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**Poboljšanje sustava ovrhe
u Republici Hrvatskoj**

**Improvement of the Enforcement system
in the Republic of Croatia**



Improvement of the Enforcement system in the Republic of Croatia
 Contract Number: 2010-01-23-010101
 Twinning Number: HR/10/IB/JH/04



THE EUROPEAN UNION'S 2010 PROGRAMME

Twinning Ref. Number HR/10/IB/JH/04

Consortium: Spanish Ministry of Justice/Hungarian Ministry of Justice and law Enforcement/Croatian Ministry of Justice/FIIAPP

DEBRIEFING REPORT

“Improvement of the Enforcement system in the Republic of Croatia”

Strengthening Institutional and Administrative Capacities of the Stakeholders Institutions with regard to the Enforcement Monitoring System

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Improvement of the Enforcement system in the Republic of Croatia
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GLOSSARY¹

For the purposes of this report, the following terms should be understood as follows:

Bailiff: Croatian enforcement agent authorised by the State to carry out the enforcement process according to Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement.

Sudski ovršitelj: ovrhovoditelj u Hrvatskoj ovlašten od strane države za provođenje ovršnog postupka prema *Preporuci Odbora ministara državama članicama Rec (2003) 17 o ovrsi*.

Enforcement: the putting into effect of court decisions, and also other judicial or non-judicial enforceable titles in compliance with the law which compels the defendant to do, to refrain from doing or to pay what has been adjudged (source: Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement).

Ovrha: stupanje na snagu sudske odluke, ali i drugih sudskih ili izvansudskih izvršnih rješenja sukladno odredbama zakona koje obvezuje tuženika da čini, da se uzdrži od činjenja ili da plati sukladno onome što je presuđeno (izvor: *Preporuka Odbora ministara državama članicama Rec (2003) 17 o ovrsi*).

Claimant: A party seeking enforcement. In civil cases, the claimant is usually a creditor, but the two terms are not synonymous as the claimant may equally well seek the enforcement of an "obligation to do" or "to refrain from doing".

Tužitelj, podnosilac tužbe: strana koja zahtjeva provođenje ovrhe. U građanskim predmetima, tužitelj je obično vjerovnik, ali ta dva pojma nisu sinonimi budući da tužitelj može isto tako tražiti izvršenje "obveze činjenja" ili "uzdržavanje od činjenja".

Clarity of enforcement fees: Enforcement fees should be set out simply, clearly and concisely. Clarity of enforcement fees is an indicator of the transparency of enforcement costs (q.v).

Jasnoća ovršnih naknada: ovršna naknada treba biti navedene na jednostavan, jasan i sažet način. Jasnoća ovršnih naknada je pokazatelj transparentnosti ovršnih troškova.

Control of activities: Control of activities means control of the lawfulness of the actions carried out by the enforcement agents. It may be carried out a priori (before the enforcement agents act) or a posteriori (after the enforcement agent acts) by a "disciplinary" authority (See supervision of activities).

Kontrola aktivnosti: kontrola aktivnosti podrazumijeva kontrolu zakonitosti akcija koje provode ovrhovoditelji. Može je provoditi "disciplinsko" tijelo (vidi: Nadzor aktivnosti) *a priori* (prije djelovanja ovršitelja) ili *a posteriori* (nakon djelovanja ovršitelja).

Defendant: A party against whom enforcement is sought. In civil cases, the defendant is usually a debtor, but for the Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement the two terms are not synonymous (see Claimant).

Optuženik: stranka protiv koje se zahtjeva provođenje ovrhe. U građanskim predmetima, okrivljenik je obično dužnik, ali prema *Preporuci Odbora ministara zemljama članicama Rec (2003) 17 o ovrsi* ta dva pojma nisu sinonimi (vidi: Tužitelj, podnosilac tužbe).

Enforced case: In order to be enforced, the case must have been the subject of an action that has fully satisfied the claimant.

Ovršeni slučaj: kako bi se slučaj ovršio/proveo, mora biti predmet akcije koja je u potpunosti zadovoljila tužitelja.

¹ This glossary has been drawn up taking into consideration the GLOSSARY attached to the CEPEJ (2009) 11REV *Guidelines for a better implementation of the existing Council of Europe's recommendation on enforcement* adopted by the CEPEJ at its 14th plenary meeting.



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Enforcement costs: Enforcement costs consist of the enforcement expenses (= enforcement fees) and any performance bonus (= performance fees) paid by the claimant to the private enforcement agent in the form of fees (See enforcement fees and performance fees).

Troškovi ovrhe: troškovi ovrhe se sastoje od izdataka za ovrhu (= pristojba za provedbu ovrhe) i dodataka za izvršenje (= pristojba za izvršenje) koje tužitelj plaća privatnom ovrhovoditelju u obliku pristojbe (vidi: Pristojba za provedbu ovrhe i Pristojbe za izvršenje).

Enforcement Fees: The expenses of the process itself, in other words, the total of the amounts for each action undertaken by the enforcement agent in the course of a single case (see Enforcement costs).

Pristojba za provedbu ovrhe: troškovi samog procesa, odnosno, zbroj pojedinačnih iznosa svih radnji koje poduzima ovrhovoditelj u okviru jednog predmeta (vidi: Troškovi ovrhe).

Enforcement services: All the professions or entities performing the task of enforcement.

Službe nadležne za provedbu ovrhe: sve djelatnosti ili osobe koje vrše ovrhu.

Enforcement timeframe: In theory, the period of action or waiting between the beginning and the completion of the enforcement process. In practice, it is the sum of the periods necessary for the completion of all the actions carried out by the enforcement agent.

Rok za provedbu ovrhe: teoretski, razdoblje djelovanja ili čekanja između početka i završetka ovršnog postupka. U praksi, to je zbroj perioda potrebnih za dovršenje svih radnji koje provode ovrhovoditelji.

Enforcement Procedure: Execution proceeding of involuntary collection and securing of a debtor's property ordered by a Court or other public body (notaries public) at the request of a claimant against a defendant .

Ovršni postupak: izvršni postupak prisilne naplate i osiguranja dužnikove imovine po nalogu suda ili drugog javnog tijela (javni bilježnici) na zahtjev podnositelja tužbe protiv tuženika.

FINA: Financial Agency (FINA <http://www.fina.hr/>) is a Croatian company with nationwide coverage in the field of financial mediation and the application of information technologies which meet the Court's requirements in relation to assets investigation during the enforcement proceedings.

FINA: Financijska agencija (FINA <http://www.fina.hr/>) je hrvatska tvrtka sa širokom nacionalnom pokrivenošću na području financijskog posredovanja i primjene informatičke tehnologije koja zadovoljava zahtjeve sudova u svezi sa istragom imovine tijekom ovršnog postupka.

Flexibility of enforcement: The nature of a system of an enforcement procedural regulation that allows an effective and transparent procedure minimizing cumbersome steps and delays while ensuring the rights of the parties. Flexibility of enforcement is related to the autonomy of the enforcement agent.

Fleksibilnost ovrhe: priroda sustava postupovnih propisa za ovrhu koja, jamčeći za prava stranaka, omogućuje učinkovit i transparentan postupak umanjujući nezgrapne korake i kašnjenje. Fleksibilnost ovrhe je povezan sa neovisnošću ovrhovoditelja.

Foreseeable time limits: In theory, the time within which the user is informed that the enforcement process should be completed. In practice, this time is often limited to the time necessary for the completion of the next enforcement measure.

Predviđen rok: u teoriji, rok u kojem je korisnik obaviješten da je ovršni postupak trebao biti dovršen. U praksi, ovo vrijeme je često ograničeno na vrijeme potrebno za dovršenje sljedeće ovršne mjere.

Performance fees: The sum payable by the claimant to the enforcement agent in the event of satisfaction. Under the legislation of different countries fees may be negotiated, set in advance or prohibited (See Enforcement costs).

Pristojba za izvršenje: iznos koji tužitelj plaća ovrhovoditelju u slučaju zadovoljenja. Prema propisima različitih zemalja o pristojbama se može pregovarati, mogu se unaprijed definirati ili zabraniti (vidi: Troškovi ovrhe).

Predictability of enforcement costs : In theory, expenses of which the user is informed by the enforcement agent, usually corresponding to the expenses of the whole enforcement process. In practice, predictability is often limited to the expense necessary for the completion of the next enforcement measure. Predictability of expenses should not be confused with transparency (q.v.).



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Predvidljivost troškova ovrhe: u teoriji, troškovi o kojima je korisnik obaviješten od strane ovrhovoditelja, obično odgovara troškovima cijelog ovršnog postupka. U praksi, predvidljivost je često ograničena na trošak potreban za završetak sljedeće ovršne mjere. Predvidljivost troškova ne treba miješati s transparentnošću (ranije navedeno).

Quality (norms of or standards of): Quantitative or qualitative criteria making it possible to identify and/or supervise compliance with the minimum requirement of satisfactory enforcement.

Kvaliteta (norme ili standardi): kvantitativni ili kvalitativni kriteriji koji omogućuju identificiranje i/ili nadzor poštivanje minimuma zahtjeva za zadovoljavajuću ovrhu.

Relevance of taking action: Relevance of taking action is the assessment of the appropriateness of starting an enforcement process. It is assessed differently by the claimant and the enforcement agent. It is an indicator of the predictability of enforcement costs (q.v.).

Relevantnost poduzimanja akcije: relevantnost poduzimanja akcije je procjena prikladnosti pokretanja ovršnog postupka. Ona je različito ocijenjena od strane tužitelja i od strane ovrhovoditelja. To je pokazatelj predvidljivosti troškova ovrhe (ranije navedeno).

Stakeholders: persons indirectly involved in the enforcement procedure.

Zaintereserane strane, dionici: osobe koje su posredno uključene u ovršni postupak.

Smooth enforcement: Enforcement within a reasonable time with no administrative obstacles or unjustified periods of inactivity; this concept is based not only on the promptness of performance of actions, but also on promptness between the various actions. Flexibility of action (q.v.) is therefore a factor in smooth enforcement.

Glatka ovrha: ovrha u razumnom vremenskom roku, bez administrativnih prepreka ili razdoblja neopravdane neaktivnosti; ovaj koncept se ne temelji samo na ažurnosti obavljanja radnji, nego i na ažurnosti između različitih akcija. Fleksibilnost akcije (ranije navedeno) je stoga čimbenik glatke ovrhe.

Supervision of activities: Supervision of activities means the process whereby an authority makes observations to the enforcement agent on his or her working methods (scheduling problems, lack of courtesy, etc.); it is a sort of simplified control that does not involve actual examination of a complaint, but the aim of which is to guarantee fair administration of justice (see Control of activities).

Nadzor nad aktivnostima: nadzor nad aktivnostima označava proces kojim tijelo iznosi opažanje ovrhovoditelju o njegovim ili njenim metodama rada (problemi rasporeda, nedostatak pristojnosti, itd.); to je vrsta pojednostavljene kontrole koja ne uključuje stvarno razmatranje pritužbe, ali ima za cilj da jamči za poštenu provedbu zakona (vidi: Kontrola aktivnosti).

Third party : Neither claimant, nor defendant in the procedure.

Treća strana: strana koja nije ni tužitelj, ni tuženik u postupku.

Transparency of enforcement costs: Information about enforcement costs should be easily accessible. Transparency is an indicator of the relevance of taking action (q.v.) and should not be confused with predictability (q.v.).

Transparentnost troškova ovrhe: informacije o troškovima ovrhe trebale bi biti lako dostupne. Transparentnost je pokazatelj relevantnosti poduzimanja akcije i ne treba ga miješati s predvidljivošću.



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ABBREVIATIONS

0. Acronyms & abbreviations

| | |
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| ADR | Alternative Dispute Resolution |
| Apostille Convention | Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents |
| BC | Beneficiary Country |
| CEPEJ | European Commission for the efficiency of justice |
| CETS | Council of Europe Treaty Series |
| CNB | Croatian National Bank |
| CoE | Council of Europe |
| EC | European Commission |
| ECHR | European Convention of Human Rights |
| ECtHR | European Court of Human Rights |
| EJNCC | European Judicial Network in Civil and Commercial Matters |
| EU | European Union |
| FIIAPP | International Foundation of Administration and Public Policies |
| FINA | Croatian Financial Agency |
| HCCH | Hague Conference on Private International Law |
| IT | Information Technology |
| LexNET | Spanish System for Telematics Notifications |
| MG | Mission Group of Experts |
| MS | Member State |
| MoJ | Ministry of Justice |
| PNJ | Spanish Neutral Judicial Point |
| Rec (2003) 17 | Recommendation Rec (2003) 17 of the Committee of Ministers to member states on enforcement |
| RTA | Resident Twinning Adviser |
| STE | Short Term Expert |
| ToR | Terms of Reference |



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1. EXECUTIVE SUMMARY

| DEBRIEFING REPORT EXECUTIVE SUMMARY | |
|-------------------------------------|--|
| Experts | Ms. María José Cañizares Castellanos, Ms. María Dolores Millán Pérez, Ms. María Rosario Palacios González, Ms. Vanessa Untiedt, Ms. Edurne Uranga Mutuberria Mr. Javier Luis Parra García, (Coordinator) |
| Mission | Activity 1.1.1. <i>“Analyzing the legal framework (laws and bylaws regulating the enforcement system in the Republic of Croatia) and preparing corresponding report”.</i> |
| Dates | June 9 – 13, 2014 |
| Places | Zagreb |
| Objectives | <p>In the framework of this project on “Improvement of the Enforcement system in the Republic of Croatia”, the main objective of this mission is to carry out a study and technical assessment concerning the current Croatian legal instruments related to the enforcement of court decisions or other judicial or non-judicial enforceable titles.</p> <p>As specific objectives this activity pursues:</p> <ol style="list-style-type: none"> 1. To conduct a mapping and analysis of the Croatian legal instruments in relation to enforcement in civil matters. 2. To present a short assessment on those areas where it is deemed necessary to evaluate reforms from the legal, functional and organizational point of view. 3. To offer preliminary suggestions and proposals concerning possible solutions and changes. 4. To give a presentation before the Croatian project team and experts. 5. To draft a final Report including conclusions and recommendations. |



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| <p>Methodology</p> | <p>The Group of experts has performed the following a steps:</p> <ol style="list-style-type: none"> i. Collection of information; ii. Study and processing of information; iii. Highlighting the positive and negative aspects of the legislation including the latest reforms; iv. Identification of possible areas where there is room for improvements; v. Drafting tentative proposals and suggestions <p>The Mission Group of experts (MG) has followed a triple methodology:</p> <ul style="list-style-type: none"> ■ Legal analysis from the substantive and procedural point of view; ■ Functional approach in connection to the practices, organization, agents & entities involved in enforcement workflow; ■ Qualitative approach in relation to the excellence indicators and normalized quality standards relating to enforcement. <p>Regarding this last point (qualitative approach), it is worth noting that the MG has take on board the recommendations adopted by the Council of Europe on enforcement: Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement as well as the Guidelines of 2009 drawn from this important text. Therefore, the study relies partly based on the quality benchmarks identified by the group as appropriate in the framework of this project and taking into account the Croatian enforcement reform.</p> <p>In addition, the possible impact on Croatian legislation and legal players that the execution of enforcement titles coming from other MS and third countries could have, has been taken into account, in this regard, it has been considered, that the Republic of Croatia² ratified the 1961 <i>Hague Convention abolishing the requirement of legalization for foreign public documents</i> (Apostille Convention).</p> <p>Finally, since during the mission in Zagreb the MG has relied only on a partially translated into English Croatian legislation, this report and conclusions may be complemented in further activities once all the information will be available.</p> |
| <p>Outcomes</p> | <p>The MG has accomplished all of the results required by the ToRs and additionally has obtained complementary achievement to be taken into account for further project activities:</p> <ol style="list-style-type: none"> 1. Mapping and analysis of the Croatian legal instruments in relation to enforcement in civil matters. 2. Advanced assessment & proposals on the areas where there is room for potential changes and solutions from the legal, functional, organizational and qualitative management points of view. |

² The Apostille Convention is the most widely ratified and acceded to of all the Conventions adopted under the auspices of the HCCH. It is in force in over 100 States from all major regions representing all major legal systems of the world, making it one of the most successful international treaties in the area of international legal and administrative co-operation.



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| | <p>3. As an added value, proposal for a harmonized enforcement quality indicators chart according with European benchmarks on executions proceedings.</p> |
| <p>Main findings</p> | <p>Developments of the Croatian enforcement system towards the right track. Although there is room for improvements, the Republic of Croatia is making a great effort in order to contribute to the development of a better and more efficient enforcement system. Several reforms have taken place and others are now major underway. In accordance with the provisions of the Enforcement Act, amendments to the Act on enforcement over monetary assets (“Official Gazette”, 91/2010, 112/2012) were enacted, extending the titles for payments, in relation to the enforcement titles as defined in Enforcement Act, based on which direct collection can be made through FINA whose work is generally recognized among lawyers and other legal practitioners.</p> <p>⚡ Training for legal players. The MG has evidenced the need for supplementary institutional strengthening of judges, bailiffs, notaries and other legal practitioners potentially involved in enforcement tasks.</p> <p>⚡ Legal barriers to execution. Some legal provisions on interruptions of enforcement and procedural requirements may be considered as unnecessary obstacles to execution (see Section 2 of this Report):</p> <ul style="list-style-type: none"> - Excessive legal remedies; - Additional litigation proceedings (i.e. Articles 55 and 60 of the Enforcement Act); - Excessive hearings to the parties; - Duality of competent enforcement agents depending on the type of property (i.e. monetary assets, movable and immovable property); - Dispersion of competent authorities for a single enforcement case depending on the territorial location of the debtor’s property; <p>⚡ Enforcement tasks under responsibility of Bailiffs (Sudski Ovršitelji) and FINA are not comparable. The monetary assets investigation and attach of cash from the debtor’s account implies a less complex activity than the execution on immovable or movable assets (attaching, appraising, seizing, dispatching, entrusting and auction).</p> <p>⚡ Mediation mechanisms and enforcement procedure. Mission revealed the lack of specific regulation on mutually agreeable solutions, mediation or other ADR system within the framework of enforcement procedures.</p> <p>⚡ Information technology and enforcement procedure. The mission revealed that the lack of IT resources in the Courts and interoperability standards may provoke result in inefficient workflow between parties, enforcement agents and competent agencies (FINA).</p> |



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| | <p>Organization of enforcement services. Although bailiffs may work as a pool for several courts, there is no evidence about implementation of centralized Court Enforcement services or Court services dealing with enforcement procedures under rationality and efficiency criteria.</p> <p>Quality management & enforcement services. While some body (such as FINA) has obtained ISO 9000 certification, research shows that there is not a comprehensive Quality Strategic Plan in regard to enforcement procedure.</p> |
| <p>Key conclusions</p> | <p>I. GENERAL</p> <p>An efficient enforcement of court decisions and non-judicial enforceable titles system is crucial for the adequate construction of internal market and social cohesion. However, suitable execution systems are bound to find a balanced point between necessary effectiveness required by the claimants and the procedural guarantees and legal certainty bound by the due process principle. This is the adequate scenario where the economic and social development can be achieved.</p> <p>The Republic of Croatia needs to continue its efforts and the steps taken towards the right track of an efficient enforcement system.</p> <p>I. LEGAL APPROACH</p> <ul style="list-style-type: none"> ■ There are some legal barriers to enforcement that should be reviewed, particularly in relation to unnecessary obstacles to execution and the dispersion of competent authorities depending on the territorial location of the debtor’s property. ■ ADR and mediation mechanisms during the enforcement procedure may play a complementary role in the workload reduction and social cohesion strengthening. <p>II. ORGANIZATIONAL APPROACH</p> <ul style="list-style-type: none"> ■ It is desirable to evaluate the appropriateness of putting implementation centralized court common services specialized in enforcement procedures applying economies of scale and scope based on criteria of rationality, quality, accountability, transparency, efficacy and efficiency. ■ Training activities should be implemented in the fields of enforcement of domestic and international enforceable titles, EU regulations and standards of quality. <p>III. INFORMATION TECHNOLOGY AND PUBLIC SERVICES</p> <ul style="list-style-type: none"> ■ Interoperability standards may contribute to minimize the delays in workflow between parties, enforcement agents and competent agencies. ■ For all new and existing IT programs in the Justice area, special |



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| | <p>attention should be paid to achieving the broadest possible participation base, in order to ensure meeting users' expectations, the long-term viability and the cost-efficiency of those projects. Steps should be taken to provide Courts, enforcement agents and competent bodies with the following facilities³:</p> <ol style="list-style-type: none"> i. Electronic auctions; ii. Electronic service of documents; iii. On line access to judicial bank accounts; iv. Electronic access to multiple-source information on defendant's property <p>IV. QUALITY MANAGEMENT APPROACH</p> <ul style="list-style-type: none"> ■ It is desirable to evaluate the convenience of putting in place a comprehensive Quality Strategic Plan in regard to enforcement services involving all agents, bodies and agencies. |
| Annexes | <ol style="list-style-type: none"> 1. PowerPoint Executive Presentation of the Technical Report. 2. Mission agenda 3. Minutes of meetings and Interviews |

³ Some initiatives in this area are foreseen in the Multiannual European e-Justice Action Plan 2014-2018 (EJUSTICE 18, JUSTCIV 42, COPEN 55JAI 92).



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2. MAPPING OF THE CROATIAN LEGAL INSTRUMENTS IN RELATION TO ENFORCEMENT ON CIVIL MATTERS

1. Background

This section includes a study on current legislation (laws and by laws) regarding civil enforcement. The analysis carried out has covered both the enforcement of titles and those that are enforceable as a result of a judicial or administrative proceeding.

In order to write this report, MG has taken into account several legislative reforms undertaken by the Republic of Croatia in order to fulfill the commitments made in the Agreement on Accession to the European Union.

The main reform took place in 2012, with the aim of establishing the possibility of direct execution of legal titles, court settlements or arbitral awards, through attachment of bank accounts by FINA, state agency with expertise in financial intermediation.

The latest reform of the Enforcement Act was made in December 2013 and since January 2014 a draft Enforcement Act on sales of movable and immovable property is in the process of parliamentary approval.

Alongside this legislative framework, MG has studied the rules governing money market funds, bonds issued in paper bonds, notes on antimoney laundering and electronic registry operating in databases, that store the different contents of the execution procedure.

In short, the basic laws on which the implementation procedure sits and show us the way to legislative reforms, if deemed appropriate and provide the necessary technical assistance to the Courts, expand and strengthen its jurisdiction, simplify and strengthen the procedure of implementing the public system.

In addition, the group has carried out a study of a collection of European legal instruments on civil enforcement and related legislation which has been compiled by The Republic of Croatia.



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2.-Collection of legal framework (laws and bylaws) regulating the enforcement system in the Republic of Croatia.

1. Enforcement Act (“Official Gazette”, 112/2012)

- Ovršni zakon

Subject: This Act regulates the procedure in which courts and notaries public conduct involuntary collection of claims on the basis of enforcement title documents and trustworthy documents(enforcement procedure) and the procedure in which courts and notaries public conduct the securing of claims (security procedure), unless determined otherwise by a special law.

2. Act on enforcement over monetary assets (“Official Gazette”, 91/2010, 112/2012)

- Zakon o provedbi ovrhe nad novčanim sredstvima

Subject: This Act regulates the implementation of enforcement on cash assets funds, including the maintenance of payment order records, course of action in the absence of executable funds and account lockout procedure, the Unified Register and its maintenance and the supervision of the implementation of this Act.

3. Regulation on the form and content of a debenture note (“Official Gazette”, 115/2012)

- Pravilnik o obliku i sadržaju zadužnice

Subject: This regulation prescribes the form and content of the promissory notes, which in accordance with Article 214 of the Enforcement Act are issued in Kuna or indexed to a foreign currency.

4. Regulation on the form and content of a blank debenture note (“Official Gazette, 115/2012)

- Pravilnik o obliku i sadržaju bjanko zadužnice

Subject: This regulation prescribes the form and content of blank promissory notes with an indication of the maximum amounts that can be introduced in certain types of these documents.



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5. Regulation on register of debenture notes and blank debenture notes ("Official Gazette", 115/2012)

- [Pravilnik o registru zadužnica i bjanko zadužnica](#)
-

Subject: This regulation prescribes the form and content of blank promissory notes with an indication of the maximum amounts that can be enrolled in certain types of these documents.

6. Regulation on establishing the amount paid for liability insurance of public commission agents ("Official Gazette", 115/2012)

- [Pravilnik o utvrđivanju visine iznosa radi osiguranja javnih komisionara od odgovornosti](#)
-

Subject: This Ordinance states the amount of the commissions paid to public agents so as to ensure public accountability of the commission which shall take into account to the type of movable property whose sale is allowed and the expected commercial traffic.

7. Regulation on the content and method of keeping a register of real estate and movable assets being sold as part of the enforcement procedure ("Official Gazette", 115/2012)

- [Pravilnik o sadržaju i načinu vođenja očevidnika nekretnina i pokretnina koje se prodaju u ovršnom postupku](#)
-

Subject: This regulation prescribes the content and manner of keeping a register of immovable and movable property sold in execution proceedings, the method of data delivery and the way to protect the identity of the parties.

8. Regulation on the form and content of a request for direct payment ("Official Gazette", 115/2012)

- [Pravilnik o obliku i sadržaju zahtjeva za izravnu naplatu](#)
-

Subject: This regulation prescribes the form and content of applications for direct payment of monetary claims based on enforcement decisions and settlements issued by a domestic court, an administrative body, or as a result of the calculation of an employer.



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9. Regulation on the rate of the compensation of costs and remuneration for performing the activity of public commission agent (“Official Gazette”, 115/2012),

- Pravilnik o tarifi za naknadu troškova i nagradu za obavljanje javne komisijone djelatnosti

Subject: This Ordinance establishes the rate, or the procedure and criteria for determining the amount of expenses and fees for conducting public commission-activities.

10. Regulation on the rate of fees and compensation of costs of public notaries in the enforcement procedure (“Official Gazette”, 114/2012)

- Pravilnik o nagradama i naknadi troškova javnih bilježnika u ovršnom postupku

Subject: This rule regulates fees and reimbursement of expenses of notaries in enforcement proceedings.

11. Regulation on ways and procedures of conducting enforcement on monetary funds (“Official Gazette”, 6/2013),

- Pravilnik o načinu provedbe ovrhe nad novčanim sredstvima

Subject: This ordinance establishes the method of enforcement on funds. It regulates inter alia: the Register used in the enforcement process, the data administration or the exemptions from enforcement

12. Regulation on enforcement on bank monetary assets (“Official Gazette”, 6/2013)

- Pravilnik o načinu provedbe ovrhe nad novčanim sredstvima banke

Subject: This standard on the method of execution regulates the conditions and procedure of enforcement on bank deposits and the role played by the Croatian National Bank in the enforcement process.



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13. Regulation on types and amounts of reimbursement for conducting activities stipulated Act on enforcement over monetary assets ("Official Gazette", 105/2010, 124/2011, 52/2012 and 6/2013)

- Pravilnik o vrstama i visini naknada za obavljanje poslova propisanih Zakonom o provedbi ovrhe na novčanim sredstvima
-

Subject: This ordinance regulates the type and amount of compensation charged by the Financial Agency and the banks for carrying out tasks regulated by the Act on Enforcement over monetary assets

14. Regulation on technical conditions and adjustment procedure in the implementation of Act on enforcement over monetary assets ("Official Gazette", 96/2010, 130/2010, 99/2011 and 115/2012)

- Pravilnik o tehničkim uvjetima i postupku prilagodbe zakonu o provedbi ovrhe nad novčanim sredstvima
-

Subject: This ordinance regulates, inter alia, technical requirements, methodological aspects and time limits for the enforcement on cash assets.

Mapping of the European legal framework governing civil matters and enforcement system.

At the time of the accession of the Republic of Croatia to full membership of the European Union the direct implementation of regulations listed below took place:

- **1) Regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings**
-

Corrigendum to Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings

- **2) Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.**
-

This regulation lays down rules governing the jurisdiction of courts and the recognition and enforcement of judgments in civil and commercial matters in MS



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The basic principle is that jurisdiction is to be exercised by the MS in which the defendant is domiciled, regardless of his/her nationality.

The Republic of Croatia is in process of amending the Conflict Law (NN 53/91, 88/01). New Act will be called Act on Private International Law and it will take all the provisions from Regulation 44/2000 relating to competence.

- **3) Regulation (EC) 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and parental responsibility**

The regulation amending Regulation (EC) No. repealing 1347/2000, also known as Brussels II Regulation, which entered into force in March 2001, has been modified by two annexes (Annex I, in 2002 and annexes IV, 2004). It applies to civil matters relating to: divorce, legal separation or marriage annulment; the attribution, exercise, delegation, restriction or termination of parental responsibility.

- **4) Regulation (EC) 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims**

This Regulation creates a European enforcement order for claims which are uncontested by debtors. The European enforcement order is a certificate which enables judgments, court settlements and authentic instruments on uncontested claims to be recognised and enforced automatically in another Member State, without any intermediate proceedings. In order for a judgment on an uncontested claim to be certified as a European Enforcement Order, the court proceedings in the Member State of origin must meet certain procedural requirements. The Regulation applies in civil and commercial matters. It does not, in particular, cover revenue, customs or administrative matters or the liability of a state for acts and omissions in the exercise of state authority ("acta iure imperii").

This Regulation does not apply to: the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession; bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; social security; arbitration.

The Republic of Croatia had declared in relation to Article 9 paragraph 1, Article 24 paragraph 1, Article 25 paragraph 1, Article 6 paragraph 2 and 3:

For issuing the certificate on the European Enforcement Order, the certificate on the enforceability of court settlement, the certificate on enforceability of other authentic instruments which are enforceable in the Republic of Croatia and the certificates according to the provisions of Article 6, paragraphs 2 and 3 of the Regulation, the following bodies are competent:



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- courts, administrative bodies, notaries public or legal or natural persons vested with public authorities which are entitled to issue the enforcement copy of the national European enforcement document on uncontested claims.

- **5) Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 establishing a European order for payment procedure.**

The European order is applied in cross-border cases in civil and commercial matters whatever the nature of the court. The "border disputes" are those in which at least one of the parties is domiciled or habitually resident in a Member State other than the country of the court hearing the action. The Regulation is applicable in all Member States except Denmark, in accordance with the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community.

The Court which has a exclusive competence to decide on applications for issuing and reviewing the European order for payment and for issuing a declaration of enforceability of the European order for payment is:

Commercial court in Zagreb

Amruševa 2/II, 10000, Zagreb

tel: +385 1 4897 222

fax: + 385 1 4920-871

e-mail: tajnistvo@tszg.pravosudje.hr

ured.predsjednika@tszg.pravosudje.hr

web: <http://www.tszg.hr/cro/TSZG/Naslovnica>

The application process considered does not include revenue, customs or administrative matters or or the liability of a State for acts and omissions in the exercise of state authority ("acta iure imperii").

This Regulation shall not apply to: rights in property arising out of a matrimonial relationship, wills and succession; bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; social security; claims arising from non-contractual obligations, unless: they have been the subject of an agreement between the parties or there has been an admission of debt, or they relate to liquidated debts arising from joint ownership of property.

- **6) Regulation (EC) 861/2007 of 11 July 2007 establishing a European Small Claims Procedure**

This Regulation establishes a European procedure for small claims, intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States.



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This Regulation also eliminates the intermediate proceedings necessary to enable recognition and enforcement, in other Member States, of judgments given in one Member State in the European Small Claims Procedure.

This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements.

It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta jure imperii*).

Space: The Regulation applies in all EU countries except Denmark.

- **7) Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing (EC) No 1348/2000**

With regard to the relevant data as referred to in articles 2, 3, 4, 10, 11, 13, 15 and 19 of the aforementioned Regulation, the Republic of Croatia states as follows:

According to Article 2 paragraph 1 of the Regulation, each Member State shall designate the public officers, authorities or other persons, referred to as 'transmitting agencies', competent for the transmission of judicial or extrajudicial documents to be served in another Member State. The Republic of Croatia has designated the following 'transmitting agencies'

- in case of judicial documents, the court to effect service;
- in case of extrajudicial documents, the municipal court within whose district a person to be served has its legal residence or habitual residence or a registered seat;
- in case of documents certified or issued by notaries public, a municipal court within whose district their seat is located.

For the purpose of performing these activities the president of the Supreme Court of the Republic of Croatia may appoint only one or several municipal courts from the territory of one or several county courts.

Under Article 2 paragraph 2 Each Member State shall designate the public officers, authorities or other persons, referred to as 'receiving agencies', competent for the receipt of judicial or extrajudicial documents from another Member State. The Receiving agency competent for service of documents in the Republic of Croatia is the municipal court within whose district documents are to be served

Article 8, paragraph 2 and Article 9, paragraph 2:

According to the national law of the Republic of Croatia there are no mandatory deadlines for the service of documents.



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- **8) Regulation (EC) 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.**
-

In addition, the following Directive has been transposed into Croatian national law

Directive (EC) N° 2000/35 of the European Parliament and of the Council of 29 June 2000 regulating fights against late payment in business transactions



3. ADVANCED ASSESMENT & PROPOSALS

1. Procedural regulation
2. Organizational structure
3. Qualitative approach
4. IT support

| TOPIC | INDICATOR | ANALISYS | PROPOSAL |
|------------------------|---------------------------------|--|---|
| 1. Procedural approach | 1.1. Enforcement timeframe | 1.1.1. Enforcement Act allows several interruptions of the enforcement process since the legal remedies are excessive (Art. Art. 5;11;12.2;16.14;16.15;25.5;26.2; 50; 84.5;105;106;130;151.3;159.7;160;198 .3;210) | To limit the number of remedies according to the fundamental rights and reduce the reasons in which the legal remedies can be based and reduce |
| | | 1.1.2. Excessive hearings can provoke undue delays of the enforcement case (Art. 17,54,55,63,92,102,103,124..) | To concentrate in one hearing as much as possible different claims. |
| | | 1.1.3 Litigation Proceedings further to an appeal that misuse of the enforcement process (Art. 52,55,60,61,67,118) | To limit or reduce the admission of new litigation proceedings that affect to enforcement procedure and provide for measures to deter or prevent procedural abuses. |
| | | 1.1.4 Objections by third parties that could means a re-adjudication of the case | To limit or reduce the admission the objections by third parties that implies a re-adjudication of the case. |
| | 1.2. Procedural handling | 1.2.1. Principle of Party dispositive (dispositive principle). Excessive burdens on the claimant | To take measures to ensure proper and full execution of court rulings planning ex officio decisions. |
| | 1.3 Serving of documents system | 1.3.1 Traditional system of communications by mail or public notaries | Regulation electronic communications and a personal service by enforcement agents |



| | | | |
|--|---|---|--|
| | | 1.3.2 All notifications in the procedure are served to all stakeholders involved | To reduce the number of mandatory notifications in order to establish a more efficient means of communication |
| | | | |
| | | 1.3.3 Conclusion on sale-auction is made public by placement on the court bulletin board or in other usual manner. That can produce less transparency. There is room for a more efficient system (Article 95.3) | To design a comprehensive electronic auction portal website to make public auctions in order to guaranteeing better dissemination of information to the broadest possible public |
| | | | |
| | | 1.3.4 According to Croatian communication to Regulation EU 1393/2007 (Articles 8.3 and 9.2) transnational serving of documents have not mandatory deadlines. | Should be deadlines |
| | | | |
| | 1.4 Penalty system | 1.4.1 Fines are provided to be imposed to the debtor who fails to comply the enforcements request. | |
| | | | |
| | | 1.4.2 Fines shall be imposed to employers, persons or bodies who participates in the enforcement when fails to provide Courts orders. | |
| | | | |
| | | 1.4.3 When fine is not paid, it shall be replaced by a prison term. | Measures involving deprivation of liberty should be removed from the framework of a civil procedure. |
| | | | |
| | 1.5. Due process and fundamental rights during the enforcements procedures | 1.5.1 Regarding to the balance between claimants' and defendants needs and rights, the claimant is in a disadvantage position in relation to the defendant. | MG recommends to open a reflection on the validity of dispositive principle and the need of ensuring the procedural handling during the enforcement stage. The court sua sponte could adopt decisions to ensure that all persons who receive a final and binding court judgment have the right to its enforcement |
| | | | |
| | | 1.5.2 The court only acts upon the motion of the claimant. | |
| | | | |



| | | | |
|-----------------------|--|--|--|
| | | 1.5.3 The claimant is obliged to pay in advance the costs of execution. This could imply an excessive burden to the claimant. | |
| | | 1.5.4. If the execution creditor fails to propose to the court any enforcement measure within a period, the execution shall be suspended (Articles 5,34,35,72,73,94,141,144,150,174,178) | |
| | | | |
| 2.Organization | | | |
| | | | |
| | 2.1. Efficiency of enforcement services | 2.1.1. Different professions are involved in the enforcement procedure depending on the type of property This situation may provoke a unnecessary added barriers to the claimant. | It is convenient to concentrate all the claims against a defendant in one entity or common service supervised by the Court. |
| | | | |
| | | 2.1.2. Different courts can be competent in regards on single enforcement case depending on the location of the property (Articles 79,133,171,185... movable, immovable, non-monetary claims.) This situation may provoke an unnecessary added barriers to the claimant. | It is advisable that just one jurisdiction be entrusted with the enforcement of one title document or trustworthy document executing all properties of execution debtor no matter real state, chattels, shares...until the enforcement action is completed. The territorial jurisdiction should be in the case of enforceable court decision the same court that rendered the decision. In the case of trustworthy document should be competent the court whose area stay the permanent residence of execution debtor. |
| | | | |
| | | 2.1.3 Non monetary claims are assumed by courts. All enforcements actions are carried out by the bailiffs although these enforcement cases are significantly the complex ones. | The role of bailiffs should be strengthened with a clear and precise definition by law. High quality training is important for the service of justice and to increase the trust of users in their justice system. |
| | | | |
| | | 2.1.4 The national legislation does not provided a specific and specialized Court's Enforcement Service operated under rationality and efficiency | Bearing in mind the principles of economy of scale and scope is desirable to evaluate the convenience of putting in place |



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| | | parameters. Although bailiffs may work as pool for several courts, there is no evidence about implementation of centralized Court Enforcement services or Court services dealing with enforcement procedures. | centralized court common services specialized on enforcement procedures based on criteria of rationality, quality, accountability, transparency, efficacy and efficiency under the supervision of the one single specialized Judge. |
| | | | |
| | 2.2. Alternative Dispute Resolution | 2.2.2 There is a lack of any specific regulation on mutually agreeable solutions, mediation or other ADR system in the framework of enforcement procedures. | ADR and mediation mechanisms may play during the enforcement procedure a complementary role in order to reduce workload and to gain social cohesion. Legislative measures could be evaluated on this area. |
| | | | |
| | 2.3 Enforcement's workload within the Courts | 2.3.1 The courts assume a heavy workload due to the complexity of a large number of enforcement cases. This provokes a potential court backlog | Legislative measures should be adopted to simplify enforcement procedure taking into account the 2.1.4. proposal. |
| 3. Qualitative approach | | | |
| | 3.1. Quality management of enforcement services | 3.1.1. Neither the legislation nor the practical experience show quality management system in regards to enforcement services. | Steps could be taken in order to evaluate the convenience of: a) Reviewing the legislation; b) Implementing a comprehensive Quality Strategic Plan in regard to enforcement procedure; c) Adapting the Croatian enforcement procedures to Council of Europe Enforcement Standards of Quality (Quantitative or qualitative criteria making it possible to identify and/or supervise compliance with the minimum requirement of satisfactory enforcement; see Section 4). |
| | | | |
| 4. IT support | 4.1. Communications between parties and enforcement agents/entities and Courts | 4.1.1. There is room for improvements on electronic communications system in the framework of Web2.0 and Semantic Web. | To provide Electronic means of serving documents. |



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| | | 4.1.2. If the serving of document is not successful it shall be displayed on the court bulletin board, (judicial official announcements). This may provoke delays and lack of publicity. | To provide an electronic board bulletin in a website. |
| | | | |
| | 4.2. interoperability and Interconnectivity between institutions | 4.2.1. There no evidence that the different institutions involved in the enforcement system comply with standards of interconnectivity and interoperability | To set up standards of interconnectivity and interoperability. |
| | | | |
| | 4.3. Efficiency of auctions | 4.3.1. The law does not provide any electronic bid in relation to auctions. There is not a national Website Portal in relation to all judicial and extrajudicial auctions | To provide an electronic system of auctions |
| | | | |
| | 4.4 Telematic date access | The data scattered in different records | To set up a centralized telematics patrimonial inquest. |
| | | | |



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4. PROPOSAL FOR HARMONISED ENFORCEMENT QUALITY INDICATORS

Proposed Enforcement Quality Indicator Chart⁴

1. Legal certainty and fairness of enforcement procedures

Benchmark

Judicial decisions and also other judicial or non-judicial enforceable titles are defined by a clearly legal framework. They are drafted in a comprehensible way and sufficiently detailed in order to provide legal certainty and transparency to the process.

The judicial decision is final, enforceable and it has the force of *res iudicata*, preventing misuse of the enforcement process by either party which does not be considered as a re-adjudication of the case.

Enforcement is carried out in compliance with the relevant law and enforceable titles according to a defined procedure and methods and submitted to judicial control within the meaning of Article 6 of the ECHR.

Legal aid granted to claimants that cannot afford enforcement fees as a quality guarantee of enforcement.

Bearing in mind the provisions of both Articles 6 and 8 of the ECHR during the enforcement process, a proper balance between claimants' and defendants' interests is established. All human rights are respected (human dignity, certain assets and income of the defendant are protected by not depriving the defendant of a minimum standard of mere economic subsistence and by not interfering disproportionately with third parties' rights, etc.). Where appropriate, the interests of third parties are also taken into account.

Flexibility of enforcement proceedings in order to choose the procedural framework adequate to every single case

Notification of parties as a necessary element of a fair trial, in the sense of Article 6.1 of the European Convention on Human Rights. Notices to parties concerning the enforcement drawn up in standard documents to notify and in a timely manner. To inform about any possible remedies allowing enforcement to be challenged, to warn the defendants of the cost of enforcement, and the enforcement measures to be taken against him,

⁴ This Chart has been drawn up taking into consideration the CEPEJ (2009) 11REV *Guidelines for a better implementation of the existing Council of Europe's recommendation on enforcement* adopted by the CEPEJ at its 14th plenary meeting ([Rec\(2003\)17](#) to member states on enforcement; see in particular the document [CEPEJ \(2009\) 11REV](#)).



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encouraging the defendant to comply voluntarily, or to inform the parties and third parties about their rights and obligations and the consequences of a failure to comply.

Where appropriate, there are minimum dissemination standard (e.g. in case of public auctions) guaranteeing rapid dissemination of information to the broadest possible public and safeguarding the rights of the parties.

In addition, defendant is informed of the extent of his liability during the enforcement process

Source of verification

Laws and case law according European standards of the European Convention on Human Rights (hereinafter referred to as “the ECHR”); public accessible statistical databases; biennial report of the European Commission for the efficiency of justice (hereinafter referred to as “CEPEJ Evaluation Scheme”); adequate complains mechanism established.

2. Accessibility of enforcement services.

Benchmark

The webpage, to which everyone who may have an interest should have a straightforward access, will help to underline the importance of an efficient and effective access to justice

Enforcement processes are clear and comprehensible for the parties involved and where possible, have the option of participating in the proceedings without legal representation.

Prevent of discrimination with language adapting to people with disabilities where oral proceedings or petitions take part, e.g. empowerment of deaf sign users through accessible communication and information.

Access to justice ensured as a priority to enable citizens to enforce judicial decisions or other enforceable titles.

Source of verification

Laws and bylaws; plain-language versions of legislation; recommendations on the language used; enforcements handbooks, CEPEJ Evaluation Scheme.

3. Transparency on the enforcement process

Benchmark

Information on the efficiency of the enforcement services and procedures by establishing quantifiable performance indicators against specified targets and by indicating the time different procedures takes (ex. on annual basis ,the number of pending, incoming and



Mission Report

Strengthening Institutional and Administrative Capacities of the Stakeholder Institutions with regard to the Enforcement Monitoring System



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executed cases; the clearance rate; the time taken to complete the enforcement; the success rates; the services rendered in the course of the enforcement; the enforcement costs incurred and how they are covered; the number of complaints and remedies in relation to the number of cases settled).

For court users and potential parties to the enforcement procedures to have confidence in the court system, information⁵ is available for all stakeholders and at all stages of the process. There is transparency in the activities of the court, safeguarding the rights of the parties.

Use of web 2.0 and Semantic Web to allow users to interact with the page introducing and obtaining information about procedures, complains, grievances, and other relevant data.

Source of verification

Data collection and setting-up of a national statistic system, by taking into account, if possible, the CEPEJ Evaluation Scheme and key data of justice defined by the CEPEJ; complaints procedures for users

4. Reasonability of the cost of enforcement procedure

Benchmark

Information of enforcement cost easily accessible and understandable to citizens as a further way to ensure the full respect of the transparency principle, a must when talking about enforcement procedures. Information known beforehand by the parties. The clarity of fees is a factor in the transparency of enforcement costs.

Proportional enforcement costs to the value of the claim because they may become an obstacle to enforcement for users. The final cost of enforcement must be proportionate to the amount of the debt

Reclaim procedure foreseen to enable legal actions, when enforcement is wrongful, and costs should be borne by the party responsible for the wrongful act.

Minimized enforcement cost and the research related costs, prior to starting any enforcement procedure, to obtain those data related to the defendant's assets.

Avoid when possible on-site inspection or visits to registers. Web as the preferred mean to obtain defendant information

Source of verification

Laws and case law according European standards of the ECHR; CEPEJ Evaluation Scheme; web sites gratuity of the enforcement services

⁵ In line with European quality standards in the framework of [Council of Europe Convention on Access to Official Documents](#) (CETS No. 205 – opened to signature in June 2009 but not yet in force).



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5. Enforcement procedural system encompass data protection standards

Benchmark

Security national legislation on personal data adapted to enforcement procedures.

Guarantee that Information obtained in the course of enforcement proceedings is not revealed to third parties that are not involved in the enforcement proceeding. Furthermore, the information obtained in a special enforcement proceeding cannot be used in other proceedings. Personal data cannot be ceded to third parties without the owner of the data prior consent.

Claimant knowledge about accessing public registers to obtain key information about a defendant, and to make sure that we are being compliant with the transparency, proportionality and legitimate principles in an adequate balance.

Full respect of data protection applicable legislation granted by the government in the course of enforcement proceedings, according to European standards⁶;

Source of verification

Laws and case law according European standards of the ECHR; CEPEJ Evaluation Scheme; disciplinary code in force.

6. Reasonable timeframes for enforcement procedures

Benchmark

In accordance with Article 6 of the ECHR the enforcement of a court judgment is an integral part of the fundamental human right to a fair trial within a reasonable time.

Reasons for postponement of the enforcement process are prescribed by law and subject to review by the court

⁶ Mainly the following:

- ✓ Directive 95/46/EC of the European Parliament and the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. This Directive is aimed at reconciling the protection of personal data with the free flow of data within the internal market.
- ✓ Directive 2006/123/EC of the European Parliament and of the council of 12 December 2006 on services in the internal market in accordance with the directives 2002/21/EC, 2002/22/EC and 2002/58/EC on electronic networks and personal data protection.
- ✓ Instruction No 21, of 24 September 2012 "on determining the rules for safeguarding the personal data processed by Large Entities"
- ✓ Instruction No 22, of 2 September 2012 "on determining the rules for safeguarding the personal data processed by Small Entities"



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Legal framework of the enforcement makes sure that proceedings are not unnecessarily prolonged. The defendant can take action to challenge enforcement measures but within a reasonable timeframe, so that this possibility does not unjustifiably paralyze or delay the enforcement process. Otherwise claimant's interests are not sufficiently protected.

Eventual complaint mechanisms for defendants against enforcement agents or monitoring systems of their activities should not hamper or delay the smooth running of their work and, consequently, the enforcement process.

Accelerated and urgent enforcement procedures in cases where a delay can result in an irreversible damage are set out (i.e. cases of defendant absconding, eviction, deterioration of assets, etc.).

On the other hand, clear criteria envisaged for national legislation regarding the duration vary according to the nature of the case and the type of action requested. Any arbitrary cut-off deadlines have been imposed for enforcement to end.

In order to bring as much legal certainty to the enforcement process as possible the length of enforcement proceedings are foreseen by establishing public accessible statistical databases. The parties can calculate the presumable duration of the different enforcement measures set out in the legal framework. The databases compiled and broadly disseminated enable other member states comparative overview of country's structure duration of enforcement system, in order to strengthen confidence between states taking into consideration the prospect of an increasing of international enforcement cases.

Source of verification

Laws and case law according European standards of the ECHR; CEPEJ Evaluation Scheme; public accessible statistical database; complaint mechanisms foreseen.

7. Adequate capability and professionalism of enforcement agents and bodies regarding enforcement

Benchmark

According with Rec (2003) 17, enforcement agents' status, role, responsibilities and powers are prescribed by law in order to bring as much certainty and transparency to the enforcement process as possible.

Recruitment procedures ensure the quality of enforcement agents with moral standards and training adequate to the complexity of their tasks.

In order to achieve honorability and ability in the performance of their duties enforcement agents are subject to disciplinary, civil and/or criminal proceedings providing adequate sanctions in case of abuses of their position.



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In case of state employees, enforcements agents need appropriate work conditions (human and material resources)

Source of verification

Bailiffs' services created or reformatted and strengthened; compulsory initial and continuous training, training curricula and common minimum standards for instructors settled down; rules of ethics and conduct clearly stated, set out in professional codes of conduct.

8. Quality management and monitory system of the enforcement proceedings

Benchmark

Taking into account point III.1 of Rec (2003) 17, bearing in mind responsibility for the effectiveness of the service, quality criteria aiming at assessing annually the efficiency of the enforcement services are been established by the state with the view to promoting quality control of enforcement proceedings and services. According abovementioned Guidelines, some of those quality indicators could be:

- a. clear legal framework of the enforcement proceedings establishing the powers, rights and responsibilities of the parties and third parties;
- b. rapidity, effectiveness and reasonable cost of the proceedings;
- c. respect of all human rights (human dignity, by not depriving the defendant of a minimum standard of mere economic subsistence and by not interfering disproportionately with third parties' rights, etc.);
- d. compliance with a defined procedure and methods (namely availability of legal remedies to be submitted to a court within the meaning of Article 6 of the ECHR);
- e. processes which should be documented;
- f. form and content of the documents which should be standardized;
- g. data collection and setting-up of a national statistic system, by taking into account, if possible, the CEPEJ Evaluation Scheme and key data of justice defined by the CEPEJ;
- h. competences of enforcement agents;
- i. performances of enforcement agents;
- j. the procedure, on an annual basis:
 - the number of pending cases;
 - the number of incoming cases;
 - the number of executed cases;
 - the clearance rate;
 - the time taken to complete the enforcement;
 - the success rates (recovery of debts, successful evictions, remittance of amounts outstanding, etc.);
 - the services rendered in the course of the enforcement (attempts at enforcement, time input, decrees, etc.);
 - the enforcement costs incurred and how they are covered;



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- the number of complaints and remedies in relation to the number of cases settled.

Source of verification

An independent electronic review system and random on-site inspection encompassing among others above mentioned indicators established; CEPEJ Evaluation Scheme.

9. Accountability enforcement system

Benchmark

Enforcement activities are assessed on an ongoing basis so that the quality of enforcement services is guaranteed. A professional and external body performs this assessment with control procedures clearly determined.

With a view to good administration of justice, efficiency and fairness, enforcement agents are exposed to disciplinary sanctions according to the seriousness of the offences also previously drawn up in a disciplinary code. Disciplinary procedures are carry out by an independent authority.

Source of verification

Authorities with disciplinary functions legally entrusted; disciplinary codes; management reports and/or customer feedback; complaint mechanisms foreseen; CEPEJ Evaluation Scheme.