



Strasbourg, 17 December 2009

CEPEJ(2009)11REV2

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

**GUIDELINES FOR A BETTER IMPLEMENTATION  
OF THE EXISTING COUNCIL OF EUROPE'S RECOMMENDATION ON  
ENFORCEMENT**

**adopted by the CEPEJ at its 14<sup>th</sup> plenary meeting  
(Strasbourg, 9 – 10 December 2009)**

## INTRODUCTION

### Methodology

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

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

3. This statement, as confirmed by the relevant case-law of the European Court of Human Rights (ECtHR), and problems in the enforcement of its judgments, as well as the work of the CEPEJ, inclined the Committee of Ministers to dedicate a monitoring process to the enforcement of national judicial decisions. CEPEJ has also taken into account important developments in the case law of ECtHR since the drafting of Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement.

4. The CEPEJ, whose statute includes the objective of facilitating the implementation of the Council of Europe's international legal instruments concerning efficiency and fairness of justice, included enforcement of judicial decisions into the list of its priorities<sup>1</sup>. As a first step, the CEPEJ commissioned an in-depth study relating to the issues of enforcement in member states, in order to gain a better understanding of how this works and to facilitate the application in practice of the relevant Council of Europe standards and instruments. The study, carried out by the legal scholars of the University of Nancy (France) and the Swiss Institute of Comparative Law (Lausanne)<sup>2</sup>, proposed a set of guidelines intended to facilitate the application of the principles contained in the Council of Europe recommendations<sup>3</sup>.

5. As a second step, the CEPEJ created a working group on enforcement of judicial decisions (CEPEJ GT-EXE)<sup>4</sup>, in charge of elaborating Guidelines for effective application of the existing Council of Europe standards. On the basis of the proposals made in the In-Depth Study, each member of the Working group drafted a paper addressing a definite set of issues relating to the future Guidelines. The CEPEJ then mandated a scientific expert, M. Julien LHUILLIER (France), to carry out the synthesis of the elaborated briefs.

### Principles and Objectives of Enforcement

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<sup>1</sup> In this context it noted the important number of cases brought before the ECtHR highlighting different enforcement problems in a number of countries, in particular in civil cases against the state or state enterprises, and the complexity of the remedial actions required, involving e.g. simplifications of enforcement procedures, improvement of budgetary procedures and internal control, improving possibilities of freezing or seizing accounts or other assets of defaulting authorities or companies, the functioning of enforcement services. Many of these problems are followed in the context of the Committee of Ministers supervision of the execution of the ECtHR's judgments.

<sup>2</sup> J. LHUILLIER, D. LHUILLIER-SOLENIK, G. NUCERA, J. PASSALACQUA, *Enforcement of Court decisions in Europe*, CEPEJ Studies n°8, Council of Europe, 2008, 140 p.

<sup>3</sup> Recommendation Rec(2003)16 of the Committee of Ministers to member states on the execution of administrative and judicial decisions in the field of administrative law; Recommendation Rec(2003)17 of the Committee of Ministers to member states on enforcement.

<sup>4</sup> The CEPEJ GT-EXE is composed as followed: Mr Andrei ABRAMOV (Russia), Mr Karl-Heinz BRUNNER (Germany), Mr Fokion GEORGAKOPOULOS (Greece), Mr Geert LANKHORST (the Netherlands), Ms Ana LOVRINOV (Croatia), Mr John Marston (United Kingdom). The following have also attended the meetings of the Group: Mr John STACEY (United Kingdom) and Mr Georg STAWA (Austria) for the CEPEJ and Mr Léo NETTEN and Mr Mathieu CHARDON for the international Union of Judicial Officers (UIHJ).

6. For the rule of law to be maintained and for court users to have confidence in the court system, there needs to be effective but fair enforcement processes. However, enforcement may only be achieved where the defendant has the means or ability to satisfy the judgment.

7. Enforcement should strike a balance between the needs of the claimant and the rights of the defendant. Member states are encouraged to monitor enforcement procedures, control court management and take appropriate actions to ensure procedural equality of the parties.

8. The enforcement process should be sufficiently flexible so as to allow the enforcement agent a reasonable measure of latitude to make arrangements with the defendant, where there is a consensus between the claimant and the defendant. Such arrangements should be subject to thorough control to ensure the enforcement agent's impartiality and the protection of the claimant's and third parties' interests. The enforcement agent's role should be clearly defined by national law (for example their degree of autonomy). They can (for example) have the role of a "post judicial mediator" during the enforcement stage.

## **Court Processes**

9. Member states should take measures to ensure that information is available on the enforcement process and there is transparency of the activities of the court and those of the enforcement agent at all stages of the process, provided that the rights of the parties are safeguarded.

10. Notwithstanding the role of the court in the enforcement process, there should be effective communication between the court, the enforcement agent, the claimant, and the defendant. All the stakeholders should have access to information on the ongoing procedures and their progress.

11. Member states should provide the potential parties to enforcement procedures with information on the efficiency of the enforcement services and procedures, by establishing performance indicators against specified targets and by indicating the time different procedures might take.

12. Each authority should provide for the adequate supervision (having regard to any relevant case law of the EctHR) of the enforcement process and should bear responsibility for the effectiveness of the service. Accountability may be achieved by management reports and/or customer feedback. Any reports should allow for verification that the judgment has been executed or (if not) that genuine efforts have been made within a reasonable time whilst respecting the equality of the parties.

## **I. PREPARATION OF ENFORCEMENT**

### **1. Accessibility of enforcement services**

#### **1.1. Distribution of enforcement services**

13. The geographical distribution of enforcement agents within a country should ensure the widest possible coverage for all potential parties. Within a single member state, when different authorities are tasked with taking action in different areas of enforcement (i.e. the judge responsible for enforcement and treasury officials), it is important to pay close attention to the distribution, both geographical and case-type, of all the authorities concerned. Every part of the jurisdiction should have adequate coverage for each type of enforcement activity.

14. Where enforcement agents carry on their profession as a private practice, member states should ensure that there is sufficient competition and clearly defined geographical competence.

#### **1.2. Language Used**

15. Measures should be taken to ensure that the parties are able to understand the process of enforcement in which they are involved, and, where possible, have the option of participating in the proceedings without the need for legal representation. To this effect, the enforcement processes and legislation should be rendered as clear and comprehensible as possible (i.e. by creating plain-language versions of legislation, enforcement handbooks, by reducing the time of contact the parties need to have with the court both in person and by correspondence, etc.).

### **1.3. Availability of stakeholders involved in the enforcement procedure**

16. All of the stakeholders that are likely to be involved in enforcement processes (police, experts, translators, interpreters, local authorities, risk insurers, child care experts, etc.) should have sufficient legal status to help the enforcement agent and should be promptly available, in case their help is necessary for the enforcement of a judgment. Social workers should be particularly available in cases where children or other vulnerable persons are concerned by the enforcement procedure.

## **2. Notices to parties and third parties**

17. Notices to parties concerning the enforcement of judicial decisions or enforceable titles or notarised or other documents are an essential aspect of the law of enforcement. Due notification of parties is a necessary element of a fair trial, in the sense of Article 6.1 of the European Convention on Human Rights.

18. The member states may draw up standard documents to notify parties. These standard documents could relate to the different stages in the enforcement process and to any possible remedies allowing enforcement to be challenged. They could have the following purposes:

- notifying the defendants of the consequences of enforcement (including the cost of enforcement) and of the costs of a failure to comply with a decision ordering them to pay;
- notifying the defendants of the enforcement measures to be taken against them, as they are implemented, so as to enable the defendant to comply with or, where applicable, challenge each measure;
- keeping the claimants fully informed of the stages reached by the enforcement procedure;
- notifying the third parties to ensure, firstly, that their rights are upheld and, secondly, that they are able to fulfil any obligations incumbent on them and to be aware of the consequences of a failure to comply.

19. Notification in all cases should encourage the defendant to comply with the court order voluntarily and include a warning that in case of non-compliance enforcement measures could be used, including, if appropriate, further costs may be applied.

20. It should be possible to entrust enforcement agents with the service of notices. To this end, member states should determine conditions for a secure method for the service of documents.

21. Where notices generate rights or obligations, it is the duty of the enforcement agent to ensure that the parties are served with adequate notice in a timely manner.

22. Where the defendant's assets are to be sold at a public auction following their seizure, potential buyers should be notified in advance by efficient means of communication, guaranteeing rapid dissemination of information to the broadest possible public, while safeguarding the defendant's privacy. Member states should propose minimum dissemination standards taking account of the nature of assets, their estimated value and the date of sale.

## **3. Enforceable Title: Definition and form of the title**

23. National legislative framework should contain a clear definition of what is considered an enforceable title and the conditions of its enforceability.

24. Enforcement titles should be drafted in clear and comprehensible way, leaving no opportunity for misinterpretation.

## **4. Enforcement agents**

### **4.1. Qualification requirements**

25. For the fair administration of justice, it is important that the quality of enforcement should be guaranteed. Member states should accredit enforcement agents only if the candidates concerned are of a standard and training commensurate with the complexity of their tasks. A high quality of training of professionals is important for the service of justice and to increase the trust of users in their justice system.

26. Enforcement agents should also be required to follow compulsory continuous training.

27. It is recommended that links be forged between national training institutions. Member states should ensure that enforcement agents are given appropriate training curricula and should set down common minimum standards for instructors in the different member states<sup>5</sup>.

28. Initial and continuous training could encompass:

- the principles and objectives of enforcement;
- professional conduct and ethics;
- stages in the enforcement process;
- the appropriateness, organisation and implementation of enforcement measures;
- the legal framework;
- role-playing and practical exercises as appropriate;
- assessment of trainees' knowledge;
- international enforcement of judicial decisions and other enforceable titles.

#### **4.2. Organisation of the profession and enforcement agent's status**

29. With a view to good administration of justice, it is desirable that enforcement agents should be organized in a professional body representing all members of the profession, thereby facilitating their collective representation and the gathering of information.

30. Within the member states which have established professional organisations of enforcement agents, membership of this representative body should be compulsory.

31. Enforcement agents' status should be clearly defined so as to offer potential parties to enforcement procedures a professional who is impartial, qualified, accountable, available, motivated and efficient.

32. Where enforcement agents are state employees, they should enjoy appropriate working conditions and sufficient human and material resources. For example, enabling staff to work with access to functioning modern communication and IT equipment (computers, telephones, fax machines, Internet connections, job-specific upgradeable IT systems) and with appropriate means of transport sufficient to allow them to perform their role as effectively as possible.

#### **4.3. Rights and obligations**

33. Enforcement agents, as defined by a country's law, should be responsible for the conduct of enforcement within their competences as defined by national law. Member states should consider giving enforcement agents sole competence for:

- enforcement of judicial decisions and other enforceable titles or documents, and
- implementation of all the enforcement procedures provided for by the law of the state in which they operate.

34. Enforcement agents may also be authorized to perform secondary activities compatible with their role, tending to safeguard and secure recognition of parties' rights and aimed at expediting the judicial process or reducing the workload of the courts. These may be, among others:

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<sup>5</sup> The CEPEJ could be tasked with setting up a working group on training on enforcement, comprising practitioners, instructors and representatives of member states or international organisations.

- debt recovery;
- voluntary sale of moveable or immoveable property at public auction;
- seizure of goods;
- recording and reporting of evidence;
- serving as court ushers;
- provision of legal advice;
- bankruptcy procedures;
- performing tasks assigned to them by the courts;
- representing parties in the courts;
- drawing up private deeds and documents;
- teaching.

35. Enforcement agents should be obliged to perform their role whenever they are legally required to do so except in cases of impediment or where they are related by blood or marriage to a party. Enforcement agents should be precluded from being assigned disputed rights or actions in cases with which they are dealing.

36. Where enforcement agents are independent professionals, they should be obliged to open a non-attachable account specifically intended for depositing funds collected on behalf of clients. This account should be subject to inspection. They should also be required to take out professional and civil liability insurance. Enforcement agents should benefit from social insurance cover.

#### **4.4. Remuneration**

37. Where enforcement agents are state employees, the state should ensure that they receive appropriate remuneration, particularly in the light of their level of training, experience and the difficulties inherent in their task.

#### **4.5. Ethics and professional conduct**

38. Enforcement agents should be subject to clearly stated rules of ethics and conduct, which could be set out in professional codes of conduct. These codes of conduct should *inter alia* contain professional standards regarding:

- information to be given to parties by enforcement agents concerning the enforcement procedure (grounds of action, transparency and clarity of costs, etc.)
- the rules governing the formulation of notices to parties (enforcement agents' social role, duty of advice, etc.)
- professional ethics (behaviour, professional secrecy, ethical criteria governing the choice of actions, etc.)
- smooth enforcement (predictability and proportionality of costs and lead-times, co-operation between enforcement services, etc.)
- procedural flexibility (autonomy of enforcement agents, etc.)

## **II. REALISATION OF ENFORCEMENT**

### **1. Information about defendants and assets**

#### **1.1. Information accessible to the claimant**

39. In order to ensure the claimant's right to adequate assistance to the enforcement proceedings, the latter should be allowed to access public registers so that they can confirm essential information about the defendant, such as information identifying the defendant and his whereabouts for enforcement purposes and the data accessible through public registers (i.e. land registers, court

registers of companies, etc.) subject to the freedom of information and data protections laws of the national state.

The aforementioned data should be available to the claimant upon a written request and upon production of sufficient proof of interest (i.e. judgment or another enforceable title).

## **1.2. Information accessible to the enforcement agent**

40. So that enforcement agents may produce an estimate of costs and ensure that any measures taken are proportionate to those costs, member states should allow them speedy and preferably direct access to information on the defendant's assets. Member states are encouraged to consider making such information available to the enforcement agent by Internet through a secured access, if possible.

41. In order to prevent the defendants from avoiding enforcement by relocating their assets, member states are encouraged to establish a unique multi-source restricted access database about debtor' attachable assets (i.e. ownership rights over a vehicle, real estate rights, payable debts, tax returns, etc.). Member states should provide the database with an acceptable level of security, with respect to the risks incurred. Access of the enforcement agent to the database should be restricted to that data pertaining to the pending enforcement procedure and be subject to thorough control. Member states should provide the defendants with effective legal means to ensure that any inquiry about their personal assets is justified.

42. 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. Protocols and uniform procedures should be drawn up to ensure inter-departmental co-operation, on one hand, and cooperation between these departments and enforcement services, on the other hand.

## **1.3. The duty to provide information**

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.

## **1.4. Data protection**

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

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.

## **1.5. Multiple use of information**

46. Member states are invited to consider allowing enforcement agents to reuse information on the defendant's assets in subsequent procedures that involve the same defendant. The reuse of information should, however, be subject to a clear and precise legal framework (i.e. setting strict timeframes for data retention, etc.).

## **2. Costs of enforcement**

### **2.1. Regulation of costs**

47. Each member state is encouraged to introduce regulations governing the level of enforcement costs to ensure effective access to justice notably through legal aid or schemes allowing for the waiver of costs or a postponement of their payment, where such costs are likely to fall to the parties. The parties should be protected to ensure that they will pay only the costs determined by law.

48. Where, within the same member state, there are enforcement agents working in both the private and public sector, the state should avoid any discrimination in terms of the costs for the debtor between enforcement agents of different status but equal competence.

49. Member states should introduce a procedure whereby parties may challenge the costs of the enforcement agents.

## **2.2. Transparency of enforcement costs**

50. Where enforcement costs are likely to fall to the parties, the member states should ensure that the latter are informed as fully as possible about the enforcement costs (enforcement fees and the performance fees due upon successful completion). This information should be made available to the parties not only by the enforcement agent but also by the courts, consumer organisations, procedural codes or via the official Internet sites of the judicial and professional authorities.

51. In recognition of the growing mobility of persons and services in Europe, there is an increasing need for international enforcement of court decisions. The transparency of enforcement costs should therefore go beyond mere domestic level: member states should agree to set up a data base of the amounts charged for the procedural acts most frequently performed and make it as broadly available as possible, with the aim of giving persons in other member states access to each country's structure of charges<sup>6</sup>.

## **2.3. Clarity and predictability of enforcement fees**

52. Enforcement fees should be public. Member states are encouraged to require that any procedural document clearly indicate the amount of the action and provide for sanctions in the event of non-compliance (i.e. invalidity of documents failing to comply with the requirement, etc).

53. Where the defendant's financial situation is known to the enforcement agent and he recommends a particular enforcement process he should inform the claimant about the type of action envisaged and the likely resulting costs at the beginning of and at each stage in the procedure.

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

55. When setting enforcement fee tariffs, member states should exchange their experiences and consider the need to take certain factors into account, such as the amount of the debt, any particular urgency and the difficulties that the enforcement agent is likely to encounter.

## **2.4. Relevance of taking action**

56. The ultimate cost of enforcement should be in due proportion to the remedy sought. Member states should endeavour to provide an effective enforcement procedure for all level of debts, either large or small.

57. It is the responsibility of the enforcement agent to take all reasonable and necessary steps in enforcement and to decide which enforcement action is most appropriate. Where costs are considered irrelevant or wrongfully incurred, these costs should be borne by the enforcement agent.

58. Member states which grant legal aid should verify the relevance of the costs incurred, so that the community does not have to bear unjustified costs.

59. Where an enforcement agent has a duty to offer proper advice, he/she should be required to explain clearly to claimants their situation and the relevance of the action they suggest be taken.

## **2.5. Allocation of enforcement costs**

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<sup>6</sup> Under the auspices of the Council of Europe and possibly in conjunction with other international organisations, the CEPEJ could be tasked with identifying the data to be collected.



60. Enforcement fees should be borne by defendants, where he or she is solvent, together with the possibility of a performance fee borne by the claimant. Where the defendant is insolvent, the enforcement fees should be paid by the claimant.

61. Where enforcement is deemed to be wrongful or irregular, liability for the costs should be borne by the persons or the bodies responsible for the wrongful or irregular act.

## **2.6. Legal aid**

62. In order to guarantee access to justice, legal aid schemes, or alternative funding schemes, should be available to claimants who are unable to pay enforcement fees (i.e. by means of state funding or by remitting the fees). Where legal aid is granted, the state may, if considered just, avail itself with mechanisms allowing it to recover its outlay from the proceeds of enforcement.

## **3. Timeframes and reports**

### **3.1. Timeframes for enforcement procedures**

#### **3.1.1. Reasonable and foreseeable time limits**

63. The time lines for enforcement procedures should be reasonable and member states should not impose any arbitrary cut-off deadlines for enforcement to end.

64. Member state should set forth clear and precise criteria regarding the reasonable nature of the duration, which could vary according to the nature of the case and the type of action requested.

65. In view of the importance of being able to foresee the length of enforcement proceedings from the point of view of legal certainty, 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.

#### **3.1.2. Factors of smooth and prompt enforcement**

66. At the stage of the enforcement of decisions, swift (such as e-mail) communication between the court, the enforcement agents and the parties should be possible.

67. Member states should ensure that the legal framework of enforcement is not unnecessarily prolonged. Member states are encouraged in particular to take measures to ease the procedural enforcement framework to give enforcement agents the necessary autonomy to choose for themselves, without prior authorisation, the procedural steps that are the most appropriate for the case in question.

68. Member states should also ensure that the defendant can take action to challenge enforcement measures within a reasonable timeframe, provided this does not unjustifiably halt or delay the enforcement proceedings; for example where a defendant wishes to appeal a decision, machinery should be in place to allow him to provide security for the protection of the claimant.

69. Member states should provide for an accelerated and emergency enforcement procedure in cases where a delay could result in an irreversible damage (i.e. cases within the province of a family court, cases of defendant absconding, eviction, deterioration of assets, etc.).

70. Priority should always be given to reaching agreement between the parties in order to coordinate enforcement timeframes. Where the parties agree between themselves a timeframe for enforcement then any procedures put in place by the member state should not preclude these agreements from taking effect.

71. The defendant's allegations of misconduct against an enforcement agent should not hamper or delay the enforcement process except where there is judicial intervention. Complaints against enforcement agent should be investigated simultaneously with the enforcement proceedings.

### **3.2. Reporting on enforcement procedures**

#### **3.2.1. Reporting on each enforcement measure**

72. The defendant should be informed as to the extent of his liability during the enforcement process.

#### **3.2.2. Reporting on completed enforcement procedure**

73. 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).

#### **3.2.3. European standards on information**

74. 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<sup>7</sup>.

### **III. Supervision, control and disciplinary procedures**

#### **1. Quality control of the enforcement proceedings**

75. In order to undertake quality control of enforcement proceedings, each member state should establish European quality standards/criteria aiming at assessing annually, through an 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:

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<sup>7</sup> Cf. Council of Europe Convention on Access to Official Documents (CETS No. 205 – opened to signature in June 2009 but not yet in force).

- 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.

76. The performance data should be based on representative samples and should be published.

77. These assessment criteria could be defined at a European level, in order to strengthen confidence between member states, particularly given the prospect of a growing number of international enforcement cases<sup>8</sup>.

## **2. Supervision and control of enforcement activities**

78. The authorities responsible for supervision and/or control of enforcement agents have an important role in also guaranteeing the quality of enforcement services. The member states should ensure that their enforcement activities are assessed on an ongoing basis. This assessment should be performed by a body external to the enforcement authorities (for example, by a professional body). The member states' authorities should clearly determine the control procedures to be performed during inspections.

79. Member states should ensure that the arrangement for monitoring the activities of enforcement agents does not hamper the smooth running of their work.

## **3. Disciplinary procedures and sanctions**

80. Breaches of laws, regulations or rules of ethics committed by enforcement agents, even outside the scope of their professional activities, should expose them to disciplinary sanctions, without prejudice to eventual civil and criminal sanctions.

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

82. An explicit list of sanctions should be drawn up, setting out a scale of disciplinary measures according to the seriousness of the offence. Disbarment or "striking off" should concern only the most serious offences (the principle of proportionality between the breach and the sanction should be observed).

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<sup>8</sup> The Council of Europe, if possible in conjunction with the European Union, could help to this task.

## GLOSSARY

For the purposes of these Guidelines, the following terms should be understood as follows:

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

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

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

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

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

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

**Enforced case:** In order to be enforced, the case must have been the subject of an action that has fully satisfied the claimant (in a civil case).

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

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

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

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

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

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

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

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

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

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

**Stakeholders:** persons indirectly involved in the enforcement procedure.

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

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

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

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