

(Mikael Berglund, 2012-01-09)

1. Some observations and reflections on five national reports

Bulgaria

Page 1, the number of debt collection cases in the EU connected to Bulgaria is considerable and increasing. The High Court of Cassation has not yet established any substantial legal usage in the areas concerned.

Page 3, there are no special rules about small claims, but this is compensated by that arbitration in civil and commercial matters is broadly and commonly used also in relatively small cases.

Pages 3-4, 10-11, IT possibilities are very limited.

Page 4, some information about the debtor's assets for enforcement purposes is available.

Page 15, the period of operation of the two regulations is too short in order to make an estimation of the need for improvements and the legislative base is satisfactory at the present.

Finland

Page 3, there are no specific rules about small claims. However, the Code of Judicial Procedure may be applied in a way adopted to the needs on a case-by-case basis for small claims.

Page 3-4, after an inquiry from the enforcement authority the debtor has to provide comprehensive information on his current and past assets.

Pages 4-6, IT possibilities are well developed and efficient.

Page 6, the number of debt collection cases in the EU connected to Finland is in the margins of the Finnish judicial system.

Pages 20-23, the present situation has led to unwelcome fragmentation and incoherence of European procedural legislation and a streamlining of such existing procedural instruments should now be considered. The goal should be to substantially streamline the instruments by putting them together and at the same time making changes necessary for them to be coherent. Reducing the number of instruments would help practitioners and citizens to use this legislation and enhance access to justice. A following step could be to include into the same piece of legislation a European Code of Cross-Border Procedure.

France

Pages 3-4, IT possibilities are somewhat developed in relation to the court system and to some extent to the enforcement officers. A specific application enables electronic recording and transmission of all the data related to the orders as between the courts and the enforcement officers in charge of the service and enforcement of orders.

Page 32, it is quite soon to evaluate the regulations, especially as there exist no statistics, but it seems anyway that the use of the new procedures remains very limited.

Page 33, regulations are faster and more automatic than the domestic ones, but it can not be ignored that the multiplication of four alternative procedures is a source of complexity.

Poland

Page 7, electronic injunction proceedings in court exist, where safe electronic signature is required.

Page 8, much information is available to the court executive officer about the debtor's assets for enforcement purposes.

Pages 61-65, suggestions on changes related to the forms of the regulations, the number of debt collection cases related to the EU are not too many, lack of cohesion in application of the regulations - there are a lot of issues unregulated which results in application of the national complementary rules and makes the procedure less unified, the European regulations are the most convenient – they create certain system of application and information and also enforcement, not connected with the national domicile of the defendant.

Sweden

Page 2, IT possibilities are limited, with the exception for some major creditors.

Pages 2- 4, much information is available to the Enforcement Authority about the debtor's assets.

Page 9, the frequency of making use of the three regulations is very low.

Pages 10-11, suggestions are made for substantial need for improved transparency of the debtor's assets in both the national and cross-border context, an application for cross-border enforcement to the Member State of origin, and for improved means of freezing of the debtor's assets in another Member State.

2. Preliminary conclusions and some suggestions of improvements based on the five reports

2.1 Statistics

The impact of cases related to the regulations vary between Member States. Some national reports provide information in more general terms without mentioning exactly how many cases are concerned. Some other national reports present statistics on the exact number of cases falling under the use of the regulations. This makes the statistical information about the number of cases falling under the regulations non compatible in this context. However, it is evident from most national reports that the regulations are only used in a very limited way as compared to the corresponding national possibilities.

In order to receive compatible statistics from all Member States and by those means get a better overview of the use of the regulations, provisions obligating the Member States to

annually report to the Commission about the number of national cases should preferably be entered into the regulations.

2.2 Legal usage

As evident from all national reports, legal usage at the supreme court level of national systems is very limited. Also, there only exist some few cases from the ECJ.

2.3 Status of IT-support

The level of development of IT-support vary between Member States. This stands out in a comparison of the national reports. Some examples of more advanced and efficient solutions are found in e.g. the Finnish and Polish reports.

With the exception for information on websites, national IT-support should preferably be further developed in most Member States in order to facilitative a more efficient use of the regulations.

2.4 Others

2.4.1 Streamlining of European procedural legislation

As indicated in e.g. the Finnish and French reports the multiplication of four alternative procedures may be a source of complexity. It should be considered to streamline the European procedural legislations here concerned following the ideas in the Finnish report.

2.4.2 Improved information about the debtor's assets for enforcement purposes

Information available about the debtor's assets for enforcement purposes vary in comparison between Member States. It is evident from some national reports, such as the Finnish, Polish, and Swedish reports, that relatively extensive information is available about the debtor's assets for enforcement purposes, while from some other national reports it become clear that this information is more limited.

There exist no EU instrument corresponding to the needs of a private creditor for an exchange between the regulated enforcement agents of the Member States in civil and commercial enforcement matters having cross-border implications in support of a more efficient use of the regulations in the same areas.