

**EUROPEAN COMMISSION FOR THE EFFICIENCY
OF JUSTICE
(CEPEJ)**

**ENFORCEMENT OF COURT DECISIONS IN
EUROPE**

Report prepared by the Research Team on enforcement
of court decisions
(University Nancy (France) / Swiss Institute of
comparative law) and discussed by the CEPEJ-GT-EVAL
at their 8th meeting

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Nous contribuons aux projets de recherche financés par les instances suisses et étrangères.



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Glossary

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

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). This study focuses mainly on the enforcement of court decisions since enforceable titles are only dealt with in passing in the CEPEJ report; our analysis is valid for enforcement in general, however.

Appropriateness of acting: Appropriateness of acting 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 foreseeability of enforcement expenses (q.v.).

CEPEJ-GT-EXE: This study advocates the formation in the CEPEJ of a working group on enforcement. This group of experts would be composed of practitioners from representative member states who would find a number of lines of work and research in these pages.

Claimant: A party seeking enforcement (source: Recommendation Rec(2003) 17 of the Committee of Ministers to member states on 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”. In criminal cases, the claimant is the member state, which alone has power to punish.

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

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

“Deciding” judge: In this study this expression refers to a judge who decides a case, as opposed to a judge who acts solely as an enforcement agent. The concept of “deciding” judge should not be confused with the initiating authority responsible for *a priori* supervision of the enforcement agent (See Control of activities).

Defendant: A party against whom enforcement is sought (source: Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement). In civil cases, the defendant is usually a debtor, but

the two terms are not synonymous (see Claimant). In criminal cases, the defendant is the offender against whom sentence has been passed.

Early member states: (See new member states.)

Enforcement agent: A person authorised by the state to carry out the enforcement process (source: Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement).

Enforced case: In order to be enforced, the case must have been the subject of an action that has fully satisfied the plaintiff (in a civil case) or of an action that has implemented the determination of the sentence (in a criminal case).

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

Enforcement expenses: 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).

Enforcement flow: 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 enforcement flow.

Enforcement rate: The relationship between the number of enforced cases (q.v.) and the total number of cases in which there has been final judgement.

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

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.

Expected timeframe for enforcement: 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.

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).

Flexibility of enforcement: The nature of a system of enforcement that enables the agent to choose the procedural framework that is most appropriate to the features of a case. Flexibility of enforcement is closely connected with the autonomy of the enforcement agent (see Enforcement flow).

Foreseeability of enforcement expenses: 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, foreseeability is often limited to the expense necessary for the completion of the next enforcement measure. Foreseeability of expenses should not be confused with transparency (q.v.).

Freshness of a case: The speedy transfer of a case from the authority handing down judgement and the enforcement authority. The importance of a case being “fresh” is that the information about the defendant’s situation is more likely to be up-to-date. The freshness of a case is a factor in enforcement flow (q.v.).

Member states: In this study the concept of member states covers all the countries that are members of the Council of Europe and have taken part in the process of evaluation of judicial systems (2004-2006 round) and, where applicable, their legal entities that have an independent judiciary.

New member states: The concept of “new” member states used in this study refers to the states that have become member of the Council of Europe since 1 January 1990; the “early member states” being the states that were members of the Council of Europe by the 31 December 1989. The importance of this distinction is to divide the states into two groups of 23 according to when they joined (the Council of Europe had 46 member states at the time of this evaluation).

National correspondents: In order to obtain reliable information, the CEPEJ has a number of national correspondents in the member states of the Council of Europe. Unless otherwise specified, it is they who gathered the information analysed in this study.

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.

Revised scheme: The questionnaire sent by the CEPEJ to national correspondents in member states in order to obtain the information needed to evaluate judicial systems in Europe. It takes the form of a scheme and was revised between the 2004 pilot round and the first report in 2006.

Solvency: A defendant’s ability to pay his or her debts. In this study, a defendant’s apparent solvency (presumed at the beginning of enforcement)

is distinguished from actual solvency (which becomes clear during enforcement).

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 proper administration of justice (see Control of activities).

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

User: For the purposes of this study, the word “user” refers to the claimant and the defendant in an enforcement process.

Introduction

The right to proper administration of justice implies that the enforcement of court decisions should itself be effective and efficient. The purpose of this study, entitled "Enforcement of court decisions in Europe", is to identify in concrete terms the elements that have a positive influence on enforcement procedures.

It has become a commonplace to say that developments in the world call for a harmonisation of national legislations in Europe. It nonetheless remains the case that there is more resistance to harmonising national procedural law than substantive law¹. There has, however, been no shortage of efforts in the field of procedural harmonisation: they have concerned all the "linchpins of procedure" (judges, lawyers, prosecutors, enforcement agents). While a common frame of reference has been constructed in relation to judges², lawyers³ and criminal prosecutors⁴, there has been far less success with regard to enforcement procedures, which still vary considerably. It is true that the progress made on European⁵ and international⁶ judicial cooperation is encouraging, but efforts aimed at harmonising and radically improving national enforcement procedures are still in their infancy⁷. Two trends, whereby users resort to the courts more and express their demands more with respect to the quality of justice⁸, mean that an in-depth study of the smooth running of enforcement is needed. In order to work towards the best possible accessibility and to guarantee the efficiency of enforcement procedures in Europe, senior officials in the Council of Europe and the authorities of member states have encouraged every research and experience-sharing initiative in the field of the enforcement of court decisions⁹.

Commissioned by the CEPEJ, this study seeks to analyse the efficiency of enforcement mechanisms in Europe and is based on the empirical data that CEPEJ gathered in 2004 in the framework of its *Evaluation of European Judicial Systems*¹⁰.

Under the terms of Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement, *enforcement* means "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". This study focuses mainly on the enforcement of court decisions, since enforceable titles are only dealt with in passing in the CEPEJ report; our analysis is valid for enforcement in general, however.

The geographic scope of the study includes the member states whose national correspondents took part in the process of evaluation of judicial systems (2004-2006 round): *Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta,*

Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, SM-Montenegro, SM-Serbia, Spain, Sweden, Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine. Mr. Nikola Prokopenko, national correspondent of the “Former Yugoslav Republic of Macedonia”, communicated to us the information that was lacking when the report on *Evaluation of European Judicial Systems* was written: this information has been included in our appended study.

The methodology used was as follows: in accordance with the terms of reference we were given, the study is based on the data provided by the CEPEJ. On the basis of the report, the team, in cooperation with the Swiss Institute of Comparative Law in Lucerne, undertook further research on national legislations in order to obtain further information and clarifications. It also compared its conclusions with the international experience of recognised practitioners, Messrs. Mathieu Chardon, Jacques Isnard and Bernard Menut (International Union of Judicial Officers).

This study is in two parts:

- the first concerns questions of accessibility of enforcement. It looks, in particular, at the problems that might arise as a result of the way services are organised and the cost of procedures;
- the second examines the efficiency of enforcement. It makes a distinction between the efficiency of the services and the efficiency of enforcement measures.

By way of illustration, the study is supplemented by appendices containing several tables finalised by the research team; they are aimed at providing practical elements of analysis that bring out a number of trends and “good practices” with regard to enforcement.

In order to improve still further the possibilities of using the CEPEJ questionnaire, a number of proposed changes to the scheme are given at the end of the study.

The summary of this study is presented in the form of guidelines for the CEPEJ. Going over the main conclusions obtained, it proposes supplementing the existing Recommendations on enforcement and could be used as a basis of the work of a potential working group (CEPEJ-GT-EXE).

Part one: accessibility of enforcement of court decisions

A. The distribution of enforcement services in member states

Two factors have an influence on the distribution of enforcement services in member states: the status of enforcement agents and their number.

1. The status of enforcement agents

Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement defines the enforcement agent as “a person authorised by the state to carry out the enforcement process”¹¹.

Enforcement agents may implement an enforcement process in civil, criminal and administrative cases. This study concerns only the status of enforcement agents in civil and criminal cases, however, because the CEPEJ questionnaire did not ask states and legal entities about the status of enforcement agents in administrative cases.

1.1 In civil cases

There is no single status for enforcement agents: they may work in the context of a public or a private status. Some states have mixed status, in other words public and private agents coexist in them.

Question 105 In civil cases enforcement agents have...		
Public status	Private status	Mixed status
Albania, Andorra, Austria, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Finland, Georgia, Germany, Iceland, Italy, Liechtenstein, Malta, Moldova, Norway, Russian Federation, San Marino, SM-Montenegro, SM-Serbia, Sweden, Turkey, UK-Northern Ireland, Ukraine	Estonia, Hungary, Latvia, Lithuania, Luxembourg, Monaco, Netherlands, Poland*, Romania, Slovakia, Slovenia	Belgium, Czech Republic, France, Greece, Ireland, Portugal, Spain**, UK-England/Wales, UK-Scotland
26 states	11 states	9 states

*Poland: *Enforcement agents are public functionaries acting for the Regional Court. The duties of enforcement agent are governed by law and court orders but are not subject to any specific authority. Control, supervision and monitoring of their work are the responsibility of the President of the Court, the Ministry of Justice and corporate self-governing bodies. Complaints about agents' acts (legal remedies within enforcement proceedings) are examined by the District Court. The remuneration of the enforcement agent comes directly from the enforcement fees paid by the parties*

(source: Reply of Poland to the CEPEJ questionnaire (Question 105) with a view to the report *European Judicial Systems*, 2006 edition, CEPEJ Studies No. 1). *Nothing in the Polish correspondent's reply indicates the status under which enforcement agents work; all we know is that they are public functionaries*).

***Spain: In the Spanish system there are no enforcement agents for the enforcement of court decisions, as judges themselves are responsible for enforcement. Only in very exceptional cases do solicitors play a role in enforcement.* (source: report *European Judicial Systems*, 2006 edition, CEPEJ Studies No. 1.)

It can be seen from the table that in civil cases enforcement agents have a public status in the majority of states and legal entities. It seems, however, that since the data were gathered in 2004 a general trend has emerged towards the privatisation of all or part of the enforcement services. For example, in Belgium the law on enforcement was amended in June 2006. In this framework, two types of enforcement agents are now working: state enforcement agents (civil servants) and enforcement agents working with a private status (source: correction to the report *European Judicial Systems*, 2006 edition, CEPEJ Studies No. 1, page 40). Similarly, under Slovak Act No. 341/2005 (entered into force: 1 September 2005), only bailiffs are now authorised to enforce court decisions.

1.1.1. Public status

Public status is the most frequent: national correspondents indicate this in 26 of the 46 states that replied. Fourteen of those states are “early states” and 12 are “new states”: the date of membership of the Council of Europe is therefore not a decisive factor in the status of enforcement agents. On the other hand, there is an external factor that has to be taken into account: the existence of another international organisation, the European Union, which makes liberalisation of enforcement services a condition of membership¹².

In the states with a strictly public status, the profession of enforcement agent varies widely. There are judges, bailiffs working in a public institution and other types of agents.

1.1.1.1. Judges

Only 5 of the 12 states and legal entities that replied to question 105 said that the judge was an enforcement agent (Bosnia-Herzegovina, Croatia, Denmark, Liechtenstein and San Marino). One particularity concerns Spain, a state in which there are no enforcement agents but where the Spanish Constitution lays a duty on judges to ensure that judgements are enforced¹³.

The very possibility of a judge-enforcement agent requires two conceptions of the administration of justice. According to the first, which is most widespread, judges say what the law is and enforcement agents, who are not judges, put the decision into effect. According to the second conception, which is less frequent, judges have dual powers, in other words, they say what the law is and themselves enforce their decisions or they are made responsible for enforcing the decisions of other judges¹⁴. In this case, the

judge's primary task (which is to judge)¹⁵ is accompanied or supplemented by another one: to enforce.

The states only seldom mentioned the status of judges acting as enforcement agents: we know nothing about the choice of states to entrust enforcement to a judge who has handed down the decision or to another judge specialising in this task. And yet the distinction seems to be important and it would be wise to ask this question in the next CEPEJ rounds.

If the enforcement agent is the judge who handed down the decision, the decision is not detached from either his or her position or person. In this hypothesis, the judge's role is understood to be very wide, going beyond the usual one of "deciding". This system has at least two advantages: it leaves the case in the hands of a judge who is already very familiar with it and who will be able to begin a procedure on the basis of a case that is "still fresh", in other words, a case containing information most of which remains unchanged. On the other hand, it makes the judge responsible for an extra task. When the question of the speediness of justice arises, such an element should be taken into account as a factor in efficiency.

If the judge acting as an enforcement agent is not the author of the decision (in other words, if the judge specialises in enforcement, as is the case in Montenegro), he or she will have to begin by familiarising him- or-herself with the case; but in this system the practical implementation of judgements is entrusted to judges who act as true enforcement professionals whose status symbolises the continuity of the state's role in the settlement of disputes.

Whether or not the judge who enforces the decision is the one who decided the case, the same question arises with respect to both systems: should the state be paying the salaries of the enforcement agents in the context of a civil case opposing two private individuals (in some states, in Austria and Germany, for example, enforcement agents, who are civil servants, are sometimes paid by the defendant¹⁶)?

However, we have no information about the way in which cases are transferred or referred to the judge. The states were not asked about the way in which cases are referred to judges as enforcement agents. Equally, no data is available enabling an assessment to be made as to whether giving judges the attribute of enforcement agents is a factor influencing the enforcement rate.

When the judge is an enforcement agent, he or she may, in some states or legal entities, share this attribute with other enforcement agents with a public status: bailiffs working in a public institution (Croatia, Denmark, Liechtenstein), a court (Bosnia-Herzegovina) or clerks of courts (SM-Serbia). However, no state reported that the judge-enforcement agent could share this function with other agents with a private status. Where the judge is not the only enforcement agent, this attribute is shared only with public agents.

1.1.1.2. Bailiffs working in a public institution

Some bailiffs work as civil servants in a court or public administration: this is the case in 25 of the 47 states or legal entities questioned¹⁷. According to the structure of the state, the bailiff may be a civil servant of the state (Austria), a regional or local entity (Germany) or a court (Denmark). Unlike bailiffs working with a private status, civil servants are paid directly by the state, a territorial authority or a public institution.

States and legal entities were not asked about the way cases are referred to bailiffs working in public institutions. The research conducted brought out disparities in the way cases are referred to such enforcement agents in states and legal entities in which bailiffs have a public status.

In this situation, in which separate authorities are responsible for making and enforcing court decisions, a case is referred to a bailiff by an act of will, a positive act on the part of the claimant or the court. Referral is not automatic. In some states and legal entities a case is referred to the bailiff, who is a civil servant, directly by the claimant (Germany), while in others the claimant may not contact the bailiff directly to have the judgment enforced (Austria, Italy). In this latter situation it is the court that, on its own initiative, directly transfers the case to the competent enforcement agent.

These different ways of referral have an effect on the continuation of the enforcement process. Where the decision to refer the case lies with the claimant, he or she may, for reasons of his or her own, choose not to pursue enforcement. This option is not possible where the decision to refer lies with the court, which will always begin the enforcement process.

1.1.1.3. Prosecutors

States were asked whether prosecutors played a role in civil cases in their system.

It was found that the role played by prosecutors in civil cases does not concern the enforcement of court decisions in any of the states that replied.

1.1.1.4. Other public agents in civil cases

Some states may have a special enforcement service composed of court employees who are neither judges nor bailiffs: this is the case in Sweden, where there is an Enforcement Service Authority.

Enforcement may also be the responsibility of court employees who are not judges but whose role is closer to that of clerks of the court, although they have judicial powers: this is the case of the Austrian *Rechtspfleger*¹⁸.

1.1.2. Private status

Of the 47 states questioned, 11 replied that their enforcement agents worked under a strictly private status: the most common designations here are "bailiff" and "enforcement agent"¹⁹.

In some states or legal entities the bailiff has a monopoly on the enforcement of court decisions in civil cases (this is the case in Estonia, Hungary, Latvia, Monaco and the Netherlands, for example)²⁰. It is, however, possible to delegate the task in some states if certain conditions are observed (in Belgium, by making a declaration to the Public Prosecutor an agent may be replaced for a limited time during which it is impossible for him or her to work).

In some cases independent bailiffs are prohibited from involvement in certain incompatible activities: the purpose of this is to avoid conflicts of professional interest. Other prohibitions are aimed at guaranteeing the equity of procedures by restricting personal interests (family²¹ and political) and guaranteeing probity and moral order (in Belgium and France bailiffs are prohibited from taking part in gambling; in Lithuania, a bailiff may not be a former employee of certain organisations, such as the KGB and the NKVD²²).

Where bailiffs have a private status, they are in principle paid by the defendant (see Part One, B.2. Regulation or negotiation of enforcement expenses). They have considerable autonomy in the performance of their profession (see Part Two, A.2.2.2. Control of activities).

Referral is not automatic and its manner differs in different states.

In some states the claimant may refer the case to the enforcement agent directly. If applicable, the claimant must respect the agent's territorial jurisdiction (Estonia, France, Greece, Luxembourg, Poland), although this condition does not exist in all states (for example, in UK-England/Wales, High Court Enforcement Officers and Enforcement Officers have national jurisdiction).

Referral to the enforcement agent may also be carried out through the court. In Slovenia, the claimant cannot refer the case to the bailiff directly: the court distributes cases to bailiffs with competence in the particular territory. This choice may, however, be guided by the claimant's wishes. The situation is comparable in Hungary where the court that has handed down the decision sends the case in turn to each independent agent responsible for the enforcement within his or her remit. This system ensures a degree of equality among Hungarian agents and avoids too fierce competition.

Lastly, cases may be referred to enforcement agents through a person exercising another independent profession, for example, the Spanish *procurador*.

1.1.3. Mixed status

Mixed status refers to the situation in member states in which enforcement agents with a public status co-exist with others with a private status.

This makes it possible to combine the advantages of both systems – public and private – such as the remuneration of agents, the means used in the implementation of the procedure and simplification of the steps to be taken to refer a case to an enforcement agent.

There are two types of mixed status: some are historical survivals, while other, more recent ones, are motivated by considerations of efficiency.

In the states where mixed status is a historical survival, enforcement agents responsible for recovering debts established by a court decision concerning private individuals have a private status. In parallel to this, where enforcement concerns state finances, enforcement agents are civil servants, often working in the Ministry of Finance (for example, the French treasury bailiff and the Belgian *fisc*). In other words, the status of the enforcement agent is linked with the nature of the debt to be recovered.

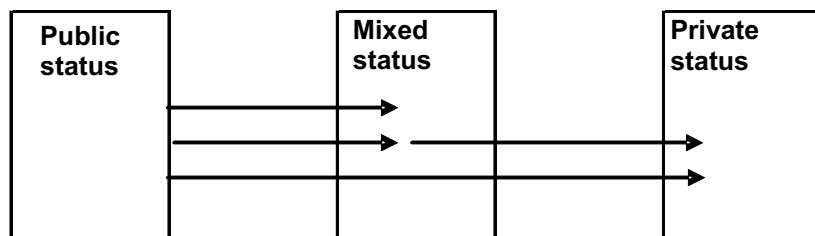
In addition to mixed status of historical origin, new forms are beginning to appear. They may be motivated by a number of concerns. The state opts for mixed status either in order to choose the most efficient system or because it has already chosen but wishes to ensure a flexible transition between two statuses.

In the first case, the state experiments with both statuses before choosing between them. The same powers are sometimes accorded to enforcement agents responsible for the same cases in order to evaluate the efficiency of each status at the end of a given period (this is the case in Bulgaria and Kazakhstan, for example). The state may also opt for this solution in order to relieve the public sector, which seems to be the case in the British Isles. In Ireland, enforcement is carried out in civil cases by the Sheriff or the County Registrar where there is no Sheriff in the county. These two types of enforcement agents have different statuses: the Sheriff is a private sector worker, while the County Registrar is a civil servant working in a court. Although County Registrars are under the authority of the Ministry of Justice, they enjoy autonomy of action.

In the second case, the state has decided to move from one status to another but a transition period is essential before obtaining the final result. This is the case in the Czech Republic, where enforcement is temporarily divided between judges and bailiffs, probably until the retirement of all the judges responsible for enforcement. This allows a smooth transition.

It is legitimate to ask towards what status these states or legal entities in transition periods are evolving: is the general trend transition from a public to a private system or from a private to a public system? Analysis of the various data seems to indicate a trend from public status to mixed status (whether temporary or not) or even directly from public to private status.

Figure 1: Trend in the changing status of enforcement agents in civil cases



1.2. In criminal cases

Question 118 In criminal cases, enforcement agents have		
Public status	Private status	Mixed status
Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, SM-Montenegro, Spain, Sweden, Turkey, Ukraine	Cyprus, UK-Scotland	UK-England/Wales, Ireland
39 states	2 states	2 states

Note: Denmark, Greece, UK-Northern Ireland: these three states say they have no judge specifically responsible for enforcing sentences. This may mean that enforcement agents are judges who are not specialised in the enforcement of sentences and that they do not share this power with any other authority. It may mean that the enforcement agent is not a judge.

Various bodies are responsible for enforcing court decisions in criminal cases. Most such bodies are public.

1.2.2. Public status

1.2.1.1. Judges

Unlike with respect to the enforcement of civil decisions, states and legal entities were not asked whether the enforcement agent in criminal cases was generally a judge. It may be admissible in criminal as in civil cases for a judge to decide a case and to see that his or her decision is enforced. If this question were asked, the replies of national correspondents would make it possible to determine whether or not the judge was given a further task. This element could be taken into account in the analysis of the efficiency of the enforcement of court decisions.

States *were* asked, however, about the existence in their administration of justice systems of judges *specifically* responsible for the enforcement of decisions in criminal cases (question 118). Such judges seem to exist in 22 states (see Appendix 1 for details).

The “deciding” judge is then relieved of the task of enforcement, which is undertaken by a judge with specific powers. The extent of the powers of such judges varies from country to country: they may even review or adjust the sentence handed down on the basis of the elements available to them.

One of the advantages of such a status is that it relieves the “deciding” judge of the task of enforcement, which is entrusted to a specialised judge who works exclusively in this area. But having judges specialised in enforcement forces the state to create extra posts for this purpose. In practical terms, the transmission of the case from the “deciding” judge to the specialised judge may result in periods of inactivity that are likely to lengthen the procedure; by seeking to foster the accessibility of enforcement, the country therefore runs the risk of undermining its efficiency.

1.2.1.2. Prosecutors

Prosecutors have powers to enforce judgements in 10 states or legal entities. They exercise these powers alone (Albania, France, Italy, Lithuania, Luxembourg, Monaco, Netherlands, Turkey) or jointly with the prison authorities (Belgium) or the judge (Germany).

The advantage of entrusting the enforcement of criminal decisions to prosecutors is again that it relieves judges. Like judges, prosecutors are proxies of the *imperium* (or state power), which means that they are proxies of a part of the public authority. As representatives of the state, it is entirely justifiable for them to ensure that the sentence is enforced and that the rights at issue are respected in the course of the enforcement process.

The disadvantage of entrusting the enforcement of criminal decisions to prosecutors is the accumulation of duties that may result: prosecutors are responsible for prosecution in all the member states where they are specifically responsible for enforcement (questions 70 and 118). A

prosecutor may therefore be both a party to the criminal proceedings and responsible for enforcing the decisions that result from it. The reservations that can be expressed as to his or her subordination to the various judicial and executive authorities are equally valid for the course of the trial itself and the enforcement of the decision. States were asked about the independence of prosecutors in their judicial systems. Three different possibilities were offered: independent within the judiciary, independent from the judiciary and under the authority of the Ministry of Justice (question 45). While prosecutors with no link can more easily claim to be free from the common interest and pressures of the executive, they may appear less legitimate as representatives of the state to ensure that the law and court decisions are properly applied.

Prosecutors have powers to enforce judgements in ten states. Of these, four replied that prosecutors were independent within the judicial system²³, although they come under the authority of the Ministry of Justice in three of them (France, Monaco and Turkey); in Germany and Belgium the prosecutor is under the authority of the Ministry of Justice but only Germany states that they are part of and subordinate to the judicial system. In each of these situations, prosecutors' ties of subordination fuel the criticisms of those who advocate their complete independence.

1.2.1.3. The prison authorities

In five states or legal entities the enforcement of court decisions in criminal cases is the responsibility of the prison authorities when it is a question of a custodial sentence (Armenia, Belgium, Iceland, Moldova, Sweden, question 118). They are responsible for enforcing the custodial sentence and managing the detention of the people sentenced.

1.2.1.4. The Ministry of Justice

The authority with powers to enforce judgements in criminal cases is the agency of the Ministry of Justice in nine states or legal entities (Armenia, Azerbaijan, Bulgaria, Croatia, Finland, Georgia, Latvia, Slovakia, Ukraine, question 118).

Enforcement is then devolved to a much larger body which is not dependent on a post (such as prosecutor or judge), but is managed by a service.

The Ministry of Justice may have powers to enforce all decisions in criminal cases, as is usually the case. It may also have powers in a particular case, where the criminal decision to be enforced is a foreign decision (this is the case in Latvia).

1.2.1.5. Other public agents in criminal cases

Sometimes non-judge staff working in courts have enforcement powers in criminal cases (for publication of the arrest warrant or charge, for example). In such cases, the powers are shared with another authority (question 118).

This specific category of staff is particularly common in Germanic systems (*Rechtspfleger*). This is an independent judicial body in accordance with the duties delegated to it by the law and, as such, it is rooted in the countries' constitutional arrangements or constitution.

In some countries, however, professions similar to *Rechtspfleger* are not referred to in constitutional laws (Germany).

However, the data gathered do not enable us to say precisely in which states *Rechtspfleger* are responsible for the enforcement of decisions in criminal cases. There was no precise question on this.

The most that can be done is to note that these *Rechtspfleger* (or agents with similar duties) exist in 16 member states: Armenia, Austria, Croatia, Denmark, Estonia, Germany, Hungary, Ireland, Liechtenstein, Malta, Norway, Poland, Slovakia, Slovenia and Spain.

In Spain there is a particular category of agents responsible for enforcing criminal decisions: *juzgados de vigilancia penitenciaria*.

In Ireland, the enforcement of court decisions in criminal cases is carried out by the police. Certain criminal decisions require the use of force in order to be enforced. Such a conception may be justified by the fact that the police are the detaining authority of the law enforcement authorities.

1.2.2. Private status

Very few states entrust the enforcement of criminal decisions to enforcement agents with a private status (question 118). In Cyprus, the enforcement process in criminal cases is carried out by private companies under the authority of the Ministry of Justice. In Scotland enforcement of decisions in criminal cases can be carried out by independent agents (Messengers-at-Arms and Sheriffs).

1.2.3. Mixed status

Only two national correspondents mentioned bailiffs as enforcement agents in criminal cases (Ireland, UK-England/Wales), but they do not carry out their duties alone.

Such mixed status could be an expression of shared powers, perhaps according to the nature of the offence concerned.

2. Number of enforcement agents

The distinction used in the analysis of the status of enforcement agents according to type of case is equally relevant to the analysis of the number of enforcement agents.

2.1. In civil cases

An initial analysis focuses on the number of enforcement agents in relation to population.

It is important to point out that the figures given are very approximate because of the wide disparity of definitions and statuses.

According to the data gathered from national correspondents, the majority of member states (21 of the 38 states that replied) have fewer than five enforcement agents per 100,000 inhabitants. As the number of enforcement agents per 100,000 increases, the number of states concerned falls (11 states have between 5 and 10 agents per 100,000; 5 states have between 10 and 15 agents; only one state has more than 20) (see Appendix 2 for details).

These data should be treated with great caution: while a high number of enforcement agents may foster *the accessibility of enforcement*, there is nothing to suggest that a large number of enforcement agents guarantees *the efficiency of enforcement*: too many criteria come into play for that to be the case.

The second level of analysis would be to ask about the reasons for such variations in the number of enforcement agents. The status of enforcement agents seems to be a factor (see Appendix 2 for details). There seem to be significantly fewer enforcement agents with a private status than with a public or mixed status. However, the data available do not make it possible to go further than the link revealed between the agents' status and their number. Indeed, the larger number of agents per 100,000 that seems to result from their public status may equally well reflect the wish of a liberalised profession to maintain a high number of clients per enforcement agent (i.e. through the *numerus clausus*, restriction of access to the profession) or an excessive number of enforcement agents who are public servants with no account being taken of users' real needs (i.e. irrespective of the real demand for enforcement services).

2.2. In criminal cases

States and legal entities were not asked about the number of enforcement agents in criminal cases. Such a question would have enabled an overall view of the matter as different authorities, other than the prosecutor, have powers to enforce decisions in criminal cases. As with civil cases, the number of enforcement agents may be an indicator of accessibility in enforcement of court decisions in criminal cases. It is interesting to consider the number of prosecutors in relation to population and to compare these figures with the role prosecutors play in enforcement.

As in civil cases, the figures given here are only an indication because of differences in prosecutors' involvement in this matter. At best, they tell us only about *the accessibility of enforcement* and not about its *efficiency*.

The role of prosecutors in enforcement could be linked with their number per 100,000 inhabitants (see Appendix 3 for details). There seem to be fewer prosecutors with powers to enforce judgements than there are those who play no role. The data gathered by the CEPEJ do not make it possible to go further than the hypothesis of this link since there is no sufficiently detailed information about this precise point to enable the importance of the role played by each prosecutor to be clearly identified.

B. Enforcement costs in member states

The study of enforcement costs concerns only civil cases. The relevant data in the CEPEJ report do not make it possible to extend the analysis to administrative or criminal cases.

The question of enforcement costs (fees and enforcement expenses)²⁴ is crucial to the analysis of the enforcement of court decisions²⁵. Costs may, indeed, become an obstacle to enforcement for users, particularly where the litigant considers them too high in relation to the debt to be recovered. For this reason, member states have adopted regulations on enforcement costs that ensure transparency and foreseeability.

1. Transparency, appropriateness and foreseeability of enforcement

1.1. Transparency of enforcement

1.1.1. In the domestic system

Guaranteeing the transparency of enforcement costs means guaranteeing litigants ready access to information about enforcement expenses and any fees payable in the form of a performance bonus. A list of the costs of the measures can be provided by the person ensuring enforcement, the courts, consumers' associations, codes of procedure (where they exist) or on the internet. These costs should be easy for users to understand (concept of clarity)²⁶.

Ensuring transparency also means requiring the cost of the measure to be indicated and making this a factor in the validity of the procedural document.

The majority of states (35 of the 42 that replied; see Appendices 4 and 5 for details) have a system ensuring the transparency of enforcement expenses (question 109). Only seven states have no such system (Greece, Italy, Latvia, Lithuania, Slovenia, Turkey and Ukraine). All these seven states say, however, that enforcement expenses are regulated by law. This minimises to some extent the negative effects of lack of transparency: as the state has regulated enforcement expenses, there is less risk that claimants will have to

pay unjustified fees. But they still need to know what they actually have to pay and what they have the right to refuse to pay. This means that access to the regulations needs to be ensured; it is therefore crucial that states should set up systems to inform users of enforcement expenses.

It is natural that some member states were unable to reply to question 109 (see Appendix 6 for details: Andorra, Russian Federation, San Marino, SM-Montenegro, Spain)²⁷: in these countries enforcement is carried out by civil servants and the costs are therefore paid directly by the state. For example, Andorra states that there are no enforcement costs payable by users as enforcement is carried out by officers of the administration of justice under the authority of a competent judge.

It is regrettable that the replies do not make it possible to determine more precisely how the transparency of enforcement expenses is ensured: the CEPEJ should probably ask if there is a detailed “price list” of the various enforcement measures and how it is made accessible to users. The drafting and publication of a price list is certainly the best means of ensuring the transparency of enforcement costs, by giving, for example, the costs of the procedural measures and the fees payable to the enforcement agent for his or her services. This “price list” should be easily accessible by users.

1.1.2. In the international system

Because of the increasing mobility of users and services in Europe, the enforcement of court decisions involving a foreign element is likely to increase. It is important for the transparency of enforcement expenses to go beyond the strictly domestic framework: member states should agree on a database of costs of the various most common enforcement measures. Once such a list has been drawn up and costs have been set by each state, it is important for it to be publicised as widely as possible, in particular so that users have access to the information, including from abroad.

Under the auspices of the Council of Europe and possibly in collaboration with other international or regional organisations²⁸ the CEPEJ could make a working group specialised in enforcement (CEPEJ-GT-EXE) responsible for determining the data that needs to be gathered.

1.2. Appropriateness of enforcement

Appropriateness of enforcement is a complex concept. Its assessment varies according to whether the point of view of claimants or of enforcement agents is adopted.

1.2.1. Appropriateness of enforcement for claimants

1.2.1.1. Concept of appropriateness for claimants

The appropriateness of enforcement for claimants involves assessing the appropriateness of proceedings by comparing the enforcement costs to be borne (enforcement expenses in the event of insolvency of the defendant or the performance bonus paid in the form of fees in the event of successful enforcement) with the amount of the debt and the defendant's solvency.

The claimant then decides whether or not to initiate proceedings against the defendant.

1.2.1.2. Appropriateness and limitation of enforcement expenses

When legal aid is offered to users, the action may seem more appropriate to claimants: they know that they will not have to pay the expenses if enforcement fails. In this situation enforcement agents have to restrict themselves to the actions that they believe to be strictly necessary. In order to encourage such caution, systematic control of enforcement expenses should be conducted by the state service that regulates legal aid. If an enforcement agent profits unduly from legal aid (by multiplying the expenses), it should be possible to take disciplinary action against him or her; for example, acts considered to be excessive should not be paid for and should be borne by the enforcement agent (as is the case in France).

In some member states enforcement costs are paid directly by the state (Andorra), so the question of the appropriateness of enforcement does not arise for claimants: as they do not bear the costs, the appropriateness of acting is of no importance to them. Whether enforcement is successful or not, the claimant runs no risk in seeking it. If it is successful, the costs will almost automatically be borne by the defendant. In the event of failure, they will be borne by the whole community.

Without calling into question the merits of legal aid, this observation may lead to a questioning of the appropriateness of laying the burden of enforcement costs on the community, given the fact that the aim of enforcement is to satisfy a private interest (the interest of party A against party B) that need not be concerned about the appropriateness of the action. The aim of the state is obviously to ensure accessibility of the enforcement of court decisions. By proceeding in this way, the state ensures that its judicial system is accessible from the beginning of proceedings until the enforcement of the decision: it controls every stage. And yet such a search for accessibility should not harm the very efficiency of enforcement. If the search for accessibility enables users to act even when the action is inappropriate, the enforcement services will be overburdened and average enforcement timeframes for all cases will be longer²⁹.

1.2.1.3. Appropriateness, limitation of expenses and access to information about assets

Requiring enforcement agents to choose the most efficient enforcement procedure and to limit enforcement expenses as much as possible means that, in return, they must have speedy or even direct access to information about defendants' assets in order to be able to act in the most appropriate way.

1.2.2. Appropriateness of enforcement for enforcement agents

1.2.2.1. Concept of appropriateness for enforcement agents

For enforcement agents, the appropriateness of acting always involves ensuring a degree of control over the expenses generated by enforcement in relation to the debt to be recovered (proportionality between the debt and the chosen action).

1.2.2.2. Appropriateness and advice

The concept of appropriateness may include a duty to advise the claimant on the appropriateness of the procedure in relation to the defendant's apparent (or actual, if this is known at this stage) solvency. This duty of advice is not absolute, however: enforcement agents must find a fair balance with the professional confidentiality incumbent on them with respect to the defendant's situation³⁰.

The claimant's opinion as to the appropriateness of acting is not always asked for (sometimes the case is automatically transferred to the enforcement agent, in Italy for example): in this situation, the appropriateness of the procedure for the enforcement agent is restricted to ensuring the proportionality between the debt and the action chosen; the duty to advise has no meaning here.

1.3. Foreseeability of enforcement costs

The foreseeability of enforcement costs means being able to estimate the cost of a whole process.

While putting in place a price list ensures the transparency of enforcement expenses, it does not ensure their foreseeability. The concept of foreseeability is complex. It depends on a great many criteria: the solvency and behaviour of the debtor, the flexibility of procedures (in other words, the possibility for enforcement agents to choose the procedure they consider most appropriate), access to information about the debtor's assets, etc.

At the beginning of enforcement it is very difficult to know the number of actions that will be taken in order to achieve a result. Claimants' legitimate

fear that debts will not be recovered and that they will have to pay the person responsible for enforcement can be an obstacle to the enforcement of court decisions. The smaller the debt, the stronger this fear will be: the least procedural act may then be expensive in relation to the sum to be recovered.

The English system has a special enforcement system for small claims³¹ under which County Court Bailiffs (civil servants working in the County Courts) have a monopoly on the enforcement of claims of less than £600 (i.e. around €891 as at 23.07.2007). The executions costs of such small claims are borne by the court. For claims more than £600, claimants have to use private enforcement officers whom they pay according to a negotiable rate. Since the system has been set up fairly recently, it would be interesting to evaluate it in order to determine whether the experiment is worth imitating.

One means of ensuring greater foreseeability of enforcement expenses would be to ask enforcement agents to inform their clients of the foreseeable costs of the procedure at the outset and then whenever a new measure is planned. This could be a “good practice”.

2. Regulation or negotiation of enforcement “expenses”

It should first be pointed out that the expression “negotiation of expenses”, used in the CEPEJ questionnaire (question 110) is ambiguous and probably clumsy.

If there is negotiation, it should only concern the performance bonus, in other words, the fee paid to the enforcement agent for carrying out his or her task (the percentage that he or she will deduct from the sums recovered for the client and that represents his or her remuneration). Negotiation can never concern the amount of the debt (restriction concerning the enforcement agent and the claimant) or the cost of the procedural acts (restriction concerning the enforcement agent and the defendant). Such negotiations could soon become attempted corruption³².

In the final analysis, a better wording would therefore be “negotiation of costs”, enforcement costs being composed of enforcement expenses and fees (also known as the performance bonus).

It would seem all the more important to ask about the regulation or negotiation of costs in view of the fact that in private systems the enforcement agent is remunerated by the procedural expenses and any performance bonus (Hungary, Monaco, Netherlands). In the public system itself, in which the enforcement agent traditionally receives a salary paid by the state (Cyprus, Denmark, SM-Montenegro), there are a few exceptions where the enforcement agent is remunerated directly by the defendant (Austria, Germany).

In the final analysis, two systems are possible with respect to enforcement costs: the state may lay down precise and detailed regulations concerning both procedural expenses and fees; it may also leave it to the parties to negotiate freely all or part of the cost. Since the wording of question 110 in the CEPEJ questionnaire is ambiguous³³, some member states probably found it difficult to interpret (and this probably explains why there was so little response to the second option). As states were asked about “fees”, we have used this term here, despite its drawbacks.

2.1. System in which the “fees” are paid by the state

The majority of member states (43 out of 47) have regulated enforcement fees (question 110)³⁴: these may therefore be regulated by the state in both private and public systems.

Where fees are regulated, compliance with the regulations presupposes the possibility of lodging a complaint against an agent who does not comply with them. Of the 23 states that replied to question 113, 15 provide for such a possibility³⁵.

A universal control system is needed to guarantee that the regulations are fully effective. The possibility of lodging a complaint is the simplest and least cumbersome system to put in place (*a posteriori* control)³⁶.

2.2. System in which the “fees” are freely negotiable by the parties

Even if the enforcement fees are regulated, it may happen that they are negotiable, at least in part (question 110). Only seven correspondents stated that fees were negotiable in their country (Croatia, Czech Republic, Germany, Monaco, Netherlands, Poland, Romania) and only two (Netherlands and Romania) stated, after having first indicated that fees were state-regulated, that they could be negotiated. This contradiction may be more apparent than real and – like the low reply rate – can probably be explained by the ambiguity of the expression “enforcement fees” used in the question.

Freedom of negotiation should, in principle, favour the user since it should tend to lower the cost of enforcement. Caution is required here, however. The reference market for enforcement is highly compartmentalised, either because the territory of each bailiff is determined by law or because enforcement agents themselves restrict their activity to a certain area. Such compartmentalisation of the market is naturally likely to favour agreements between professionals. In addition, enforcement agents, whose fees are their income, may be tempted to apply unreasonable rates, in particular to the cost of procedural acts that are recoverable from the debtor.

2.3. Remarks about the regulation or negotiation of enforcement costs

Enforcement costs are composed of the enforcement expenses (cost of procedural acts) and, when the law so allows, the enforcement agent's fees (performance bonus).

The member states' replies seem to argue in favour of strict regulation of enforcement costs, a measure that is more protective of the defendant and more in accordance with equality of rights.

The defendant plays no part in the choice of the enforcement agent and is "subject" to the claimant's choice. In addition, in terms of accessibility of enforcement, it is important for equality of rights that the expense of the procedure does not change from one client to another according to the negotiating abilities of different claimants. The total cost of enforcement acts should not depend on arbitrary criteria such as place of residence, force of persuasion or the general impression given by the claimant.

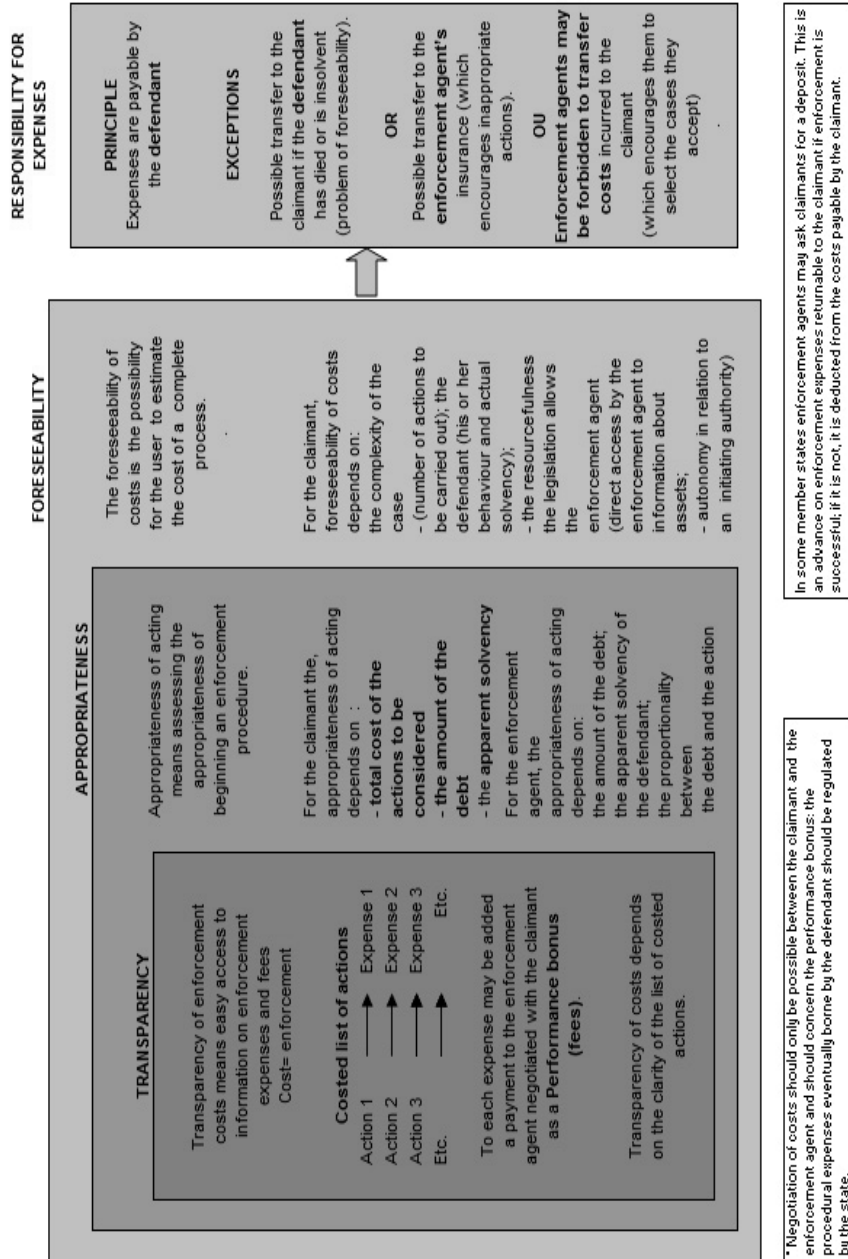
Where the law allows, the fees (performance bonus) can take two forms: they may be completely negotiable by the claimant and the enforcement agent; they may be regulated by law (a percentage being set and deducted from the recovered debt by the enforcement agent where enforcement is successful).

The risk involved in completely negotiable fees lies in a small number of enforcement agents with powers in the same territory: they may be tempted "to agree" to impose a minimum rate on their clients. The advantage of free negotiation resides in a large number of enforcement agents with powers in the same territory: there will be great competition between agents and the performance bonus will be subject to market forces and may even tend to fall, to the benefit of claimants.

Regulation of the performance bonus eliminates the risk of an agreement among enforcement agents. Each will strictly apply the regulations and deduct from debts recovered the bonus accorded by the law. However, it is impossible for claimants who wish to do so to offer the agent a higher bonus as an incentive. Some degree of freedom of negotiation should probably be included in the regulations.

In the final analysis, complete freedom to negotiate costs (fees and procedural expenses) is probably not desirable. The possibility of negotiating the fees payable to the enforcement agent, at least in part, is worthy of consideration.

Figure2: Key elements in enforcement costs



Part two: the efficiency of enforcement of court decisions

A. Efficiency of enforcement services

1. Management of enforcement agents as a factor in efficiency

1.1. Skills management

The professional training of enforcement agents is obviously crucially important for the proper administration of enforcement itself³⁷. Firstly, it produces a certain professional “solidarity”, giving a feeling of belonging to the profession and providing a basis for responsibility for the activities carried out by enforcement agents. It also guarantees uniformity of skills: it is then not only the prerequisite skills that should be taken into account, but also the phases of training and the final selection.

1.1.1. Prerequisite skills

There was no direct question in the CEPEJ evaluation scheme about prerequisite skills, a deficiency that probably needs to be corrected.

Nevertheless, initial research seems to suggest that there is a degree of consistency in member states’ requirements: in Europe, candidates for enforcement agent posts often have to have done a practical traineeship³⁸ and/or hold a law degree³⁹. The ideal would of course be that, throughout Europe, the prerequisite skills for enforcement agents should place them at the same level of expectation and training as judges and lawyers. Where the skills level is very high, it seems to be easier to avoid corruption⁴⁰ and enforcement agents are better trained to explain actions to users. In the final analysis, the profession’s image can be transformed by such enhanced probity and this effort to create a social link.

Some member states have also put in place criteria based on age (maximum age for becoming an enforcement agent; maximum age for practising the profession⁴¹). This restriction fosters a degree of “turnover” in the profession.

1.1.2. Training of enforcement agents

There is far more diversity among member states regarding the training given to future agents and the possible existence of a final selection procedure.

Only three-quarters of the states that replied (32 out of 43) said that there was specific initial training (as opposed to the “ongoing training” given to agents already practising) or an examination for entry to the profession of enforcement agent⁴²; 11 states reported that there was none (Andorra, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Denmark, Greece, Ireland, Monaco, Norway, SM-Serbia)⁴³.

There appears to be a link between the status of agents (civil servant or private) and the existence of initial training or a final selection process (see Appendix 7 for details). The countries with no specific initial training or examination often entrust the enforcement of court decision to judges (Bosnia-Herzegovina, Croatia, Denmark), civil servants working in the administration of justice under the authority of a competent judge (Andorra) or to court employees (SM-Serbia); if they use the services of bailiffs, they usually work directly in a public institution (Azerbaijan, Bulgaria, Croatia, Denmark, Greece, Norway, SM-Serbia). Conversely, there is initial training or a final selection procedure in almost all the states where enforcement agents have exclusively private status (the only exception being Monaco).

There was no question about the ongoing training of enforcement agents in the revised scheme. This is all the more regrettable in view of the fact that its essential role in the efficiency of enforcement services is clearly stated in Recommendation Rec(2003) 17 on enforcement. Putting in place ongoing training is the *sine qua non* of credibility and quality for enforcement services claiming to be above reproach.

1.1.3. The future of the training of enforcement agents

While it is particularly important for each member state to be able to train its enforcement agents to respect the specific characteristics of their legal systems, it is nonetheless important to avoid too great a disparity in training.

Recommendation Rec(2003) 17 on enforcement lays down that “*Enforcement agents should undergo initial and ongoing training according to clearly defined and well-structured aims and objectives*” (Point IV, 8.). While no detail is given on the “*aims and objectives*” that training should respect (doubtless in order to avoid giving the false impression of making an exhaustive list), it is not impossible to seek certain common standards, not only within the training centres of a particular state, but also among the various member states. The common standards could include defining minimums in terms of volume of training, and technical and practical training. They might also include a list of compulsory subjects.

The identification of common training standards would be very useful, as the Council of Europe has already emphasised several times. It would foster the international enforcement of decisions in both civil and criminal cases⁴⁴.

An initial experiment on this has already been launched on the initiative of the Council of Europe: it aims to set up in Bulgaria the European Enforcement Training Centre (EETC), which is intended to serve as a reference for training programmes for enforcement agents in Bulgaria and other European countries. Unfortunately, national prevarication makes it unlikely that the experiment will succeed. Certain lessons can nonetheless be drawn from it: the principle of aiming to identify a common basis for training has not been put into question; on the other hand, it does not appear reasonable to establish a training centre in a single place in Europe. The

private status of a great many enforcement agents, who would then have themselves to finance their journeys to the single centre in Europe, is not an argument in favour of this formula. Similarly, it would probably be difficult for the largest countries to respect the requirements of ongoing training in these conditions.

Another formula would be more appropriate: first, thought could be given to identifying a common basis of training; this study should include practitioners, trainers, representatives of member states and international organisations particularly conversant with issues concerning the training of enforcement agents. The CEPEJ has already demonstrated on other occasions that it is perfectly capable of taking on and managing this type of process. Later, the results of this process, perhaps organised in the form of guidelines, should be sent to the teachers in training schools; member states should be invited to set up exchanges concerning, not enforcement agents, but trainers. It is indeed important that it be trainers, who can themselves control the quality of their programmes in the light of the common standards: aware of the improvements to be made to the courses they teach, the trainers themselves would transpose European requirements to national systems and to the situation on the ground. It should be noted that in the framework of bilateral agreements, the Ecole National de Procédure (France)⁴⁵ already sends representatives to meet trainers from different countries in order to determine with them the themes, volumes, techniques and practices that need to be put in place.

1.2. Organisation of the profession

1.2.1. Organisation and status

All the states that say they have specific initial training or an examination for access to the profession of enforcement agent have a (more or less centralised) organisation of the profession at national, regional or local level. On the other hand, some of the states that say there is no specific initial training or examination to enter the profession do not say whether or not the profession is organised in their country (Andorra, Bosnia-Herzegovina, Croatia and SM-Serbia). Since a link could be established between the status of the agent and the existence of training, there seems also to be a link between the status of agents and organisation of the profession.

The profession does on the whole seem to be organised: 40 states say that there is a professional body (question 108). Closer examination shows that, of the seven states that do not say they have a professional body, five (Bosnia-Herzegovina, Croatia, Liechtenstein, San Marino and Spain) appoint judges as enforcement agents and in the two others enforcement agents are under the direct responsibility of a judge or a court (Andorra, where enforcement is entrusted to civil servants in the administration of justice under the authority of a competent judge, and Serbia, where enforcement is the responsibility of bailiffs working in a court). It therefore seems possible to identify a link between the status as civil servants enforcement agents have

in these countries and the absence of a professional body. Conversely, it is perfectly clear that where enforcement agents have private status the profession is organised by a professional body.

For reasons of representativeness, discipline and control, the proper administration of justice encourages organisation of the profession: the state and representatives of the profession thus find the interlocutor they seek. In view of the link identified above between the status of enforcement agents and the existence of a professional body, it would be tempting to believe that only states in which enforcement agents have a private status are concerned. This is not the case at all. The profession can be organised by a national authority even when the enforcement agents are judges and court-employed bailiffs: this is the case in Denmark. This example suggests that it would be possible to set up a body to organise the profession in all the states, whatever the status of enforcement agents. Such a body would foster the profession's representativeness and the gathering of information.

1.2.2. Organisation and centralisation

National, regional and/or local, the degree of centralisation of the professional body – where one exists – varies greatly.

The distribution of the 40 states with a professional body is as follows: 27 states have chosen a national body, two have opted for regional bodies, three have local bodies. Some states have multiple levels of centralisation: there are both national and regional bodies in four states, while four others have national, regional and local bodies (see Appendix 9 for details).

These findings probably require some clarification:

A high degree of centralisation is more relevant for a state that is above all seeking an interlocutor representing the whole profession. It is also more relevant for the profession, which make economies of scale for reaching its members: in this way the profession can speak to the state with a single voice. This is the most widespread system.

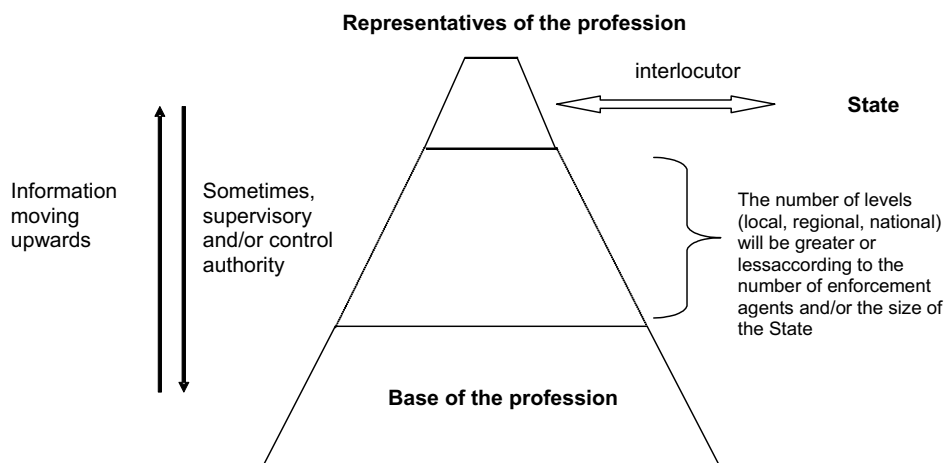
A low degree of centralisation probably fosters presence at the local level. Such proximity makes it easier to take into account the problems enforcement agents encounter; it makes it easier for problems to be communicated upwards. However, it is certainly more difficult to have an overall view of the problems of the profession. This is probably why few states have purely local or regional bodies.

The states that do not choose a purely national body also tend to have multiple levels, either to combine the advantages of both systems or the number of enforcement agents, the structure or the area of the state encouraging them to do so. A pyramid-type organisation is perfectly possible but in this case it is essential that it is the top of the pyramid that has the legitimacy to represent the profession.

In the context of this study, the degree of centralisation of enforcement agents' professional body has also been compared with that of other professions (lawyers). While it can be said that there is no common trend, the reasons for the differences are rather vague and are perhaps the result of historical considerations⁴⁶.

Whatever model of centralisation states have chosen, the representativeness of the profession of enforcement agent is better guaranteed where membership of the professional body is compulsory, something that is easily justifiable where the professional body is the authority responsible for the supervision of enforcement agents.

Figure 3: Key elements in the organisation of the profession of enforcement agent



2. The control of enforcement agents as a factor in efficiency

2.1. Quality standards

2.1.1. The existence of quality standards

The existence of quality standards is an important guarantee of the proper enforcement of court decisions. Through their dissemination, these standards help to ensure greater efficiency of enforcement services and equality before the law; indeed, they foster an essential harmonisation (particularly in federal states, such as Germany⁴⁷) by encouraging the work of comparison between services, even between member states.

National correspondents generally replied to the question as to whether or not there were quality standards (question 112), but without giving much detail about the actual content of such standards.

Of the 47 states questioned, only three failed to reply to the question (Montenegro, San Marino and Spain); of the remaining 44 states, 25 said they had quality standards for enforcement agents⁴⁸. While it is regrettable that these states give no details of the content of their standards (it would probably be a good idea to ask about this in a future questionnaire), the CEPEJ report enables an interesting trend to be identified. If member states are considered according to when they joined the Council of Europe, it is notable that the “new” member states⁴⁹ have more systematically had recourse to quality standards than the “early” member states (a proportion of 14 states to 8 for the “new” states and 11 to 11 for the “early” states). At present, the majority of states with quality standards are “new” states (14 out of 25) while the states without quality standards are more often “early” states (11 out of 19) (see Appendices 12 and 13 for details).

The idea of offering to draft “European quality standards for enforcement of court decisions” should be studied under the auspices of the Council of Europe. This could be organised by the CEPEJ and should involve practitioners, trainers, representatives of member states and international enforcement agent organisations. The quality standards should not be only quantitative (for example, quantify the number of complaints and sanctions, etc.), but also qualitative (for example, emphasise the importance of creating a social link depending on enforcement agents’ ability to explain their role to users⁵⁰; lay down criteria on transparency of costs for users; guarantee cooperation between enforcement services⁵¹; respect the debtor’s interests⁵²; ensure the appropriateness of acting and inform users of this⁵³; etc.).

2.1.2. Body responsible for formulating quality standards

It is interesting to note that all the states with quality standards have a centralised body responsible for gathering statistical data (question 50). Similarly, almost all the states with quality standards ask the courts to prepare an annual activity report (24 states out of 25; the only exception is Germany – question 51). If the means available to these states are used appropriately, the quality standards formulated can endeavour to satisfy genuine needs and their impact can be the subject of serious scientific follow-up⁵⁴.

With the exception of Estonia, Georgia, Greece and Serbia, the states that have not established quality standards all have a centralised institution responsible for collecting statistical data and the annual activity report prepared by their courts. Therefore, in most cases issuing relevant and appropriate quality standards will not encounter major difficulties.

What are the bodies preferred by member states for issuing quality standards? Most states use ministerial measures (Armenia, Bulgaria, Finland, Hungary, Iceland, Moldova, Romania, Slovenia, Turkey) or similar measures (Monaco); a certain number prefer to use legislative measures, however (Azerbaijan, Denmark, Poland, Romania, Slovakia, Ukraine). Others, in addition to or instead of that, prefer measures at local level (Austria, Denmark, Germany).

The comparisons that can be made with the quality standards laid down for other professions show that member states do not always use the same authors. For example, where the legislator is the author of quality standards for lawyers (11 states), it is notable that it is not necessarily – far from it – the author of quality standards for enforcement agents (questions 112 and 97); 4 of the 11 states in question do not have quality standards for enforcement agents (Bosnia-Herzegovina, Liechtenstein, Malta, Norway) and of the 7 states that do, the standards are issued by the legislator in only 2 (Azerbaijan and Slovakia).

The national correspondents' replies almost never indicate whether enforcement agents have themselves been consulted for the purposes of drafting the quality standards for their profession. The question is worth asking more directly.

2.2. Supervision and control of activities

The status of enforcement agents has some influence on the supervision and control to which their activities are subject. The distinction according to which the enforcement agent acts as a civil servant (judge, bailiffs working in a public institution, etc.) or with a private status (independent bailiffs) clearly marks two types of supervision and control of activities.

2.2.1. 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 proper administration of justice. For example, Dutch bailiffs are required to put in place a business plan ("*ondernemingsplan*" in Dutch) that enables the profitability of their activities to be checked (Article 5, *juncto* 6, of the Bailiffs Act of 26 January 2001, *Wet van 26 januari 2001 tot vaststelling van de Gerechtsdeurwaarderswet*)⁵⁵.

It is important to know who supervises enforcement agents. Despite their varying status, all of them perform public interest duties. According to the International Union of Judicial Officers (UIHJ), supervision of the activities of enforcement agents should take into account the volume and quality of activities⁵⁶.

With respect to volume, supervision of enforcement agents “*is possible with respect to civil servants but remains quite difficult, impossible even, with respect to those who are independent. However, states are sometimes able to access quantitative information about the activities of enforcement agents from notebooks, registers and even the pricing of the actions of independent enforcement officers*”⁵⁷. Is it in fact because of the difficulties involved in collecting such statistics that the CEPEJ scheme contains no question on this point? The question is surely worth asking, if only in relation to civil servants.

Supervision of the quality of activities is “*possible with respect to those who are civil servants and also those who are independent. Indeed, the number of complaints lodged against agents may be a useful indicator*”⁵⁸. We will, however, have occasion to express some reservations as to the relevance of this indicator (see part Two, A.2.3. Disciplinary proceedings and measures).

2.2.2. Control of activities

Control of activities means control of the lawfulness of the actions carried out by enforcement agents.

According to the member states, such control oscillates between two ethics, two approaches, each of which has advantages and disadvantages. The most visible expression of the difference between them lies in the moment when control takes place.

The first type of control involves an approach that might be called one of “professional ethics”. In this philosophy, in which consideration of the context is of little importance, the practical advantages flowing from a procedure are of no account when set against considerations of professional ethics or the moral duty weighing on justice. In this system, only those actions of enforcement agents that have been controlled in advance by a third party (the initiating authority) are acceptable under the law: once the measure – presumed to be lawful – has been authorised, it is entrusted to an executor, the enforcement agent. Such control necessarily takes place *a priori*.

The disadvantage of the *a priori* system is that it is cumbersome: it requires a great many human and material resources, which are often lacking. It carries the risk of blocking or even paralysing the enforcement process. The advantage of the system is the high degree of moral consideration of users, which prevails over every other consideration.

The second type of control is more “utilitarian”. In this approach, an action can only be defined as morally good or bad according to its consequences for the welfare of the individuals concerned, each counting as one and no one counting as more than one. Respecting such a philosophy, the blocking or paralysis of the enforcement process in the name of the rights of a single individual is unacceptable: the efficiency of the system requires that control of the lawfulness of the actions carried out by enforcement agents takes

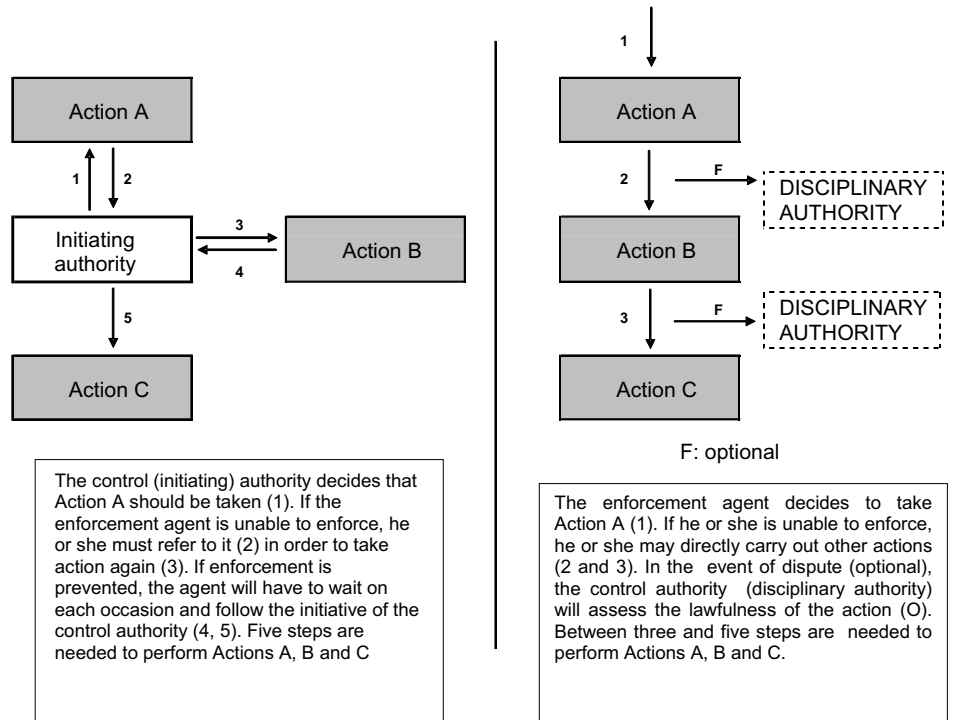
place *a posteriori*, and only with regard to measures that are disputed by one of the parties (the control authority therefore has no “initiating” role, but only a “disciplinary” role).

The disadvantage of the *a posteriori* system is that it may give the impression of sacrificing users’ rights to the continuance of a system that is precisely intended to serve them. This criticism needs to be qualified, however: is it really possible to speak of users’ rights when it is merely a question of trusting the enforcement agent, and a user who wishes to contest a measure has the possibility of doing so? According to the UIHJ, when cases are subject to *a posteriori* control, the action of enforcement agents is confirmed in the overwhelming majority of cases examined⁵⁹. The advantage of the *a posteriori* system, in addition to the fact that it seems to allow case-flow to be better managed, is that control is less frequent and therefore conducted in greater depth and more appropriately. These last reasons and the substantial savings in human resources resulting from this option, appear to have convinced most member states.

It is, however, regrettable, that the revised CEPEJ scheme did not ask member states to state expressly what type of control (*a priori* or *a posteriori*) they use (see Figure 4 below).

Figure 4: a priori control (initiating authority) / a posteriori control (“disciplinary” authority)

The enforcement agent decides to take Action A (1). If he or she is unable to enforce, he or she may directly carry out other actions (2 and 3). In the event of dispute (optional), the control authority (disciplinary authority) will assess the lawfulness of the action (O). Between three and five steps are needed to perform Actions A, B and C.



2.2.3. Authority responsible for supervision and control of activities

Supervision and control of the activities of enforcement agents are almost systematic.

Of the 47 states questioned (question 111), 44 have given useable replies and, of those, only two (Greece and UK-England/Wales) state that there is no authority responsible for supervision or control of activities.

In the states in which there is such an authority (42 states), its nature varies considerably. It is not unusual for there to be a combination of several authorities.

2.2.3.1. Prosecutors (9 states)

Prosecutors are responsible for the supervision and control of enforcement agents in nine states.

Perhaps because they are part of the judicial system (Ireland, Russian Federation), the Ministry of Justice (Belgium, Sweden) or even both (France, Monaco, Turkey)⁶⁰, prosecutors are almost never the only body responsible (Ireland is the only exception). Prosecutors share this task either with a judge (Monaco) or with a professional body (Sweden). More often than not, they even share it with several bodies, in other words with judges and a professional body (Belgium, Luxembourg), with judges and the Ministry of Justice (Moldova, Turkey) or with the Ministry of Justice and a professional body (France and Russian Federation). It is interesting to note that prosecutors are never the authority responsible for supervision and control in states where the enforcement agent is a judge (questions 105 and 111).

With respect to criminal cases, prosecutors supervise enforcement procedures in 27 of the 47 states that replied (question 70), a proportion that is understandably higher than in civil cases⁶¹: it is, however, remarkable that two states give prosecutors authority to supervise and control enforcement in civil, but not in criminal, cases (Ireland and Sweden).

2.2.3.2. A professional body (15 states)

The very existence of a professional body enables the supposition that states use it to supervise and control enforcement agents. Fifteen states have indeed chosen a professional body as the competent authority (question 111).

In view of the large number of member states that have a professional body (40 states, question 108), this may seem a low proportion, when all is said and done.

The proportion of professional bodies with powers to supervise and control enforcement agents does not appear to be linked with the degree of centralisation of the professional body (see Appendix 14 for details). It seems to be more closely linked with the status of enforcement agents: a professional body is more likely to be the competent authority where enforcement agents have a private status (7 states out of 15; only 3 out of 15 where the agent has a public status, the rest having mixed status), but it will never be the supervision and control body of judges and seldom of bailiffs employed by a public institution (5 states out of 25, in 4 of which there is mixed status, the only exception being Austria; questions 105 and 111).

2.2.3.3. Judges (20 states)

While 20 states have opted for judges to be responsible for the supervision and control of the activities of enforcement agents (question 111), a trend is

observable according to states joined the Council of Europe: of the 42 states with a control authority, the proportion of states in which judges are the authority is higher among the “new” states (only 7 of the 20 “early” states that replied use a judge, while 13 of the 22 “new” states do so) (see Appendix 15 for details). This may reflect a certain “judge culture” in the phases of enforcement control in the countries of central and eastern Europe.

In the countries where judges are enforcement agents, other judges are usually designated as supervision and control authority (4 states out of 6 – Bosnia-Herzegovina, Croatia, Denmark, Liechtenstein; questions 105 and 111). In this situation, they are usually the only competent authority (in Croatia the Ministry of Justice shares this task). The cases in which judges are usually the supervision and control authority are those where enforcement agents are bailiffs working in a public institution. In such cases, judges usually share the task with other authorities.

The responsibility may be entrusted to the president of the court (Bosnia-Herzegovina, Montenegro) and extend to the supervision of private enforcement agents (Czech Republic). Some states give the courts the right to check the procedural activities of enforcement agents (Moldova), particularly in the event of disputes; the court may then impose a fine on enforcement agents for delayed enforcement.

2.2.3.4. Ministry of Justice (25 states)

The Ministry of Justice is the most common supervision and control authority for enforcement agents in member states: 25 of the 42 states with such an authority have opted for this. The trend is strongest where enforcement agents are bailiffs working in a public institution (15 states out of 25).

The trend observed in relation to judges is still more marked for the Ministry of Justice. The date on which states joined the Council of Europe brings out a certain tendency for “new” states to use the Ministry of Justice to supervise and control enforcement. Only 8 of the 22 “early” states that replied entrust this task to the Ministry, while 17 of the 22 “new” states do so (see Appendix 16 for details).

It is, moreover, quite remarkable that this use of the Ministry of Justice takes place in the context of two different principles: in the “new” states, the Ministry of Justice usually has the role of supervision and control authority in addition to judges (9 out of 17 states choosing the Ministry; 9 out of 13 using judges: Azerbaijan, Croatia, Czech Republic, Latvia, Lithuania, Moldova, Poland, Romania, Slovenia), while in the “early” states, joint judge-ministry authorities are very rare (one of eight states choosing the ministry, one of eight using judges: Turkey) (see Appendix 17 for details). We do not know what regulations govern such joint authorities, since the states do not indicate this. More importantly, we do not understand what relationship, what hierarchy, exists between the two authorities and how, in practice, the states

that have made this choice intend to guarantee the independence of the judiciary from the executive.

2.2.3.5. Other competent authorities (8 states)

Other authorities may be chosen to supervise and control enforcement agents: six states have made such a choice.

For example, it may be the state's Supreme Court (Cyprus), or court managers (Germany). Sometimes control is entrusted to parliamentary commissions linked with the civil or judicial administration (Sweden) or departments specialising in the enforcement of decisions within the administration of justice services other than the Ministry of Justice (Northern Ireland).

Albania provides for annual evaluation of agents by an "Enforcement Council"; this is based on quantitative and qualitative quality criteria (quality of enforcement, volume of work, speed of enforcement and the agent's moral reputation) that are marked on a scale (very good, good, satisfactory, inadequate).

2.3. Disciplinary proceedings and measures

2.3.1. Complaints against enforcement agents

2.3.1.1. Main grounds of complaint

All the states that replied to the Pilot Scheme evaluation questionnaire⁶² in 2002 made provision for users to lodge complaints against enforcement agents. Question 113 of the 2004 round sought to go into this further by obtaining information about the possible grounds for such complaints (see Appendix 18 for details).

It emerges from this that some states do not have statistics on precise grounds of complaint (France, Luxembourg, Scotland). In all, 8 states were unable to detail the main subjects of complaint concerning enforcement procedures (Armenia, France, Liechtenstein, Luxembourg, Netherlands, San Marino, Scotland, Spain). One other state (Monaco) does not give a clear answer (no indication instead of positive replies).

Generally speaking, states interpreted the question as they saw fit: some simply indicated the most frequent case, others indicated the two, three, four, five or six most frequent cases. For example, three states (Belgium, Poland, UK-England/Wales) replied "yes" to all the cases, not really making it possible to know which are the "main" complaints concerning enforcement procedures: in this situation, and in the absence of any classification, all that can be concluded in relation to these three states is that one or more complaints have been lodged in each case. Conversely, one state replied

“no” to all the possibilities, suggesting that no complaints at all had been made by users in relation to the enforcement of court decisions (Norway).

The question needs to be revised. The ideal would probably be to reword it, specifying how the “main complaints” are to be identified (for example, by limiting the number of possibilities to the three most frequent, if possible classified according to volume from 1 (many) to 3 (few). States seem to be able to quantify the most frequent cases themselves⁶³. If necessary, states that were unable to put the three main grounds of complaint in order of importance should be invited to indicate the three main grounds without putting them in any order⁶⁴.

Notwithstanding the reservations noted above, it is useful, in preparation for other uses of the report, to illustrate what types of conclusions a new wording of the questionnaire would make possible. Supposing the present findings to be relevant, it would be possible to arrive at the following classification:

Of the 39 states that replied (at least once to indicate a type of complaint):

Type of complaint	Number of states stating this type of complaint is one of the “most important”	Proportion of the states that replied to question 113
Excessive length	34 states	87%
No enforcement at all	16 states	41%
Excessive cost	15 states	38%
Unlawful practices	12 states	31%
Lack of information	12 states	31%
Insufficient supervision	5 states	13%
Other	8 states	21%

2.3.1.2. Relevance of national quality standards to complaints

It is also useful to illustrate the types of conclusions the new wording of the questionnaire will make possible in relation to this issue.

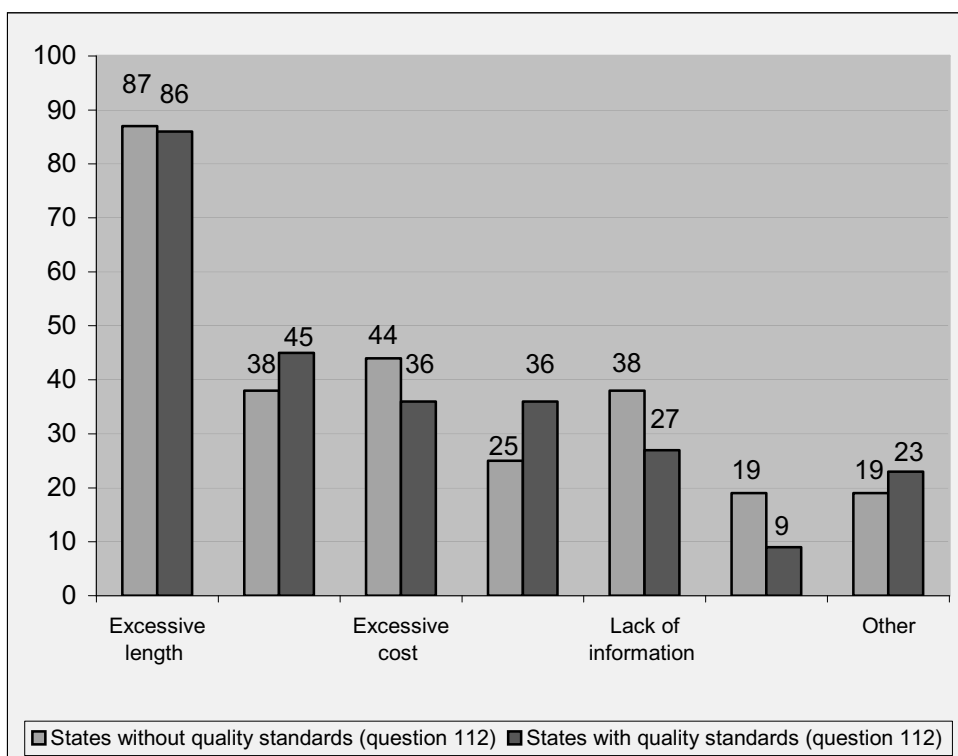
Supposing them to be relevant, the replies of national correspondents in their present formulation enable an initial observation to be made: not all of the states that say they have quality standards for their enforcement agents are able to detail the various types of complaints arising.

For example, of the eight states that were unable to detail the main complaints concerning the enforcement procedure (question 113: Armenia, France, Liechtenstein, Luxembourg, Netherlands, San Marino, Scotland and Spain), two say they have quality standards for their enforcement agents (question 112: Armenia and the Netherlands; Monaco’s reply is unclear). It is therefore tempting to wonder on what basis quality standards have been issued in these countries. How is one to know whether they respond to the main problems encountered by users?

A second observation can be made: the grounds of users' complaints vary according to whether or not there are quality standards (see Appendix 19 for details).

Analysis of the questionnaires shows that 44 states specified whether or not they had quality standards for their enforcement agents. Of these, 38 also stated the main complaints made against enforcement agents (questions 112 and 113). Of these 38 states, 22 have quality standards, 16 do not. If a distinction is made on the basis of whether or not there are quality standards (question 112), the most frequent complaints against enforcement agents are as follows (question 113):

Graph 1: Proportion of member states in which the various types of complaint arise



A number of comments can be made on the basis of this graph:

- Where states have quality standards, the proportion of states in which there are complaints about excessive cost, lack of information and insufficient supervision is lower.
- Conversely, the proportion is greater for complaints of no enforcement at all, unlawful practices and other complaints. How is this, at first sight surprising, finding to be explained? One

hypothesis is that quality standards play a dual role: on the one hand, they help to reduce certain failings in enforcement systems (excessive cost, lack of information and insufficient supervision), which would have the effect of reducing the number of such complaints; on the other hand, they enhance the identification of certain unacceptable behaviours (no enforcement at all, unlawful practices and other complaints), which would have the effect of increasing the proportion of such complaints.

- If the most common grounds of complaint are taken into consideration, it is notable that the states with quality standards give the “main complaints” in the following order: 1) *excessive length* – 2) *no enforcement at all* – 3) *excessive cost*, while the states that do not have quality standards give the “main complaints” in a different order: 1) *excessive length* – 2) *excessive cost* – 3) *no enforcement at all and lack of information (placed equal)*.

However, the reservations set out above (see, Part Two. A. 2.3.1.1. Main grounds of complaint) as to the states’ very free interpretation of the term “main complaints” encourages us not to go too far with an analysis based on dubious information: in order for a rigorous comparison to be made, it is essential that states use the same criteria. The rewording of the scheme for the next round will probably enable more reliable data to be obtained. It will be interesting to see first whether or not the greater reliability confirms the possibilities presented above. The analysis will then have to go further; it will be possible to assess the relevance of quality standards in the light of the criteria set out by the European Court of Human Rights for the assessment of the reasonableness of length of proceedings⁶⁵; the most frequent grounds of complaint should be related to whether or not there are quality standards in order to clarify the role of the latter.

2.3.1.3. Disciplinary proceedings

The number of complaints lodged against enforcement agents may seem to be a useful indicator. It should, however, be viewed with extreme caution for two reasons.

Firstly, the number of complaints is to some extent increased by proceedings that have nothing to do with breaches of discipline (proceedings concerning the principle of the enforcement itself, the principle of the court decision, proceedings to apply for postponement of enforcement and payment): in order to know the number of purely disciplinary proceedings, it is therefore crucial to subtract such extraneous “noise” from the total number of proceedings⁶⁶. It is not certain that all the member states were able to do this.

This may explain why so little information is available about the number of disciplinary proceedings. Only seven states were able to provide complete

indicators (Albania, Estonia, Finland, Hungary, Ireland, Poland and Turkey) and 11 states fragmentary indications (Austria, Azerbaijan, Cyprus, Czech Republic, Italy, Lithuania, Luxembourg, Poland, Portugal, Russian Federation and Slovenia).

Secondly, as the UIHJ recalls, disciplinary proceedings and efficiency of services are not synonymous: *“Efficiency is above all a question of resources, human, technical and, above all, procedural resources to enable court decisions to be enforced. The best professional in Europe in his or her particular field, whether, judge, lawyer, clerk of the court, notary or bailiff, will not be efficient if the tools at his or her disposal are outdated or so cumbersome and inappropriate as to make it impossible to work efficiently”*⁶⁷.

While the figures should therefore be treated with caution, it is nonetheless possible to draw a number of tentative conclusions:

We can relate the proceedings for breach of professional ethics, professional inadequacy and criminal offence (question 117) with the presence of quality standards (question 112) (see Appendix 20 for details).

The proportion of states with proceedings for breach of professional ethics is higher in member states that do not have quality standards; these findings are not surprising: the concept of professional ethics is sometimes difficult to apprehend in practice and the existence of quality standards may make it possible to avoid certain involuntary bad habits likely to lead to proceedings.

On the other hand, the proportion of states with proceedings for professional inadequacy is higher in member states that do have quality standards; this is not surprising either: where they exist, quality standards set the standards that may be used to justify proceedings when the objective is not reached.

Lastly, the proportion is the same with respect to proceedings for a criminal offence. This finding is more surprising and is worth comparing with our tentative conclusion that states with quality standards appear to have more complaints by users for unlawful practices (see Part Two, A. 2.3.1.3. Relevance of national quality standards to complaints). Two main hypotheses can be noted here. The first is that the question about the main grounds of complaints was badly worded; the findings resulting from it do not reflect the reality according to which the proportion of complaints for unlawful practices is identical whether or not there are quality standards (in this case, the new wording of the question will correct this error in the next round). The second hypothesis is to suppose, on the contrary, that the question on the main grounds of complaints produced reliable data. An attempt then has to be made to understand why quality standards would have influenced the number of complaints lodged for unlawful practices (causing the number of complaints to rise) but not influenced at all the number of proceedings. How can it be explained that not one of the new complaints by users resulted in disciplinary proceedings? Since only the proportion of complaints is higher in states with quality standards (the proportion of proceedings remaining the

same), it would have to be concluded that no action is taken with respect to the remaining complaints because they are manifestly without foundation or fall victim to professional solidarity. The first hypothesis seems more probable.

If the replies of the seven states that were able to quantify the number of disciplinary proceedings are considered (question 117), three of them consider professional inadequacy the most frequent ground of disciplinary proceedings (Albania, Estonia, Poland), two consider it to be breach of professional ethics (Finland, Hungary), while one state considers it to be a criminal offence (Turkey); Ireland had no disciplinary proceedings in 2004 (see Appendix 21 for details).

Obviously, the sometimes large number of proceedings in a particular country has to be placed in relation to the number of enforcement agents working in the country. With respect to the seven states which completed the questionnaire exhaustively (to which should be added Slovakia, that gives the total number of proceedings in 2004 in its appendices):

Member state	Number of proceedings in 2004 (question 117)	Number of enforcement agents (question 106)	Percentage
Albania	14	114	12.3
Estonia	11	51	21.6
Finland	3	758	0.4
Hungary	42*	193	21.8*
Ireland	0	40	0
Poland	193	590	32.7
Slovakia	32	262	12.2
Turkey	501	1113	45

* The total number of proceedings indicated by Hungary does not correspond to the sum of the different possible types of proceedings that it indicated elsewhere. This figure is therefore uncertain.

Prudence is needed in relation to any idea of placing countries in any kind of order: the larger or smaller number of proceedings – including in relative terms compared with the number of enforcement agents working – can in no case be interpreted as a lack of competence or honesty on the part of enforcement agents, since the number of proceedings may equally well be an indication of a society’s higher level of litigiousness or simply of greater zeal or suspicion on the part of disciplinary authorities. The only relevant comparison would be a long-term study of each state.

2.3.2. Disciplinary measures against enforcement agents

The number of disciplinary measures against enforcement agents cannot be considered a sufficient indicator of the efficiency of the system, any more than can the number of proceedings. A large number of measures in a state – including in relation to the number of enforcement agents working – may

equally well reflect a society's higher level of litigiousness or simply greater severity.

While the figures should therefore be treated with caution, it is nonetheless possible to draw a number of tentative conclusions. Few states have data on the number of measures: only 16 states were able to provide qualitative and quantitative indicators⁶⁸; 15 others were able to give indications as to the existence of disciplinary measures but without being able to quantify them⁶⁹, others still (Belgium, Croatia, Denmark, Norway and Slovenia) stated directly that they were unable to provide such data.

If the replies of the 16 states that were able to quantify the number of disciplinary measures are considered (question 117), the majority of them (9 out of 16) consider a reprimand to be the most frequent measure (Albania, Azerbaijan, Czech Republic, Italy, Moldova, Poland, Portugal, Russian Federation, Turkey); the second most frequent is a fine (3 out of 16: Estonia, Hungary, Romania); next come dismissal (Lithuania) and suspension (Serbia). Two other states (Austria and Finland) report that other types of measure are most frequent.

As with disciplinary proceedings, the number of disciplinary measures in a particular country has to be placed in relation to the number of enforcement agents working in the country. Thus, for the 16 countries that completed the questionnaire exhaustively:

Member state	Number of sanctions in 2004 (question 117)	Number of enforcement agents (question 106)	Percentage
Albania	20	114	17.5
Austria	3	369	0.8
Azerbaijan	9	400	2.3
Czech Republic	4	553	0.7
Estonia	11	51	21.6
Finland	3	758	0.4
Hungary	21	193	10.9
Italy	36	5,366	0.7
Lithuania	2	124	1.6
Moldova	25	304	8.2
Poland	203	590	34.4
Portugal	13	486	2.7
Romania	8	333	2.4
Russian Federation	3,635	18,625	19.5
Serbia	3	n/a	n/a
Turkey	87	1,113	7.9

The figures for proceedings and measures in 2004 do not necessarily correspond because of the proceedings that were not followed by a

disciplinary measure and because proceedings begun in one year may be decided the following year.

For these reasons, the only relevant comparison would be a long-term study of each state.

B. Efficiency of enforcement measures

1. Enforcement timeframe as an indicator of efficiency

1.1. Reasonable timeframe for enforcement

1.1.1. Determination of enforcement timeframe

The enforcement procedure is a crucial stage in the satisfaction of the rights confirmed by a court. In the absence of guarantees of speedy and efficient enforcement, the rights of access to the courts and to a fair trial would be meaningless. According to the case-law of the European Court of Human Rights, the enforcement of the judgement or decision of any court must be considered an integral part of the “trial” in the meaning of Article 6 of the European Convention⁷⁰. This presupposes that enforcement procedures enjoy all the procedural guarantees of Article 6, including speediness⁷¹.

The requirement to enforce judgments within a reasonable time is not studied in-depth in the 2006 CEPEJ Report⁷². Nevertheless, the data gathered by the CEPEJ makes it possible to identify certain trends in legislation and the judicial practices of member states.

1.1.1.1. Concept of “enforced case”

No study of enforcement timeframes⁷³ is possible without understanding what states mean by the concept of “enforced case”. At what point is the enforcement procedure considered to be complete? The concept of “enforced case” is a key-concept for the foreseeability of the enforcement timeframe, assessment of the enforcement flow and the determination of enforcement rates.

The Evaluation Scheme does not contain a question that makes it possible to know when the state considers a case to have been enforced. It would be desirable for the next round of the CEPEJ evaluation of judicial systems to study whether or not there are disparities in the legislations of member states concerning the determination of the beginning and the completion of enforcement.

This would make it possible to measure the capacity of legal systems, to evaluate the speed of enforcement procedures and to determine the actual proportion of cases in which claimants’ claims had been satisfied.

1.1.1.2. Deadline or case-by-case approach?

The CEPEJ report pays special attention to the ability of national systems to measure the timeframes of enforcement procedures for civil and administrative cases (question 115). According to the data gathered, 23 states or entities say they have a system enabling them to measure the timeframes of enforcement in civil cases: 22 states or entities have specific methods for calculating timeframes in the administrative field.

Such data are extremely useful because they make it possible to determine how many member states throughout the Council of Europe are able to evaluate enforcement timeframes. However, the wording of question 115 meant that some very important information was not forthcoming. Firstly, the data gathered does not cover the question as to the methods member states use to measure the total enforcement timeframe or the timeframe of a particular enforcement measure.

The information provided by some member states does, however, shed some light on this question.

The standard laid down by the ECHR according to which a court decision should be enforced within a reasonable time has been “transposed” to the legislation of several member states⁷⁴. But, apart from recognising this procedural change, legislative approaches differ. Two variants can be identified:

The first approach is clearly a minority one. It consists of setting, by law or through a regulatory provision, a sort of deadline for the enforcement procedure⁷⁵. In these states, legislation lays down a precise deadline for the enforcement of court decisions in particular cases concerning the interests of vulnerable people (i.e. cases concerning maintenance payments; cases concerning the defence of the rights and interests of minors; compensation for harm caused by death, personal injury or other damage to health)⁷⁶ or for summary proceedings. German legislation provides a practical example of this: it sets a maximum timeframe of one month for the enforcement of an emergency decision⁷⁷.

The second approach consists of imposing a reasonable time for enforcement and leaving determination of the timeframe to the judge's discretion⁷⁸. The legislation of Romania, which has recently been reformed⁷⁹, provides an illustration of this: first instance decisions in commercial cases are immediately enforceable without any other formality. As enforcement cannot be suspended by appeal, if the debtor does not of his or her own free will put the decision into effect within the deadline set in the decision, the enforcement agent immediately undertakes forced enforcement. The timeframe, laid down by the court that issued the judgment on the merits varies according to the type of authority to enforce issued: 1, 5, 10 or 15 days.

The reform of the Code of Procedure in Romania is a remarkable legislative measure aimed at making flexibility of enforcement automatic⁸⁰. In general, flexibility seems to be the key-concept for calculating enforcement timeframes. The concept of deadline for enforcement now seems outdated; its use should be exceptional and reserved for specific procedures⁸¹.

Each case is unique and the timeframe for its enforcement depends on a number of factors that are out of the enforcement agent's control. These factors include, firstly, the defendant's willingness to comply with enforcement; secondly, the efficiency of the action depends upon the defendant's solvency. These two variables are not in the enforcement agent's control. For this reason, most member states seem not to wish to impose a deadline for enforcement.

Conversely, the "reasonable time" formula, leaves the enforcement agent a certain margin of appreciation enabling the enforcement timeframe to vary according to the nature of the action and the behaviour of the parties⁸². Nevertheless, the principle of certainty of the law requires that the enforcement timeframe should be not only reasonable but foreseeable by the user. In order for this to be the case, the assessment of the enforcement timeframe should be carried out according to precise criteria.

1.1.1.3. From reasonable time to foreseeable time

What are the criteria for calculating the "reasonable time" of enforcement? Unfortunately, the data gathered by the CEPEJ provides no information on this point, as the scheme did not contain a precise question on criteria for assessing the enforcement timeframe.

It should be noted in this connection that the legislation of some member states lays down a general rule requiring judicial proceedings to be completed within a reasonable time (question 21)⁸³. For example, Moldovan legislation requires civil⁸⁴ and criminal⁸⁵ cases to be dealt with within a reasonable time, at the same time providing judges with precise criteria for determining this timeframe. These criteria, which are the same for civil and criminal cases, essentially repeat the consistent case-law of the ECHR: the complexity of the case, the conduct of the parties to the case, the conduct of the court⁸⁶. The effort of the Moldovan legislator to provide national judges with a tool for determining the length of proceedings on a case-by-case basis is remarkable because it guarantees flexibility and an individual approach to each case and determines the judge's margin of appreciation using intelligible criteria. There is no obvious reason why the same approach should not be adopted by member states in relation to enforcement of court decisions. It is highly desirable for national legislators to impose a reasonable timeframe for the enforcement procedure by establishing clear and precise criteria for calculating that can vary as the need arises according to the nature of cases and the type of action required.

In order to guarantee that the enforcement timeframe is foreseeable for users, the fact that the efficiency of enforcement depends largely on the defendant's conduct and solvency must be taken into account. Unforeseeability is therefore inherent in any enforcement process. According to the defendant's conduct and solvency, enforcement may require one or more enforcement measures. For this reason, the foreseeability of the timeframe does not go beyond a single enforcement measure. In the light of these considerations, it seems more relevant to evaluate the foreseeable timeframe of the next enforcement measure than to evaluate the timeframe for the whole enforcement process. These considerations have been taken into account by the German legislator in the recent reform of the Federal Enforcement Act⁸⁷. The new paragraph 25, sub-paragraph 3, of the *Exekutionsordnung* lays down a precise timeframe of four weeks within which the enforcement agent must carry out the first enforcement measure⁸⁸.

1.1.2. Assessment of the foreseeable enforcement timeframe

1.1.2.1. Systems measuring the timeframe of enforcement procedures

With respect to the assessment of foreseeable timeframes of the various enforcement measures, the CEPEJ report pays particular attention to setting up statistical systems measuring the timeframe of the enforcement of decisions (question 115).

The information gathered by the CEPEJ shows that specific methods of assessing enforcement timeframes are not widespread among member states⁸⁹. Only 23 countries or entities (i.e. 49% of the member states that replied to the question) have a system for evaluating the enforcement timeframe in civil cases⁹⁰.

The proportions are comparable for administrative cases: only 22 countries or entities (i.e. 47% of the member states that replied to the question) have such systems for this type of case⁹¹.

In view of the importance of the foreseeability of the enforcement timeframe for users' certainty of the law, member states should be encouraged to introduce statistical databases accessible to users that enable the timeframe of the various possible enforcement measures to be calculated. The statistical systems should enable the average timeframe for each enforcement measure possible under domestic law to be calculated (for example, attachment of salary, attachment of bank accounts, attachment of a vehicle). Such databases could be compiled in collaboration with enforcement agents.

The existence of a centralised institution responsible for gathering statistical data certainly facilitates the establishment and updating of a statistical database on the number of decisions enforced and the timeframe of the various enforcement measures. It should be noted in this connection that in

most member states the conditions for setting up such a database already exist. Indeed, 43 countries or entities already have a centralised institution responsible for gathering statistical data. Thirty-two of those 43 states have a regular monitoring system of court activities concerning the length of proceedings (question 52).

1.1.2.2. Duty to inform users of the foreseeable timeframe

Setting up a database enabling the approximate calculation of the timeframe of the various enforcement measures would make it possible to inform users as to the foreseeable timeframe of the procedure. Study of the CEPEJ data shows that a very small proportion of member states has adopted provisions concerning informing users as to the timeframe of procedures: only six states or entities (Finland, France, Georgia, Latvia, Moldova, Greece) of the 47 member states that replied to the question establish a legal duty to inform parties of the foreseeable timeframe of the procedure (question 21).

The detail of the replies concerning civil cases shows that 23 states have systems measuring the timeframes of enforcement procedures (question 115) and that, of these, only two establish a legal duty to inform parties of the foreseeable timeframe of judicial proceedings concerning them⁹² (question 21).

The proportion is almost the same with respect to administrative cases, where only three states out of 22 establish such a duty⁹³. (Questions 115 & 21)

Member states should be encouraged to adopt legislative provisions or regulations guaranteeing users' right to information about the timeframes of procedures and, in particular, about the foreseeable enforcement timeframe. The duty to inform the parties about the foreseeable timeframe of the enforcement procedure should be understood as a duty that is the corollary of the possibility of measuring timeframes. This would increase the transparency and foreseeability of enforcement timeframes and help to enhance the certainty of the law⁹⁴.

1.1.3. Guaranteeing respect of the enforcement timeframe

How is respect of the reasonable timeframe for enforcement procedures to be guaranteed in national systems? The data gathered by the CEPEJ provides very little information on this point (see question 113).

The questions of guarantees against excessive enforcement timeframes is related to the existence in domestic law of a device enabling users to rely on the disciplinary liability of enforcement agents and to lodge a complaint in order to receive compensation.

1.1.3.1. Liability of enforcement agents

The question of respecting timeframes is related to the very quality of enforcement services in member states. In some, where enforcement agents are civil servants (Finland, Germany, Norway, Sweden), it is the state itself that guarantees the proper enforcement of court decisions. In these states, the legislation makes provision for several types of appeal in the event of excessive length of enforcement: disciplinary proceedings against the enforcement agent⁹⁵ and appeal to the Ombudsman⁹⁶.

It should be noted in this respect that domestic enforcement measures that are the individual responsibility of the enforcement agent (disciplinary, administrative, criminal as well as pecuniary measures) were welcomed by the representatives of the Council of Europe and the authorities of member states at the Round Table on "Non-enforcement of domestic court decisions in member states"⁹⁷.

It would be extremely useful to study the question of the liability of enforcement agents for failure to respect the enforcement timeframe in member states in the next evaluation round.

1.1.3.2. Complaints procedures and procedures to compensate users for failure to respect the enforcement timeframe

There is no doubt that the excessive length of enforcement procedures constitutes a failure of the judicial system. This being so, failure to respect a reasonable timeframe should open the possibility of lodging a complaint against the enforcement agent in question. For example, German legislation provides that, in the event of failure by the enforcement agent to respect the timeframe imposed, the parties have the right to lodge a complaint for procedural error with the enforcement court (*Exekutionsgericht*)⁹⁸. The legislation of some member states makes provision in this situation for possible compensation, which follows the rules of procedure of the ordinary law (Finland and Sweden) or of a specific procedure (Germany and the United Kingdom). An example of such procedures is provided by the United Kingdom legislation establishing a "dual" complaints mechanism for a system of compensation for users in the event of excessive length of enforcement. The Civil Procedure Rules 1998 (No. 3132), which are in force throughout the territory of the United Kingdom, make provision for appeal and, if necessary, compensation for each enforcement measure whose length is excessively long (see Appendix 21-1).

The CEPEJ report does not specifically establish the complaints procedures for excessive length of enforcement procedure. The findings of the first round show, however, that excessive length is the main reason for user dissatisfaction (question 113). In future, this question would be worth covering specifically in order to study the efficiency of the mechanisms

existing in member states to counter delays in enforcement. At this stage, it already seems relevant to study the general framework of remedies for failings of the judicial system (question 31).

According to the data gathered on this subject (question 31), 44 of the 46 states that replied have a local or national mechanism enabling users to lodge a complaint about the performance of the judicial system. The only exceptions are Armenia and Hungary. Compensation procedures in the event of excessively long proceedings exist in 22 of the 45 states and entities that replied to question 28.

With respect to civil cases (**Table 1**), of the 23 member states with a system for measuring the timeframe of enforcement procedures (question 115), 21 states or entities have procedures enabling users to lodge a complaint about the performance of the judicial system (question 31). On the basis of the premise that in these member states excessive length of the enforcement procedure is considered a failure of the judicial system, the possibility of a judicial remedy seems to guarantee respect of the enforcement timeframe.

And yet, of the 21 states with procedures enabling enforcement timeframes to be measured (question 115) and the timeframe to be guaranteed by a complaints system (question 31), only 11 states give users the possibility of obtaining compensation for excessive length of proceedings (question 28).

Table 1: Complaints procedures and user compensation procedures in civil cases

Q 115	With respect to civil cases, 47 states replied to question 115	Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Norway, Netherlands, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, SM-Montenegro, SM-Serbia, Spain, Sweden, Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine.
	↓	
Q 115	Of those 23/47 states are able to calculate the foreseeable enforcement timeframe in civil cases	Albania, Armenia, Austria, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Germany, Hungary, Iceland, Moldova, Netherlands, Poland, Romania, San Marino, Spain, Slovakia, Sweden, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine
	↓	
Q 31	Of those 21/23 states guarantee users the possibility of complaining if the foreseeable enforcement timeframe is exceeded (supposing that exceeding the foreseeable enforcement timeframe can be considered a failure)	Albania, Austria, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Germany, Iceland, Moldova, Netherlands, Poland, Romania, San Marino, Slovakia, Spain, Sweden, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine
	↓	
Q 28	Of those 11/21 states give users the possibility of obtaining compensation for excessive length of proceedings	Austria, Azerbaijan, Bulgaria, Iceland, Poland, Slovakia, Spain, Sweden, UK-England/Wales, UK-Northern Ireland, UK-Scotland.

The proportions are comparable for administrative cases (**Table 2**).

Firstly, of the 23 member states that make provision for a system for measuring enforcement timeframes in administrative cases (question 115), 20 have procedures enabling users to lodge complaints about the performance of the judicial system (question 31).

Secondly, with respect to the possibility of compensating users who are victims of excessive length of the enforcement procedure, of the 20 states where enforcement timeframes can be measured (question 115) and the timeframe is guaranteed by a complaints procedure (question 31), only 10 states enable users to obtain compensation in the event of excessive length of the procedure (question 29).

Table 2: Complaints procedures and user compensation procedures in administrative cases

<p>With respect to administrative cases, 45 states replied to question 115</p> <p style="text-align: center;">↓</p>	<p>Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Norway, Netherlands, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, SM-Montenegro, SM-Serbia, Spain, Sweden, Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine</p>
<p>Q 115b</p> <p>Of those 22/45 states are able to calculate the foreseeable enforcement timeframe for administrative cases</p> <p style="text-align: center;">↓</p>	<p>Albania, Armenia, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Poland, Romania, Slovakia, Spain, Sweden, UK-England/Wales, UK-Scotland, Ukraine</p>
<p>Q 31</p> <p>Of those 20/22 states guarantee users the possibility of complaining if the foreseeable enforcement timeframe is exceeded (supposing that exceeding the foreseeable enforcement timeframe can be considered a failure)</p> <p style="text-align: center;">↓</p>	<p>Albania, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Iceland, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Poland, Romania, Slovakia, Spain, Sweden, UK-England/Wales, UK-Scotland, Ukraine</p>
<p>Q28</p> <p>Of those 10/20 states give users the possibility of obtaining compensation for excessive length of proceedings</p>	<p>Azerbaijan, Bulgaria, Iceland, Luxembourg, Poland, Slovakia, Spain, Sweden, UK-England/Wales, UK-Scotland</p>

Thus, in both civil and administrative cases, of the total number of member states able to ensure the foreseeability of enforcement timeframes and provide legal guarantees that those timeframes will be respected, only a very small proportion of states enable victims of delays in the proceedings to receive compensation.

The possibility for users to obtain appropriate compensation in the event of excessive length of the enforcement procedure is a guarantee of respect of reasonable time. The introduction of a system of compensation for victims at the state's expense in order to compensate for delays in enforcement has various advantages: it may lead to tighter control of respect of the quality standards with which enforcement services must comply; because of this it may become a guarantee of increased user confidence in the judicial system⁹⁹. States should be encouraged to introduce compensation systems for excessive length of proceedings, including enforcement, as a measure accompanying the general approach of proper administration of justice.

1.1.3.3. How complaints for failure to respect the enforcement timeframe are dealt with

A mechanism enabling users to lodge complaints about the performance of the judicial system and to obtain compensation is not in itself sufficient to guarantee respect of enforcement timeframes. Such procedures also need to be effective and able to remedy delays in enforcement.

The CEPEJ report brings out one of the key-indicators of the efficiency of complaints procedures: their speediness (question 32). Some national systems have systems for calculating foreseeable enforcement timeframes (question 115) and guarantee users that this timeframe will be respected by enabling them to lodge a complaint (question 31). The speediness of such complaints procedures nonetheless depends on the legal guarantees provided for in the domestic legislation of member states, in particular the existence of positive duties to respond to a complaint (question 32) and to deal with it within the time laid down (question 32).

The following tables show the general trend with regard to the efficiency of complaints procedures concerning the performance of the judicial system in civil cases (**Table 3**) and administrative cases (**Table 4**) in the member states that replied to questions 31, 32 and 115.

Table 3: The efficiency of complaints procedures concerning the performance of the judicial system in civil cases

Q 115	With respect to civil cases, 47 states replied to question 115	Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Norway, Netherlands, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, SM-Montenegro, SM-Serbia, Spain, Sweden, Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine.
	↓	
Q115	Of those 23/47 states are able to calculate the foreseeable enforcement timeframe in civil cases	Albania, Armenia, Austria, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Germany, Hungary, Iceland, Moldova, Netherlands, Poland, Romania, San Marino, Spain, Slovakia, Sweden, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine
	↓	
Q 31	Of those 21/23 states guarantee users the possibility of complaining if the foreseeable enforcement timeframe is exceeded (supposing that exceeding the foreseeable enforcement timeframe can be considered a failure)	Albania, Austria, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Germany, Iceland, Moldova, Netherlands, Poland, Romania, San Marino, Slovakia, Spain, Sweden, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine
	↓	
Q 32	Of those 13/21 states have mechanisms guaranteeing the efficiency of the complaints procedure for exceeding the foreseeable enforcement timeframe (timeframe for responding and timeframe for processing)	Austria, Azerbaijan, Bulgaria, Cyprus, Iceland, Moldova, San Marino, Slovakia, Spain, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine

Table 4: The efficiency of complaints procedures concerning the performance of the judicial system in administrative cases

<p>With respect to administrative cases, 45 states replied to question 115</p> <p style="text-align: center;">↓</p>	<p>Albania, Andorra, Armenia, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Norway, Netherlands, Poland, Portugal, Romania, Russian Federation, San Marino, Slovakia, Slovenia, SM-Montenegro, SM-Serbia, Spain, Sweden, Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine</p>
<p>Q 115b Of those 22/45 states are able to calculate the foreseeable enforcement timeframe for administrative cases</p> <p style="text-align: center;">↓</p>	<p>Albania, Armenia, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Poland, Romania, Slovakia, Spain, Sweden, UK-England/Wales, UK-Scotland, Ukraine</p>
<p>Q 31 Of those 20/22 states guarantee users the possibility of complaining if the foreseeable enforcement timeframe is exceeded (supposing that exceeding the foreseeable enforcement timeframe can be considered a failure)</p> <p style="text-align: center;">↓</p>	<p>Albania, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Iceland, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Poland, Romania, Slovakia, Spain, Sweden, UK-England/Wales, UK-Scotland, Ukraine</p>
<p>Q 32 Of those 12/20 states have mechanisms guaranteeing the efficiency of the complaints procedure for exceeding the foreseeable enforcement timeframe (timeframe for responding and timeframe for processing)</p>	<p>Azerbaijan, Bulgaria, Cyprus, Iceland, Latvia, Lithuania, Moldova, Slovakia, Spain, UK-England/Wales, UK-Scotland, Ukraine</p>

The data contained in these tables shows that only a small proportion of member states guarantee the efficiency of complaints procedures in either civil cases or administrative cases.

1.1.4. Factors fostering the speed and flow of enforcement

Since no specific question was included in the scheme, the CEPEJ report provides very little useable data enabling the factors fostering the speed and flow of enforcement to be identified.

Questions 48 and 49 concern the level of computerisation of court work. The information gathered through them has enabled study as to whether ease of communication within the courts and between the courts and the parties influences the speed of proceedings.

1.1.4.1. Level of computerisation of court work

With the exception of Armenia and Serbia, the level of computerisation of the courts is generally high (45 states say that computer facilities are generally available).

As regards communication within the courts, the majority of national correspondents said they were fully equipped. The computerisation of judges' working documents facilitates the transfer of files and information during the enforcement phase.

As regards communication between the court and the parties, the number of countries that have fully equipped the courts with electronic forms, websites and other communication facilities is not as high. Member states should be encouraged to make their courts more easily accessible to users through electronic means at every stage of proceedings.

Of the 23 states able to measure enforcement timeframes (question 115), 22 say that their courts have computer facilities (question 48), which should make it possible to speed up the enforcement procedure and facilitate contacts with the protagonists.

1.1.4.2. Flow factors not covered in the report

The supplementary research conducted to identify the elements with a positive effect on the efficiency of the enforcement procedure enables us to draw up a list of particularly important factors on which a working group could work under the authority of the CEPEJ (CEPEJ-GT-EXE). The efficiency criteria identified concern either the law or human factors.

1) Flow factors concerning the legal context of enforcement

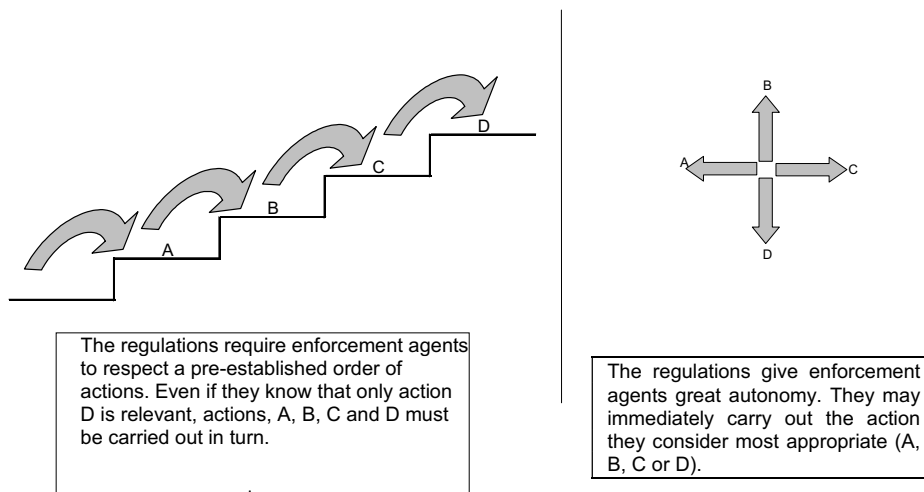
a. Degree of autonomy given to enforcement agents

Enforcement agents' autonomy varies according to how their activities are controlled: the role of the authority under which they work is crucial here. Does the authority conduct *a priori* (initiating role) or *a posteriori* (disciplinary role) control? Usually, the enforcement agent's autonomy is in inverse proportion to the degree of the judge's involvement in the procedure: in systems where the legislation requires the enforcement agent to seek the authorisation of a judge for each measure (*a priori* initiating role) the enforcement procedure seems to require more time than in systems that allow the enforcement agent greater autonomy (see Figure 5). The data gathered by the CEPEJ during this round does not enable this observation to be verified, however: this question should be the subject of more specific study, perhaps conducted by a working group specialised in enforcement.

b. Flexibility of enforcement

The speed of the completion of the enforcement procedure is predetermined by the flexibility of the legal framework. An enforcement system that enables agents themselves to choose the procedural measure most appropriate to the particularities of the case probably guarantees greater resourcefulness.

Figure 5: Flexibility of enforcement



c. Access to information about the defendant's assets

The possibility of the enforcement agent having direct access to information about the defendant's assets makes the completion of the enforcement measure speedier¹⁰⁰. In view of the significant differences between the legislations of member states¹⁰¹, a specific study is needed to verify this observation.

d. Provisional and protective measures

A study that showed whether or not all national systems offer the possibility of provisional and protective measures would also be useful. Their speediness means that such measures respond well to the interests of users of justice¹⁰².

e. Limiting deadlines for challenging enforcement measures

It should be possible to challenge enforcement measures in order to guarantee fair enforcement. This possibility should not, however, paralyse enforcement and should not have the effect of suspending the guarantees in place in this respect.

It would be useful to study the question of challenging enforcement from the point of view of reasonable time. Do national systems ensure that any initiative to challenge is taken speedily? It should be noted here that in the countries of northern Europe the deadline is no more than 15 days¹⁰³.

f. Enforcement procedures against the state and its entities

Study of the case-law of the European Court of Human Rights reveals an important structural problem: non-enforcement or excessively lengthy enforcement of court decisions against states¹⁰⁴. In member states where this is a problem, the cumbersome nature of enforcement procedures is the result of extravagant rules of procedure applicable where the state or one of its entities is the defendant. In these conditions it is particularly difficult to attach state assets.

It is of particular interest to the Council of Europe to resolve this problem¹⁰⁵. Measures aimed at the harmonisation, simplification and transparency of specific enforcement measures, making the enforcement of court decisions automatic, the liability of the state, as well as improving budget estimates are now being studied in the countries concerned¹⁰⁶.

2) "Human factors" in flow

The motivation of the enforcement agent, the possible resistance of the defendant and the duties of third parties are the three main "human factors" influencing enforcement timeframes.

a. The motivation of the enforcement agent

From an economic point of view, the enforcement agent is a provider of services. In member states in which enforcement services are privatised, it is therefore in the nature of things that the enforcement agent's activities are, like other economic activities, sensitive to financial considerations. In some countries (Belgium, Bulgaria, France, Luxembourg and the Netherlands, for example), legislation enables claimants to pay enforcement agents according to the result of their activities. Such payment takes the form of a supplementary fee, either a fixed sum or a percentage of the sums recovered, payable to the enforcement agent in order to ensure the performance and/or speediness of his or her action. The legislations that make provision for such a system give the claimant the possibility of

speeding up enforcement in return for extra payment. In these systems the enforcement timeframe becomes an economically quantifiable and negotiable concept and the extra speed of the action is reflected in the form of cost.

The possibility of financial encouragement of the enforcement agent's action probably has a positive effect on enforcement flow and the foreseeability of the timeframe of each measure. In these conditions, however, there is a risk that speeding up the procedure will be the privilege of the wealthiest users.

b. Possible resistance of the defendant

The speed of enforcement often depends on “the freshness of the case”, which requires that the judgment to be enforced is transmitted speedily between the judge and the enforcement agent¹⁰⁷ in order to avoid the information in the case file changing with lapse of time.

However, even if the communication between judge and enforcement agent is efficient, the defendant may be tempted to organise some form of resistance. For example, the mobility of the defendant may sometimes result in unforeseen delays: for example, in member states where the enforcement agent's activities are restricted to a particular area, the defendant may remove the case from his or her jurisdiction simply by changing his or her address, necessitating transfer of the case, which will inevitably delay satisfaction of the claimant. In such states, the possibility that the defendant will change address should, because it may hamper the flow of the procedure, be taken into account as a factor in the foreseeability of enforcement timeframes. The claimant should be informed of this in due time. In order to discourage resistance by the defendant, the legislation of some states lays a duty on the defendant to cooperate with enforcement, failure to do so being a criminal offence¹⁰⁸.

The extent of the defendant's duty to cooperate during enforcement (i.e. the duty to declare assets) and the penalties for failure to do so should be the subject of a more specific study.

c. Duties of third parties

The speediness of enforcement measures also depends on the degree of cooperation by third parties. Through the duties they lay on third parties (for example, regarding bank confidentiality, property, vehicle, ship and tax registers), member states put in place legislation that tends to favour the situation of a claimant or a defendant. The enforcement flow is strengthened where enforcement agents enjoy the active cooperation of third parties.

1.2. Notification timeframe

For the purposes of this study, it is interesting to compare notification timeframes in member states (question 116) and the extent to which the courts are equipped with computer facilities (question 49).

The research team selected factors that potentially affect the speed of notification procedures:

- internet connection,
- word-processing software,
- electronic forms,
- a website,
- other facilities (see Appendix 22 for details).
-

Analysis of the data shows that in the states where 100% of courts are equipped with computer facilities, electronic means of communication are more “established” in the “internal” relations of the judicial system (within a court or between courts) than in a court’s external relations (communication with users). The reverse is the case in states where less than 10% of courts are equipped with computer facilities: the majority of member states that replied give priority to setting up communications with users¹⁰⁹. Does such “openness” of the courts to potential users foster notification of parties within the shortest possible time?

With respect to the court’s communication with users, it is notable that the level of use of electronic forms is relatively low in member states where 100% of courts are equipped. The highest proportion of states where all courts have electronic forms (46%) is in the first group, with the shortest notification timeframe¹¹⁰. In the states where less than 10% of courts have electronic forms, 46% are in the first group, with a notification timeframe of one to five days (Armenia, Bosnia-Herzegovina, France, Germany, Slovakia, Slovenia), 63% are in the second group with a notification timeframe of six to ten days (Albania, Azerbaijan, Belgium, Cyprus, Spain). However, it is not possible to establish a decisive link between availability of electronic forms and speediness of notification procedures. It can, however, be observed that the use of electronic forms for the notification of parties is not yet common practice in courts.

The same observation can be made regarding other communication facilities.

It would be useful to study the question of the use of electronic means of communication for notification of the parties by the courts of member states¹¹¹.

2. The enforcement rate as an indicator of efficiency

2.1. Recovery of fines in criminal cases

2.1.1. Studies to evaluate the effective recovery rate of fines in criminal cases

Only 14 of the 40 states that replied to question 119 have studies to evaluate the effective recovery rate of fines in criminal cases¹¹²: this means that

barely 35% of member states say they are able to evaluate the efficiency of their systems for recovering fines in criminal cases and to observe possible failings.

These 14 states gave details of the characteristics of their criminal enforcement systems. Although this information is succinct, it is possible to make one slight observation: data on recovery rates are gathered either by a statistical research institution (Estonia, Sweden, UK-England/Wales) or by an institution specialising in criminal enforcement rates (Finland, France, Ireland, Luxembourg, Malta, Norway, Netherlands). Germany and Sweden mentioned that there were occasional studies and surveys on enforcement rates with respect to fines in criminal cases.

Communication to users of the data gathered appears not to be widespread: only a few states (Finland, Ireland and Malta) say that public databases have been set up.

2.1.2. Studies to evaluate the recovery rate of damages for victims of offences (comparison with systems for recovering fines in criminal cases)

A comparison of the system for recovering fines in criminal cases (question 119) and the system for recovering damages for victims of offences (question 27) seems to show general negligence concerning recovery systems: according to the figures in the report, while 40 of the 47 states have a mechanism for the compensation of victims of offences (question 24), 35 of the 41 states that replied to question 27 say they do not conduct studies to evaluate the recovery rate of damages awarded by the courts. In the final analysis, only 15% of member states (6 of the 40 states that replied to question 24) say they have studies to evaluate the recovery rate of damages for victims of offences¹¹³.

Only four states (France, Malta, Norway, UK-England/Wales) make provision for studies of the effective recovery of both fines in criminal cases (question 119) and damages for victims of offences (question 27) (see Appendix 23 for details).

2.1.3. Complaints about the performance of the judicial system

It is true that 44 of the 46 states that replied to question 31 said there was a national or local mechanism for lodging complaints about the performance of the judicial system (question 31). However, only 12 of those 44 states conduct studies to evaluate the effective recovery rate of fines in criminal offences (question 119).

Such low rates are all the more surprising since 40 of the 46 states that replied (question 51) have an institution responsible for gathering statistics. Given that there are competent bodies, the fact that so few states have the

means of evaluating recovery rates leads to other questions, which will remain unanswered in the absence of the necessary information: is this small proportion the result of technical problems in collecting this type of information? Does it reflect a certain lack of will on the part of member states to ensure regular monitoring of such data, which is often politically sensitive, but nonetheless affects the quality of enforcement services?

2.1.4. Monitoring court activities

The replies to question 52 on monitoring court activities provide no useful information on the recovery rates of fines in criminal cases. In general, this part of the report provides no information on the enforcement phase of court decisions. It would certainly be very useful to broaden question 52 to include the enforcement phase in the scope of the study.

It would be useful to study whether national systems have a regular system for monitoring court activities concerning, in particular:

- the recovery rate for fines imposed by the courts in criminal cases
- the recovery rate for damages awarded by the court to victims of offences
- the recovery rate for debts recognised by the courts.

2.2. Lack of data on civil cases

The scheme does not contain any questions on the recovery rate for debts in civil cases: it would, however, be very useful to include questions in the scheme that would elicit information on the following points:

In civil cases, are there studies to evaluate the effective recovery rates of:

- small debts?
- undisputed debts?
- damages in contractual and non-contractual matters?
- Other pecuniary debts?

Appendix 1

Synthetic tables of states' replies to the evaluation scheme

1. Existence of a judge specifically responsible for the enforcement of court decisions in criminal cases

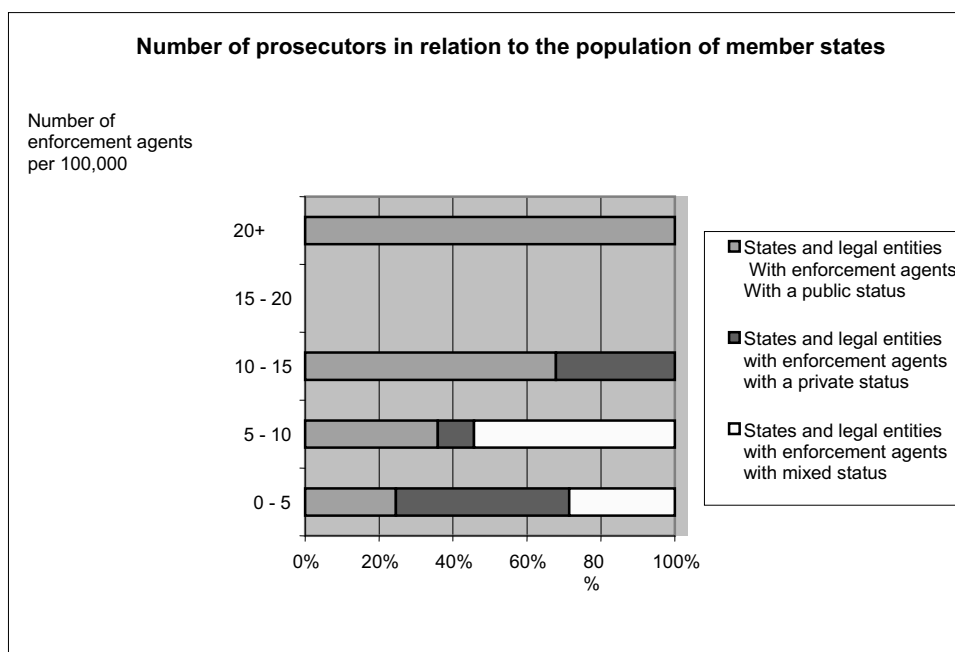
Is there a judge specifically responsible for the enforcement of court decisions in criminal cases? (Question 118)	YES	NO
Member states	Andorra, Austria, Azerbaijan, Bosnia-Herzegovina, Croatia, Czech Republic, Estonia, France, Germany, Hungary, Liechtenstein, Lithuania, Moldova, Monaco, Poland, Portugal, Romania, San Marino, Slovenia, SM-Montenegro, Spain, turkey	Albania, Armenia, Cyprus, Finland, Iceland, Ireland, Italy, Latvia, Luxembourg, Malta, Norway, Netherlands, Russian Federation, Slovakia, Sweden, UK-England/Wales, UK-Scotland, Ukraine
Number of member states	22	18

2. Number of enforcement agents in relation to population

Enforcement agents per 100,000 (question 106)	0 - 5	5 – 10*	10 – 15	15-20	20 +	
States and legal entities with enforcement agents with a public status	Albania, Austria, Azerbaijan, Bulgaria, Georgia, Malta, SM-Montenegro, Turkey, UK-Northern Ireland	Andorra, Germany, Iceland, Italy, Liechtenstein, Moldova, Norway	Finland, Russian Federation, Sweden, Ukraine	-	Cyprus	21
States and legal entities with enforcement agents with a private status	Estonia, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Romania, Slovakia, Slovenia	Monaco	UK-England/Wales	-	-	11
States and legal entities with enforcement agents with mixed status	Ireland, Portugal, UK-Scotland	Belgium, Czech Republic, France	-	-	-	6
Number of states and legal entities	21	11	5	0	1	38

*Armenia did not indicate the status of its enforcement agents at question 106 and could not, therefore, be included in this table, despite its reply to question 106, which indicated between 5 and 10 enforcement agents per 100,000.

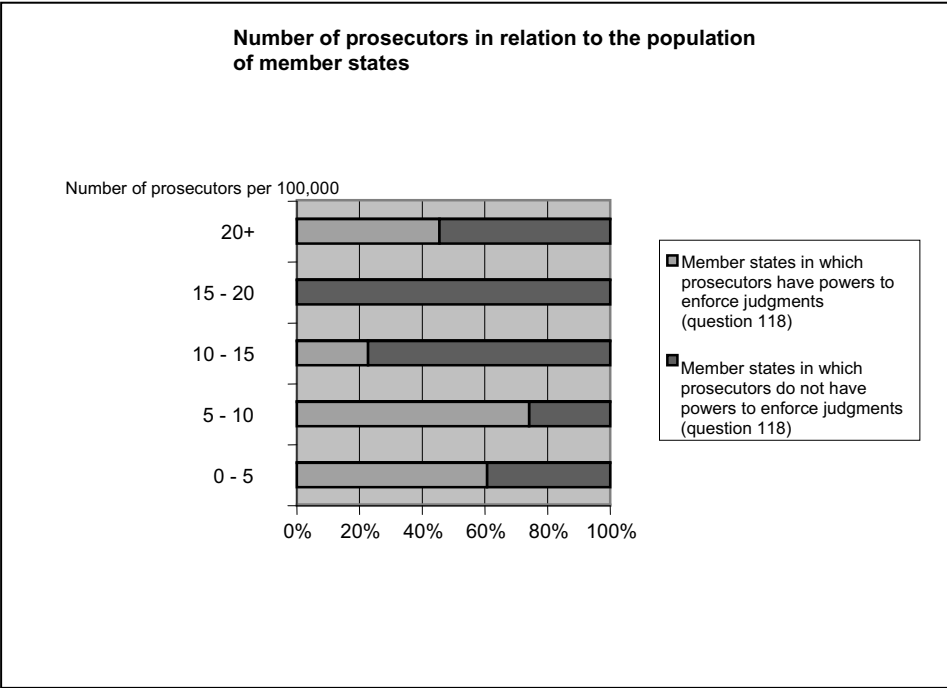
Number of enforcement agents per 100,000 (question 106)	0 – 5	5 – 10*	10 - 15	15 - 20	20+	
States and legal entities with enforcement agents with a public status	9 states (43%)	7 states (33%)	4 states (19%)	-	1 state (5%)	21 states (100%)
States and legal entities with enforcement agents with a public status	9 states (82%)	1 state (9%)	1 state (9%)	-	-	11 states (100%)
States and legal entities with enforcement agents with mixed status	3 states (50%)	3 states (50%)	-	-	-	6 states (100%)
	21	11	5	0	1	38 states



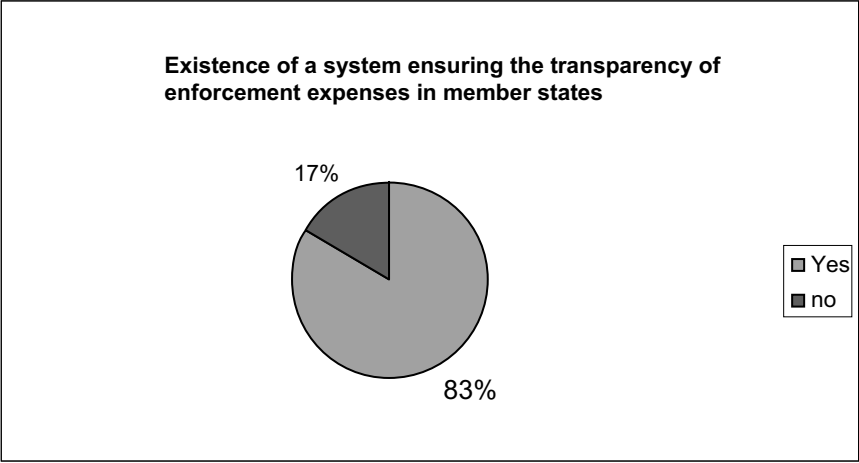
3. Number of prosecutors in relation to the population of member states

Number of prosecutors per 100,000 (question 43)	0 – 5	5 – 10	10 – 15	15 – 20	20+	
States in which prosecutors have powers to enforce judgements (question 118)	France, Italy, Netherlands, Turkey	Albania, Belgium, Germany, Luxembourg	Monaco	-	Lithuania	10 states
States in which prosecutors do not have powers to enforce judgements (question 118)	Andorra, Austria, Azerbaijan, Greece, Iceland, Ireland, Malta, San Marino, Spain	Bosnia-Herzegovina, Finland, Slovenia, Sweden, UK-England/Wales	Croatia, Czech Republic, Denmark, Estonia, Georgia, Hungary, Poland, Portugal, Romania, Serbia, SM-Montenegro, Slovakia	Armenia, Cyprus, Liechtenstein, Norway, UK-Northern Ireland	Latvia, Moldova, Russian Federation, UK-Scotland	35 states
Number of states	13	9	13	5	5	45 states

Number of prosecutors per 100,000 (question 43)	0 – 5	5 – 10	10 – 15	15 – 20	20+	
States in which prosecutors have powers to enforce judgements (question 118)	4 states (40%)	4 states (40%)	1 state (10%)	-	1 state (10%)	10 states (100%)
States in which prosecutors do not have powers to enforce judgements (question 118)	9 states (26%)	5 states (14%)	12 states (34%)	5 states (14%)	4 states (12%)	35 states (100%)
Number of states	13	9	13	5	5	45 states



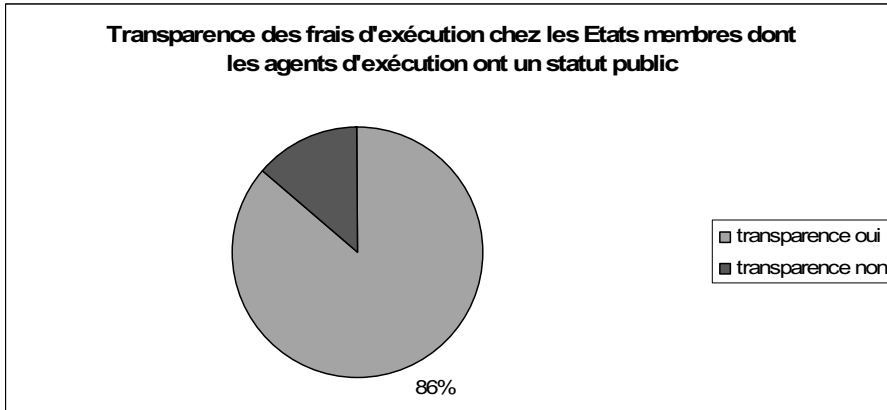
4.



YES: 35 states: Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Liechtenstein, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, SM-Serbia, Sweden, UK-England/Wales, UK-Northern Ireland, UK-Scotland.

NO: 7 states: Greece, Italy, Latvia, Lithuania, Slovenia, Turkey and Ukraine.

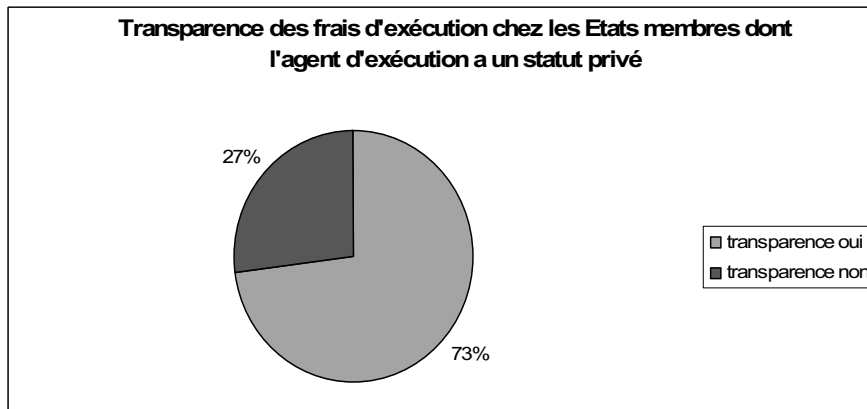
Transparency of enforcement expenses in member states where enforcement agents have a public status



YES: 19 states: Albania, Austria, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Denmark, Finland, Georgia, Germany, Iceland, Liechtenstein, Malta, Moldova, Norway, SM-Serbia, Sweden, UK-Northern Ireland.

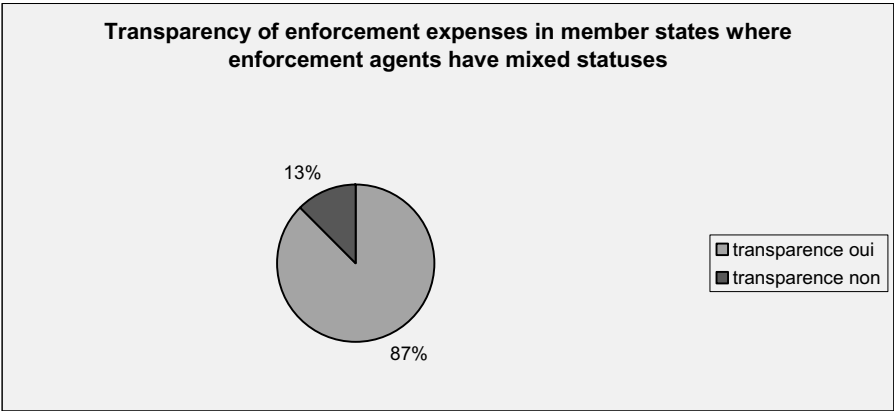
NO: 3 states: Italy, Turkey, Ukraine.

Transparency of enforcement expenses in member states where enforcement agents have a private status



Monaco, Netherlands, Poland, Romania, Slovakia.

NO: 3 states: Latvia, Lithuania, Slovenia.

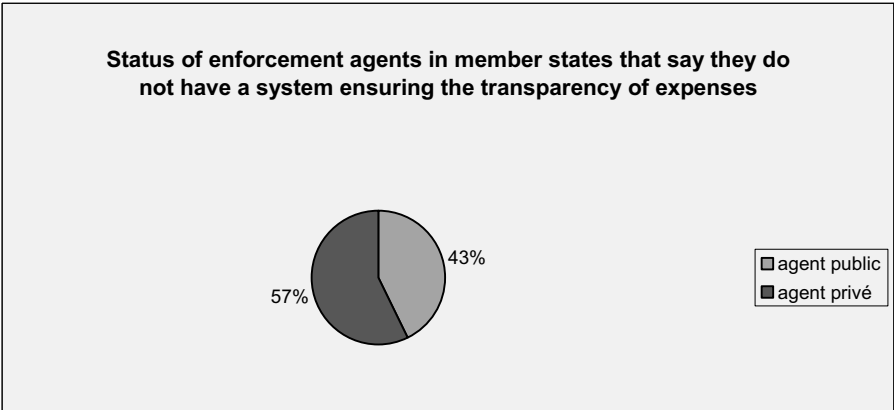


YES: 7 states: Belgium, Czech Republic, France, Ireland, Portugal, UK-England/Wales, UK-Scotland.

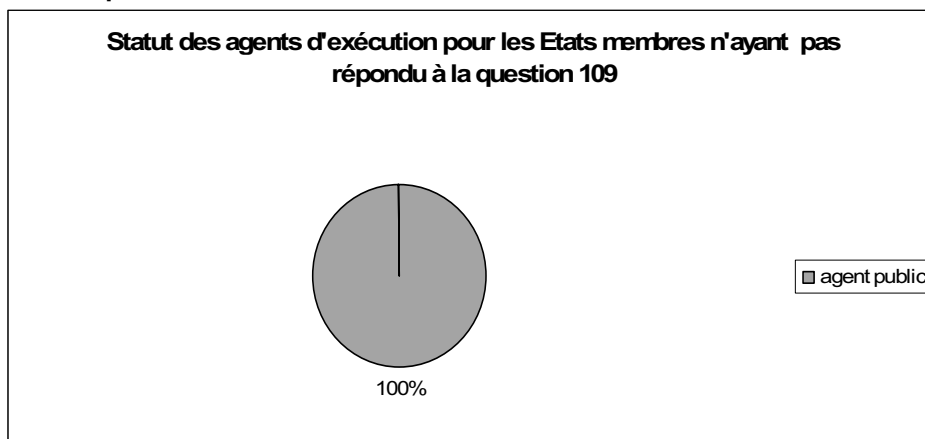
NO: 1 state: Greece.

NB: Armenia could not be taken into account in these data: its representative indicated that there was transparency of enforcement expenses but did not specify the status of enforcement agents.

5.



6. Status of enforcement agents in states that did not reply to question 109



7. Existence of specific initial training or an examination with respect to the status of enforcement agent

		(Question 105)		
		In the state enforcement agents work under ...		
		... a private status	... a public status	... mixed statuses
The state says there is specific initial training or an examination to enter the profession of enforcement agents (question 107)	Yes	10 States	15 States	6 States
	No	1 State	8 States	2 States

		(Question 105)		
		In the state enforcement agents work under ...		
		... a private status	... a public status	... mixed statuses
	Yes	Estonia, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Romania, Slovakia, Slovenia	Albania, Austria, Cyprus, Finland, Georgia, Germany, Iceland, Italy, Malta, Moldova, Russian Federation, Sweden, Turkey, UK-Northern Ireland, Ukraine	Belgium, Czech Republic, France, Portugal, UK-England/Wales, UK-Scotland

	No	Monaco	Andorra, Azerbaijan, Bosnia- Herzegovina, Bulgaria, Croatia, Denmark, Norway, SM-Serbia	Greece, Ireland
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8. The existence of specific initial training or examination for entry to the profession of enforcement agent (comparative study)

		The state says there is specific initial training or an examination to enter the profession of enforcement agent (question 107)	
		Yes	No
The state says there is specific initial training or an examination to enter the profession of lawyer (question 91)	Yes	Albania, Armenia, Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Poland, Portugal, Romania, Russian Federation, Slovakia, Sweden, Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine	Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Denmark, Greece, Ireland, Monaco, Norway, SM-Serbia In all these states, initial training is, however, compulsory to work as a judge or prosecutor (with the notable exceptions of Bosnia-Herzegovina, where such training is optional, and Serbia, where it is only highly recommended.
	No	Germany, Slovenia Training or examination is compulsory in Germany in order to practise as a judge or prosecutor, while it is only highly recommended in Slovenia.	Andorra Training and examination are nonetheless compulsory in order to practise as a judge.
	Yes	30 states	10 states
	No	2 states	1 state

		The state says there is specific initial training or an examination to enter the profession of enforcement agent (question 107)	
		Yes	No
The state says there is specific initial training or an examination to enter the profession of lawyer (question 91)	Yes	30 states	10 states
	No	2 states	1 state

9. Degree of centralisation of professional authorities organising the profession of enforcement agent (question 108)

Degree of centralisation of professional body/ies organising the profession of enforcement agent		Member states	Number of member states
<p>Single authority</p> <p>↑</p> <p>Strong centralisation</p>	National level	Armenia, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Portugal, Romania, Slovakia, Slovenia, Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine	27
	<p>↑</p> <p>Weak centralisation</p>	Regional level	Albania, Austria
<p>Pyramid structure</p> <p>↑</p> <p>↑</p> <p>↑</p> <p>↑</p> <p>↑</p>	Local level	Finland, Norway, SM-Montenegro	3
	National and regional levels	France, Moldova, Poland, Sweden	4
	National and local levels	-	-
	Regional and local levels	-	-
	National, regional and local levels	Azerbaijan, Belgium, Germany, Russian Federation	4

10. Comparison of degrees of centralisation of professional authorities organising the profession of enforcement agent and of lawyer in each member state (in bold, the member states where the degree of centralisation is the same)

Degree of centralisation of professional body/ies	profession of enforcement agent (question 108)	profession of lawyer (question 90)
National level	Armenia, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Portugal, Romania, Slovakia, Slovenia, Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine	Albania, Andorra, Armenia, Croatia, Czech Republic, Denmark, Estonia, Finland, Georgia, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Netherlands, Portugal, Romania, San Marino, Slovakia, Slovenia, SM-Montenegro, Sweden, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine
Regional level	Albania, Austria	Luxembourg
Local level	Finland, Norway, SM-Montenegro	Greece
National and regional levels	France, Moldova, Poland , Sweden	Austria, Bulgaria, Germany, Hungary, Norway, Poland
National and local levels	-	Cyprus, France, Italy, SM-Serbia, Turkey
Regional and local levels	-	Belgium, Bosnia-Herzegovina
National, regional and local levels	Azerbaijan, Belgium, Germany, Russian Federation	Azerbaijan, Ireland, Russian Federation, Spain

11. Centralisation of the professional authorities of enforcement agents as compared with those of lawyers (only for member states that do not have the same level of centralisation)

Member states	Degree of centralisation of professional body/ies concerning enforcement agents (question 108)	Degree of centralisation of professional body/ies concerning lawyers (question 90)	Centralisation of the professional bodies of enforcement agents in relation to those of lawyers
Albania	Reg	Nat.	Less centralised
Andorra		Nat.	
Austria	Reg	Nat&Reg	Minus 1 decentralised level
Belgium	Nat&Reg&Loc	Reg&Loc	Plus 1 more centralised level
Bosnia-Herzegovina		Reg&Loc	
Bulgaria	Nat	Nat&Reg	Minus 1 decentralised level
Croatia		Nat	
Cyprus	Nat	Nat&Loc	Minus 1 decentralised level
Finland	Loc	Nat	Less centralised
France	Nat&Reg	Nat&Loc	More centralised
Germany	Nat&Reg&Loc	Nat&Reg	Minus 1 decentralised level
Greece	Nat	Loc	More centralised
Hungary	Nat	Nat&Reg	Minus 1 decentralised level
Ireland	Nat	Nat&Reg&Loc	Minus 1 decentralised level
Italy	Nat	Nat&Loc	Minus 1 decentralised level
Liechtenstein		Nat	
Luxembourg	Nat	Reg	More centralised

Moldova	Nat&Reg	Nat	Plus 1 decentralised level
Norway	Loc	Nat&Reg	Less centralised
San Marino		Nat	
SM-Montenegro	Loc	Nat	Less centralised
SM-Serbia		Nat&Loc	
Spain		Nat&Reg&Loc	
Sweden	Nat&Reg	Nat	Plus 1 decentralised level
Turkey	Nat	Nat&Loc	Minus 1 decentralised level
Nat = national; Reg = regional; Loc = Local			

Light grey = The professional body of EAs is more centralised than that of lawyers

Dark grey = The professional body of EAs is less centralised than that of lawyers

12. Trend in member states of the Council of Europe concerning the existence of quality standards for enforcement agents

	Member states that joined the Council of Europe before 1 January 1990 (“early members”)	Member states that joined the Council of Europe after 1 January 1990 (“new members”)
Member states with quality standards for enforcement agents (question 112)	Austria, Denmark, Finland, Germany, Iceland, Netherlands, Portugal, Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland	Albania, Armenia, Azerbaijan, Bulgaria, Czech Republic, Hungary, Moldova, Monaco, Poland, Romania, Russian Federation, Slovakia, Slovenia, Ukraine
Member states without quality standards for enforcement agents (question 112)	Belgium, Cyprus, France, Greece, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Norway, Sweden	Andorra, Bosnia-Herzegovina, Croatia, Estonia, Georgia, Latvia, Lithuania, SM-Serbia
Member states with quality standards for enforcement agents (question 112)	11 states	14 states
Member states without quality standards for enforcement agents (question 112)	11 states	8 states

13. Existence of quality standards for enforcement agents (Q 112) and for lawyers (Q96) compared

		The state says it has quality standards for enforcement agents (question 112)	
		Yes	No
The state says it has quality standards for lawyers (question 96)	Yes	Albania, Armenia, Austria, Azerbaijan, Bulgaria, Czech Republic, Denmark, Finland, Hungary, Germany, Iceland, Monaco, Netherlands, Poland, Russian Federation, Slovakia, UK-England/Wales, UK-Northern Ireland, UK-Scotland, Ukraine	Andorra, Bosnia-Herzegovina, Croatia, Cyprus, Georgia, Ireland, Liechtenstein, Malta, Norway, SM-Serbia, Sweden
	No	Moldova, Portugal, Romania, Slovenia, Turkey	Belgium, Estonia, France, Greece, Italy, Latvia, Lithuania, Luxembourg

		The state says it has quality standards for enforcement agents (question 112)	
		Yes	No
The state says it has quality standards for lawyers (question 96)	Yes	20	11
	No	5	8

14. Influence of the degree of centralisation of professional bodies on their powers of supervision and control of enforcement agents

The member states with a professional body (40 states) are distributed as follows according to their degree of centralisation:

Degree of centralisation of the professional body	Distribution of the 40 member states with a professional body (question 108)
National	27 states
Regional	2 states
Local	3 states
National and regional	4 states
National and local	No state
Regional and local	No state
National, regional, local	4 states

15 of these 40 states have a professional body to supervise and control enforcement agents. They are distributed as follows:

Degree of centralisation of the professional body	Proportion of states choosing a professional body as the competent authority	Percentage
National	9 / 27 states	33%
Regional	1 / 2 states	50%
Local	0 / 3 states	0%
National and regional	-	-
National and local	-	-
Regional and local	3 / 4 states	75%
National, regional, local	2 / 4 states	50%

List of member states in which a professional body supervises and controls enforcement agents distributed according to the degree of centralisation of their professional body:

Degree of centralisation of the professional body	List of member states in which a professional body supervises and controls enforcement agents (in bold)
National	Armenia, Bulgaria, Cyprus, Czech Republic , Denmark, Estonia, Georgia, Greece, Hungary , Iceland, Ireland, Italy, Latvia , Lithuania , Luxembourg , Malta, Monaco, Netherlands, Portugal , Romania , Slovakia, Slovenia , Turkey, UK-England/Wales, UK-Northern Ireland, UK-Scotland , Ukraine
Regional	Albania, Austria
Local	Finland, Norway, Montenegro
National and regional	France , Moldova, Poland , Sweden
National and local	-
Regional and local	-
National, regional, local	Azerbaijan, Belgium , Germany, Russian Federation

15. Evidence of a “judge culture” in some member states concerning the supervision and control of enforcement agents

	Distribution of member states according to the date on which they joined the Council of Europe	
	Joined before 1 January 1990: “early members”	Joined after 1 January 1990: “new members”
The state says it has chosen a judge as the authority responsible for the supervision and control of enforcement agents (question 111)	Belgium, Denmark, Liechtenstein, Luxembourg, Netherlands, Portugal, Turkey	Andorra, Azerbaijan, Bosnia-Herzegovina, Croatia, Czech Republic, Latvia, Lithuania, Moldova, Monaco, Poland, Romania, Slovenia, SM-Serbia
	7 states	13 states

16. Role of the Ministry of justice in the supervision and control of enforcement agents in some member states

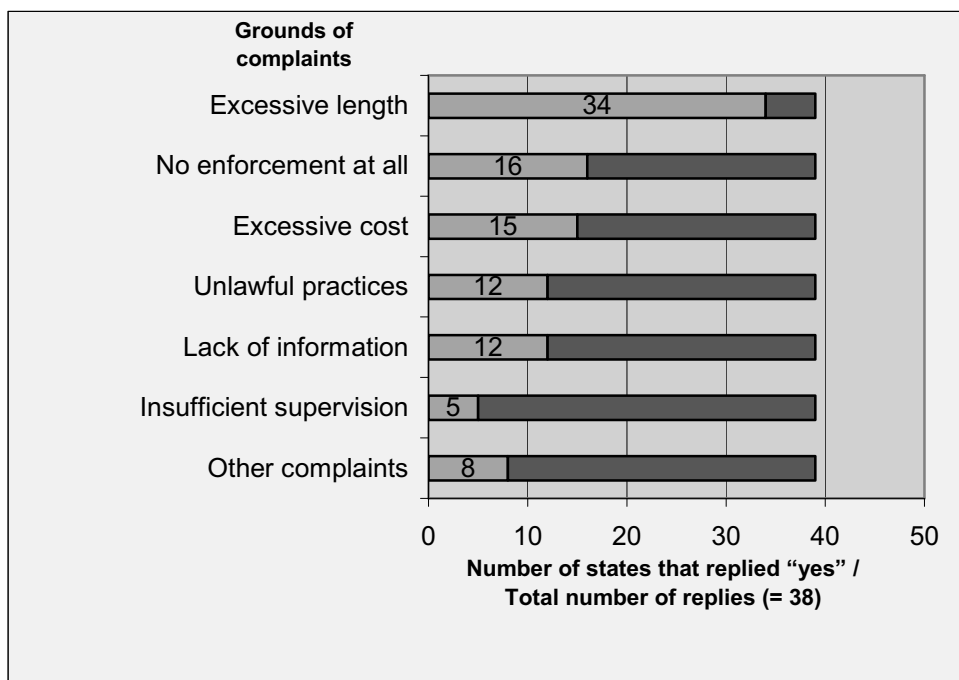
	Distribution of member states according to the date on which they joined the Council of Europe	
	Joined before 1 January 1990: "early members"	Joined after 1 January 1990: "new members"
The state says is has chosen the Ministry of Justice as the authority responsible for the supervision and control of enforcement agents (question 111)	Finland, France, Germany, Iceland, Italy, Malta, Norway, Turkey	Armenia, Azerbaijan, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Russian Federation, Slovakia, Slovenia, SM-Montenegro, Ukraine
	8 states	17 states

17. Propensity of "new states" to have joint judge-Ministry of justice supervision and control of enforcement agents

	Distribution of member states according to the date on which they joined the Council of Europe	
	Joined before 1 January 1990: "early members"	Joined after 1 January 1990: "new members"
The state says is has chosen a judge as the authority responsible for the supervision and control of enforcement agents (question 111)	Belgium, Denmark, Liechtenstein, Luxembourg, Netherland, Portugal, Turkey	Andorra, Azerbaijan , Bosnia-Herzegovina, Croatia , Czech Republic , Latvia , Lithuania , Moldova , Monaco, Poland , Romania , Slovenia , SM-Serbia
The state says is has chosen the Ministry of Justice as the authority responsible for the supervision and control of enforcement agents (question 111)	Finland, France, Germany, Iceland, Italy, Malta, Norway, Turkey	Armenia, Azerbaijan , Croatia , Czech Republic , Estonia, Georgia, Hungary, Latvia , Lithuania , Moldova , Poland , Romania , Russian Federation, Slovakia, Slovenia , SM-Montenegro, Ukraine

18. Main grounds of complaints against enforcement agents

I. Type of complaints	II. Member states acknowledging this type of complaint as one of the most frequent (question 113)
Excessive length	Albania, Andorra, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Malta, Moldova, Poland, Portugal, Romania, Russian Federation, Slovakia, Slovenia, SM-Montenegro, SM-Serbia, Sweden, Turkey, UK-England and Wales, UK-Northern Ireland
No enforcement at all	Albania, Azerbaijan, Belgium, Cyprus, Georgia, Germany, Ireland, Latvia, Moldova, Poland, Russian Federation, Slovakia, Slovenia, SM-Serbia, UK-England/Wales, Ukraine
Excessive cost	Belgium, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia, UK-England/Wales
Unlawful practices	Austria, Belgium, Czech Republic, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, UK-England/Wales
Lack of information	Azerbaijan, Belgium, Cyprus, Ireland, Latvia, Lithuania, Poland, Portugal, Slovakia, Sweden, UK-England/Wales, UK-Northern Ireland
Insufficient supervision	Belgium, Malta, Poland, SM-Serbia, UK-England/Wales
Other complaints	Hungary, Ireland, Latvia, Moldova, Sweden, Turkey, UK-England/Wales, Ukraine



19. Main grounds of complaint in member states divided according to whether or not there are quality standards

In the 22 states with quality standards (question 112) that replied to question 113, the grounds of complaints against enforcement agents are above all:

Excessive length	19 states→86%
No enforcement at all	10 states→45%
Excessive cost	8 states→36%
Unlawful practices	8 states→36%
Lack of information	6 states→27%
Other complaints	5 states→23%
Insufficient supervision	2 states→9%

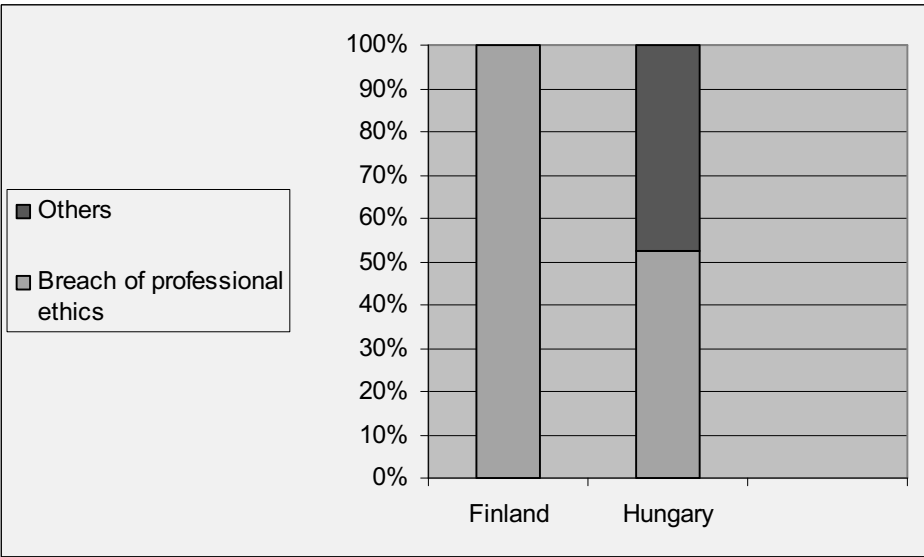
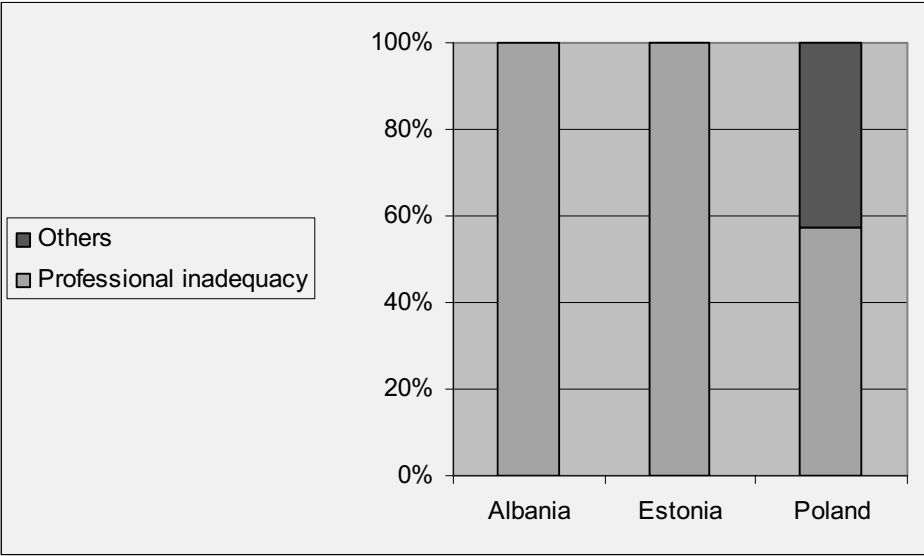
In the 16 states without quality standards (question 112) that replied to question 113, the grounds of complaints against enforcement agents are above all:

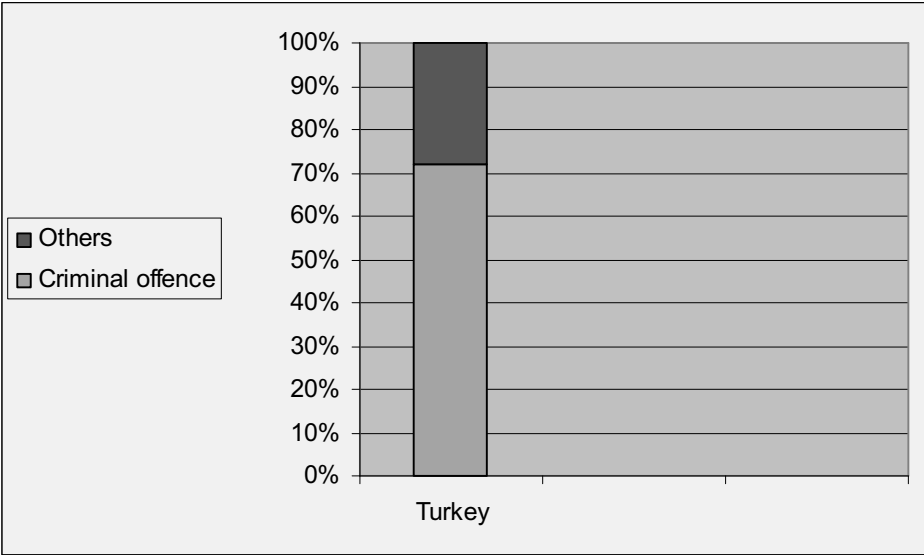
Excessive length	14 states→87%
Excessive cost	7 states→44%
No enforcement at all	6 states→38%
Lack of information	6 states→38%
Unlawful practices	4 states→25%
Insufficient supervision	3 states→19%
Other complaints	3 states→19%

20. Relationship between the existence of quality standards and the existence of proceedings against enforcement agents for breach of professional ethics, professional inadequacy or a criminal offence in 2004

		In your state, have quality standards been formulated for enforcement agents? (question 112)	
		Yes	No
In 2004, were there proceedings against enforcement agents for breach of professional ethics? (question 117)	Yes	12 states (63%)	7 states (78%)
	No	5 states (37%)	2 states (22%)
In 2004, were there proceedings against enforcement agents for professional inadequacy? (question 117)	Yes	13 states (65%)	5 states (55%)
	No	7 states (35%)	4 states (45%)
In 2004, were there proceedings against enforcement agents for a criminal offence? (question 117)	Yes	13 states (68%)	6 states (67%)
	No	6 states (32%)	3 states (33%)

21. Most frequent grounds of disciplinary proceedings against enforcement agents in each member state in 2004





21-1. System of appeal and compensation of users in the event of excessive length of the enforcement procedure in the United Kingdom (Civil Procedure rules 1998, (No. 3132))¹

Methods of Enforcement Available	Purpose	Relevant Legislation	Judgment Debtor Recourse where lengthy procedure:	Indemnity available to judgment debtor where enforcement after limitations period?
Execution Against Goods	To enforce a judgment or order for either the payment or recovery of money and / or costs by the successful party	Rules of Supreme Court (RSC) Ords. 46 and 47 in Sch. 1 to Civil Procedure Rules (CPR) County Court Rules (CCR) Ord. 26 in Sch. 2 to CPR	Where the Court grants permission, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such permission, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.	The legislation specifically provides for the situation where enforcement is sought after the limitations period; therefore, indemnification is unlikely (See Rule 2 of Sch. 1 to CPR and Rule 5 of Sch. 2 to CPR).
Attachment of Earnings	To enforce an outstanding judgment debt by ordering employer of judgment debtor to make deductions from judgment debtor's earnings until judgment debt satisfied	CPR Sch. 2, CCR Ord. 27 (enforcement method only available in County Court)	Application to discharge or vary the order for attachment of earnings under section 9 of the <i>Attachment of Earnings Act 1971</i> , (c. 32)	Issue of attachment of earnings order after expiry of limitations period subject to judicial discretion; indemnity unlikely available.
Charging Order	To impose on any available real property / share portfolios / partnership interests of the judgment debtor, a charge for securing the payment of any money due under the judgment or order	Pt. 73 of CPR ²	Application to discharge or vary the charging order under either s. 3(5) of the <i>Charging Orders Act 1979</i> (c. 53) or reg. 51(4) of the Council Tax (Administration and Enforcement) Regulations 1992 or application for a "stop order" under section 5(5) of the <i>Charging Orders Act 1979</i>	Issue of charging order after expiry of limitations period subject to judicial discretion; indemnity unlikely available.

¹ SANDBROOK, C., *Enforcement of a Judgment* (London: Sweet & Maxwell, 2007). See also the website Rules and Practice Directions published on the website of the UK Ministry of Justice: < http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm>

² Part 73 of the Civil Procedure Rules is available on the website of the UK Ministry of Justice at <http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part73.htm>

<p>Appointment of a Receiver</p>	<p>To enable judgment creditor to obtain payment of his debt when legal execution is not available because of the nature of the judgment debtor's interest in the property (rarely used because of availability of charging orders)</p>	<p>CPR Pt. 69</p>	<p>It is not clear from the legislation as to whether a judgment debtor can apply for an order discharging or terminating the appointment of a receiver.</p>	<p>The court may direct that the receiver give sufficient security to cover his liability for his acts and omissions as a receiver. It is not clear from the legislation, however, whether a receiver can be appointed after the expiry of the limitations period.</p>
<p>Committal</p>	<p>To enable judgment creditor to obtain payment of his debt when defendant breached a positive order and order of committal to prison is required for the defendant party who refuses to comply with the order</p>	<p>CPR Sch. 1 RSC Ord. 45, Rule 5 and Order 52, CPR Sch. 2, CCR Ords 28 and 29</p>	<p>The Secretary of State is required by section 258 of the <i>Criminal Justice Act 2003</i>, (c. 44) to release anyone in prison for contempt of court once half the sentence has been served and to grant early release in exceptional circumstances on compassionate grounds.</p>	<p>Issue of order of committal after expiry of limitations period subject to judicial discretion; indemnity is unlikely available.</p>
<p>Sequestration</p>	<p>Involves four sequestrators taking control of the contemnor's property until the contempt is purged where judgment or order required the contemnor to do an act or abstain from doing an act</p>	<p>CPR Sch. 1 RSC Ord. 45, Rule 5</p>	<p>There is a hearing for the application for permission to issue a writ of sequestration, which is public unless the judge determines that it should be held in private. Presumably, the judgment debtor may oppose the application.</p>	<p>Issue of order of sequestration after expiry of limitations period subject to judicial discretion; indemnity unlikely available.</p>

22. Equipment of the courts with computer facilities (question 49) and notification timeframes (question 116)

Member States with 100% of courts equipped with (Q. 49) Notification timeframe (Q. 116)	Direct assistance to the judge			Communication between the court and the parties		
	General computer facilities	Internet Connection	Word-processing software	Electronic form	Website	Other facilities
1 - 5 days (15 states)	13/15	12/15	13/15.	6/15	7/15	5/15
6 - 10 days (7 states)	7/7	6/7	7/7	3/7	4/7	3/7
11 - 30 days (8 states)	8/8	6/8	7/8.	3/8	4/8	3/8
More than 30 days (3 states)	3/3	2/3	3/3	1/3	1/3	0/3

Member States with 50% of courts equipped with (Q. 49) Notification timeframe (Q. 116)	Direct assistance to the judge			Communication between the court and the parties		
	General computer facilities	Internet Connection	Word-processing software	Electronic form	Website	Other facilities
1 - 5 days (15 states)	14/15	0/15	2/15.	0/15	1/15	2/15
6 - 10 days (7 states)	7/8	2/8	0/8	0/8	0/8	0/8
11 - 30 days (8 states)	8/8	0/8	0/8.	0/8	2/8	0/8
More than 30 days (3 states)	1/3	1/3	1/3	0/3	1/3	1/3

Member States with 50% of courts equipped with (Q. 49) Notification timeframe (Q. 116)	General computer facilities	Direct assistance to the judge		Communication between the court and the parties		
		Internet Connection	Word-processing software	Electronic form	Website	Other facilities
1 - 5 days (15 states)	14/15	2/15	0/15.	2/15	3/15	1/15
6 - 10 days (7 states)	7/8	0/8	0/8	0/8	1/8	0/8
11 - 30 days (8 states)	8/8	0/8	0/8.	0/8	2/8	0/8
More than 30 days (3 states)	1/3	0/3	0/3	0/3	0/3	0/3

Member States with 10% of courts equipped with (Q. 49) Notification timeframe (Q. 116)	General computer facilities	Direct assistance to the judge		Communication between the court and the parties		
		Internet Connection	Word-processing software	Electronic form	Website	Other facilities
1 - 5 days (15 states)	14/15	0/15	0/15.	6/15	3/15	4/15
6 - 10 days (7 states)	7/8	0/8	0/8	5/8	3/8	4/8
11 - 30 days (8 states)	8/8	0/8	0/8	2/8	1/8	1/8
More than 30 days (3 states)	1/3	0/3	0/3	2/3	1/3	1/3

23. Existence of studies to evaluate the effective recovery rate of fines in criminal cases (question 119) and the recovery rate of damages for victims of criminal offences

		Studies to evaluate the effective recovery rate of fines in criminal cases (question 119)	
		yes	no
Studies to evaluate the recovery rate of damages for victims of offences (Question 27)	yes	4	1
	no	10	22

Appendix 2

Proposals for guidelines to improve the implementation of existing recommendations regarding the execution of court decisions in Europe

INTRODUCTION

1. At the Council of Europe's 3rd Summit (Warsaw, May 2005), the Heads of State and Government undertook to "make full use of the Council of Europe's standard-setting potential and promote implementation and further development of the Organisation's legal instruments and mechanisms of legal co-operation". At this summit, it was decided to "help member states to deliver justice fairly and rapidly".

2. As the Secretary General of the Council of Europe underlined in October 2005, the execution of judicial decisions is an essential element in the functioning of a state based on the rule of law. It constitutes a serious problem both at national and European level (CM/Monitor(2005)2 of 14 October 2005)

3. This statement, as confirmed by the relevant case-law of the European Court of Human Rights (ECtHR), and problems in the execution of its judgments, as well as the work of the CEPEJ conducted the Committee of Ministers to dedicate a monitoring process for the execution of national judicial decisions.

4. The CEPEJ, whose statute includes the objective of facilitating the implementation of the Council of Europe's international legal instruments concerning efficiency and fairness of justice, included a new activity among its list of priorities: extending access to its database to research teams, particularly with regard to the execution or enforcement of court decisions, in order to gain a better understanding of how this works and to facilitate the application in practice of the relevant Council of Europe standards and instruments. The Committee of Ministers decided to wait for the results of these works in order to make use of them.

5. The research team on the execution of court decisions (University of Nancy (France)/Swiss Institute of Comparative Law) therefore took due account of the impact of the relevant Committee of Ministers recommendations in member states, in particular:

- Recommendation Rec (2003)16 on the execution of administrative and judicial decisions in the field of administrative law;
- Recommendation Rec (2003)17 on enforcement;

The research team also wished to recommend certain specific measures to facilitate the application of the principles relating to the execution of court decisions contained in these recommendations.

6. To this end, the research team first of all made full use of the data provided by the CEPEJ: in order to draft its report (*CEPEJ – Evaluation of judicial systems 2006*), the Working Group on the evaluation of judicial systems (CEPEJ-GT-EVAL) had drawn up a questionnaire with the aim, amongst other things, of measuring developments in the execution of judgments at national level, in line with the principles set forth in the recommendations. The questionnaire had been answered by the national representatives of the Council of Europe's 47 member states or entities. The database which was compiled as a result served as a basis for the research team.

7. Second, the replies from the member states were supplemented by further research (carried out by the Swiss Institute of Comparative Law) and the international experience of acknowledged practitioners, Mathieu CHARDON, Jacques ISNARD and Bernard MÈNUT (International Union of Judicial Officers).

8. As was to be expected perhaps, there were significant disparities between member states in the execution of court decisions, as a result primarily of:

- the different status attached to enforcement officers
- the varying degree of autonomy granted to enforcement officers
- the level of transparency regarding the cost and timeframes of enforcement
- the varying level of protection given to information on the defendant's assets
- the importance attached to quality standards in the enforcement process
- the arrangements for supervising and monitoring enforcement officers

9. Bearing these obstacles in mind, the research team has therefore drawn up the following guidelines to improve application of the principles relating to the execution of court decisions contained in the above-mentioned recommendations.

10. To make things easier, the guidelines have been grouped together under two headings: "Accessibility of enforcement systems" and "Effectiveness of enforcement systems".

I. ACCESSIBILITY OF ENFORCEMENT SYSTEMS

11. The execution of court decisions can only be guaranteed in member states if the enforcement services are accessible. Accordingly, measures should be taken to ensure that such services are available and evenly distributed and that enforcement mechanisms are effective.

A. Distribution of enforcement services

12. To ensure equal accessibility to enforcement services, measures should be taken to ensure that there are effective enforcement systems close to the defendant's place of residence.

13. Within a single member state, when different players are tasked with taking action in different areas of enforcement (ie the judge responsible for enforcement and treasury officials), it is important to pay close attention to the distribution, both geographical and case-type, of all concerned.

14. Where enforcement officers are independent professionals, member states should ensure that there is sufficient competition.

B. The costs of enforcement

1. Regulating costs

15. Each member state is encouraged to introduce regulations governing the costs of enforcement where such costs are likely to fall to the user.

16. Member states which have introduced regulations governing the costs of enforcement should make it possible for a user to lodge an appeal against any enforcement officer not complying with the said regulations.

17. Member states which authorise the payment of fees by an applicant to an enforcement officer upon successful completion should establish a framework for such a practice and provide for the possibility of negotiation; the fees, even where negotiated, should come within a strictly regulated range in order to limit anti-competition practices (the risk of dumping where there is no lower limit) and the emergence of two-speed enforcement (risk of the more disadvantaged sections of society being denied high quality enforcement if there is no upper limit).

18. Where, within the same member state, there are enforcement officers working in both the private and public sector, the state should avoid any discrimination in terms of fees between enforcement officers of different status but equal competence.

2. Transparency of enforcement costs

19. Where enforcement costs are likely to fall to the user, the member state should ensure that the latter is informed as fully as possible about the enforcement costs and any fees due upon successful completion. It should be possible for the user to be informed about the procedural costs, not only by the enforcement officer but also by the courts, consumer organisations, procedural codes or via the Internet.

20. States are encouraged to insist that the cost of each individual measure is clearly indicated and to provide for sanctions in the event of non-compliance.

21. Because of the growing mobility of users and services in Europe, there is an increasing need for the international execution of court decisions. The transparency of enforcement costs must therefore go beyond mere domestic level: member states should consult in order to compile a database of the fees charged for the most frequent enforcement measures. Once this list has been established and the fees set out by each state, it must be publicised as widely as possible so that users can access the information, including from other member states. Under the auspices of the Council of Europe and possibly in conjunction with other international organisations, the CEPEJ could be tasked with identifying the data to be collected.

3. Clarity of enforcement fees

22. The clarity of fees is a factor in the transparency of enforcement costs. In order to be as intelligible as possible, the fee for an action should depend on a limited number of factors. The fee should be set out in the regulation as simply, clearly and concisely as possible.

23. Here, member states could exchange their experiences and consider the need to take certain factors into account, such as the amount of debt or the assumed difficulty of the action.

4. Relevance of the action in relation to cost

24. The final cost of enforcement must be proportionate to the amount of the debt.

25. It is the responsibility of enforcement officers to do only what they consider reasonably worthwhile. When a user is offered legal aid, measures which are considered to be unnecessary should not be paid for by the community and should be borne by the enforcement officer.

26. Enforcement officers should have a duty to offer proper advice and be required to explain clearly to applicants their situation and the relevance of the action they suggest be taken. Once this advice has been given, enforcement officers should be able to refuse to assist the applicant if they have advised that no action be taken.

5. Foreseeability of enforcement costs

27. In the light of the defendant's situation, enforcement officers should inform their clients of the nature of the action that could be taken and the associated costs at the beginning of and at each new stage in the procedure.

6. Access to information on the defendant's assets

28. So that enforcement officers may produce an estimate of costs and ensure that any measures taken are proportionate to those costs, member states should allow them speedy and preferably direct access to information on the defendant's assets.

7. Apportionment of enforcement costs

29. Enforcement costs should be borne by the defendant where he or she is solvent.

30. If the defendant is insolvent, costs should be borne by the applicant.

31. The fees on successful completion should always be paid by the applicant.

II. EFFECTIVENESS OF ENFORCEMENT SYSTEMS

32. Access to enforcement systems is of no benefit to users unless the state makes available enforcement services and measures that are effective.

A. Effectiveness of enforcement services

1. Qualification requirements

33. For the effective administration of justice, there must be a guarantee that enforcement is of a high standard. Member states should accredit enforcement officers only if the candidates concerned are of a standard and training equivalent to that of judges or lawyers.

34. It is strongly recommended that there be post-training monitoring, by establishing a system of supervision, stewardship and in-service vocational training in member states.

35. Insofar as certain member states may encounter difficulties regarding the quality of enforcement officer training, it is recommended that links be forged between national training institutions. Member states should ensure that enforcement officers are given appropriate training curricula and should set down common minimum standards for instructors in the different member states. The Council of Europe, if possible in conjunction with the European Union, could help in this task. The CEPEJ could be tasked with setting up a working group on enforcement, comprising practitioners, instructors and representatives of member states or international organisations.

36. The following topics should appear in the common minimum standards:

- principles and objectives of enforcement,
- attitude and ethical code of enforcement officers,
- phases in the enforcement process,
- nature, structure and procedures of enforcement,
- legal framework of enforcement,
- appropriate emphasis on role playing and practical exercises,
- trainee competence assessment,
- international enforcement of court decisions and other writs of execution.

2. Organisation of the profession

37. For the purposes of ensuring the proper administration of justice, the profession of enforcement officer should have a professional body representing the whole profession. In this way, officers would be better represented and it would be easier to collect information.

38. In member states which have set up such professional bodies of enforcement officers, it should be mandatory for the latter to join this representative body.

3. Quality standards

39. Member states should take the necessary measures to ensure that the definitions, scope and guarantees of the major principles of enforcement are standardised. To this end, they are encouraged to draw up quality standards for their enforcement officers, following consultation with the latter and, where appropriate, in the light of the data provided by their national statistics institutions and in their courts' annual activity reports.

40. It is also recommended that member states draw up together, following consultation of their enforcement officers, minimum enforcement quality standards. The resulting "European quality standards for the execution of court decisions" should be incorporated in the code of conduct for enforcement officers. The Council of Europe, if possible in conjunction with the European Union, could help with this task. The CEPEJ could be tasked with setting up a working group on enforcement, comprising practitioners, instructors and representatives of member states or international organisations.

41. In the event that officers fail to comply with the minimum standard agreed, member states and the parties involved should be able to lodge a complaint and have recourse to disciplinary procedures.

42. Codes of conduct should contain quality standards relating to:

- information provided to users by enforcement officers regarding the procedure to be followed (reasons for the action, transparency and clarity of costs, etc),

- arrangements whereby users are to be informed (social role of the enforcement officer, duty to provide proper advice, etc),
- professional ethics (behaviour, confidentiality, ethics in the choice of action taken, etc),
- the smooth flow of the enforcement process (foreseeability of costs and enforcement timeframes, co-operation between the enforcement services, etc),
- flexibility of procedures (autonomy of the enforcement officer, etc).

43. It is also recommended that the CEPEJ create a special page on its website specific to the execution of court decisions. This page could include translations of the texts of the recommendations and other relevant Council of Europe documents relating to enforcement, an assessment of the impact of the recommendations on enforcement in member states, information on monitoring and evaluation of enforcement services, useful links, etc.

4. Supervision and monitoring of enforcement officers

44. The authorities responsible for the supervision and/or monitoring of enforcement officers have an important role to play in the quality of enforcement services. Indeed, member states should be constantly assessing their enforcement services. This should be carried out by a body outside the enforcement service and independent of the legislative and executive.

45. A number of common assessment criteria need to be defined in order to strengthen confidence between member states, particularly given the prospect of a growing number of international enforcement cases. The Council of Europe, if possible in conjunction with the European Union, could help in this task.

46. Member states should ensure that the arrangements for monitoring the activities of enforcement officers does not hamper the smooth running of their work.

5. Disciplinary procedures and sanctions

47. Disciplinary procedures should be carried out by an independent authority. Member states should consider introducing a system for the prior filtering of cases which are introduced merely as delaying tactics.

48. There should be an explicit list of sanctions, on an increasing scale proportionate to the seriousness of the facts. An officer should not be struck off the list except in the most serious cases.

B. Effectiveness of enforcement measures

1. Duration of enforcement

49. The duration should be reasonable, in line with the case-law of the European Court of Human Rights. The meaning of a reasonable duration should be left to the discretion of the domestic courts, in view of the many factors which may be beyond the control of an enforcement officer. Member states should not impose any cut-off dates for enforcement.

50. Nonetheless, it would be helpful, to assist the domestic courts in their appraisal, if each member state set forth clear and precise criteria regarding the reasonable nature of the duration, which could vary as required according to the nature of the case and the type of action requested.

2. Foreseeable length of enforcement proceedings

51. In view of the importance of being able to foresee the length of enforcement proceedings from the point of view of legal certainty for users, member states should establish statistical databases accessible to users enabling them to calculate the duration of the different enforcement measures possible. Such statistical systems should make it possible to calculate the average length of each enforcement measure possible in domestic legislation (eg attachment of salary, attachment of bank assets, attachment of vehicle). Such databases should be compiled in collaboration with enforcement professionals.

52. These databases should enable member states to give users a fairly accurate idea of the likely duration of enforcement measures. The obligation to provide such information would increase transparency and improve the foreseeability of the duration of enforcement measures, thereby offering greater legal certainty.

3. Guarantees of complying with enforcement deadlines

53. Member states should make provision for internal measures regarding the individual liability (administrative, civil, disciplinary, criminal) of enforcement officers in the event of failure to comply with enforcement deadlines.

54. They must guarantee the effectiveness of the whole complaint and user compensation system (ie a system for calculating the likely duration of enforcement proceedings; possibility of lodging a complaint for exceeding this duration; a time-limit for responding and a time-limit for processing complaints; compensation in the event of excessive duration of the procedure). Such guarantees should cover administrative, civil and criminal cases.

4. Smooth and prompt enforcement

55. In the courts, computerisation of working tools would greatly assist the transfer of files and information at the stage of the execution of decisions.

56. At the stage of the execution of decisions, e-mail communication between the court, the enforcement officers and the parties must be possible.

57. Member states must ensure that the legal framework of enforcement does not unnecessarily prolong the whole duration. Member states are encouraged in particular to take measures to ease the procedural enforcement framework to give enforcement officers the necessary autonomy to choose for themselves, without prior authorisation, the procedural steps that are the most appropriate for the case in question.

58. Member states should also ensure that the defendant may take action to challenge enforcement measures within a reasonable timeframe, provided this does not deliberately halt or delay the enforcement proceedings.

5. Notice

59. Member states must ensure that notice of both judicial and non-judicial acts is given in sufficient time, in particular by reliable electronic communications where such is possible and expedient. The defendant must give explicit consent to use of electronic communication means.

6. Enforcement rate in criminal matters

60. Member states should instigate studies assessing the actual rate of collection of criminal fines and the collection rate of damages for the victims of crimes.

7. Enforcement rate in civil matters

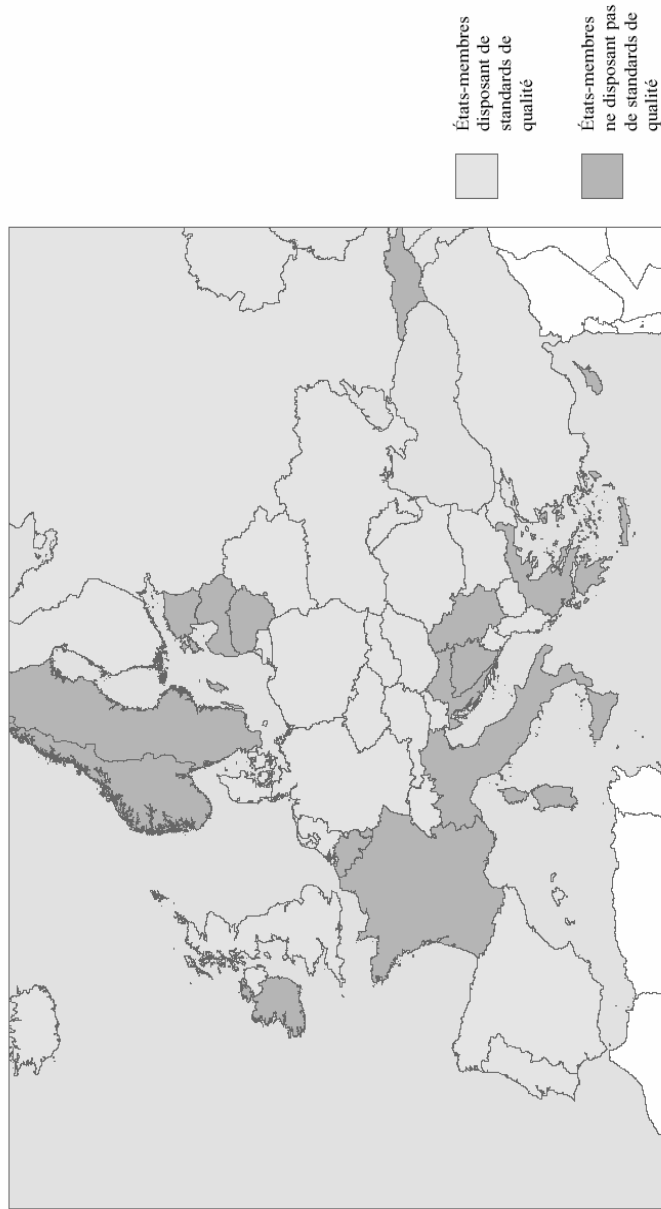
61. Member states should instigate studies assessing the actual rate of recovery of debts and the collection of damages in contractual and non-contractual matters.

8. International enforcement measures

Following the adoption of the recommendations on execution/enforcement, it would appear that only a limited number of member states have introduced mechanisms to facilitate enforcement in cases with an international dimension. It is therefore recommended that member states which have made some progress in this direction should exchange information with other member states.

Addendum 1

**Carte mettant en évidence l'existence de standards de qualité
à l'intention des agents d'exécution**



Addendum 2: Information of “The Former Yugoslav Republic of Macedonia”

M. Nikola PROKOPENKO, national correspondent of “The Former Yugoslav Republic of Macedonia”, transmitted information missing in 2006 at the time of the drafting of the report on *evaluation of European judicial systems*

VIII. Enforcement of court decisions
VIII. A. Execution of decisions in civil matters

1. Are enforcement agents:
- judges? Yes
 - bailiff practising as private profession ruled by public authorities?
 - bailiff working in a public institution?
 - other enforcement agents?
- Please specify their status:
-
2. Number of enforcement agents **69, among which 49 designated**
Source **Ministry of justice**
3. Is there a specific initial training or examination to enter the profession of enforcement agent?
Yes **specific examination** No
4. Is the profession of enforcement agent organised by?
- a national body? Yes
 - a regional body?
 - a local body?
5. Can users establish easily what the fees of the enforcement agents will be?
Yes No
6. Are enforcement fees:
- regulated by law? Yes
 - freely negotiated?

7. Is there a body entrusted with the supervision and the control of the enforcement agents?

No
 Yes Which authority is responsible for the supervision and the control of enforcement agents:

- | | | |
|--------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | a professional body? | Yes |
| <input type="checkbox"/> | the judge? | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> | the Ministry of justice? | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> | the prosecutor? | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> | other? | <input type="checkbox"/> |

Please specify:

8. Have quality standards been formulated for enforcement agents?

No
 Yes Who is responsible for formulating these quality standards?

Ministry of justice and enforcement agents' Chamber

Source Ministry of justice

9. What are the main complaints of users concerning the enforcement procedure:

- | | Yes | No |
|---|-------------------------------------|--------------------------|
| <input type="checkbox"/> no execution at all? | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> lack of information? | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> excessive length? | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> unlawful practices? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> insufficient supervision? | <input type="checkbox"/> | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> excessive cost? | <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> other? | <input type="checkbox"/> | <input type="checkbox"/> |

Source Ministry of justice

10. Does your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions?

No
 Yes Please specify:

The new law adopted in 2005 transformed the conception of enforcement: in the past entrusted to courts, it is now accomplished by private agents.

11. Is there a system measuring the timeframes of the enforcement of decisions :

- for civil cases? Yes No
- for administrative cases? Yes No

12. As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:

- between 1 and 5 days Yes No
- between 6 and 10 days Yes No
- between 11 and 30 days Yes No
- more: please specify Yes No

Source Ministry of justice

13. Disciplinary proceedings and sanctions against enforcement agents:

		Yes /No (If yes, please specify the total number)
Disciplinary proceedings	Breach of professional ethics	No
	Professional inadequacy	No
	Criminal offence	No
	Other	No
Sanctions	Reprimand	No
	Suspension	No
	Dismissal	No
	Fine	No
	Other	No

Addendum 3: Information leaflet on timeframes distributed to users by the French bailiffs

L'EXPULSION : c'est long et coûteux. Pourquoi ?

SCHEMA D'UNE PROCEDURE D'EXPULSION D'UN LOCAL AFFECTE A L'HABITATION PRINCIPALE

1^{ère} étape : commandement de payer les loyers et dénonciation éventuelle à la caution

deux mois d'attente

2^{ème} étape : assignation en expulsion et en paiement et notification au préfet

deux mois d'attente

3^{ème} étape : audience suivie du titre exécutoire (jugement ou ordonnance de référé)

4^{ème} étape : signification du titre exécutoire

délais éventuels octroyés par le juge au débiteur pour s'acquitter de sa dette ou pour quitter les lieux

5^{ème} étape : commandement de quitter les lieux et dénonciation au préfet

deux mois d'attente

attention Sauf exception, la période hivernale (du 1^{er} au 15 mars) reporte la date à laquelle l'expulsion peut être opérée.

6^{ème} étape : expulsion ou procès verbal de tentative d'expulsion

7^{ème} étape : réquisition de la force publique

deux mois d'attente

8^{ème} étape : expulsion avec le concours de la force publique et assignation

un mois d'attente

entre l'assignation et l'audience statuant sur le sort des biens non retirés par le débiteur

9^{ème} étape : jugement statuant sur le sort des biens non retirés par le débiteur

Notes

¹ See STORME, M., *Rapprochement du Droit Judiciaire de l'Union européenne*, Kluwer, Editions juridiques, Dordrecht, Boston, London, 1994, pp.7-9.

² See in particular, **in the Council of Europe**, the establishment in 2000 of the Consultative Council of European Judges (CCJE), a consultative body of the Council of Europe that issues opinions on questions concerning, for example, the independence, impartiality and power of judges:

http://www.coe.int/t/dg1/legalcooperation/judicialprofessions/ccje/default_eng.asp;

In the European Union, the establishment in 2001 of the European Judicial Network in civil and commercial matters, composed of representatives of the judicial and administrative authorities of member states and aimed at improving access to justice by the people and businesses of Europe:

http://ec.europa.eu/civilJustice/index_eng.htm;

See also the establishment of the European Judicial Training Network (EJTN), an international non-governmental organisation whose mission is to design and implement training programmes on judicial powers and the mechanisms of European judicial cooperation: <http://www.ejtn.net>.

³ **The Council of Europe** drafted Recommendation R (2000) 21 on the freedom of exercise of the profession of lawyer, which includes general principles on the legal training of lawyers, their entry into the profession, professional ethics, role and duties, disciplinary procedures, and access to lawyers.

The European Union facilitates exercise of the profession in another member country: see Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained.

⁴ See in particular the establishment in the Council of Europe in July 2005 of the Consultative Council of European Prosecutors (CCPE), which has a consultative role in relation to the implementation of Recommendation Rec(2000) 19 on the role of public prosecution in the criminal justice system and is responsible for gathering information on the operation of prosecution services in Europe.

⁵ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, Official Journal L 399 , 30/12/2006 pp. 1-32; **REGULATION (EC) No 805/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** of 21 April 2004 creating a European Enforcement Order for uncontested claims; COMMISSION OF THE EUROPEAN COMMUNITIES, Green Paper on improving the efficiency of enforcement of judgments in the European Union: the attachment of bank accounts, Brussels, 24.10.2006, COM(2006) 618 final {SEC(2006) 1341}.

⁶ Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965; Hague Convention concerning the recognition and enforcement of decisions relating to maintenance obligations towards children of 15 April 1958; Convention on the recognition and enforcement of foreign judgements in civil and commercial matters of 1 February 1971.

⁷ Despite the intensive work of the Council of Europe on improving enforcement

procedures and on the practices of enforcement agents (see in particular Recommendations Rec(2003) 16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law, adopted on 9 September 2003; Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement, adopted on 9 September 2003; and Resolution No 3 on “general approach and means of achieving effective enforcement of judicial decisions”, adopted by the Conference of European Ministers of Justice in October 2001), legislations and practices still differ widely. Cf. the information on national legislations gathered by the International Union of Judicial Officers (UIHJ): <http://www.uhj.com/>.

⁸ See JEAN, J-P. & PAULIAT, H., “L’administration de la Justice et l’évaluation de sa qualité”, *Revue Dalloz* 2005, Chron. p. 598 ; BOULARBAH, H., “*La double dimension de la qualité, condition de l’action et condition de la demande en Justice*”, *Tijdschrift voor Belgisch Burgerlijk Recht*, 1997, 19, pp.58-97; VAREILLES-SOMMIERES, B. de, “*La qualité appliquée au juridique: la norme ISO 9001 appliquée aux services juridiques*”, *Semaine Juridique* 1998, Cahiers de Droit de l’Entreprise, n°3, pp.1-14; VOISSET, M., “*La reconnaissance, en France, d’un droit des citoyens à la qualité dans les services publics*”, *Revue Française de Droit Administratif*, 1999, pp.743-749.

⁹ Council of Europe, “Non-enforcement of domestic court decisions in member states”, conclusions of the Round Table held in Strasbourg on 21-22 June 2007, organised by the Department for the execution of judgements of the European Court of Human Rights in the context of the new programme of assistance to the Committee of Ministers for the control of enforcement of the judgements of the European Court: http://www.coe.int/t/e/human_rights/execution/01_Introduction/RoundTableConcl_e.pdf (last consulted: 1 August 2007).

¹⁰ European Commission for the Efficiency of Justice, *European Judicial Systems*, CEPEJ Studies No. 1, 2006 edition (2004 data).

¹¹ Article 1.b. of Recommendation Rec(2003) 17.

¹² The conditions of accession to the European Union, known as the “Copenhagen Criteria” require candidate countries to have a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the EU. This presupposes deregulation, price liberalisation, the restructuring of enterprises and the privatisation of the service sector. See, in particular, the “*Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, The Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded*”, AA2003/ACT/en 1:

[http://www.ris.bka.gv.at/EU-Beitritt-PDF/Franzoesisch%20\(fr\)/2.%20Act/08-Act.en3.PDF](http://www.ris.bka.gv.at/EU-Beitritt-PDF/Franzoesisch%20(fr)/2.%20Act/08-Act.en3.PDF).

¹³ Article 117, para. 3 of the Spanish Constitution of 1978: “*The exercise of judicial authority in any kind of action, both in ruling and having judgments executed, is vested exclusively in the courts and tribunals laid down by the law, in accordance with the rules of jurisdiction and procedure which may be established therein*”.

¹⁴ See DEHARO, G., “*Ce qu’exécuter veut dire... Une approche théorique de la notion d’exécution*”, *Revue Droit et procédures*, n°4, 58^e année, juillet-août 2005, p. 208.

¹⁵ See WIEDERKEHR, G., “*Qu’est-ce qu’un juge?*”, in *Mélanges en l’honneur de R. PERROT, Nouveaux juges, nouveaux pouvoirs?*, Paris, Dalloz, 1996, pp. 575-586.

¹⁶ Information available on the UIHJ website: <http://www.uhj.com> under “Information-Europe”.

¹⁷ Of the 28 states that replied, the 25 states with bailiffs working in a public institution are: Albania, Austria, Azerbaijan, Bulgaria, Croatia, Czech Republic, Denmark, Finland, Georgia, Germany, Greece, Iceland, Italy, Liechtenstein, Malta, Moldova, Norway, Portugal, Russian Federation, Turkey, Ukraine, UK-England/Wales, UK-Northern Ireland, UK-Scotland.

¹⁸ See the work of the 6th European Procedure Meeting: Austria, Luxembourg, Finland and Scotland, organised by the Ecole Nationale de la Procédure, (ENP), published in *Le Nouveau Journal des Huissiers de Justice*, September/October 2004, p.24.

¹⁹ Of the 20 states that replied, the 11 with strictly private enforcement agents are: Estonia, Hungary, Latvia, Lithuania, Luxembourg, Monaco, Netherlands, Poland, Romania, Slovakia and Slovenia.

²⁰ On the other hand, in many cases enforcement agents have a duty to exercise their powers: for example, in the Netherlands, Article 11 of the Bailiffs Act of 26 January 2001 (*Wet van 26 januari 2001 tot vaststelling van de Gerechtsdeurwaarderswet*) lays a duty on bailiffs, allowing for exceptions, to perform the tasks the law attributes to them.

²¹ In the Netherlands the *Wet van 26 januari 2001 tot vaststelling van de Gerechtsdeurwaarderswet* (Bailiffs Act of 26 January 2001) prohibits bailiffs from exercising their powers over their own assets, those of their family or the family of their partner (spouse, legal partner or any other person with whom an enforcement agent lives as a couple on a long-standing basis). See Article 2, para. 2 a. and b. of the Act. Failure to comply with these prohibitions is sanctioned by nullity (Article 3 para. 4 of the Act). In Denmark, Section 3 of Act 571 of 19 December 1985 on the Public Administration (*Forvaltningsloven*) and Section 5 of Act 1001 of 5 October 2006 on judicial procedure (*Retsplejeloven*) deal precisely with this prohibition.

²² Article 4 of the Bailiffs Act of the Republic of Lithuania.

²³ The states concerned are France, Italy, Monaco and Turkey.

²⁴ Enforcement costs consist of the expenses of the process itself, which are usually payable by the defendant, as well as any performance bonus paid by the claimant to the enforcement agent where this is provided for in the legislation of the member state. Where such fees exist, they usually consist of a percentage of the debt to be recovered: this percentage may be regulated by law or freely negotiable between the enforcement agent and the claimant. The claimant only pays the enforcement agent if enforcement is successful.

²⁵ In its judgement in *Kreuz v. Poland* of 19 June 2001, the ECHR held that financial obstacles should not conflict with the effectiveness of the right of access to a court. Fees that are excessive in relation to the claimant’s ability to pay them constitute a disproportionate restriction on the right of access to a court (see JCP G, No. 31, 1 August 2001, 1 342). By analogy, the cost of proceedings should not constitute an obstacle for the litigant that restricts access to the enforcement of the court decision concerning him or her or of his or her writ of enforcement. Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement states

that the enforcement of a court judgement is an integral part of the fundamental human right to a fair trial within a reasonable time (Article 6 of the European Convention on Human Rights) and that the rule of law can only be a reality if citizens can, in practice, assert their legal rights.

²⁶ For example, in Denmark legal guides (“*juridiske vejledninger*”) are available. Some are aimed at helping the enforcement officials of the Ministry of Taxation in their daily work in order to facilitate correct decisions being taken: they present changes in the relevant legislation and case-law and are updated every four months but are not produced directly by the legislator. Other guides, such as the guide on collection that has been in force since 16 July 2007 (*Inddrivelsesvejledning 2007-3*), describe changes in the rules on collection in cases of claims by the state (*restanceinddrivelsesmyndigheden*), the rules applicable to assets in bankruptcy, payment orders, and adjustment or remission of debt. While the existence of these guides is to be welcomed, they are highly specialised and of no direct use to users. They are not enough in themselves to make the information clear.

²⁷ Question 109 is worded as follows: *Can users establish easily what the fees of the enforcement agents will be?*

²⁸ With the European Union, for example (see its European Judicial Network in Civil and Commercial matters <http://ec.europa.eu/civilJustice/>) or the Hague Conference on Private International Law (see its page on jurisdiction and enforcement of judgements <http://www.hcch.net/>).

²⁹ On enforcement times, see Part Two, B. 1. Enforcement times as an indicator of efficiency.

³⁰ This is the case in Denmark, where breach of professional confidentiality is a criminal offence; see Section 8 of Act No. 571 of 19 December 1985 on the public administration (*Forvaltningsloven*) and Article 41g of Act No. 1001 of 5 October 2006 on judicial procedure (*Retsplejeloven*).

³¹ At the seminar held by the Franco-British Judicial Cooperation Committee held from 13 to 15 June 2002 at the French Cour de Cassation, it seemed that 50% of court decisions concerning small claims in Great Britain were not applied, either because the debtors were dishonest and organised their insolvency or because they were genuinely destitute and unable to settle their debts. This situation led the Lord Chancellor’s Department to draw up a reform of enforcement procedures. See the article by CAVROIS, M.-L., & McKEE, J.-Y., “*Le droit d’accès aux juridictions en matière de petits litiges*”, a summary of the work and debates, http://www.courdecassation.fr/formation_br_4/2002_2036/aux_juridictions_8387.html.

³² In order to guard against the corruption of enforcement agents, some member states, such as the Netherlands, lay a number of duties on them, such as that their accounts must include their private wealth and professional revenues (Article 17 of the Bailiffs Act of 26 January 2001, *Wet van 26 januari 2001 tot vaststelling van de Gerechtsdeurwaarderswet*) and the duty to open a specific bank account into which the revenues and money held for third parties must be paid (Article 19 of the same Act).

³³ Question 110 is worded as follows: *Are enforcement fees: regulated by law? / freely negotiable?*

³⁴ The four states (Andorra, Russian Federation, San Marino, Spain) that were unable to reply to this question had already failed to reply to the question on transparency and foreseeability (question 109), explaining that enforcement was

carried out by civil servants.

³⁵ The states in question are as follows: Belgium, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, Slovenia, UK-England/Wales.

³⁶ For more information on the control of enforcement agents, see Part Two, A 2.2. Supervision and control of enforcement agents.

³⁷ Work carried out in Europe on the enforcement of court decisions emphasises the importance of the training of enforcement agents. See, in particular, Recommendation Rec(2003) 17 of the Committee of Ministers to member states on enforcement, adopted by the Committee of Ministers of the Council of Europe on 9 September 2003, especially IV, 8, which states that “Enforcement agents should undergo initial and ongoing training according to clearly defined and well-structured aims and objectives”.

³⁸ In the Netherlands, Article 5 of the Bailiffs Act of 26 January 2001 (*Wet van 26 januari 2001 tot vaststelling van de Gerechtsdeurwaarderswet*), for example, requires a traineeship (see Article 5 para. 1 (b)). This is a two-year traineeship (see Article 5, para. 1 (c)). The form of the traineeship is set out in a Decree of 4 July 2001 (see the authentic text in Dutch *Besluit van 4 juli 2001, houdende nadere regels inzake de opleiding tot kandidaat-gerechtsdeurwaarder en de stage van de toegevoegd kandidaat-gerechtsdeurwaarder (Besluit opleiding en stage kandidaat-gerechtsdeurwaarder)*).

³⁹ Furthermore, in many cases candidates must have the nationality of the state in which they wish to work and be of exemplary moral probity. For further details, see in particular the UIHJ website: <http://www.uihj.com>, particularly the “Information – Europe” pages.

⁴⁰ V. DUJARDIN, R., “Les huissiers de Justice en droit comparé”, *European Journal of Law Reform*, Vol. VIII, n°1, pp. 113-131, §11.

⁴¹ For example, the age limit for practising is 65 in Lithuania (Article 12, para. 8, of the Bailiffs Act) and the Netherlands (Articles 23.c. and 52.1 of the Act of 26 January 2001 establishing the law on bailiffs).

⁴² The details of the replies to question 107 (on whether or not there is specific initial training or examination for entry to the profession) are as follows: of 47 states consulted, four did not reply (Liechtenstein, San Marino, SM-Montenegro, Spain). Of the 43 that did: 32 said there was specific initial training or examination to enter the profession and 11 said that there was not (Andorra, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Denmark, Greece, Ireland, Monaco, Norway, SM-Serbia).

⁴³ This proportion is worth comparing with those of other professions (see Appendix 8 for details). All the member states (47) were able to reply to question 91 (Is there a specific initial training or examination to enter the profession of lawyer?).

Of these, 43 state that there is specific initial training or examination to enter the profession and only four (Andorra, Germany, Slovenia and Spain) state that there is not. In the final analysis:

- 10 states have no specific initial training or examination to enter the profession of enforcement agent, although training or an examination is necessary to become a lawyer (Azerbaijan, Bosnia-Herzegovina, Bulgaria, Croatia, Denmark, Greece, Ireland, Monaco, Norway, SM-Serbia). In all these states initial training is, however, required to practise as a judge or

prosecutor (with the notable exceptions of Bosnia-Herzegovina, where such training is only optional, and Serbia, where it is only strongly recommended).

- Two states have no specific initial training or examination to enter the profession of lawyer, whereas training or an examination is necessary to become an enforcement agent (Germany, Slovenia). Training or an examination is, moreover, compulsory to practise as a judge or prosecutor in Germany, while it is only strongly recommended in Slovenia.
- One state (Andorra) has no specific initial training or examination for either profession (training and examination are, however, compulsory in order to practise as a judge).

⁴⁴ With respect to terrorism, CODEXTER recently emphasised its importance; see CODEXTER (2003) 12, Selected paragraphs from the report of the 78th meeting of the European Committee on Legal Co-operation (CDCJ), §18.

⁴⁵ The website of the Ecole Nationale de Procédure is www.enpepp.org (as at 1 August 2007).

⁴⁶ Of the 47 states consulted, 22 have an identical degree of centralisation for the professional bodies of enforcement agents and lawyers. 25 states do not give the same reply; in this case, is the organisation of the profession of enforcement agent more centralised or less centralised than the organisation of the profession of lawyer? Having set aside 7 states that cannot be taken into account as they did not reply to the question on the organisation of the profession of enforcement agent (Andorra, Bosnia-Herzegovina, Croatia, Liechtenstein, San Marino, SM-Serbia, Spain), 18 states can be compared: in 7 the organisation of the profession of enforcement agent is less centralised than the profession of lawyer; in 11 it is more centralised.

In the final analysis, of the 40 states that can be compared:

- 22 have an identical degree of centralisation in the organisation of the professions of enforcement agent and lawyer (55%);
- 7 have a lesser degree of centralisation in the organisation of the profession of enforcement agent (18%): Albania, Austria, Finland, Moldova, Norway, SM-Montenegro, Sweden;
- 11 have a higher degree of centralisation in the organisation of the profession of enforcement agent (27%): Belgium, Bulgaria, Cyprus, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg.

The findings do not therefore present any general trend (see Appendices 10 and 11 for details). It does not seem possible to explain these differences either by the status of enforcement agents or by the respective sizes of the states. Is it possible that they reflect historical considerations?

⁴⁷ "Instructions for enforcement agents", *Geschäftsanweisung für Gerichtsvollzieher* (GVGA) of 1 July 2003 (AV d. JM vom 18. März 1980; 2344-IB. 124), lays down standards for enforcement agents. It imposes rules on methods of enforcement. Article 1 of GVGA lays a duty on enforcement agents to comply with these rules and to know the relevant legal provisions.

⁴⁸ This proportion (25 states out of 44) is worth comparing with those for other professions. In reply to question 96 (Have quality standards been formulated for lawyers?), 31 of the same 44 states replied that they had standards. The most

significant differences are as follows:

- 25 states have quality standards for enforcement agents: of these, 5 (Moldova, Portugal, Romania, Slovenia, Turkey) do not have quality standards for lawyers;
- 19 states do not have quality standards for enforcement agents: of these, 11 (Andorra, Bosnia-Herzegovina, Croatia, Cyprus, Georgia, Ireland, Liechtenstein, Malta, Norway, SM-Serbia, Sweden) do not have quality standards for lawyers.

⁴⁹ The concept of “new” member states used in this study refers to the states that have joined the Council of Europe since 1 January 1990, the “early member states” being the states that were members of the Council of Europe by 31 December 1989. The significance of this distinction is to divide the states into two groups of 23 on the basis of the date of joining (the Council of Europe had 46 member states at the time of this evaluation).

⁵⁰ In the Netherlands, Article 13 of the Bailiffs Act of 26 January 2001 (*Wet van 26 januari 2001 tot vaststelling van de Gerechtsdeurwaarderswet*) lays a duty on enforcement agents to justify themselves at the user’s request. In order to foster the social follow-up of people in difficulty, Article 14 of the same Act requires bailiffs to give prior notice to the municipal authorities in which the building is situated of any domestic evictions. In Finland, Section 2 of Act No. 434 of 6 June 2003 on the public administration (*Hallintolaki / Förvaltningslag*) requires enforcement agents (civil servants) to provide “an appropriate service to users”.

⁵¹ This is the case in Finland (Section 2 of Act No. 434 of 6 June 2003 on the public administration (*Hallintolaki / Förvaltningslag*)).

⁵² In the United Kingdom, assets that are attached are subject to a duty of care by the enforcement agent (see *IRC v. Hoogstraten* [1984] 3 All E.R. 25).

In Germany, Article 104 of the “Instructions for enforcement agents”, *Geschäftsanweisung für Gerichtsvollzieher* (GVGA) of 1 July 2003 (AV d. JM vom 18. März 1980; 2344-IB. 124), requires enforcement agents to take into account not only the interests of the creditor, but also of the debtor, insofar as that does not endanger the success of enforcement and does not cause unnecessary costs. Enforcement agents are also required to avoid any damage to debtors and to avoid creating a scandal. In the words of Article 104 GVGA: “1. *Bei der Zwangsvollstreckung wahrt der Gerichtsvollzieher neben dem Interesse des Gläubigers auch das des Schuldners, soweit dies ohne Gefährdung des Erfolgs der Zwangsvollstreckung geschehen kann. 2. Er vermeidet jede unnötige Schädigung oder Ehrenkränkung des Schuldners und die Erregung überflüssigen Aufsehens. 3. Er ist darauf bedacht, dass nur die unbedingt notwendigen Kosten und Aufwendungen entstehen. 4. Auf etwaige Wünsche des Gläubigers oder des Schuldners hinsichtlich der Ausführung der Zwangsvollstreckung nimmt der Gerichtsvollzieher Rücksicht, soweit es ohne überflüssige Kosten und Schwierigkeiten und ohne Beeinträchtigung des Zwecks der Vollstreckung geschehen kann.*”

⁵³ In Germany, Article 187 of the “Instructions for enforcement agents”, *Geschäftsanweisung für Gerichtsvollzieher* (GVGA) of 1 July 2003, contain specific rules on the procedure to be followed during enforcement. Enforcement agents are required to avoid any severity that is unnecessary for achieving the aim of enforcement (paragraph 1). Before arrest, they must serve the arrest warrant on the debtor and ask him or her if he or she wishes to inform his or her relatives of the

arrest. According to paragraph 3, enforcement agents must give the creditor the possibility of taking part in the debtor's solemn declaration (*eidesstattliche Versicherung*). Where there is doubt, the primacy of the debtor's personal freedom over the creditor's interest in participating must be respected. Paragraph 7 provides that the arrest warrant should be handed over to the debtor on his or her release. The creditor must be informed of the process. Article 187 (GVGA) lays down: "1. Der Gerichtsvollzieher vermeidet bei der Verhaftung unnötiges Aufsehen und jede durch den Zweck der Vollstreckung nicht gebotene Härte. In geeigneten Fällen kann er den Schuldner schriftlich zur Zahlung und zum Erscheinen an der Gerichtsstelle auffordern. Dies hat jedoch zu unterbleiben, wenn zu befürchten ist, der Schuldner werde sich der Verhaftung entziehen oder Vermögensgegenstände beiseite schaffen. Bei Widerstand wendet der Gerichtsvollzieher Gewalt an und beachtet dabei die §§ 758, 759 ZPO. Vor der Verhaftung stellt der Gerichtsvollzieher fest, dass die angetroffene Person die im Haftbefehl bezeichnete ist. Er übergibt dem Schuldner bei der Verhaftung eine beglaubigte Abschrift des Haftbefehls (§ 909 ZPO); [...] 2. Der Gerichtsvollzieher befragt den Verhafteten, ob er jemanden von seiner Verhaftung zu benachrichtigen wünsche, und gibt ihm Gelegenheit zur Benachrichtigung seiner Angehörigen und anderer nach Lage des Falles in Betracht kommender Personen, soweit es erforderlich ist und ohne Gefährdung der Inhaftnahme geschehen kann. Ist die Benachrichtigung durch den Verhafteten nicht möglich oder angängig, so führt der Gerichtsvollzieher die Benachrichtigung selbst aus. [...] 3. Ist der Schuldner zur Abgabe der eidesstattlichen Versicherung bereit, so nimmt ihm der verhaftende Gerichtsvollzieher die eidesstattliche Versicherung ab. Dem Gläubiger ist die Teilnahme zu ermöglichen, wenn er dies beantragt hat und die Versicherung gleichwohl ohne Verzug abgenommen werden kann. [...] Im Zweifel ist dem Recht des Schuldners auf persönliche Freiheit der Vorrang vor dem Teilnahmeinteresse des Gläubigers einzuräumen. [...] 7. Der Gerichtsvollzieher des Haftorts entlässt den Schuldner nach Abgabe der eidesstattlichen Versicherung oder Bewirkung der geschuldeten Leistung aus der Haft. Der Haftbefehl ist damit verbraucht. Der Gerichtsvollzieher übergibt dem Schuldner den Haftbefehl und macht die Übergabe aktenkundig. Zugleich unterrichtet er den Gläubiger.[...]"

⁵⁴ Excessive length of enforcement is probably the most widespread complaint of users in Europe. In order to reduce it, it may be useful to put in place quality standards for enforcement agents; such standards should be based on a system of regular follow-up of court activity concerning the length of proceedings. The replies from national correspondents show, however, that this is not always the case (questions 52 and 112). While the 25 states that have quality standards for enforcement agents have all set up a system to follow-up the length of proceedings (the only exception being Monaco which, as a micro state, probably does not need one), the situation is more complex for the 19 states that do not have quality standards. Of these, 9 have a follow-up system for length of proceedings, but have not used it to put forward quality standards (Croatia, Cyprus, Estonia, France, Ireland, Italy, Malta, Norway and Sweden), while 9 others, including several micro states, do not have a follow-up system for length of proceedings either (Andorra, Belgium, Bosnia-Herzegovina, Greece, Latvia, Liechtenstein, Lithuania, Luxembourg and Serbia).

⁵⁵ The form this business plan should take is set out in a Decree of 4 July 2001 (in Dutch, *Besluit van 4 juli 2001, houdende nadere regels inzake het ondernemingsplan in verband met de vestiging van een gerechtsdeurwaarder en de advisering daarover door de Commissie van deskundigen (Besluit ondernemingsplan gerechtsdeurwaarder)*).

⁵⁶ Contribution of the UIHJ to the CEPEJ presented by B. MENUT, Secretary of the UIHJ, on 1 December 2004. The contribution is available on the UIHJ website:

<http://www.uihj.com/rubrique.php?ID=1006513&lg=fr> (consulted on 1 August 2007).

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Question 45 of the Revised Scheme.

⁶¹ The 27 states in question are as follows: Albania, Andorra, Armenia, Austria, Belgium, Czech Republic, Denmark, France, Georgia, Germany, Greece, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Moldova, Monaco, Netherlands, Portugal, Romania, Russian Federation, Slovakia, SM-Montenegro, Spain, Turkey, Ukraine.

⁶² See CEPEJ, *European Judicial Systems – Facts and figures on the basis of a survey conducted in 40 Council of Europe Member States*, 2004, CEPEJ (2004) 30, question 106.

⁶³ For example, Germany says in its reply to question 113 that all the grounds of complaint mentioned in the questionnaire may arise, but it nonetheless specifies the three main complaints (lack of information, excessive length, excessive cost) and says that the others do not account for the majority of complaints.

⁶⁴ At the 9th plenary meeting of the CEPEJ, held in Strasbourg on 13 and 14 June 2007, we submitted our comments on this question and proposed a new wording reflecting our observations. The new wording was adopted by the meeting and the next round (2006-2008) should have more information on this point.

⁶⁵ The European Court of Human Rights has identified four criteria for assessing the reasonableness of the length of proceedings: the complexity of the case, the applicant's conduct, the conduct of the competent authorities, what is at stake for the applicant. On this subject, see, in particular, F. CALVEZ, *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, CEPEJ Studies, No. 3, Council of Europe Publications, June 2007.

⁶⁶ See in this connection, the contribution of the UIHJ to the CEPEJ presented by B. MENUT, Secretary of the UIHJ, on 1 December 2004. The contribution is available on the UIHJ website:

<http://www.uihj.com/rubrique.php?ID=1006513&lg=fr> (consulted on 1 August 2007)

⁶⁷ Ibid.

⁶⁸ The 16 states in question are as follows: Albania, Austria, Azerbaijan, Czech Republic, Estonia, Finland, Hungary, Italy, Lithuania, Moldova, Poland, Portugal, Romania, Russian Federation, Serbia and Turkey.

⁶⁹ The 15 states concerned are as follows: Andorra, Armenia, Bulgaria, Cyprus, France, Georgia, Germany, Greece, Iceland, Latvia, Luxembourg, Malta, Monaco, UK-Northern Ireland and Ukraine.

⁷⁰ ECHR, *Hornsby v. Greece*, judgement of 19 March 1997; *Di Pede v. Italy* and *Zapia v. Italy*, judgments of 26 September 1996.

⁷¹ DEHARO, G., “Ce qu’exécuter veut dire... Une approche théorique de la notion d’exécution”, *Droit et procédures*, juill.-août 2005, n° 4, pp. 208-214, and particularly 2.

⁷² See “Fair trial within a reasonable time” and “Enforcement timeframes” in European Commission for the Efficiency of Justice, *European Judicial Systems*, CEPEJ Studies, 2006 edition (2004 data), p. 85 ff; p.144.

⁷³ For the purposes of this study, a distinction needs to be drawn between the concept of the “enforcement timeframe” and the notion of the “limitation period”. The first has an exclusively procedural meaning and refers to a period of waiting or action between the beginning and the completion of the enforcement process. The second, on the other hand, refers to a period laid down by law at the end of which the right to demand enforcement lapses. For example, Section 24 of the Limitation Act 1980 (c.58) in force in England and Wales provides that “an action shall not be brought upon any judgment after the expiration of six years from the date on which the judgement became enforceable”.

In this study, the concept of “enforcement timeframe” refers only to the procedural timeframe allowed to the enforcement agent in which to complete the enforcement procedure or practical measure that he or she undertakes.

⁷⁴ In Finland, Article 19 of Act No. 37 of 3 December 1995 on forced enforcement (*Ulosottolaki/Utsökningslag*) deals with the speed and efficiency of the appropriate methods of enforcement. A new Code (No. 705 of 15 June 2007) on forced enforcement will come into force on 1 January 2008.

⁷⁵ This is, in particular, the case in the following states: Finland, Germany (for the enforcement of emergency orders and guarantees of pecuniary debts), Russian Federation (for rights to maintenance), Sweden.

⁷⁶ See the conclusions of the Round Table on “Non-enforcement of domestic court decisions in member states: general measures to comply with European Court judgments” held in Strasbourg on 21 and 22 June 2007 by the Department for the execution of judgments of the European Court of Human Rights in the context of the programme to assist the Committee of Ministers in the control of the execution of the judgments of the European Court.

http://www.coe.int/t/e/human_rights/execution/01_Introduction/RoundTableConcl_e.pdf (last consulted: 1 August 2007).

⁷⁷ See in this connection the enforcement Act (*Exekutionsordnung*, 27.05.1896, RGBI 79), amended by I 2005/68 (EO-Nov 2005) §396.

⁷⁸ This is the case in Georgia, Latvia and Romania, for example.

⁷⁹ Act No. 219/2005 amending the Romanian Code of Civil Procedure.

⁸⁰ Cf. the German Act on Criminal Procedure (*Strafprozessordnung* (StPO) of 9. Dezember 1075 (BGBl. Nr. 631) requiring the immediate enforcement of decisions in criminal cases (§397 StOP). The importance of automatic enforcement of all court decisions taken against the public authorities was emphasised by the participants in the high-level Round Table on “Non-enforcement of domestic court decisions in member states”: see the aforementioned conclusions.

⁸¹ See above, previous paragraph.

⁸² See F. CALVEZ, *Length of court proceedings in the member states of the Council*

of Europe based on the case law of the European Court of Human Rights, CEPEJ Studies, No. 3, Council of Europe Publications June 2007, especially pp. 24-28.

⁸³ For example, this is the case in Georgia, Latvia, Moldova, San Marino and Spain. The German law (*Exekutionsordnung* (EO), of 27 May 1896, RGBI 79, amended by I 2005/68 (EO-Nov 2005)) on the enforcement of court decisions in civil cases provides that an authorised enforcement should be carried out automatically by the civil courts or enforcement agents under the direction of the courts (§16). Judicial practice deduces from this a prohibition on delayed enforcement without a legal justification and a duty for the competent bodies to act within a reasonable time.

⁸⁴ Article 192 of the Moldovan Code of Civil Procedure, adopted by Act No. 225/XV of 30 May 2003.

⁸⁵ Article 20 of the Moldovan Code of Criminal Procedure, adopted by Act No. 122-XV of 14 March 2003.

⁸⁶ Cf. Moldova's reply to question 21 with the study by F. CALVEZ, *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, CEPEJ Studies, No. 3 op. cit.

⁸⁷ Reform of the *Exekutionsordnung* (EO), of 27 May 1896, RGBI 79, (EO-Nov 2003); §25 EO.

⁸⁸ *Das Vollstreckungsorgan hat die erste Vollzugshandlung innerhalb von vier Wochen ab Erhalt des Vollzugauftrages durchzuführen* (§ 25.3).

⁸⁹ See question 115 of the Revised Scheme for evaluation of judicial systems.

⁹⁰ These states are as follows: Albania, Armenia, Austria, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Germany, Hungary, Iceland, Moldova, Netherlands, Poland, Romania, San Marino, Slovakia, Spain, Sweden, United Kingdom (UK-England/Wales, UK-Northern Ireland, UK-Scotland), Ukraine.

⁹¹ These states are as follows: Albania, Armenia, Azerbaijan, Bulgaria, Cyprus, Czech Republic, Finland, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Moldova, Netherlands, Poland, Romania, Slovakia, Spain, Sweden, United Kingdom (UK-England/Wales, UK-Scotland), Ukraine.

⁹² These states are Finland and Moldova.

⁹³ These states are Finland, Latvia and Moldova.

⁹⁴ See the CEPEJ framework programme "A new objective for judicial systems: the processing of each case within an optimum and foreseeable timeframe" (CEPEJ (2004) 19 Rev.).

⁹⁵ Under Articles 69 and 108 of the Constitution of Finland No. 731 of 11 June 1991 (*Suomen perustuslaki/Finlands grundlag*), the *justitiekansler* intervenes if an enforcement authority does not fulfil its legal obligations. A complaint is not required for its intervention. Cf. Act No. 193 of 25 February 2000 on the *justitiekanslern* (*Laki valtioneuvoston oikeuskanslerista/lag om justitiekanslern i statsrådet*). Swedish law makes a similar provision: Articles 1 and 2 of *Lag om justitiekanslerns tillsyn* SFS 1975: 1339.

⁹⁶ Under Article 3 of Finnish Act No. 197 of 14 March 2002 on *Riksdagens justitieombudsman* SFS 1986:765 (*Laki eduskunnan oikeusasiamiehestä/lag om Riksdagens justitieombudsman*), a complaint may be lodged with the Ombudsman against a procedure that has not complied with legal provisions. There is a similar

provision in Swedish law: Articles 3-6 of the instructions for *Riksdagens ombudsmän* SFS 1986:765 (*lag med instruktion för Riksdagens ombudsmän ("JO-instruktionen")*).

In the United Kingdom, the Local Government Ombudsman may also investigate complaints lodged against certain authorities responsible for enforcement (e.g. *Regulation 34(3) of the Council Tax (Administration and Enforcement) Regulations 1992 (No. 613)*). See the website of the *Local Government Ombudsman*: <http://www.lgo.org.uk>

⁹⁷ See the conclusions of the Round Table available at:

http://www.coe.int/t/e/human_rights/execution/01_Introduction/RoundTableConcl_e.pdf (last consulted: 1 August 2007).

⁹⁸ *Exekutionsordnung* (EO), of 27 May 1896, RGBI 79, amended by I 2005/68 (EO-Nov 2005), § 68 EO

⁹⁹ See the conclusion of the above-mentioned Round Table:

http://www.coe.int/t/e/human_rights/execution/01_Introduction/RoundTableConcl_e.pdf

¹⁰⁰ The importance of giving enforcement agents the necessary powers to guarantee proper enforcement of court decisions was emphasised by the participants in the Round Table on "Non-enforcement of domestic court decisions in member states", Strasbourg, 21-22 June 2007, op. cit. Cf. "Transparency of a Debtor's Assets" in HESS, B., Study No. JAI/A3/2002/02 on making more efficient the enforcement of judicial decisions in the European Union, pp. 20-59:

http://ec.europa.eu/Justice_home/doc_centre/civil/studies/doc/enforcement_judicial_decisions_180204_en.pdf (last consulted: 1 August 2007).

¹⁰¹ KENETT, W. *The Enforcement of Judgements in Europe*, 2000, Oxford, Oxford University Press, p. 102.

¹⁰² MATTHEWS, P., "Provisional and Protective Measures in England and Ireland at Common Law and Under the Conventions: a Comparative Survey", C.J.Q. 1995, 14(JUL), 190-202; Cf. "Provisional Enforceability and protective Measures" in B. HESS, Study No. JAI/A3/2002/02, op. cit., pp. 101-144.

¹⁰³ This deadline is not laid down in law but adopted by judicial practice. In Sweden, under the Act on payment orders and delegation of powers by a judge SFS 1990: 746 (*Lag om betalningsföreläggande och handräckning*), the debtor has 10-14 days in which to respond to the request for a payment order or challenge it in writing (Article 31). Under Article 25, in some special cases concerning unpaid rent or the debts of persons living abroad, the deadline may be more than 14 days. The authority competent to deal with requests for payment orders (*Kronofogdemyndigheten*) determines the deadline for challenging on a discretionary, case-by-case basis within the limits established in law. The practice of applying a deadline of 10 days for challenging enforcement measures has been confirmed by decision of *Kronofogdemyndigheten* (appeal lodged on 6 August 2007).

In Finland, for the same type of request, the deadline is also around 14 days, but is not expressly established in law. Deadlines are established for other appeals, however. Under Chapter 9, Article 6, of the Finnish Code of Procedure, No. 4 of 1 January 1734 (*Oikeudenkäymiskaari/Rättegångsbalken*), an appeal against a decision on enforcement measures may be lodged, in certain conditions ("enforcement action" – *verkställighetstvist*). Such an appeal must be lodged within

four weeks of the disputed decision. Moreover, an action to change an enforcement measure may be brought before the first instance court within three weeks of the disputed decision under Chapter 10, Article 4, of the Code of Procedure.

¹⁰⁴ SUNBERG, F., “*Le contrôle de l’exécution des arrêts de la Cour européenne des droits de l’Homme*”, in Mélanges G. COHEN-JONATHAN, *Liberté, Justice, tolérance*, Vol. 2, Bruxelles, Bruylant, 2004, pp. 1515-1535.

¹⁰⁵ COUNCIL OF EUROPE, “*Non enforcement of court decisions against the State and its entities in the Russian Federation: remaining problems and solution required*”, Round table, Strasbourg, 30-31 October 2006. Cf. the memoranda prepared for the Committee of Ministers “*Non enforcement of domestic judicial decisions in Russia: general measures to comply with the European Court’s judgements*”, CM/Inf/DH(2006) 19 Rev. 3; “*Non enforcement of domestic judicial decisions in Ukraine: general measures to comply with the European Court’s judgements*”, CM/Inf/DH(2007)30.

¹⁰⁶ See the conclusions of the Round Table on “*Non-enforcement of domestic court decisions in member states*”, op. cit.; see also, NOTES BLEUES DE BERCY n° 135, “*L’exécution des décisions de Justice – Panorama des principales étapes de l’exécution d’une décision du juge judiciaire, en faveur ou à l’encontre de l’Etat*”, *Revue des huissiers de Justice* 1998, p. 1038.

¹⁰⁷ In the member states in which judges enforce their own decisions, the case is not transferred at all. The freshness of the case then depends only on the immediate enforcement of the decision.

¹⁰⁸ The legislation of some states makes a false declaration or refusal by the defendant to declare assets a criminal offence (Austria, Denmark, England, Germany, Greece, Ireland, Portugal, Spain, Sweden). In England and Ireland the defendant’s refusal to cooperate with the enforcement agent is considered contempt of court: See B. HESS, Study No. JAI/A3/2002/02 on making more efficient the enforcement of judicial decisions in the European Union, op. cit., p. 37.

¹⁰⁹ This “openness” of the courts to potential users in member states with a low level of computerisation of the judicial system is probably explained by steps aimed at fostering access to justice in those states.

¹¹⁰ These states are as follows: Austria, Denmark, Estonia, Luxembourg, UK-England/Wales, Ukraine.

¹¹¹ See CABRILLAC, S., “*De quelques utilisations des nouvelles technologies par la profession d’huissier de Justice*”, *Petites affiches* 2006, n° du 4 avril, pp. 8-13.

¹¹² These states are as follows: Austria, Bulgaria, Estonia, Finland, France, Georgia, Ireland, Malta, Netherlands, Norway, Poland, SM-Montenegro, Sweden, UK-England/Wales.

¹¹³ These states are as follows: France, Luxembourg, Malta, Norway, Russian Federation, UK-England/Wales.

