



**COUNTRY  
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# **The Legal 500 Country Comparative Guides**

## **Germany**

# **ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS**

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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 variety of international conventions, treaties and other arrangements on the enforcement of foreign judgments.

#### Brussels Ia Regulation

The most significant law applies to judgments issued within EU member states. EU Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels Ia Regulation") provides – different from the other regimes described below – for enforcement without a prior judicial declaration of enforceability.

#### Multilateral agreements

Multilateral agreements play a significant role. Worth mentioning is the Lugano Convention from 2007 between the European Community on one side, Switzerland, Norway, Iceland and Denmark on the other side. In addition, the Hague Choice of Courts Convention 2005 is applicable for enforcing judgments based on exclusive choice of court agreements.

On 1 September 2023, the Hague Judgments Convention 2019 will come into force in the member states of the EU (except Denmark) and Ukraine. The Convention governs recognition and enforcement of judgments in civil and commercial matters. Since the Brussels Ia Regulation already applies between the EU member states and the Hague Judgments Convention 2019 does not affect the applicability of the Brussels Ia Regulation, the practical relevance of the Hague Judgments Convention 2019 (until the potential accession of further non-EU states) will essentially be limited to the relationship between the

EU member states (except Denmark) and Ukraine.

#### Bilateral agreements

Germany has concluded bilateral agreements, most importantly with the United Kingdom ("German-UK Convention", 1960), Tunisia ("German-Tunisian Treaty", 1966) and Israel ("German-Israeli Treaty", 1977), which include individual requirements for enforcement.

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

Germany has not made any reservations. However, the EU has made some reservations to the Hague Choice of Courts Convention 2005 regarding certain insurance contracts.

### 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?

Yes. The German Code of Civil Procedure (Zivilprozessordnung, "ZPO") provides a general procedure for recognition and enforcement of foreign judgments if and to the extent that they are not covered by a convention, treaty or other arrangement. The proceedings are governed by Sections 328, 722, 723 ZPO ("exequatur proceedings").

### 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 principle, all foreign judgments (money judgments and

other judgments) are enforceable in Germany provided that they are (i) enforceable in the country of origin and (ii) order for a sufficiently specific performance. Thus, declaratory judgments (Feststellungsurteile), judgments effective erga omnes (Gestaltungsurteile) and judgments dismissing actions (Klageabweisungen) are not enforceable as they lack an order for a specific performance.

The remaining requirements depend on which international treaty or regulation is applicable to the judgment.

## Brussels Ia Regulation

To be enforceable under the Brussels Ia Regulation, judgments require to be either final and legally binding (having gained res judicata effect) or provisionally enforceable in the country of origin.

Besides, Articles 45, 46 Brussels Ia Regulation contain negatively defined requirements (grounds for refusal), on the basis of which the judgment debtor may apply for refusal of enforcement of the judgment. Grounds for refusal exist if:

- the recognition of the judgment would violate key principles of German public policy (ordre public).
- the defendant did not make an appearance in the proceedings in which the judgment was rendered, since he was not served with the document initiating the proceedings in sufficient time to enable his defence (unless the defendant did not appeal against the judgment although he was able to do so).
- the judgment does not align with a judgment rendered between the same parties in Germany.
- the judgment is not in line with an earlier judgment issued in another EU member state or a third state regarding the same claim and between the same parties if the earlier judgment fulfils the requirements for recognition in Germany.
- 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

To be enforceable under the Lugano Convention, judgments have to meet the same criteria as under the Brussels Ia Regulation. Equally, grounds for refusal of enforcement correspond with those set out in the

Brussels Ia Regulation (Articles 45, 35, 34 Lugano Convention). Notably, the grounds for refusal are not reviewed within the proceedings aimed for the required judicial declaration of enforceability, but only upon the judgment debtor's appeal against the judicial declaration of enforceability.

## General Law

In the exequatur proceedings under the general law, judgments need to have a final and binding ruling on the legal claim, i.e. obtained res judicata effect in the country of origin.

Section 328 ZPO provides for several basic criteria that foreign judgments must satisfy, which are negatively defined as grounds for refusal. The following three grounds for refusal essentially correspond with the refusal grounds under the Brussels Ia Regulation and the Lugano Convention:

- Recognition of the foreign judgment would lead to a result that is obviously incompatible with the German ordre public.
- The defendant who did not enter an appearance in the foreign proceedings in which the judgment was rendered and invokes this fact was not served with the document initiating the proceedings properly or in sufficient time to ensure that he could adequately defend himself (see question 14).
- The foreign judgment is incompatible with a judgment rendered in Germany or with an earlier judgment rendered abroad, that is to be recognised in Germany, or if the proceedings in which the foreign judgment was rendered are incompatible with proceedings that have previously become pending in Germany.

Two additional grounds for refusal under the general law are:

- The courts of the country of origin did not have international jurisdiction according to German law (see question 13).
- Reciprocity between Germany and the country of origin is not guaranteed. Reciprocity is guaranteed if, taking into account the mutual recognition law and practice, the requirements for recognition of German judgments in the country of origin are essentially equivalent as vice versa.

## 5. What is the procedure for enforcement

## of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

### Brussels Ia Regulation

Judgments under the Brussels Ia Regulation are enforceable without a specific procedure. In order to enforce a Judgment, the judgment creditor must provide the German enforcement authority with a certified copy of the judgment and a certificate issued by the court of origin pursuant to Annex I of the Brussels Ia Regulation. Importantly, the certificate needs to be served on the judgment debtor before commencing enforcement.

### Lugano Convention

In order to enforce a foreign judgment under the Lugano Convention, the judgment creditor must apply for a declaration of enforceability with the regional court (Landgericht), in whose district the defendant has its residence or registered seat or the judgment is to be enforced. The application has to be accompanied by a certified copy of the judgment and a certificate issued by the court of origin according to Annex V of the Lugano Convention. The judgment creditor must advance the court fees of EUR 264. For the application, representation by a lawyer is not mandatory.

## 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 must obtain a judgment issued by a German court to declare the foreign judgement enforceable in Germany ("exequatur judgment"). For this, the judgment creditor must file an action with the competent court.

To this end, the court where the defendant has its residence or registered seat or assets of the defendant are located has local jurisdiction. Under current law, subject-matter jurisdiction lays either with the district court (Amtsgericht) in case the dispute value is below EUR 5,000, otherwise with the regional court. Simultaneously with entry into force of the Hague Judgments Convention 2019 on 1 September 2023, an amendment to these jurisdiction rules will come into force in Germany, according to which subject-matter jurisdiction for exequatur judgments (irrespective of the value of the dispute) will lie exclusively with the regional courts. In this respect, the individual German federal states have the option of concentrating jurisdiction at certain regional courts to be designated by legislative decree. Before the regional courts, the parties must be

represented by lawyers.

The court procedure usually needs an oral hearing if the parties do not mutually waive this requirement (the latter being rather rare). The court will then, if the requirements are met, issue a written judgment which declares the foreign judgement enforceable. The plaintiff has to advance the court fees of EUR 264.

## 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?

Judgments submitted to the German court in a foreign language must generally be accompanied by a certified German translation. For judgments covered by the Brussels Ia Regulation, however, it is up to the judgment debtor to request a (not necessarily certified) translation if the judgment is not written into either a language which he understands or 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. For avoiding delays and further discussions, it is to be recommended to always provide a (certified) translation if the Judgment is not written in German.

Judgments under the Brussels Ia Regulation and the Lugano Convention do not need to be apostilled or legalised. In principle, in order to enforce a judgment under general law, the court may under its discretion require that the judgment needs to be either legalised or apostilled. However, in practice, the court may consider this only in rare cases, e.g. if there are circumstances indicating a lack of authenticity of the foreign judgment or if the defendant contests the authenticity of the judgment.

## 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.

The required time period for enforcing foreign judgments in Germany differs depending on the applicable regime. Judgments covered by the Brussels Ia Regulation do not require a judicial declaration of enforceability and can thus be enforced quite quickly. Judgments covered by

the Lugano Convention require a judicial declaration of enforceability; however, this judicial declaration can usually be obtained within several weeks.

The time frame of exequatur proceedings under general law depends on several circumstances. Since for obtaining an exequatur judgment ordinary court proceedings, including an oral hearing and a written judgment, are required, the proceedings of first instance may take at least one year. It may take even more time if, as often required, the court needs to obtain expert opinions on questions of foreign law before deciding on the declaration of enforceability of the judgment.

## **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?**

### **Brussels Ia Regulation**

Under the Brussels Ia Regulation, the judgment creditor may use the same interim reliefs as available to a judgment creditor of a German judgment. The judgment creditor of monetary claim may, for example, pursue a backup enforcement (Sicherungsvollstreckung). Accordingly, the creditor can already pursue the attachment (Pfändung) of movable assets or – by way of a security mortgage – immovable assets; however, it is not yet possible to realize the attached items. In order to obtain an attachment of the judgment debtor's monetary claims (including bank deposits), the judgment creditor may apply for a preliminary attachment (Vorpfändung). Further, the judgment creditor could also pursue attachment proceedings (Arrestverfahren) as a measure of interim relief in order to obtain an attachment of specific assets. However, the latter requires separate proceedings and is subject to prerequisites that can be difficult to meet. For example, it must be demonstrated that the judgment debtor is thwarting enforcement, e.g. by disposing of assets.

The aforementioned measures should be considered in particular when the issuance of the certificate pursuant to Annex I of the Brussels Ia Regulation is delayed or if the judgment debtor requests a translation of the judgment (see question 7).

### **Lugano Convention**

The above measures also apply to foreign judgments covered by the Lugano Convention. With applying for the respective measures, the judgment creditor can obtain security already before the regional court has rendered its decision on the declaration of enforceability.

### **General Law**

Under the general law, the judgment creditor has not the same reliefs as a judgment creditor of a German judgment before an exequatur judgment is rendered. However, it is acknowledged that the foreign judgment creditor may file for measures of interim relief, such as, in the event of a monetary claim, attachment proceedings.

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

The law does not provide specific limitation periods for the enforcement of foreign judgments. However, the claim granted in a foreign judgment becomes time barred after 30 years (Section 197 (1) no. 3 ZPO).

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

### **Brussels Ia Regulation**

Pursuant to Articles 46, 45 Brussels Ia Regulation, the defendant is able to request the refusal of enforcement of a foreign judgment if a ground for refusal (see question 4) is applicable.

### **Lugano Convention**

The defendant cannot invoke grounds for refusal in the proceedings for obtaining the required judicial declaration of enforceability if all formal requirements for the judicial declaration of enforceability are met. At this stage of the proceedings, the grounds for refusal are not part of the court's assessment (Article 41 Lugano Convention). However, the defendant can file an appeal against the judicial declaration of enforceability (see question 18) arguing that a ground for refusal (see question 4) exists.

### **General Law**

If a ground for refusal under Sections 723, 328 ZPO exists, the German courts will not declare the foreign judgment enforceable (see question 4). In principle, the court has to examine the grounds for refusal in the exequatur proceedings ex officio.

## **12. Will the courts in your jurisdiction reconsider the merits of the judgment to**

## be enforced?

The German courts will not reconsider the merits of the judgment to be enforced (prohibition of a *révision au fond*). However, the *ordre public* requirement allows a very limited review of foreign judgments on the merits in exceptional cases (i.e. if key principles of German law are violated).

## 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?

### Brussels Ia Regulation

Article 45 (3) Brussels Ia Regulation generally prohibits reviewing the international and local jurisdiction of the court of origin with an exception for special and exclusive jurisdiction under the Brussels Ia Regulation. For example, if the court of origin has disregarded the special jurisdiction in insurance, consumer and individual labor law cases, enforcement must be denied.

### Lugano Convention

According to Article 35 (3) Lugano Convention, the same applies for judgments issued by a Lugano Convention member state. However, in contrast to the Brussels Ia Regulation, no exception applies if the court of origin has disregarded jurisdiction for individual labor law cases.

### General Law

According to Sections 723 (2), 328 (1) no. 1 ZPO, enforcement is precluded if the original court did not have international jurisdiction according to the general rules of local/international jurisdiction of the ZPO (reflection principle). To this end, it is not to be examined whether the court of origin applied "its" jurisdiction rules without error, but only whether the court of origin would have been entitled to assume jurisdiction if it had applied the German jurisdiction law. These requirements may be absent, for example, if the defendant is not domiciled in the country of origin of the judgment, has no assets there, and no jurisdiction clause has established competence of the foreign courts.

## 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?

### Brussels Ia Regulation

According to Articles 46, 45 (1) b) Brussels Ia Regulation, enforcement must be denied if the defendant's right to a fair hearing in the initiation of the proceedings was violated by the court of origin. This is the case when (i) the defendant did not enter an appearance in the proceedings and (ii) the document instituting the proceedings was not served on the defendant in sufficient time and in such a way to enable him to arrange for his proper defence. This ground for refusal only relates to the document by which the defendant is or is to be informed of the initiation of the proceedings in accordance with the law of the country of origin, e.g. the statement of claim or the application for interim relief. It is not applicable if the defendant has not appealed against the judgment in the country of origin, although he had the opportunity to do so.

### Lugano Convention

The same applies for foreign judgments covered by the Lugano Convention (Articles 45 (1), 34 no. 2 Lugano Convention).

### General Law

Sections 723 (2), 328 (1) no. 2 ZPO similarly provide that enforcement shall be denied if the defendant who did not enter an appearance in the foreign proceedings in which the judgment was rendered and invokes this fact was not served with the document initiating the proceedings properly or in sufficient time to ensure that he could adequately defend himself. However, in contrast to the Brussels Ia Regulation and the Lugano Convention, this ground for refusal does not require the defendant to have appealed the judgment if he had the opportunity to do so.

### Default judgments

Subject to the aforementioned requirements, foreign default judgments are therefore generally enforceable in Germany.

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

The German courts do not have a discretion in this regard. Notwithstanding this, German courts have a certain margin by determining whether the foreign judgment is in line with the key principles of German law (*ordre public*).



**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?**

In general, all foreign judgments enforceable in the country of origin can be enforced. German law does not explicitly exclude judgments granting punitive damages from enforcement. However, according to the case law of the German Federal Court of Justice (FCJ), punitive damages are not in line with the German legal system, thus violate the German public policy (ordre public), which constitutes a ground for refusal. The same applies to foreign judgments that award multiple or even treble damages. Such contain an overcompensation of a punitive nature and are therefore not likely to be recognized in Germany due to a violation of the ordre public.

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

Foreign judgments governed by the Brussels Ia Regulation and the Lugano Convention can be enforced in Germany if they are subjected to appeal or the appeal proceeding is pending in the country of origin – provided that they are (provisionally) enforceable in the country of origin. This is not the case for foreign judgments covered by the general law, since they must have become final and binding beforehand.

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

**Brussels Ia Regulation**

Under the Brussels Ia Regulation, against the court's decision on the refusal of enforcement, both parties may file an immediate appeal (sofortige Beschwerde) with the higher regional court (Oberlandesgericht) within one month after the service of the decision on the refusal. Further, appeal on points of law (Rechtsbeschwerde) applies against the decision on the immediate appeal.

**Lugano Convention**

Under the Lugano Convention, appeal (Beschwerde) against the decision on the declaration of enforceability to the higher regional court applies. The appeal must be filed within one month after the service of the decision. Against the decision on the appeal, each party may

submit an appeal on points of law with the FCJ within one month after the service of the decision.

**General Law**

Against an exequatur judgment, i.e. the judgment declaring the foreign judgment enforceable in Germany, appeal (Berufung) is applicable to the court of the next higher instance, that is, depending on whether the exequatur judgment was rendered by the district court or by the regional court, either the regional court or the higher regional court. The appeal must be lodged within one month after service of the judgment. Against the decision on appeal, a party may file for a second appeal (Revision) with the FCJ, which is, however subject to admission, either by the appeal court or the FCJ (upon complaint).

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

Interest may be enforced to the extent that it is awarded in the foreign judgment. However, foreign judgments may not sufficiently specify the interest due or may only refer to the statutory interest. In this cases, the court may conduct an ex-post specification of the foreign judgment. For such, however, it is required that the criteria to specify the interest claim results either from foreign law or similar circumstances which are equally accessible and can be ascertained with certainty in Germany.

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

A granted claim in a foreign currency will not be converted in the exequatur proceedings. Rather, this is left to the enforcement authorities.

**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?**

Court costs and parties' costs (including lawyer's fees) can be recovered from the judgment debtor. However, recovery for lawyer's fees is limited by the statutory fees reimbursable pursuant to the German Act for the Remuneration of Lawyers. To this end, it is noteworthy

that the statutory fees are determined by the amount in dispute and can be significantly lower than the fees actually incurred (e.g. lawyer's fees based on hourly rates).

### **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 admissible for enforcement actions. As for third party funding in general, exceptions apply for the parties' lawyers, since such will constitute a contingency fee, which is (subject to rare exemptions) not allowed in Germany.

Third party funders must not be held liable for costs incurred, since there is no legal basis for this under German law.

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

After the Brexit, it remains unclear how this will affect the enforceability of UK-judgments. Whether the German-UK Convention will come back to effect after the UK is not bound anymore to the Brussels Ia Regulation remains to be seen. So far, the FCJ and the EU Commission probably do not assume this. Further, the EU has rejected UK's application to accede to the Lugano Convention in 2021. However, the Hague Choice of Courts Convention 2005 will be applicable due to UK's accession in 2020.

### **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 Hague Choice of Courts Convention 2005 due to the approval by the EU.

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

The Hague Judgments Convention 2019 has been ratified by the EU and Ukraine on 29 August 2022 and will come into force in the member states of the EU (except Denmark) and Ukraine on 1 September 2023.

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