

E-Justice in Enforcement Law

I.

- Since the introduction of the electronic case file, enforceable legal documents in the form of court judgments have been created as original electronic documents.
- Notarial records drawn up in accordance with Sections 16a ff. BeurkG are also created as original electronic documents.
- Paper records drawn up by a notary in the presence of the parties must be converted into electronic form in accordance with Section 56 BeurkG and then placed in the Electronic Documents Archive operated by the Federal Chamber of Notaries (Section 78h BNotO).
- If the notarial record is an enforceable legal document, it also exists in the form of an electronic document.

II.

- Example: Execution against movable property based on a legally binding judgment in which the debtor was ordered to pay a certain amount of money to the creditor.
- Lawyers must submit the enforcement requests made for their clients to the court-appointed enforcement officer electronically, which arises from Sections 753 (5) and 130d ZPO. However, the court-appointed enforcement officer may only take attachment measures under Sections 750 and 754 ZPO if the creditor has provided him with an enforceable execution copy of the judgment in accordance with sections 724 and 725 ZPO. Section 317 (2) 1 ZPO stipulates that this copy must be issued in paper form only.
- After the creditor's claims have been satisfied in the enforcement proceedings, the debtor receives a receipt for the payments he has made in accordance with § 757 ZPO and the enforceable execution copy of the judgment is handed over.

III.

- German law does not allow electronic execution copies to be provided because electronic documents cannot be returned or forwarded as such, but at the same time they can be reproduced endlessly. Unlike the prescribed procedure for execution copies of original documents, they are therefore by their very nature neither identifiable nor traceable.
- The primary reason given for the fact that enforcement authorities may only begin enforcement measures when they have been presented with an enforceable copy of the instrument is the need to protect the debtor from multiple enforcement on the basis of the same instrument.
- However, this protection by the enforceable execution copy is not guaranteed without gaps, because § 733 ZPO enables the creditor to obtain several enforceable execution copies of the same title.

- Furthermore, there are various enforceable legal documents in particular writs of execution, where enforcement may begin even without an enforceable execution copy of the title. In principle, however, the creditor must still submit a simple execution copy in paper form to the enforcement authority.

IV.

- In German enforcement law, electronic file management is only partially provided for at present.
- Instead of an on-site auction, the court-appointed enforcement officer can also auction off the attached movable property of the debtor in an online auction.
- Sections 754a and 829a ZPO state that the enforceable execution copy is unnecessary in some cases of enforcement from a writ of execution. In this case, it is sufficient to send a simple electronic copy to the enforcement authority so that it may take the requested measures. Here, one can speak of a digitized enforcement procedure.
- According to the legislator, the necessary protection of the debtor is guaranteed here by the creditor's assurance that the claim to be enforced still exists, as well as by the fact that the debtor receives a receipt for the payments he has made.
- Attempts to extend the scope of these two provisions to all cases of compulsory enforcement due to monetary claims could no longer be realized in the legislative period that has just ended.

V.

- In the context of a further digitization of enforcement proceedings, the creation of a central electronic title register is being discussed.
- The Electronic Documents Archive operated by the Federal Chamber of Notaries serves as a model, and according to some suggestions, it should be further developed into such an electronic register for any enforceable legal documents.
- Such a register would certainly have many advantages. However, it is unlikely that such a project could be implemented within a reasonably short period of time.

VI.

In recent years, German procedural law has seen a number of reforms that have led to the creation of enforceable legal documents in digital form. However, this digitization is not yet being continued in the subsequent enforcement proceedings, where it is still in its early stages. The main reason for this is that the creditor must regularly present an enforceable execution copy in paper form in order to commence enforcement measures. This serves the interests of debtor protection in particular. However, German enforcement law is satisfied with a lower level of debtor protection in the cases of Sections 754a and 829a ZPO. It remains to be seen whether the as-yet unsuccessful expansion of the scope of application of these two provisions will be taken up again in the new legislative period. The idea of creating a central electronic enforcement register for the purpose of digitizing the enforcement process seems to be a long way off.

Code of Civil Procedure (ZPO)

Section 128a (Hearing for oral argument using image and sound transmission)

(1) Hearings may, in appropriate cases and provided that sufficient capacity is available, take place in the form of a video conference. (...)

Section 130d (Obligation to use for lawyers and authorities)

Preparatory pleadings and their annexes, as well as written submissions and declarations submitted by a lawyer, an authority or a legal entity under public law, including associations formed by it to fulfill its public duties, shall be submitted as electronic documents. If this is temporarily impossible for technical reasons, transmission shall be admissible in accordance with the general provisions. The temporary impossibility shall be credibly demonstrated upon resubmission or immediately thereafter; an electronic document shall be submitted subsequently upon request.

Section 169 (Confirmation of the time of service; certification)

(4) A document may be served as a certified electronic copy. The copy is to be furnished with the qualified digital signature of the records clerk of the court registry.

Section 298a (Electronic file)

(1a) The case files will be kept electronically from January 1, 2026.

Section 317 (Service of the judgment and its execution)

(1) Judgments shall be served as a copy on the parties; default judgments that have been pronounced shall be served only on the party that has not prevailed in the dispute. (...)

(2) Execution copies will be issued only upon corresponding application being made, and solely in paper format. (...)

(4) The execution copies and excerpts of judgments are to be signed by the records clerk of the court registry and the court seal is to be affixed to them.

Section 724 (Enforceable execution copy)

(1) Compulsory enforcement will be pursued based on an execution copy of the judgment furnished with the court certificate of enforceability (enforceable execution copy).

(2) The enforceable execution copy is issued by the records clerk of the registry of the court of first instance and, should the legal dispute be pending with a court of higher instance, by the records clerk of that court's registry.

Section 725 (Court certificate of enforceability)

The court certificate of enforceability:

"The above execution copy is issued to (designation of the party) for the purposes of compulsory enforcement" is to be added to the execution copy of the judgment at its end, it is to be signed by the records clerk of the court registry, and is to be furnished with the court seal.

Section 733 (Additional enforceable execution copies)

(1) Prior to an additional enforceable execution copy being issued, the debtor may be heard unless the execution copy first issued is returned.

(2) The court registry is to notify the opponent of the fact that an additional execution copy has been issued.

(3) The additional execution copy is to be expressly designated as such.

Section 734 (Note recorded on the original of the judgment regarding the issuance of an execution copy)

Prior to physical delivery of an enforceable execution copy, it is to be noted on the original of the judgment for which party the execution copy was issued, and at what time this was done. Where the court records of the dispute are kept as electronic documents, this note is to be recorded in a separate electronic document. The document is to be joined to the judgment such that it cannot be separated.

Section 750 (Prerequisites for compulsory enforcement)

(1) Compulsory enforcement may be commenced only if the persons for and against whom it is to be performed have been designated by name in the judgment or in the court certificate of enforceability attached to it, and if the judgment has already been served or is served concurrently. Service by the creditor shall be deemed compliant with the present rule; in such event, the execution copy of the judgment need not set out the facts and circumstances on which the ruling is based, nor need it set out its reasons.

Section 753 (Enforcement by court-appointed enforcement officers)

(5) Section 130d shall apply accordingly.

Section 754 (Enforcement instructions and enforceable execution copy)

(1) The court-appointed enforcement officer is authorised by the enforcement instructions, and by the enforceable execution copy being physically handed over to him, to accept performance by the debtor, to issue receipts in this regard, and to enter into payment agreements with effect for the creditor, subject to the stipulations set out in Section 802b.

(2) The court-appointed enforcement officer is authorised, by his possession of the enforceable execution copy, to effect compulsory enforcement and to take the actions designated in subsection (1) vis-à-vis the debtor and third parties. Where the instructions to the enforcement officer were deficient or where they were issued with restrictions, this fact may not be asserted by the creditor vis-à-vis such persons.

Section 754a (Simplified enforcement instructions for writs of execution)

(1) In the case of an electronically submitted application for enforcement of a judgment based on an enforcement order which does not require an enforcement clause, the transmission of the copy of the enforcement order is dispensable in the case of enforcement due to monetary claims if

1. the monetary claim due as stated in the enforcement order, including any ancillary claims and costs for which judgment has been entered, does not exceed €5,000; costs of compulsory enforcement are to be taken into account when calculating the amount of the claim only if they are the sole subject of the enforcement order;
2. the presentation of documents other than the execution copy of the enforcement order is not prescribed;
3. the creditor attaches a copy of the enforcement order together with a certificate of service as an electronic document to the order and
4. the creditor assures that he is in possession of a copy of the enforcement order and a certificate of service and that the claim in the amount of the enforcement order still exists.

If costs of compulsory enforcement are to be enforced, a verifiable list of the costs and corresponding receipts as an electronic document shall be attached to the order in addition to the documents mentioned in sentence 1 number 3.

(2) If the judicial officer has doubts as to the existence of a copy of the enforcement order or the other enforcement prerequisites, he shall notify the creditor accordingly and shall only carry out the compulsory enforcement after the creditor has transmitted the copy of the enforcement order or has furnished proof of the other enforcement prerequisites.

Section 757 (Physical submission of the legal title and receipt note)

(1) Following receipt of the payment or following other action he has taken, the court-appointed enforcement officer is to surrender to the debtor the enforceable execution copy in addition to a receipt note; should performance be made only partially, he is to note this on the enforceable execution copy and is to issue a receipt note to the debtor.

(2) The right of the debtor to retroactively demand that the creditor himself issue a receipt note is not affected by the present rules.

Section 794 (Further enforceable legal documents)

(1) Compulsory enforcement may furthermore be pursued:

(...)

4. Based on writs of execution;

(...)

5. Based on records or documents that have been recorded in accordance with the requirements as to form by a German court or by a German notary within the bounds of his official authority, provided that the record or document has been recorded regarding a claim that can be provided for by a settlement, that is not directed at obtaining a declaration of intent, and that does not concern the existence of a tenancy relationship for residential spaces, and furthermore provided that the debtor has subjected himself, in the record or document, to immediate compulsory enforcement of the claim as specified therein;

Section 796 (Compulsory enforcement based on writs of execution)

(1) Writs of execution shall require a court certificate of enforceability only if compulsory enforcement is to be pursued on behalf of another creditor than the one designated in the writ of execution, or against another debtor than the one designated in the writ of execution.

Section 808 (Attachment with the debtor)

(1) The attachment of the physical objects in the custody and control of the debtor is effected by the court-appointed enforcement officer taking possession of them.

Section 814 (Sale at public auction)

(1) The court-appointed enforcement officer is to offer the objects attached for sale at public auction; valuables are to be appraised by an expert prior to the auction.

(2) At the election of the court-appointed enforcement officer, the public auction may be effected as:

1. An auction on site; or

2. As a generally accessible auction in the internet using an auction platform.

Section 829a (Simplified enforcement instructions for writs of execution)

(1) In the case of an electronic application for enforcement of a judgment based on a writ of execution that does not require an enforceable execution copy, the transmission of the copy of the enforcement order is not required in the case of attachment and transfer of a monetary claim (Sections 829, 835) if

1. the monetary claim due as stated in the enforcement order, including any ancillary claims and costs for which judgment has been entered, does not exceed €5,000; costs of compulsory enforcement shall only be taken into account when calculating the amount of the claim if they are the sole subject of the application for enforcement;

2. the presentation of other documents than the execution of the enforcement order is not prescribed;

3. the creditor attaches a copy of the enforcement order together with a certificate of service as an electronic document to the application and

4. the creditor assures that he has a copy of the enforcement order and a certificate of service and that the claim still exists in the amount of the enforcement application.

If costs of enforcement are to be enforced, a verifiable list of the costs and corresponding receipts as an electronic document must be attached to the application in addition to the documents mentioned in sentence 1 no. 3.

(2) If the court has doubts as to the existence of a copy of the enforcement order or the other enforcement requirements, it shall inform the creditor of this and shall only carry out the enforcement after the creditor has submitted the copy of the enforcement order or has provided evidence of the other enforcement requirements.

Section 929 (Court certificate of enforceability; enforcement period)

(1) A writ of seizure shall require a court certificate of enforceability only if it is to be enforced for a different creditor than the creditor designated in the writ of seizure, or against a different debtor than the debtor designated in the writ of seizure.

Section 936 (Application of the rules governing arrest)

The rules regarding the order of writs of seizure and regarding the attachment procedure shall apply mutatis mutandis to the order of injunctions and the further procedure, unless the following sections set out deviating rules.

Civil Code (BGB)

Section 172 (Letter of authorisation)

(2) The power of agency remains effective until the letter of authorisation is returned to the principal or declared to be invalid.

Notarial Recording Act (BeurkG)

Section 8

When notarizing declarations of intent, minutes of the proceedings must be taken.

Section 16a

(1) Declarations of intent may be notarized by means of the video communication system operated by the Federal Chamber of Notaries pursuant to Section 78p of the Federal Notarial Code in accordance with the following provisions, insofar as this is permitted by law.

Section 55 (Register and custody of deeds)

(1) The notary shall maintain an electronic register of records and other official acts (deed register).

(2) The notary shall maintain the record register and the electronic collection of records in the Electronic Document Archive (§ 78h of the Federal Code for Notaries).

(3) The notary shall store the deeds registered in the schedule of deeds in a collection of deeds, an electronic collection of deeds and a collection of inheritance contracts.

Section 56 (Transfer of paper documents into electronic form; placement of electronic documents in the electronic collection of deeds)

(1) When transferring the documents in paper form into electronic form, it should be ensured by means of suitable precautions according to the state of the art that the electronic documents with the documents in paper form correspond in terms of content and image. This correspondence is to be confirmed by the notary

in a note indicating the place and date of its issue. Strikethroughs, amendments, insertions, erasures or other defects in the written document should be indicated in the note if they are not clearly evident from the electronic document. The electronic document and the note shall be provided with a qualified electronic signature. Section 16b (4) sentences 2 and 4 and section 39a (2) sentence 1 shall apply with the necessary modifications. (2) If, after the electronic version of an original or copy to be kept in the collection of deeds has been included in the electronic collection of deeds, additional notes, further documents or other originals are added to the original or copy, the supplements, further documents and other originals shall be transferred into electronic documents in accordance with subsection (1) and kept in the electronic document collection together with the electronic version of the original or copy.

(3) If documents or other originals are added to the electronic original, subsections (1) and (2) shall apply with the necessary modifications. 44a paragraph 2 clause 5 and § 44b paragraph 1 clause 2 remain unaffected.

(4) The electronic documents held in safe custody by the notary in the electronic document collection are equivalent to the documents from which they have been transferred in accordance with paragraphs 1 to 3.

Federal Code for Notaries

Section 78h (Electronic Document Archive; authorisation to issue statutory instruments)

(1) The Federal Chamber of Notaries, in its capacity as the authority holding the document archive, maintains a central electronic archive which enables notaries to keep an electronic collection of documents, a register of documents and a register of safe custody (Electronic Document Archive). The Federal Ministry of Justice and Consumer Protection exercises legal supervision over the authority holding the document archive.

Regulation for court-appointed enforcement officers

Section 39 (Special files and folders)

(3) In the special files, all documents created in the proceedings are to be arranged in chronological order and numbered consecutively. (...) The documents created in the enforcement proceedings by means of information technology shall be placed in the special file in a legible form, insofar as their content does not arise from other file contents or orders; the documents and records received by the judicial officer in the enforcement proceedings by electronic means shall be treated in a corresponding manner. Electronic storage or a printout in XML format is not sufficient. (...)