



COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES

**INTERNATIONAL CONFERENCE
“PROMOTE EFFICIENCY OF ENFORCEMENT”**

CONCLUSIONS

SUPERIOR INSTITUTE OF POLITICAL AND SOCIAL SCIENCES – LISBON UNIVERSITY

18 AND 19 OF JUNE 2010



OPENING SESSION

Master Paula Meira Lourenço - President of the Commission for the Efficiency of Enforcement Procedures

- The 1st International Conference “*Promote the Efficiency of Enforcement*” was held on June 18 and June 19 in the main auditorium of the Institute of Social and Political Sciences Technical of the University of Lisbon, was promoted by the Commission for the Efficiency Enforcement Procedures (CEEP) and co-organized by the Institute of Information Technologies in Justice of the Ministry of Justice (ITIJ) and Editorial Group *Economic Life*, and had the support of the Institute of Social and Political Sciences Technical University of Lisbon (ISCSP), the Directorate-General of Justice Policy of the Ministry of Justice (DGPJ), Mayor of Lisbon (CML) and the Chamber of Solicitors (CS), entities to which we express public thanks.
- The conference program was composed of nine panels devoted to, in summary, the annual report of activities of CEEP, the rigor of the profession of Enforcement Agents, the initial and ongoing training and discipline and supervision of Enforcement Agents, new technologies and electronic enforcement procedures - the electronic system at courts (CITIUS), the electronic system supporting the activities of Enforcement Agents (SISAAE) and the Public List of Debtors, the multidisciplinary analysis of the effectiveness of the enforcement procedures within the first year of the new legislative simplification of the legal system enforced by Decree-Law No. 226/2008, 20 November, the users and consumers perspective of justice (citizens and businesses), the European enforcement procedures and future perspectives for CEEP.



- The organizations of this first International Conference aimed to present the public the annual report of activities of CEEP (2009/2010), helping to open public debate around a key theme for Justice and the Economy of Portugal - the efficiency of the enforcement, in particular, the recovery of debts - and collect contributions from national and international speakers, as well as general public for the issuance of recommendations by CEEP regarding the effectiveness of the enforcement procedures and training of Enforcement Agents to be presented next plenary meeting of CEEP, scheduled for July 13, 2010.
- Thus, the President of CEEP invited all participants to fill out the suggestions bulletin that was put in the individual folders, and leave them on the *Suggestion Box* that was at the entrance to the Auditorium.
- Since the conclusions of the conference would be presented at the closing session, and subsequently publicized, the President of CEEP then gave the word, in that order, to the President of the Institute of Social and Political Sciences, the Vice-President General of the Lawyers Bar Association, the Secretary of State for Justice and Judicial Modernization and the President of the Supreme Court and Superior Council of Magistracy.

Professor João Bilhim - President of the Institute of Social and Political Sciences of Technical University of Lisbon

- Greeting from CEEP for holding the 1st. CEEP International Conference in ISCSP under the Cooperation Protocol signed between the CEEP and ISCSP, stressing his concern for justice for many years and wishing to keep up the good work.

Dr. Jerónimo Martins - Vice-President of the General Council of the Lawyers Bar

- The implementation of the Conference is of crucial importance, inasmuch as the figure of the Execution Agent having received powers from the judge and the secretariat, has seen its powers strengthened since March 2009.
- Stressed and welcomed the current possibility of lawyers entering the profession of Enforcement Agent.



Master Jose Magalhaes - Secretary of State for Justice and Judicial Modernization

- I am sure that these two-day conference will openly and profitably discuss, the recent simplification of enforcement procedures in Portugal, which occurred just over a year, and compare what happens between us with what is best made in European countries.
- I want to stress how much we have achieved in about a year, due to the simplification operated by the recent simplification of enforcement procedures in Portugal, which denotes a greater coordination and ability to perform in comparison with the previous period.
- The improvement, change has to be forms of work organization and electronic communication between the various entities involved, in a more reliable and coordinated manner possible.
- So, I emphasize the proper effort and cooperation that the Department of Justice received from the Chamber of Solicitors, the Ministry of Finance and the Ministry of Labour and Social Solidarity, in such areas as: access to information about goods, electronic notices, electronic enforcement procedures, electronic communications and notifications between litigants and Enforcement Agents, Public List of Debtors, sale announcements and electronic payment through ATM. Here is certainly an interesting example for Europe.
- The credit for the effort of coordination and implementation must also be extended to CEEP and its President. Some measures have been coordinated within the CEEP and it would not be possible without your democratic set-up involving all the protagonists in the enforcement procedures. Also here the model of cooperative work we have adopted can be an example.
- The CEEP in less than a year of actual activity has scored an overview of the effectiveness of enforcement procedures in Portugal, becoming a key element in the ethics and discipline of enforcement officers in the dissemination of best practices and coordinating efforts of all involved. That was the objective and it's being achieved in a hostile economic environment, causing a tsunami of executions.
- There is much to do yet. We know that there are now over 150,000 pending processes without a procedural motion in courts for more than 1 year and 6 months. Over 10% of pending processes is "officially" stopped for over a year and a half. This is because these processes have not been moved? No.



COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES

- My Cabinet did an analysis of these disputes in collaboration with several Enforcement Agents: more than 50% of these cases were already filed with full payment, due to lack of assets or other reasons. In fact, before 2009 it was not mandatory to use the computer application for Enforcement Agents, dismissal of the lawsuit was never sent to CITIUS and it never reached the statistical system of the closure process. These are false disputes!
- This is a problem whose resolution is a priority, because without reliable figures we do not have measuring instruments to adopt the right solutions. For some months, in cooperation with the Chamber of Solicitors, myself, my office and services for which I am responsible are committed to bring statistics closer to reality.
- We are coordinating with the Chamber of Solicitors to send, in block, and by computer, such statistical information, creating working groups with Enforcement Agents asking them to verify and update the progress of proceedings in SISAAE and thus reflecting immediate repercussions in the statistics.
- Only after that essential work has been done can we properly analyze the activity of all involved and, in cooperation with them, find the appropriate solutions to the challenges ahead.
- We believe in the dozens of people who have collaborated with us and point out that the enforcement procedures has visibly improved significantly since September 2009, the result of legislative changes and the investment made by the Ministry in computer technologies, the Chamber and all involved.
- We reaffirm the willingness of the Ministry of Justice to consolidate, strengthen and expand the use of information technology in general and in justice, particularly in enforcement.
- There is now a broad consensus on the need to use the opportunities of the rapid expansion of electronic networks and new technologies of information and communication, which should be use in large scale to provide a better public service of Justice.
- The investment and human effort that will continue to bet already allowed a significant reduction in time and cost and resource savings to judges, prosecutors, Enforcement Agents, lawyers, solicitors, to the bailiffs, but especially to citizens and businesses.
- This is our way and we continue to travel it. For the success of these objectives is essential your cooperation. Thank you.



Councilor Luis Noronha Nascimento - President of the Supreme Court of Justice (STJ) and the Superior Council of Magistracy (CSM)

- He welcomed CEEP for holding the conference, given that enforcement procedures are a core problem of justice, as there is about one million of pending lawsuits.
- This situation has become more pronounced with an upward curve since the mid eighties due to the increase in consumer credit, the existence of massive litigation (as compared, for example, with the Netherlands, where there are about 100 or 200 cases per 100,000 inhabitants), the wide range of enforcement procedures in Portugal.
- To resolve this problem there are three possible models: a 1st model in which the judge has to do everything, a 2nd which corresponds to a mixed system, and a 3rd based on freer justice system.
- In the 30's of last century we had the first. model, judicialized because there was only confidence in judges
- Currently in Portugal we have a mixed model: a de-judicialized process is a good solution (although the President of STJ is more keen with the Swedish model, in which the litigations run in terms of a public institution).
- The President of the STJ also argued that it should end up with liens of the state and public entities in executions, which delays the process and allow these preferential creditors to seize the initiative of another creditor who brought the action, when in fact what exists is a lis pendens.
- Finally, the President of STJ advocated the creation of a regulator to control the activities of Enforcement Agents, in terms of supervision and disciplinary matters. This entity should be public and truly independent and autonomous from corporate entities whose activities monitors. It does not make any sense that people subject to this control, were both makers of that control in established disciplinary and supervisory bodies.



PANEL 1 - CEEP: PRESENTATION OF ANNUAL REPORT OF ACTIVITIES

Moderator: Dr. João Luís de Sousa (Director of *Economic Life*)

SIMPLIFICATION, PROMOTE EFFICIENCY AND AVOID UNNECESSARY PROCEDURES

Dr. Pedro Marques da Silva (Lawyer and Partner of Moreira & Marques da Silva - Law Firm)

- Changing the legal system of enforcement procedures made by Decree-Law No. 226/2008, of 20/11 was crucial as it has allowed to make executions easier and eliminate unnecessary procedural formalities;
- Strengthening the role of the Enforcement Agent and reserve the intervention of the Judge for situations where there is actual conflict or relevance of the issue warranted;
- stressed the capacity of the Enforcement Agent in promoting the progress of the process, the end of the overall control of the process by the judge, the possibility of investigating the debtor's property exclusively through electronic means and the possibility of carrying out the execution electronically;
- He noted that there are many debtors who live based on the slowness of the system in recovering their debts, feeling that the last legislative amendment has dissipated, because it allows a faster litigation process.



**THE COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES:
A MODEL IN EUROPE**

Prof. Dr. Guillaume Payan (University of Maine; Expert of International Union of Huissiers of Justice and Judicial Officers)

- It can be considered the active participation of CEEP under the "Forum for discussion of policies and practices of the European Union in the field of justice." The forum, whose inaugural meeting was held in Brussels on 30th of May 2008, was conceived as an ongoing dialogue between European institutions and "all actors in the systems of justice in the EU.";
- The CEEP should take action in the Council of Europe and the European Union on Justice;
- The CEEP expected to monitor the dematerialization process and should be part of European groups, and participate in the drafting of a European justice system;
- The CEEP should appear as an intervener in the elaboration of a European judicial area;
- The new information technologies contribute to the implementation of a European judicial area;
- The CEEP has to increase its action on the European scene and should participate actively in the Forum on European policies related to enforcement actions in permanent dialogue in order to enrich the European debate on this matter;
- The CEEP should be an interlocutor of the Council of Europe and particularly CEPEJ, particularly in terms of statistical analysis;
- However, we can only hope that CEEP will have financial and human resources to achieve the ambitious and noble goals that were set. It is then my wish for the first anniversary of CEEP.



PRESENTATION OF ANNUAL REPORT OF ACTIVITIES OF CEEP

Master Paula Meira Lourenço (President of CEEP)

1. THE CREATION OF CEEP UNDER DECREE-LAW No. 226/2008, of 20/11

- Pluralism and independence of CEEP.

2. CONSTRUCTION OF FOUNDATION OF CEEP

- Installation of CEEP - April to July 2009;
- Establishment of CEEP website on the Internet - June 2009
- Analysis and setting of the number of candidates to be admitted in each execution agent training actions (May 2009);
- *The Handbook of Questions and Answers about Enforcement Procedures and Legislation Compilation* (available since July 2009);
- *CEEP Internal Procedures and Rules* (July 2009);
- *CEEP Action Program and the Guidelines for the triennium 2009/2012* (September 2009);
- *CEEP Handbook on Supervision 2009/2010* (December 2009);
- *The Handbook of Preliminary Assessment and Disciplinary Procedures 2009/2010* (May 2010).

3. CEEP ACTION PLAN AND GUIDELINES FOR 2009/2012 – GOALS AND RESULTS ACHIEVED IN 2009/2010

- Three objectives of CEEP:
 - **Objective I** - Promote the effectiveness of enforcement: speed and efficiency through the electronic
 - **Objective II** - Contribute to the creation of the new paradigm of service for Enforcement Agents
 - **Objective III** - Ensure disclosure of CEEP and promote its activities through new information technologies and communication - a link between the judiciary, citizens and businesses



- **CEEP selects 300 new Enforcement Agents in 2009 in view of the effectiveness of enforcement action** - In May 2009 there were 835 Enforcement Agents (data of the Chamber of Solicitors), it was found in a study prepared by the Directorate General Justice Policy that "it was necessary to double the number of Enforcement Agents to ensure a faster implementation, so that instead of lasting two years, lasted a year.". Doubling of the number of Enforcement Agents in a phased manner during three years;
- In May 2009 - 300 candidates for the 1st training of Enforcement Agents;
- In March 2010 - more 300 new Enforcement Agents to the 2nd training program, a total of 600.

4. STATISTICAL DATA AND ANALYSIS - MANAGEMENT GROUP

- **DISQUALIFICATIONS, EXCLUSION, SUSPICIONS OVER ENFORCEMENT AGENTS**
 - The CEEP reviewed 69 applications for verification of an impediment or excuse of the Enforcement Agent.
- **COMPLAINTS about the activities of Enforcement Agents**
 - The CEEP recorded 192 complaints regarding the activities of Enforcement Agents. The procedural action in breach of due care, failure to return of sums / property and excessive / illegal retention represent the greater volume of complaints.
- **DISCIPLINARY ACTIONS**
 - CEEP Executive Board initiated 53 disciplinary actions (25 in 2009 and 23 in 2010 to date), which in 2009 accounted for 68% two types of plaintiffs: judges (44%) and debtors (24%), a situation that changed in 1st quarter of 2010, where 57% of disciplinary actions resulted from complaints by magistrates (32%) and by lawyers of the creditors (25%).
 - As a result CEEP preventively suspended two Enforcement Agents and expelled one Enforcement Agent of their duties.



▪ **SUPERVISION**

- The Executive Board oversaw eight Enforcement Agents in their offices.
- There is an ongoing recruitment of staff for Enforcement Agents to the supervisors pool (who already has 27 candidates, and 4 effective supervisors).
- Ongoing surveillance of all Enforcement Agents.
- Periodic supervision should be seen as something natural, educational and beneficial to the quality and performance of Enforcement Agents.

▪ **SUGGESTIONS BY THE PRESIDENT OF CEEP:**

- Legislative amendment for submission to the Justice Ministry to forecast the payment to the enforcement of a fixed amount upon commencement of each action similar to existing justice fees, a measure of justice for the Enforcement Agent, preventing the actions to stop due to lack of initial payment.



PANEL 2 - ACCESS TO DIFFERENT PROFESSIONALS TO ENFORCEMENT AGENTS WORK AND INITIAL TRAINING - HIGH QUALITY STANDARDS

Moderator: Mr. John Marston, Chairman of the Working Group on the Effectiveness of executions under the European Commission for the Efficiency of Justice (CEPEJ-GT-EXE)

REQUIREMENTS FOR THE ACCESS ENFORCEMENT AGENT ACTIVITY: THE NATIONAL EXAMS OF ENFORCEMENT PROCEDURES AND SELECTION OF THE 300 BEST CANDIDATES

Prof. Rodrigo Queiroz de Melo (Lisbon Faculty of Law, Portuguese Catholic University - external and independent body selected by CEEP in 2009)

- Presented the work of the external entity as a challenge, whose objectives are:
 - a) Achieve the selection of the 300 best candidates to the training of Enforcement Agent;
 - b) Be able not to select candidates without knowledge of:
 - Powers of the Enforcement Agent;
 - Rights and guarantees of the debtor;
 - Assessment of the enforcement procedures ;
 - Follow-up of the enforcement procedures ;
 - c) Conducting a large number of exams (expected 2000 candidates) within a short period of time (between 12.03.2009 to 01.21.2010).
- Actions of External Entity unfolded in the following steps:
 - a) Communication with the candidates - carried out exclusively by electronic means (email and website provided for that purpose);
 - b) Construction of the exam - 29 multiple choice practical questions with five options, in which only one was correct, there were three levels of difficulty in the questions (easy, medium and hard);
 - c) Correction of the tests - correction process took only five days;
 - d) management of complaints - 127 complaints received, none were met (reliability testing of the exam had already provided the certainty of results);



COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES

- e) Strict quality control - analysis of total scores and the correlation between the expected response and the responses obtained, verifying the goal of the question asked
- Submitted the following suggestions for the future:
 - a) Creation of a *link* accessed only by the Enforcement Agent trainee in the Chamber of Solicitors;
 - b) Creation of a link with organized information and where training program classes were publicized in advance.

THE FIRST THREE MONTHS OF ENFORCEMENT AGENTS TRAINING

Dr. António Gomes da Cunha (President of the Chamber of Solicitors and Member of the CEEP Plenary representing the Chamber of Solicitors)

- He mentioned that Phase one of the training has the workload of 210 hours, of which 147 hours are mandatory and 67 hours are not mandatory;
- He stressed that the training was a novelty and a challenge for the Chamber of Solicitors, to the extent that it sought to ensure a theoretical-practical in the training's first stage, because the theoretical model with a duration of three months, will necessarily be connected to second, the practical stage;
- Three training centers were set-up: Porto, Coimbra and Lisbon, with three coordinators, Dr. Fernando Cardoso, Dr. Manuel Marques Rascão and Dra. Maria Fernanda Santos, respectively.
 - The scientific coordination of the training was in charge of Master Cláudia Boloto;
- Material given to the trainees:
 - *The Handbook of Questions and Answers about Enforcement Procedures and Legislation Compilation of CEEP and DGPJ*
 - *Enforcement procedures and the Enforcement Agent*, by Eduardo Cabrita Paiva and Helena Cabrita;
 - Work book prepared by Master Cláudia Boloto.
- **Negative aspects:**
 - a) Impossible to distribute one computer for each trainee;
 - b) The system unavailability due to online access overload.
- **Positive aspect:** election of a training delegate among the trainees.



PANEL 3 - THE IMPORTANCE OF CONTINUOUS TRAINING: THE NEW PARADIGM OF PUBLIC SERVICE OF THE PORTUGUESE ENFORCEMENT AGENTS

Moderator: Dra. Luísa Guimarães (Member of the Plenary of CEEP appointed by the Minister of Labour and Social Solidarity) stressed that CEEP works with great openness, transparency and democracy.

TRAINING, BASE OF QUALITY OF SERVICE

Professor Dr. John Bilhim (Professor and Chairman of the Institute of Social and Political Sciences Technical of the University of Lisbon)

- Launched the idea that there is life-long learning and not for life training.
- Traditional model: training seen as premium or penalty. For example, a premium is attending a conference in Switzerland, but it can be seen as a punishment: because he did wrong, he must go to training. Poor presence of Enforcement Agents to this conference is due to the fact that such conferences are seen as a punishment.
- Currently, the training aims to achieve four objectives: 4 E's:
 - Economy;
 - Efficiency (more results with less costs);
 - Effectiveness;
 - Ethics.
 - Strategic Qualification of Human Resources - emotional competence is very important:
 - ✓ *Soft Skills* – know how to be; and
 - ✓ *Hard Skills* – know how to do
 - Workers as assets rather than as resources.
- CEEP should be the certifying body of quality and accreditation of continuous improvement.
- Must be a qualified training to achieve the four E's - is the key of change.



EDUCATION, ETHICS AND PROFESSIONAL ETHICS

Professor Dr. Bernard Menut (First Vice-President of the International Union of Huissiers of Justice and Judicial Officers)

- The training has to be assumed as an instrument of knowledge: Training of Enforcement Agents and Forensic Employees, and the latest are more numerous than the Enforcement Agents.
- It is important not to forget the training of trainers, which means investing more in teachers.
- It is proposed as the training program for Enforcement Agents:
 - a) Continuing Education Format: ideal format in restricted groups (20-25 people), divided into training modules;
 - b) Training Format: by holding workshops or using E-Learning (Swedish model);
 - c) Duration (20 hours / year, ie one week) and supervision (to assure quality) training.
 - d) Training as a ethical - professional tool: to establish trust and to establish and maintain accuracy;
 - The "*Huissiers de Justice*" shall have the same level of training as judge or a lawyer;
 - Lack of training leads to: Errors, flaws ("I know I did badly) and damage to reputation and professional respectability.
- 4 Recommendations:
 - 1) Transparency criteria;
 - 2) Morality criteria;
 - 3) Initial and continuing training - is essential for the future;
 - 4) Improved customer confidence - take CEEP to raise the quality of service provided by the Enforcement Agent and therefore more quality means more customers.



PANEL 4 - DISCIPLINE AND SUPERVISION OF ENFORCEMENT AGENTS

Moderator: Dra. Inês Caeiros (Member of CEEP Executive Board)

RELEVANCE OF CEEP ACTION

Professor Tiago Duarte (Faculty of Law, New University of Lisbon; CEEP Expert in 2009)

- Creation of the Enforcement Agent, at the time of the *Solicitor of Enforcement*, by Decree-Law No. 38/2003, hence the Enforcement Agents were only solicitors and their legal status was in the Chamber of Solicitors and the competent bodies in grounds of discipline were the Chamber of Solicitors - "*Defense Move*";
- Opening of the profession of Enforcement Agent to lawyers through Decree-Law 226/2008 and the establishment of CEEP which corresponds to an organ of cohesion between lawyers and solicitors and unifier of discipline of lawyers and solicitors who are Enforcement Agents, but there is an "out of positional play" - the legislative amendment that created CEEP put it on the ECS, because "to the wife of Caesar it's not enough to look serious, she must look like one" - "*Middle Field Play*";
- Creation of a own statute to CEEP where are clear types of illegal actions and the penalties and also remove the possibility of delegating powers to organs of the Chamber of Solicitors and the Bar, because it is a contradiction regarding independence - "*Move to strike*";
- It is clear the need to create a very organic law applied only to CEEP strengthening it's independence and autonomy:
 - a) The access to the profession;
 - b) Exercise of the profession;
 - c) The discipline of the profession.



GOOD PRACTICES: THE PROCEDURES HANDBOOK AND DISCIPLINARY SUPERVISION

Dra. Ana Luísa Rodrigues (Member of CEEP Executive Board)

- CEEP action on discipline and supervision :
 - It is an exclusive jurisdiction of the Executive Board;
 - It is envisaged the possibility of appeal to the Plenary of CEEP regarding decisions of the Executive Board concerning the implementation penalty of suspension and expulsion to an Enforcement Agent;
 - In carrying out their tasks (on discipline and supervision), CEEP Executive Board may be assisted by technical experts to recruit within the annual maximum amount that will be fixed by joint decree of the Cabinet members responsible the areas of Finance and Justice - Article 69.º- F/3 of the ECS.
 - For the year 2009, had been published Order No. 386/2010 of January 7 - the Executive Board had the support of two (2) experts and one (1) technique.
 - For the year 2010, the CEEP is waiting the issuance of the order from all the members of the Government in charge of finance and justice.
- In operational terms and in relation to the supervisory activity of CEEP:
 - The Executive Board may appoint an outside entity to perform the audits to the Enforcement Agents or may appoint an oversight committee, pursuant to Rule 131. Of the ECS.
 - The Audit Committee appointed by CEEP Executive Board may consist of:
 - Members of CEEP Group Management;
 - Members of CEEP Group Management and others designated by CEEP (eg Enforcement Agents);
 - Enforcement Agents (maximum of 3).
 - Each Audit Committee may be assisted by professionals, and offset the expenses and loss of earned income, under regulations to be approved by the General Council of the Chamber of Solicitors.



COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES

- As part of its responsibilities regarding discipline and supervision, CEEP produced the following results as per Action Plan and Guidelines of CEEP 2009/2012:
 - Procedures and preliminary assessment of disciplinary proceedings Handbook 2009/2010 (Approved in May 2010 and took effect on December 1, 2009);
 - Supervision proceedings Handbook 2009/2010 (Approved in December 2009 and took effect on 11.25.2009).
 - Common aspects to both Handbooks:
 - ✓ The primary objectives set, related to customer accounts and the transparency thereof, the computer record of movements of two client accounts, with reference to each enforcement procedures of the Enforcement Agent and the structures and electronic means minimum that the Enforcement Agents require;
 - ✓ Immediately available documentation;
 - ✓ Cooperation with other entities;
 - ✓ Defined decision criteria and objectives in support of the principle of transparency;
 - ✓ The possibility that CEEP can always intervene in the conduct of proceedings;
 - ✓ The collection of drafts compiled;
 - ✓ The deadline for revising the Handbooks;
 - ✓ The online advertising of the Handbooks.
- The CEEP conducts inspections in conjunction with Enforcement Agents and created for this purpose a **pool of CEEP inspectors**:
 - The recruitment and selection of CEEP supervisors is provided in the Handbook of Procedures for Monitoring and includes: a curriculum evaluation, an interview and conducting a in loco supervision of the Enforcement Agent by CEEP Executive Board;
 - In this process CEEP has a total of 26 Enforcement Agents candidates, 11 interviews, with three Enforcement Agents already in the pool after being inspected
- CEEP held the distinction of Enforcement Agents by providing a quality public service:
 - In the Supervisory Procedures Handbook, CEEP provided the opportunity for Enforcement Agents are distinguished by raising the quality of the public service, if evidence of breaches of discipline are not detected by obtaining a statement issued CEEP announcing that its business have already been inspected by CEEP with the words:



COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES

"Enforcement Agent monitored in 2010 with distinction and quality of service verified and certified by the Commission for the Efficiency of Execution."

- To date, four Enforcement Agents have been honored with this statement and 3 three of these candidates belong to the CEEP pool.

In short: CEEP for the sake of transparency and the methodologies implemented in the exercise of these powers, aims to demystify them and pass on to agents that and Enforcement Agent role model should be created, to improve their quality and credibility in this activity and still convey the idea that monitor and be monitored is an action that occurs regularly and naturally.

In conclusion and as the results still to achieve and the means to deliver them, CEEP proposes:

- The conduct of surveillance, procedures for preliminary assessment and disciplinary procedure provided for in the Handbooks, in accordance with the law, translated into a computer application, through the implementation of those minutes collected Handbooks, relevant for the purposes of effective performance of the activity of CEEP at disciplinary / audits and inspections, using the electronic processing and recognition of the target E-CEEP (Objective I of the Action Programme). Having, in order to reduce the average time of the preliminary assessment of appraisals and disciplinary procedures and even the inspection reports prepared by the Audit Committee, cutting red tape media and setting, with full transparency, the state of each action . All documentation regarding the development and implementation of computer applications necessary for the processing electronics and statistical processing of disciplinary cases and controls has been designed by CEEP and awaits implementation in accordance with and for the purposes of paragraphs a) and b) of Art. 3. Decree-Law No. 165/2009, of 22 July.
- A review of the procedures contained in the Handbook and its annual review.
- The beginning of an ordinary review of all Enforcement Agents to be held initially in the form of inspection from distance or dematerialized (FD) and cooperation (FC) and in these terms, CEEP will ask entities and / or judiciary operators, the administrators of computer systems CITIUS / SISAAE, the judge, the court, the trustees and Enforcement Agents - clarifications and documents or information as deemed necessary, cf. provided in the Handbook
- The collection of contributions to the preparation of a Handbook of Good Practices which follow, mutatis mutandis, the following guidelines relating to ethics and ethics propagated by the *European Commission of the Efficiency of Justice (CEPEJ)* in its "*Guidelines for the Better*



COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES

Implementation of the Existing Council of Europe's Recommendation Enforcement "dated 12.17.2009 and relating to the following:

- ✓ Information to be given to parties involved in court proceedings, the Enforcement Agents on the exercise of their activity (reasons for action, clarity and transparency of costs, etc.).
- ✓ Uniform acts to effect service of documents of investigations, communications, telematics, the wording of notices to concerned (given the social role of the Enforcement Agent, the duty of advising, etc.).
- ✓ Professional Ethics (from the behavioral point of view of professional secrecy, the underlying ethical decision making, etc.).
- ✓ Simplification of the activities of Enforcement Agents (predictability and proportionality of cost / time value, cooperation with other agencies also linked to executions, etc.);
- ✓ Increased autonomy of Enforcement Agents.
- Finally, CEEP suggests a legislative change regarding the disciplinary process:
 - ✓ Types of offenses according to the following grading scale: very serious, severe and mild;
 - ✓ Correspondence between the type of offense and the penalty to be applied;
 - ✓ Creation of a form of simplified process for minor offenses: removal of early stage / preliminary investigation, electronic notification of the Enforcement Agent.

GOOD PRACTICE: CREATING THE CEEP SUPERVISORS POOL

Dr. Fernando Cardoso (First Vice-President of the Chamber of Solicitors; Enforcement Agent)

- He referred to his experience as a member of CEEP pool citing aspects of the review contained in the Check-List (list of key control information and documentation required to be in use by the CEEP, which is annexed to the Handbook of Inspections and forming a part of it).
- Emphasized the importance of an intangible or remote supervision.
- Stressed the need to implement control measures among the Enforcement Agents with large volume of cases and the need to quota procedures.



PANEL 5 - NEW TECHNOLOGIES IN SUPPORT OF THE ENFORCEMENT PROCEDURES

Moderator: Professor Dr. Alexandre de Sousa Pinheiro (Faculty of Law, University of Lisbon)

EXECUTIVE ELECTRONIC PROCESS: THE CITIUS

Dr. Ponciano Oliveira (Member of the Board of the ITIJ)

- Presented as objectives of the dematerialization of civil proceedings in the Portuguese courts of Justice:
 - Improve access to justice;
 - Simplify procedures and eliminate routine, with gains in speed,
 - Improve management with new instruments;
 - As of January 5, 2009 the vast majority of acts in about 74% of litigation in first instance (civil, labor and family) became available in its electronic version to all participants in the process;
- The electronic civil procedure in general has the following components:
 - CITIUS MAGISTRATES - 1356 judges with the application installed;
 - CITIUS service of procedural documents - In December 2009, 86% of all actions and proceedings commenced via CITIUS;
 - CITIUS INJUNCTIONS - 98.2% of orders delivered electronically directly through the application in December 2009;
 - Since April 15 2009 it is possible perform electronic reporting to the trustees.
- The electronic executive process since 2005 has been a cooperative experience
 - IT developments made in collaboration with the Chamber of Solicitors;
 - In 2005 it was launched the Electronic Executive Application
 - In 2006 vehicle register, and Social Security consultations were made available;
 - In 2007 it was possible to record the sent electronic mail;
 - In 2008 it was developed the electronic query of executions records and electronic acquirement of cars;



COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES

- In 2009 it was made available the:
 - ✓ Electronic properties seizures;
 - ✓ Consultation of Finance Services;
 - ✓ Consultations to the General Pension Fund;
 - ✓ Access to Public List of Debtors;
 - ✓ Two-way communication of all documents CITIUS / HABILUS and GPESE
 - ✓ Electronic notifications from Enforcement Agents to the trustees via CITIUS.
- For 2010 we propose the creation and development of:
 - ✓ Webservice for ATM payment data of each Enforcement Agent delivery receipt of the executive application
 - ✓ Electronic notices
 - ✓ Sites of joint Sales adds
 - ✓ Electronic quotes to Social Security and Finances
 - ✓ CEEP access to the CITIUS and GPESE / SISAAE
 - ✓ Direct communications between the representatives and the Enforcement Agent via CITIUS
 - ✓ Improvements to the Public List of Debtors
- The next steps in the electronic process of CITIUS: PLUS CITIUS development, reliable, useful and safe computer application
- The future of the electronic enforcement procedures will necessarily take following developments:
 - Consultations of the following databases fully integrated into computer applications:
 - Finances;
 - Land Registry
 - Civil Registry;
 - Simplified Business Information
 - Acquisitions integrated in computer applications:
 - Land Registry



- Current account of the process visible through the CITTUS to the trustees;
- Development of queries to databases of other entities (insurance companies, banks, etc.).

COMPUTER SYSTEMS SUPPORTING THE ENFORCEMENT AGENTS ACTIVITY (SISAAE)

Enforcement Agent Jacinto Neto (Coordinator of the Computer Science Board of the Chamber of Solicitors; Enforcement Agent)

- SISAAE is a software tool that performs and handles all proceedings before the enforcement procedures while providing access to several databases, including tax, labor and registration, which immediately allows online representations and acts regarding credit recovery;
- SISAAE Statistics:
 - Early release - September 2003
 - Registered users - Enforcement Agents / employees: 8 564
 - Number of cases: 1 667 544
 - Number of queries to databases: 4 066 301
 - Average daily number of electronic car seizures: 136
 - Average daily number of external users requests: 3 102
 - Average daily sessions: 6 062
 - Documents received: 17 249 601
 - Documents produced: 15 637 877
 - Size of the database: 2 136 GB (2,136 Tera)



THE COMPUTER RECORD OF EXECUTIONS AND PUBLIC LIST OF DEBTORS

Dr. Armando Branco (President of the College of Specialty of Enforcement Agents, Member of CEEP Plenary and Executive Board)

- Three features of the access to the Public List of Debtors:
 - a) *Online* Access;
 - b) Public Access;
 - c) Free Access.

- Goals of the Public List of Debtors:
 - a) Retrieve the reliability levels and performance of the economy being a strong deterrent to breaches of obligations;
 - b) Reduce the time needed for recovery and the improvement of judicial system;
 - c) Precious tool for detecting relapsed debtors;
 - d) Identify the borrowers without economic and financial capacity to honor its obligations;
 - e) Allow the debtors to join a payment plan prepared with the aid of authority in support of indebtedness recognized by the Ministry of Justice.

- Advantages of the Public List of Debtors:
 - a) The Public List of Debtors allows easy recovery of VAT paid on transactions up to € 8,000 (VAT included) with people who are in the Public List of Debtors (Article 78. No 8 e) of the CIVA Code).
 - b) However, paragraph 17 of art.78. of the CIVA does not allow the deduction of tax if, at the time of the transaction, the buyer appears on the Public List of Debtors.



- Suggestions for Success of the Public List of Debtors:
 - a) Disclose the Public List of Debtors to businesses and citizens, in that its knowledge will enable a preventive action. For example, attaching explicit statement that the subject is in the Public List of Debtors while consulting the fiscal number through the website, allowing increased alertness from the the public and businesses when conducting checks or tax validations.
 - b) Openness to all kinds of executions (especially tax foreclosure), as today its restricted to civil cases;
 - c) Inclusion of insolvents, harmonizing the Public List of Debtors with the executions computer record;
 - d) Promote the commitment of the Enforcement Agents to raise the number of records in the Public List of Debtors, insofar as this is synonymous with a decrease in pending actions;
 - e) Promote the commitment of the courts to insert debtors in the Public List of Debtors.



**PANEL 6 - PROMOTION OF THE EFFICIENCY OF CIVIL EXECUTIONS UNDER
THE LAW-DECREE No. 226/2008, 22 November**

Moderator: Dr. Ponciano Oliveira (Member of the Board of the ITIJ)

BETWEEN PAST AND FUTURE: SOCIETY AND ENFORCEMENT PROCEDURES

Dr. Pedro Correia (Advisor to the DGPJ)

- Quantitative vision, numerical and statistical information on the issue of civil enforcement actions in all courts of first instance, with particular focus on civil actions under the Law-Decree No. 226/2008 of 20 November;
- General Framework: enforcement procedures represent 80% of pending civil cases on 31.12.2009 and 67.8% of all pending cases on 12.31.2009 (about two in every three actions pending in courts are civil enforcement actions);
- Average duration of enforcement actions in 2009: three years and eight months, and 40.1% of cases end in less than two years;
- Pending proceedings in 2009 was more pronounced in the entire coastal strip, where we find the highest population densities;
- Analyzing only those enforcement actions registered from 03.31.2009, they represent 9% of the current pending enforcement procedures (99 571 cases);
- When comparing homologous periods between April and December 2008 and April December 2009, the new system presents a less favorable behavior. However, there was a large increase in litigation in this time interval (in the period under review in 2008, 190,315 actions entered while we registered in 2009 232 294 actions), which may explain part of the observed behavior;
- Reflection: the Problem of enforcement procedures is not legal but an economic and financial, given the high debt payments in installments is much longer than the current average length of an enforcement procedures, because it makes the compensation of creditor depend on debtor's economic situation, the duration of the process is sometimes justified by the need to make regular seizures of small, regular amounts thus keeping a longer time frame for action resolution, without constituting a problem of inefficiency.



STATISTICAL DATA ANALYSIS - A MULTIDISCIPLINARY APPROACH

Dr. João Pedroso (Assistant, Faculty of Economics, University of Coimbra, Researcher at the Centre for Social Studies, University of Coimbra, Lawyer)

- It takes a multidisciplinary approach in the analysis of statistical data of Justice;
- Statistics should be analyzed according to the reality in each county;

- In 2001: Half of the debt actions amounted to state charges. Is it be different today?
- Reflexion:
 - a) Is it fair that a company pays the same for access to the Court that the ordinary citizen?
 - b) Who contributes to the statistics as they are?

- A multidisciplinary view of the data implies a combination of the following:
 - a) Have the statistics;
 - b) In depth study of the law;
 - c) Conducting interviews with the people working in justice;
 - d) Organize discussions panel with scholars.

- How to solve courts congestion due to high number of enforcement actions:
We could solve by encouraging the reduction of demand. In some countries, certain debts are not charged, by law, such as hospital care. If it is political assumed that debts for mobile telecommunications services (aka phones) cannot go to court, it will reduce the pendency of actions;
- Justifications should be sought for the increase in enforcement actions number.



CRITERIA FOR ANALYZING THE EFFECTIVENESS OF ENFORCEMENT ACTIONS AND TRAINING OF ENFORCEMENT AGENTS

Dr. Joana Bernardo (Member of CEEP Executive Board)

- 291 000 new enforcement actions between April 2009 and 06/17/2010.
- Average of 410 enforcement actions by each Enforcement Agent.

- Linking between disciplinary and supervisory powers of the Executive Board and the powers to issue recommendations on the effectiveness and training of Enforcement Agents of the Plenary: inseparable link, given the need of data and experience for the responsible conduct of skills;

- METHODOLOGY ADOPTED FOR ISSUANCE OF RECOMMENDATIONS: COLLECT BROAD INPUT, DEFINING CRITERIA, ANALYSIS OF DATA RELATING TO EXECUTIONS AND THE TRAINING OF ENFORCEMENT OFFICERS, IDENTIFICATION OF PROBLEMS AND FINALLY ISSUING RECOMMENDATIONS;

- **Criteria defined by CEPEJ:**
 - ✓ Financial Criteria
 - ✓ Legal aid criteria
 - ✓ Material criteria
 - ✓ Organizational criteria
 - ✓ Functional criteria
 - ✓ Time criteria
 - ✓ Enforcement Agents:
 - N.º of Enforcement Agents
 - The entry process into the profession - ensuring rigorous selection and training
 - N.º of Enforcement Agents by county
 - N.º of Enforcement Actions by Enforcement Agent
 - Allocation of Enforcement Agents by geographic area



- ✓ Satisfaction of users of Justice - Verification of complaints with grounds:
 - Non-finalized decision
 - No application of the decision to public entities
 - Lack of information
 - Excessive delays
 - Illegal practices
 - Inefficient supervision over Enforcement Agents
 - Excessive costs

- **CEEP Criteria:**
 - ✓ Regarding efficiency:
 - Procedures Movement: Incoming and Ended - Rate of Procedure Resolution
 - Geographical Distribution
 - Average duration of procedural steps
 - Average processing time
 - Geographical Distribution of the actions
 - Resources for procedural density
 - N.º of Enforcement Agents
 - Geographical Distribution of the Enforcement Agents
 - N.º of actions per Enforcement Agent

 - ✓ As to Training:
 - Enforcement Agents first training programme
 - No. of Lawyers and Solicitors registered
 - Program taught in the first phase
 - Examination Results
 - Results of Final Evaluation conducted by external entity



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- Analysis of the disciplinary behavior of the Enforcement Agent
 - frequent procedural errors
 - Frequent Complaints
 - Frequent Disciplinary Offences
 - Questions to CEEP
 - Supervision of the Enforcement Agents
 - Handling of client accounts
 - IT usage verification
 - Organization and archives
 - Problems detected
-
- For the analysis of the criteria of judicial organization, it is urgent to undertake a study on the impact of entry into force of the reform of the judiciary Map of the enforcement actions;
 - The declining number of Enforcement Agents since May 2009 and the number of Enforcement Agents who requested the suspension to accept new processes based on excess labor may lead us to the evidence that there are fewer Enforcement Agents than those that are needed to cope with the work. This has motivated the establishment of 300 more Enforcement Agents to admit to the next training of Enforcement Agent.

THE ECONOMIC IMPACT OF THE EFFICIENCY OF ENFORCEMENT PROCEDURES

Professor Dr. António Rebelo de Sousa (Institute of Social and Political Sciences Technical University of Lisbon)

- Presented the Economic Theory of Relativity (3 Diamond Welfare);
- Law of Marginal Utility
- Relationship of the Enforcement procedures with:
 1. Lack of endogenous savings (savings equal to 8%)
 2. Dependence on allogeneic investment



- Considering the electronic process as the cornerstone of efficiency, there may be discrimination to the extent that there are people who do not access the electronic system;
- Presented legislative measures for the promotion of efficiency of executions:
 - ✓ CEEP as independent from the Government in accordance with the 2003 Recommendation from the European Council;
 - ✓ June 2005 - Release of the Measures of Enforcement Action.
- The reform of 2008 is generally positive, as well as the creation and operation of CEEP, without prejudice to measures for improvement;
- Proposes the creation of a Reflection Group for the future.

PANEL 7 - A USER PERSPECTIVE OF JUSTICE: THE CITIZENS AND BUSINESS

Moderator: Dra. Célia Marques (Member of CEEP the Plenary representing consumer and users of Justice Services)

INDEBTEDNESS

Dra. Natália Nunes (Director of the Office for Support to over-indebtedness of the Portuguese Association for Consumer Protection - DECO)

- End-year 90/2000 created the Office of Support to over-indebtedness (GAS): The function of this office is essentially a preventive action (to avoid the initiation of legal action)
- From this office are excluded:
 - a) Commercial and fiscal debts;
 - b) Debts that are already in court.
- Between January and May 2010 - about 5500 consumers used the GAS because:
 - Unemployment;
 - Divorce;
 - Disease.
- There is a noticeable decrease in savings, which corresponds to an increased rate of effort from families, which already exceeds 90%.



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- It is important to have a financial education: of citizens and businesses, because the number of requests to DECO has been steadily increasing.
- In 80% of cases in which GAS intervenes, the family manages to retake balance of their budget.
- Since 31/03/2009 DECO has another role, intervene on the enforcement procedures , before the debtor is included on the Public List of Debtors. However, to date, has not yet been called to intervene in this area.
- Proposed measures to support the indebtedness under the legislative amendment

ECONOMIC DEVELOPMENT AND ACCESS TO JUSTICE

Dr. Joaquim Dionísio (Member of the CEEP Plenary representing the Confederations with a seat on the Standing Committee for Social Dialogue of the Economic and Social Council)

- He noted that most companies find themselves with problems of competitiveness;
- indicated the existence of reliability problems with data bases;
- He stressed the importance of dialogue to solve the enforcement actions problems;
- He mentioned that the judicial system is slow, despite the investment in new technology by the Ministry of Justice, noting, however, the importance of *online* process.
- Indicated the existence of a model in which companies that grant credit, while claiming the payment, have an aggressive attitude, selling its debt to other companies that buy debt..
- Stressed that a speedier debt recovery, must also take into account that there are companies that provide credit to over-indebted that have no assets to meet their obligations, this being a social problem.



RELEVANCE OF THE DURATION OF THE PROCEDURE FOR COMPANIES

Dr. Vasco Álvares de Mello (Member of the CEEP Plenary representing the Confederations with a seat on the Standing Committee for Social Dialogue of the Economic and Social Council)

- Referring to the Legal Enforcement procedures prior to 2003, mentioned that the lender had to know and indicate what were the debtor's assets, since this is a very slow process, many are still pending;
- As the current problems of enforcement procedures he identified the universal implementation, with the lodging of claims of public creditors often precludes compensation for the claim of the creditor and the lack of public deposits.
- Identified the irresponsibility in the banking system as a cause of some problems for companies:
 - ✓ accounting change - Basel 1, 2 and 3 - the accessibility of companies to credit is more difficult, compared with the ease of granting credit to individuals;
 - ✓ The sources of companies financing are affected;
- The banks already knew beforehand that there was a rate of uncollectible in granting easy credit;
- Since the crisis is international Access to funding is increasingly difficult and own capital is also depleted in small and medium enterprises thus causing great difficulties, assuming as a priority payment to the State and Social Security;
- He concluded saying that there is a high number of companies going bankrupt because they do not have sources of funding and fail to collect their debts.



PANEL 8 - EUROPEAN EXECUTIVE PROCESS

Moderator: Dra. Laurinda Gemas (Judge; Member of the CEEP Plenary appointed by the Superior Council of Magistracy)

EUROPEAN PROCEDURE FOR COMMERCIAL AND CIVIL ACTIONS OF SMALL AMOUNT AND EUROPEAN INJUNCTION PROCEDURE ORDER FOR PAYMENT FOR COLLECTION OF PECUNIARY CLAIMS AND PAYABLE

Dr. Rui Torres Vouga (Magistrate Judge of the Court of Appeal of Lisbon)

- The Regulation 861/2007 of 11/07 - European order for payment of small claims, any citizen can place an execution in another country.
 - ✓ Scope - Civil and commercial matters less than € 2,000;
 - ✓ Problem in the practice of scope - Redundant in converting inferred if the defendant raising the value to more than € 2,000, which is an efficient way to withdraw this procedure;
 - ✓ It is not compulsory intervention of the lawyer, since the procedure starts by filling out the form model.
- The Regulation No 1896/2006 – European injunction order (for enforcement will be implemented in any EU state). Example: The debtor is Spanish then the European order is set in Spain.
 - ✓ Scope: Civil and commercial matters and there is no quantitative limit;
 - ✓ This is an optional procedure;
- These procedures require the filing of forms contained in the Annex to the Regulation
- Member States submit a case by case information if it is to admit or not an appeal;
- The European injunction order can be enforced in any state without the scrutiny of the *exequatur*
- In Portugal the only competent court is the Civil Court of Porto.



THE BANK ATTACHEMENT ORDER: THE PORTUGUESE SYSTEM AND CROSSBORDER EXECUTIONS

José Carlos Resende (Enforcement Agent / Former President of the Chamber of Solicitors)

- In April 2009 it was announced an European Parliament resolution on enforcement;
- In 2009 there are only five European Enforcement Titles in Portuguese Courts;
- In 2008 it was given a priority to complete the bank deposits seizure, but it still depends upon a court order authorization, hostage to the idea that what you want is the lifting of banking secrecy, when in fact what the Enforcement Agent intends by carrying out such action is simply to inform the bank that that particular amount is captive to his order, which has no implications in terms of banking secrecy, thus not justifying a Judge order;
- CEEP is willing to cooperate with the Justice Department and the Chamber of Solicitors in order to defend the seizure of direct deposit by the agent execution without court order;
- **In the statutory regime prior to 2003:** the lender had to identify the bank account number, the Judge sent letter to the Bank of Portugal, who in turn sent to all banks.
- It was concluded a Protocol between Ministry of Justice, the Chamber of Solicitors and Portuguese Association of Banks. There is no information if any Bank has adhered to this Protocol.

E-ENFORCEMENT AGENT: THE WARRANT OF TRANSPARENCY OF THE EXECUTIVE PROCESS

Dr. Alain Bobant (President of the Federation of TTP; Expert of the International Union of Huissiers of Justice and Court Officials)

- Defended the compatibility of legal systems and communication between the computer systems of European countries;
- He stated that the Enforcement Agent is the guarantor of security in electronic communications.
- Announced that the Federation of TTP seeks a representative from the Ministry of Justice or a representative of the Enforcement Agents for a partnership;
- Recommended that the electronic signature licenses are managed and that the migration of electronic archives is made.



PANEL 9 - ANALYSIS AND PROSPECTIVE OF CEEP

Moderator: Mr. Leo Netten (President of the International Union of Huissiers of Justice and Judicial Officers)

- 4 Key issues:
 - Over 60% of crossborder debts are irrecoverable (cf. intervention of Mrs. Vivian Reding).
 - The President of the International Union of Huissiers of Justice and Judicial Officers (UIHJ) advocated the creation of an *International Code of Enforcement Procedures*, stating that for such an initiative they could have UIHJ Scientific Council, in which CEEP President, Master Paula Meira Lourenço, sits.
 - The President of the UIHJ defended a fast implementation of bank deposits forfeits: proposing the joint work of UIHJ and CEEP.
 - In Holland there is an entity to control discipline and quality that is "*outside*" the body that brought together Enforcement Agents. This increases the confidence of the lender in the Enforcement Agent.
 - The President of the UIHJ recommended that the Portuguese Enforcement Agents should begin to understand that CEEP also serves to increase the confidence of creditors in Enforcement Agents.

- He referred to "*Position paper*" presented by the International Union of Huissiers of Justice and Judicial Officers on this subject in May 2010 that briefly states the following:
 - a) The *bank attachments order* should be a European transnational instrument. The UIHJ supports the growth of a flexible system that allows, in domestic law, the choice between the forfeit of domestic bank deposits and forfeit of bank deposits in other European countries. In crossborder cases, the order of seizure of European bank deposits;
 - b) In order to ensure its effectiveness, the procedure for enforcement of the decision authorizing the seizure of bank deposits in Europe must necessarily be abolished. Enforcement Agents are competent to carry out this pledge, according to legal rules;



- c) With regard to banking secrecy, the UIHJ understanding is that banks cannot rely on the existence of such secrecy. On the contrary, such institutions should be obliged to declare, without delay, to the Enforcement Agent the extension of its obligations to borrowers and as such obligations may be affected and, where appropriate, the transfer of debts, liens or previous delegations ;
 - d) For the *bank attachments order* to be effective and efficient, and for reasons of legal certainty, the Enforcement Agent should have full access to information that will enable the achievement of such an act of seizure;
 - e) The seizure of bank deposits should be undertaken without informing the debtor (an element of surprise). Taking into account the rights of the debtor's defense, it is essential that the debtor to whom the bank deposits have been seized are adequately informed within a short time, for example, within eight days from the date of the practice of the act. To ensure security, this notification shall be made by an authentic document, signed by an Enforcement Agent;
 - f) It is important to avoid measures during the enforcement proceedings that are conducted only to exert pressure on the debtor. For example, in cases that should have been proposed declaratory action on the debt following the procedure of execution of service to the debtor and was not, as soon as the executive procedure starts, the bank forfeit must be annulled / withdrawn.
-
- The importance of surveillance / monitoring / supervision by an external entity - increases the quality, credibility and even the increase of customers.



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- The importance of improving access to justice through "*E-Justice*", a brief mention of the "*position paper*" submitted by UIHJ on this subject in April 2010, which summarily states the following:
 - a) Creation of a European portal on the topic "*E-Justice*", of the European Union Council;
 - b) Creation of a worldwide network of Enforcement Agents/Bailiffs. This involves developing an electronic tool/application for use by all Enforcement Agents/Judicial Officers in cases of cross-border debt collection;
 - c) Citizens would also be informed about the activities of /Judicial Officers;
 - d) Secure access to information on debtors and on their property is essential to improving the efficiency of enforcement procedures.

THE IMPORTANCE OF QUALITY IN TRAINING OF ENFORCEMENT AGENTS

Dra. Márcia Gonçalves (Member of the CEEP Plenary appointed by the Chairman of Lawyers Bar Association)

- The Training of Enforcement Agents should be extended to forensic officials;
- Some problems occurred in 2003, notably as regarding access to databases by the Enforcement Agent, enhancing the training effort that was made by the Chamber of Solicitors.
- What changed in 2008:
 - a) Opening the profession to lawyers - as proposed by the Permanent Observatory of Justice in 2001;
 - b) More demanding access to the profession;
 - c) The existence of compulsory internship of 10 months requiring positive evaluation throughout those months;
- Argued that training addresses the technical side, ethics and science (recruiting suitable teachers for that training purposes).



THE ROLE OF THE FREQUENT LITIGANT IN PORTUGUESE JUDICIAL SYSTEM

Dra. Inês Caeiros (Member of CEEP Executive Board)

- Relevance that the litigant assumes in the Portuguese court system:
 - a) Identification of Frequent litigant: there are 31 frequent creditors in the Portuguese courts;
 - b) Data collected by the Justice Statistics (SIEJ): The litigants often represent the 104 204 of the 343 756 enforcement actions brought in 2009.
- 31 most frequent creditor users of the courts grouped in only four types of creditors by business identity.
 - a) ESSENTIAL PUBLIC SERVICE PROVIDERS ;
 - b) Credit Institutions (Banks);
 - c) Financial Institutions of Consumer Credit;
 - d) Insurance Companies.

In short: Greater litigant: Essential Public Service Providers with more debts of small value (up to € 3,000, most costing less than € 500).

- High representation in the Portuguese legal system of enforcement actions of this type of business: serious implications for the country's own economic development.
 - Frequent court users to recover his credit, contribute more to the difficulty in recovering the same credit and all other existing clogging the courts, increasing the pending procedure that will affect the delay of the entire procedure.
 - It is not solely dependent on the state to provide citizens with an efficient judicial system, fast and effective, depending on the effective functioning of the actions of the lender prior to the introduction of appropriate enforcement procedures and pending of it. Special duty not to initiate unnecessary enforcement actions.
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- **PRACTICAL MEASURES:**
 - a) CONSULT THE PUBLIC LIST OF DEBTORS;
 - b) CONSULT INSOLVENCY OF THE DEBTOR;
 - c) CONSULT THE EXECUTIONS COMPUTER RECORD.



- **OPERATIONAL MEASURES: CREDITOR ACCOUNTABILITY:**
 - a) Increased accountability of the creditor who chooses to contract with a specific person whose name appears as debtor placed on the Public List of Debtors. Advise that such creditor is likely that the reimbursement of that credit during the period in which the executive is listed, will be considerably diminished, leaving to the lender a share of responsibility for the risk of contracting and not see your credit reimbursed;
 - b) *De iure condendo*: the contracting party (creditor) that having consulted the Public List of Debtors and still chooses to contract, is prevented from using the courts to charge his credit, at least during the period in which such debtor is registered, *maxime*, for a period of five years.
- **FINAL GOAL: avoiding unnecessary Litigation:** The Credit Recovery is the last act of a chain that begins with granting the credit itself.
 - a) Address the legislative policy in force at the time the credit is granted and credit recovery;
 - b) Rigorous risk analysis of credit granting to the debtor: debtor's debt quota, because sometimes we see the unexplained cases of credit granted that prove to be uncollectible and for which estimates of uncollectible amounts, was a reality existing prior to any lending.
 - c) Adjust the results of risk analysis to options for hiring at your company: effective payment guarantees of granted credit.
 - d) Instilling into the creditor a sense of high responsibility of his role as an injection engine of debt to the consumer, to the extent that its performance can enhance the reality that exists today in courts, making borrowers today, future enforcement actions executes of tomorrow.
- **PRACTICAL MEASURES TO BE TAKEN AT THE TIME OF JUDICIAL RECOVERY OF CREDIT:**
 - a) Access to privileged information about the debtor's assets: effect of exercise at least for each creditor, process by process for a real savings in the recovery of this and other claims;



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- b) Payment of fees and expenses of the Enforcement Agent of the executive process: on average € 150 will allow the creditor to know if there is minimal economic solvency to proceed with Enforcement Action.
 - c) Claims of lesser value: minimum charge ceilings below which the assumption that the credit is irrecoverable.
 - d) Allowing the recovery of VAT paid by the frequent litigant creditor, without having to initiate enforcement action (Article 78. No VAT Code).
 - e) Institutionalized arbitration: establishment of Arbitration Centers which can judge and mediate conflicts and even carry out material acts of implementation. It is necessary to consider and reject *a priori* as a future solution as a possible congestion in courts of law for the sake of efficiency, speed and just settlement of disputes on enforcement procedures . Contemplate extending the competence of enforcement procedures to Peace Judgment
 - f) "False Pending Procedure": pending executions in which the debtor has no assets, but they still run the same terms and they are not extinct. Make the frequent litigants aware to the extinction of some executions that no longer produce any effect and only affect the normal and regular conduct of other enforcement procedures.
-
- In general, to promote the effectiveness of enforcement procedures will be appropriate and necessary to an effective dialogue between all parties: Enforcement Agent, Representative, creditor and debtor.
 - Needed more policy measures that change the present scenario in the Portuguese courts, leading to a significant change in the role played by frequent litigant in the courts of Portugal: towards legal enforcement or incentives to alter their course of action regarding the recovery of their debts and release the Courts of credit recovery for resolving disputes;
 - While other measures do not result in legislative policy, the lender cannot keep blaming the frequent congestion of the courts without, however, in due proportion to their participation, help to counteract this reality.



THE "NEW" ENFORCEMENT AGENTS AS PROMOTERS OF THE EFFECTIVENESS OF ENFORCEMENT PROCEDURES

Dr. João Jorge Almeida (Advisor to the Secretary of State for Justice and Judicial Modernization)

- In this presentation it became clear that the difficulties in 2003 and subsequent years, led to poor results in the reform of enforcement procedures. In particular, they emphasized the "*social*" revolution that took place overnight, and for which nobody was prepared. Stood out, though, the isolation of the Chamber of Solicitors and in 2003 alone took the task of putting in place a regime which gave the requestors tasks for which they were not properly prepared and to a proper performance for which they lacked the base infrastructure that should have been released by the Justice Department properly implemented. Therefore, there developed an essentially hostile stance against the new powers of solicitors because of practical difficulties very substantial re-engineering the work function of this new profession, because of lack of legitimacy due to lack of adequate training of the solicitor to take on this task and resentment the loss of its own functions or the loss of a more "*legitimate*" person.
- The analysis of the past imposed an action in several areas, notably in improving the technological resources made available to enforcement procedures (now with the minimum infrastructure of support that had been promised in 2003); and in total transparency of the process for all involved assured by the electronic process; a clear identification of a new profession now not exclusive to solicitors; the clear commitment to careful selection and training of new entrants; greater public engagement in the discipline of Enforcement Agents and effectiveness of enforcement procedures (improving existing models for professions exercising public functions: CSM, CSTAF, Council of Notaries, etc.); the clear commitment in the quality of public discussion on the topic, encouraging the exchange of experiences and awareness of different realities for all stakeholders; and supporting study and revision of communication flows and procedures to eliminate useless acts and maximize productivity.
- He stressed that the enforcement procedures, even with the simplification of 2009, has no chance of succeeding if it does not work very determined and visibly the issue of ethics of all operators, whether large litigants or lawyers, or justice officials, whether magistrates or, essentially, due to the role they play, the Enforcement Agents.



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- It was highlighted the essential role of ethics to the Enforcement Agents. The teaching of ethics, clearly introduced in 2009, allows each professionals to learn to take responsibility for the impact of the exercise of its business; allows the development of a common sense of ethics and professional conduct that is promoted through the joint rational discussion of concrete problems; allows each professional to be aware of their actions and change their behavior by being aware that it didn't acted according to what is expected of their performance, thus avoiding common or naive mistakes; and can teach to argue and find common ethical and professional grounds of conduct while allowing each enforcement to resist external pressures that aim to compromise the ethical and deontological principles.
- However, in 2009, there was the necessary step allowing enforcement officers themselves to create, as it has to be and can only be, a set of effective ethical standards. This challenge can only happen with a group of professionals committed to excellence of the whole class.
- Also in 2009 it established the roots for the development of ethics and ethical sense of all, trainees, employers and active Enforcement Agents, promoting training and sharing of general daily difficulties and solutions found.
- Also in 2009 it was formed an independent body of any internal or external political pressure aiming to correctly harmonize procedures through ordinary and requested supervisions immediately exercise disciplinary jurisdiction in more serious cases.
- Now, in 2010, that same independent body begins to apply in an effective, uniform and impartial manner, disciplinary sanctions to those who acted intentionally, severely undermining creditor, executed or the justice system. But the agency still needs support, mainly financially and in human resources from the Government and from the Chamber of Solicitors.
- Only in 2009 was made clear that the Enforcement Agent is the guarantor of the interests of the creditor (whose rights have been declared or not disputed), the guarantor of fundamental rights of those executed and all stakeholders in the process, and ensures the public interest in a speedy and effective enforcement procedures. Now these functions need an ethically responsible and ethically correct legitimized working class, in order to take effective control of enforcement procedures.