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PROJECT

**Support to further strengthening the efficiency and quality of the judicial system
in the Republic of Moldova**

REPORT

**on the enforcement of court decisions in civil and administrative
matters in the Republic of Moldova**

*(based on the results of a fact-finding mission
conducted by a team of CEPEJ experts on 2-3 March 2020)*

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Executive summary

The present report was drawn up by a team of experts invited by the European Commission for the Efficiency of Justice (CEPEJ) to conduct a fact-finding and experience-sharing mission on the enforcement of court decisions in civil and administrative matters in the Republic of Moldova. The mission was carried out on 2-3 March 2020, in the framework of the European Union / Council of Europe joint Project “Support to further strengthening the efficiency and quality of the judicial system in the Republic of Moldova”, which is part of the 2019-2021 “Partnership for Good Governance for Eastern Partnership countries” (PGGII).

The system of enforcement of court decisions in civil and administrative matters in the Republic of Moldova will mark soon 10 years since switching to the institute of private enforcement agents. Currently, the Ministry of Justice of the Republic of Moldova and the National Union of Enforcement Agents of the Republic of Moldova (further referred to also as UNEJ – abbreviation from the Romanian “Uniunea Nationala a Executorilor Judecatoresti”) are undertaking joint efforts to improve the evaluation of the performance of the system, to modernise the case management, and to increase the efficiency and the quality of enforcement services.

In this context, the team of experienced enforcement agents including Mr Mathieu Chardon, First Vice-President of the International Union of Judicial Officers (UIHJ) (France), Ms Dovile Satkauskiene, Governor of the Chamber of Enforcement Agents (Lithuania), Mr Adrian Stoica, Dean of the Law Faculty of the Ovidius Constanta University (Romania), and Mr Adrianus Uitdehaag, Secretary/ Board member of UIHJ (The Netherlands) carried out the mission to assess and support the on-going reform and the current priorities of the Moldovan system of enforcement of court decisions in civil and administrative matters. The mission included a round table on the CEPEJ recommendations and the best practices in Europe with regard to the methodology of evaluating the performance of enforcement agents, the related indicators of efficiency and quality, the time management tools etc. A workshop was dedicated to new technologies and cyberjustice tools at the service of the enforcement systems and dealt with issues such as the integrated case management systems or the registers of enforceable documents and procedures, as well as the on-line platforms for auctioning of seized goods.

The present report recommends to the national stakeholders several objectives and actions in the directions of evaluating and improving the efficiency and quality of the enforcement system and of deploying IT-based solutions such as integrated case management systems or registers and e-auctions, to support the enforcement system and its agents.

General considerations regarding the objectives of the project

Enforcement means the putting into effect of judicial decisions and 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. The concept of enforcement refers to the enforcement of court judgments and other enforceable titles (debt instruments, public deeds and authenticated private deeds for specific services). At the enforcement stage, which is still subject to judicial proceedings, the forces of law and order may intervene if the debtor fails to meet his/her obligations spontaneously.

This Project is of particular importance from a double perspective: *evaluating certain deficiencies existing in the enforcement system in the Republic of Moldova* and *identifying the best solutions for improving the enforcement activity, as well as strengthening the status of the enforcement agent in the Republic of Moldova*.

Under these circumstances, the general objectives of the Project concentrate on the activities carried out in compliance with essential factors, specific to an efficient enforcement system, namely:

- a) The efficiency, expediency and predictability of enforcement procedures.** These three factors are fundamental to the implementation of a qualitative enforcement system. The legal framework needed for the implementation of these factors in a enforcement system is an essential attribute of the rule of law, which at the same time has the obligation to ensure the professional independence of the enforcement agent. With the creation of this legal system in which the efficiency, expediency and predictability of enforcement procedures are identified, it can be stated that the state offers the guarantee of a good quality justice within the component of enforcement to any citizen who resorts to this procedure;
- b) The transparency of enforcement procedures.** In the sphere of transparency, not only the issues related to the visibility of the legislation regarding enforcement are included, but also the information regarding the costs of this procedure or, more than that, the disciplinary mechanisms within the enforcement agent profession, as well as the advertising of the solutions given within the settled disciplinary actions;
- c) The implementation of dematerialised procedures.** The purpose of introducing these procedures is closely linked to the implementation of a "cyber justice" system at national level. The computerised enforcement procedures contribute to the efficiency and increased quality of the enforcement system and at the same time they ensure its effective transparency;
- d) Better professional management.** This factor has a complex application, generally to professional efficiency. In order to be successfully implemented, the representatives of the enforcement agent profession must collect, during the controls carried out, information on: the working conditions of enforcement agents and their auxiliary personnel; the number of admitted appeals and the fault of the enforcement agent. Furthermore, after performing these controls, the introduction of professional obligations that may not exist in the enforcement system (for example, the obligation of the enforcement agent to submit annually statistical situations regarding the expediency of the execution of a case or the number of admitted appeals and the reasons for admitting these actions, etc.).

This Project pays attention to a series of effects typical to any European project, manifested primarily in organising seminars, workshops aiming to emphasize the functionality of registers of documents, but also of enforcement procedures, or in conferences in accordance with its objectives.

Moreover, within these actions, a number of authorities participate, which together with the representatives of the UNEJ, are considering the implementation of best practices in the field of enforcement, but to the same extent, they find the most effective procedural mechanisms in increasing the quality of the enforcement system in this country.

Last but not least, the translation and dissemination of the most important tools promoted by the CEPEJ/the European Commission for the efficiency of justice, but also by the Council of Europe, can lead to the creation of a system of indicators regarding the efficiency of the enforcement system and the assessment of the enforcement agents' performances.

For the implementation of this Project, two very important meetings have already been held, both organised in Chisinau. Thus, on December 11, 2019, at the National Institute of Justice in the Republic of Moldova, the launch of this Project took place, and on 2-3 March 2020, in Chisinau.

1. Improving the assessment of the efficiency and quality of the general enforcement system

1.1. Introduction

The current European legislative framework encourages the states to develop the implementation of an efficient and predictable judicial system, which can be improved in the interest of citizens. This European legislative context, in which the enforcement component operates, includes the following normative acts:

- *European Convention on Human Rights (in particular, Articles 5, 6, 8 and 13 and Article 1 of Protocol No. 1);*
- *Regulation (EC) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (reform of the Brussels I Regulation);*
- *Regulation (EC) 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;*
- *Regulation (EC) 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;*
- *Regulation (EC) 805/2004 creating a European Enforcement Order for uncontested claims;*
- *Regulation (EC) 1896/2006 creating a European order for payment procedure;*
- *Regulation (EC) 861/2007 establishing a European Small Claims Procedure;*
- *Regulation (EC) 1393/2007 on the service of judicial and extrajudicial documents in civil or commercial matters;*
- *Directive 52/2008 on certain aspects of mediation in civil and commercial matters;*
- *Recommendation Rec (2003)16 of the Council of Europe Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law;*
- *Recommendation Rec (2003)17 of the Council of Europe Committee of Ministers to member states on enforcement;*
- *CEPEJ Guidelines for a better implementation of the existing Council of Europe's recommendation on enforcement (CEPEJ(2009)11REV2);*
- *Recommendation Rec (2003)14 of the Council of Europe Committee of Ministers to member states on the interoperability of information systems;*
- *Recommendation Rec (2008)2 of the Council of Europe Committee of Ministers to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights.*

Therefore, the domestic law of a European state must obey the enforcement of a writ of execution, which is why domestic law must take into account that enforcement should not be undermined by an exterior intervention, either by the executive or by the legislative. Also, the status of the enforcement agent is of major importance since he/she must have an objective autonomy, distinct from the activity of the court. This autonomy, which must be statutory and financial, can create an adequate framework for assuming professional responsibility in the situations where it is required.

In order to improve the assessment of the efficiency and quality of the general enforcement system in the Republic of Moldova, in relation to the European instruments mentioned above, it is necessary to draft some recommendations addressing the following:

1. **Better publicity by the concerned authorities of the main EU-European documents relating to the fundamental rights and freedoms of man, but also to those concerning enforcement procedures;**
2. **The promotion the EU-European provisions related to the status of the enforcement agents regarding their independence, duties, but also their responsibility;**
3. **The support of the rapid implementation of the IT procedures in the general enforcement system and, at the same time, the stipulation of the EU-European provisions that recommend their use by the EU member states;**
4. **The inclusion in the topics of vocational training courses available to the enforcement agents of the presentation of the most important EU-European instruments in the field of enforcement procedures or regarding the status of a European enforcement agent.**

1.2. Improving the enforcement system from the perspective of the European Court of Human Rights (ECHR) and the Consultative Council of European Judges (CCJE)

In civil matters, the modern evolution of the civil process is closely linked to the fair trial concept. This evolution has its source in the jurisprudence of the European Court of Human Rights and has as its first reference the case of *Golder v. The United Kingdom of February 21, 1975*, and the last one is the case of *Hornsby v. Greece of March 19, 1997*. After these two representative judgments, we can talk about a *European civil process* composed of two phases: the trial and the enforcement. Both phases of a fair trial have the same principles.

However, the ECHR considers that most of the established principles regarding enforcement in civil matters apply "*mutatis mutandis*" to enforcement of judgments in administrative matters, whether the enforcement is against a private person or a public institution. However, certain special considerations can arise when enforcing court judgments against public entities. These may appear in administrative law, but also in civil litigation.

Moreover, the ECHR and the CCJE consider that, in a country governed by the rule of law, public institutions, above all others, are obligated to comply with judgments and to enforce them in an "*ex officio*" rapid manner. The very idea that a state body refuses to obey a court ruling undermines the concept of the rule of law.

A large number of cases presented to the ECHR concern the non-execution of court judgements by public institutions. In principle, a state must comply with the judgments made against it without delay and without the need for the plaintiff to use the enforcement procedures.

The ECHR, for the first time in its judgments, **Metaxas v. Greece, May 27, 2004**, **Koltsov v. Russia, February 24, 2005**, **Petrushko v. Russia, February 24, 2005**, repeatedly admitted the plaintiffs' claims who either did not resort to these procedures, or were forced to resort to them, expressing the view that: "*a person who has obtained a court judgement against the state after a won trial should not be required to resort to enforcement procedures in order to implement it*". Also, in the cases of **Sabin Popescu v. Romania, March 2, 2004** and **Maria Costin v. Romania, May 26, 2005**, the Court also stipulated that: "*the undertaking of other actions by the plaintiff would only have a repetitive character, namely that a court would once again rule for the public authorities to implement a court judgement*", which would lead to the violation of Art. 35 para. (1) of the Convention.

When resorting to enforcement is necessary, the states must ensure in their domestic legislation the provision of penal and disciplinary sanctions against the officials responsible for refusing or delaying the enforcement, as well as the possibility of their civil liability. At the same time, the states must take action against such officials in order to recover the costs generated by the refusal or delay of the enforcement. The acts of the officials delaying or refusing the enforcement must be subject to appeal.

Legislative interventions in cases where enforcement is in progress are not allowed, especially when a public entity is a debtor in the case. Similar to the case where enforcement is directed against private entities, the same enforcement agents must have competences and the same procedural principles must be applied. Judges should not have restrictions in applying the same legal provisions and in ensuring effective compensation for the delays in the enforcement procedure, such as: adjusting to inflation rate, late payment interest in the appropriate general amount, compensation for damages, other penalties.

Such a compensation is also a direct ECHR requirement (in particular by applying Article 1 of Protocol No. 1). Thus, in the Court's view, according to the judgement **Petrushko v. Russia, February 24, 2005**, the very fact that the authorities complied with the judgements cannot be regarded as an automatic renunciation of the victim to the victim status under the convention, unless adequate compensation has been offered for delaying procedures.

The appropriate compensation eventually paid out late must take into account different situations, in order to compensate for ***the difference between the amount due and the amount finally paid to the creditor and to compensate for the losses***. This principle was first established by the ECHR in the cases: **Akkus v. Turkey, July 9, 1997, Angelov v. Bulgaria, April 22, 2004, Eko-Elda Avee v. Greece, March 9, 2006**. Furthermore, according to ECHR, ***compensations can also be demanded for non-patrimonial damages*** (see case Sandor v. Romania, March 24, 2005).

From these considerations, we consider that we can recall ten principles to which the stakeholders of any enforcement system should pay particular attention, namely:

- I. *The efficient enforcement of the executory and final judgments is a fundamental element of the rule of law. It is essential to ensure public confidence in the authority of the judicial system. The independence of justice and the right to a fair trial are devoid of content if the judgment is not implemented.*
- II. *The very notion of an "independent" court established in Article 6 of ECHR shows that its power to issue a compulsory ruling cannot be subject to approval, ratification or change of its essence by any non-judicial authority, including the Head of State.*
- III. *All the state bodies must ensure the interpretation of the legal provisions regarding the independence of the courts, which exist in the constitutions or at the highest legislative level, in such a way that the court judgements are implemented promptly, without any intervention from other state powers, with the sole exception of amnesty and pardons in criminal cases. The suspension of the enforcement of a writ of execution can be ordered only by a court judgement.*
- IV. *There should be no delay in the enforcement procedure, except for the reasons stipulated by law. Any postponement must be ordered by a judge. The enforcement agents should not have the power to challenge or change the terms of a judgment.*

- V. *The CCJE considers¹ that, in a state governed by the Rule of law, public entities are above all bound to respect judicial decisions, and to implement them in a rapid way “ex officio”. The very idea of a state body refusing to obey a court decision undermines the concept of primacy of the law.*
- VI. *Enforcement must be fair, efficient and proportional.*
- VII. *The parties must be able to initiate easily the enforcement procedure. Any obstacle to this, such as excessive costs, must be avoided.*
- VIII. *All enforcement procedures must be implemented in accordance with the fundamental rights and freedoms recognised by ECHR and other international instruments.*
- IX. *The principles of mutual trust and recognition are the foundation of the construction of a European judicial space, while respecting the diversity of the domestic systems. Mutual recognition means that all the judgements reached at domestic level have effects on other Member States, in particular on their judicial systems. Thus, it is essential to increase the exchanges between legal professionals. Their different networks need restructuring, consolidation and mutual coordination.*
- X. *The CCJE recommends² that the Council for the Judiciary, or any other relevant independent body, publish regularly a report on the effectiveness of enforcement, including data on delays and their causes, as well as on different enforcement methods. A special section should deal with the enforcement of judicial decisions against public entities.*

1.3. Improving the enforcement system from the perspective of Recommendation Rec(2003)17 of the Council of Europe and the CEPEJ Guidelines on Enforcement

On 9 September 2003, the Council of Ministers of the Council of Europe adopted Recommendation Rec(2003)17 on Enforcement. The CEPEJ adopted on 17 December 2009 the Guidelines for a better implementation of this recommendation (CEPEJ(2009)11REV2) (further referred to also as the CEPEJ Guidelines on Enforcement). Although not binding, these two documents can be considered as guides for the improvement of enforcement within the Council of Europe’s members states, including as regards timeframes and reports.

We would like to underline the following recommendations from the CEPEJ Guidelines on Enforcement:

- *“Once the claimant’s interests are satisfied, this information should be communicated to the claimant. Member states are encouraged to establish clear regulations governing the obligation to report pending and/or completed enforcement procedures (e.g. by the way of a public register where the outcomes of enforcement actions against individual defendants are recorded).”* (Provision 73 of the CEPEJ Guidelines on Enforcement)
- *“Member states are strongly encouraged to draw up together European quality standards regarding the information that needs to be provided to the parties and to the general public with respect to enforcement procedures.”* (Provision 74 of the CEPEJ Guidelines on Enforcement)
- *“In order to undertake quality control of enforcement proceedings, each member state should establish European quality standards/criteria aiming at assessing annually, through an*

¹ See CCJE Opinion no.13 (2010) on the role of judges in the enforcement of judicial decisions, p. 31

² *Idem*, p. 23

independent review system and random on-site inspection, the efficiency of the enforcement services. Among these standards, there should be:

- a) clear legal framework of the enforcement proceedings establishing the powers, rights and responsibilities of the parties and third parties;*
- b) rapidity, effectiveness and reasonable cost of the proceedings;*
- c) respect of all human rights (human dignity, by not depriving the defendant of a minimum standard of mere economic subsistence and by not interfering disproportionately with third parties' rights, etc.);*
- d) compliance with a defined procedure and methods (namely availability of legal remedies to be submitted to a court within the meaning of Article 6 of the ECHR);*
- e) processes which should be documented;*
- f) form and content of the documents which should be standardised;*
- g) data collection and setting-up of a national statistic system, by taking into account, if possible, the CEPEJ Evaluation Scheme and key data of justice defined by the CEPEJ;*
- h) competences of enforcement agents;*
- i) performances of enforcement agents;*
- j) the procedure, on an annual basis:*
 - the number of pending cases;*
 - the number of incoming cases;*
 - the number of executed cases;*
 - the clearance rate;*
 - the time taken to complete the enforcement;*
 - the success rates (recovery of debts, successful evictions, remittance of amounts outstanding, etc.);*
 - the services rendered in the course of the enforcement (attempts at enforcement, time input, decrees, etc.);*
 - the enforcement costs incurred and how they are covered;*
 - the number of complaints and remedies in relation to the number of cases settled.”*
(Provision 75 of the CEPEJ Guidelines on enforcement)

1.4. General issues concerning the present efficiency and quality of the enforcement system in the Republic of Moldova

Since 2010 the enforcement system in the Republic of Moldova has been radically reformed. First of all, the enforcement agents have acquired a liberal status from the civil servant status, by the adoption of Law no. 113 of June 17, 2010, published in the Official Gazette of the Republic of Moldova, no. 126-128 of July 23, 2010. Also since 2010 the enforcement system in the Republic of Moldova benefits from the Enforcement Code, published in the Official Gazette of the Republic of Moldova, no. 214-220.

Therefore, starting from 2010 the general enforcement system in the Republic of Moldova has undergone an impressive evolution, with convincing achievements during the first 7-8 years. These achievements were ensured by the active involvement of the entire professional body in organising and consolidating the enforcement agent profession, making proposals *de lege ferenda* admitted by the legislative body, through which a series of supple and innovative provisions were introduced, which supported the prompt and efficient realisation of the right of the creditor recognised in the content of

the writ of execution. Also, on this occasion, a number of efficient work procedure mechanisms were adopted and made available the legislator to the enforcement agents.

However, from 2017-2018, and this is demonstrated by the statistical indicators available to the representatives of the UNEJ, it is no longer possible to talk about an increase in the efficiency of the system or of an increase in its quality, but rather about stagnation and one could even admit that there is a beginning of a decline.

This situation is due to major problems arising from the accumulation of a degree of dissatisfaction of the population related to some deficiencies in the enforcement system, such as: difficulties in identifying the enforcement agent who manages an enforcement file; maintaining some insurance measures past the legal term; the lack of some legal provisions that would lead to the motivated termination of the enforcement procedures; poor communication with some enforcement agents; increasing number of unenforced files; etc.

Predictably, these situations, especially dealt with by the parties in the trial, result from some system-specific deficiencies, such as:

- Lack of a unified system of objective data collection regarding the managed files and the stage at which they are located;
- The enforcement agents' increased responsibilities and administrative pressure, often resulting from legally unacknowledged situations;
- The devaluation in time of the amount of the fees and the costs of enforcement, often covering the costs of the enforcement procedure, leading to the reduction of the capacities of the enforcement agents to properly manage the procedures;
- Deficiencies regarding the functioning of the mechanism of attracting the disciplinary responsibility of the enforcement agents, an aspect which led to the encouragement of behaviours contrary to professional ethics;
- Low efficiency of communication between the UNEJ, the Ministry of Justice and other authorities interested in establishing a fair justice in the Republic of Moldova;
- The outdated organising modalities of the enforcement agent professional management, of the supervision of the enforcement agents' activities. These only meant carrying out checks at the offices of the enforcement agents, and over time, they have become more difficult to conduct, considering that the number of documents in the enforcement agents' records has increased excessively, while the number of their auxiliary personnel has decreased;
- The lack of modern methods of organising the activity of the enforcement agents, but also of their effective control, by the lack of implementation of professional standards;
- The lack of reaction and the reluctance of the Ministry of Justice to firmly support and strengthen the role of the governing bodies of the profession in relation to the enforcement agents.

1.5. Conclusions and general recommendations

It is essential to know, first of all, that the obligation to guarantee a fair justice belongs to the state, which is why it will answer both for the non-enforcement of the judgments and for the activity undertaken by the enforcement agents.

As previously mentioned, the first jurisprudential confirmation of **the state's responsibility for the non-execution of a court judgement** was evoked by ECHR in the content of judgement *Hornsby v Greece* of March 19, 1997. The Court stated, among other things, that the non-enforcement of judgments "*risks creating situations incompatible with the principle of the rule of law, which the signatory (contracting) states have committed to respect by ratifying the European Convention*". Subsequently, an official acknowledgement of this type of responsibility can be found in a multitude of ECHR judgements, such as: *Nuutinen v Finland*, June 27, 2000; judgement *Lunari v Italy*, January 11, 2001; *Estimate Jorge v Portugal*, April 21, 1998; *Buj v Croatia*, June 1, 2006 (no. 24661/02); *Dumbrăveanu v Moldova*, May 25, 2005; *Nicola Silvestri v. Italy* from June 9, 2009, etc.

The responsibility regarding the activity undertaken by the enforcement agents reflects the degree of efficiency of the enforcement agent profession. The liability of the state for the non-enforcement of judgments or other writs of execution arises as a result of the lack of efficiency due to the normative or institutional deficiencies within the domestic judicial system.

The responsibility of the state in a situation in which the enforcement agent performs his or her job responsibilities according to the law, but ECHR condemns the state, represents a type of responsibility highlighted by ECHR for the first time in the case *Pini and Bertani and Manera and Atripaldi v Romania* of June 22, 2004. The Court mentioned, among others, two very important provisions, namely:

- "*the enforcement agents act in the interest of a good administration of justice, which makes them an essential element of the rule of law, and within the implementation of the writs of execution, they have the quality of depositors of the public force in the matter of enforcement and this cannot happen without consequences for those responsible*";

- "*the state has the obligation to take all the necessary measures so that they can carry out the task with which they have been invested, in particular by ensuring the effective cooperation of other authorities which can forcefully enforce, when necessary, measures in the absence of which the guarantees that the party of the trial benefits before the courts lose their reason to exist*".

The same positive findings regarding the performance of professional responsibilities by the enforcement agent were noted by ECHR also on the occasion of delivering other judgements, such as: *Ciocan et al. v Romania*, December 9, 2008; *Constantin Oprea v Romania*, February 8, 2008, etc.

The responsibility of the state in the situation in which the enforcement agent does not perform his or her responsibilities according to the law and ECHR condemns the state, has special characteristics.

The typology of this responsibility is special because, as a rule, it appears in the ECHR jurisprudence having as convicted states those states in which enforcement agents have a civil servant status. This type of state responsibility intervenes when the enforcement agents fail to fulfil their duties or refuse to perform them.

An eloquent decision in this situation is represented by the judgement of *Ruianu v Romania* of June 17, 2003, with reference to the non-enforcement of a court judgement regarding the demolition of a

construction, an action initiated in Romania at a time when the enforcement agent had a civil servant status. Other such decisions are: *Platakou v Greece*, January 11, 2001; *Tsironis v Greece*, December 6, 2001; *P.M. v Italy*, January 11, 2001; etc.

Under these circumstances, given our current understanding of the efficiency and quality of the general enforcement system in the Republic of Moldova as mentioned above, we could make the following recommendations:

1. Drafting of an individual report, at the beginning of each year, for the previous year, by each enforcement agent, and mentioning, among other indicators, the number of enforcement appeals allowed and the reasons why they are allowed;
2. The creation, by the UNEJ, in cooperation with the Ministry of Justice, of a system of centralised data regarding the managed files and the stage at which they are located, including the number of enforcement appeals allowed and the reasons why they are allowed, for each enforcement agent;
3. Drafting an Annual Report of the UNEJ, which will review the state of the profession and the enforcement procedures in which, implicitly, the data on the number of enforcement appeals allowed and the reasons why they are allowed will be introduced. This report will be published on web pages, in the press and in the media;
4. Define and adopt professional standards for the enforcement agents.

1.6. Specific recommendations (Key performance indicators)

In order to increase the quality and efficiency of the general enforcement procedure in the Republic of Moldova, we consider it particularly useful to highlight a few specific indicators which have an impact on the enforcement procedure, but also on the status of the enforcement agent profession. Throughout the years, the CEPEJ has developed efficient methods for evaluating and measuring the performance of the judicial systems and services³ based on indicators such as the case flow, the clearance rate, the case turnover ratio, the duration of proceedings, the efficiency rate, disposition time, success rate, checklist on quality, etc. These evaluations applied by the CEPEJ should be applicable to the profession of enforcement agent. The relevant indicators for should the included in the Court Management System of the profession of enforcement agents. For this the ministry of justice of the Republic of Moldova and the UNEJ could define and decide on a list of indicators to be included in the Case Management System of the profession of enforcement agent, including a check list on these indicators, such as:

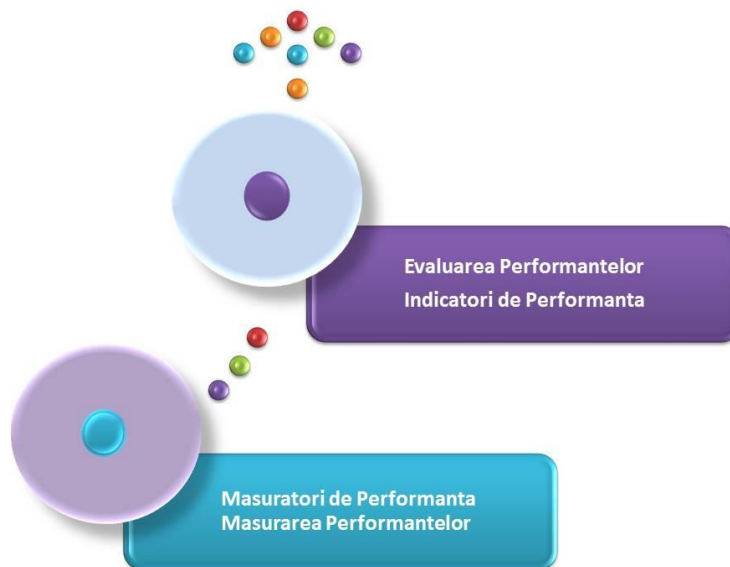
- Workload: number of pending cases, number of incoming cases, number of enforced cases, main categories.
- Efficiency and quality: clearance rate, average time to complete the enforcement by category of procedure, or the calculated disposition time, age of pending cases, success rates, enforcement costs, number of complaints and remedies in relation to the number of cases settled.

³ Such as “*Measuring the quality of justice*” as adopted on 7 December 2016 at the 28th plenary meeting of the CEPEJ (CEPEJ(2016)12).

These indicators would be useful to draw conclusions on how best to improve the efficiency of enforcement and apply relevant policy of managerial measures. As an example, these indicators can reveal both best practices as well as practical discrepancies and show what concrete solutions can be applied.

In this regard, we can consider the following recommendations:

1. In general, based on the provisions contained in the CEPEJ(2016)12 document on measuring the quality of justice, the Ministry of Justice of the Republic of Moldova, together with the UNEJ, should define and decide on a list of indicators to be included in the Case Management System, including a check list on these indicators.
2. Establishing an optimal legal framework regarding the cases of termination of enforcement. Among these cases the hypothesis according to which the debtor does not own goods or his/her goods are not of interest in the public auction should be included. This situation must be correlated with the suspension of the prescriptive period, made available to the creditor, until the debtor acquires the goods or incomes that can be tracked for payment of debts.
3. Establishing a specific term or a certain period until a precautionary measure or enforcement measure must produce its effects on the assets or incomes of the debtors that can be tracked for payment of debts.
4. Within the profession, in order to increase the quality of the enforcement act, it is necessary to constantly assess the performances of the enforcement agents, based on clear performance criteria, established by legal provisions. At the end of each year, the governing bodies of the profession must have at their disposal legal norms which can constitute performance measurements or the measurement of professional performances (fig. 1).



Evaluarea Performanțelor
 Indicatori de Performanță
 Măsurători de Performanță
 Măsurarea Performanțelor

Performance Assessment
 Key Performance Indicators
 Performance Measurements
 Measurement of Performances

2. IT-based solutions in enforcement: automated case management system and enforcement register

2.1. Introduction

The CEPEJ 2009 Guidelines⁴ encourage member States to set up a “*unique multi-source restricted access database about debtor’ attachable assets*” and “*invited to consider allowing enforcement agents to reuse information on the defendant’s assets in subsequent procedures that involve the same defendant, subject to a clear and precise legal framework (i.e. setting strict timeframes for data retention, etc.)*”.

Indeed, improvement of the efficiency and effectiveness of the enforcement system also entails a well-organised and well-structured case management system (here after CMS).

Enforcement agents are supposed to be honourable and competent in the performance of their duties and act in accordance with recognised high professional and ethical standards. To safeguard those standards, they should be subject to professional scrutiny and monitoring. A well-structured CMS will also contribute to a more effective oversight and supervision over the profession.

The Moldovan Draft Strategy of Development of the Justice Sector for the 2019-2022 (specific objective 3.3. Modernising the justice sector by supplying it with modern electronic systems and equipment and interconnecting them) underlines the importance of IT in the legal system: “*Within the framework of the institutional reform of the judiciary, computerisation has been a priority. An essential support to the modernisation of justice is ensured by developing the information system.*” As main areas of intervention are mentioned:

- Facilitating people's access to justice through application of information technologies;
- Facilitating/developing the electronic communication of lawyers and public authorities with courts, prosecutors, criminal investigation bodies and enforcement agents;
- Developing the "E-Enforcement"/"E-Arrest" platforms;
- Ensuring the interconnection of information systems of law enforcement bodies.

Indeed, IT based solutions, also in the field of enforcement, are of utmost importance. In that respect we want to mention 3 major issues:

- The enforcement case management system (procedural flow of a claim within the enforcement system);
- The access to information;
- The system of monitoring and control.

⁴ See CEPEJ(2009)11REV2, p. 40 – 47

2.2. Current status

2.2.1. Legal framework

Contravention Code

Article 34 of the Contravention Code (paragraph 3¹) introduces the Debtors Register. Such Register should record the enforcement of sanctions and fines (based on the Contravention Code). Though this provision has been introduced several years ago, so far, the Debtors Register does not exist.

Enforcement Code: access to information

Article 88, paragraph 4 of the Enforcement Code states that, at the enforcement agent's request, the holders of records and information relevant for the enforcement proceedings, financial institutions, tax authorities, cadastral bodies, other natural or legal persons are obliged to notify, within maximum 10 days, the information needed for enforcement. The Law on Collateral has a similar provision, allowing the enforcement agent access to the relevant registers. Yet, in practice this provision is not fully implemented. Enforcement agents, for example, do not receive the relevant information on registered collateral. Another example is the information request towards banks prior to an attachment of a bank account: the requests are still done on paper since banks are unable to process digitized requests.

Law on enforcement agents

According to article 29 of the Law on Enforcement Agents, the enforcement agent is obliged to keep financial and accounting records. The supervision over the profession (article 33) is exercised by the Ministry of Justice and UNEJ. For the moment such supervision can only be done by visiting the respective offices. Since resources are limited (both human resources and financial resources), in practice the monitoring and control is carried out on a (very) limited scale only.

2.2.2. Two different software applications

Already for several years Moldovan authorities undertake efforts to establish an automated enforcement information system. The main problem however is that the Moldovan Ministry of Justice and the UNEJ have a different view on the development of such a system. Consequently, there is no unitary solution for management of the enforcement procedures and for the management of financial flows. The Ministry and UNEJ developed two different software applications, each of them having the general objective of managing the enforcement procedures and the financial flows.

It is not efficient to develop and refine two information systems for dealing with enforcement cases. It would be advisable to continue with the development of a single IT system only.

In that respect, the IT system as developed by UNEJ seems to be more sophisticated, whereas the system under development at the Ministry is still in the project phase. It seems more appropriate to focus and join efforts for the further development and implementation of the UNEJ system.

We recommend a close cooperation (institutional partnership) between MoJ and UNEJ with regard to the automation of the enforcement procedures (including transparency of operations and control over the activity, via the automated system). A proper financial construction should ensure the sustainability

of the system and a fair contribution to its costs by the enforcement agents' profession and the Ministry of Justice.

2.2.3. Court case management

Though courts are connected to a unique court case management system, connection of enforcement cases to this court case management system is not foreseen.

2.3. Automated management of enforcement

2.3.1. The development of an IT platform

With regard to the development of an IT platform several options (scenarios) can be considered:

- *Scenario 0: No new system*

Each enforcement agent is free to choose his/her own case management software. The UNEJ and MoJ provide the format for the reports. There is an obligation for the enforcement agent to provide data electronically. The MoJ and UNEJ (as controlling bodies) negotiate the provision of external data with the stakeholders.

- *Scenario 1: Central case management system*

A central (web-based) system is used obligatorily by all the enforcement agents as the case management system. This system also allows the enforcement agents to retrieve necessary data about assets and debtors. Information necessary for monitoring and control purposes are automatically retrieved by the monitoring bodies from the central system.

- *Scenario 2: Central server for collection of data from enforcement agents and a central portal for retrieval of data by enforcement agents*

This scenario uses a central server for data collection, which is to be used obligatorily by enforcement agents to upload manually or transmit via web-services (or other server-to-server communication which does not require the presence of an operator) all information requested for monitoring and control purposes, including the annual reports (Article 33 of the Law on Enforcement Agents).

The enforcement agent uses (obligatorily) the standards for the data provided: content, format and exchange modalities are described by the controlling bodies.

Once authenticated for access to the central portal, enforcement agents have access to information about the debtors through the use of a unique identification number of debtors (e.g. the population register number for physical persons or the tax identification number for legal persons) along with the case number (in order to ensure random checks and avoid misuse of this facility for searching data on people not connected with any cases). The portal enables access to the assets of the debtor, domicile, etc. Alternatively, the same web-services should be made available upon secure authentication of the enforcement agents.

- *Scenario 3: Central basic CMS + central server for collection of data from enforcement agents plus a central portal for retrieval of data by enforcement agents*

This third scenario represents a compromise between the scenarios 1 and 2, offering both the possibility for enforcement agents to develop, purchase or rent their own case management systems and the possibility to use a basic version of a case management system developed by the UNEJ or MoJ. Enforcement agents will upload relevant data to the central server and connect either via the portal directly or via their case management system, as described under the second scenario.

	Strengths	Weaknesses
Scenario 0 (No new system)	Cheaper Immediate	Monitor and control capacities are not improved (in a situation of dramatic lack of staff for this purpose), since data to be collected cannot be too complex and human intervention is still necessary to process them; Automatic access to data is depending very much on the goodwill of the relevant institutions as they should build ad-hoc mechanisms for data searches
Scenario 1 (Central CMS)	All resources of enforcement agents, UNEJ and possible donations are pooled together with the objective of creating a perfect system, instead of dispersing them into several attempts; Interactions for external actors which provide data and for creditors are simpler	It does not reward the initiative and skills of the enforcement agents who invested time in its development; To reach a consensus about the change of functionalities might be difficult, with the risk of paralysis or dissatisfaction; It makes it difficult for enforcement agents to compete on the grounds of quality and relations with the creditors
Scenario 2 Central server + central portal	It allows for competition while still maintaining the possibility of basic searches for weaker enforcement agents who have not developed their own system	Smaller offices can retrieve data
Scenario 3	It balances the needs of smaller offices (especially in	It can be too expensive

Central <i>basic</i> CMS + central server + central portal	regional areas) to have a simple CMS, with the competition among larger offices to offer best services	
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It seems that currently both MoJ and UNEJ, in their respective developments of software solutions, have opted either for scenario 1 or for scenario 2. In scenario 2 this is an absolute necessity: the enforcement agent is still allowed to have its own case management system but is obliged to supply the central server with certain data from such individual CMS. Yet, as we noted during the discussions, not all enforcement agents currently are supplying data. In that respect, in our opinion, the third scenario might be preferable, since it keeps the advantages of both other scenarios.

In case the choice for scenario 2 or 3 is made, it should be compulsory and such obligation should be enforced by law. UNEJ should retain a strong coordinating role in defining the standards, not only with regard to the IT systems, but also regarding the methods for providing data to the central server, terms of minimal security, format and content of data and access to the information about the debtors.

2.3.2. The enforcement case management system

What are the requirements for a well-functioning enforcement case management system? Whether it is developed and deployed by a central authority such as the MoJ or UNEJ, or is it an in-house tool of an enforcement agent or office, such CMS will need to ensure certain functions:

Basic requirements (basic CMS):

1. *Recording of enforceable documents*: all documents relating to a certain enforcement case will need to be filed in the CMS. Here it is important to realise that not all documents are available in electronic format. The same applies to the information on assets (see, for example, the information regarding the bank accounts). Physical documents will need to be scanned in order to have them stored electronically in the CMS.
2. *Recording of debtors and creditors*;
3. *Recording of the enforcement costs*: most complaints and disciplinary proceedings against the Moldovan enforcement agents refer to the calculation of enforcement costs. An automated system for calculation of enforcement costs will reduce the number of complaints;
4. *Recording of the State claims*: such recording is obligatory based on article 34, paragraph 3¹ of the Contravention Code. This provision provides for the establishment of an obligatory Register that records the enforcement of sanctions and fines. Another argument is the calculation of the advanced fees. Currently the State (still) has an exceptional position when it comes to the advanced payment of enforcement costs (though such exceptional position is not in line with international standards).
5. *Control mechanisms*: a well-structured CMS with a unified use of its functions enables the use of performance indicators. Such indicators allow for comparison of performances among different actors within the system;
6. *Management and reporting of statistical data*: the CMS should enable the production of

analytical (for control purposes) and statistical data (both on an individual enforcement agent level, as on a general level). This is also in line with international standards. The CEPEJ 2009 Guidelines⁵ recommend, in view of the importance of being able to foresee the length of enforcement proceedings that “*member states should consider establishing publicly accessible statistical databases enabling the parties to calculate the likely duration of the different enforcement measures possible in domestic legislation (i.e. attachment of salary, attachment of bank assets, and attachment of vehicle). The databases should be compiled in collaboration with enforcement professionals and should be made as broadly available as possible, with the aim of giving persons in other member states access to each country's structure of duration so comparisons can be made.*”

Additional requirements:

7. *Recording of the enforcement actions:* all enforcement actions will need to be registered. Here it is important that such recording of the enforcement actions is done in a unified way. This means (for example) as much as possible to use unified templates of documents. A normative act that accurately defines the procedures and the division of those procedures into types and stages will result in a uniform use of the types of enforcement actions. This will also facilitate the supervision of the work of the enforcement agent by the supervisory bodies: indicators on the performance of the enforcement agent (e.g. rate of success or inactivity) can easily be defined and monitored. A good example is the monitoring of deadlines: in case each stage of the enforcement procedure is well defined, the corresponding deadlines can easily be monitored;
8. *The use of workflows on enforcement:* under point 3 (recording of the enforcement actions) we already mentioned the need to accurately define the enforcement procedures and that the division of those procedures into types and stages will result in a uniform use of the types of enforcement actions. A well-organised CMS will monitor each stage and will provide the user with a limited number of actions and documents connected with a certain stage in the enforcement process. This will reduce the risk of making mistakes;
9. *Transfer of enforcement files:* according to article 30, paragraph 1 of the Enforcement Code (and article 26 of the Law on Enforcement Agents), as a general rule, the competence of the enforcement agent is limited to the jurisdiction of the territorial chamber within which the office is located. According to article 32, paragraph 1 of the Enforcement Code, in certain circumstances or at the request of the creditor, an enforcement case can be transferred to another enforcement agent. This means that also the corresponding documents need to be transferred. The CMS should facilitate the electronic transfer of the enforcement file to another enforcement agent;
10. *Online access to the enforcement file:* taking into consideration data protection rules, the CMS should facilitate the access of the parties in the enforcement proceedings to their files;
11. *Uploading of non-case related data:* Article 33 of the Law on Enforcement Agents empowers the MoJ and UNEJ to supervise the work of the enforcement agent. Such supervision should not be limited to the enforcement cases. For example, the money flows within the office (what happens with the money received from the debtors? Is it transferred in time to the creditor?) should be

⁵ See CEPEJ(2009)11REV2, p. 65 and 75-76

monitored too. In that respect we may refer to article 28 of the Law on Enforcement Agents and the transactions on this (special) bank account. For example, in the Netherlands such bank account is checked on a 3-month basis.

2.3.3. Enforcement agents' access to information

It is important that the enforcement agent has an easy access to information, keeping in mind the data protection provisions. In this the role of the State is considered of substantial importance. The CEPEJ 2009 Guidelines state:

Under p. 43: All state bodies, which administer databases with information required for efficient enforcement, should have a duty to provide the information to the enforcement agent, within an agreed time-limit if such information is compatible with data protection legislation. [...]

Under p. 44: It is recommended that national legislation on personal data protection should be scrutinised in case it needs to be adapted to allow for efficient enforcement procedures.

Under p. 45: Enforcement agents must bear a responsibility for maintaining confidentiality when secret, confidential or sensitive information comes to their attention in the course of enforcement proceedings. In case of a breach of this duty, measures of disciplinary liability should be applicable, along with civil and criminal sanctions."

The *Recommendation Rec (2003)14 of the Council of Europe Committee of Ministers to member states on the interoperability of information systems in the justice sector* includes in the requirements for interoperability the consideration of the development of an integration strategy to allow for system-to-system communication. Co-operation between the various organs of state and private institutions, subject to compliance with the data protection legislation, is essential for enabling a speedy access to the multiple-source information on defendants' assets.

Given the amount of enforcement cases in Moldova, and in line with best European practices, it is necessary to devise a system which allows for automatic retrieval of a registered address and for the automatic screening for the existence of debtors' monetary and other assets. In order to set up such a system, the following conditions should be realised:

- Secure mechanisms which allow for automatic retrieval of information on address and assets;
- A unique identifier for the debtor, available to the creditor when sending cases for enforcement;
- A legal framework allowing these transactions.

2.3.4. The system of monitoring and control

The use of an enforcement case management system means that (enforcement) case related data can be directly imported into the central database. It will to a large extent facilitate the monitoring and control activities of the supervision authorities (i.e. MoJ and UNEJ) through the use of performance indicators. Such indicators allow for comparison of performances among different actors within the system (e.g. among enforcement agents as a profession and among individual enforcement agents), comparison over time in order to monitor progress or emerging issues, and - of course - provide data which are relevant for informed decision making, either by policy makers or by actors within the system (for example creditors who can choose to whom to entrust the enforcement of their cases).

The set of indicators should be defined jointly by the UNEJ and MoJ. A clear-cut definition and a description of the modalities to be used for measuring it should be provided for each indicator.

The indicators should refer to: the case-related information (case flow figures such as backlog at the beginning of the period, received cases, closed cases, number of enforcement actions, amounts of claims, amounts recovered, type of creditor, type of enforcement document) and performance (including length of proceedings, the success rate and costs).

The use of a central CMS means that also other (financial) data can be uploaded and this way can be used to analyse the financial status of the office. IT can greatly facilitate the tasks of UNEJ and MoJ to analyse the data provided by the enforcement agents. The use of certain indicators should make it possible to analyse the finances and case-flows in the offices, compare the outcomes with historical data and decide whether it is necessary to conduct a thorough investigation of a concrete office. Behaviours considered inappropriate or risky (by law, by the UNEJ or by MoJ, based on a certain set of standards) will result in immediate alerting of the enforcement agents and the controlling bodies.

Some examples:

1. In their capacity of controlling bodies, MoJ and UNEJ may set a certain standard regarding liquidity and solvability of the office. In case the enforcement agent does not meet this set standard, the supervising bodies will receive an alert regarding the possible financial shortcomings;
2. In case the enforcement agent is obliged to automatically import cases into the case management system (be it a central one or his/her own), all transactions from the special bank account for the funds received from debtors are registered (article 28 of the Law on Enforcement Agents). All major banks provide their customers with electronic excerpts of transactions. The alarm could sound if payments made into this account, coming from other accounts, are not followed by a timely transfer to one of the accounts of the creditors;
3. Listing of inactive cases.

2.3.5. Data protection

According to article 130, paragraph 4 of the Enforcement Code data on the persons that filed a request to participate in the auction and the number of applications shall be kept confidential. Article 32, paragraph 2 of the Law on Enforcement Agents has a similar provision, stating that the enforcement agent's *office* must ensure the confidentiality of data related to the enforcement process. Disclosure of confidential information is liable under the law.

Indeed, the processing of personal data must be fair and lawful. The data must be adequate, relevant and not excessive in relation to the purposes for which they are collected (principle of proportionality). Information obtained should not be transferred to unauthorised third persons. In this respect a well-defined regulative framework is necessary to avoid misuse of the central database.

2.4. Conclusions and recommendations

1. Enforcement proceedings present several specificities, such as the involvement of enforcement

agents, the need for frequent and sometimes urgent communication with colleague enforcement agents, authorities and parties, the need for an efficient, effective and fast access to information on assets, and the fact that (due to the private enforcement system in Moldova) not all claims on a certain debtor will be concentrated in one office.

Dealing with a substantial amount of enforcement cases requires special strategies to be put in place in order to maximise the use of available resources. IT systems are unavoidable for an effective and efficient enforcement of cases. However, the use of a CMS will only be successful in case the enforcement agent is obliged to use such system and in case there is a uniform use of the system. A regulative framework in that respect is a necessity.

2. The CMS should, at least, have following functions:
 1. Recording of enforceable documents;
 2. Recording of debtors and creditors;
 3. Recording of the enforcement actions;
 4. Recording of the enforcement costs;
 5. Recording of the State claims;
 6. The use of workflows on enforcement;
 7. Control mechanisms;
 8. Transfer of enforcement files;
 9. Online access to the enforcement file;
 10. Management and reporting of statistical data;
 11. Uploading of non-case related data.
3. Design a set of templates of documents to be used in the enforcement cases;
4. Define the access to the CMS and introduce in a normative act the responsibility for its misuse;
5. Elaborate the criteria for record keeping;
6. Elaborate criteria for the editing and deleting of data;

3. IT-based solutions in enforcement: e-auctions

3.1. Introduction

In this chapter we start analysing issues concerning the present situation of public auction⁶ in the enforcement (debt recovery) process in the Republic of Moldova. There are listed ways to improve the provision of the public services in an electronical way. As a result, the announcement process, extension options and the electronic implementation solutions of e-auction are described. The main goal of this work is to define and suggest the possible concept of e-auction services that provides more efficient access to the enforcement agent's services in Moldova.

The transfer of public services to the electronic space is usually one of the objectives of every modern state's progress strategy. The public sector, including justice (enforcement process), must ensure high quality of services and meet the needs of the users. Consensus-based, high-quality public services must be provided. The quality of services must be constantly assessed; service users must be widely involved in their improvement processes. The scope of public services must meet the expectations of the society; they must be easily accessible to all citizens, in a way that is convenient for clients, considering changes in technological possibilities.

Accelerating the transition of public services to the electronic space must be based on economic and anti-corruption criteria. These criteria are a priority when deciding on the necessity and priorities for the creation and further development of electronic services in the field of enforcement process.

The Committee of Ministers of Council of Europe in Recommendation on Enforcement *Rec(2003)17*⁷ to member states stressed the importance of information technology in improving the efficiency of the enforcement process and the relevant Council of Europe legal instruments in this field, including the Recommendation *Rec(2003)14*⁸ on the interoperability of information systems in the justice sector. It is recommended that governments of member states would facilitate the efficient and cost-effective enforcement of judicial decisions, as well as of other judicial or non-judicial enforceable titles, as appropriate. It follows that enforcement procedures must be as effective and efficient as possible.

The Recommendation *Rec(2003)17* prescribes that debtor's assets should be sold promptly while still seeking to obtain the highest market value and avoiding any costly and unnecessary depreciation.

CEPEJ has adopted Guidelines (*CEPEJ(2009)11REV2*) on the implementation of above-mentioned Recommendation. This document is not binding but should be seen as authoritative advice on the proper implementation of the right to enforcement of a judgment that Article 6(1) of the ECHR encompasses.

The CEPEJ 2009 Guidelines contain advice regarding quality control of the enforcement proceedings. In order to undertake quality control of enforcement proceedings, each member state should establish European quality standards/criteria. Among these standards may be mentioned electronic

⁶ Public auctions would be considered as an integral part of public services.

⁷ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805df135

⁸ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805df179

recovery tools: one of the enforcement measures - selling the debtor's property by *public electronic auction*.⁹

3.2. Current status

Efficiency of justice and enforcement obviously is determined by lower costs and a speedier outcome – lower expenditure of time. There is no doubt that efficiency could be increased by a more extensive employment of modern information technologies in enforcement procedures. That could be achieved, for instance, by creating an electronic auction platform, putting in place an electronic case management system, carrying out correspondence between parties exclusively by means of electronic communication.

Legal framework

Strategy of Justice Sector

The draft of the Strategy for Ensuring the Independence and Integrity of Justice Sector for 2020-2023 in Moldova¹⁰ requires fortifying and streamlining mechanisms which will ensure an effective enforcement of courts' judgments. Part of specific objectives identifies the need of improving the efficiency of mechanisms for enforcing judgments and ensuring an adequate balance between the interests of creditors and those of debtors as part of the foreclosure proceedings.

The Action Plan for the Implementation of the Strategy for Ensuring the Independence and Integrity of Justice Sector for 2020–2023¹¹ specifies the measures in section of the Specific object (2.1.7. Streamline the mechanisms to enforce court decisions) and underlines the planned action: building a platform for online auction sales of forfeited assets. Expected outputs would be: technical concept is drafted and approved, the regulation on the procedure and the use of platform is developed and approved, and, finally, the information system is developed and implemented.

Enforcement Code: auctions

According to the current regulation, the auction is held in the “old way”, in the enforcement agent's office, and there is no possibility to organise an auction in the electronic space.

Stakeholders are informed about the auction by publishing the information in a newspaper. Article 125, paragraph 3 of the Enforcement Code¹² states that seized goods are usually sold at auction or by specialised commercial organisations, based on a commission contract. Article 128 defines the organisation of the auction and provides that the date and place of the auction sale of the seized goods shall be fixed by the enforcement agent, considering the necessity of ensuring the integrity of the goods and the expenses related to their keeping. The auction shall be organised at the office of the enforcement agent or in another place established by him/her.

⁹ See CEPEJ(2009)11REV2, p. 22

¹⁰http://justice.gov.md/public/files/directia_analiza_monitorizare_si_evaluare_a_politicilor/EN_Draft_Strategy_Ensuring_Independence_Integrity_of_Justice_Sector_2020-2023.pdf

¹¹http://www.justice.gov.md/public/files/directia_analiza_monitorizare_si_evaluare_a_politicilor/EN_Action_Plan_SEIJS_2020-2023.pdf

¹² <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=336538>

Article 129 of the Enforcement Code regulates the requirements to the announcement of the auction. The announcement of the auction shall be published in a district or national newspaper or in the Official Gazette of the Republic of Moldova and shall be displayed at the office of the enforcement agent. Article 134 states that on the day of the auction, when handing the participation tickets, the enforcement agent records the attending participants. Registration ends 10 minutes before the start of the bidding process. The enforcement agent announces the beginning of the auction and reads the first part of the minutes. The enforcement agent offers the good (lot) at the initial price. The person who accepts the price raises the ticket. The enforcement agent shall offer the good for sale at least three times in a row, at intervals to allow for options and overload. After one of the participants raises the ticket, the others can claim the bounty, offering a higher price with one or several pickup steps. If no one offers a higher price than the one accepted, shouted three times, the enforcement agent fixes the sale of the good by hammer blow. The bidder who has won the asset (lot) is obliged to sign the minutes.

Law on Enforcement Agents

According to article 7 of the Law on Enforcement Agents the enforcement agent is authorised to seize goods, to store, manage and sell property seized in the enforcement and pledged assets.

3.3. Alternative strategic solutions and technical implementation

Conceptual model

First of all, a concept of transferring enforcement agents; auctions to electronic space should be developed and approved. It must cover both functional and technical tools. The conceptual model must make it possible to achieve a few very important objectives:

- i. implementation of the provision of public services on a one-stop shop basis. Through the inter-institutional communication, the client will be provided with all the tools necessary for the selected service - participation in the auction - in one access point (e-portal);
- ii. determining the optimal price of movable and immovable property for sale;
- iii. reduce service delivery time, achieve results at lower operating costs, increase service delivery and end-to-end quality. Such e-system (the process of realising the debtor's assets) will be easier to monitor, control and analyse.

It is for the responsible authorities to decide to what extent and within what deadlines the process of organising enforcement agent's auctions electronically would be undertaken. The countries of the European Union use different ways of transition from public physically organised auction to the electronic ones. These two essential directions can be identified as follows:

- i. *Slow adoption.* The gradual transition towards a fully electronic based auction system, i.e. with the creation of an alternative to the enforcement agents, for a fixed period of time, to organise debtor's property auctions both in enforcement agent's offices and via an electronic auction platform (may be mentioned experience in Estonia).
- ii. *Sprint start transition.* An electronic auction system becomes fully operational from a certain date and a public e-auction platform is created, where the hosting and pricing of all

published debtors' property auctions is mandatory. The debtors' assets would be sold only through electronic auctions platform. There is no other way for interested persons (buyers) to participate and acquire property of the debtors in auctions organised by an enforcement agent (it may be mentioned experience in Lithuania, Latvia, and Poland in this regard).

Each of these approaches has its advantages and disadvantages, but the second option outweighs, when a starting line is drawn and the process of auctioning the debtor's assets by enforcement agents becomes fully electronic in a whole state. This clear way of organising auctions allows to analyse the shortcomings of the system, to collect and analyse more up-to-date data and to ensure maximum transparency of the process by raising the price of the selling property.

System integrity

It is to be emphasised that it is logical for the auction system to be linked to the case management system used by enforcement agents or even to be part of it. As mentioned in the previous parts of this report, Moldova has plans to set up a case management system, but there is no unitary solution for this process, as the Ministry of Justice and UNEJ have developed two different software applications for dealing with enforcement cases. From the final decision on this issue, further decisions on the development of the e-auction system may be planned. The information systems' integrity should be a prerequisite for the effective transition of enforcement agents' public services to cyberspace.

If we recognise that the e-auction service is public, it is necessary to ensure that the participant's registration for the auction is secure and accessible through the public service portal. Moldovan authorities have taken important steps creating in particular multiple information platforms of public services provided by authorities to ordinary people and the business environment, including services.gov.md, aiming at the transparency of the activity of public institutions and the provision of electronic services.

A relevant example in this context is the M-Tender project (<https://mtender.gov.md/en>). As the Ministry of Finance of the Republic of Moldova is leading a transition to digital public procurement, to ensure more transparent and efficient spending of the state budget, the new digital platform (referred to as government service) shall support public procurement from planning the purchase to payment for public contracts. It is supposed to shorten the time for tendering for public bodies and waiting time for payment for suppliers and contractors. This project is supported by the European Bank for Reconstruction and Development (EBRD) and seems to bring fruit already. Given the conceptual proximity of public tenders with auctions from legal, economical, and social viewpoints and the similarities in their technical implementation, it is recommendable to consider the adaptation/integration of the e-auctioning platform for different actors, including enforcement agents, into the M-Tender project.

Different auction methods

Many types of auctions are practiced in different real-world situations to achieve different business objectives such as best price, guaranteed sale, minimum collusion possibility, etc. The most common for selling debtors property is the so-called "English auction" (one seller – many buyers type). In such an e-auction the buyers gather at a virtual space at the pre-specified time. Each buyer can see the bid submitted by another buyer and has a limited time to respond to it with a higher counter-bid.

In physical auctions the responses must be received within seconds, while in cyber auctions it is conceivable that several minutes or hours will be allowed for the response.

Whatever model is chosen, it can have subtle variations such as:

Anonymity, i.e. what information is revealed during the auction and after the auction closes. For example, the identity of the bidders could be concealed and the final winning prices could be kept confidential too. But this is rarely the case in field of enforcement, when the procedures must be particularly transparent, can be challenged in court, and so on.

Rules for ending. Auctions may end at a posted closing time. Alternatively, the auctions could be kept open as long as new bids continue to arrive within some time interval from the preceding bid. This interval would be several minutes in an internet auction. One could also choose to close the auction if either of the above two conditions is met or only when both conditions are met. Once the bidding phase is over, the bidders with the highest bids get the property being auctioned, but the price they pay could be the same as what they bid or lower. In a *Discriminative Auction* the winners pay what they bid.

Restrictions on bid amount: usually in all auctions the rules specify the minimum starting bid. To speed up the bidding process minimum bid increments are often enforced. The bid increment is roughly proportional to the current bid, i.e., they are smaller for lower bids and larger at higher bids.

3.4. Complete e-auction process

What would be the requirements for the e-auction process? In this report, we suggest considering the structure of the auction process and to create complete auction-based trading process from 5 basic activities:

1) Auction initiation and publication

Information on all assets sold through the auction should be published on a special internet portal. Each advertisement indicates the time of the auction, the category and location of the property, the initial sale price, and the amount of the auction participant's fee. A brief description of the property also should be provided, and photographs of the property and other additional information may be attached to the advertisement. As one of the elements of system's integrity could be the option that the data provided in the advertisement are automatically linked to the information in the official state registers (for example, real estate register, register of legal entities, population register etc.). Such mechanisms would allow for reduced errors, for example, no possibility to generate an advertisement for the auction if the person or property is not entered in the official register.

In some countries, additional services are provided on the auctioning platform, for example, the advertisement also includes a link to the internet portal where one can view the history of similar real estate transactions¹³. Using transaction information, auctioneers may draw conclusions about

¹³ See <https://www.ntsandoriai.lt/lt/nekilnojamosis-turtas.html>

the real price of the plot of interest or the administrative premises planned to be purchased, also the activity of the real estate market in a particular place.

The advertisement of the auction could indicate the following information: the number of the auction; the name and surname of the owner of the property (name of the legal person); name and surname of the enforcement agent selling the property from the auction, telephone number, where to apply for an inspection of the property; location and brief description of the property; the end time of the auction; the amount of the auction participant's fee; the initial selling price; ownership restrictions on the property to be sold; a notice that all interested persons who have the rights to the property for sale must submit documents confirming their rights to the enforcement agent before the auction; an electronic reference to the procedure for registration of participants and execution of auction.

The electronic auction portal is also dedicated for viewing, registering and participating in the announced, ongoing and closed auctions. The user would be provided with the opportunity to: view the list of auctions, perform an auction search, view auction data and property information.

2) Initial buyer registration, security requirements

This step deals with the issues relating to authentication of participating parties and creation of a profile for each buyer and possibly his/her authorised spending limits. Only a person who has proved his/her identity by electronic signature or logged on to the electronic banking system may participate in the auction. The requirement to identify by electronic means should also apply to the companies. The participants should indicate contact information (phone number, email address), place of residence (registered office) and bank account. The bank account information is needed in case an auction deposit fee should be returned. If a person participates in the auction through a representative, the requirement to prove identity and to provide other information shall rest on the representative. The representative must indicate the first name, surname, personal identification number (legal entity's name, code) and the basis for the representation.

The general contact and bank account information of the logged-in user is managed in the user account (bidder's personal auction gallery) created by him/her. This information can be used later in different auctions. If the person is logged in as a natural person, the data of the natural person is processed, if the person is logged in as the head of the legal person (manager etc.), the data of the legal person is processed.

A person shall be registered as a participant in the auction if all the conditions set out in the Law are met. Personal data specified by the participant of the auction may not be disclosed in advance to the enforcement agent, other participants in the auction, or to third parties, except in cases provided by law.

Only few countries charge participants not only a deposit fee, i.e. 5 or 10 percent from the value of the property is paid in advance as a guarantee, but also a participant fee, which allows to improve the functionality of the system from the collected funds. For example, in Latvia the participant fee is of 20 Euro.

3) Setting up a particular auction event

This step deals with describing the item being sold and setting up the rules of the auction. The auction rules explain the type of auction being conducted, parameters negotiated (price, delivery

dates, terms of payment, etc.), starting date and time of the auction, auction closing rules, etc. The auction organiser shall inform the persons wishing to participate in the auction and participants of the auction about conditions of participation in the auction and use of the auction's environment during the registration procedure.

It should be noted that there are different practices in the states regarding the duration of the auction. Some states announce planned auctions in advance, others consider the day of publication to be the start of the auction, some states associate it with court hours, some with the value of property, some regulate a minimum duration but allow the enforcement agent to set a maximum duration.

For example, in Estonia, except for items of small value (less than €100), the enforcement agent is obliged to sell the seized movable properties and real properties at a public electronic auction. An electronic auction takes place in the electronic auction environment that opens in the website: www.oksjonikeskus.ee. The duration of an electronic auction is determined by the enforcement agent. The determined duration of an electronic auction may not be shorter than five days. An announcement shall be published at least ten days before the auction in the publication *Ametlikud Teadaanded* and in a public computer network. In case of sell of immovable property, the period of time between publication of an announcement of an auction and a notice of an auction and the auction shall be not less than 20 days, unless a court determine otherwise.

In Lithuania, the start of the auction is the moment of its publication on a special internet website www.evarzytynes.lt. According Law the auction is announced on weekdays from 9 a.m. zero minutes to 4 p.m. zero minutes. A forced auction is closed (1.) after thirty days for real property and moveable property (then the value exceeds thirty thousand euro) (2.) after twenty days if any other property is to be sold. Forced auction closes on the day it ends at the same hour and minute as it was announced. For example, if the forced auction was announced at 10:15 and 35 seconds, it will close on the auction's closure day, at 10:15 inclusive, and all the bids recorded no later than at 10:15 and 59.999 seconds on the server of the information system of the website www.evarzytynes.lt will be considered as made in time.

In Portugal, the auction shall be terminated on a day when, under the procedural law, the courts are open. It stays open for a period of not less than 20 days and nor more than 60 days, after the day of the payment of the fee. In Estonia, an announcement shall be published at least ten days before the auction.

In Latvia, an auction completes on the 30th day from the start date specified in the immovable property auction announcement, at 13:00, but if the 30th day falls on an off-day or a holiday, on the next working day, at 13:00.

4) Raising price in auction (bidding)

The bidding step handles the collection of bids from the buyers and implements the bid control rules of the auction (minimum bid, bid increment). The auctions are public. However, the electronic processes must ensure confidentiality of the participants. Usually the identity of the bidder while the auction is taking place is not known to anyone. The registered participants are only able to see their own bids and the highest bid in the electronic auctioning system. The enforcement agent will receive information about the identity of the highest bidder only when the auction ends.

A positively assessed functionality ensures that auction participant can increase the price by automatic or non-automatic bidding. If a higher bid is placed in a non-automatic way, the bidder shall offer a price for the property for sale that cannot be less than the initial sale price. For example in Lithuania, participants in the forced auction may only offer a higher price for the property for sale, however each increase in the price must not be less than 0.5 per cent of the initial sale price if it is less than fifteen thousand Euros, and not less than 0.3 per cent if the initial property sale price is from fifteen thousand Euros to thirty thousand Euros, and not less than 0.1 per cent if the initial property sale price exceeds thirty thousand Euros. During the forced auction its participants can see the information what minimum bid they may place according to the bid increment intervals specified. Prices are expressed in Euros without cents. By the end of the forced auction, the same auction participant is allowed to place a higher bid for unlimited number of times. During the auction the highest bid for the property for sale is displayed.

In case of an automatic bidding an auction participant shall indicated the initial offered price, which cannot be less than the initial property sale price, the highest offered price and price increment interval in an automatic way that cannot be less than the price increment specified in above mentioned intervals. The highest bid, if compared to the initial proposed price or the bid placed by other auction participants, if any, must be higher by at least price increment intervals specified in above paragraph and cannot be disclosed to the enforcement agent who has organised the forced auction, other forced auction participants or third parties. In case the price is increased in an automatic way, the initial bid placed by a bidder is displayed and remains until the next bidder places a higher one for the property to be sold. If another bidder places a higher bid, the price offered by the bidder having selected an automatic increment shall be increased automatically by the interval specified by this bidder until the bid offered by the next bidder exceeds the highest bid placed by the bidder having selected automatic price increase.

If the bidder, increasing the bid in a non-automatic way, offers the same price as another bidder, who is increasing the bid in an automatic way, has previously indicated as the highest bid, so a maximum bid of the bidder who has selected automatic increment of the bid will be displayed that is deemed to be a bid for the property for sale at that moment. Other bidders can increase this bid non-automatically by placing a higher bid or automatically by offering a higher maximum bid. The procedure specified in the current paragraph shall apply in cases where the bidder, increasing bids automatically, offers the same maximum bid as the other bidder increasing the bid automatically has earlier indicated as the maximum bid.

Until the end of the auction any participant can set up an automatic price increment or increase or reduce the maximum bid specified earlier in automatic way. Auction participant, who has offered the highest price during the biddings, cannot reduce the maximum bid previously increased in automatic mode more than the currently displayed bid offered by this participant.

For the smooth operation of the e-auction system almost all countries provide a preliminary fixed end of the auction but link it to a recent price increase. In Lithuania, if at least one bid has been received before the established auction closure, the forced auction is extended for additional five minutes zero seconds and bidders may place bids during this extended time for the property for sale. For example, if the auction closure time is 10:15 and 59.999 seconds and at least one bid has been received within the last 5 minutes of this term, the auction is extended for next five minutes and any new bid recorded no later than 10:20 and 59.999 seconds on the server of the website

www.evarzytynes.lt information system is deemed to be made on time. If any bid is made during the extended time of five minutes, the auction is renewed for another five minutes and so on, after any subsequent bid. The time counting starts from the moment a new bid has been received. For example, if during the extended auction, a bid is received at 10:18 and 36 seconds, a new bid recorded on the server of the website www.evarzytynes.lt information system before 10:23 and 36.999 seconds is deemed to be received in time and the auction is repeatedly extended for next five minutes. The extended auction is closed if no bids are received within five minutes after the last extension.

In Portugal, like in Lithuania, if there is a proposal submitted within the last five minutes before the time limit initially set, the time limit will be increased to the last bid, plus five minutes. The cycle of submission of bids and subsequent deferral of the cut-off time ends only after five minutes have elapsed on the presentation of the last bid.

Latvia considered the Lithuanian practice: when a bid is registered within the last 5 minutes prior to closing an auction, the auction time is automatically extended by 5 minutes. Also, if during the last hour prior to closing an auction, any serious technical problems have been identified, which can affect the outcome of the auction, and they are not related to violations of the system security, the auction time is automatically extended till the next working day, 1:00 p.m.

In Estonia, a participant of the auction can activate automatic bidding function already before the actual start of bidding. By activating automatic bidding, the participant sets the upper limit up to which the price offered by him or her can rise when competing with other bidders. When no competing bids are made by other bidders, the auction environment registers the bid in the initial price offered by the participant who first activated automatic bidding function. If before the opening of bidding several automatic biddings were activated, the current price shall rise at the opening of bidding to the level where only one competing participant has remained. If before the opening of bidding several automatic bids with the similar limit were set up and no higher automatic bids followed by any other participant, the bid of the participant who set the automatic bidding up earlier is registered as current bid at the opening of bidding. The first possible bid is always the initial price. All subsequent bids must be higher of the previous one. Bids can only be whole multiples of the size of the step set by the organizer of the auction. Bids may be submitted manually or automatically. As a rule, a single participant cannot place two or more consecutive bids.

5) Statement of auction/property sale certificate

This final step determines the auction's winner, handles the payment to the enforcement agent, and the transfer of property or goods to the buyer. How does the winning bidder become the owner of the property? The winner of the forced auction shall be the bidder who proposed the highest price. The price proposed by the winner of the forced auction shall be also considered as the property sale price. After closing the forced auction, the property sale price shall be displayed. An electronic notification of winning shall be sent to the winner of the forced auction. The enforcement agent organising an auction will receive an electronic message (a system activity protocol) about the winning bidder within one business day following the end of an auction. The winning bidder will receive a message regarding an auction won. The winner of the auction must pay the difference between the price of the sale of the property and the paid fee of the auction participant to the deposit account of the enforcement agent who organised the auction. The enforcement agent will draw up a property sale certificate within a few business days following the payment of the full price

of the property. Usually, once the buyer signs this certificate, the right of ownership of the auctioned property will be transferred to the buyer.

3.5. Conclusions and recommendations

1. The use of IT is becoming more widespread around the world, so information flows have also led to the need to move enforcement services to the electronic space. One of the main aims is to increase the transparency of enforcement agents' activities. In terms of services, e-auction provides services 24 hours a day, seven days a week without coming to an enforcement agent's office.
2. Procedures in the electronic space guarantee maximum publicity, accessibility and efficiency of auctions. They allow no more opportunities for participants to artificially reduce the price of the selling property. A more economical, more convenient form of property acquisition expands the circle of participants in auctions; various means of innovative e- identification would also contribute to this. This will allow the main goal of the process to be achieved - to satisfy the claimant's claims from the debtor's property sold at the highest price.
3. We should keep in mind that the opportunity to register and participate in the auctions that have already started should be seen as an advantage. In addition, to achieve the maximum price for the debtor's property from the forced sale is recommended not to create any obstacles for the same person to participate in several selected auctions at the same time. The optimal duration of the auction would create favourable conditions to attract more participants.
4. For the smooth operation of the e-auction system, almost all countries provide a preliminarily fixed end of the auction but link it to a recent price increase.
5. Usually the statement of an e-auction is generated by the system. However, it is not the IT system itself, but the enforcement agent who has to make the final decision on the auction and the realisation of the debtor's property. The enforcement agent must assess the progress of the auction, minutes, disorder protocol, if any, whether there have been any disturbances or changes, maybe some new circumstances became known, and finally draw up an act/property sale certificate.
6. The e-auction systems must be subject to particularly high security requirements, data protection and monitoring.
7. It is common for professional associations (Chambers) to become responsible for the administration of the e-auction systems and the development of their functionalities. Of course, this requires close cooperation with the legislator and the Ministry of Justice, which supervises the enforcement agents. Therefore, there is no doubt that UNEJ in Moldova should be the leader in developing this e-auction system in Moldova.