

# Legal 500

## Country Comparative Guides 2024

### Germany

## Enforcement of Judgments in Civil and Commercial Matters

### Contributor

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Germany.

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# Germany: Enforcement of Judgments in Civil and Commercial Matters

## 1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

Germany is bound by a multitude of instruments such as European Law and international conventions and treaties regarding the enforcement of foreign judgments.

**Brussels Ia Regulation:** Within the European Union, the Brussels Ia Regulation (Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) plays a vital role as it applies to all EU Member States, with the exception of Denmark. The Brussels Ia Regulation provides that a judgment rendered in a Member State is recognized in the other Member States without special procedure (Article 36) or without requiring a declaration of enforceability (Article 39).

Other significant multilateral agreements are the Lugano Convention 2007, the Hague Choice of Courts Convention 2005, and the Hague Judgments Convention 2019.

**Lugano Convention 2007:** The Lugano Convention extends the recognition and enforcement of judgments between the EU Member States to Denmark, Iceland, Norway and Switzerland. Under the Lugano Convention a declaration of enforceability remains necessary (Article 33).

**Hague Choice of Courts Convention 2005:** According to the Hague Choice of Courts Convention, a judgment given by a court designated in an exclusive choice of court agreement shall be recognised and enforced in other states (Article 8).

**Hague Judgments Convention 2019:** On 1 September 2023, the Hague Judgments Convention governing the recognitions and enforcement of judgments in civil and commercial matters came into force. The EU Member States, with the exception of Denmark, are bound by virtue of the accession of the EU, without affecting the Brussels Ia Regulation. The convention was signed but not yet ratified by a number of States among which are the Russian Federation and the United States of America.

The regime of international conventions is supplemented by a multitude of bilateral treaties.

## 2. What, if any, reservations has your jurisdiction made to such treaties?

Germany has not made any reservations but is bound by the reservations made by the European Union. The EU excluded non-residential leases of immovable property from the application of the Hague Judgments Convention as well as certain insurance contracts from the Hague Choice of Courts Convention.

## 3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

Insofar as a convention, treaty or other arrangement does not apply, the general rules of the German Code of Civil Procedure (Zivilprozessordnung) for the recognition and enforcement of foreign judgments apply. The relevant provisions can be found in Sections 328, 722, 723 of the German Code of Civil Procedure.

## 4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

In general, any foreign judgment (not only including judgments for payment) can be enforced in Germany. Most importantly, the judgment needs to be enforceable in the country of origin and needs an order for a sufficiently specific performance (mere procedural decisions are not enforceable).

Any further criteria for enforcement depend on the respective regulations of the applicable law.

### **Brussels Ia Regulation:**

Under the Brussel Ia Regulation, the judgment by the courts of the respective Member State needs to be legally binding. It suffices if the judgment is provisionally enforceable in the country of origin.

On the application of a party, the enforcement of a decision shall be refused under the Brussels Ia Regulation under the following circumstances:

- if such recognition is manifestly contrary to public policy (ordre public) in Germany;
- where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
- if the judgment is irreconcilable with a judgment rendered between the same parties in Germany;
- if the judgment is irreconcilable with an earlier judgment rendered in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Germany; or
- if the court of the country of origin was not competent pursuant to the provisions for exclusive jurisdiction for consumers, employees, insured persons or Article 24 Brussels Ia Regulation.

#### **Lugano Convention:**

The grounds of refusal under the Lugano Convention are regulated in Articles 45, 35, 34 of the Lugano Convention and are identical with those under the Brussels Ia Regulation.

The grounds for refusal are only reviewed upon the debtor's appeal against the declaration of enforceability.

#### **General law:**

According to the general law, judgments need to have a binding ruling on the legal claim in the country of origin.

Grounds for refusal for the enforceability of the foreign judgments are enumerated in Section 328 of the German Code of Civil Procedure (Zivilprozessordnung):

- the courts of the state to which the foreign court belongs do not have jurisdiction under German law;
- the defendant, who did not enter an appearance in the proceedings and who takes recourse to this fact, was not duly served with the document instituting the proceedings or was not served in sufficient time to enable him to arrange for his defence;
- the judgment is incompatible with a judgment

delivered in Germany, or with an earlier judgment handed down abroad that is to be recognised, or if the proceedings on which such judgment is based are incompatible with proceedings that have become pending earlier in Germany;

- the recognition of the judgment leads to a result that is manifestly incompatible with fundamental principles of German law, in particular if the recognition is incompatible with fundamental rights;
- reciprocity is not guaranteed.

### **5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?**

Under the Brussels Ia Regulation, judgments by the courts of another Member State are enforceable without any special procedure. Enforcement in Germany requires (i) a certified copy of the judgment and (ii) a certificate pursuant to Annex I of the Brussels Ia Regulation. The certificate pursuant to Annex I of the Brussels Ia Regulation shall be served upon the person against whom the enforcement is sought prior to the first enforcement measure.

Under the Lugano Convention, an application for a declaration of enforceability before the competent German court is required. With the application, a certified copy of the judgment and a certificate in accordance with Annex V of the Lugano Convention needs to be provided.

### **6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?**

Under the general law, the judgment creditor has to file an action with the competent regional court (Landgericht) for an "exequatur judgment" declaring the foreign judgment enforceable in Germany, Section 722 of the German Code of Civil Procedure (Zivilprozessordnung). The court fees must be paid for the action to be effective. The local jurisdiction of the competent regional court is determined by the defendant's place of residence, registered seat or location of assets. Usually, an oral hearing takes place.

### **7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For**

**example, must the judgment be apostilled?**

In enforcement proceedings before German courts, foreign judgments must in principle be accompanied by a certified German translation. In general, the judgments do not need to be apostilled, subject to exceptional cases in which the authenticity of the foreign judgment is questioned.

Judgments under the Brussels Ia Regulation and the Lugano Convention do not need to be apostilled or legalised.

For judgments covered by the Brussels Ia Regulation, however, it is up to the debtor to request a (not necessarily certified) translation if the judgment is not written in either a language which the debtor understands or in the official language of the Member State in which he is domiciled.

For judgments covered by the Lugano Convention the court that is to decide on the declaration of enforceability may request a translation of the judgment.

It is to be recommended to always provide a (certified) translation to ensure efficiency and to prevent unnecessary delays.

**8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction?  
Is there a summary procedure available?**

There are no summary proceedings available for the enforcement of foreign judgments in Germany.

Under the Brussels Ia Regulation, no declaration of enforceability by a German court is necessary so that judgments can be enforced relatively quickly.

Under the Lugano Convention, a declaration of enforceability by a German court is required. There are not statutory timelines. However, the judicial declaration can usually be obtained within several weeks.

For exequatur proceedings under general law an ordinary court proceeding in Germany needs to take place. First instance proceedings may take one year or longer.

**9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?**

It is possible to obtain an interim relief during the enforcement or registration procedure takes place.

In case the Brussels Ia Regulation is applicable, the same interim reliefs as for a creditor of a German judgment are available. The same applies to foreign judgments covered by the Lugano Convention.

The creditor of a monetary claim may pursue:

- a backup enforcement (*Sicherungsvollstreckung*)
- the attachment (*Pfändung*) of movable assets or by way of a security mortgage also immovable assets. It has to be considered, that an attachment does not yet constitute an immediate realisation of the attached items.
- preliminary attachment (*Vorpfändung*) in order to obtain an attachment of the judgment debtor's monetary claims.
- attachment proceedings (*Arrestverfahren*) as a measure of interim relief to obtain an attachment of specific assets. However, it has to be considered, that the latter requires separate proceedings and is subject to prerequisites that can be difficult to meet.

In contrast, under the general law, the creditor does not have the same reliefs as a judgment creditor of a German judgment. A creditor can however apply for attachment proceedings in separate proceedings.

**10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?**

German law provides a thirty-year limitation period for enforcing a foreign judgment. After that period, the claim is statute-barred Section 197 subsec. 1 no. 3 of the German Civil Code (*Bürgerliches Gesetzbuch*).

**11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?**

Enforcement of foreign judgments can be challenged based on the grounds described above under question 4.

**12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?**

As a rule, German courts will not review the merits of a judgment to be enforced (no revision au fond). In exceptional cases, a judgment may be reviewed for a

violation of ordre public.

**13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?**

In general, German courts will examine whether the foreign court had jurisdiction over the defendant. The criteria depend on the respective regulations of the applicable law (see above question 4).

**14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?**

Under the Brussels Ia Regulation, recognition of a judgment shall be refused where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so. The same applies under the Lugano Convention (see above question 4). Under general law, recognition of a judgment shall be refused for essentially the same reasons as under the Brussels Ia Regulation and the Lugano Convention. General law however does not establish a requirement to challenge the judgment in the foreign country.

Default judgments can generally be enforced.

**15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?**

German courts are generally bound by the applicable laws and have no discretion over whether or not to recognize foreign judgments.

**16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?**

German law does not categorically exclude specific types of foreign judgments from enforcement. The German

Federal Court of Justice (*Bundesgerichtshof*) however held that an award of punitive damages violates German public policy. The principles established by the German Federal Court of Justice will apply likewise to the award of treble damages.

**17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?**

Under the Brussels Ia Regulation and the Lugano Convention, enforcement procedures can be started in Germany even if an appeal is pending in the foreign jurisdiction provided that the judgment is provisionally enforceable in the country of origin. Under general law, the foreign decision to be enforced needs to be final.

**18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?**

Yes, a decision by a German court recognising or enforcing a foreign judgment can be appealed under the Brussels Ia Regulation (regarding the decision on the application for refusal of enforcement), the Lugano Convention and under general law. The deadline for filing the appeal is one month from the service of the decision.

**19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?**

In order to be enforceable, the foreign judgment has to be for a specific performance. However, if the judgment is ambiguous, German courts can specify the foreign judgment to a certain extent within the exequatur procedure. Specifications can be made if the scope of the enforceable obligation for payment results from statutory provisions of the foreign country or similarly ascertainable circumstances. This is generally the case if statutory interests are awarded. It is also permissible to add statutory interest to the title if this is not specifically awarded in the country of origin.

**20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?**

The German Civil Code recognizes the possibility of a foreign currency debt and does not require a conversion Section 244 of the German Civil Code (*Bürgerliches Gesetzbuch*). Therefore, a claim granted in a foreign



currency remains a foreign currency debt, regardless of whether it was granted by a German or a foreign court. The conversion is left to the enforcing authorities in accordance with the exchange rate applicable to the place and time of the payment.

## **21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?**

The statutory court fees and the costs of the parties, including lawyers' fees, can be recovered from the judgment debtor, Sections 91, 788 subsec. 1 of the German Code of Civil Procedure (Zivilprozessordnung). The compensation of both the court fees and the reimbursable attorneys' fees are limited by a statutory fee schedule which is based on the amount in dispute. Consequently, the reimbursable lawyers' fees can be lower than the fees actually incurred.

## **22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

Third party funding is generally permissible, including in enforcement actions. German law does not recognize any legal principle according to which legal action must always be taken without outside assistance. Third party funders will generally not be held liable for the costs

incurred by the other side.

## **23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?**

The recognition and enforcement of judgments in and from the UK in the time-period between Brexit and the entry into force of the Hague Judgments Convention 2019 remains an open topic. The Hague Judgments Convention 2019 will generally gain relevance in the future. Subject to an upcoming decision by the ECJ, the relevance and admissibility of asymmetric jurisdiction clauses, providing for partially exclusive jurisdiction, may become a topic in the future. Another trend where the legal landscape is evolving is the admissibility of anti-suit injunctions (and corresponding questions of enforceability in case of the issuance of such injunctions).

## **24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?**

Germany is bound by the Convention as a result of the approval by the European Union.

## **25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?**

Germany is bound by the Convention by virtue of the accession of the European Union.

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