registry is responsible.

The trial judge is responsible for the execution; in addition, he/she ceases and desists enforcement (authorization of the creditor to perform an action at the debtor's expense, submission of a declaration of intent, penalty payment and coercive detention).

The enforcement agent is primarily responsible for movable goods (attachment and recovery). In German law, the enforcement agent is an official who, in accordance with Section 154 of the Court Constitution Act (GVG), is responsible for deliveries,



summonses and executions. As has already been mentioned, the enforcement agent is not only responsible for the enforcement of risks and the surrender of property, but also for the acceptance of statement of assets. In this report the debtor, based on a questionnaire, has to reveal all his assets. Therefore, the Code of Civil Procedure (ZPO) contains the generally applicable rules, as far as the tasks of the enforcement agent are concerned, in the section "General Rules".

I.2 Enforceable titles

Debt securities according to the ZPO can be final judgments or conditional judgments of German courts that have been declared final or enforceable (Sections 704, 300, 301, 302 (3), 599 (3) ZPO, 36 (1) No. 1 GVGA).

As a rule, the law assumes that enforcement is made from a final judgment that is final or enforceable (section 300 ZPO) (section 704 ZPO).

One speaks of a final judgment (section 705 ZPO) if there is no legal remedy against it, i.e., if the appointment or revision deadline has expired (section 19 EGZPO) or if the debtor should have waived legal remedies. Upon application, the legal force is confirmed in accordance with § 706 ZPO by the official of the trial court, for example with the sentence: "This judgment is final".

The judgment can be provisionally enforceable in the period up to legal force (§§ 708 - 720 ZPO). These rules first apply to the trial court. It has to decide whether a judgment should be enforceable before it becomes final, and if so, with or without security.

Furthermore, there are also partial judgments (§301 ZPO) and conditional judgments (§ 302 ZPO) and the debt instruments that are not exhaustively listed in § 794 ZPO: comparisons between parties, cost-fixing decisions, enforcement notices, arbitral awards, notarial deeds, European payment orders as well as arrests and injunctions.

In these cases, the clause (§ 725 ZPO) is the official certificate of enforceability - it attests to the existence of the title and the readiness for enforcement. The enforcement bodies should not be burdened with substantive questions, because the knowledge process has been completed. They should also not have to check whether and how the title came about. The enforcement agent does not have to check whether and how the title came about. However, it must be certain that the title exists and can be enforced. In this respect, the clause solves the problem because the court itself can determine whether a formal title exists, whether it is ready for enforcement, whether the title has an enforceable content and whether the plaintiff (creditor) and defendant (debtor) are identical.

The notification required after creation of the title (§§ 166 - 213 ZPO) is the formal announcement of written declarations and decisions to the addressee. The latter should be given the opportunity to take note of the content of the document to be served. Furthermore, the fact, type and time of disclosure should be documented. The delivery of the title before the start of enforcement is required in §§ 750 - 751 ZPO.

For the titles mentioned in § 794 ZPO, the provisions of §§ 724 - 793 ZPO, i.e., also § 750 ZPO, are to be applied accordingly. §§ 166 - 195 ZPO contain further provisions for the delivery procedure. The delivery serves to protect the debtor. For the last time, he/she should be given the option of a "voluntary" payment. The delivery can be "ex officio" (§§ 166 - 190 ZPO) or in "party operation" (§§ 191-195 ZPO).

In Germany, a large number of executions are carried out from enforcement notices (sections 794 (1) no.4, 692, 699, 700, 796 ZPO). The judicial dunning procedure is regulated in §§ 688 ff. ZPO. It will make it easier for the creditor to obtain an enforceable title if it is not expected that the debtor will defend himself/herself against the claim. Only monetary claims can be asserted in the dunning procedure. The district court is responsible. The dunning procedure is centralized in the countries and is processed automatically.

At the request of the creditor, an order for payment is issued. If the debtor does not file an objection against this in due time (within two weeks), the enforcement order is issued. The enforcement order which has been issued is the title to carry out the foreclosure. According to § 796 ZPO, it does not need an enforcement clause, unless it is to be enforced against a third party (e.g., legal successor). The enforcement order must be served. The delivery sets the legal remedial period (2 weeks) in motion and is a prerequisite for the enforcement (§§ 750, 795 ZPO). At the request of the creditor, it takes place either ex officio or in party operations (Section 699 (4) ZPO).

Arbitral awards and arbitration settlements declared to be enforceable are less common in the enforcement procedure - but are not impossible. It is often agreed in industry, commerce and associations that legal disputes should be decided by one or more arbitrators rather than by state courts. The reason for such arbitration agreements is that decisions in the courts often take several years to become final. In addition, the state judge often does not have the professional/scientific qualifications that seem appropriate to resolve the issues that are sometimes very special. Instead of the state court, the arbitrator decides the legal dispute. If the parties agree, a settlement is also reached before the arbitral tribunal (§1053 ZPO). If the parties do not agree, the arbitrators must decide the dispute. The decision is then made in the form of a so-called arbitration award (sections 1054, 1055 ZPO). As such, arbitration awards and arbitration comparisons are not enforcement titles. In order to become debt instruments, they require the declaration of enforceability (section 1060 ZPO), which is made by the court in the form of a decision that is delivered ex officio (section 329 (3) ZPO). The higher regional court is responsible for this (§1062 ZPO).

In addition, the notary can create enforceable deeds. The prerequisites for notarization can be found in Section 794 (1) no. 5 ZPO and the Certification Act. These documents in turn require a clause (sections 749 (1) number 5, 795 ZPO). This is issued by the notary. The two-week waiting period of Section 798 ZPO must be observed.

Enforceable titles are also provided by legal instruments outside the ZPO. The following titles of this category include:

- Title according to family law legislation;



- Title under the bankruptcy code;
- Decisions of the labour courts;
- Youth welfare documents;
- Foreign debt.

I.3 Service of documents to parties and third parties

The enforcement agent is responsible for deliveries inside and outside of enforcement proceedings.

Within the enforcement procedure, the enforcement agent is responsible for the delivery of enforcement documents if they have not yet been delivered when the order was placed. This fulfils a necessary enforcement requirement. In addition, the enforcement agent delivers the summons to deliver the property information within the enforcement procedure. The enforcement agent also has to send attachment and transfer orders to the respective third-party debtor and the debtor as requested.

The enforcement agent also has to deliver documents outside of enforcement.

The enforcement agent is responsible for checking the form in which the respective document has to be delivered (certified form or in the original (declarations of intent). If necessary, the enforcement agent produces the certificates himself/herself.

The decision regarding the type of delivery is made according to due judgment, that is, should be delivered by post or in person.

Electronic deliveries are currently not possible in Germany.

I.4 Legal remedies, appeal and objection

The enforcement body, including the enforcement agent, is not entitled to check whether the payment claim (still) exists. The substantive claim is “established” in the title; there can no longer be any dispute about it in the enforcement proceedings. The enforcement agent must rely on what the title attests. The enforcement body must not be allowed to hear the debtor's objection, which is often heard in practice, that the title is wrongly held. The debtor should have raised this objection in the knowledge proceedings.

The enforcement debtor who objects that he/she has paid or has been deferred by the creditor, or who makes other substantive objections, must in principle file a counterclaim for enforcement (enforcement order) (Sections 767, 795, 796 (2) and (3), 797 3-5 ZPO). In principle, the debtor cannot be heard with these objections in the enforcement proceedings. This applies with very special exceptions, which are in connection with § 775 ZPO. The enforcement agent may only consider suspension of enforcement in the above-mentioned cases if further conditions are met (Section 775 No. 4 or 5 ZPO).

These arrangements are only preliminary. If the creditor insists on enforcement, the enforcement agent is bound by it and must enforce it. As already mentioned, the debtor has only the possibility to file a counterclaim for enforcement pursuant to Section 767 ZPO. The enforcement creditor has the right to carry out the act of

enforcement based on the conditions for enforcement - title, clause and service. This right of the creditor is called "enforcement right".

A distinction is therefore made between the creditor's substantive legal claim against the debtor and the enforceable claim resulting from the title. In the event of refusal of the enforcement body the creditor can enforce his/her enforcement claim by reminder to the enforcement court (§766 ZPO) and, if necessary, by immediate complaint to the district court (§793 ZPO).

1.5 Postponement, suspension and termination of enforcement

Section 765 a (1) of the ZPO gives the enforcement court the option of suspending, prohibiting or temporarily suspending enforcement measures if there is particular hardship. Except in the case of eviction, this application is not subject to a time limit. In cases of eviction (not just the evacuation of living space) it must be made at least two weeks before the eviction date. The enforcement agent reacts to the decision according to its content, whereby enforcement measures already taken can only be revoked when the decision becomes final.

In addition, the enforcement agent has the option of agreeing payment instalments with the debtor if the creditor has not objected to such an agreement when the order was placed. In this case, the stay of enforcement lasts as long as the debtor adheres to the payment agreements. If the debtor is delayed in payments by more than two weeks, the postponement of execution is ended by law.

With regard to the termination of the enforcement, it should be noted that the word foreclosure can encompass both the entire state activity aimed at satisfaction of the creditor and the individual enforcement measure together with the other acts intended to be carried out, in which case the enforcement is also carried out without satisfaction. Its effect can end when a new independent enforcement begins with a subsequent new measure. Enforcement in the broader sense is important for § 767 ZPO and enforcement in the narrower sense for § 766 ZPO.

Enforcement in the broader sense only ends when the creditor is fully satisfied in relation to the title claim and the costs. As long as the measure of enforcement in physical matters due to monetary claims (§808 ZPO) is still ongoing, it has not ended. With the receipt of the proceeds by the enforcement agent or with the removal of cash, the debtor is released - as follows from §§ 815 para. 2, 827 para. 2, 732 ff. ZPO - but enforcement is still ongoing. Rather, the termination lies only in the delivery of the money to the creditor. In the case of a knock-down with the handover to the creditor himself/herself, enforcement is terminated if the creditor is released from the obligation to pay cash in accordance with section 817 (4) ZPO and the matter is handed over to him/her (section 819 (4) sentence 2 ZPO).

The enforcement to obtain the surrender of goods (§§ 883 ff ZPO) does not end with the removal of the good, but only with the delivery of the good to the creditor. The enforcement according to § 885 ZPO does not end with the debtor being dismissed from the premises, but only with the instruction of the creditor.

I.6 Counter enforcement

The debtor of an enforcement measure may appeal against the manner of enforcement. The appeal is called reminder (§ 766 ZPO). This is directed against enforcement measures that have been carried out by the responsible enforcement body without a hearing. These include, for example, seizure measures by the enforcement agent, the issuing of seizure and transfer orders by the enforcement court or the entry of a security mortgage by the land registry. The so-called "reminder" is not tied to a deadline. However, it can no longer be lodged when the execution has already ended, for example when the creditor has received all of his/her money. The reminder can be lodged directly before the enforcement body or before the enforcement court. The appeal itself has no suspensive effect.

The suspension of enforcement must therefore be explicitly requested within the application. The enforcement court then has the option of temporarily suspending execution until a decision has been made on the reminder. The enforcement body itself has the right to remedy the reminder, which means to change its own measure. However, if a lien has already been given as a result of the measure, the remedy by the enforcement body itself is no longer permitted. If the enforcement body does not help with the inserted reminder, that is, if the initiated measure does not change after reviewing the presentation, the process is submitted to the judge responsible at the enforcement court of the district court for decision.

The memory itself can only relate to formal objections, e.g., against enforcement measures that are not covered by the title itself (different content, different amount of money), the lack of the clause, ineffective delivery or an inadmissible attachment due to provisions on the garnishment protection.

If the enforcement body rejects the execution of an enforcement order, the creditor can, like the debtor, file a reminder against the rejection.

If the enforcement court or the trial court, as the enforcement body, has made a decision after hearing the commander, the commander can only appeal against the immediate complaint in accordance with Section 793 ZPO. There is a fixed period of two weeks for this. The district court then decides on the immediate complaint.

The debtor also has the right to file an enforcement order. He/she can apply to the enforcement court for a measure of enforcement to be lifted, prohibited or temporarily suspended. Overall, however, this is only possible under very strict conditions, namely when enforcement means hardship that is incompatible with common decency and the creditor's need for protection does not completely conflict with this (§ 765 a ZPO). Enforcement protection is mainly used for the eviction of apartments. In such cases, the debtor must submit the application for evacuation protection to the court at least two weeks before the scheduled evacuation date, unless he/she was unable to present the application earlier through no fault of his/her own.

Objections based on substantive law against enforcement can only be raised within the narrow framework of Section 767 of the Code of Civil Procedure. If the titled claim

has been met, for example, or has expired, the debtor can only raise this objection by means of an enforcement counterclaim. The trial court that issued the title is responsible for this. However, an enforcement counterclaim is only possible if the circumstances on which the objection is based only occurred after the title was issued and no legal remedy is possible. The trial court or, in urgent cases, the enforcement court may temporarily suspend the enforcement on request. Temporary settings can be made on condition that the debtor has to provide security beforehand.

1.7 Objects and exemptions on enforcement

Physical objects are subject to enforcement (seizure) by the enforcement agent (Section 808 (1) ZPO). This includes movable, physical things within the meaning of the d. Sections 90 ff BGB. The enforcement agent cannot seize the immovable property. The latter includes land (section 864 (1) ZPO) and its essential components, co-ownership shares in land, land rights (in particular inheritance rights, section 864 (1) ZPO), residential property (section 1 (2) WEG), partial ownership (section 1 Paragraph 3 WEG), registered ships and objects belonging to the liability association of the property mortgage (§ 865 ZPO). The enforcement agent can also not attach any essential parts of a property because they cannot be the subject of special rights, i.e., they are subject to foreclosure on the property (§ 864 ZPO in conjunction with §§ 94, 95 BGB). Essential parts of a property are things that are either permanently connected to the land (building) or are inserted for the production of a building, e.g., central heating in a residential building.

As a rule, the movable items in the debtor's custody are easily attachable. This corresponds to the principle that the total assets of the debtor are open to the enforcement bodies. However, there are a number of restrictions on debtor protection for social, economic and equity reasons. A debtor who is worthy of protection should be left with the goods necessary for his/her appropriate survival and further advancement, without thereby making it unreasonably difficult for the creditor to fulfil his/her claims. These seizure restrictions only apply to the enforcement of money, not to the enforcement of the surrender. The attachment restrictions may result from the ZPO (e.g., Section 811 ZPO) or other laws.

A total distinction must be made between absolute garnishment restrictions and relative garnishment restrictions. Absolute garnishment restrictions mean that a certain good may never be seized because, for example, it is prohibited by law to sell it (e.g., food that can be harmful to health or certain plants and animals that are subject to the Washington Convention on the Protection of Species). Relative garnishment restrictions mean that a good is only seized from the garnishment if there are other certain conditions met regarding the person of the debtor.

The attachment protection regulations are to be examined *ex officio*. The enforcement agent therefore decides independently and under his/her own responsibility on the spot whether there is a garnishment restriction (Section 72 (1) GVGA). Even if the creditor expressly instructs the enforcement agent to refuse to seize an item that cannot be attached.

In addition, there is a ban on attachment in Germany. This provision serves to protect debtors when enforcing them in movable property. Before the seizure, the enforcement agent calculates the amount of money due for enforcement of the creditor, which is composed of the main claim, ancillary claim, interest and enforcement costs in accordance with § 80 GVGA. On the basis of the estimate of the usual sales value of the seized objects to be included in the attachment protocol in accordance with §§ 813 ZPO, the enforcement agent determines the auction proceeds that are likely to be achieved. This can be higher than the minimum bids of § 817 a ZPO. By comparing the amount to be recovered and the presumed auction proceeds, the enforcement agent has to determine how far he/she has to extend the attachment. If the enforcement agent has seized objects that will in all likelihood achieve the amount (as described above), he/she will end the seizure measure. However, if there is only one item that has a much higher value (e.g., a new debtor's passenger car), the enforcement agent must seize it despite the excess value. Since it is the only item in this situation, there is no over-attachment.

Furthermore, there is a ban on useless attachment according to Section 803 (2) ZPO. Accordingly, a garnishment is always forbidden if the good does not allow proceeds to be expected. A garnishment is useless if the realization of the objects to be garnished does not lead to a surplus over the costs of the enforcement. The enforcement agent must therefore compare the costs and the presumed auction proceeds.

Section 812 ZPO extends the ban on useless attachment to certain items. This provision is mandatory for the enforcement agent despite the wording "should". Failure to do so gives the debtor or the beneficiary member of the debtor's household the right to be reminded in accordance with § 766 ZPO. A prerequisite for the application of the provision of § 812 ZPO is that it must be a matter of ordinary household items. These are things that serve the daily needs of the household, e.g., beds, tables, chairs, dishes, kitchen utensils or things of personal use such as clothing or laundry. Luxury items are excluded from this. The things that really need to be used are included. Their number, the adequacy or the necessity for the debtor's household is irrelevant for § 812 ZPO.

The general attachment prohibitions are contained in § 811 ZPO. The restrictions of the regulation apply only to the specific objects listed in the law, not to money surrogates.

Ownership of the objects is not important for debtor protection. The debtor is protected because of the necessary use of the thing, even if he/she is not the owner. However, Section 811 (2) ZPO should be observed here. In the case of a thing purchased under retention of title, the debtor cannot rely on the protection of Section 811 (1) No. 1, 4, 5 to 7 ZPO under the conditions of this provision.

In general, the attachment protection of § 811 ZPO is granted from a social point of view, taking into account the specific circumstances of the debtor.

1.8 (Court) penalties and fines

Enforcement in criminal matters is carried out regularly in accordance with the law on



the collection of justice. In the case of adhesion procedures (sections 403 - 406 c, in particular section 406 b StPO; section 38 no.5 GVGA), in the event of collapse of security (sections 124 subsection 3, 116 subsection 1 no.4 StPO; section 38 no.4 GVGA) and the cost reimbursement obligation of one party to the other party (§464 b StPO) is to be enforced according to the Code of Civil Procedure (ZPO), i.e., in suitable cases by the enforcement agent. In these cases, a clause of the criminal court is necessary.

For several years, real arrest has been of particular importance in accordance with Section 111 d StPO. The provisional seizure of assets as part of the public prosecutor's investigation is referred to as asset skimming. In accordance with Section 111d of the Code of Criminal Procedure, an arrest in rem can be ordered during the investigation to ensure the forfeiture of the replacement of value (Section 73a of the Criminal Code), the confiscation of the replacement of value (Section 74c of the Criminal Code) or in favor of the injured party (Section 111b (5) of the Criminal Code). The criminal judge is generally responsible for ordering the real arrest. In the event of imminent danger, however, the public prosecutor's office can order the arrest (section 111e (1) sentence 1 2nd half sentence of the Code of Criminal Procedure). Responsibility for the execution of these arrests by attachment is regulated in § 111 f (3) STPO. Responsible is the authority designated in § 2 of the law on the collection of justice, the public prosecutor, the police and also the enforcement agent. It is disputed whether the enforcement agent as such is under his/her own responsibility or the enforcement agent as a law enforcement officer.

1.9 Access to information on the domicile and assets of the debtor

The enforcement agent has the opportunity to determine the whereabouts of the debtor in accordance with § 755 ZPO. This requires a corresponding application from the creditor. The location is then determined by asking the registration office, the immigration office, the pension insurance agency, the Federal Motor Transport Authority, the trade inspectorate and the commercial register. The enforcement agent is responsible for checking whether there are any obstacles to providing information to the creditor (e.g., information blocks, special information blocks - sections 51, 52 BMG).

In addition, the enforcement agent has the option of determining the debtor's assets by obtaining information from third parties, in accordance with Section 802 I of the Code of Civil Procedure. The enforcement agent will, if possible, examine the existence of the procedural requirements in accordance with Section 802 I of the Code of Civil Procedure in conjunction with Section 74 SGB X, Section 93b (1) AO and Section 33 (1) of the StVG.

The enforcement agent can then find out the name / company and the address of the current employer of an insured employment relationship of the debtor by asking the pension insurance institution.

By asking the Federal Central Tax Office, the enforcement agent can find out the debtor's accounts in accordance with section 93 (8) sentence 2 of the AO in

conjunction with “93 b AO. The information also includes those accounts for which the debtor is only entitled to dispose, because this information also belongs to data within the meaning of Section 24 (1) sentence 1 no. 2 KWG and it can be relevant for enforcement purposes.

By querying the Federal Motor Transport Authority, motor vehicles that are registered to the debtor can be determined. All the information required for attachment must be included.

PART II: ORGANIZATION OF ENFORCEMENT

II.1 The status of the judicial officer

The enforcement agent is an independent enforcement body and at the same time a middle or senior civil servant. He/she runs his/her own business with his/her own office and office staff at his/her own expense. There are about 4,200 enforcement agents in Germany. A deficiency is not known. In 2017, they carried out about 1.3 million seizures and evicted 53,600 apartments. The enforcement agent has the task of compulsorily enforcing judgments and other enforcement orders and (also outside of specific court proceedings) of serving documents. In his/her activity as an independent organ of enforcement, the enforcement agent exercises sovereign authority on his/her own responsibility and is subject to the technical supervision of the enforcement court within the framework of reminder. Outside of his/her activity as an independent enforcement body (e.g., with regard to the question of organization), an enforcement agent, as an official, is subject to the supervision of the supervising district court.

Pursuant to Article 1 of the Enforcement Agents' Rules, the enforcement agent is independent to the extent that other principles do not conflict with this. The enforcement agent is bound by the creditor's application for enforcement, e.g., on the basis of the disposition maxim applicable in the enforcement proceedings. The creditor thus determines the start, type and extent of the enforcement. The creditor can also exempt certain objects from the attachment. However, the enforcement agent independently determines the exact time of an enforcement measure. He/she can also decide independently whether to postpone an enforcement measure under § 765 a Abs. 2 ZPO.

The enforcement agent is one of the organs of the administration of justice and is active exclusively in an area of jurisdiction assigned to him/her. The local courts have so-called enforcement agent distribution offices, which collect orders from creditors to the enforcement agents in the respective district of the local court and then assign them to the relevant competent enforcement agent. Unless otherwise provided, the enforcement agent's local jurisdiction shall be limited to the district assigned to him/her.

II.2 Supervision over enforcement

As an independent judicial body, the enforcement agent does not act in relation to creditors on the basis of a private law mandate, but on the basis of public law



authority, namely on the basis of a procedural request for the performance of the relevant official act, which he/she performs independently and on his/her own responsibility directly vis-à-vis the parties within the framework of legislation. When performing the official act, there is a wide scope of action with regards to the result of the work. It is the enforcement agent's sole responsibility to independently apply and interpret the relevant legislation and thereby achieve a legally acceptable result of the work. He/she is not subject to the direction of the court and is not bound by instructions in his/her activities, but is factually independent and is only subject to the technical supervision of the enforcement court in individual cases. His/her official acts and decisions can only be challenged by appeal and cannot be overruled by the official supervision. In his/her official acts, the enforcement agent must not only represent the interests of creditors, but also take into account the protection needs of debtors, in particular their fundamental rights, in which he/she must regularly intervene.

The procedure for speedy and cost-saving execution is determined at the enforcement agent's discretion. Consequently, the enforcement agent has a wide margin of discretion and assessment. This special responsibility is also evident from the large number of court decisions in the enforcement agent sector. In the area of cost law, in addition to specialist supervision, the enforcement agent is subject to a special right of instruction by the district auditor, as the costs are charged to the state treasury. Under civil service law, the enforcement agent is also subject to supervision. In setting up and running his/her business, the enforcement agent is only subject to statutory provisions and, to that extent, he/she acts independently and in his/her own name.

II.3 Access to the premises

The enforcement agent is authorised to search the debtor's home and containers if the latter consents to the search; this must be recorded in the report. A dwelling includes all premises serving the domestic or professional purposes of their owner, in particular the actual dwelling, as well as work, business and other premises, associated ancillary rooms and the adjoining pacified property (courtyard, garden). If the debtor does not permit the search, the enforcement agent must ask him/her about the reasons he/she wishes to oppose a search. The substance of his/her statements must be recorded in the minutes.

At the same time, the enforcement agent shall instruct the debtor that, as a result of the refusal to carry out a search, he/she shall be obliged to provide information on his/her assets pursuant to § 807 Abs. 1 Nr. 1 of the Code of Civil Procedure (ZPO), provided that the creditor has made a request to that effect, but that he/she may object to the immediate acceptance of such information. The enforcement agent shall note the instruction in the minutes.

It is up to the creditor to obtain a judicial search order. The search warrant is issued by the judge of the district court in whose district the search is to take place. Without a judicial order, the enforcement agent may only search the debtor's home if the delay in obtaining such an order in advance would jeopardise the success of the search. The search warrant must be presented at the time of execution and mentioned in the minutes. If the enforcement agent does not find any person at the debtor's home



during an attempted execution, he/she shall make a note of this in the files and shall otherwise, if he/she repeatedly fails to find the debtor, proceed in accordance with the provisions of paragraphs 3 to 4.

If a combined order pursuant to § 807 of the Code of Civil Procedure (ZPO) exists, the enforcement agent shall, in the event of the debtor repeatedly failing to find the debtor, agree on further action with the creditor, unless the order already contains specific provisions for this case. As a rule, he/she shall not open the apartment by force until he/she has given the debtor written notice of this. The announcement should contain references to § 758 Code of Civil Procedure (ZPO) and § 288 of the German Criminal Code (StGB), to the search order and a demand for payment. This also applies if the apartment is to be searched for the surrender of movable property or for the execution of orders under the Judicial Recovery Act (JBeitrG), including the removal of the driving licence. On the other hand, a judicial search order is not required for the eviction of an apartment and the arrest of a person on the basis of a judicial arrest warrant; the same applies to the subsequent collection of seized property left in the debtor's custody if a search order had already been issued for the seizure.

If a judicial search warrant is available, all other orders available to the enforcement agent may also be executed simultaneously, provided that execution on account of these orders does not require any additional further measures (search of other rooms and containers), which inevitably lead to the enforcement agent staying at the debtor's premises for a longer period of time. Otherwise, separate judicial search orders will be required.

The enforcement agent may search the debtor's clothes and bags. A special judicial order is only required if the search is to be carried out in the debtor's home against his/her will. The enforcement agent shall have a reliable female assistant perform the search of a female person. The search of a male person shall be carried out by a reliable male auxiliary, if a female enforcement agent executes the enforcement.

Persons who occupy the apartment together with the debtor must tolerate the search if it is admissible against the debtor. Despite this fundamental duty to tolerate, the enforcement agent must take into account special personal circumstances of the flatmates, such as an acute illness that is obvious or proven by a medical certificate, or a serious threat to their health, in order to avoid undue hardship, and thereafter, in exceptional cases, refrain from a search.

Due to the multiple encroachments on fundamental rights such as the right to property, the inviolability of the home, the inviolability of the person and the right to informal self-determination, decisions are made which must be individually adapted to the individual case and often have to be made on the spot. In addition, massive conflict situations can occur with regards to violation on fundamental rights. Based on a decision that has been made, a fact is immediately established that cannot be reversed. A challenge of the decision is only possible according to § 766 Code of Civil Procedure (ZPO). Because of the encroachments on fundamental rights, proportionality must be maintained, which entails pursuing a legitimate public



purpose that is also suitable, necessary and appropriate. Efforts must be made to ensure speedy and cost-saving enforcement (§ 802 a ZPO). For this reason, persuasion is often required in conflict-ridden discussions in order to persuade the debtor to cooperate. This approach is de-escalating, saves costs and time and ultimately ensures that the execution order can be carried out without having to refer the creditor to further legal proceedings.

II.4 Obstructing the judicial officer from carrying out enforcement

If the enforcement agent faces resistance, he/she may use force and request police assistance for this purpose (§ 758 Abs. 3 ZPO). To enforce his/her powers, the enforcement agent may use direct coercion against the debtor; in doing so, he/she may also make use of the administrative assistance of the police.

The enforcement agent must call two adults or a municipal or police officer as witnesses to an enforcement action (§ 759 ZPO) in the following cases:

- If there is resistance to an enforcement measure;
- in case of an enforcement measure, neither the debtor himself/herself nor an adult member of his/her family or employed by his/her family is present in the debtor's home.

As witnesses, uninvolved persons who appear suitable should be selected who, if possible, should live at or near the place of enforcement. The witnesses must also sign the minutes. Resistance within the meaning of these provisions is any behaviour which is likely to give rise to the assumption that execution cannot be carried out without the use of force.

II.5 Time of enforcement

The enforcement agent shall not perform an enforcement action at night and on Sundays and public holidays if this represents undue hardship for the debtor and the joint custodians or if the expected success is disproportionate to the intervention in apartments only on the basis of a special order of the judge of the district court. Night-time includes the hours from 9 p.m. to 6 a.m. (§ 758 a Abs. 4 Code of Civil Procedure (ZPO)).

On Sundays and general public holidays and at night time, the enforcement agent may carry out enforcement actions outside of homes (§ 61 Abs. 1 Satz 2 Enforcement Agent's instructions - GVGA), provided that this does not constitute undue hardship either for the debtor or for the joint custody holders and provided that the expected success is not disproportionate to the intervention. Prior to this, the enforcement agent shall, as a rule, have tried in vain at least once at the time of day on a normal weekday.

In apartments, the enforcement agent may only enforce on Sundays and public holidays and at night on the basis of a special judicial order. This shall also apply if the enforcement action is aimed at the evacuation or surrender of premises or the execution of an arrest warrant pursuant to § 901 of the Code of Civil Procedure. The order is issued by the judge of the district court in whose district the enforcement



action is to be carried out. It is up to the creditor to obtain the order. The order must be presented at the time of execution, and this must be noted in the minutes of the execution proceedings. Unless its contents indicate otherwise, the order issued is only valid for the one-time execution of the enforcement action. It includes permission to search the apartment if the enforcement action requires it.

There is no legal provision that expressly permits the enforcement agent to continue an enforcement action that was started in an apartment at daytime after the start of the night. It is therefore advisable to obtain the judge's order from the local court as a precautionary measure if it is to be expected that enforcement cannot be completed before the night-time period begins.

The debtor's home may be searched without his/her consent only on the basis of an order by the judge at the local court in whose district the search is to be carried out. This does not apply if obtaining the order would jeopardize the success of the search. Subsection 1 shall not apply to the execution of an order to vacate or hand over premises and to the execution of an arrest warrant under § 802 Code of Civil Procedure (ZPO).

If the debtor consents to the search or if a search warrant has been issued against him/her, persons who have joint custody of the debtor's home shall tolerate the search, but these are unreasonable hardships towards joint custody holders and should therefore be avoided.

II.6 Mediation

In Germany, mediation by enforcement agents is not foreseen. The enforcement agent can only try to reach an amicable settlement with the debtor (payment by instalments, § 802 b ZPO). This is done in the context of the enforcement proceedings. The enforcement agent shall work towards the speedy, complete and cost-saving recovery of monetary claims (§ 802 a Abs. 1 of the Code of Civil Procedure (ZPO)).

This is done by contacting the debtor by mail or personally on site. The debtor is informed about the possibilities and consequences of an amicable settlement. The enforcement agent then has to decide on his/her own responsibility whether the offer of payment by instalments is granted. For this purpose, the debtor must provide credible evidence, if necessary, by submitting documents such as salary statements, account statements, life insurance contracts, funds from which he/she will pay the instalments. Repayment should be completed within twelve months (§ 802 b Abs. 2 sentences 3 ZPO).

The enforcement agent is entitled and obliged to work towards an amicable settlement in every stage of the enforcement proceedings. This principle gives the enforcement agent considerable scope for assessment and discretion in suspending enforcement measures.

The creditor must be confident that the enforcement agent will realize a speedy recovery of the claim, and at the same time the debtor may assume that he/she will not be left destitute.

The requirement of credibly demonstrated solvency partially assigns the enforcement agent with a judge-like task. The procedure for amicable settlement is an act of mediation, which takes place within the framework of enforcement and which is carried out by the judge in proceedings for a decision.

PART III: ENFORCEMENT PROCEDURES

III.1 Initiation and end of the enforcement procedure

III.1.1 General procedural requirements

In order to initiate enforcement, the creditor in Germany needs an enforcement title with an enforcement clause. As a rule, this must be delivered before the enforcement begins.

There are a variety of enforcement orders. The most common include final judgments that are final or enforceable (§ 300 ZPO). Furthermore, there are also partial judgments (§ 301 ZPO), conditional judgments (§ 302 ZPO) and the debt instruments that are not exhaustively listed in § 794 ZPO (comparisons between parties, cost-fixing decisions, enforcement notices, arbitral awards, notarial deeds, European payment orders, arrests and injunctions).

Most titles must have an enforcement clause (enforceable copy). The only exception is the enforcement order. The clause is the official certificate of enforceability. As a rule, the court certifies that a formal title exists, that it is ready for enforcement, that the title has an enforceable content and that the plaintiff (creditor) and defendant (debtor) are identical. The declaration of enforceability of notarial deeds is made by the respective notary.

The delivery of the title before the start of enforcement is prescribed in §§ 750, 751 ZPO. For the titles mentioned in § 794 ZPO, the provisions of §§ 724 - 793 ZPO, i.e., also § 750 ZPO, are to be applied accordingly, according to § 795 ZPO. §§ 166 - 195 ZPO contain more detailed provisions for the delivery procedure. The delivery serves to protect the debtor. For the last time, he/she should be given the option of a "voluntary" payment.

The delivery can be made "ex officio" by the court (§§ 166 - 190 ZPO) or in "party operation" (§§ 191 - 195 ZPO) by the enforcement agent.

III.1.2 Application (§§ 753, 828 ZPO)

The creditor can freely decide whether and when he wants his/her claim to be enforced from the title. It determines the start, type and extent of enforcement access. The creditor can also withdraw the application at any time and is therefore the "master of the procedure". Enforcement is therefore not carried out "ex officio". The creditor's application (declaration of intent) is thus a procedural act that initiates the proceedings. The application must be submitted to the local court responsible for enforcement, the enforcement agent distribution centre of the local court or directly to the local enforcement agent. The responsibility of the court is usually determined¹

¹ It can be determined at: <https://www.gerichtsverzeichnis.de/verzeichnis.php>.



by the place of residence of the debtor or, exceptionally, by the place of the enforcement action.

III.1.3 Enforcement from a European enforcement order if the debtor lives in another member state²

A foreign decision, judicial settlement or public document can be enforced in another member state with a confirmation as a European enforcement order in civil and commercial matters.

Confirmation as a European enforcement order (judgments, orders, orders for payment or orders for enforcement, court officials' cost-fixing orders, judicial comparisons and public documents) is only available for uncontested claims and must be requested from the competent authority (mainly court) in the member state of origin (Art 24 para. 1 EuVTVO). Legal effect is not necessary according to Regulation (EC) No. 805/2004 (EuVTVO).

Even if the requirements for issuing a European order for payment are met, the applicant can, for example, obtain a judgment and have it confirmed as a European enforcement order. It would also be conceivable to instead apply for an international clause in the country in which enforcement is to take place.

In the case of a European enforcement order, which must be temporarily enforceable, no declaration of enforceability is required in the executing member state (Art. 5 EuVTVO).

Confirmation as a European enforcement order is issued by the court using the form (Art. 9 (1) EUTVO).

A foreign or German enforcement clause is not required in Germany; it is replaced by the confirmation (§ 1082 ZPO).

III.1.4 Service of a European enforcement order

The creditor can carry out the enforcement himself/herself immediately, but must apply for it before the court or body responsible for the enforcement of European enforcement orders in the executing member state. These authorities or bodies can be found on the website of the European Judicial Network in civil and commercial matters.

In accordance with Art. 20 para. 2 EuVTVO, the creditor has to provide the enforcement authority of the executing member state (see above) with a copy of the decision, the public document or the judicial settlement that meets the requirements to establish its authenticity, a copy of the certificate as a European enforcement order

² See: Regulation (EC) No. 805/2004 (EuVTVO) of April 21, 2004 on the introduction of a European enforcement order for uncontested claims, Regulation (EC) No. 1869/2005 of 16.11.2005 to replace the annexes to the regulation, Guide to the application of the European Enforcement Order, Commentary on §§ 1079 - 1086 ZPO, as well as: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005R1869:DE:NOT>, http://www.datenbanken.justiz.nrw.de/ir_hm/vo_805-2004_unbestrittene_iefe.htm.

and, if applicable, a translation of the certificate into the official language of the executing member state. A translation is generally not required unless the form contains individual information.

It could also make sense to provide the competent enforcement authority with proof of delivery of the confirmation to the debtor. However, this is not a necessary requirement (Strasser, Rpfleger 2007, 249).

The enforcement authorities must check whether the creditor has provided the documents necessary for the enforcement.

III.1.5 Foreclosure into movable property

The creditor can enforce the immovable and movable assets of the debtor on the basis of a monetary claim.

The 8th book of the ZPO deals with the enforcement of the debtor's movable property. Movable assets include claims and rights on the one hand, and physical things on the other. If the debtor's assets are not known to the creditor, a procedure must first be carried out by the enforcement agent, in order to receive information and determine the debtor's assets. With the information obtained, enforcement can then be carried out in a targeted manner. The enforcement agent can also be charged with enforcement in physical things without knowing in advance whether the debtor is in possession of them.

III.1.6 Enforcement in claims and rights

In Germany, the enforcement department of the district court of the place of residence or business of the debtor is responsible for enforcement of claims and rights. To initiate enforcement, the enforceable copy of the enforcement order and an enforcement order must be submitted to the competent district court. A form must be used to issue the enforcement order (§ 829 ZPO in conjunction with § 2 ZVfV). The form must list creditors, debtors and enforcement orders. In addition, the third-party debtor and the nature of the claim must be specified. A list of claims must also be attached to the form.

The order can be sent to the court by post or electronically. The electronic submission takes place via the electronic court and administrative mailbox of the responsible court. Special requirements must be met for this (§ 130a ZPO).

III.1.7 Enforcement in physical things

In Germany, the enforcement agent is responsible for enforcement in physical things. In order to determine which enforcement agent is responsible, the enforcement order and the enforceable copy of the enforcement order must be submitted to the enforcement agent distribution centre of the local court responsible depending on the debtor's place of residence or place of business. If the responsible enforcement agent is already known, he/she can also be commissioned directly. A form must be used to issue the enforcement order (§ 753 ZPO in conjunction with § 1 GVFV). The form must list creditors, debtors and enforcement orders. In addition, the form must specify whether a certain item (known to the creditor) should be attached or whether the



enforcement agent should visit the debtor to search for attachable items. A list of claims must also be attached to the form.

The order can be sent to the enforcement agent or the enforcement agent distribution centre by post or electronically. The electronic submission takes place via the electronic court and administrative mailbox of the responsible enforcement agent or court. Special requirements must be met for this (Section 130a ZPO).

III.2 Enforcement against movable assets to settle pecuniary claims

According to § 808 ZPO, the attachment is made by the enforcement agent taking possession of the property. In this sense, the possession means a seizure of the attachment, which takes place through the removal of the assets. Alternatively, the items can be left in the debtor's custody. In these cases, the attachment is to be made visible by applying seals or a deposit notice. With regards to the assets that have been removed, the enforcement agent acquires third-party property.

The physical things can only be attached if they are "in custody" of the debtor, the creditor or a third party prepared to surrender them (§§ 808, 809 ZPO). Custody means that the property is actually in the hands of the debtor, the creditor or a third party. It must be noted, however, that assets that are in the custody of a third party may only be seized with his/her consent ("... ready for surrender to third parties"). This consent affects both the willingness to surrender and the utilization of the items. Therefore, mere agreement with the attachment is not sufficient.

Before the attachment, the enforcement agent checks whether the physical items found are subject to attachment restrictions. The attachment restrictions are intended to protect the debtor from undue hardship.

Section 811 of the ZPO contains the prohibitions of attachment, which the enforcement agent has to observe ex officio. The livelihood of the debtor and his/her family is to be secured. However, seizure of objects which have personal value for the debtor or for his/her family should also be prevented.

For example, items serving personal use or the household, in particular clothing, linen, beds, household and kitchen utensils are attachable, insofar as the debtor requires modest living and household management appropriate to his/her professional activity and debt; in addition, garden houses, arbours and similar residential facilities that are subject to enforcement of movable property and which the debtor or his/her family need for permanent accommodation.

Another important ban on attachment is related to the recurring income, subject to the protective provisions of §§ 850 to 850b ZPO or § 54 subsections 3 to 5 SGB I. Thus, recurring income can only be seized up to the garnishment exemption limit and current child benefit payments. In the case of the seizure of property, the debtor is left with an amount of money that corresponds to the part of the income not subject to the attachment for the period from the attachment to the next payment date.³

³ <https://www.schuldnerberatung.de/pfaendungstabelle/>



Through the attachment, the creditor acquires a lien on the attached item. The right of lien grants the creditor the same rights in relation to other creditors as a lien acquired by contract. An initial attachment, i.e., a lien acquired earlier, takes priority over other attachments (§ 804 ZPO). With the garnishment lien, the creditor is entitled to use the seized property in order to obtain satisfaction from the claim contained in the enforcement order.

§ 758a ZPO sets the limits of enforcement actions. Accordingly, *"(1) The debtor's home [...] may only be searched without his(her) consent on the basis of an order from the judge at the district court in whose district the search is to take place. This does not apply if obtaining the order would jeopardize the success of the search.*

(4) The enforcement agent does not carry out an enforcement act at night and on Sundays and public holidays if this represents an unreasonable hardship for the debtor and the custodian or if the expected success is disproportionate to the intervention in apartments only on the basis of one special order of the judge at the district court. The night time spans from 9pm to 6am."

As a result, executions in apartments at night and on Sundays and public holidays may only be carried out on the basis of a special order by the judge.

The enforcement agent can attach the garnishment at any location within the scope of his/her local jurisdiction, i.e., not just in the debtor's home. It must be noted that, according to § 758a III ZPO, persons who are also in custody of the debtor's apartment must tolerate the search.

The seized items should be valued at their usual sales value when the attachment is made. An expert should be given the estimate of the value of valuables. In other cases, the enforcement court can, at the request of the creditor or the debtor, order the assessment by an expert (Section 813 ZPO).

The seized property is to be auctioned publicly by the enforcement agent. A public auction can be carried out at the enforcement agent's choice as an on-site auction (presence auction) or as a generally accessible auction on the internet via the auction platform <https://www.justiz-auktion.de/> (§ 814 ZPO).

At the request of the creditor or the debtor, the enforcement agent can exploit a seized property in a different way or at a different location than that specified in § 814 ZPO. The enforcement agent must inform the defendant of the intended recovery. Without the consent of the respondent, he/she may not exploit the asset until two weeks after the notification has been served. In addition, the enforcement court can, at the request of the creditor or the debtor, order the auction of a seized property by a person other than the enforcement agent (§ 825 ZPO).

III.3 Attachment on the bank account of the debtor

If the debtor's bank accounts are to be seized, the creditor must be aware of the bank with which the debtor holds bank accounts, since the bank must be identified as the third-party debtor in the application for attachment.

If the creditor is not aware of the bank accounts, he/she must first commission the



enforcement agent responsible according to the place of residence of the debtor to determine this information. Upon request, the debtor is obliged to provide the enforcement agent with complete information about his/her income and financial situation and to swear it under oath (§802 c ZPO). In this statement of assets, he/she is also obliged to provide information on the amount of the claims against banks and to name them and their place of business so that the creditor can use the information to carry out the attachment.

If the debtor does not meet his/her obligation to provide the property information or if the creditor is unlikely to be fully satisfied upon enforcement of the assets listed there, the enforcement agent may obtain information from third parties on the debtor's employer, motor vehicles and bank accounts. It is mandatory to use a form to place the order for the acceptance of the property information and to obtain third-party information (§ 753 ZPO in conjunction with § 1 GVFV).

If a monetary claim is to be attached to a bank, the enforcement court must prohibit the bank (third party debtor) from paying to the debtor. At the same time, the court has to issue a command to the debtor to abstain from any disposal of the claim, in particular its collection. (§ 829 ZPO). For this purpose, the creditor, as described in section III.1.6, must file an application for a seizure and transfer order to the local court of the place of residence of the debtor. In addition, the application can be ordered to deliver the decision to the bank (third party debtor) (§ 828 ZPO).

The delivery order is then mediated by the court to the enforcement agent who is responsible based on Enforcement in Claims and Rights Enforcement in Claims and Rights Enforcement in Claims and Rights the bank's place of business and, by requesting the bank to provide the creditor with the information pursuant to § 840 of the Code of Civil Procedure. Only when the decision is served on the third-party debtor is the seizure deemed to have been effected.

The attachment and transfer order is issued in Germany as a blanket order, since the creditor cannot know how high the debtor's claim against the bank at the time of the attachment is.

According to § 840 ZPO, the bank has to declare within two weeks, counted from the delivery of the attachment order, at the request of the obligee, whether and to what extent it recognizes the claim as justified and is willing to make payment, whether and which claims to other persons constitute the claim, whether and on account of which claims the claim has already been attached for other creditors, whether within the last twelve months with regard to the account whose balance has been attached, the non-attachability of the credit has been ordered according to § 850I ZPO, and whether the account whose assets have been seized is an account protected from seizure within the meaning of Section 850K Paragraph 7 ZPO.

The seized money claim is to be transferred to the creditor at his/her discretion for collection or payment instead of the nominal value. If a credit balance of a debtor (natural person), which is attached to a credit institution, is transferred to the creditor, the balance may only be paid to the creditor or the amount deposited four weeks after



the transfer decision to the third party debtor has been served. If future credit has been seized, the enforcement court will, upon request, also order that incoming payments to the creditor be made or the amount deposited only four weeks after the credit (§ 835 ZPO).

The attachment of an account with a credit institution includes the balance existing on the day of delivery of the attachment order at the credit institution as well as the daily credit on the days following the attachment (§ 833a ZPO).

III.4 Enforcement against savings deposits and current accounts

An exception to the procedure for the attachment of savings accounts secured by savings books is the attachment of savings accounts, since the holder of the savings book is legitimized to have the balance in the savings account.

The enforcement creditor therefore needs the savings book or other savings certificate to assert the seized and transferred claim, since otherwise he/she will not be able to obtain payment. Therefore, the enforcement debtor is obliged to hand over the savings book or the savings certificate to the enforcement creditor after the attachment and transfer of the claim from the savings. If the enforcement debtor does not provide this voluntarily, the enforcement creditor must enforce the surrender (section 836 (3) sentence 2 of the Code of Civil Procedure), in order to acquire the necessary identification document. An enforcement agent of the place of enforcement - but not so regularly at the debtor's place of residence - is responsible. In addition to the title, the enforcement title is the attachment and transfer order, in which, at the request of the enforcement creditor, the order to issue the document is to be included.

If the savings account cannot be found at the enforcement debtor, the enforcement creditor can have the enforcement debtor summoned to take the affidavit under § 883 (2) ZPO. If this does not go any further, the enforcement creditor only has the option of the procurement procedure with the possibility of invalidation.

III.5 Enforcement on immovable property

The creditor has the possibility to enforce a claim on the immovable property and thus to satisfy his/her claim. Immovable assets are real estate and its structures, residential property, partial ownership as well as real property rights such as the heritable building right. Airplanes and ships are treated in the same way as immovable objects if they are entered in a register. Special regulations apply to their utilization (§ 864 ZPO).

The foreclosure on immovable property also includes the objects to which the mortgage extends for land and allowances, and the ship mortgage for ships or shipbuilding. These items and items that are accessories cannot be attached. The rest are subject to foreclosure on movable property unless their confiscation has been carried out by way of foreclosure on immovable property (§ 866 ZPO).

The foreclosure on a property is carried out by entering a security mortgage for the claim, by foreclosure and by forced administration. The creditor can request that one



of these measures be carried out alone or alongside the others (§ 866 ZPO).

A security mortgage may only be entered for an amount of more than 750€. The security mortgage is entered in the land register at the request of the creditor (§ 867 ZPO). The application must be submitted to the land registry. The information on real estate assets can be found in the debtor's property information, which he must hand over to the enforcement agent and insure at an oath (§ 802c ZPO). The security mortgage is only a preliminary stage of realization.

With the registration of the security mortgage, this individual enforcement measure has formally ended, but the creditor is not yet satisfied. On the one hand, it serves to secure the creditor, if foreclosure or administration is carried out by other creditors. The creditor or his/her legal successor can also conduct the foreclosure or administration on the property himself/herself because of his/her personal claim from the enforcement order.

Foreclosure is intended to satisfy the creditor from the proceeds from the sale of the property and any objects that are attached.

Forced administration gives him/her satisfaction from the property's earnings.

The essential law for the further enforcement in real estate, of ships, shipbuilding and aircraft is the law on the forced auction and the forced administration in the version of the announcement of December 22, 2006, usually abbreviated as "ZVG".

In contrast to compulsory administration, which aims at the yield of a property, compulsory auction leads to utilization of the substance.

The procedure is usually carried out at the district court, as the enforcement court in whose district the property is located. The jurisdiction is sometimes concentrated at a district court for the districts of several district courts (§§ 1,2 ZVG).

Aircrafts are auctioned centrally by the Braunschweig District Court. The Federal Aviation Office is located in Braunschweig; the seat of the office determines the competent enforcement court.

The foreclosure sale by means of enforcement must be requested by a creditor (operating creditor). This can be the creditor of a right entered in the land register (real creditor) or the creditor of another monetary claim (personal creditor).

The prerequisites for this have already been described in Section III.1 (enforcement title, enforcement clause and the delivery of the enforcement title and the enforcement clause).

The enforcement court decides on the application. The debtor is not heard beforehand. There is no justification for granting applications. The decision applies in favour of the creditor as confiscation of the object to be auctioned, upon delivery to the debtor.

The court must send the decision to seize the debtor, possibly also the creditor. The debtor (e.g., property owner), the operating creditor and those whose interests derive from the land register, in particular the creditors of other rights, are involved in the



foreclosure procedure. Depending on the situation of the procedure, other parties may also be involved - even during the procedure.

At the request of the enforcement court, it is noted in Department II of the land register that a compulsory auction has been ordered. This entry destroys public belief in the correctness of the land register with regards to ownership.

Additional creditors can join the foreclosure procedure. The same conditions and effects apply to the decision to join. The decision to join becomes effective upon delivery to the debtor. Although the auction process is the same, the operating creditors are independent of each other. For example, the procedure can be terminated or cancelled separately for each individual creditor.

Before the auction date, the enforcement court must determine the market value of the auction object. This market value determination serves only to be able to determine the value limits for the protection of certain creditor and debtor rights in the auction date. The enforcement agent can estimate the market value of the property at his/her own discretion. However, an expert is usually commissioned to prepare a market value appraisal. In principle, however, an existing report can also serve as the basis for determining the market value.

This market value appraisal is then transmitted to the parties involved in the process or the determined value of the property is announced for comment.

The expert opinion can also be viewed by third parties who have an interest in the auction object without stating a legal interest or other formalities (§ 42 ZVG). After hearing the parties involved, the market value is determined by decision based on this report.

Utilization always takes place through public auction. After the market value has been determined, the auction date is determined. As a rule, 9 to 12 months pass between ordering the compulsory auction and determining the auction date, and regionally up to 24 months. The date is announced by notice in the district court and publication in the Official Gazette. Pursuant to Section 38 (2) of the ZVG, publication on the Internet also applies to publication in the Official Gazette. In addition, it is usually published in a local daily newspaper and on the community board (§ 39 ZVG).

The auction date is public. Everyone has access (§ 169 GVG). It consists of three parts: the announcements (§ 66 ZVG), the bidding time (§ 73 ZVG) and the hearing of the participants present for the award (§ 74 ZVG).

The creditor in charge of the procedure or another person entitled to do so (e.g., the debtor) can request security from any bidder of 10% of the market value, as a rule, immediately after the bid has been submitted. With particularly low market values, security can also be somewhat higher if certain additional costs so require. If the security is not provided immediately, the bid will be rejected by the court. If the bidder is not awarded the contract, the security will be returned immediately after the auction date by the court.

If no effective bid has been submitted on the auction date, the court will terminate



the proceedings ex officio. The operating creditors then have the opportunity to request that the proceedings be continued.

If the highest bid (bid including remaining rights) is below 7/10 of the market value, a person entitled to do so can apply for a refusal.

Taking into account the applications, the court announces its decision on the award. It is also possible for the court to set a separate award date for this. For constitutional reasons, the enforcement court must also avoid squandering. If the highest bid is below 3/10 of the market value, the enforcement court will adjourn its decision in order to give the enforcement debtor the opportunity to file special enforcement protection applications.

The enforcement court must take into account both creditor and debtor protection interests when making its decision. If the best bid (highest bid) in the appointment is below 7/10 of the market value, the surcharge must be applied for at the request of a beneficiary whose claim is within this 7/10 limit. § 74a (1) ZVG can be refused. If the highest bid is below half of the market value (5/10), the bid is ex officio refused in accordance with § 85a (1) ZVG. In both cases, a new auction date must be set in which these limits no longer apply. The knockdown is made to the highest bidder. If the contract is awarded, the purchaser is the owner of the property from the time the contract is awarded.

The award decision is the enforcer's title to enforce his/her right to take possession. If the property is not handed over voluntarily, the purchaser can carry out the enforcement for evacuation and surrender against the owner of the property before it becomes final. Enforcement is not carried out by the court, but by the purchaser with the help of the enforcement agent.

If the contract is awarded, the registrar determines a distribution date. On the distribution date it is necessary to determine how much the mass to be distributed is. The mass also includes the proceeds from those items which, in the case of § 65 ZVG, have been auctioned or otherwise used (§ 107 ZVG). In addition, the auction proceeds will be allocated to the creditors according to the legally prescribed order. At the distribution date, which takes place approximately 8 to 12 weeks after the award of the contract, the remaining climbing price is due and pays interest of 4% p.a.

The land registry will correct the land register at the request of the auction court. The court addresses a request at the land registry if the award decision is legally binding, the division plan has been implemented and the payment of the real estate transfer tax has been proven by a certificate of clearance from the tax office.

III.6 Enforcement against wages and other permanent pecuniary income

If the debtor's wage, salary or other recurring income is to be seized, the creditor must be aware of which employer the debtor is employed by or from whom the debtor can claim other recurring income, as this is designated as a third-party debtor in the attachment application got to. The procedure is essentially the same as the attachment procedure for bank accounts. In addition to wage and salary claims, the



provision of § 832 ZPO also covers the comparable claims for ongoing payments in connection with the employment law relationship, which include employee savings allowances, pensions, social benefits, private pension rights, etc.

§ 832 of the Code of Civil Procedure also stipulates that the garnishment, immediately in the event of a garnishment of salary claims or continuous remuneration, will include all remuneration that will also be due in the future if the garnishment has been carried out without being restricted to a certain period. The latter can prove to be expedient if it is foreseeable, taking into account the non-attachability limits, that the titled debt can be satisfied by the enforcement within the specified period.

According to § 833 ZPO, the debtor's wages and salaries remain confiscated even if there are changes in their amount. The debtor retains his/her job insofar as, despite implementations, promotions, new foundations, within the nine-month period of para. 2 u. If the same employer remains employed and therefore the person of the third-party debtor does not change with regard to the attachment, a salary claim from an employment or service relationship modified or newly created with the changes mentioned is also recorded by the seizure by the attachment order.

Labour income that is payable in cash can only be seized in accordance with Sections 850a to 850i ZPO. For example: half of the part of the work income paid for the work of overtime hours, allowances for expenses, trigger money and other social allowances for foreign employment, remuneration for self-made work material, hazard allowances and dirt and difficulty allowances, insofar as these payments do not exceed the scope of the usual, Christmas allowances up to half the monthly income, up to a maximum of 500 euros (§ 850a ZPO).

III.6.1 Pensions due to injury to the body or health

Maintenance pensions based on statutory provisions, as well as pensions due to the withdrawal of such a claim, ongoing income that a debtor receives from foundations or otherwise due to the care and generosity of a third party or due to a part of the elderly or an extract contract, widow's, orphan, auxiliary and health insurance funds, which are granted exclusively or in large part for support purposes, as well as claims from life insurance policies, which are only concluded on the death of the policyholder, if the insured sum does not exceed 3,579 euros, can be seized, according to the regulations applicable for labour income, if the enforcement of the other movable assets of the debtor has not or will probably not lead to complete satisfaction of the creditor and if according to the circumstances of the case, in particular the type of claim to be recovered and the amount of remuneration, the attachment is fair (Section 850b ZPO).

Labour income is non-attachable if, depending on the period for which it is paid, it is not more than in the current attachment table⁴ (§§ 850c).

An exception is the attachability of maintenance claims, for which the attachment table does not apply. In these cases, the part of the labour income subject to

⁴ <https://www.schuldnerberatung.de/pfaendungstabelle/>



protection from attachment is determined individually by the enforcement court. The maintenance creditors enjoy the privilege of being able to access to the debtor's income from work to a greater extent due to a maintenance relationship with the debtor based on family law, because they depend on the debtor's maintenance payments.

The employer has to observe the regulations according to §§ 832, 833, 835, 840, 850a-850i ZPO.

III.7 Attachment under the debtor's debtor

The enforcement court of the debtor's place of residence is also responsible for the attachment of other claims of the debtor against third parties. A corresponding application for attachment and transfer of the claim can be made as described in the two previous chapters. Other claims can, for example, be the following:

- Claims against life insurance and death insurance funds.
- Claims against the landlord for repayment of rent deposits and additional costs.
- Claims against the tax office for reimbursement/reimbursement of taxes.
- Receivables from purchase and loan contracts.
- Reimbursement and/or compensation claims, subscription rights to/from insurance (including property insurance).
- Claims for damages.
- Claims for reimbursement of insurance and membership fees.
- Claims for reimbursement of energy costs.

III.8 Enforcement against shares

The shares of the debtor are usually either in his/her personal custody or entrusted by him/her to his/her credit institution for safekeeping in a securities account.

If the shares are in the debtor's custody, the enforcement agent of the debtor's place of residence must be instructed to enforce them. In this case, securities are treated as movable physical things. They are attached by the enforcement agent taking possession of them.

The seized securities are realized, if they have a stock exchange or market price, by direct sale, otherwise by public auction (§ 821 ZPO). In the case of sale of bearer securities, the transfer of the sold paper to the purchaser is sufficient to transfer the right documented in the paper to the purchaser. On the other hand, papers that can be transferred by endorsement, but which are not claim papers, must be endorsed for the purpose of the transfer (for example, registered shares). Other papers that are in the name must be provided with the declaration of assignment. This also applies to bearer certificates rewritten in the name, unless a request is made to convert them back.



The securities include all bearer securities, even if they are transcribed in the name of a specific beneficiary, and all shares, even if they are in the name of a specific beneficiary.

There are two basic types of custody in a bank's custody account.

The special safekeeping according to § 2 DepotG is characterized by the fact that the securities are kept separately under the externally recognizable name of the depositor (debtor). In the case of special safekeeping, the debtor remains the owner of the securities which he/she can reclaim on the basis of this right. According to §§ 829, 846 ZPO, the creditor can seize this claim to the enforcement court of the place of residence of the debtor by submitting an application for a seizure and transfer order. For the specific description of the surrender claim, it is sufficient to state the custody account number or the individual securities. Since the security is a physical matter, it should be noted that, according to § 847 ZPO, it must be ordered ex officio that it should be handed over to an enforcement agent to be commissioned by the creditor. This means that the enforcement agent must be explicitly authorized by the creditor to receive it (§§ 754, 757 ZPO).

According to § 847 (2) of the Code of Civil Procedure, the regulations governing the sale of seized assets must be applied to sale of seized securities. This means that § 821 ZPO must be observed. According to this, if they have a stock exchange or market price, securities are to be sold by the enforcement agent at a free hand at the daily rate. If they do not have such a price, they will be auctioned by public auction in accordance with the general provisions §§ 814 ff., 817, 817a ZPO. The usual sales value is to be estimated according to § 813 ZPO. An expert can be commissioned with this. However, if the creditor is interested in acquiring the securities himself/herself, he/she can do so by filing an application with the enforcement court pursuant to § 844 ZPO. Taking into account his/her claim, these can be transferred to him/her as property.

Collective custody according to § 5 DepotG is more common in practice. Here, the credit institution stores the securities of the depositor (debtor) separately from its holdings and the holdings of third parties in a single deposit.

In the case of collective custody, the debtor becomes co-owner after the securities have been received by the custodian bank after a fraction of the securities of the same kind belonging to the custodian's collective holdings. It is important for the creditor that the debtor's share as depositor to this community is subject to fractions of attachment under § 857 ZPO.

The depositary bank remains the third-party debtor - not the other co-owners - because of the special regulations for the collective deposit. According to Section 7 of the DepotG, the debtor's right as co-owner after fractions does not apply to the cancellation of the community, but only to the delivery of securities corresponding to the nominal amount or the number of securities held in custody. The creditor is bound by this modification of the debtor's rights, which means that his/her claim does not go any further. The creditor can assert the right to extradition if the portion of the



deposit has been transferred to him/her for collection. If the securities of the custodian bank of a bank or savings bank are passed on to a third party, such as a Landesbank, for safekeeping in accordance with Section 3 of the DepotG, the bank remains a third-party debtor due to the direct contractual relationships between the credit institution and the debtor. In these cases, however, for security reasons, the attachment order should also be sent to the third-party custodian.

The securities held in collective custody are sold according to § 821 ZPO. According to this, securities, if they have a stock exchange or market price, are to be sold by the enforcement agent at the daily rate and if they do not have such a price, be auctioned according to the general provisions. However, they can also be used in other ways according to § 844 ZPO. For example, they can be transferred to the creditor's custody account at the daily market value.⁵

III.9 Other attachment procedures

III.9.1 Seizure and realization of mortgages and land charges

To attach a claim for which a mortgage exists, the mortgage letter must be handed over to the creditor in addition to the attachment order. If the handover is effected by means of enforcement, it is deemed to have taken place if the enforcement agent takes away the letter for the purpose of delivery to the creditor. If the issuance of the mortgage letter is excluded, the attachment of the attachment in the land register is required; registration is based on the attachment order (§ 830 ZPO).

In contrast to mortgages, land charges are fundamentally independent of claims. Therefore, in addition to the claim that is seized according to § 829 ZPO, the land charge can also be a separate right according to §§ 857 (6) ZPO. A property debt is seized by attachment order of the responsible enforcement court. In the case of a land charge, in addition to the attachment, there is a need to hand over the land charge, which may be carried out by the enforcement agent by way of enforcement (§§ 883 ff ZPO). In the case of a land charge, an entry is made in the land register.

In the case of mortgages and land charges, the transfer takes place instead of payment or is transferred for collection by transfer order by the enforcement court and handover of this decision (§§ 835 ff. ZPO).

III.9.2 Enforcement in other property rights

To seize other property rights, a seizure order is required in accordance with §§ 857 (1), 828, 829 ZPO. Other property rights include company, cooperative, co-ownership and inheritance shares, but also rights to receive pensions, patents and copyrights.

The transfer of another property right is usually only for confiscation. In principle, attachment and transfer with delivery to the third-party debtor take effect. If there is no third party debtor, e.g., in the case of enforcement in a land charge or in patent or copyrights, the attachment becomes effective with the delivery of the debtor's bid to

⁵ Source: „Vollstreckung effektiv“ - edition 01/2002, page 9

the debtor (Section 857 (2) ZPO).

The execution in a company share is described here as an example.

§ 859 (1) ZPO allows a shareholder's share in itself to be seized in accordance with § 851 (1) ZPO. After the attachment, the creditor is entitled to termination in accordance with § 725 (1) of the German Civil Code (BGB) and can thus access the settlement credit. Society as such is a third-party debtor.

Enforcement on a GmbH share is different. These are easily attachable in accordance with § 857 (1) ZPO. However, utilization is only conceivable in accordance with § 844 ZPO, since the GmbH does not have the extraordinary right of termination. The third-party debtor is the GmbH as a legal person.

The OHG / KG also applies § 859 (1) ZPO with regards to the share. However, § 135 of the German Commercial Code (HGB) must be observed here, which only permits recovery after the transfer has been made.

III.10 Handing over movable assets

In Germany, the enforcement agent enforces the surrender of mobile objects if a corresponding court decision has been issued.

According to § 883 ZPO (Release of certain movables): (1) If the debtor has to surrender a movable object or a number of certain movable objects, the enforcement agent must take them away and hand them over to the creditor; (2) If the item to be surrendered is not found, the debtor is obliged, at the request of the creditor, to take oath on record instead of assuring that he does not own the item, and does not know where the item is located. The enforcement agent responsible according to § 802e invites the debtor to take the affidavit; (3) The provisions of sections 478 to 480, 483, 802f (4), sections 802g to 802i and 802j (1 and 2) apply accordingly.

According to the creditor, the court must specify in its decision what items are to be returned to the creditor by the debtor. The objects must be labelled as precisely as possible so that they cannot be mixed up. General terms such as "three TV sets and two cabinets" are not suitable for enforcement. In case of doubt, it may be necessary to state the manufacturing, device or serial numbers. In the case of motor vehicles, it is essential to provide the identification number belonging to the vehicle.

As a rule, enforcement takes place in such a way that the enforcement agent sets a date for the surrender and announces this to both the debtor and the creditor. On the day of the appointment, the enforcement agent goes to the debtor with the creditor and requests the debtor to return the items designated by the court. If the debtor does not comply with this request, the enforcement agent is authorized to search the debtor's premises and furniture to find the items to be released.

If the debtor voluntarily surrenders the items to be surrendered or the enforcement agent finds these items, he/she takes them away from the debtor and hands them over directly to the creditor. If this does not succeed and the debtor is not willing to voluntarily provide information about the whereabouts of the items to be surrendered, the debtor is obliged to provide the enforcement agent with the relevant



information at the request of the creditor. The debtor must swear to the enforcement agent that the information is correct instead of affirming that incorrect or deliberately incomplete information can be prosecuted.

If the debtor also refuses to provide information to the enforcement agent about the whereabouts of the items to be surrendered, an arrest warrant to enforce this information can be issued by the competent district court at the request of the creditor and enforced by the enforcement agent. For enforcement, the enforcement agent takes the debtor to the competent prison after his/her arrest. He/she stays here for up to 6 months if he/she does not give the requested information beforehand.

If the debtor has provided the required information regarding the whereabouts of the items to be surrendered, the enforcement agent executes the surrender at the place where the items are supposed to be located, according to the debtor. If they are in the custody of a third person and this person is not prepared to surrender the items, the creditor can apply to the competent local court for the debtor's claim against the third party to surrender to be attached and transferred to the creditor.

According to § 886 (Release in custody of a third party): If a good to be surrendered is in the custody of a third party, the creditor's request to transfer the good must be transferred to the creditor in accordance with the regulations relating to the attachment and transfer of a monetary claim.

If this has happened and the court has issued a corresponding decision, enforcement for surrender must be carried out against the third party named in the court order, if the third party continues to refuse to surrender. The latter then takes on the role of the debtor and has to tolerate enforcement against him/her.

All costs incurred in the enforcement of surrender, which can be proven to have arisen for the creditor or which arise directly from the enforcement, are deemed to be "necessary" costs within the meaning of Section 788 ZPO and can be enforced against the debtor without a new title.

III.11 Enforcement in reinstatement of employee to work

Foreclosure in order to reinstate a dismissed worker in his/her workplace or to reinstate a dismissed worker does not take place as a separate type of enforcement in Germany.

It is an unacceptable act that is determined by the exclusive will of the employer. If the employer does not comply with a corresponding decision by the competent labour court on reinstatement, the court can proceed in accordance with § 888 ZPO and impose a periodic penalty payment or compulsory custody on the employer.

The enforcement of the penalty payment or prison sentence is carried out by the enforcement agent. For further details on the procedure see section III.13 on enforcement of obligations to act.

III.12 Eviction

The enforcement agent is responsible for the execution of all kinds of evictions in

Germany. The prerequisite is the existence of a corresponding debt instrument, which is usually issued by a court by judgment or by an order in the context of the foreclosure sale of a property. In rare cases, a notarial deed in which the debtor has undertaken to vacate a property and which is drawn up by the notary for enforcement can form the basis of an eviction. A clearance period can be set by the court, the eviction may then only take place after this period has expired.

There are two types of eviction:

- "normal" eviction, in which both the debtor himself/herself and all the furniture are removed from the property to be vacated (§ 885 ZPO);
- "limited" eviction, in which only the debtor is removed from the property to be vacated, but all of the debtor's furniture remains in the property (§ 885 a ZPO).

In both cases, the enforcement agent commissioned by the creditor and responsible for the debtor determines an appointment for the execution of the eviction and notifies both the creditor and the debtor; notification to the debtor is to be sent formally in accordance with the provisions on deliveries in party operations. There are no special deadlines to be observed, but the debtor must be given sufficient time to be able to apply for enforcement protection from the enforcement court. Creditors and debtors are to be advised of the regulations on the eviction of real estate, and when the housing is vacated, the responsible local authority must be informed of the impending eviction and the impending homelessness of the debtor.

The enforcement agent can make the execution of the eviction dependent on the payment of an advance payment by the creditor. The enforcement agent determines the amount of the advance payment on the basis of the anticipated cost of the eviction, in particular for the removal, transport and storage of the furniture to be removed from the object to be vacated in the "normal" eviction.

The creditor or an authorized representative must be present at the eviction in order to be able to be instructed in the cleared property by the enforcement agent. In the "normal" eviction, the enforcement agent orders a company to remove the furniture from the object to be evacuated and monitors this action. If the debtor is present, the furniture can be handed over to him/her, unless the enforcement agent has seized objects for the creditor's claim for money. If the debtor refuses to accept the furniture or if neither he/she nor a person representing him/her is present at the eviction, the enforcement agent must store all the furniture at a suitable company or, if possible, in his/her pawnshop. The enforcement agent can immediately destroy things in which the debtor is obviously no longer interested, as well as items that cannot be stored (garbage, bulky waste). The debtor must be requested to collect the stored furniture from the warehouse keeper within one month. If this does not happen, the enforcement agent must sell the stored furniture after the deadline or, if a sale is not possible, destroy it.

The procedure is different in the case of "limited" eviction. In this case, the enforcement agent only ensures that the debtor leaves the property to be vacated, but all the furniture remains in the property. The enforcement agent has to document



the furniture left behind, which can also be done via electronic image recordings (photo documentation). The enforcement agent then hands over the property including the furniture to the creditor and ends the measure. The debtor can, at any time within one month after the eviction, collect the furniture that has not been seized from the creditor, who must keep the furniture until the end of this period. The creditor may immediately destroy things in which the debtor is obviously no longer interested. If the debtor has not requested the items held by the creditor from the creditor within a period of one month, the creditor may sell or destroy them. In both types of eviction, the enforcement agent is authorized to use force and may have locked rooms opened by a locksmith, observing the relevant provisions. The enforcement agent has to monitor their work when companies, work aids or key services are called in and is responsible for the entire eviction process.

The execution of evictions has a high potential for conflict, which in some cases has led to attacks on the enforcement agent even leading to death. For this reason, the enforcement agent can request police assistance if it is likely that the eviction may escalate or if it is known in advance that the debtor is violent or in possession of weapons.

All costs incurred during eviction, including for companies and work aids commissioned by the enforcement agent, are necessary costs of enforcement and can also be enforced by the enforcement agent.

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

In Germany, the enforcement agent is also involved in enforcement of a debtor's obligation to act. A distinction is made between:

- justifiable (reasonable) actions; and
- unjustifiable (unreasonable) actions.

Justifiable actions are those that the debtor may not necessarily perform himself/herself but may also be performed by a third party for the debtor in the form of an alternative action.

Unreasonable actions are those which the debtor must carry out himself/herself and which cannot be carried out by a third person as an alternative. As with any other form of enforcement, the prerequisite for action by the enforcement agent is the existence of an enforceable debt instrument. This may be a judicial judgment, an injunction, or an order to freeze the warrant.

According to Section 887 ZPO concerning justifiable actions: (1) If the debtor does not meet the obligation to perform an action that can be carried out by a third party, the creditor is to be authorized by the court of first instance on request to have the action carried out at the debtor's expense. (2) At the same time, the creditor can request that the debtor be paid in advance for the costs that will be incurred as a result of the action, without prejudice to the right to a subsequent request if the act entails a greater cost.

This rule is always applicable in cases where the debtor has been convicted of an



action that can alternatively be carried out by a third party. The situation is different for unjustifiable acts that the debtor has to perform (§ 888 ZPO).

According to § 888 ZPO concerning actions which are not justifiable: If an action cannot be carried out by a third party, if it depends solely on the will of the debtor, it can be seen on application by the trial court of the first instance that the debtor has to take the action by means of a penalty payment and in the event that this cannot be driven to be stopped by compulsory detention. The individual penalty payment may not exceed the amount of 25,000 euros. The provisions of the second section on detention apply accordingly to compulsory detention.

This applies to actions that only the debtor can carry out themselves, are solely dependent on his/her will and in which a substitute measure by third parties is not possible. In both cases, the enforcement agent is responsible for enforcing judicial decisions.

In the case of justifiable acts, he/she organizes and monitors the compulsory enforcement by third parties of the act to be performed by the debtor and also executes in advance the advance payment ordered by the court, which the debtor has to make for the involvement of third parties.

In the case of unjustifiable acts, the enforcement agent executes the penalty payment imposed by the court or the compulsory detention ordered to enforce the act of the debtor if the court has issued a corresponding arrest warrant. The detention is carried out in a correctional facility and may not exceed 6 months. During detention, the debtor has the opportunity to perform the action requested by him/her at any time and is then immediately released from prison.

Another category is the enforcement of omissions and tolerations. In these cases, the court condemns the debtor in accordance with Section 890 ZPO to refrain from an action or to tolerate the action. If the debtor does not comply with these orders, a further sentence may be imposed, up to an amount of EUR 250,000, or, if this cannot be recovered by the enforcement agent, up to two years' imprisonment after the order has been issued. The arrest warrant is also enforced by the enforcement agent.

If penalty payments or administrative fines are collected, these do not flow to the creditor, but are transferred to the state treasury of the respective federal state. These funds are used to enforce actions by the debtor and not to satisfy the creditor.

An important object of enforcement is the elimination of the debtor's resistance to actions that he/she has to tolerate after a court decision in accordance with § 887 or 890 ZPO.

According to § 892 ZPO concerning resistance of the debtor, if the debtor opposes the performance of an action that he/she has to tolerate in accordance with the provisions of Sections 887, 890 ZPO, the creditor can use an enforcement agent to remedy the resistance, who has to proceed, in accordance with the provisions of Section 758 (3) and § 759 ZPO.

This type of foreclosure often occurs when the debtor has been sentenced to give



utility company representatives access to the material equipment located in the home or house where the debtor lives. The enforcement agent is also authorized to use force and may forcibly open the apartment and its front doors.

According to Section 758 ZPO concerning search and use of violence: (1) The enforcement agent is authorized to search the debtor's home and containers, insofar as the purpose of enforcement so requires. (2) He/she is authorized to have the locked front doors, room doors and containers opened. (3) If he/she finds resistance, he/she is authorized to use force and can request the support of the police enforcement bodies for this purpose.

In these cases, the enforcement agent must call in two adult witnesses or a police or community officer.

III.14 Sequestration of goods

In Germany, the enforcement agent can be commissioned by the trial court as a sequester in individual cases.

This usually happens in the case of injunctions, if objects are to be handed over immediately by the debtor, but are not yet to be handed over directly to the creditor. In these cases, the judge can instruct an enforcement agent to sequester these items. However, this does not necessarily have to be the same enforcement agent who may have carried out the execution to return the items. The court can also instruct any other suitable person to perform the sequestration; it is not an exclusive task of the enforcement agent.

A sequestration occurs when it is necessary to secure, store and manage the property. The enforcement agent is not obliged to take on the office of sequester. He/she can refuse to do so without giving any reason.

The mere custody of objects is not seen as sequestration, but as an act of enforcement that the enforcement agent has to take on. The sequestration by the enforcement agent is regulated in Section 154 of the Business Instructions for Enforcement agents (GVGA), according to which: (1) According to § 938 ZPO, the temporary injunction can also consist of a sequestration, i.e., the custody and administration by a trusted person. The enforcement agent only acts in the execution of such an order insofar as it is a matter of enabling the sequester to carry out the sequestration by means of a coercive measure, for example by taking away a movable property or vacating a property and handing it over to the sequester. The enforcement agent is not obliged to act as a sequester. (2) If the provision of a thing ordered in an injunction only requires safekeeping (without administration), there is no sequestration. The enforcement agent has to take care of the custody as it is still an act of enforcement. The costs of such safekeeping are enforcement costs. Securing a movable property usually means no sequestration, since it does not require independent administration. (3) If the sequestration is ordered in the preliminary injunction, the enforcement agent can in doubt assume that the order is an administration; in these cases, he/she can proceed according to paragraph 1.

The remuneration for the sequester is determined by the judge of the trial court and depends on the effort of the sequestration.

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

In Germany, debt instruments issued in countries that do not belong to the EU must, in principle, be enforced by a domestic court.

This procedure is regulated in § 722 ZPO concerning enforceability of foreign judgments, according to which: (1) Enforcement takes place from the judgment of a foreign court only if its admissibility is pronounced by an enforcement order. (2) The district court or regional court where the debtor has his/her general place of jurisdiction is responsible for the action for issuing the judgment, and otherwise the district court or regional court where the debtor can be brought under Article 23.

The local or regional court in whose district the debtor resides is locally responsible for the admission of the foreign (non-EU) title. The location of the company is decisive for commercial enterprises and legal entities. The court in whose district the debtor's assets are located is responsible for persons who have their place of residence or business abroad. The functional responsibility depends on the value of the thing in dispute or on the type of claim. The district court is responsible for claims up to € 5,000 and in rental matters regardless of the amount of the claim.

The creditor must file a lawsuit before the competent district or regional court for approval of the foreign title for foreclosure in Germany. This process is often costly and time-consuming, but cannot be shortened or simplified.

The competent court decides on the admission of the foreign title by an enforcement order in which the title is admitted for enforcement in Germany. However, this is only possible if the foreign title has become final and if it has also been declared enforceable in the country of origin.

The German court does not conduct a factual review of the foreign title; the accuracy of the title is not checked in factual or legal terms. However, it is a prerequisite that the foreign debt instrument (the judgment) can in principle be recognized in Germany and that there are no prohibitions of recognition under international law.

The enforcement judgment on the admission of foreclosure in Germany must be served to the debtor before the creditor can initiate the enforcement according to German law. The right of enforcement abroad cannot apply in Germany.

The debtor has the opportunity to defend himself/herself against the declaration of enforceability and subsequent enforcement by submitting an enforcement order to the competent court. However, this lawsuit must not be directed against the content of the original title, but only against the admission to enforcement in Germany. This does not, however, inhibit enforcement, unless the competent court has temporarily suspended it.

There are special regulations for foreign debt instruments issued by family courts or relating to family law matters, such as Judgments on maintenance payments.

In these matters, the approval of foreclosure in Germany is based on § 110 FamFG. The competent district court (family court) checks whether the foreign title can be recognized in Germany in accordance with Section 109 FamFG and then issues a decision on the enforceability of this title in Germany. In this case, it is also necessary that the foreign debt instrument has become legally binding.

Special rules apply to the enforcement of debt instruments from the member states of the European Union.

PART IV: ENFORCEMENT COSTS

IV.1 The costs of enforcement

The law on enforcement agent costs is mainly regulated by the Law on Enforcement Agent Costs. However, the Court and Notary Costs Act (GNotKG) also contains provisions which must be applied by the enforcement agent. Likewise, the enforcement agent requires knowledge of the JVEG (Judicial Remuneration and Compensation Act) and the RVG (Lawyers' Fees Act) in the course of his/her work.

The implementing provisions of the Enforcement Agent Costs Act are to be regarded as an important aid for the interpretation of the Enforcement Agent Costs Act. These are additional instructions and explanations on the individual provisions of the Enforcement Agent Costs Act. In addition, numerous different ordinances regulate individual issues of the law on enforcement agent costs. Even if they are "only" administrative provisions in this respect, they must be observed by the enforcement agent. Compliance with them is one of the official duties of an enforcement agent (Article 1 GVGA).

Costs must always be calculated on the basis of the official act carried out by the enforcement agent in order to perform an assignment. Therefore, the law of civil procedure must be taken into account when applying cost law. The calculation of costs depends on how the assignment was to be performed under procedural law.

A distinction is made between the "execution" of the assignment and the "completion" of the official act. § 3 Abs. 1 GvKostG clarifies that the mandate given to an enforcement agent may be aimed at the performance of one or more official acts.

This means that it is not the individual official act (service, execution, exploitation, etc.) that determines the mandate, but the entirety of the necessary official acts that are decisive for the mandate.

The provision of § 1 GvKostG defines the term "costs". According to it, costs are, as in all other laws on legal costs (see §§ 1 GKG, 1 GNotKG), fees and expenses. Thus, when the GvKostG speaks of "costs", a corresponding provision covers both fees and expenses.

Costs are charged for the work of an enforcement agent for which he/she is responsible under federal or provincial law. There is no general rule on the jurisdiction of enforcement agents at federal level. Apart from the normal activities of an enforcement agent in the context of enforcement proceedings, which are governed

by § 753 of the Code of Civil Procedure, the authorisation of § 154 of the Judicial Services Act has often been used by the judicial authorities of the federal states, and the jurisdiction of enforcement agents for other activities at the level of the federal states has been regulated.

An activity must take place in the capacity of enforcement agent. The enforcement agent must be competent to perform it. No. 1 DB-GvKostG expressly states the principle that enforcement agent costs are charged to the state treasury. Enforcement agents are not "fee officers". In particular, the expenses that are left to the enforcement agent to settle his/her cash expenses must first be charged to the country.

This leads to the conclusion that the enforcement agent cannot make a decision on these costs, for example, he/she cannot waive costs.

The Enforcement Agent Costs Act exclusively regulates the legal relationship between the debtor and the treasury, but not with the enforcement agent.

The fact that the enforcement agent is charged with expenses and shares of fees § 7 Abs. 2 of the Enforcement Agent Regulation in conjunction with the Enforcement Fees Regulation and the compensation regulations of the country) does not therefore result in the enforcement agent charging costs. The transfer of expenses and fee shares is a question of remuneration law, but not of enforcement agent costs law.

As the enforcement agent collects costs on behalf of the country, he/she acts in his/her capacity as an official when drawing up the cost account.

The preparation of the cost account by the enforcement agent is carried out as an act of judicial administration.

In this respect, the enforcement agent therefore acts like an enforcement agent in charge of costs who is bound by the instructions of the court without restriction.

The enforcement agent has a special position within the judicial system. First and foremost, he/she is an enforcement officer, but he/she is also an office administrator, paying agent administrator, authorising officer and costs officer, and all at the same time. It is clear from the list of activities that an enforcement agent must be familiar with a wide range of laws and case law in the area of costs alone.

IV.1.1 Advance payment

§ 4 Abs. 1 of the GvKostG stipulates an express obligation of the customer/creditor to make an advance payment. However, there is no obligation on the enforcement agent to make an advance payment. The collection of an advance is at the enforcement agent's discretion. In exercising his/her discretion, he/she is bound by the implementing provisions. The collection of an advance on orders from the Court of First Instance or the granting of legal aid is excluded. The client is obliged to pay an advance to cover the costs likely to be incurred. The enforcement agent's obligation to make his/her activities dependent on the payment of an advance relates to the total costs likely to be incurred as a result of the assignment. The advance must therefore be chosen in such a way as to cover all fees and expenses likely to be



incurred.

The enforcement agent is therefore not obliged to first quantify the costs incurred and then request the advance. It should also be borne in mind that the determination of any costs that may be necessary, for example, by obtaining cost estimates regarding transport companies, storage facilities, experts, etc., would already incur costs.

Therefore, the amount of the advance is generally left to the enforcement agent's experience and discretion, particularly with regards to expenses. A discretionary decision by the enforcement agent as to the amount of an advance requested would therefore only be unjustified if the request for the advance is misjudged or abusive. In the case of eviction from residential property, the enforcement agent is also obliged to execute the enforcement order as cost-effectively as possible and to examine the costs incurred by third parties of which he/she makes use in the execution of the order to determine whether they are reasonable.

The payment deadline for the advance payment for the execution of the order is not mentioned in § 4 Abs. 1 of the Judicial Costs Act. However, a minimum period is ultimately set out in § 3 Abs. 4 sentence § 5 GvKostG.

Pursuant to § 3 Abs. 4 sentence § 5 GvKostG, the order is deemed to be withdrawn if the requested advance has not been received by the enforcement agent by the end of the calendar month following dispatch of the advance request. It follows imperatively from this that at least one period must be granted before that date.

If an order is issued by the court or if the principal is granted legal aid, the principal is not obliged to pay an advance, nor can the performance of the order be made dependent on the payment of the advance. It follows from § 4 Abs. 1 sentence § 3 GvKostG that in these cases the charging of an advance is excluded.

An advance payment is also not possible if a customer is entitled to free of charge enforcement actions according to § 2 GvKostG. It goes without saying that in cases where no costs can be charged, no advance payments may be taken into account, as these are advances on any costs that may arise. The purpose of charging advances is to cover the costs that would probably be incurred if the enforcement agent were to perform a task in accordance with the statutory provisions and the administrative provisions. However, since such costs cannot arise in the person of a client who is exempt from costs, no advance payment can be made in this respect. The enforcement agent must advance the necessary expenses from his/her own resources. However, due to the amount of the expenses, for example in the case of eviction, he/she can usually apply for an advance payment from the state treasury (§ 8 GVO).

§ 8 of the BER does not refer to the enforcement agent's cash balance. It concerns the enforcement agent's claim to compensation from the state treasury if, for reasons beyond his/her control (private banking, cost exemptions), such expenses cannot be charged to the creditor. The enforcement agent cannot reasonably be expected to pre-finance such - usually larger - amounts from his/her own resources until the next quarterly statement of account.

As a rule, an advance shall not be charged in the case of

- commissions from public authorities or from corporations, institutions or foundations under public law, even if they are not free of charge;
- orders, the delay of which would cause irreplaceable disadvantages for the client;
- orders for the collection of bill or cheque protests.

Advances shall be paid into the enforcement agents' service account; advances shall be processed via the cash books I and II.

If the party obliged to make advances pays the requested advance within the time limits resulting from the GvKostG, the order shall be carried out or, pursuant to § 3 Abs. 4 sentences 2 - 5 GvKostG, it shall be deemed not yet to have been carried out and shall therefore be continued. The continuation shall be made within the context of the same order. This means that any costs already charged and paid in advance (e.g., in the case of § 32 GVGA or § 758 a ZPO) are to be offset against the final costs incurred within the scope of this order.

If a client continues to pursue the order after expiry of the payment deadline, a new order is deemed to be in place in terms of costs. The enforcement agent shall therefore not set off the fees he/she charged when returning the assignment against the fees that continue to be charged.

IV.1.2 Exemption from costs and charges

First, a distinction must be made between cost and fee exemptions.

- Exemption from costs: exemption from fees and expenses.
- Exemption from fees: exemption from fees.

The Federal Government and the countries are exempt from costs. This includes the Federal Republic of Germany including the ministries and their central and subordinate authorities, as well as the federal states with their subdivisions. The institutions and funds administered in accordance with the budgets of the Federation and the federal states for the account of the Federation or a federal state are also exempt from costs. These must be included in the respective budgets with their total income and expenditure. It is not sufficient that any surpluses fall to the Federation or the federal states or that they have to pay for losses. It is also not sufficient if the respective institution or fund only acts on behalf or for the account of the Federation or a federal state or collects debts. In all other respects, the granting of cost concessions for universities and university hospitals in other federal states is governed by the regulations of the respective federal state.

Only the providers of social welfare, youth welfare and basic support for job-seekers are exempt from fees pursuant to § 2 Abs. 2 and § 1 GvKostG. These are exempt from fees, as far as matters relating to the implementation of the SGB II (Basic security for job seekers), SGB VIII (Child and Youth Services) and SGB XII (social welfare benefits).



Concerning the SGB II, the institutions of basic provision for job seekers are exempted from paying enforcement agent costs. These include the Federal Employment Agency and the independent cities and districts (§ 6 SGB II). This means that the Federal Employment Agency, its regional directorates and the employment agencies (employment offices) are not required to bear the costs of the basic provision for jobseekers, insofar as these are tasks under the Second Book of the Social Code. It should be noted, however, that this is only a matter of exemption from fees. Nor are the institutions responsible for basic social security for job seekers exempt from paying the expenses.

Carriers (local carriers) of the social welfare (thus carriers of tasks from the SGB XII) are in principle the district-free cities and the districts. However, something else can be determined after national right (§ 3 SGB XII).

The bearers of the war victim welfare (= welfare offices) are included in those exempted from fees, because in addition to social assistance and child and youth welfare, war victim welfare is also part of the "public welfare" sector and this is historically and systematically closely linked to social assistance. However, the expenses are to be charged in the cases mentioned.

The Deutsche Bundespost, Postbank and the Bundesbahn are not exempt from charges. These companies (including Telekom, Postbank, postal services, etc.) must pay the full general meeting costs, as they are run as public limited companies.

The only exception to this rule is related to the client "Bundeseisenbahnvermögen". Since the customer is the Federal Government, there is no charge.

PART V: LINKS, LITERATURE AND SOURCES

BGB (Bürgerliches Gesetzbuch)

<https://dejure.org/gesetze>

FamFG (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der frei-willigen Gerichtsbarkeit)

ZPO (Zivilprozessordnung)