



COMISSÃO PARA A EFICÁCIA DAS EXECUÇÕES

**CONCLUSIONS
OF THE
2ND INTERNATIONAL CONFERENCE
"PROMOTING THE EFFICIENCY OF ENFORCEMENT PROCEDURES"
AND WORKSHOP
"GOOD PRACTICES ON ENFORCEMENT AGENTS ACTIVITY"**

**MULTIMEDIA CENTER OF ESPINHO
23RD AND 24TH SEPTEMBER 2011**

(PLENARY DECISION N.º 35/2011, 22 NOVEMBER)



OPENING SESSION

MAYOR OF ESPINHO CITY HALL - MR. PINTO MOREIRA

- Expressed pride in receiving the 2nd CPEE International Conference under the subject "*Promoting the Efficiency of Enforcement Procedures*" and Workshop "*Good Practices on Enforcement Agents Activity*".
- He highlighted the key role that the enforcement agent and other law enforcement officials play in creating a faster and more effective judicial system, which is increasingly relevant and necessary in the current economic, financial and social development of our country. He said that you also need the commitment of everyone - judges, lawyers, solicitors, employees, citizens and businesses - to develop a swift and effective justice.
- Considering the quality of the speakers and other participants in the 2nd CPEE International Conference, this is to be an essential forum for sharing information and discussing topics such as preventive control in the activity of enforcement agents as a factor of credibility, and their ethical obligations, impartiality and independence.

PRESIDENT OF THE COLLEGE OF SPECIALTY OF ENFORCEMENT AGENTS – ENFORCEMENT AGENT MR. CARLOS DE MATOS

- In this 2nd International Conference "*Promoting the Efficiency of Enforcement Procedures*" & Workshop, mentioned that speaking of the efficiency of enforcement is not speaking only in supervision and discipline of enforcement agents and in the recommendations addressed to them, but in the common goal in the various procedures involved, from the various professional classes, and the necessary resources to the organization and management of courts, considering also the involvement of judges, attorneys and bailiffs in order to make swift and effective enforcement procedures.
- The enforcement agents cannot be the sole responsible for the procedural delays and are often targets of unfounded complaints.
- The existence of CPEE as a supervision and disciplinary entity is accepted and consolidated next to the enforcement agents and contributes in a decisive way to the credibility of the agents and execution of their business.



THE PRESIDENT OF THE CHAMBER OF SOLICITORS – ENFORCEMENT AGENT JOSÉ CARLOS RESENDE

Shared four concerns that are keeping him busy and are essential for the development of the activity of enforcement agents:

- Supervision: the Chamber of Solicitors, and the College of Enforcement Agents want the best and most effective way to control the activity of enforcement agents because they know that only a thorough supervision brings credibility to the profession;
- The present is difficult for enforcement agents but they will have to ensure citizens and all legal operators that they are creating a computer system with its full efficiency but also with full transparency. He said that this creation will be difficult, which will give work to all colleagues, employees and directors but will bring a decisive increase of credibility for the profession of the Enforcement Agent (eg, operation of the new functionality in SISSAE: bank referrals, absolute safety of all that is received and paid, which will turn into saving work to the enforcement agent; feature that will allow the enforcement agent who quits performing duties (resignation, death, suspension, etc..) to deliver the proceedings that he is in charge with to another enforcement agent. It is essential for the credibility of the enforcement agent. If for its implementation is necessary to "separate the wheat from the chaff" to do this, all will be done;
- The tariff system creates many more problems than it solves. The competitive situation is taking the enforcement agent to be a minor functionary of the creditor. It is absolutely unacceptable that on the one hand more powers are to be given to the EA, including refuse the Enforcement application, to make a series of acts to-jurisdictional and otherwise facilitate the removal of the enforcement agent at any time and without any justification;
- If we want to have an effective enforcement procedure we have to be sure that all our agents have good working conditions but also fairness in the distribution of processes. There are agents with many procedures that are working well, others less well, but he is also aware that there are hundreds of enforcement agents who have no procedures.



President of the Commission for the Efficiency of Enforcement Procedures

Master Paula Meira Lourenço

- Greeted all presents and addressed a special greeting to the distinguished representatives of various entities with which CPEE maintains an institutional relationship and excellent collaboration, as well as the international speakers: Madame Françoise Andrieux, the Secretary-General of the International Association of the Enforcement Agents - Huissiers de Justice (UIHJ) Mr. Anton Snoeren, Director of Independent Financial Supervisory Agency of Enforcement Agents in the Netherlands, and Mr. Jos Uitedhaag, Enforcement Agent and Expert of UIHJ.
- Introduced the CPEEs 2nd International Conference and Workshop as a forum for the discussion of issues on the efficiency of procedures and on the activity of Enforcement Agents while reflecting on CPEE the pluralistic and democratic body which brings together 18 entities in its Plenary - politics, legal professions, corporations, consumers and users of justice, the economic enterprise and the union forces.
- Evidenced that the Program of the 2nd CPEE International Conference reflected current concerns in the context of enforcement proceedings, in particular the need to achieve the legal measures that were foreseen in the law since 2009, considered one of Europe's best law, and that provided the means necessary for the activity of enforcement agents and CPEE, considering that forum as a way to call for these facilities.
- Highlighted that the Workshop "*Best Practices on the Enforcement Agents Activity*" is meant to discuss the various aspects of the existing legal regimes, taking advantage of the presence of a broad panel of judicial workers, judges, lawyers, bailiffs, it is useful to establish why in 2003 there were already pending about 700 thousand proceedings, and outline the best solutions for the resolution of pending proceedings.
- Emphasized the mission of the Plenary and of the Executive Board of the CPEE as a base for the discussion of issues regarding the efficiency and training of agents and for the issuance of the recommendations, in 2010 made 93 recommendations to the efficiency of enforcement proceedings and training of enforcement agents, whose implementation was being monitored. And exposed the usefulness of these recommendations for the implementation of existing legal measures, being appreciative of all initiatives that promote the operation and monitor of implementation of legal measures.
- Argued that the Enforcement Agent should have an independent status, the nature of the ethics of professional conduct in order to increase transparency in its activities and enhance their accountability, rigor, impartiality as professional as it has a duty to ensure the balance between the guarantees of the creditor and the debtor.
- Finally, wished everyone a good work, inviting all participants to reflect and discuss the issues in agenda, which would be collected the base for the emission by the Plenary of the recommendations of CPEE 2011/2012.



PANEL 1
THE NEED OF PREVENTIVE CONTROL
OF THE ENFORCEMENT AGENTS ACTIVITY

DISCIPLINE AND SUPERVISION BY CPEE AS A FACTOR OF CREDIBILITY OF THE ACTIVITY OF ENFORCEMENT AGENT - MR. JOEL TIMÓTEO (JUDGE, ASSISTANT FOR THE SUPREME COURT OF MAGISTRACY CABINET)

- The legal competences of discipline and supervision of CPEE concerning the enforcement agents are considered in the law.
- The inspecting competence of CPEE Executive Board is a regular and periodic activity and its geographic coverage that can be performed according to the following criteria: the time of exercise of the activity, the volume of proceedings and randomness.
- The supervisory powers is also a regular activity preceded, as a rule, by a complaint or an act of labor inspection, without geographical focus, and may also be established other criteria including the time of exercise of the activity, the volume of proceedings and randomness.
- The inspection and monitoring may result in disciplinary proceedings and also the delivery of recommendations with the possibility of correction as the fault is less serious or serious flaws.
- Supervision is a base of the exercise of the enforcement agent, and is a CPEE competence under Article 116. of the ECS, and can be ordinary and extraordinary, the ordinary is equivalent to the inspection and the extraordinary is the supervision performed according to criteria established by CPEE, grouped into the following main categories: disciplinary scope or equivalent, financial management, operational management, accountability and integrity, ethical framework.
- Disciplinary authority is divided between the Executive Board and Plenary of CPEE, being a competence of the plenary the decision of the appeals of the decisions of the Executive Board to apply disciplinary sanctions of suspension or disbarment of the enforcement agent.
- The decisions of the Executive Board to implement other disciplinary measures considered on Article 142. Of the ECS may be challenged in court.
- Effective discipline is a guarantee of compliance with the duties of enforcement agents namely the ethical and deontological duties, the duties strictly procedural, activity duties and also the professional duties specific of the activity, aim of confidence of the proceedings subjects and of citizens.
- Disciplinary offenses may be grouped into: violations of work, ethical or professional conduct offenses, institutional offenses, activity offenses and procedural violations.
- Supervision and discipline provided by CPEE make the Enforcement Agent more aware of the relevance of their legal powers to social peace and to restore citizen confidence in the justice system.



THE ENFORCEMENT AGENTS INDEPENDENT SUPERVISION AGENCY IN THE NETHERLANDS (*BUREAU FINANCIËEL TOEZICHT*) - MR. ANTON SNOEREN (GENERAL MANAGER OF THE ENFORCEMENT AGENTS INDEPENDENT SUPERVISION AGENCY IN THE NETHERLANDS)

- The Independent Financial Supervisory Agency of the activity of Enforcement Agents in the Netherlands (Financieel Toezicht Bureau) was established in 1999 and is responsible for financial supervision of about 400 Enforcement Agents (private), 500 employees of Enforcement Agents (which are responsible for 6.3 million cases) and 1,500 notaries. The funding of this legal institution is under the Ministry of Justice.
- Since 2003, this independent agency is also responsible for overseeing the work of other professionals in order to combat money laundering or illicit financing, this activity being funded by the Ministry of Finance.
- This agency is totally independent, financially autonomous and with a year budget of €5.100 M (five million and one hundred thousand euros), funded by the Ministries of Justice and Finance.
- In the exercise of its activity, this agency:
 - a) Provides information for the purpose of raising awareness about the importance of existing rules and regulations, encouraging understanding of the consequences of non compliance;
 - b) Encourages compliance with the law, concluding agreements of cooperation with professional organizations and associations;
 - c) Performs regular and special inspections, carried out independently, in order to ensure compliance with regulated and supervised activities. This approach provides greater confidence in the work of supervised professionals, in particular as regards monetary amounts under the care and responsibility of these professionals.
- The activity of financial supervision of the enforcement agents activity is essentially based on the compliance to provide information exclusively via electronic means, by sending the following documentation:
 - a) Annual financial reports from privates and companies;
 - b) Bi-annual reports from companies;
 - c) Bi-annual reports concerning customers financial relationships.
- The Government is responsible for creating laws and regulations regarding:
 - a) The criteria for appointment of enforcement agents;
 - b) The obligations regarding financial accounting and auditing;
 - c) The financial liability of Enforcement Agents;
 - d) The supervision and independent monitoring of the activity of Enforcement Agents;
 - e) Penalties for Enforcement Agents in the event of failure to comply with the Law.



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- The Independent Financial Supervisory Agency of the activity of Enforcement Agents in the Netherlands is the only entity responsible for financial supervision, and may:
 - a) File charges;
 - b) Report information and file charges;
 - c) Report the information and define deadlines to rectify the irregularities;
 - d) Report the information and next steps until the next supervision.

- Thus, the independent Financial Supervisory Agency of the activity of Enforcement Agents in Holland is not the entity responsible for the application of disciplinary actions against Enforcement Agents for breach of their professional duties. However, if after inspection of an Enforcement Agent it is concluded that this may involve the practice of disciplinary sanctions, the Agency informs the Independent Disciplinary Board, an independent professional association of enforcement agents.

- The Disciplinary Board is an independent professional association of enforcement agents and of the Independent Financial Supervisory Agency of the activity of enforcement agents and is funded by the Ministry of Justice to ensure total independence.

- The independence of the entity that ensures the discipline within the enforcement agents is essential to ensure that complaints are a fair and appropriate treatment and to increase public confidence and also from public entities in the system of discipline.

- In short, the Independent Financial Supervisory Agency of the activity of Enforcement Agents in the Netherlands assumes a role of enormous importance in the prevention or awareness, ensuring regular reporting on the activities of enforcement agents and the actual complaint to the Disciplinary Board, an independent body responsible for ensuring that disciplinary sanctions are applied.



PANEL 2
THE IMPLEMENTATION OF THE EUROPEAN AND INTERNATIONAL
RECOMMENDATIONS BY CPEE ON CIVIL ENFORCEMENT

INDEPENDENCE OF CPEE: THE GUARRANTEE OF FAIRNESS AND RELEASE
OF THE ENFORCEMENT AGENT – MR. PAULO FERREIRA RIJO (JUDGE OF THE LISBON
COURT OF APPEAL)

- The enforcement procedures (or, better, and as stated in Decree-Law No. 226/2008 of 20 November, the system of judiciary proceedings) is not limited to the form of enforcement procedures, but rather a whole set of mechanisms (legal, proceedings, administrative and even social) that make certain or very likely that people will obey the rule that determines the performance of their obligations.
- As an understanding the purpose of enforcement is no longer effective debt collection but rather to ensure the efficiency of censorship to who does not meet its commitments.
- Effective enforcement is one that sets social consciousness in the belief that failure to comply leads to effective censorship and responsibility. The efficiency of enforcement is sought by three different ways:
 - a) Stability of legislation;
 - b) Efficiency of means;
 - c) Excellence of its agents.
- The proper functioning of the system obviously depends on the quality of technical and ethical attributes of those who are their operators, in this case, enforcement agents.
- As regards the qualification of Enforcement Agents, excellence of the members of a group is promoted by four means:
 - a) The requirement in access;
 - b) The intensity and quality of training;
 - c) Supervision;
 - d) The assignment of a professional status.
- The granting of professional status is the public recognition, incentive and therefore, the social relevance of the developed activity, and the prestige of those who develop, on the assumption that fits the standards laid down. Put into effect in an organic and systematic framework of the particular requirements of the practice, being the obligation of a regulatory body's the mission of ensuring the efficiency of the standards.
- The management of the system by a regulatory body to promote and ensure the efficiency of the standards the established standards, is cause and condition of the independence of members of the professional group in that on the one hand, protects them from pressures or the actions of the same entities with whom they interact, and, secondly, ensures the functional integrity and excludes who does not meet the exacting standards required.



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- But for the regulator to exercise this function that ensures the autonomy of professional excellence and its regulation, it is imperative that it is also immune to external influences, so it must be independent, about its financial management and the means it has.
- Under the reform of the enforcement procedures implemented by Decree-Law No. 226/2008 of 20 November, was created a specific management structure of the system - the Commission for the Efficiency of Enforcement Procedures (CPEE) - who is committed to the function of regulating the profession and increase its level of excellence as well as enhance the skills of Enforcement Agents by extending the scope of recruitment also to lawyers.
- **That the Commission, notwithstanding the difficulties arising from uncertainties of organisms still on installation process and the dependence of the means provided by other entities, has done an excellent job, as it is evidenced in the activity reports, implementing a system for recruiting, training, supervision and discipline of enforcement agents in accordance with the criteria that I mentioned earlier.**
- The work developed by CPEE in its first term of three years it is profitable, settled the implementation of the new enforcement system, created the structures necessary for the evolution of it and, above all, demonstrated the system's suitability with its creation.
- To paraphrase a very recent ministerial statement, **the CPEE proved possible to do much with little and, moreover, to do it well.**
- It is time to move on to the autonomy of the Enforcement Agent as a legal profession, along with the other legal professions.
- The Enforcement Agent activity is not a secondary activity, supplement, or a part-time job for lawyers or solicitors, and is not particular to these professions.
- The Enforcement Agent provides an independent and relevant public service and should be given a proper professional status, according to the increasing levels of excellence in the profession.
- It is also time to commit to CPEE to the functions of an independent regulatory body, with the typical features of these three entities:
 - a) Independence in composition, essentially maintaining the current form, with all the virtues of its originality, and resisting the temptations of absolute indirect control, in particular, the government control;
 - b) Financial independence, given its autonomy so that it can be run independently;
 - c) Independence of means, in addition to those other means acquired, economic independence, powers of structure or control over computer systems.
- Reform of enforcement procedures implemented by Decree-Law No. 226/2008 of 20 November, is being implemented gradually, with positive results, while creating conditions for progress towards full autonomy of the enforcement system.
- Empowerment of the enforcement system and its enforcement agents under the aegis of CPEE, should be the focus of the program of action for the 2012-2015 term.



CPEE FOR THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE EUROPEAN COMMISSION TO THE EFFICIENCY OF JUSTICE (CEPEJ) AND THE INTERNATIONAL UNION OF ENFORCEMENT AGENTS (UIHJ)
ANA LUÍSA RODRIGUES (MEMBER OF THE EXECUTIVE BOARD OF CPEE)

- **CEPEJ** - European Commission for the Efficiency of Justice is a structure placed within the Council of Europe which conducts studies on judicial systems.
- **UIHJ** - The Union International des Huissiers de Justice is a non-governmental organization representing 71 countries in international organizations, ensuring the necessary cooperation with professional bodies of Enforcement Agents and Baillifs in each country.

- **THE RECOMMENDATIONS OF THE CEPEJ**
- **Recommendation Rec (2003) 17 of the Committee of Ministers to Member States on the enforcement procedures**
With regard to the recommendations of the CEPEJ inherent in the recruitment of enforcement agents to carry out assessment reviews of their knowledge and training of enforcement agents in accordance with clearly defined and well structured goals. In July 2010 the CPEE issued 32 recommendations on the training of enforcement agents (initial and ongoing).
- **Guidelines for implementing the recommendations of the CEPEJ on the efficiency of enforcement procedures of 17/12/2009, Rev (2009) 11 of the Committee of Ministers to Member States:**
Eligibility requirements and access to the profession are also referenced in the CEPEJ Guidelines published in 2009, namely in lines No. 25 and 26 the quality of training of professionals is important for the service of justice, to increase users' confidence in their justice system, and that enforcement agents should also be required to have mandatory continuing training.
The CPEE, as the independent body that ensures discipline and supervision of enforcement agents in Portugal, achieves in Portugal the implementation of Guideline No. 81 of the CEPEJ.
In terms of supervision Guideline No. 78 of the CEPEJ indicates that the authorities responsible for supervising and / or supervision of Enforcement Agents have an important role in ensuring the quality of enforcement procedures, so that Member States should ensure that enforcement agents are inspected as part of its activity on an ongoing basis and regular, and that such inspection must be performed by an outside body to enforcement agents. Now, in Portugal, that competence is ensured by an independent entity, CPEE, which is ruled by Procedures Manuals approved by it.
- CPEE studied and adapted to the Portuguese judicial system the system of assessment of CEPEJ's criteria defined by the CEPEJ, in order to exercise one of the core competencies of CPEE the issuance of recommendations on the efficiency of enforcement procedures and the training of enforcement agents, and established their own criteria for the efficiency of enforcement procedures and the training of enforcement agents.

- Given the relevance of the autonomy, neutrality and impartiality of the activity of enforcement agents, CPEE issued four releases:
 - The Release No. 1 / 2010 on incompatibilities and impediments of the Enforcement Agent;



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The CPEE Communiqué No 1 / 2011 of May 26 on the maximum rate charged by the Enforcement Agent in Phase 1 for the payment of the right amount (Article 18. 331-B/2009 of the Ordinance, 30 March);

The CPEE Communiqué No. 2 / 2011 of June 3, containing a warning to possible illegality of clauses in agreements between the Representatives and Enforcement Agents;

The CPEE Communiqué No. 3 / 2011 of 30 June concerning the guidelines as to complete the electronic form in the Electronic Ordinary Inspection June / September 2011.

The releases are available to the public www.cpee.pt.

- **THE RECOMMENDATIONS OF UIHJ: the International Union acts in accordance with the guidelines of the CEPEJ and to that extent, develops and publishes papers positions relative to the activity of enforcement agents - were released in 2010 3 positions papers**
- In July 2010, the CPEE recommended:
- Improving communication between computer systems and CITTUS SISAAE, in particular, informatics development of the legal solutions and direct access to databases. The CPEE implemented the E-CPEE - through regular inspection procedures for the surveillance dematerialized / online and supervision for cooperation (both distance), the disclosure in www.cpee.pt of all the activity and availability of the form " electronic complaint "- see the Position Paper on E-Justice UIHJ;
- The performing by the Enforcement Agent of electronic seizure through SISAAE, of property, shares of companies, brands and patents, bank balances and tax credits and the elimination of court order authorizing the seizure of bank balances (Article 861. Bis of the CPC) - see Position Paper on the UIHJ on seizure of bank deposits
- The requirement for initial and continuing training of high quality, that is, the promotion of courses, conferences and training, complementary to the TrainingProgram, the mandatory inclusion of professional ethics, to define the program in conjunction with the CPEE and technical and legal training, ethics, technology of information not only to communications but also to forensics, obligatory - see the Position Paper of UIHJ on the multidisciplinary of the Enforcement Agent;
- Summing up: CPEE recommends and carries out international best practices, is the implementation in Portugal of the CEPEJ guidelines (in particular paragraphs 76, 78 and 81), is the link with the UIHJ and will continue to implement the guidelines of the CEPEJ and UIHJ.



PANEL 3
THE RELEVANCE OF AN EFFECTIVE MANAGEMENT
ON ENFORCEMENT PROCEDURES

THE ENFORCEMENT COURT OF SINTRA: AN EXPERIENCE OF PROCEDURES MANAGEMENT – MRS. ANA AZEVEDO COELHO (JUDGE PRESIDENT OF DISTRICT COURT IN GREATER LISBON-NORTHWEST)

- **Implementation of the management model of the Great Northwest Lisbon - May 2009: Challenges to highlight:**
 - a) Diagnosis of the structure of the pending proceedings (extinct courts: Sintra, Mafra and Sintra)
 - b) Survey of the main difficulties of the Operational Units (OU);
 - c) Planning for immediate execution related to the transition;
 - d) Definition of generic objectives for OU.
- In May 2009 the composition of the Enforcement Court of Sintra was: two judges, a single Scribe with a single section of procedures; 15 Employees (currently 12), 37,383 cases (major, not attached), 13 different source of OU procedures.
- Report of the Judges for Enforcement Court (March 2011) addressed the sociological reality: € 2,046,453,481.41 running capital, most of them relating to mortgages, plus the high population density and constructive, the depreciation of the security housing (housing medium and medium / low, poor land use characteristics and suburban housing market crisis) and a population of mostly low-income low-or medium without assets who can answer for the debts, the economic deregulation for a grant of credit even without own investment in real estate that necessarily translate into a large number of pending cases after the sale of real estate with no prospects for satisfaction of remaining credits.
- **In this context came the "X Project"**, this is a coding system of processes by procedure to perform in order to be able to know at every moment, how many proceedings, and of what nature were practiced in each process. This proposal was studied and accepted by judges and could set a process of coding and allocation of resources: to only one judge (given the priority of the section organization) proposal to DGAJ (who accepted) for allocation of bailiffs (with the accumulation of functions) for screening and workmen for entering codes for a period of two months and the realization of the encoding shortly before the deadline.
- **Description of X Project:** processes coding system (for each process) by each proceeding to be practiced, which involves the initial encoding of all processes in accordance with the next proceeding to perform in each process, and maintenance of this encoding updated throughout the proceedings.



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- **Process Phases:** Coding: Assigning a code to all processes according to the next procedural step to practice in each and the date for its implementation; **Operation:** Armed with the information required under the code, we can start **planning** which is the mapping of proceedings that are set to be performed and dates on which they should be performed - prepared by the clerk of the court –this is a quarterly planning of the proceedings which define priorities of the court to practice in this quarter. These are made by judges and discussed in a meeting with judges, clerks and presiding judge. It follows the implementation of what was planned with the distribution of tasks (according to the mapping of proceedings), divided into several stages: paper; proceedings (officialness - with the issue of provision eg Provision 1: the generic permission for seizure of bank accounts -; conclusions and acting) and attending.
- **Advantages:** Information on the proceedings in an organic unity (OU) at all times; planning and managing of resources according to the analysis of information obtained, assigning tasks according to the resources for the implementation of planning and easy integration of employees with no experience.
- **Difficulties:** manual coding of each process (desirable would be the automatic coding, given by the computer system by default, although subject to change series), ease of human error, changes in the traditional division of tasks in legal offices.
- **Capabilities:** Makes an almost intuitive need for conformation dynamics of judicial secretaries, without rigidity to the structure and on the functional distinctions, sees the process as an activity to obtain information in order for the decision and not as a set of bureaucratic acts, considers the acts of their office in order to obtain information and communication (such as sender or receiver) allows / requires the Judges to assume responsibility for the functioning of the court in the dimension of management options and information for citizens about these options (transparency of judges and the court).
- **Conclusions:**
 - a) **The X Project** is based on a decisive option which provides managing information and means of implementation;
 - b) It has its full realization in the intervention of organizations with diverse and complementary skills that Law 52/08 enabled;
 - c) **Respects and promotes** the centrality of the judicial function in setting priorities in the courts and assuming liability;
 - d) It follows from the need to obtain structured information which is based on manual coding but it is urgent to automate;
 - e) **Allows / requires** a reorganization of departments according to models of teamwork oriented towards achieving results versus bureaucratic tasks based on rigidly of hierarchical distinctions;
 - f) **The X Project** is a working method, is not the miracle cure, nor prevents the increase in pendency.



ORGANIZATION OF PROCEDURES IN THE OFFICE OF ENFORCEMENT AGENTS – Ms. PAULA CANTANHEDE (ENFORCEMENT AGENT DISTINGUISHED BY CPEE FOR GOOD PUBLIC SERVICE, CPEE INSPECTOR SINCE APRIL 2010)

- As a result of the supervision activity, as a member of the CPEE inspector's team since April 2010, found flaws in the management and procedures in the offices of Enforcement Agents.
- The Enforcement Agent needs to be competitive and ensure its sustainability, must adopt strategies that allow you to change a speed at least higher than the average rate of change of its other colleagues, adopting strategies and management models flexible, agile and technologically advanced in order to have qualitative effects, effective, cost reduction, security, trust, fairness and legality.
- Enforcement Agents have to stop talking in "my process" because "the process is public," and "must be transparent, readable and manageable by all people at all, and at any time," as enshrined in law.³ Essentials:
 - a) Organization of the process, tasks and activities organized by logical, sequential and chronological order to obtain the maximum efficiency with minimal resources
 - b) File and its maintenance: the obligation to keep the file for 10 years. Should be paid. Regardless of the digital process, should be kept in paper format because if for any reason the process is removed from SISAAE, the enforcement agent has no access to the history of the process;
 - c) Accounting Process and Enforcement Agent accounts: verification by supervision of the use of computer programs supporting alternative management (calendar, accounting management) in order to fill some gaps in the SISAAE; lack of knowledge on SISAAE for lack of training, difficulties in maintaining the customer account of the procedures

Given the complexity of the profession, which is also laborious, it was concluded that it is all a matter of "study, method and organization," and urging that the CPEE CEAE recommend: a model of organization and method for the procedures and office, also continuous and compulsory training, both at the procedural level, as well as using SISAAE.



WORKSHOP “BEST PRACTICES ON THE ENFORCEMENT AGENTS ACTIVITY”

Enforcement Agent Fernando Rodrigues – Scientific Coordinator of the 2nd Training of Enforcement Agents (North) Enforcement Agent Inspector of the Commission for the Efficiency of Enforcement Procedures since August 2010, distinguished by CPEE for good public service. Intervention entitled "TRAINING OF ENFORCEMENT AGENT"

“Enforcement Agent – function, or profession?”

- In the sense of considering the figure of the Enforcement Agent as a profession, there are several references, considering the profession from the outset in the early stages of the Code of Civil Procedure (CPC) and the Code of the Chamber of Solicitors (CCS).
- However, in the references stated there are some inconsistencies, first, because, as a profession, its not even worth mentioning in the list annexed to the IRS Code.
- Questions that arise: lack of specific tax regime, lack of professional tax category of liberal enforcement agent; taking away the tax transparency of two enforcement agents enrolled in society, forcing them to be collected as a solicitor and / or as a lawyer (professional access to the figure of enforcement agent), need for use of methods of evidence for determining the base of a society of Enforcement Agent: difficulty of determining income and costs of each Enforcement agents, the lack of clarification in amount of the tax profession, the delay in refunds from the IRS, the difference between declarative E. A. and creditors.
- As references considering the "duties of enforcement agent" there is CPEES release Nr. 1 / 2010 on the legal impediments of the enforcement agent, the Guide by Phd José Lebre de Freitas in his publication "Enforcement Procedure , After the Reform of the Reform ", the portal CITTUS of the Ministry of Justice, the Public Service Jurisdictional and the private professions exercising public functions of the courts.
- One of the main duties of the enforcement agent: accountability of its activity, necessitating the use of several accounting techniques known from simple manual calculation or Excel spreadsheet, the accounting software, and the application of specific information contained in SISAAE.
- It is necessary to improve the banking computer application to prevent the entry of values without indicating the number of legal of which proceedings they refer to, the complexity and difficulty in identifying values entered into the bank accounts (after eight years of activity and hundreds of Stable million), deposits on the bank filed a situation that is aggravated by the fact that the very large litigants encourage to big transfers of money, accompanied by lists Excel, opening up a precedent of risk, that can greatly contribute for some of the unfortunate news reports in the media.
- Enforcement Agents, after the effort of adaptation that made over eight years, deserved to have been kept from these hateful opportunities, as well as recognition for their work, if it had been provided an efficient statistical system that reflected the outcome of their work.
- Work that must necessarily be unsatisfactory: exponential growth of credit to consumption, poor or no risk analysis, serious errors in assessment of property subject to loans with mortgage guarantees, increased unemployment, which in itself would justify an increase in pending enforcement procedures, false pending court indications over the distribution of enforcement agents, large concentration of procedures in few offices of Enforcement Agents.



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- Expected impact: causing chaos by the concentration of procedures or the satisfaction of the services obtained. However, the rules should never be forgotten and the necessary supervision.
- All deserve, certainly, our consideration and especially the State which created the figure of the Enforcement Agent, should act as a good father to the profession that created, regulating and creating the conditions for the proper performance of the public functions assigned.

In terms of debate:

- We discussed issues related to provision: the provision of a receipt issued to the creditor and at the final moment, the return of the amount to the creditor: different accounting documents (output / input).
- Professionals with public functions: entrepreneurship promoting employment and wealth in the country, difficulties of office management to the point of determining its profitability, lack of training in accounting associated with the performance of duties, training mandatory or optional: little time to practice all proceedings; need of knowledge to use computer tools, the final bill sent to all parts of the process and not only to their respective legal representatives, training needs and the management of client accounts, inability to appoint societies and their enforcement agent issuing a receipt, mandatory training and or optional.
- Representing the Portuguese Catholic University Ms. Ana Taveira da Fonseca reported that the analysis conducted by the University resulting from the initial and final evaluations carried out under the 1. Training of Enforcement Agents were⁴ very important, and expressed the readiness of the Catholic University to help design a system of training of enforcement agents better suited to the needs and demands of the profession.
- Master Alexandre Sousa Pinheiro, having served as a Member of the National Commission for Data Protection addressed the issue of collection of personal data of the parties by the Enforcement Agent in the exercise of functions from the perspective of those who practice the acts of collection of personal data, and the electronic form of collecting data is the way information is more transparent, secure and protection guaranteed, because the collection is in the same computer records that may reveal who committed the proceeding and on which of the Judicial Procedures. It is necessary to restore the activity of enforcement agent to a procedure, set a principle of finality.
- Existing approximately 913 agents and about 8000 Enforcement Agents recorded in SISAAE, Master Alexandre Pinheiro alerted that the situation is that the Enforcement Agent exercises a public function, to whom were granted rights and authorities and to whom, in contrast, is required the fulfilment of duties, such sensitive information can not circulate among all remaining 8000 employees, except within their legal powers, and the collection of information is always confined to the court proceedings considered.
- An intervention by the President of the Chamber of Solicitors followed, assumed two failures that rely on them: lack of regulation of accounting and the lack of a capable and organized accounting system.
- It was also discussed the problem of exemption of the Enforcement Agent for the creditor manifested in the possibility of change in value of Phase 1, discussing the possibility of changing the variable to fixed rate.
- Given the time for fixing the rate on the Phase 1 by the Enforcement Agent, was also made a warning to enforcement agents present to the need to ensure their neutrality and impartiality, at the time of fixation, or during the statutory period in which the practice of this value is



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required warning is also to comply with ethical standards, subject to disciplinary penalties for infractions in practice.

- **Judge Henry Delgado (Ovar Enforcement Judge, County Baixo Vouga)** reported over the four meetings that have been taking place in the counties of Ovar and Aveiro (which are published in http://www.cpee.pt/boas_praticas_tribunais), in a culture of proximity between all of the legal parts within the enforcement procedure, judges, lawyers and enforcement agents and also the Commission for the Efficiency of Enforcement Procedures, with the purpose of a good relationship with enforcement agents to overcome many obstacles, in particular, is striving for uniformity of procedure and avoid the procedures to stop, providing direct contact by email to answer any questions within the scope of enforcement procedures in concrete and / or in the abstract:
 - a) The act by the Enforcement Agent according to its purpose (eg joint document and not just as a requirement, subject to court order, making it easy to search by court clerk);
 - b) Failure to use the paper form, and always use electronic communications in order to speed up the enforcement proceedings;
 - c) Focus on education in order to prevent that the judge is a trainer at distance;
 - d) Send the proceeding to the General Attorney for preparation of bills;
 - e) Information to the court about procedures that are finished in the office of the Enforcement Agent (send the Court a list of finished procedures on a quarterly basis);
 - f) Posting notices: possibility to request the display of notices by the Enforcement Agents that are not based in the city.

- **Mr. Daniel Costa (Director General of the Judicial District of Greater Lisbon-Northwest):** Management of procedure by the administrative services point of view: contact and communication with all the different legal parts should be preferably by electronic means. In the organization of the courts is more difficult to manage and process information that isn't seen, which led to the creation of the Project "X" and has led to the development of managing in a very useful way. The services have also made contacts with enforcement agents that have solved many problems and that can affect the performance of the activity of the Enforcement Agent and the courts.
- The different software applications (SISAAE / CITIUS) do not reflect the same reality often translate procedural problems of various nature difficult to treat the executive process either by the Court or by the enforcement officers is important to reflect that the executive process is an electronic process, hoping to be able to expedite the process in terms of technology executive for the benefit

- **Mrs. Carla Bento, from the Lawyers Bar,** highlighted the amendment of the Regulation of Court Costs in progress.
- **Mr. Joaquim Alves (Enforcement Agent from the 1. First Training Course of Enforcement Agent):** The best practice which can be made is "*cooperation*" and "*dialog*", warning of the reality, a still existing difficulty of communication between the parts of one proceeding, taking as an example of cooperation necessary the results obtained in the district of Baixo Vouga, referring to the intervention of Dr. Henry Delgado, the achieved results from the cooperation between the North's first trainees of the 1.st Enforcement Agents.



PANEL 4 CITIZENS AND COMPANIES

COSTS AND EXPENSES IN EXECUTIVE PROCEDURES - Ms. MARIA JOÃO AREIAS (JUDGE OF THE CIVIL COURT OF COIMBRA, APPOINTED AS ASSISTANT OF COURT OF APPEAL OF COIMBRA)

- One of the dilemmas found during the enforcement action is about the collection of fees and expenses that are due in the case of non-payment of the full amount exequenda and other charges by the debtor. The law does not present a clear and unambiguous solution to recovery in case of no voluntary payment by the creditor. This uncertainty leads to a perverse effect: When in doubt, the enforcement agent chooses not to sue the creditor, and the impunity of such recognition brings with it an increase in cases of default.
- Numerous solutions have been identified in our jurisprudence for the collection of amounts owed by the creditor to the enforcement agent: (i) establish a common action for declaratory relief, (ii) use of an injunction, (iii) to consider the bill of duly notified to and not subject to creditor claims, a writ of execution, enabling the requester execution, immediately and without recourse to prior filing of a declaratory action to establish itself, an enforcement action against the petitioner.
- It was considered inappropriate to impose a solution to the enforcement agent in charge of setting up legal process to charge what they deserved, and with the obligation to appoint a new agent to each one of procedures, with the consequent payment of the respective court fee, equating to a common creditor.
- The establishment of the process by the Attorney General for collection of fees to the enforcement agent and their implementation costs, at the request of the enforcement agent, and attached to sue for the action under which they were formed, emerges as the only way compatible with the nature of the charges and the only process able to effectively ensure the rapid collection of them, obviating the future defaults.
- It was addressed the question of whether the 50% of the sum of legal fees paid by the prevailing party as provided in sub. c) of paragraph 3 of art. 26° of the Regulation of Legal Costs, applies to the reimbursement of amounts paid by the creditor by way of fees to the enforcement agent.
- There was disagreement regarding the position taken by Salvador da Costa, "*the responsibility of the debtor, that must be settled, includes the amount paid by the creditor as a cost of court fees or expenses previously borne by the enforcement agent and the fees to representative or enforcement agent, unless the amounts in question exceed the value indicated in point. c) of paragraph 3 of art. . 26^ª*"
- If in the declaratory action there are no question raised as to the application of 50% of the sum of legal fees paid, reimbursement of the values supported by the successful party by way of attorney's fees and fees for enforcement agent, it was argued that such limit is inapplicable in the context of executive action for the following reasons: (i) Art. 447°-D of CPC imposes no limit to reimburse any fees paid to the enforcement agent and expenses incurred by it as by determining, in art. 455° of the same Code, that the costs of implementation, including the fees and costs incurred by the enforcement agent will be supported by the assets pledged, shall exclude any limitation on the liability of the debtor for such redemption, (ii) of this rule states that the fees and costs incurred by the enforcement agent will be supported



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by the assets in its entirety - and this, whether the amounts have already been paid to the enforcement officer by the creditor or not.

- We conclude therefore that the limit specified in subparagraph c) of paragraph 3 of Article 26º that regulates legal costs, as to reimbursement of fees paid by the winning party to the Enforcement Agent shall not apply to the enforcement action.

INDEBTEDNESS – Ms. CATARINA FRADE, PHD (FACULTY OF ECONOMICS, UNIVERSITY OF COIMBRA)

- The indebtedness is the impossibility of lasting structural or non-timely payment of non-professional debt that can be caused by an accident of life, an unexpected event, for mismanagement of the family budget, which causes a decrease in income or expenditure increases.
- Reasons for Over-indebtedness: the dynamics of the consumer society, the complexity of lifestyles, the expansion of the means of financing consumption, access to credit, changing the scale of values of society and the difficulty in decision making.
- To prevent and solve over-indebtedness situations it is necessary to act preemptively, regulating the credit market, promoting the financial education of the population and responsible lending, changing the paradigm of consumption. It is necessary a curative intervention and bet on extrajudicial solutions to support social policies.
- The indebtedness is a multidimensional problem, with financial, social and psychological consequences which involves the whole family. It is a problem that demands rapid, close and inclusive responses and has a stigmatizing effect (socially and psychologically). There is loss of social skills, fall in job performance, isolation, shame, physical and psychological disorders, addictive behaviors and a high risk of social exclusion and poverty. This phenomenon is still costly to the financial system and public policy (law, social security, health, and housing).



ARBITRATION IN THE ENFORCEMENT PROCEDURE – Ms. ANA CABRAL (MEMBER OF THE EXECUTIVE BOARD OF THE CPEE)

- Arbitration is the alternative means of a dispute resolution in which both parties submit a settlement to their dispute to one or more arbitrators. Arbitration is not mediation, judicial conciliation or negotiation.
- The main features of Arbitration, in light of the Voluntary Arbitration Law, are: i) its voluntary nature, ii) the jurisdictional effects iii) the flexibility of the arbitration proceedings, and iv) the existence of a legal or conventional deadlines to present the decision.
- It was highlighted the existence of arbitration centers, ie, entities that ensure the implementation of arbitration permanently. The creation of arbitration centers is dependent on authorization from the Ministry of Justice.
- The possibility of creating arbitration centers in the field of executive procedures is provided by Decree-Law No. 226/2008 of 20 November, although there is no current measure to operationalization of this legal provision.
- **The Memorandum of Understanding between the European Commission, the European Central Bank and International Monetary Fund that fixed by the end of February 2012 arbitration for enforcement actions should be fully operational.**
- The main features of the system of arbitration in enforcement procedures are:
 - i) The acts of the enforcement procedure under the jurisdiction of the Court transfer to the arbitrators, such as the opposition's decision to the enforcement procedure, from opposing the seizure, the verification and grading of their claims and complaints and appeals;
 - ii) The competence of enforcement agents transfer to the arbitration centers on executive procedures orof the enforcement agents;
 - iii) Either party may terminate the arbitration agreement within 10 days after the formation of the enforcement procedure and creates a presumption of tacit acceptance of the arbitration agreement, and therefore the competence of the tribunal since it assumes that the spouse creditors or claimants who commit acts to the center of the arbitration proceedings accept the jurisdiction of the arbitration center.
- **Advantage:** it is expected that the legal arbitration centers should create an effective link between executive processes and systems to support overindebtedness.
- Topics that may include a proposal to establish arbitration centers on executive procedures:
 - i) Arbitration Rules to make a simpler executive process, no need to apply the Code of Civil Procedure, while respecting the principles of fair trial;
 - ii) Regulation with lower than anticipated charges for enforcement procedures;
 - iii) Ensure the connection of arbitration centers to computer applications in the field of executive action and support systems to over-indebtedness;
 - iv) Take advantage of training and experience of the Enforcement Agents to carry out investigations and executive procedures, creating a own group of enforcement agents selected by the arbitration.
- Despite having been identified weaknesses of the operation of arbitration centers in the area of enforcement action, the advantages of this method of resolution can be a solution for mass claims and the decongestion of courts regarding these procedures.



PROSPECTIVE ANALYSIS

THE POSSIBILITY OF NEW SKILLS FOR THE PORTUGUESE ENFORCEMENT AGENT - MADAME FRANÇOISE ANDRIEUX (SECRETARY GENERAL OF THE UIHJ; ENFORCEMENT AGENT)

- The multidisciplinary nature of the Enforcement Agent is related to the demanding initial training and further education, but also with information;
- There are several statutory powers exercised by the Enforcement Agents inherent to the enforcement proceedings related to the traditional activities of the Enforcement Agent, and the optimization of these activities could lead to the following: i) exclusive assignment of any matter related to the enforcement procedure, to the enforcement agents, ii) harmonization of citations / reports (reported to have been aware of a service via facebook), in order to standardize the information to be provided, thus:
- The activity of mediation earlier to the enforcement process - for example, the conclusion of a settlement agreement and the prior knowledge of the contents of the declaration required the debtor's assets;
- The certification activity of the negative equity. In Germany, the Enforcement Agent is also involved in the recognition of insolvency of the procedure, through the issuance of a certificate of default or recovery and argued that this aspect may be made to correlate with over-indebtedness;
- The activities related to research, creation and maintenance of proof. In France there is the possibility of gathering evidence for enforcement agents called "Constat", which represents a document written by the Enforcement Agent, which serves as an evidence on a factual situation that occurred at a given time. Said to be the most physical act performed by enforcement agents because it involves the five senses (sight, hearing, touch, smell and taste). The areas of intervention of a "Constat" may be the following: a lease (Constat can be done on a good or bad condition of the fraction), a company that will do a work on a street or in a wall (can be done a Constat State on the wall or the street in order to prevent the company might be sued later by cracks in the wall that existed before the work started), the Enforcement Agent reports the current situation with preventive nature , ie, in order to prevent further losses. Examples of Constats: Constat post-mortem (referring to a DNA test), a Constat in a cockcrow, counterfeit situations (major brands of cars). The Constat are ways to help the judges because of its probative value and are economically very relevant. Also serve to discourage other delaying tactics and through this mechanism Enforcement Agents are the guarantors of proof and regulating the economy;
- The consulting activities of enforcement agents in particular as regards to the clarification of doubts in the interpretation of contracts, the signing of the same or its execution. For example, the Enforcement Agent will seek the other party, refers questions and issues, and this function can also serve as a mechanism for the recognition of debts;
- The activities of the Enforcement Agent in respect of their assistance in the proper administration of justice in relation to the protection of assets / inventory of them / receiving them, somewhat similar to a Constat;
- *The role of enforcement agents as an alternative towards conflict management*, namely, mediation, arbitration, negotiation, conciliation and settlement. In arbitration, enforcement agents are



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arbitrators, mediators, conciliators and mediation is to protect debtors, so that the procedure is not as traumatic;

- The certification of correspondence sent via electronic mail ("Tiers de Confiance"). In France there is the Federation of Tiers de Confiance that is certainly an idea that could be imported into Portugal;
- The asset management business (in semi-rural and rural areas), through the drafting of contracts, management of leases, etc.;
- The possibility of enforcement agents to be "Credit Managers" of large companies.
- It is necessary to harmonize the status of the enforcement agents, skills and activities at European level, through the creation of a European Statute of Enforcement Agents, based on the Guidelines of the CEPEJ, 2009.

GOOD PRACTICES IN INTERNATIONAL ENFORCEMENT AGENT'S ACTIVITY – MR. JOS UITEDHAAG (UIHJ EXPERT'S; ENFORCEMENT AGENT / NETHERLANDS)

- It is very important to have a procedures standard within the scope of the enforcement agent action, which we call the European Best Practices arising from or Recommendations of the CEPEJ or its Guidelines, in recommending the "normal high standards" and "high law education " in the activity of the enforcement agents;
- To develop the concept of "Best European Practices" examples of "Bad Practices" were used from which was inferred the important role of the enforcement agent in the enforcement system, though, giving note that, despite being the enforcement Agent who leads the enforcement procedure, he needs the support of tools and assets to do this (eg the help of police forces);
- The European Court of Human Rights has already ruled that it is the responsibility of the state to provide a good judicial system that ensures na enforcement system, regardless of what you have to do to ensure that system;
- It is important to note that the enforcement agents or the enforcement judicial system can not solve the isolated problems, as there is a dependency of other agencies and state authorities to conduct the enforcement action. Cooperation is needed between the enforcement agent and the state authorities, clearly defining the boundaries of each;
- It is evident that either the lender or the borrower must have guarantees of a fair procedure; the key issue is to find the balance between the parties, being aware of the interests of either one or the other. In European countries of southern Europe we still see some of these imbalances, perhaps due to the socialist past with over-protection of the debtor;
- The way the enforcement system is implemented can also generate "Bad Practices", namely the judicial organization. For example, in countries where the system chosen is the Court, it may happen that the enforcement system is not a priority of the judicial system, possibly to the extent that there is a lack of specialized structures and specialized training, resulting in minor improvements and few discussions due to deficient priority setting;



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- The lack of procedures leading to the implementation creates "bad practices" for enforcement actions. For example, if we have to wait seven years for the end of an action, the success of it, what are the consequences for the lender? Users of justice no longer have any confidence in the system that spreads to the lack of trust in contracts (in their compliance), which reinforces the idea of the use of private justice (dangerous threat to any democratic rule of law). This means "poor enforcement actions". So how do you combat this? There are institutions that pressure to improve the system, for example, investors who need a legal system operating in accordance with European conventions on this matter;
- The Enforcement Agent is a server of the public interest first, and only secondarily can be considered a private employer;
- Existing "bad practices" in all countries and wanting to change, how to do? What kind of changes to implement? You can not just say that there is a model system, ideal, and everyone would simply copy it to the respective jurisdictions. This would certainly be a bad solution. In the absence of an ideal system, you must meet the legal history of the judicial system of each country, suiting the particular jurisdiction;
- To that extent, the recommendations of the CEPEJ (2003) and the Guidelines for the Implementation of the Recommendations of the CEPEJ (2009) can not be used to describe the ideal system as being applicable to the Court, the private or administrative. This is a logical reasoning because the implementation of each solution depends of the environment where it will be implemented;
- For example, a system in which the state defines all the features of the system and under which the fees arising from the implementation are not used to improve the enforcement system will not be an ideal system. If one makes the improvement of the enforcement system exclusively through the state budget it will not work. Other countries have private systems: if there is a private system from scratch, the adoption of a system of private enforcement may be an optimal solution because the model is already rooted in the legal community and the spirit of competition is there too. The same is true in the model Tribunal adopted: if this mean that there is a chance for the Court's to have own budget and be able to develop the improvements necessary to understand this area, then there will be no problem in adopting this solution;
- Therefore, we conclude that there is an ideal system, but there are issues, standards and principles that describe what are the best practices - the "high moral standards" and "good law education" of the enforcement agents are indispensable in the process of appointment of an enforcement agent, depending on which system you choose. For example, in the private system, is necessary to consider not only the legal status of the applicant's enforcement agent, as well as his economic management skills because they have to know how to manage an office. In the Netherlands, during the nomination process it is required from the candidate a "business plan", which is presented to a special committee, demonstrating its ability to depreciate the investment over a period of 3 years;



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- **As to the training program:** There are countries that require a high level of training (LLM and / or Masters). But it is of no use to an enforcement agent to know the most diverse dogmatic theories, if you can not communicate with the debtor to obtain the order of enforcement action;
- **The standards and professional ethics:** It is very important to have a Code of Ethics, which will necessarily be very general. Article 1º Of the Dutch Code of Ethics: "A good enforcement agent must act as a good enforcement agent acts" (24 hours per day). However, the Belgian Code of Ethics although sets general standards, can also be quite accurate, for example, not allowing the entry of enforcement agents in casinos;
- **As for the disciplinary control:** The Guidelines of the CEPEJ (2009) report that disciplinary proceedings should be conducted by an independent body, because according to Article 6º Of the European Convention of Human Rights it is a process similar to civil and criminal processes, trialed by an independent body;
- **As for supervision / monitoring:** How to monitor / supervise? Again referring to the Guidelines of the CEPEJ (2009), monitoring / supervision should be independent. In most European countries it focuses on financial issues, the quality of service, enforcement procedures and customer accounts. The consequences of supervision / monitoring, they are not to be negative, need not necessarily result in disciplinary, civil or criminal, it may result in a positive approach between supervisory entity and supervised;
- **As to responsibility:**
 - a) **Enforcement Agents:** In the Netherlands, enforcement agents are personally liable, so the report made to the independent Financial Supervisory Agency, and focuses on the agent's office and his personal situation, because his private life may threaten how their actions will lead to it's Professional activity;
 - b) **Chamber of Enforcement Agents:** It is the institutional duty to implement disciplinary proceedings as soon as there is evidence of infringing conduct of any enforcement agent (disciplinary and criminal), to the extent that there is a concern for transparency in the activity so as not to affect the confidence that the public has in the system;
 - c) **State:** It is the instrument that creates the environment in which the enforcement agent necessarily works. The "Best European Practices" try to set out the state's role as a creditor and as a debtor;
- Finally, it is concluded that the "European Best Practices" are created through the Recommendations of the CEPEJ (2003 and 2006) and its Guidelines (2009), but also through the role that both the state and the enforcement agents play in the implementation.
- The process of creation and discussion of the "Best European Practices" and "Bad Practices" is continuous and evolving, being a good starting point to Article 1.º of the Dutch Code of Ethics:
"A good enforcement agent should act as good enforcement agent acts"



THE CONTRIBUTION OF CPEE: 2ND YEAR OF ACTIVITY AND PROPOSALS FOR THE FUTURE

MASTER PAULA MEIRA LOURENÇO (PRESIDENT OF CPEE)

- **The CPEE balance of activity (2 Years)**
 - An Internal CPEE activities Regulation Manual
 - A FAQ Manual (co-authored with the Ministry of Justice)
 - A Procedures Manual and Preliminary Assessment of Disciplinary action of Enforcement Agents
 - 2 Supervision Procedures Manuals of the activity of the Enforcement Agents
 - Approval of Recommendations for the Efficiency of Enforcement Actions and Training of Enforcement Agents 2009-2010 (containing the criteria for analysis)
 - 2 Yearly reports
 - Organization of two international conferences - in June 2010 and September 2011
 - Participation in 57 Conferences/Seminars
 - Cooperation Agreements with 6 (six) Public Entities

- **Proposals for the future**
 - **Providing CPEE with the necessary means**
 - a) Urgent: technical assistance and adequate facilities
 - b) Provide CPEE with access to enforcement agents computer systems
 - c) Strengthening the powers of control / supervision of CPEE over Enforcement Agents – MoU with IMF, EC and the ECB (see section 7.3 of 1. ^a Evaluation Memorandum of Troika)
 - d) Need for financial independence of CPEE

 - **Implement 2009/2010 CPEE recommendations - implementing the Decree Law No. 226/2008, of November 20th**

 - **Reducing the causes of pending processes - the contribution of CPEE: recommendations and inspections**
 - a) Institute the prepayment of the Phase 1 to the enforcement agent
 - b) Enforcement agents must comply with the rules already in place of extinction of enforcement actions in case of lack of assets - in the CPEE monitoring actions it is evaluated the reduction of the pending processes of the enforcement agent and a deadline is set for reducing the AE pendency
 - c) Development in CITTUS of a tool that allows the petitioner to request the renewal of the terminated proceedings, without completion and submission of new application of executive action with the corresponding renewal process in SISAAE
 - d) Computer systems must start to distinguish the causes of pending proceedings
 - e) Effective cooperation between managers of computer systems for the enhancement and improvement of communication between computing platforms of CITTUS and SISAAE



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- f) Regulatory action for arbitration in enforcement actions
- g) Creation of institutionalized arbitration centers in enforcement proceedings (Articles 11.º to 18.º of Decree-Law No. 226/2008, of November 20th)
- h) Developing the CITIUS computer system, allowing the CPEE, the Court and the petitioner may implement their decisions directly on CITIUS (without third party intervention)
- i) Synchronization between CITIUS and SISAAE: a mere transmission of data from existing information on each process in each of the systems, allows to display to the Enforcement Agent the reported incidences in each enforcement action (eg, the query opposed to enforcement)
- j) Elimination of the need to issue court order authorizing the seizure of bank balances (Art. 861.º-A of CPC) will produce practical effects in thousands of lawsuits, allowing the continuation of the immediate process that begins with the seizure of electronic bank balances, without court authorization to that effect, which delays the continuation of the current enforcement action at an early stage and necessarily the same length of time until its extinction
- k) March 2011 - CPEE created the working group to streamline the electronic seizure of bank accounts (GT/CPEE- EPA)

▪ **Measures to expedite Court actions**

- Extension of limitation period from 6 months to 3 years in contracts to provide essential public services (the period of 6 months does not allow the debtor to negotiate the debt and increase the number of legal actions)
- Increase in deposits at the time of the contract to provide essential public services
- Merge into a single list of the current three lists: List of debtors of the Ministry of Finance, the list of insolvent persons and companies, and the Public List of Enforcement Actions - CPEE already makes available through: http://www.cpee.pt/listas_publicas/
- Inability to obtain the credit through the courts when an entity extends credit to a borrower who is already registered in any of the three current lists of debtors.
- Creation of an effective electronic model for court management ("X Project" Court Enforcement)
- To bring an end to all executions unviable: all pending cases for lack of debtor's assets
- Synchronization between CITIUS and SISAAE
- Make a survey of the number of executions with declarative grafts; calculate the average duration of these processes; definition of decision deadlines, to be assessed for career progression
- Monitoring the average duration of enforcement actions by region
- Allow the creditor to choose the court with shorter average duration of an enforcement action.



▪ **CPEE Initiatives – 2nd half of 2011**

- 2nd Conference & Workshop on September 23rd and 24th 2011 in Espinho
- Approval and publication of the *Ethical Code of the Enforcement Agents*
- Approval and publication of the *Manual of Best Practices of the Enforcement Agents*
- Launch of the "*Prize for Best Practices in the activity of the Enforcement Agents*"
- Presentation of proposed legislative change in relation to the CPEE: full electronic access to the enforcement actions, administrative and financial independence – considerations towards the Dutch (see section 7.3 of 1. ^a Evaluation Memorandum of Troika).



CLOSING SESSION

Enforcement Agent, Ms. Cristina Frade - Presentation of the Conclusions of the Conference

- To finish the Conference, the conclusions were presented to the public in accordance with the notes taken during the event.

President of the Municipal Assembly of Espinho and Group President of the Social Democratic Party Parliamentary Group - Mr. Luis Montenegro

- He praised the fact that the President of CPEE perform her duties effectively and willing to produce positive results and thanked for the choice of the city of Espinho for the 2nd CPEE Conference & Workshop expressing full availability for the future to help organize this kind of events that contribute to improving the functioning of Justice;
- He noted that the Parliament had noted the good work that CPEE has been carrying out under the Justice and of the important conclusions that have been presented to improve the justice system, despite its lack of resources, and stressed that the CPEE was an important partner for the efficiency of enforcement actions;
- He said that legislative changes are forthcoming that will impact the activity of Enforcement Agents and executive procedures and therefore considered this is the moment for reflection on legislative developments in this area in Portugal;
- He pointed out that to increase the credibility and trust of enforcement agents was essential to enhance supervision and the activity of CPEE as the supervisory entity would be essential;
- He concluded by saying that the Parliament with legislative responsibilities and political leadership, was interested in pursuing the terms of the proposals submitted by the 2nd CPEE International Conference and Workshop.



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

- Thanked the invaluable and essential cooperation of the Municipality of Espinho in the organization and reception of the 2nd CPEE Conference & Workshop, especially, the Mayor of Espinho, Mr. Pinto Moreira, and through him, the whole team of professionals in the Multimedia Center of Espinho, as well as to all speakers, participants and members of CPEE, which helped make this Conference a success, a milestone in the inevitable reflection about the future enforcement procedures.
- Expressed special thanks to the President of the Municipal Assembly of Espinho and President of the Parliamentary Group of the Social Democratic Party, Mr. Luís Montenegro, for accepting the invitation to the closing session.
- Reiterated the willingness and commitment of CPEE whenever necessary to intervene in matters of justice, particularly in the area of enforcement procedures, through the release of the 93 CPEE Recommendations of 2009/2010, either through the provision of all statistical data collected in exercise of their activity, and statistical data of the Ministry of Justice and the Chamber of Solicitors, entities with a nuclear position in this matter, and who sit in the CPEE plenary.
- Was available to send to the Parliament and Government the reflections and proposals made by several speakers, that would be summarized in a document that would give the name of "Conclusions of the 2nd CPEE International Conference and Workshop."
- Stressed that the presentations made in the 2nd CPEE Conference & Workshop, as well as the document "Conclusions of the 2nd CPEE International Conference and Workshop" would serve as a basis for reflection and emission, soon, by the CPEE Plenary 2011/2012 of the recommendations on the efficiency of enforcement actions and training of enforcement agents, legal competence of the utmost importance, and which would be sent to the all relevant recipients and to the Parliament and Government;
- Highlighted the importance of the Plenary of CPEE and the Commission as a democratic and pluralistic organization that contributed to a vision of justice not only turn to the classic legal apparatus but directed to a public service essential to the economy, whose quality would be evaluated by those who provided the service and by the citizens and companies using it;
- Concluded by once again thanking the City of Espinho, Espinho Multimedia Center and all those who participated in the organization, and contributed to the success of the event.