




Exécution judiciaire en Europe European judicial enforcement

Co-financed by the European Union, the EJE project aims to improve the enforcement of court judgments in Europe by providing European citizens, court bailiffs and enforcement officers with the information needed to enforce court judgments in the territory of another member state. This project also intends to improve the mechanisms for cooperation and communication among judicial officers in Europe. In order to reach these objectives, the EJE project is equipped with a key instrument: the EJE web site - www.europe-eje.eu - which provides citizens and legal professionals with the information on the legal tools and procedures to be used when they want to enforce a judgment in the territory of another member state.

In this regard the EJE project publishes a newsletter which aims to inform European bailiffs and law officers and people interested in the progress made with this project. It also seeks to provide information about the latest developments in European legislation and case law that may be of interest to the profession as an essential player in constructing the European area of justice, freedom and security.

For further informations on EJE project

 Download the presentation brochure

 Consult EJE website
www.europe-eje.eu

EJE News

Final Conference of the EJE project – 18th June 2012 - Paris

Co-financed by the European Union, the EJE project, which brings together the representative bodies of judicial officers in Germany, Belgium, Scotland, France, Hungary, Italy, Luxembourg, the Netherlands and Poland, was launched two years ago to improve the enforcement of judgments in Europe. The EJE project partners will meet in Paris on 18th June to give an overview of actions and progress made for the last two years. At the end of June, the co-financing of the project by the European Commission will stop but the EJE project will continue to exist. The EJE partners will take this opportunity to draft also the orientation to be given to the project in the future.

The project had the objective to improve the enforcement of judgments in Europe, (1) by providing citizens and judicial officers – enforcement agents, with the information required to enforce a judgment in another Member State, and (2) by improving mechanisms of cooperation and communication between European judicial officers.

At the origin of the EJE project, there was an observation: since its creation following the Treaty of Amsterdam, the European area of Justice, Freedom and Security has gradually broken down the barriers to the free movement of enforcement orders in Europe. However, despite this real progress, the current enforcement of one country's court decisions in another country of the European Union still gives rise to major practical difficulties, associated with the territorial nature of civil enforcement procedures. The diversity of national laws and lack of harmonisation of Member States' national rules on civil enforcement procedures make it difficult to implement the right to enforcement that should be guaranteed in a cross-border situation and unfortunately may give rise to a sense of injustice among litigants and a feeling of having been abandoned.

So, the EJE project has pursued two fundamental objectives : (1) to provide European citizens with the information needed to enforce court judgments in the territories of other Member States, and thereby improving access to justice, and (2) to give European judicial officers the tools needed to bolster mutual trust so as to encourage closer cooperation in their work as enforcement agents.

To achieve these objectives, the EJE project partners have implemented several actions, such as job-shadowing programs, exchange of best practices, writing notes on the enforcement procedures in different Member States, studies on National implementation of European instruments regarding free movement of enforcement orders, discussions about legislation in preparation ... They also provided the EJE project with an essential tool: the EJE website - www.europe-eje.eu - which makes available to citizens and legal professionals information about law and procedures needed to enforce a judgment in another Member State and a European directory of judicial officers. This website also highlights the European news which are of interest to judicial officers and the opinion of the EJE project partners on these issues.

During these last two years, the EJE project was so attached to make the right of enforcement a real guaranteed right in cross-border cases, as it has been enshrined by the ECHR (ruling Hornsby/Greece - ECHR 19 March 1997) as an integral component of the right to a fair trial. In order to do this, the EJE project has, for the first time, brought about collaboration among judicial officers, key players in civil enforcement procedures, in order to improve access to law through the use of new technology and to reinforce mutual trust between judicial officers. The EJE project also offered judicial officers a forum allowing them to develop tools and promote best practices in the field of enforcement. This is of particular importance at a time when the European Commission intends, for the first time, to work on enforcement itself, by publishing a proposal for a regulation creating a European bank account preservation order.

The final conference, to be held on 18th June 2012 in Paris, at the French National Chamber of judicial officers with all the EJE project partners, will be the opportunity to present the actions implemented and results achieved in the last two years, with the financial support of the European Commission, both in terms of judicial cooperation in civil matters and in terms of e-justice. Representatives

of European and National institutions and legal professionals, key players in the European area of justice, will attend. So, this conference will also be a chance, thanks to the pool of experts gathered for the occasion, to clarify the future orientations of the EJE project and its next steps.

Access to this conference is free but registration is required. Interpreting will be provided in French and English.

- To see the program and register for the conference: <http://www.europe-eje.eu/sites/default/files/pj/actualite/programmeen.pdf>

Towards the creation of a European bank account preservation order

Follow up of the legislative work on the creation of a European bank account preservation order (EAPO)

The proposal for a regulation creating a European Account Preservation Order (EAPO) to facilitate cross-border debt recovery in civil and commercial (COM (2011) 445 final), published by the European Commission on 25th July, 2011, has now been transmitted to the Council of the European Union and the European Parliament. Within the Council of the European Union, the United Kingdom has decided to exercise its right to opt out, unlike Ireland which has announced its participation (opt in). Within the European Parliament, Raffaele Baldassare, Member of the European Parliament, was appointed rapporteur within the «Legal Affairs» Committee – responsible Committee - while Elena Basescu was appointed rapporteur in the «Economic and Monetary Affairs» Committee – Committee asked for an opinion. The vote of the Legal Affaires Committee is scheduled for November 2012 while the vote of the Plenary Session is scheduled for February 2013.

In accordance with the Treaty on the Functioning of the European Union, the European Commission has asked the European Data Protection Supervisor and the European Economic and Social Committee for an opinion. Both have given their opinion. At the same time, the Council of Notaries of the European Union has published a position paper on this issue.

As a reminder, the EJE project partners submitted comments on the proposal for a Regulation creating a European Account Preservation order, which was subject of particular attention in previous newsletters and which is available at the following address:

<http://www.europe-eje.eu/en/actualite/members-eje-project-comments-proposal-regulation-creating-european-account-preservation-or>

• The opinion of the European Data Protection Supervisor (EDPS)

On 13th October 2012, the European Data Protection Supervisor (EDPS) gave its opinion on the proposal for a regulation creating a European Account Preservation Order. This opinion was published in the Official Journal of the European Union.

The EDPS is pleased to see the efforts taken to address the different data protection aspects which are raised by the proposed instrument of an EAPO. More in particular, he appreciates the application of and the references to the principle of necessity. However, the EDPS believes the proposed Regulation would still require some further improvements and clarifications. The EDPS recommends:

- to consider including in Article 25 (Service of the EAPO on the defendant) the possibility for the claimant to request the removal of his address details from the information provided to the defendant;
- to remove the optional data fields (the telephone number and e-mail address of the defendant) from Annex I (Application form) if the actual need is not proven;
- to restrict the information provided by the claimant under Article 17 (Request for obtaining account information) (2) to what is necessary to identify the defendant and to determine his or her bank account(s) (Article 17 (2) provides that : « The application shall include all information available to the claimant about the defendant and the defendant's bank accounts »);
- to consider replace the reference in Article 17(4) to 'all appropriate and reasonable means' by 'one of the two methods referred to in paragraph 5' (Article 17 (4) provides that : « The competent authority shall use all appropriate and reasonable means available in the Member State of enforcement to obtain the information referred to in paragraph 1 » while Article 17 (5) provides two methods for obtaining information (Member States are invited to provide for one or the other) : the possibility to oblige all banks in their territory to disclose whether the defendant holds an account with them / access by the competent authority to the information referred to in paragraph 1 where that information is held by public authorities or administrations in registers or otherwise.) ;

- to explain what is meant by the 'existing public registers' referred to in Article 17(5) (b).

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:373:0004:0007:EN:PDF>

• The opinion of the European Economic and Social Committee (EESC)

Following the report of M. Jorge PEGADO LIZ, Member of the EESC, the EESC gave, on 26th April 2012, its opinion on the proposal for a regulation creating a European Account Preservation Order.

The EESC welcomes the presentation of the proposal. However, the EESC considers that it should be accompanied by a simultaneous initiative – although it should logically have come first – on the transparency of debtors' accounts, as set out in the 2008 Green Paper on the transparency of debtors' assets.

The EESC is pleased that the Commission has succeeded in proposing, in an area of great technical difficulty, a legal regime that strikes a proper balance between the various interests at stake and a fair balance between the rights of the various parties concerned. The EESC welcomes the fact that the Commission has taken on board a considerable part of the recommendations made by the EESC in its opinion on the above-mentioned green paper, including (i) the extension of its scope beyond cash held in bank accounts to include other financial instruments, (ii) the issue of a European Account Preservation Order (EAPO) after obtaining an enforceable title, (iii) the wide-ranging definition of courts having jurisdiction, (iv) the non-inclusion of requests for any amounts other than those due and not repaid together with default interest, and recognised costs, and (v) the clear definition of rules for contesting and opposing the measure and for admissible appeals, in order to guarantee the lawfulness of the procedure and safeguard the rights of claimants, defendants and third parties.

The clear adoption of an alternative or optional approach (i), the choice of a regulation as the EU instrument to best ensure the completion of the internal market (ii), application of the measure only to cross-border situations (iii) are particularly welcome.

The EESC is moreover not entirely convinced with regard to the essential nature of the measure, especially given that it will not be adopted by the United Kingdom and given the fact that uncertainty about the total cost of the procedure as well as finding out the competent foreign court will remain barriers, certainly for small companies. Neither is the EESC entirely convinced with regard to the proposal's compliance with the principles of subsidiarity and proportionality, since the revision of the Brussels I Regulation envisages the abolition of *exequatur* and the estimates of the expected results contained in the impact assessment are still imprecise.

Lastly, the EESC considers that the content of some provisions needs to be reviewed and could be improved to make it clearer, less ambiguous and more purposeful, and also to correct some translation and printing errors.

In this regard, some of these specific comments echo the concerns of EJE project partners, such as the comment made under article 25 of the proposal. Article 25 paragraph 1 of the proposal is as follows: « The defendant shall be served with the EAPO and all documents submitted to the court or competent authority with a view to obtaining the order without undue delay after service on the bank has been effected pursuant to Article 24 and the bank has issued the declaration pursuant to Article 27 ». The EJE project partners consider, in their position paper, that the notion of «undue delay» cannot provide legal security required by the implementation of a EAPO. A specified period, which could be of 8 days from the date of service of the EAPO, should be stated. The EESC underlines, in its opinion, that « the expression «without undue delay» is dangerously vague: it should be replaced by a set minimum deadline, such as «on the next working day» ».

The EJE project partners will comment the opinion of the EESC soon.

<http://www.eesc.europa.eu/?i=portal.en.int-opinions&itemCode=19924>

• The position paper of the Council of Notaries of the European Union

The Council of the Notaries of the European Union (CNEU) published, on 3rd February 2012, its opinion on the proposal for a regulation creating a European account preservation order.

The Notaries of Europe approve of the European Commission's initiative to propose an account preservation order that will complete the *acquis* in enforcement matters.

Accordingly, the Notaries of Europe welcome the proposal in Article 14 making it possible to establish directly the European preservation orders that this regulation would introduce. As a reminder, Article 14 (« Competence for issuing the EAPO » after obtaining

an enforceable title) provides that « Where the claimant has obtained an authentic instrument, that claimant may request that the competent authority in the Member State where the authentic instrument has been drawn up and designated for this purpose by each Member State also issue an EAPO ». The CNEU mentions that this mechanism is in line with the extension of the Brussels I Regulation and the Regulation creating a European Enforcement Order according to which notaries can issue European enforcement orders personally and without additional formalities.

The Notaries of Europe approve of the definition of authentic instrument in the body of the regulation (Art. 4, pt 11). This definition comes from the Community Acquis : « authentic instrument means a document which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which : a) relates to the signature and the content of the instrument, and (b) has been established by a public authority or other authority empowered for that purpose ». Nevertheless, the Notaries of Europe are concerned about recalling that « the authentic instrument is a conventional document containing the agreement of the parties. A notarised authentic instrument is never established against or going against a party, even though it can be enforced against one of the parties, for example, in the case of a credit ». Therefore, the CNEU asks the European institutions to adapt the proposal's terminology (« judgment, court settlement or authentic instrument against the defendant ») to conform to the distinctive identity of the authentic instrument.

Finally, the Notaries of Europe are in favour of withdrawing the exequatur as envisaged in Article 23 of the proposal. Nevertheless, the Notaries of Europe support the Commission when it foresees measures so that the debtor of the debt claim is not without the possibility to appeal, giving the debtor the means foreseen in chapter 4 of the proposal.

<http://www.notaries-of-europe.eu/index.php?pageID=7557>

European News

Civil justice - Crystal Scales of Justice

Call for applications for the European Crystal Scales of Justice Prize for innovative practices contributing to the efficiency and quality of civil justice

In 2012, the Council of Europe together with the European Commission is organizing once again the 6th edition of the «Crystal Scales of Justice» Prize. The aim of the prize is to identify and promote innovative practices in civil justice, aimed to improve the efficiency and quality of the functioning of the justice system, procedures, and court organisation.

This competition is open to courts, associations and legal professionals, prosecutor's offices, non-governmental organisations, or any other entity responsible for justice affairs in the Member States of the Council of Europe or the European Union. So the representative bodies of judicial officers in the European Union are eligible.

To compete, the initiatives must have been introduced in order to improve the efficiency of the organisation and procedures of justice systems, particularly for the users of justice, or to improve mutual knowledge and exchange of best practice in the area of justice. They must therefore be innovative practices whose results are measurable and which can be applied to other jurisdictions or States.

Applications must be submitted to the European Commission or the Council of Europe by 30 June 2012. Rules of the Prize and application form are available on this website : http://ec.europa.eu/justice/civil/files/rules_en.pdf

Civil justice – Process of modernisation of EU rules governing insolvencies

European Insolvency Law is laid down in Regulation (EC) No 1346/2000 on insolvency proceedings (the "Insolvency Regulation"), which has applied since 31 May 2002. The Regulation contains rules on jurisdiction, applicable law and recognition of the court's decisions for cases where a debtor, whether a company, a trader or an individual, becomes insolvent and provides for the coordination of insolvency proceedings opened in several Member States. The Regulation applies whenever the debtor has assets or creditors in more than one Member State. It is aimed at dissuading the debtor from transferring his/her assets or the judicial proceedings from one country to another in order to improve his/her legal position. Important developments in national insolvency law and considerable changes in the economic and political environment call today for a fresh look at the Regulation.

On 30 March 2012, the European Commission launched a public consultation on modernising this EC Regulation. The results of the consultation will help determine whether and how the existing Regulation needs to be revised, improved and modernised. The European Commission considers that it is essential to have modern laws and efficient procedures in place to help businesses, which have sufficient economic substance, overcome financial difficulties and to get a «second chance». Stakeholders are invited to reply to the consultation until 21 June 2012.

- The consultation can be found here: http://ec.europa.eu/justice/newsroom/civil/opinion/120326_en.htm

In the same view, the European Commission published a call for applications for selection of candidates for Group of Experts on cross-border insolvency with a view to establishing a group of experts that will assist the European Commission in the revision of the Council Regulation (EC) 1346/2000 on insolvency proceedings.

Civil justice - Cross-border successions - Vote by the European Parliament

On 13 March 2012, the European parliament voted in plenary session on the proposal for a regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession.

The new regulation aims to make it easier to settle inheritances and avoid disputes when the legal systems of more than one Member State are involved. EU-wide criteria would make it clear which Member State's legal system applies when an inheritance could arguably be subject to the laws of more than one, thus avoiding costly legal disputes and cutting red tape for heirs. There will be full mutual recognition of judgments in succession matters.

The proposal provides for the application of a single criterion for determining both the jurisdiction of the authorities and the law applicable to a cross-border succession: the deceased's habitual place of residence. People living abroad will, however, be able to opt to have the law of their country of nationality apply to the entirety of their succession.

First, if someone dies in a Member State that is not their home country, their succession would generally be dealt with under the law of the Member State where they last had their place of «habitual residence», by the courts and authorities of that Member State. This would avoid conflicts that could otherwise arise if several courts in different Member States declared themselves competent. However, the person drawing up a will would also have the option of having his or her will read under the law of his or her Member State of origin.

The new regulation will also introduce a European Certificate of Succession designed to make the legal position clearer for the person who draws up the will and to safeguard the rights of heirs, as well as other parties, such as creditors. It will enable a person to prove their capacity as heir or their powers as administrator or executor of a succession without further formalities. However, use of this certificate would not be mandatory.

The regulation would not apply in UK and Ireland, as their respective governments decided to exercise their right to opt out, nor in Denmark, as it is always the case for these matters.

Parliament and Council have already reached an informal agreement but it will have now to be confirmed by the Council to enter into force.

E-justice – European directory of notaries

Notaries of the European Union have put online the European directory of notaries. It is now possible to find the contact details of a notary anywhere in the European Union who speaks your language. This service, which is partially funded by the European institutions, provides notaries' contact details and states the languages they used. To find the relevant notary you search, you have to choose one of the EU's 23 official languages and a country where you wish to find a notary (with the option of selecting a town). Try it out at: www.notaries-directory.eu

http://ec.europa.eu/consumers/strategy/index_en.htm#agenda

Consumers - A new European Consumer Agenda

On 22th May 2012, the European Commission adopted a European consumer agenda which presents its strategic vision for EU consumer policy for the years to come, with a view to maximise consumer participation and trust in the market. This agenda is built around

four main objectives: reinforcing consumer safety ; enhancing knowledge ; stepping up enforcement and securing redress; aligning consumer rights and policies to changes in society and in the economy. It also presents a number of key actions to be implemented between now and 2014.

In the framework of the third objective, the European Commission intends to make a better use of the European Judicial Network which, as it is underlined in the agenda to facilitate access to justice, to ensure smooth operation of procedures with a cross-border impact and to facilitate requests for judicial cooperation across Member States. Concerning the right to redress, the Commission will focus in the short-to-medium-term on ensuring the adoption and application of its recent proposals on Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). At the same time, the European Commission announces that the European Small Claims procedure will be made more accessible for consumers : in 2012, a guide providing practical advice to consumers and legal practitioners will be issued to this end and, during the course of 2013, the Commission intends to make the small claims forms available online and report on the operation of the procedure as a whole, including on the need to revise the level of the threshold (currently : 2000 euros).

http://ec.europa.eu/consumers/strategy/docs/consumer_agenda_2012_en.pdf

Data protection – Towards a modernization of the European data protection rules

On 25 January 2012, the European Commission proposed a comprehensive reform of the EU's 1995 data protection rules to strengthen online privacy rights and boost Europe's digital economy. Technological progress and globalisation have profoundly changed the way our data is collected, accessed and used. In addition, the 27 EU Member States have implemented the 1995 rules differently, resulting in divergences in enforcement. A single law will do away with the current fragmentation and costly administrative burdens, leading to savings for businesses of around €2.3 billion a year.

The Commission's proposals intend to update and modernise the principles enshrined in the 1995 Data Protection Directive to guarantee privacy rights in the future. They include a policy Communication setting out the Commission's objectives and two legislative proposals: a Regulation setting out a general EU framework for data protection and a Directive on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities.

The Commission's proposals will be passed on to the European Parliament and EU Member States (meeting in the Council of Ministers) for discussion.

■ Press pack on data protection reform:

http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm

Citizens' rights – Public Consultation

On 9th May 2012, the European day, the European Commission launched a public consultation, which will be open for four months, until 9 September, asking citizens about the obstacles they face in exercising their rights as EU citizens, when travelling in Europe, when voting or standing as a candidate in elections or when shopping online. The public consultation comes ahead of the 2013 European Year of Citizens. The input received from the public will feed directly into the Commission's policy agenda and form the basis for the 2013 EU Citizenship Report, to be presented on 9 May 2013.

■ It is a short questionnaire which can easily be completed online:

<http://ec.europa.eu/your-rights-your-future>.