

Enforcement of Foreign Judgments

Fundamental Principles [Austria]

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**I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION
(CIVIL AND COMMERCIAL MATTERS)**

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

1. Is it possible to apply for enforcement of a foreign court judgment in your country?

Answer: Yes.

B. Applicable Law: General Rules

1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?

Answer: The procedure is set out in §§ 406 et seq EO (*Exekutionsordnung* – Austrian Enforcement Act).

Special Rules: European Union (see C. 1. below).

With regard to Iceland, Norway and Switzerland, the 2007 Lugano Convention applies setting out its own procedure for the recognition of court decisions.

With regard to Mexico, Montenegro, Singapore, USA and China, the 2005 Hague Convention on the choice of Court Agreements applies setting out its own procedure for the recognition of court decisions.

The Brussels Convention applies to judgments from Gibraltar and some dependent territories of EU member states.

Bilateral arrangements including Israel (BGBl No 349/1968), the Federal Republic of Yugoslavia (BGBl No. 310/192) (only with regard to maintenance obligations [*Unterhaltsverpflichtungen*]), the Principality of Liechtenstein (BGBl No 114/1975), Tunisia (BBGBl No 305/1980) and Turkey (BGBl 571/1992) apply.

C. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: According to §§ 1 para 2, 403 EO, a foreign court judgement is directly enforceable in Austria like a domestic court judgement if the foreign court decision is enforceable without a separate declaration of enforceability by virtue of an international agreement or an act of the European Union. The following EU regulations provide for such direct enforceability:

- EuGVVO (Brussels Ia, Regulation (EU) No 1215/2012) for decisions in civil and commercial matters resulting from proceedings initiated after 10 January 2015. Decisions resulting from proceedings before that time are subject to the previous version of EuGVVO (Brussels I, Regulation (EC) 44/2001).
- EuEheVO (Brussels IIa, Regulation (EC) No 2201/2003) for decisions in matrimonial matters and matters of parental responsibility.
- EuVTVO (European Enforcement Order, Regulation (EC) No 805/2004) regarding certain uncontested claims in civil and commercial matters.
- EuMahnVO (European order for payment procedure, Regulation (EC) No 1896/2006) regarding uncontested European orders for payment.
- EuBagatellVO (European Small Claims Procedure, Regulation (EC) No 861/2007) regarding decisions given using the European Small Claims Procedure.
- EuErbVO (Matters of succession, Regulation (EU) No 650/2012) regarding decisions under inheritance law.
- EuUnterhaltsVO (Regulation (EC) No 4/2009) regarding decisions relating to maintenance obligations [*Unterhaltsverpflichtungen*].

2. Does the European Union have a special procedure to enforce court judgments coming from its member states?

Answer: Yes. The principles under the European regulations cited in C.1. above. A claimant who has obtained a judgment from a member state can enforce it in the other member states without having to begin separate proceedings regarding the merit of the claim and without a declaration of enforceability (exequatur) being necessary. In cases subject to a European regulation cited in C.1., the procedural rules set out in the respective regulations supersede Austrian enforcement rules insofar as the respective regulation does not refer back to national law.

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer: Usually some weeks to a few months, depending on whether the decision is challenged.

II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Yes, according to §§ 407 et seq EO.

The court has to deny an application for a declaration of enforceability if:

- the case would not have been permitted to be brought before the court of a foreign state according to Austrian law;
- the summons or order by which the proceedings were instituted before the foreign court were not served on the person against whom enforcement is to be made in accordance with all applicable procedural provisions;
- the foreign court judgement is still subject to a legal remedy that impedes enforceability according to the law applicable to the foreign court;
- due to an irregularity in the proceedings, it was not possible for the defendant to participate in the proceedings before the foreign court;
- enforcement will force an act which is either illegal or unenforceable under domestic law;
- enforcement is being pursued to recognise a legal relationship or claim which is not valid or enforceable under domestic law for reasons of public order or morality (*öffentliche Ordnung oder Sittlichkeit*).

Where the EuGVVO applies, reasons to refuse recognition and enforcement are set out in Articles 45 and 46. The EuEheVO (Art 22, 23, 24), EuBagatellVO (Art 22, 23), EuErbVO (Art 40, 52), EuMahnVO (Art 20, 22, 23), EuUnterhaltsVO (Art 32 – 35) and EuVTVO (Art 10) set out similar provisions.

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: The application for the initiation of enforcement proceedings triggers fees (*Gerichtsgebühren*) according to the Austrian Court Fee Act (*Gerichtsgebührengesetz*) depending on the nature and value of the matter in dispute.

Furthermore, translation costs for documents which are not in German will accrue.

Depending on the nature of the enforcement proceeding (realisation of a claim, auction of real estate), further costs (e.g. appraisal reports, expert opinions) may be triggered.

Lawyers' fees (depending on the complexity of the matter and the agreement with the lawyer).

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: In principle, (domestic and foreign) court judgments are enforceable in Austria within 30 years or within 3 years depending on the nature of the claim.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: Yes. All executory titles according to § 1 EO need to be final and definitive. However, §§ 378 et seq EO sets out preliminary injunctions (*einstweilige Verfügung*) that can be used to secure the rights of a claimant before they are able to obtain a final and definitive decision.

C. Necessary Requirements

1. What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?

Answer:

- EU regime – the judgement has been certified / declared enforceable in another member state.
- Any requirements set out in multilateral or bilateral treaties / statutes.
- Austria - there must be no reason for denial of enforcement (see II.A. above).

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay court fees for this kind of application?

Answer: Yes (see II. B. 1. above).

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No.

IV. PROCEDURE

A. Competent court

1. Which court or courts are competent to decide an enforcement application?

Answer: The local courts (*Bezirksgerichte*); which local court is competent depends on the claimant (natural person or legal entity) and the object which is the subject of the enforcement (e.g. real property, patents).

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: Generally speaking, the information required includes:

- Information regarding the type of enforcement proceeding being pursued (e.g. realisation of a claim, auction of real estate).
- The name of the judgement creditor and the address for service (and the name and address of the legal representative, if applicable).
- The name of the judgement debtor and the address for service (and the name and address of the legal representative, if applicable).
- Information regarding the foreign court judgement (the court, date of the judgment, reference number, date of the declaration of enforceability) and the claim (outstanding amount, interest rate and information necessary to calculate the interest).
- In the event the foreign judgement is not directly enforceable in Austria, the enforcement application can be combined with an application for a declaration of enforceability (§ 412 EO).

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: In Austria: authenticated copy of the judgement, declaration of enforceability (if applicable) and the court fee.

The judgment creditor must provide:

- a) a copy of the judgment; and (if applicable)
 - i. a certificate from the court of origin issued in the form set out at Annex 1 to the EuGVVO, certifying that the judgment is enforceable and containing an extract of the judgment as well as relevant information on the recoverable costs of the proceedings and the calculation of interest; or
 - ii. a declaration of enforceability (of foreign judgements not directly enforceable);
- b) in some cases, a translation or transliteration may be necessary.

European regulations / bilateral treaties / statutes and the Hague Convention – refer to these terms.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: Application to obtain a declaration of enforceability (if the foreign judgement is not directly enforceable), application to initiate enforcement proceedings and enforcement (e.g. seizure of goods, charging order, third party debt order).

The procedure may be more complex if the judgement debtor opposes the enforcement or files an appeal.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer:

The reasons for opposing, by way of an appeal, against an enforcement decision (*Exekutionsbewilligung*) are not enumerated; the reasons to appeal are mostly failures in procedure (e.g. the non-fulfilment of requirements that the court did not take into account or was not aware of).

If a declaration of enforceability is necessary, the decision to declare a foreign judgement enforceable can be challenged by way of appeal.

Further, the defendant can assert certain facts according to §§ 35 et seq EO (*Oppositionsklage, Impugnationsklage*): § 35 EO sets out objections against the claim (circumstances which suspend or inhibit the claim and which occurred after the creation of the foreign judgement), § 36 EO sets out objections against the enforcement decision (*Exekutionsbewilligung*) (e.g. the claim is not due, the defendant is not the judgement debtor by way of legal succession, the judgement creditor has waived their right to enforce the claim).

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?

Answer: Yes.

2. Can this appeal suspend the enforcement?

Answer: Proceedings may be suspended upon request in an appeal against an enforcement decision (§ 42 para 1 no 7 EO), an application for annulment or modification of a declaration of enforceability (§ 42 para 1 no 9) or in the case of objections or actions according to §§ 35 et seq EO have been filed (§ 42 para 1 no 5, see E. 2. above).

Under Article 49 of the EuGVVO, either party may appeal against a decision made on an application for refusal of enforcement. Under Article 51, the court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50, may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

Pursuant to Art. 44 (1) EuGVVO, the debtor may, at the same time as filing an application for non-enforcement, apply for a total or partial stay of enforcement proceedings.

Other treaties / statutes – refer to their terms.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: In principle (and regarding the costs of legal representation with limits regarding the total amount), the defendant is obligated to reimburse the claimant for the costs of the enforcement proceedings.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer: All available assets of the debtor such as money, earnings, claims against third parties, balances on bank accounts, intellectual property rights, movable and immovable property and shares in companies.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: No.

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