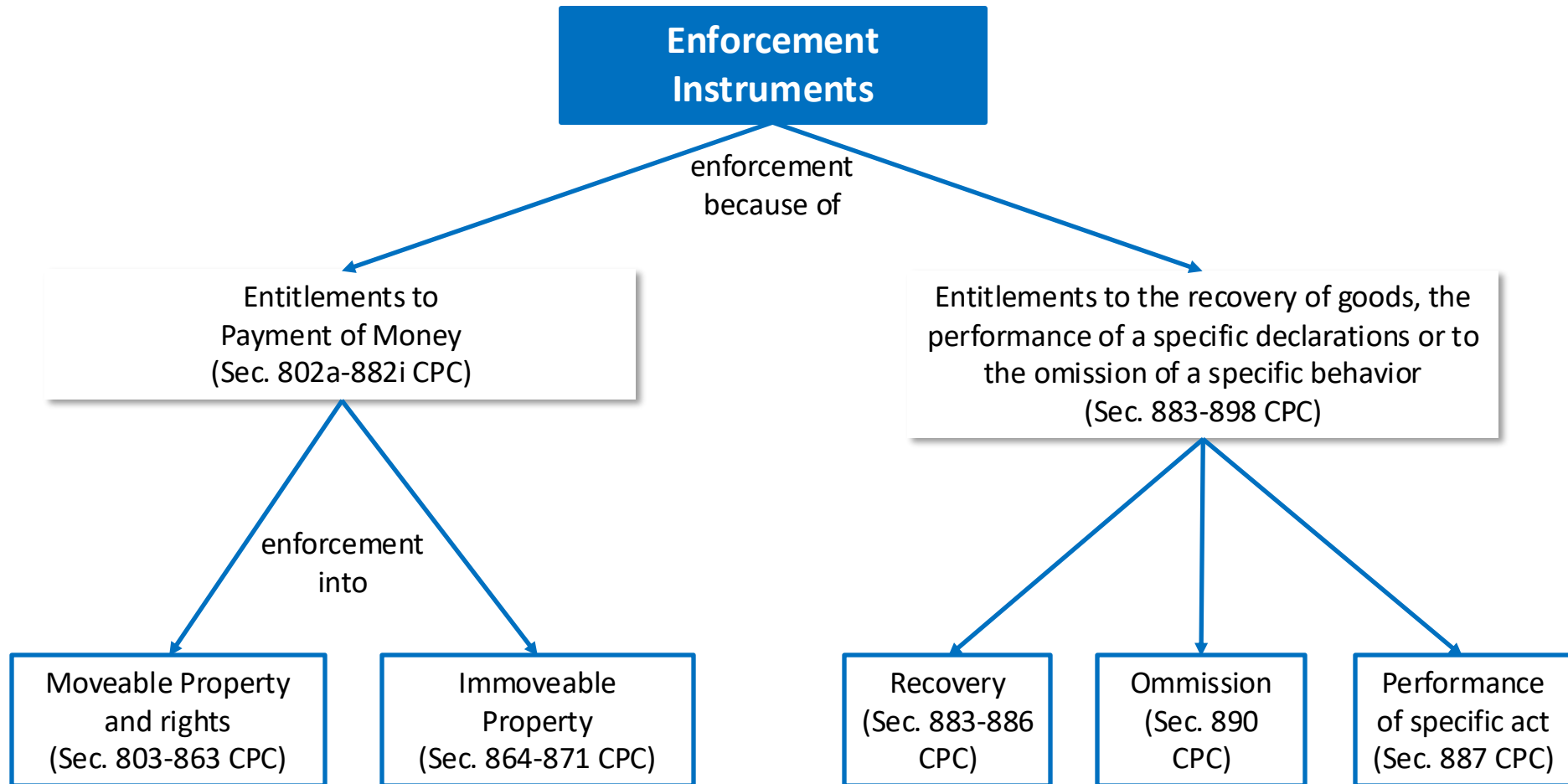


# Enforcement

## 32. General Principles of Enforcement (1)

- Purpose of enforcement law
  - Formal procedure to enforce subjective rights
  - State monopoly on justice and coercion correlates with necessity for a formal and legal enforcement procedure
    - Individual with a legal title has the subjective right (directed towards the state) to use this enforcement procedure
- Enforcement law as public law
  - Authorities act in sovereign capacity
  - The titleholder's enforcement-claim is directed against the state
- Numerus Clausus of enforcement instruments
  - Statutorily defined and limited enforcement measures
- Party Control and Party Proceedings
  - Motion by the party is required: no automatic enforcement
  - Adversarial proceeding between creditor and debtor

## 32. General Principles of Enforcement (2)



## 32. General Principles of Enforcement (3)

### ■ Prerequisites of Enforcement

#### – Motion

- Creditor has to initiate enforcement proceedings at the competent authority

#### – Enforceable Title

- A public document that, by statutory provision, permits enforcement (e.g. final judgments, Sec. 704 CPC, enforceable deeds by notaries, Sec. 794 CPC etc.)
- Content (“who, what, from whom”):
  - Parties: creditor and debtor
  - Content of the claim and the type and scope of enforcement
- Title must be specific and precise

#### – Enforcement Clause (“*Vollstreckungsklausel*”)

- Special version of the title necessary = **Court certificate of enforceability**, Sec 725 CPC (“*vollstreckbare Ausfertigung*”)
- “The above execution copy is issued to (designation of the party) for the purposes of compulsory enforcement.”

#### – Service, Sec. 750 I 1, 795 CPC

- Enforcement may only take place when the title (i.e. regularly a judgment) has been served to the debtor

## Sec. 794 CPC: Further enforceable legal documents

### (1) Compulsory enforcement may furthermore be pursued:

1. **Based on settlements concluded by the parties**, or between one of the parties and a third party, in order to resolve the legal dispute either in its full scope or as regards a part of the subject matter of the litigation, **before a German court or before a dispute- resolution entity established or recognized by the Land department of justice (Landesjustizverwaltung)**, as well as based on settlements that have been recorded pursuant to section 118 (1), third sentence, or section 492 (3) for the record of the judge;

(...)

### 4 **Based on writs of execution;**

- 4a. Based on **decisions declaring arbitration awards as enforceable**, provided that the decisions are final and binding or have been declared provisionally enforceable
- 4b. Based on orders pursuant to section 796b or section 796c;

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;**

(...)

## 32. General Principles of Enforcement (3)

- Examples: Title

III. Der Beklagten wird für jeden Fall der schuldhaften Zuwiderhandlung gegen die in Ziffern I. und II. genannten Verbote ein Ordnungsgeld von bis zu € 250.000,00 (ersatzweise Ordnungshaft bis zu 6 Wochen) bzw. Ordnungshaft bis zu 6 Monaten, zu vollstrecken an dem Vorstand der Beklagten, angedroht.

IV. Eine Kostenentscheidung ist aufgrund der Kostenregelung im Vergleich nicht veranlasst.

V. Das Urteil ist vorläufig vollstreckbar.

84 O 152/20

**Vollstreckbare Ausfertigung**

Zugestellt an  
a) Klägerseite am: 13.1.21  
b) Beklagtenseite am: 12.1.21

Justizbeschäftigte  
als Urkundsbeamtin der  
Geschäftsstelle

**Landgericht Köln**

**IM NAMEN DES VOLKES**

**Anerkenntnisurteil**

In dem Rechtsstreit

des Verbraucherzentrale Baden-Württemberg e.V., gesetzlich vertreten durch den  
Vorstand, Frau Cornelia Tausch, Paulinenstraße 47, 70178 Stuttgart,

Prozessbevollmächtigte: [REDACTED] Klägers,

gegen

die Deutsche Lufthansa AG, gesetzlich vertreten durch die Vorstandsmitglieder  
[REDACTED]  
[REDACTED] Venloer Straße 151-153, 50672 Köln,

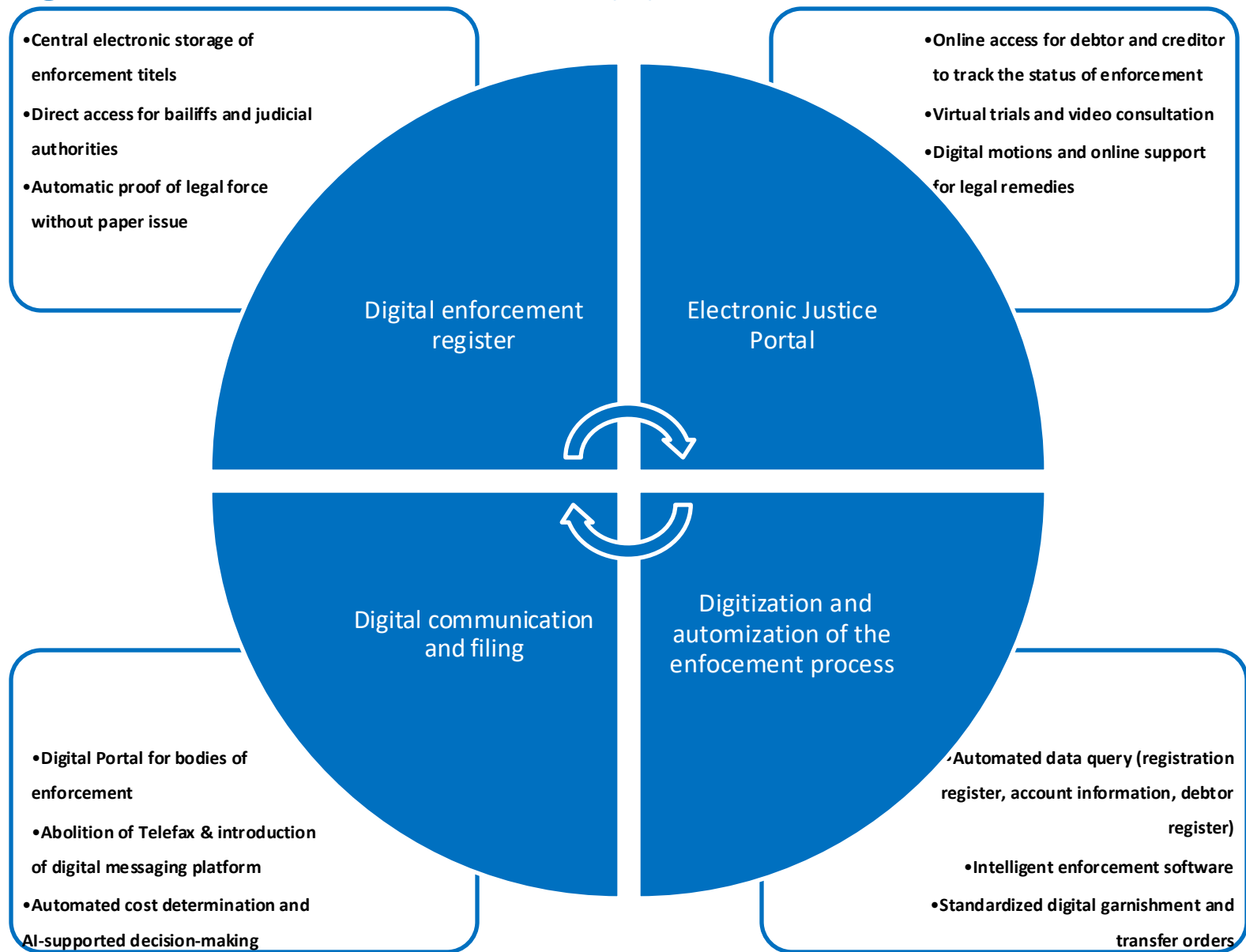
Prozessbevollmächtigte: [REDACTED] Beklagte,

hat die 4. Kammer für Handelssachen des Landgerichts Köln  
im schriftlichen Verfahren am 29.12.2020  
durch den Vorsitzenden Richter am Landgericht [REDACTED]

**für Recht erkannt:**

I. Der Beklagten wird untersagt, einen Verbraucher, der mit der Beklagten einen Flugbeförderungsvertrag geschlossen hat, für den Fall, dass dieser Flug von der Beklagten annulliert worden ist, lediglich auf die Möglichkeit hinzuweisen, eine Umbuchung vornehmen zu dürfen, ohne gleichzeitig auf transparente Weise darüber zu informieren, dass als Alternative die Möglichkeit besteht, die Rückerstattung des gezahlten Flugpreises zu

### 33. Digitization and Enforcement (1)



## 33. Digitization and Enforcement (2)

### ■ Status of reform

- [Draft law to further digitize enforcement](#)
- The decision in the Bundestag is still pending
- Problem: Principle of Discontinuity

### ■ Goals of the current reform

- Electronic documents instead of paper:
- digital transmission of enforceable copies
  - Bailiffs no longer need to possess paper copies
- Simplification of powers of attorney:
  - New regulations for proving process powers of attorney (Sec 752a CPC-E) and powers of attorney for receiving money (Sec 753a CPC-E)
  - Bailiffs shall be allowed to pay collected funds to authorized representatives of the creditor.
- Expansion of Digitization of Land Register:
  - Extension of Sec. 134a GBO until December 31, 2029, to enable the creation of a nationwide digital land registry database.
- Secure methods for electronic communication with bailiff

**Deutscher Bundestag**  
20. Wahlperiode

**Drucksache 20/11310**  
08.05.2024

**Gesetzentwurf**  
der Bundesregierung

Entwurf eines Gesetzes zur weiteren Digitalisierung der Zwangsvollstreckung



# Summary

- General Principles of Enforcement in German Civil Procedure law
- Digitalisation of enforcement

# Contact



**Prof. Dr. Philipp M. Reuß**

[p.reuss@jura.uni-goettingen.de](mailto:p.reuss@jura.uni-goettingen.de)

[www.reusz.eu](http://www.reusz.eu)