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## How to enforce a court decision

Italy

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### 1 What does 'enforcement' mean in civil and commercial matters?

Enforcement is the forced execution of court judgments and other enforceable titles (debt instruments, public deeds (*atti pubblici*) and authenticated private deeds for specific services). At this stage, which is still subject to judicial proceedings, the forces of law and order may intervene if the debtor fails to meet his/her obligations spontaneously.

### 2 Which authority or authorities are competent for enforcement?

The ordinary courts are competent for enforcement. The application for refusal of enforcement referred to in Article 47(1) of Regulation (EU) No 1215/2012 (Brussels I Regulation (recast)) must also be submitted to the ordinary courts.

### 3 What are the conditions under which an enforceable title or decision may be issued?

Possession of an enforceable title is a necessary and sufficient condition for starting enforcement action. Typically, enforceable titles are provided for in law by Article 474 of the Code of Civil Procedure, and there are two types: judicial titles and extra-judicial titles. Judicial titles include judgments, acts and decisions issued by a court during or at the end of court proceedings. Extra-judicial titles include debt instruments, public deeds and authenticated private deeds created autonomously by the parties.

#### 3.1 The procedure

Enforcement starts when the enforceable title, which must be the enforceable copy in accordance with Article 475 of the Code of Civil Procedure, and the enforcement order (*precetto*), which is an injunction on the debtor to comply within a deadline of at least 10 days and a warning that failure to do so will result in forced execution in accordance with Article 480 of the Code of Civil Procedure, are served on the debtor. The third paragraph of Article 480 provides that, in the enforcement order, the creditor must elect domicile in the municipality in which the court with jurisdiction over the enforcement is located. In the event of failure to elect domicile, appeals against the enforcement order are brought in the court of the place where the order was served, and notifications are served on the creditor at the office of the clerk to the same court. Once these formalities have been completed, the enforcement process can begin with attachment by the bailiff, who must first show the required documents mentioned above. The attachment must take place within 90 days of the date when the enforcement order was served, but no earlier than the deadline given in that order; if it does not, the enforcement order will lapse (Article 481). Legal representation is necessary at this stage.

The attachment becomes null and void if assignment or sale is not requested within 45 days of its completion.

Enforcement aims to secure the forced execution of unfulfilled obligations through the use of the forces of law and order. It may be used both for financial debts and for obligations to deliver movable property or release immovable property and for 'non-fungible' positive obligations.

#### 3.2 The main conditions

A necessary and sufficient condition for initiating enforcement is possession of an enforceable title containing a right that is 'certain, of a fixed amount and due' (*certo, liquido ed esigibile*) (Article 474). The degree of 'certainty' varies depending on the title: there is obviously a greater degree of certainty with a judgment at first instance (enforceable on a provisional basis) than with a debt instrument or with transactions entered in public deeds or authenticated private deeds.

### 4 Object and nature of enforcement measures

The enforcement court issues various types of measures, normally orders (*ordinanze*), during the procedure. They range from measures necessary to lay down the rules for the proper conduct of the proceedings to measures that assign utility, e.g. the decree (*decreto*) assigning the attached property to the person who bought it at auction or who was the highest bidder.

#### 4.1 What types of assets can be subject to enforcement?

The following may be subject to expropriation: a) movable property, b) immovable property, c) the debtor's claims and movable property that the debtor keeps on the premises of third parties, d) shares in companies.

Obligations to deliver movable property and to release immovable property, and fungible positive and negative obligations may also be enforced.

#### 4.2 What are the effects of enforcement measures?

Enforcement in the case of sums of money, beginning with attachment, means that the attached money is unavailable to the debtor on whom the enforcement order was executed. All acts of disposition of that money will therefore be null and void and cannot be used to prevent enforcement.

#### 4.3 What is the validity of such measures?

The measures are enforcement measures for the purpose of satisfying claims made; they cannot therefore be used as evidence for investigations.

### 5 Is there a possibility of appeal against the decision granting such a measure?

The legal system allows appeals by the debtor (and/or third parties subject to enforcement) against the acts and judgments related to enforcement procedures. Appeals can produce two different types of judgment:

- appeal against enforcement (*opposizione all'esecuzione*) (Articles 615 and 616 of the Code of Civil Procedure) where the right to proceed with enforcement (or the existence of the creditor's right to proceed with enforcement) is challenged;
- appeal against enforceable acts (*opposizione agli atti esecutivi*) (Articles 617 and 618 of the Code of Civil Procedure) where procedural errors (i.e. the legality of the documents involved in the enforcement procedure) are challenged.

Appeals against enforcement or enforceable acts, lodged before the forced execution begins, are defined as appeals against an enforcement order (*precetto*) because they are consequent on the document giving advance notice of enforcement: the appeal is brought against the enforcement order by applying to the court with jurisdiction in the matter or over the amount and over the area, in accordance with the general provisions of the Code.

If enforcement has already begun or the attachment order has already been served, the appeal against enforcement or against enforceable instruments is made by lodging a specific appeal with the enforcement court.

Third parties who claim to have rights in rem over the attached property may appeal to the enforcement court until the property is sold or assigned.

The legal provisions governing the matter are Articles 615, 616, 617, 618 and 619 of the Code of Civil Procedure.

#### **6 Are there any limitations on enforcement, in particular related to debtor protection or time limits?**

In addition to items declared unattachable by special legal provisions, the following cannot be attached:

1) sacred objects and items used in the practice of a religion;

2) wedding rings, clothes, household linen, beds, dining tables and chairs, wardrobes, chests of drawers, refrigerators, stoves and ovens, whether gas or electric, washing machines, household and kitchen utensils and a piece of furniture to hold them, sufficient to meet the needs of the debtor and his or her household; however, this does not include furniture of significant value (except beds), including valuable antiques and items of confirmed artistic worth;

3) the food and fuel necessary to sustain the debtor and the other persons mentioned in the previous paragraph for one month;

Furniture (except beds) of significant financial value (including valuable antiques and items of confirmed artistic worth) are also excluded.

Weapons and other items that the debtor must keep in order to provide a public service, decorations, letters, records and family papers in general, as well as manuscripts, except where they form part of a collection, cannot be attached.

The law also declares unattachable, *inter alia*: state-owned property, non-disposable assets owned by the state or another public body, property covered by the matrimonial property regimes, the property of ecclesiastical institutions, and religious buildings.

Enforcement action cannot succeed if the limitation period of the claim has expired fully. Limitation periods vary depending on the right in question. However, it is important to note that sometimes the law lays down a different limitation period depending on the type of instrument proving the claim on which enforcement is based. For example, the limitation period for a claim established in a court judgment is 10 years, even though for this type of claim the law generally gives a shorter limitation period.

The law has recently changed so that the court of the debtor's place of permanent or temporary residence, domicile or head office may, at the creditor's request, authorise the property for attachment to be pursued using electronic methods (Article 492-bis of the Code of Civil Procedure, as amended by [Decree-Law No 83 of 27 June 2015](#) (converted, with amendments, by [Law No 132 of 6 August 2015](#))); forms of payment in instalments have also been introduced in the case of enforcement of movable goods, as part of conversion of attached property measures (*conversione del pignoramento*).

#### **Related annexes**

[Code of Civil Procedure \(474 - 482\)](#)  (64 Kb) 

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