COMPARATIVE REPORT

ENABLE – Enabling dematerialized access to information and assets for judicial enforcement of claims in the EU (NUMBER — 721331)

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This report was funded by the European Union’s Justice Programme (2014-2020)
ENABLE – Enabling dematerialized access to information and assets for judicial enforcement of claims in the EU
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Abbreviations

AIS    (Lithuania) Enforcement Information System
CEPT   Cross Border Enforcement Proceeding Tool (international information system for initiating and monitoring cross border enforcement proceedings
ECtHR European Court on Human Rights
eIDAS Directive 1999/93/EC on e-signature

Elected electronic address for service any other electronic address to which notification can be made in accordance with the relevant law and following express prior consent of the recipient for every notification in question.

Electronic (judicial) address the unique e-mail address assigned by the competent authority to a private individual or a legal entity

ETIS    (Estonia) Enforcement Agents Management System
KBvG Royal Dutch Professional Organization of enforcement agents
MISP    (Estonia) Mini Info System Portal
MS     (European Union) Member State
PMS Project Member States
REC    (Latvia) Register of Enforcement Cases
SISAAE (Portugal) Central Information tool for Portuguese enforcement agents that allows them to carry out procedural transactions and electronic access to all databases that have information on the assets of a debtor
Introduction

The project ENABLE aims to explore e-justice solutions for dematerialized exchanges and pragmatic conditions for secure access to and exchange of information for enforcement in the European Union. The project is financed by the European Union and is implemented by the Center for European Constitutional Law (CECL) in cooperation with the International Union of Judicial Officers (UIHJ) and the Aristotle University of Thessaloniki (AUTH).

The CECL is a leading research institute based in Greece, operating as a public benefit foundation. It has vast experience in coordinating EU projects and it coordinates several EU grants. Its particular added value lies in its experience in facilitating cross-country, evidence-based research and analysis and strengthening the capacity of public bodies in the field of justice; assessing impacts and creating the evidence basis for sustainable reforms. The CECL has contributed to a number of activities on judicial cooperation in civil and commercial matters. The Centre is certified for the services it offers by ISO 9001:2008.

The Union Internationale des Huissiers de Justice et Officiers Judiciaires (UIHJ) (International Union of Judicial Officers) was created in 1952 and gathers 92 countries. The purpose of the organization is to represent its members to international organizations and ensure a good collaboration with national professional bodies. It works to improve national procedural law and international treaties and makes every effort to promote ideas, projects and initiatives which help to move forward and elevate the independent status of judicial officers. The UIHJ is a member of the Economic and Social Council of the United Nations, is involved in the work of the Hague Conference on Private International Law, specifically in the planning of conventions relating to the service of documents and enforcement. It is a permanent observer member of the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe and took an active part in the development of its Guidelines of December 17th, 2009 on execution of legal decisions. It took part in the work which led to the update of (EC) Regulation n°1348/2000 of May 29th, 2000 on the service of judicial and extrajudicial documents in civil and commercial matters. It also participated in the reflections aiming at opening the European Judicial Network in civil and commercial matters of the European commission to legal professions. Furthermore, it currently takes part in the work of the Forum Justice group set up by the European Commission as well as its e-Justice project.

The Aristotle University of Thessaloniki (AUTH) has supported several national cross border e-governance activities in the period from 2008 to today. It is presently implementing the e-CODEX national pilots, in close cooperation with the Greek Ministry of Justice (MoJ) and the Athens Court of First Instance, supervised by the MoJ. The AUTH has a leading role in the project’s interoperability testing activities. The Information Technology Laboratory of the Aristotle University is a leader in the domain of Security and has developed significant activity in IT policy support of the public service sector (Justice, Health and Social security). It has also facilitated the piloting and national deployment of some of the most important cross-border / e-government applications in Greece and has established specialized know how and expertise in these areas. AUTH is also an active
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member of the eSENS consortium with main involvement in the Legal expertise centre, the testing and the piloting activities.

Within the European Union, the development of an e-Justice strategy was an important step forward for the creation of a European area of Justice. E-Justice aims to enhance:

a) access to information in the field of justice;

b) access to courts and extrajudicial procedures in cross-border situations and

c) facilitate communication between judicial authorities.

While relative progress has been achieved with regard to access to information and electronic solutions for courts, lawyers and notaries, significantly less progress was noted in relation to the dematerialized exchanges in the legal and extra-judicial field of enforcement and the role of enforcement agents (judicial officers).1

While the European Court of Human Rights has established that the enforcement of a court judgment must be regarded as an integral part of "fair trial" for the purposes of Article 6 of the European Convention of Human Rights (Hornsby v. Greece2) and that enforcement agents work in the interest of a good administration of justice and are an essential element of the rule of law (Pini v. Romania3 ECtHR, 22 June 2004) little emphasis has been placed on their role in the area of e-justice.

Six main sets of barriers appear to hinder the development of e-justice solutions for dematerialized exchanges in the (enforcement) legal and extra-judicial field across EU member states.

Firstly, technical barriers resulting from incompatible technical standards at national level, lack of inter-operational databases, lack of inventories and publicly accessible information allowing the identification and selection of judicial officers by EU citizens and businesses, great number of certification authorities, limited use of digital signature nationally and in cross border communication, lack of validated databases and information on assets of debtor, not to mention the need for security of electronic exchanges, data protection and other concerns.

Secondly, legal barriers related to the highly diversified national frameworks in relation to the status, role, competences of enforcement agents and the service and enforcement procedures (CEPEJ4) and the lack of alternative means to verify documents' authenticity5.

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1 This report uses the term enforcement agent as it was also defined by the Guidelines of CEPEJ: a person authorised by the State to carry out the enforcement process. In that respect, unless mentioned differently in this report, we do not make a difference between the enforcement agent who is a state employee or the self-employed (independent) enforcement agent.

2 Hornsby v. Greece; ECtHR March 19, 1997; number 107/1995/613/701

3 Pini and others v. Romania; ECtHR June 22, 2004; number 78028/01 and 78030/01

4 https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes8Execution_en.pdf

5 See for example: Study No. JAI/A3/2002/02 on making more efficient the enforcement of judicial decisions within the European Union: Transparency of a Debtor’s Assets Attachment of Bank Accounts Provisional Enforcement and Protective Measures, 2004
Thirdly, information barriers resulting from insufficient information available on competent judicial officers, debtor’s domicile or location of property.

Fourthly, linguistic constraints in accessing information, communicating, monitoring and obtaining feedback on the enforcement proceedings.

Fifthly, cost constraints resulting from different tariffs, delays and the need to translate necessary documents to the official language of the receiving Member State and

Last but not least, barriers resulting from the limited trust in dematerialized exchanges and enforcement from the part of authorities and citizens.

The costs and delays deriving from existing procedures result in the fact that some claims are never enforced. E-justice solutions in the enforcement area can improve the efficiency of enforcement and justice through harmonized documents initiating proceedings, secure electronic exchanges between citizens, speed, efficiency and security of enforcement and enable other dematerialized enforcement procedures (attachment on salaries, seizures of banking assets, attachment of shares, movable and immovable auctions on the Internet) etc.

The project ENABLE focuses on the development of pragmatic solutions to overcome existing barriers hindering the exchange of information and dematerialized exchanges in the legal and extra-legal judicial field operated by judicial officers. In a European area of e-justice, where goods and judicial decisions are valid, serviced and enforced across member states, and where legal security plays a major role, the speed and efficiency of enforcement of legal decisions, and thus the role of judicial officers as the party responsible for dematerialized exchanges in the legal and extra-judicial field, is critical.

The project focuses on 8 EU Member States that represent different regions, legal systems and judicial cultures: Belgium, Bulgaria, Estonia, Greece, Latvia, Lithuania, the Netherlands and Portugal.

In its initial phase, the project mapped the current situation in the participating countries through eight country-reports. The reports include an inventory of e-justice procedures and systems, e-justice practices and solutions. The present comparative report assesses the interoperability and compatibility of national practices, bottlenecks, good practices and possibilities for further developments.

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6 UIHJ Position paper, 2010
Chapter 1: Status of enforcement agents

1.1. Legislative aspects

The role of enforcement agents (or judicial officers, both terms to be used interchangeably) is central in the context of enforcement. The role of the enforcement agent is public in nature. The legislator has assigned certain exclusive powers to the judicial officer (enforcement agent). Given such position, the enforcement agent cannot refuse to assist a person subject to trial who calls upon the services of the enforcement agent. The judicial officer fulfils a specific and active role at the crossroads between executive and judicial power. Their status in the participating member states in the ENABLE project (hereafter: PMS) is not identical, albeit substantially similar.

In particular, in all participating countries, with the exception of Bulgaria, they are state authorised independent professionals. Even in Bulgaria where there exist two types of enforcement agents, one similar to the rest of the PMS and another which comprises of civil servants, the legislative trend is towards the paradigm of the rest of PMS. The enforcement agents have a civil, criminal and disciplinary liability. Also, the independent (self-employed) professional however, will need to act independently and impartially, is subject to ethical behavior and can be subject to disciplinary measures, which include suspension and dismissal from the profession. The enforcement agent is subject to regular monitoring and control over professional activities. The judicial officer fulfils a specific and active role at the crossroads between executive and judicial power.

Another characteristic of the status in the various PMS is that in most of them, the enforcement agents are territorially restricted. In most of the PMS and there also exists a numerus clausus of enforcement agents. The territorial restrictions and the numerus clausus can prima facie be treated as barriers to entry in the profession and may also hinder the swift enforcement of judgments. On the other hand, they are explained by the apparent need of regulating a profession that is an expression of state sovereignty. This explains the particular role of the enforcement agents in the enforcement procedure.

The activities of enforcement agents (also self-employed professionals) are considered not commercial. He or she is entitled to take reimbursement. The amount of reimbursement for the official activities of enforcement agents is determined in conformity with the rates, which are determined by the Government. Agreement regarding the amount of reimbursement for official activities different from this rate, in general, is prohibited. The self-employed enforcement agent is subject to the value added tax, i.e., as self-employed persons their activity is not financed from the State budget.

Having said that, the existence of the above-mentioned restrictions in the exercise of the profession of enforcement agents is a common given of the PMS and there is no reason to question its continuation in the future. In this sense, the similarity of their status can be very helpful with respect to the envisaged harmonization of the e-enforcement procedure.

Enforcement normally is carried out on the basis of an authenticated copy or the minutes, provided with the enforcement order.
The role of enforcement agents in all PMS includes not only enforcement of judgments on moveable and immoveable property as well as on bank accounts, but also service of documents. One point where we face a striking capacity of enforcement agents in the PMS, is their role in auctions. Whereas in some participating PMS they take all steps of the auction up to completion, in others the auction is completed by a notary public. This is a point that shall be discussed in more detail in chapter 5. At the moment a mere reference suffices as an indication of minor differences in approaches of the various PMS regarding the status of enforcement agents.

1.2. The status of enforcement agents in Europe

When it comes to the status of enforcement agents in Europe, different systems can be mentioned:

- States where the enforcement agents practice exclusively within a private profession ruled by public authorities;
- States where the enforcement agents work in a public institution;
- States or entities that combine the status of enforcement agents working in public institutions with enforcement agents practicing within a self-employed (private) profession, or combine self-employed or public status with other enforcement agents who could themselves have public or private status, like in Belgium (notaries, enforcement agents in tax affairs), in France (huissiers du Trésor, responsible for the collection of taxes), in Ireland (sheriff/solicitor and revenue sheriffs responsible for the collection of taxes), in Portugal (execution solicitors), and in UK-Scotland (Sheriff Officers and Messengers at Arms).

Neither the European Union, nor the Council of Europe has taken a formal position with regard to the status. What is important, is that a fast and effective enforcement of a court decision is considered a fundamental right and comes as such under article 6 of the European Convention for protection of Human Rights. Yet, there are significant differences between the enforcement agent as a civil servant and the (growing trends in Europe of) the self-employed enforcement agent:

<table>
<thead>
<tr>
<th>Civil servant-based enforcement system</th>
<th>Self-employed enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcement through court</td>
<td>Enforcement through executive department</td>
</tr>
<tr>
<td>Advantages</td>
<td>Advantages</td>
</tr>
<tr>
<td>Professionalism</td>
<td>Professionalism</td>
</tr>
<tr>
<td>High standards</td>
<td>High standards</td>
</tr>
<tr>
<td>Level of debtor protection</td>
<td>Level of debtor protection</td>
</tr>
<tr>
<td>Fast</td>
<td>Fast</td>
</tr>
<tr>
<td>Flexible</td>
<td>Flexible</td>
</tr>
<tr>
<td>Less expensive for the State budget</td>
<td>Less expensive for the State budget</td>
</tr>
<tr>
<td>Rapid</td>
<td>Rapid</td>
</tr>
<tr>
<td>Efficient</td>
<td>Efficient</td>
</tr>
<tr>
<td>Inexpensive for the State budget</td>
<td>Inexpensive for the State budget</td>
</tr>
<tr>
<td>Professional quality</td>
<td>Professional quality</td>
</tr>
<tr>
<td>Disadvantages</td>
<td>Disadvantages</td>
</tr>
<tr>
<td>Expensive</td>
<td>Expensive</td>
</tr>
<tr>
<td>Slow</td>
<td>Slow</td>
</tr>
<tr>
<td>Lack of quality</td>
<td>Lack of quality</td>
</tr>
<tr>
<td>Lack of independence</td>
<td>Lack of independence</td>
</tr>
<tr>
<td>Costly for consumers</td>
<td>Costly for consumers</td>
</tr>
<tr>
<td>Difficult to change</td>
<td>Difficult to change</td>
</tr>
</tbody>
</table>

7 See among others: European Court of Human Rights, 19 March 1997 (Hornsby vs. Greece): “execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of article 6” of the European Convention on Human Rights, it being understood that the right of access to a court “would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party”.
Rigid
Over-formalised

<table>
<thead>
<tr>
<th>Opportunity for corruption</th>
<th>Need for control</th>
</tr>
</thead>
</table>

The enforcement agent as a civil servant

One of the most significant examples of the enforcement agent as a civil servant is the German Gerichtsvollzieher. As in other countries with an enforcement system based on civil service (e.g. Sweden) there is a division of the work: the Rechtspfleger involved in the more intellectual aspects of enforcement (Germany: Rechtspfleger, Sweden: kronofogde) and the “foot soldiers” who effect the practical work (Germany: Gerichtsvollzieher, Sweden: Kronoinspektör). as a result, we cannot say that the enforcement agent as a civil servant is an enforcement specialist: legal knowledge and practical skills are divided in to different professions/persons.

Consequently, in most cases enforcement agents have limited competences. This also has its influence in enforcement. In the absence of competition, the quality of the work will be driven by targets and budgets rather than the interests of the individual creditors. In most cases the organization is rather bureaucratic and hierarchic. The work of the civil servant in most cases is employer orientated and not client orientated. In some countries, e.g. Sweden, tax collection is the base. Enforcement of other judgments seems to be a smaller part of the duties. Contrary to their independent (self-employed) colleagues lobbying in most cases is not developed and other legal professions might have a greater input into e.g. legislative proposals.

The enforcement agent as a self-employed (independent) professional

Being independent, this type of enforcement agent will be market orientated. Although market orientated such approach should never undermine the respect for ethics and the demands of the system of justice. To safeguard the balance between the challenges of a self-employed profession and the demands for justice, the enforcement agent, as a public officer is subject of monitoring and control through the State.

The level of education of the self-employed enforcement agent is high; in most countries a law degree as one of the requirements for appointment, followed by several years of practice. CEPEJ in its biannual report concluded that the prerequisite skills for enforcement agents place them at the same level of expectation and training as judges and lawyers.⁸

Contrary to their civil servant colleagues the independent professional will look for an extension of the range of activities, e.g. by amicable debt recovery. E.g. in the Netherlands debt collection is about 50% of the turnover of an average office. Secondary (non-enforcement) activities such as debt collection are integrated in the official activities of the Dutch enforcement agent. Normally these enforcement agents cooperate with their colleagues in other areas. In most cases they are well organised in a professional national body of which they are compulsory members. Most of these national organizations have been able to raise standards in relation to qualifications and ethics (e.g. by adopting byelaws for the profession). Those national organizations can form a significant lobby and thus be able to influence e.g. future legislation.

Within the ENABLE project, the focus is on the self-employed enforcement agent. All countries have a self-employed enforcement system:

<table>
<thead>
<tr>
<th>Country</th>
<th>Enforcement agents</th>
<th>Assistant enforcement agents</th>
<th>Trainee enforcement agents</th>
<th>Staff whole country</th>
<th>Staff largest office in the country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>536</td>
<td>363</td>
<td>265</td>
<td>n/a</td>
<td>&gt;100</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>202</td>
<td>201</td>
<td>n/a</td>
<td>n/a</td>
<td>&gt;50</td>
</tr>
<tr>
<td>Estonia</td>
<td>46</td>
<td>31</td>
<td>n/a</td>
<td>295</td>
<td>26</td>
</tr>
<tr>
<td>Greece</td>
<td>Between 2000 and 2100</td>
<td>n/a</td>
<td>8</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Latvia</td>
<td>116</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Lithuania</td>
<td>120</td>
<td>372</td>
<td>n/a</td>
<td>450-500</td>
<td>40</td>
</tr>
<tr>
<td>Netherlands</td>
<td>347</td>
<td>450</td>
<td>56</td>
<td>n/a</td>
<td>734</td>
</tr>
<tr>
<td>Portugal</td>
<td>1287</td>
<td>n/a</td>
<td>0</td>
<td>3398</td>
<td>n/a</td>
</tr>
</tbody>
</table>

The countries with a self-employed system, have a national organization of enforcement agents. In most cases the enforcement agent is a compulsory member of such an organization (as is also the case in the 8 PMS we are focusing on in our report).

The structure of such an organization is well defined by law: how is it organised (chambers, elections, appointments of the members of the board). There are several advantages to the creation of such obligatory structure:

- The organization is able to issue internal regulations on e.g. conduct and behaviour, disciplinary measures, accounting, (financial) control of the individual offices;
- The creation of group dynamic by establishing a feeling of professional identity while homogenizing competences and practices;
- Economies of scale regarding communication: the profession is able to speak to the Government and other parties with a single voice. Especially when it comes to E-Justice this is (as we will see in the next chapter) an advantage.\(^9\)

### 1.3. Conclusion: enforcement agents and e-justice

At the present moment, e-justice in the field of enforcement is an area that has developed only at national level, if at all. Exchange among countries in this field is limited and mainly achieved through the networking and interaction of professionals and stakeholders through the UIHJ during seminars and conferences.

Some initiatives have been undertaken in the past, with financial assistance of the EU. For example, the project “Cross-Border Enforcement Proceeding Tool” (implemented by the Estonian Chamber of Bailiffs and Trustees in Bankruptcy in co-operation with the Estonian Ministry of Justice, the UIHJ, the Lithuanian Chamber of Bailiffs and the Council of Latvian Judicial Officers) that aimed to develop an online cross-border enforcement proceeding

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\(^9\) See also in this respect: CEPEJ European Judicial Systems, edition 2010 (data 2008), page 255-256
tool (CEPT) for EU citizens, businesses and judicial officers allowing the initiation of a cross-border enforcement proceeding; sending, receiving and archiving documents and data electronically; monitoring the status of enforcement proceedings; carrying out inquiries about debtor’s domicile and location of property (determine jurisdiction); and supervising the procedure more efficiently. Two other significant initiatives in this field that are the EJE project ([http://www.europa-eje.eu](http://www.europa-eje.eu)) and the “Find a Bailiff” project.

The EJE (European Judicial Enforcement) project aimed to improve the execution of court judgments in Europe by offering European citizens and judicial officers – the enforcement agents – the information they require for the execution of legal decisions in the territory of another Member State and improve the mechanisms for cooperation and communication among judicial officers in Europe. The Find a Bailiff project (FAB II) aimed to extend the European directory of bailiffs/enforcement authorities to cover all 28 Member States.

Both projects focus on the initial steps of access to information. No attention has been paid so far to the possibility for e-justice solutions that go beyond the service of documents. Solutions that include the exchange of information on assets among enforcement agents or that facilitate methods of finding information on assets on debtors in another MS. The specific preconditions and barriers for implementing such solutions in national systems have not yet been solved, neither on a legal, nor on a technical level.
Chapter 2: The E-justice policy and environment

2.1. E-justice strategy of the Government and national organizations of enforcement agents

2.1.1. Belgium

In Belgium a memorandum of understanding between the Belgium National Chamber and the Ministry of Justice is in place. As a result of this synergy, several decisive projects have been set up, such as the procedure for summary recovery of uncontested debts, the notification by electronic means but also the development of a system of e-service of documents.

As regards the 2014-2019 legislative period, the Belgian Minister of Justice has set up an ambitious plan to reform the justice system emphasising two areas:

1. Making the justice system more efficient and fair, by refocusing on its essential tasks. To this end, four draft laws have been initiated:
   - The first one concerns reforming civil proceedings, including court fees and information technology;
   - The second relates to criminal law, criminal proceedings and their application;
   - The third relates to personnel and the material infrastructure of the justice system, including the decentralised administration of the courts;
   - The fourth groups several residual topics not connected to the first three areas;

2. Thoroughly reforming the basic legislation by developing new penal and criminal procedures and major reforms of civil and commercial law.

2.1.2. Bulgaria


However, the practical implementation of the e-justice mechanisms as well as working implications of an integrated e-justice system at a national level are very limited. For instance, there is a Unified e-Justice Portal where there is active connection to just 10 out of 113 district courts and 8 out of 28 provincial courts. The user registration provided by the system does not allow on-line registration but rather a paper filing in the respective

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10 Through Sam-Tes, the centre for expertise that has been established by the Belgian National Chamber and who acts as a facilitator and interventionist for the profession, also in the field of E-justice

11 https://ecase.justice.bg/
court. A common problem is that not all of the services formally offered are responsive and functional. Needless to say, translations in other EU MS languages are a rare exception.\textsuperscript{12}

Enforcement, with some exceptions as we will see later in this report, is not addressed. Development and implementation of information technology in the enforcement profession lies entirely within the initiative and material resources of the PEO Chamber and its members. E-justice implementation in the enforcement procedure is a major priority for the Bulgarian Chamber. The Chamber has funded and accomplished by own initiative several major IT projects such as The Central Debtors Register, The Public Auctions Register, Filing and Data Processing System.

2.1.3. Estonia

The Chamber adopted in 2016 the “\textit{Development Plan of the Estonian Chamber of Enforcement agents and Trustees in Bankruptcy 2016-2019}”. The strategy mainly focused on the final development of the information system of enforcement agents (E-Enforcement agent) and its implementation by enforcement agents. CEPT is a part of the E-Enforcement agent information system. Further focus is the electronic access to public information, especially to registers and databases.

2.1.4. Greece

The Greek e-justice initiatives were included in the National Action Plan on e-Justice and Administrative Upgrading of April 2014. It was part of the third memorandum agreed between the Greek Government and the Troika and the laws and regulations that followed for its application set the first e-enforcement provisions. Law 4335/23-07-2015 amended the Code of Civil Procedure to include the possibility for e-auctions and public announcement of auctions via electronic means.

Another focus was the electronic access to registers (i.e. the Cadastre). In cooperation with the Aristotle University of Thessaloniki and the Greek Universities Network, the Greek Chamber decided to develop other E-justice tools: digitalization of the registers for enforcement agents (the register on service of documents, the register for enforcement acts and the register for charging free acts), digital certificates, the development of an administration portal for members, an application for the electronic service of documents, email administration services and the necessary training in the use of e-signature systems.

2.1.5. Latvia

In 2012, the \textit{Register of Enforcement Cases} was developed. The owner of this system was the court administration.


procedures for organizing electronic data interchange between executive institutions (enforcement agents, State Revenue Service) and credit institutions as required for ensuring compulsory execution (collection), thus making debt collection procedures more efficient.

With regard to enforcement agents and courts, IT projects are implemented by the Court Administration – the state administration institution subordinate to the Minister of Justice. The Court Administration maintains several state information systems - State Unified Computerized Land Register; Court Information System and Data Distribution System, and the Register of Enforcement Cases. When it comes to enforcement activities the Latvian Chamber closely cooperates with the Ministry of Justice.

2.1.6. Lithuania

The National E-Justice Strategy “Lithuania 2030” outlines the vision for the development of Lithuania. The strategic objectives of the Government are outlined in the Lithuanian Information Society Development Program for 2011-2019\(^{13}\): increasing public sector efficiency and quality of public services, modernizing public and administrative services, introducing efficiency assessments, simplifying and shortening processes, choosing the most appropriate way of providing public services.

The dissemination of information through modern electronic means is significant for the judicial system. The promotion of e-government, improving the electronic accessibility of legal information, especially court rulings and making enforcement procedures faster are priority areas of the State.

The developments within the court system are also closely connected with enforcement. The National Courts Administration implemented the project “E-services for the administration of justice in the process”, as a tool to fight against corruption in the courts, to have all judicial decisions publicly available on the Internet, and enable the availability of case related information for legitimate interest holders, since 2013 parties in civil and administrative cases are provided access to the Lithuanian Court System LITEKO data – to store in the system of procedural documentation.

The State does not have a specific written e-strategy regarding enforcement. However, in general the strategy of the Ministry of Justice in the field of enforcement is strongly focused on the development of e-enforcement tools (e-fines, e-auction and the exchanging data only through electronic means, e-attachment, e-service of documents, e-control etc). In general, the policy of implementing these IT tools is under the Ministry of Justice, taking into consideration the needs of the profession: the association (Chamber) of enforcement agents is administrator of the central Enforcement Agents’ information system and is therefore involved in the system development and modernization processes.

2.1.7. Netherlands

An overall Governmental Strategy on civil enforcement is not available. The Dutch Chamber adopted the National Strategy 2016-2020 with a focus on e-justice. The following topics

\(^{13}\) The Development Program is accessible at: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.394457?jfwid=-umo1q8pz9
have received special attention in the Strategy: the continuous development of the National Register for Attachments, the development of an innovation agenda of the Chamber, until recently the implementation of the project KEI (digitalization of court proceedings)\(^\text{14}\), the further implementation of electronic attachment under third parties (e.g. banks), electronic assistance in the fight against (financial) fraud, the development of a centralized system for access to information regarding bank account holders (also in line with the European Account Preservation Order) and the further development of digital registries.

There are no rules for Dutch enforcement agents regarding the use of specific IT systems; each office is allowed to choose a digital management and filing system that suits them. As in Belgium, there are mandatory rules regarding the use of IT in the offices of the enforcement agents. Through a mandatory set of professional standards (quality norms), the office IT system needs to meet certain requirements.

2.1.8. Portugal

The concept of e-justice is widely implemented. Since 2003, the Portuguese Solicitors and Enforcement Agents National Association is actively involved in the development of the Governmental E-Justice strategy. The Chamber is competent to propose interoperability rules and conventions on the use of IT profession wide to the ministry of justice.

2.1.9. Conclusions

Each of the 8 countries that participated in this project has an active E-justice policy in its territory. In all cases, the E-justice policy is developed in (close) cooperation with the Government, more often the Ministry of Justice. The organization of e-justice however, differs per country with regard to the degree of centralization of e-justice solutions. In some member states (e.g. Belgium and Netherlands), the enforcement agent is free to choose IT partner/ software supplier, whereas in other countries (e.g. Baltic States and Portugal), e-justice on an office level is nationally organized.

2.2. Legislative framework on e-justice

2.2.1. Belgium

Every enforcement agent in Belgium is free in choosing an IT system and software supplier. As a consequence, several commercial companies are offering their services to enforcement agents. The software solutions available (electronic case management systems) may vary, but all software must fulfil the specifications decided by the National Chamber. An IT partner/ software supplier who does not satisfy the set conditions would prevent the enforcement agent from being able to integrate ongoing IT projects developed through the Belgian National Chamber. Lack of compliance could prevent enforcement agents from correctly fulfilling their legal and regulatory obligations, which would result in

\(^{14}\) Recently (10 April 2018), the Council for the Judiciary concluded that the digitalization of courts, based on an external assessment, concluded that the project did not meet its expectations and that the digitalization needed a“reset” (as it was called in the communication from the Council).
potential legal and/or disciplinary sanctions. A mechanism for approving IT partners / software suppliers is currently being considered.

2.2.2. Bulgaria

With few exceptions, neither legislation nor administrative regulation addresses the enforcement system as an integral part of the national e-justice system.

2.2.3. Estonia

The legal framework on the use of information technology is regulated at state level. The Estonian Chamber is competent to develop and administer the information systems required for the work of enforcement agents and bankruptcy trustees.

2.2.4. Greece

During the past 2 years steps were made towards reform and implementation of IT solutions in the Hellenic Judicial system. The profession of enforcement agent in Greece is just starting to adopt these changes and is still in early phases. No legislative rules or specific guidelines are available regarding the use of IT in private practice. Once the initiatives materialize, a set of rules will be required to ensure their full application.

2.2.5. Latvia

The operation and use of the Register of Enforcement Cases (REC) is regulated by Cabinet Regulation No. 941 of December 18, 2012 Regulation on the Register of Enforcement Cases. The ‘owner’ of REC is the Court Administration (article 156 paragraph 3 Law on Bailiffs), which is responsible for the development, improvement of feasibility and maintenance of the information system in accordance with the requirements set out by the State Information System holder (article 8 State Information System Law). The duty of bailiffs to use REC is determined in article 156.1 first part Law on Bailiffs.

2.2.6. Lithuania

The Lithuanian Information Society Development Program for 2011-2019 underlined the importance of IT to increase the efficiency and quality of public services. The information dissemination process through electronic means is considered significant for judicial system, including enforcement. In 2011 there were major changes to the Civil Procedure Code, focusing on electronic communication, also in court proceedings. Such electronic communication is compulsory for enforcement cases.

2.2.7. Netherlands

As in Belgium, the enforcement agent in the Netherlands is free to make an individual choice on an enforcement case management system from one of the commercial companies that offer such software. Similarly, the Dutch system has mandatory rules regarding the use of IT in enforcement agents’ offices. Each enforcement agent needs to comply with a set of professional standards (best-practices) based on the Regulation Standards for Quality. The regulation states that the enforcement agent will need to have a consistent electronic system in order to safeguard the primary processes of the office and

the financial data. These standards concern a consistent back-up procedure for the IT system in the office; security of the IT system (secured access); the use of data in accordance with data protection rules; assurance of integrity and correct use of the applications in primary use. Compliance with these standards is audited on a periodic base through independent auditors. In case of non-compliance, disciplinary action can be taken against the enforcement agent.

2.2.8. Portugal

The Portuguese Solicitors and Enforcement Agents National Association is competent to propose interoperability rules and conventions on the use of IT in the profession.

2.3. E-justice interventions and projects

2.3.1. Belgium

Belgian enforcement agents are developing important projects in cooperation with the Ministry of Justice. The following are the most relevant ones:

The e-Box project: This project will eventually make it possible for all judicial bodies, lawyers, enforcement agents and notaries to communicate among themselves electronically;

The e-Depot project: this project aims to make it compulsory to deposit deeds of companies and legal entities by electronic means. This has the advantage of entering data into databases automatically, storing company files in electronic form, on-line consultation of such information and reducing the workload on the commercial courts;

The e-Deposit project: The purpose is to file court statements by electronic means with a view towards a “single electronic court case file”. This application offers advantages to all stakeholders: a lawyer no longer has to go to the court to file their statements and is no longer bound by the opening hours of the court registry.

Database of judgments and rulings: The database of judgments and rulings (“VAJA”) has already been created. Data entry is still necessary to ensure effective and immediate delivery of copies of judgments in an electronic format to lawyers, enforcement agents and notaries when requested. VAJA creates electronic copies of judgments and sends them by electronic means to those who need them.

The e-Notification project: Electronic notification constitutes an additional stage in the digitization of justice. This change offers, in addition to the traditional means of notification, the possibility of opting for notification by electronic means. In this way it will be possible to notify documents either to the court’s e-mail address or to the e-mail address that has been chosen as address for service.

Pro deo digital platform: The pro deo digital platform will be the main way for processing requests from persons entitled to free second-line legal aid. The current applications will be replaced by a single central national application. Given that this application will be connected to the official databases, the ‘only once’ principle will apply. This means that it will be possible to download all information required to examine the request from various
official databases, such as income and assets situation or the composition of the applicant’s household.

**MaCH:** MaCH is the application used to administer files used by court registries and public prosecutors’ offices. It contains data and documents linked to the court’s digital investigation file by e-Deposit and other applications. MaCH replaces all applications used to manage obsolete files from various courts and public prosecutors’ offices with a single standardised application with a large number of additional functions.

In addition, there are some other projects which have its influence on the legal professions such as:

- The e-Payment project: the platform for electronic payment to Justice for legal professions;
- The e-Signature project: the use of the electronic signature in the judicial communication;
- The RCCI project: the platform for the procedure for the recovery of undisputed claims. Here there is a significant role for the enforcement agents;
- The SCR project: the central estate register;
- The RECA project: the register of digital records of service which also regulates the Electronic service (see chapter 5);
- The RCCD project: the platform for digital records and collective debt settlements;
- The RCS project: the platform for digital bankruptcy files and the digital bankruptcy procedure.

These projects have an important influence on the profession of the enforcement agent. For one matter, the creation of new databases (e.g. the registry of bankruptcy cases, the platform for digital records and the central estate register) will improve the efficiency of enforcement significantly. Secondly, Belgian enforcement agents will be vested with new powers (e.g. regarding the digital procedure for uncontested claims); thirdly, the administrative burden for enforcement agents will be reduced (e.g. with the introduction of e-payment) and last but not least, projects such as the e-Deposit and e-Signification projects will make it possible to digitize communications, notifications and services whether these are solely between professionals or between professionals and litigants. Key to the success of these projects is the close cooperation between the Ministry of Justice, the legal professions and enforcement agents.

### 2.3.2. Bulgaria

Since no legislative or regulatory initiatives are in place, the development and implementation of information technology in the field of enforcement mainly depends on initiatives of the Bulgarian Chamber of private enforcement agents.

At present, there is no legal possibility to use electronic documents and electronic signatures in direct activity and interaction with judicial bodies. There is also no legal mechanism to exercise procedural rights via electronic means. With the entry into force of
the Electronic Document and Electronic Signature Act, electronic documents are recognized as equivalent to paper and may be signed with a simple, advanced or qualified electronic signature with the legal effect of a handwritten signature. However, a wide range of legal rights related to the statutory recognition of the e-document and e-signature by the judiciary authorities and the exercise of procedural rights via e-venues remain unregulated and outside the scope of EDES Act, while implementation is presently latent.

To date there is no systematic approach to implement IT data processing in the Bulgarian judicial system. Existing software applications have been purchased or created over different periods of time, with the aim of meeting needs of either the Justice Ministry, its subsidiaries or the respective judicial structures. Unified and secure means of electronic identification are missing. Different institutions and registers a variety of ID tools such as PIN, PIC, qualified electronic signature and etc.

E-justice implementation in the enforcement procedure is a major priority for the Chamber. The Chamber has funded and accomplished by own initiative several major IT projects such as The Central Debtors Register, The Public Auctions Register, Filing and Data Processing System. With regard to the IT infrastructure of the Bulgarian Chamber, two major segments can be mentioned:

1. Registers and data management of the Chamber;
2. Case management systems of the individual enforcement agents or partnerships.

These two segments do not interact systematically and by default, regardless of the fact that they are partially integrated as a flow of data. For instance, registered debtors and auctioned properties for the purposes respectively of the Central Debtors Register and the Public Sales Register are transferred automatically from the PEO case database to the Chamber’s registry database. Both these segments of the PEOs IT infrastructure are basically independent from all national automated registers (population, land, vehicles, intellectual property and etc.) as well as from the registers and databases of the national judicial system as a whole. The financing of these registers is done by the individual enforcement agents, through the Bulgarian Chamber.

Ad 1: Registers and data management of the Chamber

The Central Debtors Register is an automated database developed and hosted by the Chamber which contains information of all active cases processed by private enforcement agents. A note of reference whether an entity or person is a debtor in an enforcement case could be obtained from the register via request through each enforcement agent’s office in Bulgaria. State enforcement cases are not integrated. All major IT systems in enforcement agents’ offices are designed for an automated exchange of data with the register. The few offices which do not use an automated system are obliged to log online and enter the necessary case information manually.

The Public Auctions Register is globally accessible online and provides sufficient data to form an informed opinion in regard to a property under auction. The Register provides visual images of the property, as well as complete cadastral description, parties in the case, legal encumbrances and etc. Though the public auctions of debtor’s property in Bulgaria are still carried out in an “old fashioned manner” and not online, the Bulgarian Chamber
ENABLE – Enabling dematerialized access to information and assets for judicial enforcement of claims in the EU (NUMBER — 721331)

decided to develop this register that in practice appeared very effective. The site has become a major source of information for real estate investors, agents and the general population.

The Filing and Data Processing System of the Chamber encompasses an electronic database of the entire archive of the Chamber since 2006, including but not limited to the status and registration of enforcement agents, documentation related to the administration of the Chamber, data related to disciplinary proceedings and internal monitoring. The system search and filtering functionalities allowing access to scanned archives, internal administrative acts and procedural records. Through the module "Disciplinary and Judicial Practice" an operator could extract and process electronic copies of disciplinary cases and files.

Ad 2: case management systems of the individual PEO and/or PEO partnerships

With regard to the case management, there is no unified system. Internal statutory measures were adopted when the functionality of central registers of the Chamber depended on functionalities of the enforcement agents’ individual case management systems, i.e. those were ruled into compliance with the respective Chamber registers. The development of the enforcement agent’s individual management systems is regulated neither by the Chamber nor by any government authority. The compliance test here is rather the “empirical” outcome of the evolution of these IT systems. Should automated registers, debt calculators, statutory updates et cetera prove to be incorrect or incoherent with laws and regulations that would lead to liability both on disciplinary and civil grounds. On the other hand, no enforcement agent’s office can afford the impact of such failures on their image and authority.

Although IT systems provide for predominantly automated operations in the office (case and financial management, process service, document processing, remote access to case data et cetera), the justice and enforcement process in Bulgaria still relies on paper files. Any electronic data related to an enforcement case is just an image reflection of the paper original which is solely authentic and relevant in case a dispute is raised whether a certain claim, objection, ruling or other relevant legal action has occurred or is existent as an occurrence of fact or a matter of law.

2.3.3. Estonia

The Chamber manages the electronic enforcement procedure information system and the electronic auction environment. The Ministry of Justice manages the "old" enforcement procedure register (Täitis). Enforcement agents are obliged to introduce all professional acts and register petitions for initiation of enforcement procedures and documents in the enforcement procedure register.

The enforcement agent exercises enforcement proceedings on the basis of the Code of Enforcement Procedure and delivers documents on the basis of legal proceedings acts. The main benefit of the enforcement information system (ETIS) managed by the Estonian Chamber is the possibility to make information requests from national registers and databases and to connect with the e-governance infrastructure (X-Road) of Estonia.
As an intermediate measure, the Chamber developed a middleware type of software called MISP (Mini Info System Portal). MISP makes it possible to authorise and authenticate users when accessing the state’s electronic registers and does not depend on the enforcement agents’ information system. An enforcement agent can connect to a national information system directly or via the Chamber. If an enforcement agent connects with a national information system directly, the Republic of Estonia Information System Authority audits the enforcement agent’s information system once every two years.

Except for auditing rules, there is no mandatory framework regulating the use of information technologies in enforcement offices. Various IT solutions are used. Those offered by the Chamber are used, but some enforcement agents have developed their own. The obligations of enforcement agents in using national databases are regulated with contracts between the Chamber and the state or between the enforcement agent and the state. The obligation of the maintainers of the national databases to issue data to enforcement agents is the general legal basis for access to state registers and databases.

2.3.4. Greece

The developments in Greece in the field of e-enforcement are very recent. In the “Third Economic Adjustment Programme for Greece”, signed between the Greek Government and the Troika (IMF, European Central Bank and European Commission) on 12 July 2015, the Greek Government agreed to introduce e-enforcement provisions in legislation. This resulted in changes in the Civil Procedure Code that introduced e-auction and public announcement of auctions through electronic means. Various delays, caused either by political reasons or technical problems, led to postponements and implementation was only recently finalized. Another tool that is currently operational is the electronic attachment of bank accounts. These attachments are not carried out by enforcement agents, but by Revenue Departments and Social Security Agencies.

2.3.5. Latvia

Since January 2, 2012 Latvia has organised enforcement cases through a state information system – The Register of Enforcement Cases (hereinafter – REC). The aim of REC was to simplify the activities of enforcement agents and to facilitate the recovery procedures in enforcement cases. The ‘owner’ of REC is the Court Administration. REC ensures a number of functions:

1. Record-keeping for centralized electronic enforcement cases and other cases (e.g., fact recording cases) and registration of official activities and documents related to enforcement cases;

2. Accounting and registration of sums received on the bailiff’s deposit account at the State Treasury and paid therefrom;

3. Interconnection to other state information systems, for example, to the State Register of Vehicles and Their Drivers, State Revenue Service and State Social Insurance Agency databases, information systems held by the Register of Enterprises, SLLC Latvijas Vestnesis information system, Cadastral Register, State Unified Computerized Land Register and others. These interconnections ensure the
receipt of online information in respect of the property and income of debtors registered in REC. Some registers, e.g., State Unified Computerized Land Register, ensure data monitoring. I.e., REC receives a notice as soon as the debtor registers his immovable property ownership in the Land Register, making it possible for bailiffs to record a recovery notation in respect for the debtor’s property.

The Deputy Head of the Latvian Chamber is also a member of the REC monitoring working group and a participant in the meetings on the matters of REC operation and development. CSBL also takes part in the elaboration of REC development and extension plan on a yearly basis.

For the purpose of online auctions (since 2015), a special REC module was developed – the online auction site. From July 2017, the Account Register Law took effect. From July 1, 2019 all credit institutions and payment service providers shall ensure the receipt and execution of attachment orders only electronically in online format. CSBL representatives participated in the development and acceptance of amendments to all the aforesaid regulatory enactments and the discussion of technical solutions.

Proposals were made by the Latvian Chamber with regard to the modernization of record keeping. The intention is that all data, including documents will be stored electronically. The proposal also refers to the electronic signing and service of documents which is to be transmitted from the Court Information System to REC online.

2.3.6. Lithuania

Developments within the court system are closely connected with enforcement: since 2013 parties in civil and administrative cases are provided access to the Lithuanian Court System.
ENABLE – Enabling dematerialized access to information and assets for judicial enforcement of claims in the EU (NUMBER — 721331)

LITEKO data – to store in the system of procedural documentation. On Lithuanian courts’ electronic services portal “e.teismas.lt” persons may review cases in which they are actors, listen to audio recordings of court hearings, access to the proceedings, provide to the court process documents, to prepare documents by the forms, be notified about the acceptance, found errors in the proceedings, to pay the stamp duty, court fines or costs awarded against the State.

The electronic data related to enforcement files in an enforcement agent's office are processed, entered in accounts and stored using information and electronic communications technologies in accordance with the procedure laid down by the Minister of Justice in coordination with the Chief Archivist of Lithuania.

Enforcement files and the information related to enforcement proceedings may be processed exclusively in an electronic format. In case of an electronic enforcement file, the written information received and forwarded by the enforcement agent is subject to digitization, while written documents are processed, stored and destroyed in accordance with the procedure laid down by the Minister of Justice in coordination with the Chief Archivist of Lithuania.

The parties to enforcement proceedings and the persons concerned, in accordance with the procedure laid down by the Minister of Justice, have the right to access an electronic enforcement file and obtain copies of the documents contained therein. Moreover, the person, in accordance with the procedure laid down by the law, has the right to access completed enforcement files. An enforcement agent’s office should provide the necessary technical conditions for the exercise of these rights; in addition, conditions must be created to access electronic enforcement files and obtain copies thereof.

The parties to enforcement proceedings and the persons concerned shall, in accordance with the procedure laid down by the Minister of Justice, have the right to submit to a judicial officer all documents and information related to enforcement proceedings in electronic format and use means of electronic communication. The persons submitting documents using means of electronic communication must sign them by an advanced electronic signature or prove their identity by other means (using electronic banking systems, etc.) or be registered in the Judicial Officers Information System (AIS).

A Judicial Officer’s office shall provide necessary technical conditions for the endorsement of documents related to enforcement proceedings and copies thereof by an advanced electronic signature generated by a secure signature-creation device and bearing a qualified certificate. The procedural documents drawn up by the Judicial Officer and endorsed by an electronic signature and copies thereof shall have the same legal effect as the procedural documents endorsed by hand-written signatures.

An electronic enforcement file shall store digital copies of the written documents drawn up or received in the course of enforcement proceedings, except for the documents which, according to statutory requirements, cannot be digitized, and created or submitted electronic documents. The written documents must be digitized and digital copies thereof must be moved to an electronic enforcement file not later than within three working days from their receipt at a judicial officer’s office. The digital copy must indicate the time of
digitization of a document and a person who has performed the digitization of the document. The digital copy must bear an advanced electronic signature of the person who has performed the digitization. Where, for the reasons set out in this paragraph, a written document cannot be digitized, a judicial officer shall adopt a reasoned ordinance to store documents exclusively in a written format and enter a note thereof in an electronic enforcement file.

2.3.7. Netherlands

We already mentioned that each enforcement agent in Netherlands is free in the choice of IT system and IT or software supplier. Several commercial companies offer services. On the other hand, the National Chamber plays an important role in the development of certain electronic enforcement tools. For example, with financial support of the Dutch Government, the Dutch Chamber developed the National Register for Attachments. All enforcement agents are obliged to have all attachments registered. Other services include:

- The implementation of electronic attachment under third parties such as banks;
- Access to databanks to identify assets of debtors (e.g. cadaster, motor and car vehicle register, the central domicile register, access to the social security register);
- Communication with the Dutch Official Gazette to publish the announcements on the service of documents to persons without a known address;

In these cases, the Dutch Chamber, on behalf of all enforcement agents negotiates the technical specifications for the exchange of information with the relevant registers. Those specifications are forwarded to commercial software suppliers in order to have them integrated in the various electronic case management systems. In general, all requests for information are processed through the server of the national Chamber. This means that all requests for information are registered. Such requests are, randomly, controlled every year to check compliance with data protection regulations.

Until recently, the Chamber, together with the Ministry of Justice, the Bar Association and the Council for Judiciary were involved in the implementation of the project KEI (digitalization of court proceedings). The enforcement agent is involved since the writ of summons to initiate proceedings is served personally by the enforcement agent. On 10 April 2018, the Council for the Judiciary concluded that the digitalization of courts, based on an external assessment, did not meet its expectations and that the digitalization needed a “reset” (as termed in the relevant communication from the Council). For the enforcement agents this means several steps back in the development of e-enforcement tools.

2.3.8. Portugal

In Portugal there is one principal Governmental electronic platform, called CITIUS. A special interoperability framework in the area of e-justice is missing in Portugal.

The enforcement agents have at their disposal several informatic platforms, the most important bring SISAAE. SISAAE can communicate, through a Webservice, with CITIUS. The SISAAE is an IT tool that allows enforcement agents to deal with all procedural transactions.

16 https://www.citius.mj.pt/portal/default.aspx
in enforcement proceedings. With this tool, enforcement agents can send and receive all notifications and communications between the intervening parties and third parties related to the process (the latter depending on the third party informatic conditions). With SISAAE, enforcement agents also have direct access to all databases on debtor assets such as taxes, financial, labour, social security, commercial, register of cars, boats, planes, immovable, real estate and other property, bank accounts and stock exchange shares, and so on. SISAAE allows them immediately and online to confiscate and/or make a seizure.

Organization chart of SISAAE
2.4. Use of electronic tools to monitor the enforcement profession

2.4.1. Belgium

In Belgium, different agencies are charged to ensure compliance with applicable rules:

- Professional bodies (local chambers of enforcement agents, management committees and general meetings) approve internal regulations and ensure that members comply with the law in its broadest sense;
- Disciplinary investigative bodies (local chambers of enforcement agents, management committees, courts of first instance) sanction conduct that is non-compliant with customs, practices and the legal and deontological rules and regulations applicable to the profession;
- The financial audit committee verifies the correct accounting and financial management at cabinets in Belgium every year;
- Courts (in essence, the judge of attachments) verify the legality and compliance of enforcement procedures undertaken by enforcement agents.

In general, control refers to both legal and non-legal behavior. The use of digital means in monitoring and control is limited:

- An electronic register administers the number of days of absence, disciplinary sanctions and so;
- The central register of dematerialised acts enables follow up and monitoring of the proper course of the notification of an act by electronic means;
- The digital platform dedicated to the summary procedure for recovery of uncontested debts enables to control the compliance of the procedure and the issuance of the enforceable title in digital form.

2.4.2. Bulgaria

The profession of enforcement agents is monitored and controlled by both the Chamber and the Inspectorate of the Ministry of Justice. The IT implications of such control are not direct, but rather auxiliary. Both the Chamber and the Inspectorate perform planned or incidental (upon complaint) audits of offices. The controls can be performed by document review (an enforcement agent is requested to present copies of one or several case files) or by on site checks and interviews, at the office of the enforcement agent. Neither method involves electronic access to data or transfer of electronic documents.

The Chamber monitors and controls both adherence to laws and procedures and compliance with rules for funds management, financial and accounting regulations. The Chamber performs two complete monitoring audits annually. The scope of the monitoring includes all pertinent procedural, financial and clerical/bookkeeping aspects of the day-to-day business. Normally the results of any such audits are noted in a report with recommendations for the optimization of certain procedures or avoidance of practices.

Monitoring and control by the Ministry of Justice are either planned on the basis of an annual schedule approved by the Minister, or random ones following risk assessments,
prompted by complaints or by a proposal of the Chamber Council. The scope of the audit may vary. It may be an audit of the entire enforcement agent’s business operation, or may target a particular area, such as certain procedural acts, accounting practices or a review of one or more file cases. An inspector has the right to have free access to the office and to the official archive and is also entitled to obtain copies of documents upon request. The inspector also has the right to access fiduciary bank accounts. Depending on the gravity of an eventual misconduct or statutory violations, the inspector may either suggest formal recommendations by the Minister or alternatively may file a report requesting initiation of disciplinary proceedings.

The financial data is also subject to control. In practice each PEO’s office chooses the accounting management software which is integrated as a module in the case management system. A general standard is that the final product of accounting modules has to abide by the national accounting and taxation legislation. Although in practice an auditing official would draw the necessary reference from an enforcement agent’s automated database, they would always compare the data with the paper source (accounts, invoices, electronic banking printouts), which is considered the authentic evidence for scrutiny. IT solutions in the process of control such as remote access to the enforcement agent’s database or virtual exchange of relevant documents or data are practically non-existent.

2.4.3. Estonia

The enforcement agent’s profession, including the control exercised is regulated by law. The Ministry of Justice exercises administrative supervision over enforcement agents. It checks the transactions of the professional bank account of an enforcement agent, advance payments and enforcement expenses, including the legality of fees collected, the registration of professional acts, the organisation of information technology work, conformity with requirements, obligations and terms set forth in legislation or good professional practice.

The Ministry of Justice has the right to delegate the exercise of administrative supervision to the Chamber in the following matters: adherence to prohibition on working in the same offices with representatives of other professions, adherence to office opening hours as required, adherence to restrictions on services of enforcement agents, personal performance of official duties imposed on enforcement agents by law, existence and conformity with established requirements of professional liability insurance, adherence to requirements on registration of professional acts, drawing of statistics and submission of reports. No electronic information system has been established solely for supervision which takes place according to the ad hoc principle.

The Ministry of Justice monitors enforcement agents via the electronic enforcement procedure registry and enforcement agents’ information register. As mentioned above, enforcement agents are obliged to enter all professional acts and register petitions for the initiation of enforcement procedures and enforcement documents in the enforcement procedure register. Therefore, the Ministry of Justice has an overview of the professional activities of enforcement agents.

2.4.4. Greece

The profession of enforcement agent is supervised by the Ministry of Justice and more specifically the Prosecutor of the Court of Appeal in the jurisdiction of each local Chamber. Every year the register books of each enforcement agent are inspected by the Prosecution Bureau or a Magistrate assigned for that purpose. Inspection reports are sent to the Ministry of Justice and to the local chamber. The Public Prosecutor may conduct an audit in special session. No IT system is used in monitoring and control.

2.4.5. Latvia

The district (city) courts monitor the official activities of enforcement agents. In addition, at least once a year, the books and execution files of each enforcement agent are controlled by both the Ministry of Justice and the Chamber. For this, both have access to the REC (Register of Enforcement Cases).

2.4.6. Lithuania

The Ministry of Justice and Chamber of Enforcement agents exercise administrative and financial supervision over Enforcement agents. Control focuses on compliance with legislation (including the correct use of fees) and professional conduct. The district (city) courts monitor the official activities of Enforcement agents in accordance with civil procedures.

Although the main goal of Enforcement agents’ Information System (AIS) (enforcement case management system) is to enable enforcement parties online access to the enforcement documents, cases and electronic communication, it is also used to supervise enforcement agents. In the future, the persons responsible for control (Chamber of Enforcement agents and the representatives of the Ministry of Justice) will have the possibility to use and access the AIS data for the control of Enforcement agent’s activity in a viewing mode, if required for the performance of their official duties.

2.4.7. Netherlands

The profession of the Enforcement agent is regulated in the Enforcement Agents Act. This act describes the activities of the Enforcement agent, while a regulation sets the professional standards (best practices) enforcement agents are obliged to observe as a minimum set of quality norms.

Control is carried out at several levels: by any party in a case, by the Chamber and by the “Bureau Financieel Toezicht” (BFT, Financial Supervision Office, a governmental organization responsible for the control of the Enforcement agents). BFT does not have online access to the case management system of individual enforcement agents but is entitled to have, upon inspection, access to all cases, financial data and other relevant documents in the office. On a monthly basis, enforcement agents have to send (electronically) the data with regard to the special bank account and the receipts from debtors to the BFT.
The Chamber is responsible for periodic audit of professional standards. For this purpose, external auditors, trained by the Chamber, are responsible. The audit is conducted every two years and auditors control also IT systems used in offices.

2.4.8. Portugal

In Portugal control is carried out by an independent body, CAAJ. CAAJ continuously supervises the activity of enforcement agents, particularly in relation to financial issues. For this purpose, CAAJ has access to SISAAE, the IT tool that allows enforcement agents to handle procedural transactions in enforcement proceedings.

2.5. EU legislation and recent developments

2.5.1. EU legislation and recent developments

The EU has adopted a number of initiatives that are relevant in the context of e-Justice in the EU. In particular there are e-signature and e-certification systems for enforcement agents for the commencement and execution of enforcement proceedings. With regard to e-signature, the applicable provisions are those established by Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC. At least three other EU initiatives need to be mentioned:

- **e-CODEX**
  e-CODEX is a Large Scale Pilot project that aims to improve cross-border access of citizens and businesses to legal justice in Europe and interoperability between legal authorities in the European Union by developing and piloting e-Justice services interoperability infrastructure, including for cross-border communication in judicial proceedings and between judicial authorities.

- **e-SENS**
  This project was launched in 2013 by the European Commission and involved over 100 public and private actors from 22 countries. It ended on 31 March 2017. Its job has been to consolidate and solidify the work done in previous Large-Scale Pilots, providing generic IT solutions for cross-border communication which can be applied to any policy domain. During its four years of operation, e-SENS succeeded in creating a pan-European set of IT building blocks for digital public services that embrace both national and sectorial diversity and facilitate interoperability. It provides for the integration of European directory of judicial officers/enforcement agents in the European e-Justice portal, alongside the “find a lawyer” and “find a notary” functions that are already available.

- **EJE**

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For the European judicial area to function smoothly, a necessary precondition is that a citizen or an enterprise should be able to have an enforcement order issued by a national authority in civil and commercial matters executed in another European Union country. The objective of the EJE (European Judicial Enforcement) project, co-financed by the European Union, is to improve the execution of court judgments in Europe by offering European citizens and judicial officers – the enforcement agents – the information they require for the execution of legal decisions in the territory of another Member State. A further aim of this project is to improve the mechanisms for cooperation and communication among judicial officers in Europe.

Also the portal e-justice.europa.eu offers substantial information on all cross border litigation and enforcement instruments of the EU.

2.6. e- Codex environment, ongoing projects, findings of other projects

e-CODEX\(^{19}\) has been the flagship project in cross-border e-Justice. The e-CODEX community of MS, national and EU level stakeholders and the EC have delivered and are maintaining the European cross border Infrastructure supporting an initial set of legal procedures.

Since the start of the project in December 2010 e-CODEX has transformed from a ambitious project to an operational Digital Service Infrastructure (DSI) in the judicial domain. Currently, the focus lies on the transition of the e-CODEX project towards a long-term sustainable solution for the maintenance of e-CODEX. The e-CODEX infrastructure is evolving into a sustainable e-Justice Digital Service Infrastructure (DSI), gradually extending to support new areas and new e-Justice services, catering to priorities set by the MS and the judicial community.

The e-Justice Digital Service Infrastructure (DSI) comprises a Core Service Platform i.e. a central hub of digital service infrastructures aiming to ensure trans-European connectivity, access and interoperability, and which are open to the Member States and may be open to other entities. It provides trans-European interoperable services of common interest for citizens, professionals, judicial authorities and businesses.

The infrastructure is composed of a number of cross sectorial and sector-specific building blocks (BBs) and relies upon sector specific interoperability assets such as commonly agreed, data and process models, developed and maintained co-operatively at EU level.

\(^{19}\) [www.e-codex.eu](http://www.e-codex.eu)
ENABLE – Enabling dematerialized access to information and assets for judicial enforcement of claims in the EU (NUMBER — 721331)

This report was funded by the European Union’s Justice Programme (2014-2020)
implementation of the Platform will be delivered by the EC to be then localized at national level.

The following countries among those surveyed have established or are in process of establishing generic services:

**Table. Availability of e-CODEX generic services in PMS**

<table>
<thead>
<tr>
<th>CROSS BORDER e-JUSTICE INFRASTRUCTURE</th>
<th>MEMBER STATE</th>
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<tbody>
<tr>
<td></td>
<td>BE</td>
</tr>
<tr>
<td>e-DELIVERY PLATFORM: GATEWAY (CONNECTION BETWEEN PEERS)</td>
<td>N</td>
</tr>
<tr>
<td>NATIONAL CONNECTOR (CONNECTION OF GW TO NATIONAL SERVICE INFRASTRUCTURE)</td>
<td>N</td>
</tr>
<tr>
<td>LEGAL PROCEDURES: EPO</td>
<td>?</td>
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<tr>
<td>LEGAL PROCEDURES: ESCP</td>
<td>?</td>
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</tbody>
</table>

In the specific interest area of judicial enforcement, the European Chamber of Judicial Officers (CEHJ)\(^{21}\) has completed the EJE (European Judicial Enforcement) project that explored the potential for judicial officers to communicate and receive digitally documents to be served onto parties to a trial, in accordance with Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. The project developed a platform for secure exchanges of dematerialized acts between judicial officers settled in different states and the connection of the platform to the e-CODEX infrastructure\(^{22}\) for the transmission of documents between judicial officers in application of EU procedures, first and foremost the ‘European order for payment, pilot project of e-CODEX has been considered under the Me-CODEX project. Under the same project, CEHJ has also demonstrated the concept for a European directory of judicial officers \(^{23}\), allowing any citizen to identify the competent judicial officer for the service of documents (in accordance with EU Regulation 1393/2007[2]) and to proceeding of enforcement measures in another MS. Since June 2012, the CEHJ manages and promotes the Directory to ensure its expansion and further integration into the e-justice portal, in a way similar to the “find a notary” and “find a lawyer” services.

At present, however, the sustainability of this platform is not secured partly due to the lack of a successful sustainability plan. It is, however, also important to note that a sustainable EU level directory would need to be linked to the national registries in a way that would allow information to be automatically updated when changes happen at national level.

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\(^{21}\) The European Chamber of Judicial Officers stopped its activities. These activities will be taken over by a Foundation established by the French National Chamber of Enforcement Agents and the European Union of Enforcement Agents (UEHJ). The members of, previous CEHJ, are member of UEHJ.

\(^{22}\) Please see the press release on the signature of the partnership agreement EJS / e-CODEX, /sites/default/files/imce/communiqueen_0.pdf

\(^{23}\) http://www.europe-eje.eu/en/annuaire
2.6. Interim conclusions

Although e-justice policies are in place in all countries participating in ENABLE project, the organization of e-justice, the degree of centralization of e-justice solutions, the existence of a binding legislative framework, the nature and scope of e-justice projects, the use of electronic tools to monitor the enforcement profession vary significantly. The existence of initiatives at EU level, which involve all EU MS creates an even more complicated environment. To conclude, when it comes to the interplay between national and EU policies and the development of the area of e-Justice

- There is a demonstrated need to secure exchanges of dematerialized acts between judicial officers based in different states
- The e-CODEX infrastructure can be appropriately used to securely transmit documents between judicial officers in application of EU procedures
- A European directory of judicial officers, in the form of a “Find a Juridical Officer” service, would allow any citizen to identify competent judicial officers for the service of documents and for proceeding with enforcement measures in another MS. Such a Directory should be sustainable, operated under an EU level relevant professional organization and – most importantly – be so designed as to allow for its continuous updating through properly coupling it to the national level registries of judicial officers.
Chapter 3: Access to information and authentic sources

3.1. Legislative aspects

Access to information is absolutely critical in the context of e-justice and e-enforcement. This is so because, without the existence of serious databases where information on the subject of enforcement can be found, it will not be possible to ensure e-enforcement.

Two are the critical elements when it comes to access to information: (a) The need for exhaustive content of databases and (b) the interconnection of the databases. In the PMS, one can pinpoint different levels of development of data bases that meet the above requirements.

Legislation can be used in a twofold manner: (a) as steering force for the creation of an e-enforcement system (b) as a tool for regulating the operation of the various databases, rights of access and interconnection thereof.

a) As a steering force

Legislation can be very useful in order to create a workable e-enforcement system. Such legislation will have to describe the structure and content of the databases

b) To regulate databases and their interconnection

Legislation can also regulate the rights of access and the due and legal handling of the relevant information.

On the basis of the above, one can pinpoint differing levels of development of adequate and operable databases. In particular countries like Estonia, Lithuania and Portugal have attained a very high level of access to information. In particular Estonia has an E-Land/ e-business/e-notary and other e-data bases completed and operative. On top it has built the X-ROAD which is Personal identification and signing (e-id) system. In this context the enforcement agent has e-access to all databases such as Population Register/ Land Register/ Vessel Register. The enforcement agents have full access to information by using the e-id. Access in free of charge and queries are made automatically by secure server (but the enforcement agents cover the cost for such secure server). In Lithuania there exists the so-called AIS i.e. the judicial officers information system which is centralised. The purpose of the AIS is to enable residents and business entities to participate in the process of debt enforcement and take part in auctions remotely. All enforcement agents (judicial officers) have such access on confidential basis. E-box is a critical e-delivery system active in the country. Portugal has the so-called SISAAE and CITIUS that allow for property search and enforcement and a number of registries such as Enforcement/ Social Security/ Commercial / Land / Car. All these countries follow a “holistic” approach in the structure of their databases.

Belgium is also very interesting, in the sense that it is implementing the so-called e-justice programme 2014-2019 which comprises of various sub-programmes/ projects, namely the e-Box project/ e-Depot/ Data base of judgments and Rulings/e-notification/ Pro Deo/ MaCH and Just on Web. All these constitute a holistic approach under construction,
similar to the ones of Estonia, Lithuania and Portugal. The architecture of the e-data bases programmes of these four countries share similar characteristics, in the sense that the aim is the creation of an all-encompassing system of databases. In each of these MS there exists a number of interconnected databases, on the basis of the reality and needs of each MS. Access in ensured only for certain professionals, enforcement agents among them, via authenticated ids and only in relation to a specific case each time. Therefore, there does not exist unlimited access to such information.

Other MS have a less evolved system. For example Latvia has in place a Register of Enforcement Cases (REC). It is the state information system for entering, processing and storage of data on all enforcement cases registered in the record-keeping system of enforcement agents and information on the persons, holding the status of a debtor in such enforcement cases. Apart from this progress on e-databases is made on an industry basis. In this context the REC is interconnected with other databases such as Register of Vehicles/ State Revenue Service. Latvia has a number of information systems with different level of access to relevant data. A debtor is obliged to provide explanations on his/ her financial situation to the requesting enforcement agent. Enforcement agents can also acquire such information from state registers.

In the Netherlands, access to info is allowed for enforcement agents only with specific purpose. There also exist various data bases such as Registry of persons/ income. Such info is digital or on paper as per request of enforcement agent and is obtained “real-time”. It is accessible by a secure getaway and solely accessible with a digital certificate (e-IDAS High / level: STORK 4). Each person working at the office of the Judicial Officer has access to this register, under the responsibility and supervision of the Judicial Officer. In addition to digital access to information, the Judicial Officer has the right to receive more detailed information of employment by requesting information from the company that the debtor is working for. The project is run by SNG which is a non-profit foundation. No general strategy/ agenda exists although it is said to be a political priority. The same applies to Greece, where some initiatives do exist, such as National Criminal Records/ e-filing of actions/ recording of minutes of hearings/ Tiresias database of Banks and SOLON on court cases. There are also in place certain ad hoc initiatives such as e-access to Cadastre database by enforcement agents and a recent proposal for e-id/ e-signature and e-service. The system “Solon” allows for the on-line access to information regarding the status of the pending cases. The Public Key Infrastructure (PKI) has been created following the entry into force of the eIDAS regulation. There also exist a number of other electronic datatbases that may be of use to the enforcement agents in their work.

Finally, Bulgaria has the less developed e-databases system but certain projects are under discussion (eg Unified e-justice portal with limited participation of regional courts) - also Central Debtors Register/ Public Auctions Register/ Bank Accounts Register/ National Social Security. A unified e-Justice Portal is under construction under the management of the Chamber and of the Enforcement agents Unions.

To sum up: At least three PMS (Estonia, Lithuania and Portugal) are very far ahead in the formation of a fully workable and easily accessible information system. From a structural point of view, the Estonian system seems to be the simpler and best designed, as it
comprises of certain e-data bases that are linked through the X-ROAD which is accessible to anyone with an e-id. Belgium seems to be following a similar process in a project under construction. Latvia is in an intermediate stage. The Netherlands, Greece and Bulgaria are gradually building information systems with differing levels of progress. None of them seems to have in place a concise “holistic” system and are rather taking initiatives on the spot to cover particular needs. These initiatives at least in the case of Greece and the Netherlands, emanate also from non-state entities (like Tiresias data base for banks in Greece). This picture essentially leads to the conclusion that due to the different levels of development of data bases on the PMS, it is hard to presently imagine the formation of an equal level fully accessible and workable e-data bases system in the EU.

3.2. Access to information

3.2.1. Access to information on the domicile of the debtor

The legal interpretation of address differs per country: an address is used to indicate the domicile of a person, to indicate the legal residence of a person, to indicate the residence of a person or to indicate the registration of immovable property. It is important that legislation provides a good definition of what is understood by legal residence. Internationally, the term that is nowadays used is “habitual residence”, a term that is gradually replacing the previously used term “domicile”. Habitual residence is less demanding than domicile and the focus is more on past experience rather than future intention. There is normally only one habitual residence where the individual usually resides and routinely returns to, after visiting other places. It is the place that he or she would consider to be "home". It is something less than domicile which requires a strong element of intention and something less than simple residence which lacks the dimension of some relevant permanency. However also a legal residence can be different under different state laws, depending on whether it is meant for e.g. purposes of voting, for having legal documents served, etc. When it comes to the place of registration of a company in the EU, this seems to matter more than the place of central administration. This has been clarified under a number of ECJ judgments (see for example: Centros\(^24\), Uberseering\(^25\) and Inspire Art\(^26\)). This is definitely the case, at least in the context of service of documents.

A problem that arises is the accuracy of the population registers (information with regard to the address of legal entities seems in most PMS more accurate; in general enforcement agents use the available information from the commercial register). Several countries, indicated that the information from the population register is not 100% reliable (e.g. Estonia based on a 2015 survey concluded that 12% of the addresses are inaccurate)\(^27\). One of the reasons for such inaccuracy is the lack of a sanction system for wrong registration of

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\(^24\) Centros v Erhversus-og Selkabssyrelsen, ECJ, case C-2121/97, 9 March 1999
\(^25\) Uberseering v Nordic Construction Company, ECJ, C-208/00, 5 November 2002
\(^26\) Kamer van Koophandel en Fabrieken voor Amsterdam v Inspire Art, ECJ, case C-167/01, 30 September 2003
\(^27\) According to the data disclosed by the public broadcasting portal (err.ee) on 25 October 2017, the data of the population register are not accurate. According to the data of the Estonian labour force survey of 2015 conducted by Statistics Estonia, the actual place of residence coincides with the registered place of residence in 88 percent of the cases and does not coincide in 12 percent of the cases.
the domicile. The introduction of fines for wrong registration or refusal to update the information in the population register could make the system more reliable, as we have seen in the Netherlands. In Estonia there are no sanctions for such failure.

The inaccuracy of the data in practice means that the enforcement agent needs to use several sources (registers) to locate a person (e.g. land register, register of construction or the electronic enforcement register). At least to a certain extend.

Let us take as an example the Netherlands and Lithuania. In both countries, the enforcement agent is obliged to perform research in the register in order to perform his duties. If the obligatory research is not performed, the enforcement agent may be subject to disciplinary sanctions. This research needs to be performed before the physical service of the documents. However, in the Netherlands, the enforcement agent is not entitled to use the non-public registers to locate a person. Such registers can only be used when the document is enforceable (i.e. after the service of the enforceable document to the debtor). Whereas in other countries, such as Lithuania, the enforcement agent has access to information to locate the addressee in the framework of his mission of service of document through the Enforcement agents’ Information System (AIS).

At the same time, certain Government agencies, such as the Tax Administration have more accurate data about the place of residence of a person. Taxes normally use the address from which the person made an application to the Tax Board (e.g. for refunding income taxes). Despite, not in all countries the enforcement agents have access to the data of the Tax Administration. In countries who have a centralised enforcement case management system, such as Estonia, Latvia, Lithuania and Portugal, the enforcement agent can benefit from the updates in such systems by other enforcement agents.

Sometimes (Greece) even the information from the Tax Administration (TAXISnet) is questionable. In Greece there is no official register that is accurate enough to rely on its data. Greek enforcement agents are depending on secondary sources such as the phone index and locally obtained information (e.g. through the local post office or police station).

Especially the Baltic countries have well developed IT systems that enable the enforcement agent to obtain information easily and from different sources. For example, Latvia in 2012 introduced REC, the Register of Enforcement Cases. Besides the record keeping of enforcement cases, this system is also interconnected to other state information systems, for example, to the State Register of Vehicles and Their Drivers, State Revenue Service and State Social Insurance Agency databases, information systems held by the Register of Enterprises, SLLC Latvijas Vestnesis information system, Cadastral Register, State Unified Computerized Land Register and others. These interconnections ensure the receipt of online information in respect of the domicile and property and income of debtors registered in REC. Some registers, e.g., State Unified Computerized Land Register, ensure data monitoring. I.e., REC receives a notice as soon as the debtor registers his immovable property ownership in the Land Register, making it possible for enforcement agents to record a recovery notation in respect for the debtor’s property.

A similar Enforcement Agent Information System (AIS) is operational in Lithuania and in Portugal (SISAAE). Estonia is currently developing a new information system for enforcement agents (ETIS).
Also the PMS (with the exception of Greece) who do not have a centralized database for enforcement cases, have electronic access to the centralized database of the population. For example in Bulgaria, the data of the National Population Database are accessible through remote access by a secured channel using qualified electronic signatures in compliance with the requirements of the Electronic Document and Electronic Signature Act.

In all PMS the access to the data is monitored. For example, in Lithuania, Netherlands and Bulgaria by periodical randomized samples of all inquiries by the enforcement agents. In case of violations, the Ministry may suspend the access of the enforcement agent, notify the Commission for Personal Data Protection and undertake disciplinary actions.

3.2.2. Access to information on the assets of the debtor

On 6 March 2008 the European Commission published a green paper called “Effective enforcement of Judgements in the European Union: the transparency of the debtor’s assets”\(^\text{28}\). This green paper mainly focused on possible measures at European level that can be adopted with a view to improve the access to information on the debtor’s assets and the transparency of the debtor’s assets. The reason for the green paper was that the systems in place in the EU member states are very heterogeneous. Although the green paper did not envisage any harmonization of the access to information, from the public consultation that was launched on the same date, one could conclude that certain minimum standards should be determined. According to the “Stockholm program”, the European Commission intended to develop a regulation on transparency of assets before 2013. Yet, so far, no regulation has been developed.

Nevertheless, it is obvious that the efficiency of enforcement proceedings will increase when the access to information is well facilitated. Nowadays, when it comes to the access to information, most countries have at least a basic structure for automated access available.

Among PMS, Greece is an exception. Whereas in the other countries electronic access to the cadastre, mortgage register, vehicles register, and ship register are common, such electronic access does not exist in Greece. The usual procedure is that the enforcement agent searches in person the registry books for possible assets and then submits written applications in order to receive copies of the titles he/she is interested in. The time needed to conclude the procedure depends on the authority addressed. Common reasons for delay are lack of personnel, lack of IT infrastructure, strikes and the dispersion of authorities.

\(^{28}\) Effective enforcement of Judgements in the European Union: the transparency of the debtor’s assets; 6 March 2008; COM(2008)128 final
How is the access regulated? There is a difference between those countries that work with a central enforcement case management system.

On the other hand, there are the countries that are free in the choice for case management software. An example is **Bulgaria**. The Bulgarian Chamber succeeded to obtain remote access to the various registers and databases. This has been a result of decade-drawn negotiations on “department by department” and “agency by agency” basis: each access is based on different technological means, which leads to all sorts of interoperability difficulties and glitches. Such individually agreed access make it different to organize access
to all registers, as we also see in Bulgaria: there is no complete electronic access to number of registers.

To optimize enforcement proceedings demands the State to be actively engaged in the organization of access to information. The CEPEJ 2009 Guidelines, within Europe considered leading when it comes to international standards on enforcement consider this of utmost importance:29

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

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

Co-operation between the various organs of state and private institutions, subject to compliance with the data protection legislation, is essential for enabling a speedy access to the multiple-source information on defendants’ assets. Protocols and uniform procedures should be drawn up to ensure inter-departmental co-operation, on one hand, and cooperation between these departments and enforcement services, on the other hand.

Such centralized collection of data on the debtor’s assets seems well developed in case enforcement cases are electronically administered in one case management system. For example in Lithuania. The debtor’s data on incomes and assets are mainly collected through the Enforcement agents’ Information System (AIS) (enforcement case management system). This system processes data from 30 different registers which are able to do data exchange electronically30 and also receives data from all banks. In addition, there is the Register of Property Seizure Acts. Courts, judges, enforcement agents, prosecutors, officers of the State Tax Inspectorates, the State Social Insurance Fund Board representatives, and other state institutions and officers empowered to seize property on the grounds and according to the procedure established by the laws of the Republic of Lithuania provide data for the Register of Property Seizure Acts.

29 CEPEJ 2009 Guidelines 40-42
30 The Regulation on the Enforcement agents’ Information System (AIS) (is not available in English) – list of registers from 19.1 paragraph- 19.30 paragraph. Accessible at: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.431702?jfwid=piflfev2t6
In Lithuania, the Register of Property Seizure Acts is a public register. In other countries such register of seizures (e.g. Netherlands), or, more general, a debtors-register is a major source of information.

3.3. Technical aspects

The analysis has shown that enforcement agents in most countries are provided access to non-public databases. Authorizations to access data are provided on the basis of their professional competency. In some countries, such as the Netherlands, it is also necessary to provide proof of holding a relevant enforceable document.

Investigating the availability of assets that might be attached is relevant to the cross border context in several ways. A debtor in a MS may have assets in several MS. Alternatively, a court judgement issued in a MS may concern a debtor that is a national of another MS, while the enforcement may need to be executed in the country of the debtor.

Two main groups of technical challenges are identified:

- Authorizing access to a national database in a cross-border context
- Interconnecting national Databases

Accessing databases entails a significant policy alignment challenge. In the absence of such an alignment, the solution is doing this by proxy, i.e., through a territorially competent execution agent. This line of action is further explored in chapter V.

If policy alignment exists, on the other hand, then alternative architectures and implementation scenarios may apply, all resting on the underlying requirement of preserving trust. For example, a trusted national contact point (such as a professional regulatory body) may return upon request by the foreign database service provider, assertions as to the competency of the identified and authenticated individual; a national e-court infrastructure may provide assertions as to the existence of an enforcement order.

Alternatively, MS may agree to notify Justice specific eID schemes, in which case trust could be established directly through the eIDAS legal framework. A thorough analysis beyond the scope of this project is therefore needed within the scope of a relevant future EU priority.

In addition to access challenges, the interconnection of national DBs is necessary in order to be able to execute unified searches. Interconnection systems have been implemented today for Business Registries (BRIS) and Insolvency Registries (IRS), in order to facilitate access to data at European level. A Directory service, under FAB II in the future could also be seen as a service addressing an interconnection challenge. Accordingly, a thorough analysis of what data is needed to be exchanged in what format will be needed.

Last but not least, a cross border service supporting access to national databases of non-public information, would be meaningful if sufficient national authentic sources would be made available to this purpose. The national reports indicate high level of digitization of information relevant to judicial enforcement in all PMS surveyed. While these national DBs
are generally accessed by enforcement agents upon authorization, the conditions for authorization vary across the PMS.

3.4. Interim conclusions

Access to information is critical in the context of e-justice and e-enforcement. Without secure and reliable information on the subject of enforcement, e-enforcement becomes impossible. Two further elements are critical with regard to available information: (a) the exhaustiveness of the information stored and (b) the interconnection of the databases used for distinct purposes. The analysis of the country reports shows that there are different levels of development of data bases that meet the above requirements. A small number of countries (Estonia, Lithuania and Portugal) are very advanced in the use of a fully operational information system, with distinct degrees of complexity. Another group of countries are taking steps in this direction (Belgium, Latvia) while another group (the Netherlands, Greece and Bulgaria) lack a “holistic” or integrated information system and rely on fragmented initiatives. For the purpose of the project, this means that due to the different levels of development of information systems and databases, the formation of comprehensive, fully accessible and workable e-databases at EU level does not look immediately possible. This variability remains when it comes to accessing information on the domicile of the debtor or their assets. In technical terms, enforcement agents in most countries are provided access to non-public databases on the basis of their professional competence. To conclude:

- Making it possible for Judicial Officers to access non-public national databases in another country is currently not feasible, primarily due to the great diversity of national policies and immature technological solutions permitting interconnection of DBs; as European e-Justice and e-Gov achieves greater integration, over time and enabled through EU legal instruments, this priority is likely to come into focus.

- The most realistic scenario in the short term for cross border access to information, is one where access is mediated by a competent judicial officer in the country where the search is required.

- A first priority in terms of interconnection of national DBs, the priority should be on interconnecting professional Registries of Judicial Officers, towards establishing a European Directory.
Chapter 4: E-identification, authentication and authorization

4.1. Legislative aspects

In the context of the e-identification, authentication and authorization there exist different levels of development in the PMS. As it can easily be appreciated, this is actually the “key” to entering the various databases. The edifice of databases however differs from PMS to PMS. This renders the importance of e-id relative, in the sense that although absolutely essential, it only offers access to varying information depending on the existing databases behind it.

Obviously, all countries apply Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC on e-signature (eIDAS) that concerns cooperation between Member States of the European Union in recognition and assessment of electronic identification means. Essentially, the MS had already implemented the repealed directive under national legislation as of the beginning of ’00. Directive 2003/98/EC on the re-use of public sector information as amended by Directive 2013/37/EU (‘PSI Directive’) is also applicable in all PMS. Apart from this though, the level of progress in the e-id field differs among the PMS.

In Belgium a complete e-signature project is under way. It is envisaged that once completed, judicial communication shall be made by the use of electronic signatures. Apart from this, Belgium follows the various EU initiatives. The EJE (European Judicial Enforcement) which is co-financed by the European Union is part of the Belgian reality. Its aims is to improve the execution of court judgments in Europe by offering European citizens and judicial officers – the enforcement agents – the information they require for the execution of legal decisions in the territory of another Member State. A further aim of this project is to improve the mechanisms for cooperation and communication among judicial officers in Europe. In terms of e-certification of judicial officers, the profession has an authenticated source that meets the criteria required for trusted third parties by the Belgian Commission for the Protection of Privacy (which itself is based on the European standards). This certification is carried out by means of the electronic identity card. Belgium has adopted the “Law of the Electronic Economy” which implements the eIDAS Regulation.

In the Netherlands EC Regulation 910/2014 is under implementation by the Government with a view to having extensive use of eID in The Netherlands. The main goal is an updated and more secure identification of citizens for digital access to websites of the government, healthcare and other governmental organisations (DigiD). One of the sub-projects aims at finalizing the research regarding the connectivity of cross-border eID approved documents/tools. eIDAS is broken down to two sub systems: eHerkenning and Idensys, both at a level of partial implementation. The Netherlands also participates in several EU projects such as e-SENS and e-CODEX. Cross-border e-justice services for European Payment Order and Small Claims are not implemented. No general civil matters have been implemented at this point, the e-CODEX system is currently available and accessible for civil matters on initiative of the competent authorities such as the courts. Regarding
connectivity, an e-CODEX gateway exists and is available for any judicial organisation upon request. The Dutch Civil Code provides the possibility to submit standard forms digitally, however no court has yet implemented this in regulations. No submission of claims in cross-border procedures can currently be accepted in digital form. The development of the digital submission of a claim falls under the program KEI and will be implemented after the program shall have been finalized.

In Estonia and Portugal fully-fledged e-id systems are in place. The enforcement agents have electronic access to databases by using an e-id in both countries. The Estonian digital ID is regulated in legal terms by: 1. The eIDAS Regulation. The State has established a trusted list of trust service providers. 2. The Electronic Identification and Trust Services for Electronic Transactions Act that implements in details the eIDAS Regulation on the national level. It covers, above all, organisation of supervision and specification of the general requirements arising from the Regulation. The Act provides national margin of discretion to the extent set out in the eIDAS Regulation. In addition, the Act ties the national regulation in force before to the eIDAS Regulation and ensures the consistency of use of a digital signature and a digital seal. 3. The Identity Documents Act describes the functions of an ID card as the principal internal identity document and establishes on residents of Estonia the obligation to hold a digital document. The Act also regulates the procedure for issue and revocation of other digital documents (Digi-ID, Mobile-ID).

In Portugal access is possible in relation to the use of the SISAAE. It is an informatics tool that allows enforcement agents to deal with all procedural aspects of enforcement and interact with CITIUS which is the basis state informatics platform. The enforcement agents have full access to information relating to the debtors and in particular to civil, commercial, social security and retirement registry. Such data must be kept confidential by the enforcement agent. Same facilities are used in the case of cross border request for information. In particular in the case of the preservation order provided for under regulation 655/2014, access to bank accounts is also possible for enforcement agents.

Similar is the situation in Latvia, where access at the REC and at information regarding debtors is enabled by the use of an e-id granted to enforcement agents. Such information relates to the domicile of the persons and their assets online. This can be done also in view of enforcement. In Latvia there exists a large number of information systems with different levels of access to data. Latvia is in the process of creating an inventory regarding cross border succession cases as provided for under regulation 650/2012.

In the case of Lithuania an e-id is required for auctions. The concept of a 'secure eSignature' stated in Lithuanian law is identical to the notion of an 'advanced eSignature' referred to in the relevant EU legislation. e-Signature is also admissible as evidence before a court of law. An enforcement agent shall provide necessary technical conditions for the endorsement of documents related to enforcement proceedings and copies thereof by an advanced electronic signature generated by a secure signature-creation device and bearing a qualified certificate. The procedural documents drawn up by the enforcement agent and endorsed by an electronic signature and copies thereof have the same legal effect as the procedural documents endorsed by hand-written signatures.
Trusted Lists are essential elements in building trust among electronic market operators by allowing users to determine the qualified status and the status history of trust service providers and their services. The Trusted Lists of Member States include, as a minimum, information specified in Article 1 of Commission Implementing Lithuania is not participating or planning to participate to cross border e-Justice activities (as per e-CODEX, Access to e-CODEX). The e-evidence project is under the responsibility of the Prosecutor General’s Office, but there was no possibility to find any public information.

In Bulgaria and Greece there is limited and fractional progress.

In Bulgaria e-id is used only in relation to attachment of companies’ shares. In this case there is a need for e-signature of the enforcement agent. In Bulgaria there has been adopted the so-called Electronic Identification Act which implement the eIDAS Regulation. Prior to this under the EDESA initiative, directive 1999/93 EC had been implemented in the country. Recently, two pieces of regulations were introduced, which establish the framework for electronic process in the court system. Ordinance No. 5 of 1.06.2017 of the High Judicial Council on the organization and order of keeping, preserving and accessing the electronic cases and the way of keeping the evidence and the means of evidence in the cases as well as the internal turnover and the storage of other information processed by the judicial administration. Also Internal Rules for the Use of Electronic Signature and Electronic Identification by the Judiciary Authorities, was adopted by the Supreme Judicial Council. The idea behind them is to promote dematerialization of Court proceedings. Although the Electronic Identification Act (in effect since 21 November 2016), stipulates an obligation for all entities to maintain a unified means for electronic identification, so far this is not implemented in practice. The absence of such unified and secure means of electronic identification influences the efficiency of the enforcement proceedings. Currently in Bulgaria there are many functional electronic administrative services provided by the National Revenue Service, National Social Security Agency, The Registry Agency (Including Land Registry, National Cadastre and Commercial Register). These means of access are far from unified, though. At different institutions and registers a variety of ID tools such as PIN, PIC, qualified electronic signature and etc. are requested. Obtaining, maintenance and safekeeping of all related information and devices is complicated and resource consuming.

In Greece there exists legislation on e-signature as of 2001. There is also a programme regarding accessing administrative acts (article 24 of Law 4440/2016 - electronic process for the issuance and circulation of administrative acts and documents in the public sector). In this context, all procedures for the issuance of administrative acts and other documents by public bodies such as drafting, promotion for signing, signing, incoming documents, internal handling, as well as archiving are carried out exclusively through ICT systems, using an approved electronic signature and an approved electronic time stamp. The distribution, transmission, notification and communication of administrative acts and documents of all kinds between public sector bodies is carried out exclusively through the use of ICTs. Under the “Ermis” project for enforcement agents which is under way, it is expected to soon have e-id for enforcement agents. The so-called Pubic key Infrastructure (PKI) implements Regulation 910/2014 (e-IDAS). Finally law 4314/2014 has implemented directive 2012/17/EU on Business Registers Interconnection System.
To sum up: Again divergent levels of development of e-ids are in place in the PMS. Estonia, Portugal are again at the forefront, while Latvia, the Netherlands, Belgium and Lithuania are in the process of creating a fully workable systems too. Greece is struggling towards the same direction while Bulgaria is still at the stage of designing such system. It is self-evident that the creation of an e-id system is essential for the due operation of an e-service and e-enforcement system. This shall be the first step for the attainment of a future all-encompassing e-justice system in the EU. It is our submission that the PMS and the rest of the MS should be encouraged to take the necessary initiatives without delays.

4.2. Enforcement and practical aspects

European Union. With regard to e-signature, in all MS are applicable the provisions as established by Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

Belgium. In terms of e-certification of judicial officers, in Belgium, the profession has an authenticated source that meets the criteria required for trusted third parties by the Belgian Commission for the Protection of Privacy (which itself is based on the European standards). This certification is carried out by means of the electronic identity card. As such, not only the identity but also the capacity of a judicial officer is verified each time the latter requests access to a database containing protected information or to an application enabling the use of a particular computerised procedure.

Bulgaria. Based on Regulation (EU) No 910/2014 the Bulgarian legislator adopted the Electronic Identification Act and implementing rules thereof, of an electronic identity certificate, a formalized official electronic document, represented by a generally accepted standard, issued with a fixed term of validity and containing an electronic identifier and other pertinent data. A new State Agency for Electronic Governance (SAEG) is established at the Council of Ministers, which envisages the establishment of an electronic identification center. The Agency shall cooperate and interact on e-Governance issues with the competent authorities of the Member States of the European Union, the institutions of the European Union and other international organizations. The Agency will coordinate the adoption and implementation of government standards in the area of e-Governance. The implemental regulations to the E-Governance Act allows the use of existing means of identification, and they will be able to pass through the same process through which the new electronic identity. These are, for example, the Qualified Electronic Signature (QES) and the PIC of the National Revenue Agency.

At the same time, it has to be mentioned that, as far as systems for e-certification of enforcement agents and systems for initialization of enforcement proceedings are concerned, such specialized approaches are not yet established in Bulgaria. Enforcement agents are granted qualified electronic signatures as well as other specialized (key/token) devices under the same statutory rules as other qualified individuals, entitled to administer secure electronic data transfers. Access of enforcement agents to restricted databases, based on enforcement agent’s public prerogatives is granted not based on any e-
certification but rather based on their professional capacity, regardless of whether these databased are approached via electronic means or paper requests for obtaining debtor’s information.

Recently, two pieces of implemental regulations were introduced, which establish the framework for electronic process in the court system. This includes Internal Rules for the Use of Electronic Signature and Electronic Identification by the Judiciary Authorities. Based on these implemental rules it is expected that gradually the judicial system will begin processing electronic cases based on dematerialized applications, evidence and corresponding procedural mechanisms based on the existing legislative framework.

The Bulgarian Electronic Document and Electronic Signature Act (EDESA) came into force in 2001 and granted electronic documents legal weight and legitimacy of authentic statements, which up to that moment had signed and stamped (where necessary) paper documents. Additionally, the signing with a basic, advanced or qualified electronic signature was recognized in terms of legal significance and ensuing consequences to possess the value of a handwritten signature. The electronic signature in Bulgaria warrants authenticity and veracity as well as irrevocability of the signed electronic document. A signed electronic document remains authentically signed, regardless of whether it is stored on magnetic, optical or other media, whether it is sent by e-mail or accessed via the Internet. Under present active legislation placing an electronic signature means that: (1) the signatory is identified as the author of the electronic document; (2) the signatory has agreed with the content of the document and (3) the signatory has protected the document from subsequent changes.

The most commonly used encryption system in the data access and dematerialized exchange related to the judicial enforcement in Bulgaria is the asymmetric data encryption system based on a pair of public and private keys. The private key is used to generate and encode the electronic signature using a specific algorithm. This allows only the person who created the electronically signed document to access it. The private key is associated with a corresponding public key, which allows the encrypted message to be read and the e-statement and the integrity of its content authenticated by anyone holding the public key.

**Estonia.** Access to databases and information services of the State has been performed via or without the X-Road and is based on electronic identification and authentication. The State has created one universal electronic identification and signing system. Pursuant to the Identity Documents Act, a document meant for the identification of a person on the national level (ID card) includes hardware (memory chip) for electronic identification of the person. It contains a personal confidential certificate in electronic format (personal key) that has been issued to the person and to which a public certificate also corresponds in electronic format (public key, PKI), which is in the possession of the trust service provider. Upon authorisation, electronic communication takes place between the public and secret keys of the person. Upon identification of a person, the person electronically submits a secret certificate that is protected with a PIN. The certificate is compared with the public certificate at the trust service provider’s as of the moment of identification. The same procedure takes place when an electronic signature is given. The eID public key infrastructure used in Estonia is the national PKI. This means that the State undertakes to
assure the existence and functioning of a public key infrastructure. All residents of the State are furnished with eID without additional charge.

Within the meaning of Regulation (EU) No. 910/2014 (eIDAS Regulation), the national electronic identification system corresponds technically to a high assurance level and is in compliance with the requirements that the eIDAS Regulation sets for a qualified certificate for electronic signature (DigiDoc). DigiDoc has been developed in compliance with the requirements of the eIDAS Regulation. It supports Qualified Electronic Signatures (QES), Advanced Electronic Signatures with Qualified Certificates (AdES/QC) and Advanced Electronic Signatures (AdES).

Lithuania. Lithuania has well developed electronic signature platform and comparatively widespread use of electronic signatures has been established. There is a mandatory requirement for all government agencies to accept electronically signed documents which is mostly followed. There are different interfaces to electronic signature use/creation for any resident:

- eDelivery infrastructure and is managed by State Administration of Information Society Development in Lithuania. The project is implemented by the Information Society Development Committee under the Ministry of Transport and Communications of the Republic of Lithuania along with the partner AB Lietuvos paštas.
- eID chip card based electronic signatures (capability to sign custom Adoc. format as well as creation of electronically signed PDFs). The law on Identity Cards was amended in June 2008 in order to introduce the possibility to use the personal identity card for electronic personal identification and for signing electronic documents;
- Virtual electronic signature portal (with bank ID authentication and mobile phone e-signature methods) for creation of Adoc. and PDF electronically signed files to be exchanged with any government entity or other person.
- Electronic signature portal (with) for the creation only PDF electronically signed documents to be exchanged with any person or entity, public organisation.

The concept of a 'secure eSignature' stated in Lithuanian law is identical to the notion of an 'advanced eSignature' referred to in Directive 1999/93/EC. An amendment to the law on electronic signature was adopted in 2002, which establishes that, in all cases, an electronic signature shall have the legal power of a hand-written signature, provided that the signature users reach an agreement among themselves. In this way, the notion of a 'contractual electronic signature' was introduced in Lithuanian law. eSignature is also admissible as evidence before a court of law. The law does not include any specific requirements for the use of electronic signatures in the public sector.

Since January 2009, the Residents' Register Service under the Ministry of the Interior has been issuing qualified certificates for the national eID cards. There are three certification authorities (CAs) issuing qualified certificates in Lithuania: the State enterprise 'The Centre
of Registers’ and the Residents’ Register Service. eSignatures created with the help of certificates of other certification authorities in the EU are also accepted.

Since November 2007, it has been possible to sign documents electronically using a mobile phone with a new eSignature-compliant SIM card. Those who wish to take advantage of the mobile eSignature need to replace their SIM card and sign an e-Identity agreement. Two codes, known only to the user, protect the ID key contained in the telephone from illegal use.

4.3. Technical aspects

From the analysis, it becomes evident that electronic identification, Authentication and Authorization services are prerequisites for establishing cross border services supporting dematerialization of documents for co-operation on judicial enforcement across borders.

With few exceptions, such as for example accessing public data, the parties to any transactions need to be identified and authenticated; for executing any task regulated under the profession of an enforcement agent (EA), the EA need to also provide electronically evidence of their active professional status; furthermore, the EA, most commonly needs to provide evidence of holding of an enforcement order in order to act upon a given case.

e-CODEX has so far dealt with on line transactions between citizens and the court in the framework of European Small Claims and European Payment Order procedures. No identification services have been deemed necessary and the basis of cross border recognition has been on the basis of Advanced Qualified electronic signatures and a Circle of Trust Agreement.

Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market, introduces a new trust framework and conditions for mutual recognition in public services: essentially, MS notify one or more national identification schemes that have been assessed against set criteria and they are then published by the European Commission. Similarly, the Regulation prescribes a framework for trust services including for electronic signatures. If a Member State requires a certain level of Authentication Assurance Level (AAL) and/or for electronic signatures to access an online service, it must recognise this level or higher, starting from substantial AAL / advanced electronic signatures.

The eIDAS DSI does not support Authorization as such. Trust is established between a relying party and a citizen when the citizen’s national eIDAS node returns to the electronic service provider, an eIDAS SAMPL Assertion with the 5 mandatory attributes foreseen in the eIDAS interoperability framework. There are provisions for sector specific additional optional attributes which – if included in the notified eID schemes – could possibly be supported; however, at present this level of complexity is not dealt with.

The following countries among those surveyed have established or are in process of establishing electronic identification, authentication and authorization services for cross border e-services:
Table 2. Availability of Identification, Authentication and Authorization services in MS in MS

<table>
<thead>
<tr>
<th>CROSS BORDER INFRASTRUCTURE</th>
<th>BE</th>
<th>BG</th>
<th>EE</th>
<th>GR</th>
<th>LV</th>
<th>NL</th>
<th>PT</th>
<th>LT</th>
</tr>
</thead>
<tbody>
<tr>
<td>-eIDAD eSIGN (eIDAS CORE SERVICES-CROSS SECTORIAL)</td>
<td>Y</td>
<td>?</td>
<td>Y</td>
<td>Y</td>
<td>?</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>ON-LINE PROFESSIONAL REGISTERS</td>
<td>Y</td>
<td>N</td>
<td>Y</td>
<td>N</td>
<td>?</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
</tr>
<tr>
<td>FIND-AN-ENFORCEMENT AGENT</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
</tbody>
</table>

4.4. Conclusions

When it comes to e-identification, authentication and authorization different levels of development are observed in the MS taking part in the project. Estonia and Portugal are at the forefront, while Latvia, the Netherlands, Belgium and Lithuania are in the process of creating fully workable systems too. Greece and Bulgaria are in earlier stages of design or implementation of such systems.

An e-identification system is essential for the operation of an e-service and e-enforcement system and a first essential step for a future all-encompassing e-justice system in the EU. Electronic identification, authentication and authorization services are prerequisites for establishing cross border services supporting dematerialization of documents for cooperation on judicial enforcement across borders.
Chapter 5: Enforcement

5.1. E-Judgment

5.1.1 Legislative aspects

The issuance of e-judgments is central in the context of e-justice. It constitutes the first step for the dematerialization of the judicial process. An e-judgment shall make easier the e-enforcement steps that shall follow. However, it is suggested that an e-judgment is not indispensable for the e-enforcement. This is evidenced also by the fact that in some participating MS judgments are not digitalized but e-enforcement is possible. The position in the various MS is as follows:

Estonia has a fully evolved e-justice system, the e-judgment being part of it. In Estonia this is part of the overall personal identification and signing (e-id) system which allows the public to have easy access to state information. Court judgments are also issued electronically. The judge or judges who discuss a case shall sign the judgment electronically. The office of the court adds an electronic enforcement notice to the signed judgment when the judgment is has stepped into force. All courts and all instances issue electronic judgments.

In Lithuania there is a strategy by 2020 in favour of publishing all judgments on the internet in order to combat corruption. No special reference is made as to digital judgments.

In Portugal, proceedings and judgments are digitalized. Documents are e-signed but no secure e-delivery system is in place.

Bulgaria stands at the other extreme, since no such possibility exists at all.

Greece and the Netherlands seem to start paying closer attendance to the matter. In Greece a project is under way regarding digitalization of court proceedings. The system “Solon” allows for the on-line access to information regarding the status of the pending cases. The Public Key Infrastructure (PKI) has been created following the entry into force of the eIDAS regulation. There also exist a number of other electronic databases that may be of use to the enforcement agents in their work.

In the Netherlands there is a new dual system was prepared under KEI – Kantonrecht which allow the courts to perform digital handling of cases: KEI and eKantonrecht. Under the KEI (digital procedural law) any party in a procedure should access the relevant documents in an online secure portal. This portal can currently only be accessed by a lawyer. The Judge was supposed to announce this decision in the portal and will upload the digital judgement. In case enforcement is needed, the court shall distribute an expedition of the decision to the attorney for enforcement. This expedition will be physically signed by the Judge. Until recently, KEI was only mandatory in two district courts, as a pilot. It was planned that, after the evaluation, KEI would become mandatory at every court in The Netherlands. eKantonrecht is similar to KEI and applies only to smaller (up to 25,000 euros) and undisputed cases with parties’ consent. Again it has limited application in two
district courts. Recently (10 April 2018), the Council for the Judiciary concluded that the
digitalization of courts, based on an external assessment was a failure and the project did
not meet its expectations. The Council decided that the digitalization needed a “reset” (as
it was called in the communication from the Council).

In Belgium, there exists a new project in place (e-Box) which will eventually allow the
electronic communication of all the person involved in the judicial system of the country.
The so-called VAJA system, already in place, includes e-copies of judgments which can be
sent to anyone who needs them. However, data entry is slow for the moment.

5.1.2. The e-judgment

Belgium. In Belgium, there is one procedure for obtaining an enforceable title in a
dematerialised manner. This is a mixed procedure halfway between the administrative and
judicial spheres; namely, the summary procedure for the recovery of uncontested claims.
With this procedure for the recovery of uncontested monetary claims, the legislator wished
to transpose into Belgian law the first paragraph of Article 10 of Directive 2011/7/EU on
combating late payment in commercial transactions, which provides that each Member
State shall ensure that an accelerated procedure is organised in order to obtain an
enforceable title in the event that a claim is not challenged.

The notification of an order to pay is served by the enforcement agent. If the debtor does
not respect or has not obtained the required payment arrangements, has disputed the
claim in a way that is invalid or has not responded within the prescribed time, the
enforcement agent will draw up a report of non-contestation. This report of non-
contestation is made enforceable at the request of the enforcement agent by a law officer
at the Management and Supervisory Committee with a request to the central file of notices
of attachments (fichier central des avis de saisie – FCA. The application must be submitted
using the electronic register that has been set up to check on the correct progress of this
procedure. If the law officer finds that the procedure was conducted in accordance with
the legal requirements, the report will then be electronically converted into executory
form.

Estonia. All court judgments are issued electronically. The judge or judges who discussed
the case sign the judgment electronically. The office of the court adds an electronic
enforcement notice to the signed judgment when the judgment went into force.

Lithuania. In Lithuania all the information about each case heard in courts (procedural
documents of parties to the proceedings, parties to the proceedings and other participants
in the proceedings, the course of proceedings, procedural documents of court, etc.) is
stored in the judicial information system called LITEKO. The system allows to the parties to
obtain an enforceable title done in electronic format (adoc.) through the electronic
highway.

Netherlands. When it comes to e-judgments, Netherlands was until recently in the pilot
phase. There were two different systems planned: KEI and e-Kantonrechter. The plan was
to introduce a new digital procedural law (under KEI and e-Kantonrechter) that foresees
changes in the initiation of a court proceedings. KEI would also allow parties in a court
procedure to access the relevant documents through an online secure portal. When a court
decision is issued, the judge could announce this decision in the portal and upload the e-judgement. In case enforcement is needed, the court distributes an expedition of the decision to the lawyer for enforcement. This expedition is physically signed by the Judge. However, recently the Council for the Judiciary concluded that the digitalization of courts, was a failure and the project did not meet its expectations. The Council decided that the digitalization needed a “reset”.

5.1.3. Technical aspects

Communicating a court judgment is the first step in the enforcement procedure. In a cross-border context, this would mean, providing the possibility for a creditor/litigant or defendant that is resident in Member State A to have electronic access to the court judgement issued by a court in another Member State B. In practice, this would mean that (a) country B offers such services to its own citizens and (b) would extend these services to citizens of other MS.

There is broad variation amongst MS surveyed as to the availability of services through which citizens or their authorized representatives may get access to or be sent electronically copies of the court judgements on their case. This is pursued in different ways, according to national strategies. For example, in Belgium, the VAJA system creates electronic copies of judgments and sends them by electronic means to those who need them. In the Netherlands, the new digital procedural law (KEI) will allow any party in a procedure to access the relevant documents in an online secure portal, which at present can only accessed by a lawyer; when a court decision is issued, the Judge shall announce this decision in the portal and will upload the digital judgement.

A second major pre-requisite for offering such cross-border services is that eIDAS nodes have been set up nationally in the MS involved in the exchange and that the e-judgment service provider has established a connection to the national eIDAS nodes.

Offering such services cross border would in addition require that the documents are shared over a secure environment, which may be provided by the e-CODEX infrastructure. The table 4 below should be therefore considered together with Tables 1 and 2, for deriving feasibility and maturity of this cross border service.

Table 2. Availability of national e-Judgement services

<table>
<thead>
<tr>
<th>NATIONAL INFRASTRUCTURE</th>
<th>E-JUDGEMENT WEB SERVICES</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>BE</td>
</tr>
<tr>
<td>E-JUDGEMENT WEB SERVICES</td>
<td>Y</td>
</tr>
</tbody>
</table>
5.2. E-Service

5.2.1. Legislative aspects

E-service is also central in relation to e-justice, as it highlights the commencement of enforcement procedures. Further, the e-service of extrajudicial documents is critical with relation to legal disputes. With regard to e-service, different levels of progress are noted among the participating MS. Estonia has in place legislation on e-service of documents. This is accepted provided the document carries an e-signature and is done only by enforcement agents. E-service is allowed only provided the addressee accepts explicitly such method of service at first service. Subsequent services can therefore be effected by e-mail. However it is not used particularly widely by enforcement agents. Another alternative for the recipient is to log-in in the court information system (e-file) and get any information from there. In case the recipient cannot be found, alternative methods of service a provided for, the publication with the Official Gazette being one of them. In Latvia there exists a programme for e-address in order to facilitate e-service (1.6.2018) but is not compulsory for private persons. It primarily aims at facilitating the official communication between the state and private persons. Private persons who register in the programme agree to communicate with state entities only in the electronic environment. Enforcement agents can seek on-line info on data regarding enforcement, by using the REC. Service of documents is done by sending ordinary mail or handing them to the recipient. In particular when it comes to e-service, this is allowed for electronically signed documents. All services of any kind are effected by enforcement agents.

In Lithuania service is also in paper. An enforcement agent shall, in the cases specified by law, notify participants in enforcement proceedings of enforcement actions or procedural decisions using means of electronic communications in accordance with the procedure laid down by the Minister of Justice. This can be electronic via LITEKO (court system) when the court case is in electronic format. The evidentiary power of the e-service is full if effected by a enforcement agent, with the consent of the addressee or if served on its attorney. The e-box also places a central role in this respect. Service in only done by enforcement agents.

In Greece, service is usually by paper. A publication with the Official Journal takes place in case of unknown residence of the addressee. Service can also be electronic, in case that the document carries a so-called e-signature as defined in the applicable legislation. If the document is then returned to the sender carrying an e-signature, service shall be deemed completed. The same In this case too, it is effected only by enforcement agents.

The remaining four participating MS have not taken steps towards e-service.

In Belgium service is effected by paper and by enforcement agent only. In case of unknown address of the addressee it is effected to the Crown Prosecutor and is of equal power and effect with the service on the addressee himself. An e-notification project is currently incorporated in the Judicial Code. In order to notify a document electronically, certain prior conditions must be fulfilled:

i. The circumstances of the case must allow for this.
ii. The recipient of the deed (private individual or legal entity) must hold an “electronic judicial address” or, failing this, an “elected electronic address for service”. In the latter case, express prior consent – which can be obtained by dematerialised means – is required.

In Bulgaria, service is effected in person to the addressee by private enforcement agents and is treated by courts as the most reliable one. Service by e-mail is allowed in case of urgency only.

Portugal does not allow at all e-service. In case of unknown residence of the recipient, a publication on a public access page is sufficient.

In Netherlands service is also effected only by paper. There is a new law on uniformity (KEI). Publication with the Official Gazette is effected in case of unknown residence of the addressee.

5.2.2. E-Service of documents: enforcement and practical aspects

Service of documents

Though a “highly technical and not very thrilling legal field”, the importance of a well organised system of service of documents should not be underestimated. In all participating countries, service is carried out by the enforcement agent. However, the system of service differs per country:

<table>
<thead>
<tr>
<th>Service of documents</th>
<th>BE</th>
<th>BG</th>
<th>EE</th>
<th>GR</th>
<th>LV</th>
<th>LT</th>
<th>NL</th>
<th>PT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service of documents is carried out by physical handing over (through the enforcement agent) the document to the addressee</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>The report needs to be signed by the addressee</td>
<td>N</td>
<td>n/a</td>
<td>n/a</td>
<td>Y</td>
<td>Y</td>
<td>n/a</td>
<td>N</td>
<td>Y</td>
</tr>
<tr>
<td>Service of documents by registered mail with acknowledgment of receipt</td>
<td>N</td>
<td>Y</td>
<td>Y*</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* In theory only; in practice, this method is not used

Most procedural complications arise in case the addressee cannot be found at one’s (registered) address or does not have a registered address in the country at all. In Bulgaria in such case the enforcement agent, upon the claimant’s request, forwards an application to the district court for appointment of a “special representative” of the debtor. The latter, being an attorney-at-law, acts as a legal representative in absentia of the debtor for all procedural purposes including but not limited to process service. In Greece and Belgium, if the recipient of service has an unknown address, the service shall be done to the public prosecutor. In Greece, at the same time a summary of the document served must be published in two daily newspapers, one of which shall be issued in Athens and the other at the jurisdiction of the court, otherwise the other must be issued in Athens, at the

31 As it was described in the “Study on the service of documents; comparative legal analysis of the relevant laws and practices of the Member States” report JUST/2014/JCOO/PR/CIVI/0049, 5 October 2016, DMI
suggestion of the public prosecutor to whom the service is served. In Latvia the documents to be served are published in the Electronic Official gazette if the place of residence of a natural person debtor is unknown. In the Netherlands, the documents are served to the public prosecutor and a summary is published in the electronic Official Gazette.

e-Service of documents

In most of the participating countries, e-service is not common, or limited to certain enforcement actions only (e.g. in the Netherlands e-service of documents can be done only with regard to the attachment under a third party, such as a bank). In those countries where e-service is allowed, such e-service can only be effected in case prior conditions are fulfilled. Such prior conditions refer to the existence of a “guaranteed” electronic address or with prior consent of the recipient.

**Belgium.** A dematerialized notification procedure has been introduced in the Judicial Code. In order to notify a document electronically, certain prior conditions must be fulfilled:

- The circumstances of the case must allow for this.
- The recipient of the deed (private individual or legal entity) must hold an “electronic judicial address” or, failing this, an “elected electronic address for service”. In the latter case, express prior consent – which can be obtained by dematerialised means – is required.

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32 “Electronic judicial address” means “the unique e-mail address assigned by the competent authority to a private individual or a legal entity”.

33 “Elected electronic address for service” means “any other electronic address to which notification can be made in accordance with the Judicial Code, following express prior consent of the recipient for every notification in question”.

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This report was funded by the European Union’s Justice Programme (2014-2020)
Belgium has introduced a special e-notification platform. This platform acts as:

- The authentic source for all records of notification and service: all notifications are recorded there with all the necessary additional information;
- The e-Notification platform is a communication system through which the requests for service emanating from the public prosecutor’s office are handed over to the territorially competent and available enforcement agent;
- The e-Notification is also the application that effects electronic notifications;
- (In the near future) the e-notification platform replaces the role of the public prosecutor for service of addressees without a known address.

**Bulgaria.** So far, no initiatives have been undertaken with regard to e-service of documents.

**Estonia.** Though there is a court information system (e-File) that enables e-service, this system is only used by courts. As a rule, Estonian enforcement agents do not use e-service, except for electronic mail. It is possible to use the service of a postal service provider for sending an electronic registered letter. The postal service provider sends a notice about an electronic document to the addressee’s e-mail address and adds a reference (link) to the document. The addressee receives the document if they enter their electronic ID after having clicked on the reference.

In judicial proceedings (civil, criminal, misdemeanour and administrative matters), electronic delivery is possible. This is performed via the information system of courts (e-File) after a person has identified themselves to the system electronically. In the information system it is possible to express one’s will to receive a procedural document. In cooperation with the Ministry of Justice and the Chamber, a new information system for
enforcement agents (ETIS) is being prepared, which will operate as the enforcement register provided by law. The enforcement register would ensure availability of procedural information to involved persons and State supervision over enforcement proceedings. One of the planned functionalities of the ETIS is the delivery module.

**Latvia.** Latvia will in future introduce the official electronic addresses (E-address). The aim is to ensure a guaranteed, safe and convenient official communication in the electronic environment between state institutions and private persons. The E-address solution will be ensured by the E-address information system - the electronic communication and electronic document flow environment, which is safe and reliable for E-address account users. The 1st phase of the E-address solution will be created at workplaces of the clients of the State administrative service portal latvija.lv (hereinafter – the “Portal”) and the single module of State information systems.

For private persons there will be created a single electronic environment, in which they will receive all correspondence due to them from state institutions, regardless of which state institution intends to contact them and on which matter, at the same time ensuring analogous letters sent by registered mail. The use of E-addresses will be mandatory for state institutions, merchants and soldiers in reserve. Natural persons not registered as merchants may use E-addresses voluntarily. E-addresses will start operating from June 1, 2018, the date when soldiers in reserve and state institutions, except for courts, enforcement agents and administrators of insolvency proceedings, shall start using E-addresses. Courts, enforcement agents and administrators of insolvency proceedings shall start using E-addresses from January 1, 2020 or may start using them voluntarily from January 1, 2019.

**Lithuania.** In general, in Lithuania, the enforcement agent is able to serve a document electronically (to the enforcement case parties or other persons) under certain conditions: the prior agreement of the addressee is required (except for public state institutions and lawyers). An acknowledgment of receipt is not necessary but is desirable to validate the service). Lithuania has different internet portals that can be used for e-service: www.teismai.lt; www.antstoliai.lt and special information systems: The Court Information System (LITEKO), the Judicial Officer’s Information system (AIS) and eDelivery (e.Boxes) (called e.pristatymas). The court information system (LITEKO) can be used for delivery in addition to the other ways of deliver. The recipient of the procedural document can log in with his/her ID card and receive the document. If the court document was not delivered to the person in his place of residence, the court publishes a notice on the special section of the website www.teismai.lt.

Service of Documents can also be effected through the Judicial Officer’s Information System (AIS). AIS functional structure consists of subsystems and different modules. One of these models is the Module for the Service of the Documents. In this Module, the parties of the executing proceedings (the debtor, the creditor) or their representatives by electronic means are informed about the electronic case (file) document sent to them by enforcement agent. In the module it is possible to review all electronic case (file) documents and confirm receipt of these document. In addition, via this Module the enforcement agent can generate a public call to the debtor for implementation of the court
decision to be submitted and public announcement. The parties of the executing proceedings (the debtor, the creditor) using this AIS system Module can also submit all documents electronically to the enforcement agent. In essence, this model implemented two-way electronic data exchange.

The last method, eDelivery provides is a hybrid document delivery system in Lithuania: The information transmitted electronically to the Lithuanian Post is automatically printed, placed in envelopes and subsequently delivered to the recipients by registered mail. Log in to the e-delivery system - www.epristatymas.lt - can any resident or business of Lithuania. Electronic shipments via the e-delivery system are sent free of charge.

5.2.3. Technical aspects

The process, parties involved in the process, information to be exchanged, formats and forms and other relevant matters in the cross-border service of judicial and extrajudicial documents in civil or commercial matters in the MS is regulated by Regulation 1393/2007. As such, there is sufficient clarity on the details of the process to be dematerialized. It is therefore natural that the cross border e-service of documents is at present being considered to be supported by the e-CODEX infrastructure.

E-Service of documents is not common amongst MS surveyed, there are however pilot and limited scale deployments in some MS. It should be however noted that for deploying cross border e-service of document it is not necessary that MS has a nationally deployed portals for e-service of documents. What is necessary for MS to achieve is to take all the organisational and technical steps to establish a connection to a potential future European e-Service of Documents Platform which may be envisaged as a decentralised network of national portals communicating with each other via e-CODEX. This can entail the installation of an e-CODEX access point, if not already available, and connecting it – where they exist - to national portals that support the specific workflow. A collaborative EU level activity for developing such a platform is yet pending.

Table 4 below should be therefore considered together with Table 1 when assessing feasibility of the cross-border service. E-CODEX is currently evaluating the relevance of eIDAS services to its currently supported legal procedures. It is anticipated that identification services will in any case be needed to be supported by the Platform.

Table 4. Availability of national workflow systems supporting e-service of documents

<table>
<thead>
<tr>
<th>NATIONAL E-SERVICE OF DOCUMENTS SERVICES</th>
<th>BE</th>
<th>BG</th>
<th>EE</th>
<th>GR</th>
<th>LV</th>
<th>NL</th>
<th>PT</th>
<th>LT</th>
</tr>
</thead>
<tbody>
<tr>
<td>e-Service of Document workflow systems</td>
<td>N</td>
<td>N</td>
<td>Y*</td>
<td>Y*</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>Y*</td>
</tr>
</tbody>
</table>

5.2.4. Conclusions

The e-service of documents depends on the existence of e-signatures and the consent of the addressee for such kind of service. This applies, with small variations in the MS participating in the project where e-service is possible (Estonia, Latvia, Greece and Lithuania), while in others this is not possible. A central problem to the full
operationalization of e-service is the prior consent of the addressee. This can be addressed only through a “holistic” approach whereby all residents in a MS shall have one “official e-address” for service, as of the day that their habitual residence in a MS is established. This solutions does not appear feasible at the moment and presumably this shall continue to be the case in the coming years. On this basis, one cannot expect that e-service shall be used extensively and most probably it will remain the least developed e-justice element for the coming years. An aspect of e-service that can be easier accomplished, concerns addressees with unknown address. In this case, it makes sense to replace nominal service in various MS, with nominal e-service in an official, state run e-platform.

5.3. Attachment on movables

5.3.1. Attachment on movables, legislative aspects

Estonia, Lithuania and Portugal are pioneers in this field. All three have a fully workable legislation and system for e-enforcement on moveable property. In the case of all three, attachment is effected only by enforcement agent.

In Portugal the enforcement agent is obliged to do the attachment electronically. The procedure is regulated by art. 751 of the CPC. In particular, it is for the creditor to choose which asset shall be first seized.

In Estonia, seizure is usually digitally signed by the enforcement agent (although it can still be in paper form).

In Estonia e-attachment is provided for in most cases and in Lithuania e-attachment on moveable is effected with the LITEKO platform. Attachment of the movable property (registered or not) is realized by sending the entry regarding recovery (seizure act or restriction on disposition) to the Register of Property Seizure Acts through the Judicial Officer’s Information System (AIS). The data of this Register of Property Seizure Acts must be followed by all other registers.

The rest of the participating MS have not made particular progress in this respect. In Belgium there is partial dematerialization regarding only contested claims. Apart from this, the procedure is not dematerialized.

In Bulgaria e-attachment on movables is possible only with relation to companies’ shares. For physical attachment a service on the debtor in required.

In Latvia the only field where this is possible is the attachment on vehicles by using the vehicles registry. Such attachments prohibit sale of the vehicles by their owners. All other type of attachments on movable property is done physically.

In Greece and the Netherlands no related provision or facilities are in place. In the Netherlands, the reason is that under law the enforcement agent must first visually identify the moveable good. After carrying out an arrest on moveable goods, the Judicial Officer will draw up a deed and physically sign this deed, followed by personal service of this deed to the debtor.
5.3.2. Attachment on movables: enforcement and practical aspects

**Belgium.** Belgian law does not provide for the seizure of a debtor's personal property by digital means. Neither is the public sale by electronic means, organised by law. Some enforcement agents however enable potential buyers to bid both physically at the auction and by electronic means. The lack of a legal framework has the effect that there is no uniformity as regards how to proceed in the case of recourse to the mechanism of electronic auctions.

**Bulgaria.** Presently there are neither statutory basis nor practical applications of electronic means with regard to the attachment procedure on movables. The attachment on certain movables needs to be registered in specialized administrative registers (e.g. motor vehicles, ships, airplanes and etc.) or an administrative register for collaterals (The Special Pledges Register, Bulgarian Register of Shipping and etc.), however, such legal notifications and other pertinent operations are performed via submission of paper documents and respectively – via personal process service or mail. No electronic means of communication or data transfers are applied.

**Estonia.** The enforcement agent prepares a property seizure act about movable property, which may be on paper, but as a rule is prepared electronically and signed digitally by the enforcement agent. The enforcement agent delivers the seizure act to the debtor. If the movable property is entered in a register, the enforcement agent will send the seizure act to the keeper of the relevant property register, who adds a notation on prohibition of disposition about the debtor’s property to the register entry (the Traffic Register, Commercial Register, Central Register of Securities).

Except for items of small value (less than €100), the enforcement agent is obliged to sell the seized movable properties and real properties at a public electronic auction. If an electronic auction is not possible for reasons not dependent on the enforcement agent, the auction may also be verbal. An electronic auction takes place in the electronic auction environment that opens in the web environment. The duration of an electronic auction is determined by the enforcement agent. The determined duration of an electronic auction may not be shorter than five days.

**Greece.** The seizure is carried out by the enforcement agent. The inventory report is issued in front of an adult witness. The confiscated item is assessed by the Enforcement agent or an expert whom the Enforcement agent hires at his discretion for that purpose. The auction date is mandatory seven (7) months but not later than eight (8) months from the date of the seizure. The public sale is carried out by the notary.

A new procedure of public sale through e-auction has recently been introduced. An e-auction is carried out by a certified for that purpose auctioneer (notary) by means of electronic auction systems. The ownership, administration and management of electronic auction systems is the responsibility of the competent local Notarial Associations. Electronic auction systems contain all the information from the extract of the seizure report. The online auction involves bidders who have previously been certified in electronic auction systems.
Each candidate bidder shall declare his participation in a particular auction in accordance with the terms thereof after having paid the requested guarantee by 15:00 hours two working days prior to the specified auction date. The charge for use of the systems for conducting the electronic auction is paid by the auctions outbidder. The deposit of the guarantee, the fee for the use of the electronic auction systems and the auction proceeds is made exclusively in a special bank account which is kept by the auctioneer at a Greek Banking Institution. Each possible tenderer appoints a proxy resident in the area District Court of the place of enforcement until 15:00, two working days prior to the specified auction date, otherwise the Register of the Court of First Instance of the place of enforcement is regarded as proxy. The e-auction auctioneer after the deadline set in the previous paragraph checks the submitted files, ascertains until 17.00 of the previous day of the e-auction, the accordance of the formalities specified above and submits to the electronic auctioning systems a list of the candidate bidders that are entitled to participate. The electronic auction is carried out on the custody of a notary within the region where the seizure, who has been appointed for auction. The e-auction is conducted before the same notary initially appointed and in the case of multiple seizures. Electronic auctions are held on a Wednesday or Thursday or Friday, from 10:00 to 14.00 or 14.00 to 18.00. In the case of a last minute bid, i.e. from 13:59:00 to 13:59:59 or 17:59:00 to 17:59:59, a five-minute extension is automatically granted. For each bid submitted in the last minute of the extension, a new automatic five-minute extension is given if a higher bid is submitted. Extensions may be continued for a period of not more than two hours from the scheduled time of the electronic auction, and after that period the bidding process is completed.

An electronic auction may not be held from 1 August to 31 August, and the previous and next week of the election day. This prohibition does not exist if the auction concerns ships, aircraft and items that can be damaged. An electronic auction is an open-ended type in which successive bids are submitted. Participants bid continuously higher than the maximum bidding until the auction deadline. All the submitted bids are recorded in the electronic systems.

With the submission of the bid, the bidders are immediately informed by the system for the amount of their bid, the exact time of submission, and that it has been recorded. Each bidder is informed of the maximum bid submitted. All bidders taking part in an electronic auction are immediately informed by the system of any suspension, termination or discontinuation of the auction, as well as its cause. At the end of the bidding process, the result is announced via the electronic systems.

Those who have participated in the online auction are informed without delay of the result. The auctioneer compiles the report, by awarding the auctioned items to the outbidder. In the electronic auction of moveables, the outbidder has the obligation to pay the auction proceeds and fees to the special bank account of the auctioneer no later than the third working day after the auction. Only upon payment of the auction proceeds and fees, the award shall be handed over to the outbidder.

The auctioneer must deposit the auction proceeds to the Consignments and Loans Fund, not later than the fifth working day after the auction. The deposit of the auction is not subject to seizure, does not fall upon bankruptcy procedures and is not subject to the
obligations imposed by the State to safeguard its interests. Within the next working day from the expiration of the aforementioned deadline, the auctioneer shall remit the use fee to the relevant Notarial Association of which he is a member.

In the electronic auction of immovables, the outbidder has the obligation to pay the auction proceeds and fees to the special bank account of the auctioneer no later than the tenth working day after the auction. The auctioneer must, deposit the auction proceeds at the Consignments and Loans Fund, no later than the twelveth working day after the auction. The deposit of the auction is not subject to seizure, does not fall upon bankruptcy procedures and is not subject to the obligations imposed by the State to safeguard its interests. Within the next working day from the expiration of the aforementioned deadline, the auctioneer shall remit the use fee to the relevant Notarial Association of which he is a member.

**Latvia.** Attachment of the movable property of a debtor means the inventorying, sealing, appraisal and guarding of such property. Enforcement agents shall sell the attached property at auctions, but if requested by the judgment creditor and the debtor does not object, enforcement agents may transfer the attached property to a trading undertaking for sale pursuant to terms regarding commission. The current CPL regulation provides for organizing two face-to-face (oral) auctions – 1st auction is organized based on ascending bids, but if it is recognized as not taken place, the 2nd auction shall be organized based on descending bids. If the 1st or the 2nd auction is declared as not taken place, the creditor has the right to retain the attached property at the initial price of the auction, informing the enforcement agent thereof in writing within two weeks from the auction date.

Amendments to the Latvian legislation, providing for the movable property sale only at electronic auctions, are presently in the process of adoption. Such e-auctions will be organized following the same procedures as for electronic auctions for immovable property.

**Lithuania.** Attachment of the movable property (either registered or not) is realized by sending the entry regarding recovery (seizure act or restriction on disposition) to the Register of Property Seizure Acts through the Enforcement Agent Information System (AIS). The data of this Register of Property Seizure Acts must be followed by all other registers, i.e. if the debtor wants to (de)register a tractor or a vehicle, he will not be able to do so, because the Tractor Register and the State Register of Vehicles will see that this vehicle is seized.

The debt recovery from the property rights is carried out after the Enforcement agent has arranged to arrest the property rights of the debtor. This arrangement is tantamount to a property seizure act. The attachment of claims related to cash benefits shall also apply to future payments. The enforcement agent has the right to oblige the debtor to declare within a specified time frame, on what basis and to what extent the property right belongs to the debtor from which recovery or to whose property rights the other persons claim, whether or not the court is conducting proceedings on property rights, or is recovered from property rights.
Pursuant to Lithuanian legislation, the real property of a debtor and other registered property, which exceeds a value of 2,030 euro, as well as other movable property which exceeds a value of 30,000 euro, is realised by e-auction.

**Netherlands.** Under Dutch law, movables can only be seized in case the enforcement agent has visually identify the moveable good. For this reason, an electronic arrest on moveable goods is not recognized under Dutch law. The public auction is performed by way of physical auction. Netherlands does not have a system of e-auction.

**Portugal.** Under Portuguese law, the enforcement agent is obliged to electronically attach the debtor’s property and assets, unless the movables are not subject to registration. The attached goods are sold through the electronic auction platform developed and administered by the Portuguese Chamber of enforcement agents. The enforcement agent uploads the information on the seized goods in the e-auction system. The term of the e-auction is fixed for a day on which, under the procedural law, the courts are open for a period of not less than 20 days nor more than 60 days after payment of the placement fee. The closing time of the auction is fixed between 9.30 and 12.30. Any user registered in the platform can submit a proposal on the assets that are auctioned, up to date and time limit, without prejudice to the following items:

- If there is a proposal submitted within the last five minutes before the cut-off time initially set, the time limit shall be that of the registration on the platform of the last bid, plus five minutes;
- The cycle of submission of bids and subsequent deferral of the deadline, ends only after five minutes have elapsed on the submission of the last bid.

In case no bid is done, or the bid is lower than the minimum price, the good diverge to private negotiation, within the same platform [www.e-leilões.pt](http://www.e-leilões.pt). The decision on the sale is communicated electronically with the creditor, the debtor and the creditors.

### 5.3.3. Technical aspects

From a technical perspective, this part of the cross-border workflow is seen as a collaboration and a “transfer of case” challenge i.e. if assets are located in more than one MS the authorized representative of the creditor may need to collaborate with one or more competent agents in other MS; this may entail also transferring the enforcement order to an enforcement agent that has the territorial competence to act on attachment to movables. The same holds true for immoveables and bank accounts, delegating searches and acts of attachments.

To the extent that this is not a public service the e-CODEX infrastructure as such may not be the most appropriate to explore; As a use case however it may present an investment interest for a Value Added service provider to develop and offer a secure collaborative platform and services on a commercial basis. This collaboration Platform may interact and exchange with the European e-Service of Documents Platform, on the formal aspects of the workflow, such as for example, communicating enforcement orders and providing authorizations.
A cross border aspect to e-Auctions has not been explored to this stage and it would have been immature to initiate such a discussion in the absence of a robust EU level electronic Identification and Authentication infrastructure for European citizens accessing cross border services. eID schemes are now being notified and as of September 2018, MS will recognize eIDs of citizen from another MS, which are part of a notified eID scheme; to the extent that no other legal barriers exist, this recognition will constitute a major enabler for citizens from one country participating directly or through their legal representatives in cross border e-auctions.

For this participation to be facilitated however it will be necessary that a European e-Auction Platform is established, providing information on national rules, supporting notifications, and broadcasting of Auction relevant information and preferably in a multilingual context. As this is publicly available information, the use of the e-Codex infrastructure is not relevant, and again, this an area of possible consideration by Value Added Service providers.

A cross-border electronic Auction service would furthermore require that:
- the MS where the property is auctioned is operating an electronic e-Auction system.
- that the MS of origin of the bidder has notified an eID scheme

Table 5 . Availability of national e-Auction systems

<table>
<thead>
<tr>
<th>NATIONAL e-AUCTION SERVICES</th>
<th>BE</th>
<th>BG</th>
<th>EE</th>
<th>GR</th>
<th>LV</th>
<th>NL</th>
<th>PT</th>
<th>LT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Y</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
</tbody>
</table>

5.3.4. Conclusions
The level of establishment of e-systems allowing attachment on movables is far from advanced in the member states participating in the project. It looks that limited progress can be expected in the coming years, not only due to the lack of resources but, most importantly, as this area does not seem to be a priority. The design of the e-justice system should take this into account.
5.4. Attachment on immovables

5.4.1. Attachment on immovables, legislative aspects

In the case of immoveable property, e-attachment is generally more forward in comparison to e-attachment on moveable. In particular four participating MS, namely Estonia, Latvia, Lithuania and Portugal have an evolved system on e-attachment.

In Estonia it is done electronically in most cases by the enforcement agent. In order to seize real property, the enforcement agent prepares a property seizure act about immovable property, which may be on paper, but as a rule is prepared electronically and signed digitally by the enforcement agent.

In Latvia and Lithuania, attachment on immovable property can be made electronically, by using the respective platforms REC and LITEKO.

In Latvia the enforcement agent first informs the debtor and then files with REC an on-line seizure of the property in question. After this, the enforcement agent conducts any mortgaged creditor and requests data from local government. After this he/she informs co-owners and other persons in favour of whom other relevant entries have been made.

In Lithuania the process is as follows: The Judicial Officers seizes the debtor's Immovable property by signing with e-signature a property seizure act and transmitting it through the Judicial Officer's Information System (AIS) to the Register of Property Seizure Acts and Real Property Register and Cadaster. The evaluation of immovable property shall be made by a certified immovable property valuator upon the request of a Judicial Officer, determining the value of forced sale of the immovable property. The value of forced sale is 80 % of the market price. This value is determined as the initial price at e-auction.

In Portugal it is compulsorily effected electronically by the enforcement agent. The rest of the participating MS are more backward in this field.

In Belgium the process is not dematerialized.

In the Netherlands there is also partial dematerialization. The deed for auction is registered electronically in the Cadastre. The attachment is carried out by the enforcement agent. The enforcement agent then draws up a deed of arrest and needs to sign it physically in order to have the arrest formally carried out. After the formalities, the deed is electronically registered by the enforcement agent in the public registry of the Cadastre. By registering the deed, a public prohibition of disposition in respect of the debtor’s property is created. In order to register the deed in the Cadastre, the Judicial Officer has access to a software tool provided by the Cadastre named web-ELAN. The document that needs to be registered has to be in regular PDF format. When uploading the file via web-ELAN, the Judicial Officer needs to digitally sign the file by using his personal code which is connected to a personal public key infrastructure certificate.

In Greece and Bulgaria there exists no such legislation or facilities.

In Bulgaria the cadaster system is digitalized and accessible on-line.
5.4.2. Enforcement and practical aspects;

**Belgium.** Belgium does not have the possibility of an electronic attachment on immovables. As regarding the public sale, it is possible to do this via an electronic auction. The public sale of immovables is done by the notary. The electronic auction procedure works as follows:

- Registration of the participant to the e-auction: the registration is done with through the applicant’s electronic identity card (eID) and the associated PIN by means of a card reader. This allows the notary, who is monitoring the sale, to ensure that the potential buyer has the capacity to enter into legally binding contracts.
- The registration and authorisation issued the registered person is able to bid. The other candidate-buyers will see that person appear on the website and may eventually outbid them.
- Every electronic auction must be validated. Specifically, each of them must be signed as and when, using the eID and PIN. It is possible to bid electronically in two different ways:
  - either by introducing an amount greater than that indicated on the screen. Once signed electronically, this amount is confirmed as a bid. Another interested party can then make a higher bid, thus leaving the other interested persons (including the other bidders) free to place a new bid and so on until the close of the sale;
  - or by automatic auction. The bidder must then indicate the maximum amount he decides to offer for the property. The system will automatically outbid "in successive instalments" any new bid up to the maximum price allowed. In both cases, an e-mail will inform the prospective buyer of the progress of the auction.
- The bidder who has issued the highest bid at the close of the auction will automatically become the owner of the property.
- The sale process can be entirely electronic or mixed, combining an electronic sale with an indoor session. In this last scenario, after a predetermined number of electronic bids, the notary continues the sale in a traditional sales room or some other given place. It will always be possible to bid physically.

In both cases, the entire auction process can be followed online.

**Bulgaria.** The attachment of immovables in Bulgaria cannot be done electronically. Titles and orders of distraint are digitalized in the land register database through scanned copies in most cases. The mechanism of directing an enforcement against such property however is applied via filing of the respective request on behalf of the enforcement agent on paper at the respective regional office of the Registry Agency.
With regard to electronic auctions of debtor’s property in Bulgaria until recently they were part of the future. The Bulgarian Parliament adopted in October 2017 amendments to the Civil Procedure Code, enabling the sale under the rules of an electronic public auction.

**Estonia.** As a rule, the property seizure act for immovables is prepared electronically and signed digitally by the enforcement agent. The enforcement agent delivers the seizure act to the debtor and sends the request for entering a notation on prohibition of disposition in respect of the debtor’s property to the keeper of the Land Register via the Land Register’s information system. The enforcement agent does not make the entry about the seizure in the Land Register himself; instead, it is made by the register’s judge (the Land Register is kept by county courts) if the submitted documents comply with requirements.

The enforcement agent sells real property publicly mandatorily at electronic auctions. If nobody takes part in the auction or no written or electronic bids are submitted, or no bid is made that at least equals the starting price, the enforcement agent announces that the auction has failed. The collector may demand the organisation of a repeat auction if an auction fails. Whilst the first auction may only be electronic, the repeat auction may be either verbal or electronic as decided by the enforcement agent.

**Greece.** Seizure of immovables is done by writing a report from the enforcement agent in front of an adult witness. The confiscation of the mortgaged property can be done either against the debtor or against the third owner or against the person who is legally entitled to the mortgage estate after the servicing report has been notified to the debtor and the third party. After the enforcement agent’s on-site visit, the seized property must be accurately described with regard to its type, location, boundaries and extent, with the components and fixtures seized so that there is no doubt about its identity. For the purpose of assessing the value of the property being seized, account shall be taken of its commercial value, as determined at the time of the seizure. In order to impose the attachment and the description of the property, the enforcement agent has the right to enter the property, even if it is owned by a third party.

The enforcement agent shall, within ten (10) days of the attachment, hand over to the auctioneer the enforceable title, the servicing report on the delivery of the execution order, the seizure report and the servicing reports to the debtor, the third principal or the possessor and the land registry or whoever keeps the register of ships or aircraft, as well as the statement of encumbrances, who draws up a report on all this. An extract from the seizure report, shall be issued by the Enforcement agent and published until the 10th day after the attachment on the auction site of the Bulletin of Judicial Publications of the Legal Department of the Unified Independent Employees Fund.

The e-auction procedure is similar to the e-auction for movables (see paragraph 5.3.2).

**Latvia.** The attachment on immovables in Latvia is done electronically. The Register of Enforcement Cases (REC) in Latvia is linked to the State Single Computerized Land Register. Through the REC, the enforcement agent submits electronically to the land register office a corroboration request for making an entry on recovery. Recovery entries delay any voluntary corroboration made by the owner, e.g. prohibit immovable property owners from re-registering their property in favour of any other person.
The public sale is performed electronically. The electronic auction website is a module of the Register of Enforcement Cases, which ensures:

- preparation of auction announcements, their sending for publication to «Latvijas Vēstnesis» and placement at the electronic auction website;
- registration and authentication of participants in auction;
- authorization of registered auction participants;
- payments required to participate in auction;
- bidding;
- preparation of a statement of auction;
- internal data exchange between the enforcement agent and registered users;
- system security monitoring.

An enforcement agent does not draw up a statement of auction. It is generated by the REC system. After the highest bidder has paid the amount due from him, an enforcement agent submits electronically a statement of auction together with an application for approval to district (city) court land register office, within which operation territory the immovable property is located, and requests to corroborate ownership in the land register in the name of the acquirer.

**Lithuania.** The enforcement agents seizes the debtor’s Immovable by signing with an e-signature the property seizure act and transmitting this document through the Enforcement agent’s Information System (AIS) to the Register of Property Seizure Acts and Real Property Register and Cadaster.

The e-auction system is part of AIS. Enforcement agents organize all immovable and movable property auctions through the electronic auction. Lithuanian and foreign citizens and legal entities with electronic banking systems available in Lithuania or who possess an electronic signature issued in Lithuania can participate in the e-auction. The procedure of registration of participants and conducting an auction is described in the electronic link provided in the announcement. By logging in to the e-auction portal by means of e-baking or electronic signature and following this link, the participants can familiarize and confirm electronically that they have familiarized with the procedure of conducting an auction. Here the participants can also enter their contact details (name and surname, personal ID number or code of legal entity, e-mail address, etc.). The validity of the required documents will be verified via an automatic link to the Residents’ Register. The system will then generate a payment order for payment of the auction participant fee. The registration will be completed once the payment has been made.

The e-auctions are public; however the electronic processes ensure confidentiality of the participants. The bidders’ identity is known to neither the potential buyers nor the enforcement agent organizing an auction. The registered participants are only able to see their own bids and the highest bid in the electronic auctioning system. The enforcement agent will receive information about the highest bidder only when the auction ends.
The enforcement agent organising an auction will receive an electronic message about the winning bidder within one business day following the end of an auction. The winning bidder will receive a message regarding an auction won. The enforcement agent will draw up a property sale certificate within three business days following the payment of the full price of property. In accordance with the Code of Civil Procedure, once the buyer signs this certificate, the right of ownership of the auctioned property will be transferred to the buyer.

Since November of 2015 auctions, published by the enforcement agents, are carried out in a joint portal www.evarzytynes.lt, where bankruptcy administrators’ auctions, auctions of municipalities, auctions of Turto bankas (Bank of Property) and auctions of other institutions, executed by Turto bankas (Bank of Property) are carried out.

**Netherlands.** For the attachment on immovables, the enforcement agent draws up an act. The act is signed with a written signature. After these formalities, the enforcement agent uploads the act electronically in the public registry of the Cadastre. In order to register the act of seizure in the Cadastre, the Enforcement agent has access to a software tool provided by the Cadastre named web-ELAN. The document that needs to be uploaded is in regular PDF format. When uploading the file via web-ELAN, the enforcement agent uses a digital signature. The PKI certificate is personal and with security level e-IDAS High.

As in Belgium, in the Netherlands the notary performs the public sale of immovables. The auction of immoveable goods can be performed both physically and digitally. The digital implementation of the auction of immoveable goods has been implemented in the Dutch Civil Law on the 1st of January 2015 and is now increasingly used as a standard for auction. The digital auction functions mainly under the same regulation as a physical auction, yet the announcements are primarily done via a website, in addition, the (exceptional) terms and conditions of the auction are published on the website which holds the auction and, in addition, has to be sent by post to the stakeholders. Instead of the date and time of the auction, the notary shall publish the time frame within which the bids can be performed. After this bidding period has ended, the auction is closed and continues on to the next phase (by performing the descending bid).

5.4.3. Technical aspects
The considerations described under section 5.3.3. apply.

5.4.4. Conclusions
Full dematerialization of the process of e-enforcement on immovable property is not an easy task: for one matter, it requires a fully digitalized cadaster, which is not in place in several MS.
5.5. e-Auction

5.5.1. Legislative aspects

This is the final step required for e-enforcement. This is possible in all participating MS with the exception of Bulgaria, at least partially, with respect to specific types of assets (companies’ shares). All the rest of the assets are put to auction in the “old fashioned” way. Proportionality of enforcement is not provided under law but it is used in practice for “ethical” reasons.

In Belgium there is no provision on electronic auction or sale regarding moveables, although in practice an enforcement agent can organise it. E-auctions on immovable is allowed and is effected by a notary. Prior registration of the person who wishes to participate in the auction is needed.

In Estonia the auction is done by an enforcement agent. Except for items of small value (less than €100), the enforcement agent is obliged to sell the seized movable properties at a public electronic auction. If an electronic auction is not possible for reasons not dependent on the enforcement agent, the auction may also be physical. The enforcement agent sells real property publicly mandatorily at electronic auctions. Most of the auctions carried out in enforcement procedures concern real property. The enforcement agent may reduce the price of the items, but by no more than 25 per cent of the starting price of the previous auction. The enforcement agent requests the opinion of the debtor and the collector about the price reduction in advance. The prices of items may not be reduced by more than 70 per cent of the starting price of the first auction.

In Greece, under a recent law 959A CCP, e-auctions of both moveables and immovables is allowed and is effected also by a notary. Article 959A CCP analyses the e-auction process exhaustively. Procedural differences between e-auction of moveables and immoveables exist. In Latvia e-auction is possible for immovable property. Under a draft law this shall be extended to movables as well and in case of assets with a value of under 10000 euros, time shall be shortened to 20 days. E-auction is made also by enforcement agents and is open to persons with prior registration only as per Section 607 CPL. Arts. 608-613 CPL regulate the process of electronic auctions. In particular movable assets can be transferred to a trading undertaking for sale under commission.

In Lithuania it is also allowed by using the LITEKO platform. It is allowed only on line and the names of the participants are protected. Pursuant to Article 694(1) of the Code of Civil Procedure of the Republic of Lithuania the real property of a debtor and other registered property, the value of which exceeds 2,030 euro, as well as other movable property, the value of a unit of which exceeds 30,000 euro, shall be realised by e-auction. Securities traded in the stock exchange market are sold under its rules. Other securities can be sold in e-auction. Judicial Officers organize all immovable and movable property auctions at the electronic auction. As of 1 January 2013, the property of debtors in the territory of Lithuania is auctioned only online, in e-auction system. The Lithuanian and foreign citizens and legal entities with electronic banking systems available in Lithuania or who possess an electronic signature issued in Lithuania.
In the Netherlands, in the case of movable property, after arresting moveable goods, these goods need to be auctioned by means of public auction. The rules for public auction are stated in the Dutch Civil Code. Public auctions are performed by way of physical auction. In addition, the Judicial Officer is obliged to announce the auction in a physical newspaper which is published at the location where the auction shall take place. There are no rules regarding digital announcements. In the case of immovable assets auctions are executed by a notary public under the third title, second chapter of the Dutch Civil Code. An announcement that needs to be served by a Judicial Officer upon all the stakeholders regarding the immovable good precedes the auction. At the date and time of the auction anybody can bid on the property in ascending order, such following by a descending order until the final price has been accepted. The auction of immovable goods can be performed both physically and digitally.

Finally in Portugal e-auctions do take place and they are preferably electronic by the use of a handy interface. The operating rules of the electronic auction platform developed and administered by the Solicitors and Enforcement Agents National Association (www.e-leiloes.pt) are defined in accordance with article 837 of the Civil Procedure Code and articles 20 and of Ordinance No. 282/2013 of 29 August. The main objective of www.e-leiloes.pt is the sale, in an electronic auction, of seized assets in proceedings which the Enforcement Agents has been designated.

5.5.2. Conclusions

E-auction is a field where significant progress is observed. What appears to be missing at the moment is a well-designed platform in each MS with carefully designed access levels for professionals such as notaries and enforcement agents. The important point is that this can be a system that does not require the prior formation of extensive e-data systems.

5.6. Attachment on bank accounts

5.6.1. Legislative aspects

E-enforcement on bank accounts is the most developed area in the context examined by the project.

Belgium allows both paper and electronic attachment on bank accounts. Given that the enforcement agent does not have prior access to information on existing bank accounts of the debtors, a “fishing expedition” is followed.

In Bulgaria there is a law since 2013 which has not been put to application yet.

In Estonia it is done electronically in most cases by the enforcement agent/ e-seizure system. The enforcement agent uses the electronic e-Seizure system for seizing bank accounts. The electronic seizure system is an information channel created between the Enforcement Procedure Register, the Register of Taxable Persons (the Tax Board) and the
credit institutions information system. The objective of which is to guarantee the seizure of the debtor’s account and pass on requests about the acts related to the management of seizures electronically to credit institutions, allow for making queries about data in the possession of credit institutions and guarantee that the expressions of will of the parties are sent immediately and securely. Enforcement agents can access the debtor’s bank account balance electronically via this system and they can also do it before the seizure of the bank accounts. The enforcement agents have no access to the transaction entries in the debtor’s bank account. The enforcement agents may contact the specific bank for information about the bank accounts via the seizure system before seizing the accounts.

**Greece** has no legislation on e-attachment of bank accounts in place yet. Attachment is done by service of papers on the banks. The banks are then obliged to inform the claimant on the existence of funds or otherwise by a written declaration before the competent Court.

In **Latvia** e-attachment on bank accounts is possible under law as of September 2017. In particular, under Section 599 CPL if a debtor has a bank account with a credit institution, an enforcement agent shall give an order to such credit institution to transfer the deposited funds to the account of the debtor and the relevant expenses to the account of the enforcement agent.

In **Lithuania** this is also possible by using the LITEKO platform. In this country the proportional satisfaction of creditors has not been enacted and has replaces the first win rule. The seizure of bank accounts is carried out only by electronic means of communication. From mid-September of 2015 attachment of debtor’s bank accounts is made through the Monetary Fund Restriction Information System (PLAIS) (Piniginiu lesu apribojimo informacine sistema).

In the **Netherlands** attachment is effected by the enforcement agent only physically or electronically through SNG. The attaching party though is deprived of the right to get information on the bank accounts prior to attachment. An electronic arrest on bank accounts is provided by the SNG via the same platform that is used to obtain information and with the same certified professional digital signature which is used to arrest immoveable property. Various verification of the validity and authenticity of the document are carried out. The process is automated and real time. The bank has to provide an official declaration regarding the funds in the bank accounts of the debtor with such bank.

In **Portugal** there is a completely electronic and highly controlled system. One of the basic strings for new Civil Procedure Code is the electronic bank account attachment and seizure. It does not need previous judicial authorization and it is a completely electronic and automatic procedure in a very high controlled system. The Enforcement Agent is generally obliged to electronically attach the debtor’s property and assets, obviously with exception
to those which are not subject to registration and that also applies to the bank accounts. Inquiries about bank accounts are done by using SISAAE. The whole procedure is analytically described in the CPC.

5.6.2. Enforcement and practical aspects

**Belgium.** With regard to the attachment of one or more bank accounts, the enforcement agent does not have prior electronic access to the information relating to the said accounts. As a result, in the event that the enforcement agent does not have advance knowledge of the bank account number(s) that the debtor may hold, the enforcement agent will organise a bank account attachment procedure in the form of a ‘fishing expedition’. In concrete terms, the enforcement agent will effect attachment with multiple attempts by applying to the main banking institutions that could house an account that might be held by the debtor who is being sued.

**Bulgaria.** Electronic attachment of funds available in debtor’s bank account was introduced in 2011. In 2013 the technical platform - Unified environment for exchange of electronic distraint was created. Effective as of 1st of January, 2013, the attachment on debtor’s bank account is supposed to be imposed by the enforcement agent through an attachment notification in electronic form, signed with a qualified electronic signature, via the Unified Environment for Exchange of Electronic Distraint. It needs to be mentioned however that the stipulation is dormant since there is no joint regulation for a single standard on behalf of the Justice Ministry and the National (Central) Bank. The attachment notice, the bank’s answer, the notice of the lifting of the attachment, the confirmation of the message received and other statements concerning the imposition, implementation and lifting of the seizure (presently all written on paper and physically delivered in each bank) are to be submitted and maintained in the system through a single standard approved by the Chairman of the National Bank and the Minister of Justice. The implementation of electronic attachments would reduce the cost of the enforcement process substantially.

**Estonia.** The enforcement agent uses the electronic e-Seizure system for seizing bank accounts. The electronic seizure system is an information channel created between the Enforcement Procedure Register, the Register of Taxable Persons (the Tax Board) and the credit institutions information system, the objective of which is to guarantee the seizure of the debtor’s account and pass on requests about the acts related to the management of seizures electronically to credit institutions, allow for making queries about data in the possession of credit institutions and guarantee that the expressions of will of the parties are sent immediately and securely. Enforcement agents can access the debtor’s bank account balance electronically via this system and he/she can also do it before the seizure of the bank accounts. The enforcement agent has no access to the transaction entries in the debtor’s bank account. The enforcement agent may contact the specific bank for information about the bank accounts via the seizure system before seizing the accounts.
However, preliminary information about the money in the account is not available. The bank seizes the account on the basis of the seizure act sent by the enforcement agent to the extent indicated in the act. The money in the account is transferred to the occupational account of the enforcement agent in the amount indicated in the seizure act. If there is less money in the account at the time of the seizure than indicated in the seizure act, the amounts received in the account after the seizure will also be deemed as seized to the extent of the shortfall. The amounts received in the account after the seizure are transferred to the occupational account of the enforcement agent until the amount indicated in the seizure act has been covered. The exchange of information about the transfers of money in the event of the seizure of a bank account takes place electronically.

**Greece.** The attachment on bank accounts was implemented by the Law in 2001. The Enforcement agent is not able to access information on bank accounts prior to the attachment. The attachment of bank accounts is effected by service of the attachment act to the bank and to the debtor. There is no system of electronic attachment of bank accounts.

**Latvia.** Latvia has a system of electronic attachment of the bank accounts of the debtor. In case a debtor has an account in a credit institution, the enforcement agent orders the credit institution to transfer the deposited funds in the amounts indicated by the enforcement agent to be recovered and the amount of execution of the judgment expenditures to the enforcement agent’s deposit account. The order of the enforcement agent shall be executed without delay. The enforcement agent shall state in his or her order that on the debtor’s account there shall be kept funds in the amount of a minimum monthly wage determined in the State (380 EUR), and in the child support recovery cases for the support of minors or in favour of the Administration of Maintenance Guarantee Fund – half of this amount (190 EUR). Enforcement agents send the above orders in the form of documents signed electronically by e-mail, and to the credit institutions who did not agree to receive documents signed electronically – by mail.

**Lithuania.** The attachment of bank accounts in Lithuania is carried out only by electronic means of communication. From mid-September of 2015 attachment of debtor’s bank accounts is made through the Monetary Fund Restriction Information System (PLAIS) (Piniginiu lesu apribojimo informacine sistema). The Enforcement agents Information System was supplemented by a new electronic debt management tool. In the System the data of 18 different institutions are integrated as well as all data, which the enforcement agents have on debts and their recovery progress. The Enforcement agent is able to access all information on the bank accounts electronically, prior to the attachment. The enforcement agent is authorised to electronically attach the debtor’s bank account. The system provides not only completely automatic but as well proportional distribution of
recovered funds from the debtors to all the enforcement agents (and other institutions) according to the size of their claims.

PLAIS checks all accounts every day and distributes the necessary amounts of funds for the covering of debts. Orders of Enforcement agents to limit the disposal of monetary funds or to write-off forcibly the monetary funds of a debtor are transferred to all credit institutions through electronic communication. Credit institutions not only means the commercial banks carrying out their activities in Lithuania, their branches and other credit institutions, but also a number of credit unions belonging to the Lithuanian Central Credit Union. All these banks and credit institutions are connected to PLAIS. This minimizes as much as possible the possibility that the debtor might keep funds in a “hidden” account.

Netherlands. The attachment on a bank account in the Netherlands can be performed on paper (by serving the attachment act to the bank) or electronically. Electronic attachment is only possible in case the bank (or any other third party) communicated with the enforcement agent’s Chamber the electronic address for receipt of the acts of attachment. Under responsibility of the Dutch Chamber, a platform was developed for the electronic attachment. The enforcement agent creates a PDF file of the attachment act and uses his PKI certificate to digitally sign the document. The document then is uploaded and through the Chamber’s portal is send to the bank institution. Upon receipt, the bank creates a timestamp on the PDF file which also holds a professional digital signature with security level e-IDAS High (level: STORK 4). It is at this moment that the arrest has formally been carried out.

As in Belgium, the enforcement agent does not have prior access with which bank the debtor has an account.

Portugal. The enforcement agent, via electronic means using the electronic enforcement system SISAAE, through the Bank of Portugal is able to check the bank accounts of the debtor. In case a positive response is received back, indicating that the debtor has a bank account in a specific banking institution, then, that institution will be immediately and electronically notified to proceed to the attachment up to the necessary amount (the amount of the debt plus interest and legal amounts).

5.6.3. Technical aspects

In cross-border cases, a court in one EU country freeze funds in the bank account of a debtor in another EU country by means of the European Account Preservation Order (EAPO)\textsuperscript{34}. The procedure is used only, whereby the court carrying out the procedure or the country of domicile of the creditor must be in a different Member State than the one in

\textsuperscript{34} The procedure for getting an EAPO is set out in Regulation (EU) No 655/2014.
which the debtor's account is maintained. The procedure may be facilitated through dynamic forms in the e-Justice portal.

The attachment of a bank account, as such, in a cross border context through the involvement of a judicial officer is also considered to be a situation for “transfer of case” to a judicial and hence the considerations described under section 5.3.3. apply.

5.6.4. Conclusions

E-enforcement on bank accounts is a well developed area in the MS participating in the project. At the same time, it is easier to be organized since the most important aspect for its materialization is the existence of a central system that could be run by the banks.

5.7. Conclusions

E-service is of great importance for e-justice, one the one hand because it marks the commencement of enforcement procedures and on the other because the e-service of extrajudicial documents is critical for legal disputes. Progress in member states differs significantly.

The e-service of documents depends on the existence of e-signatures and the consent of the addressee for the service, the latter being an issue than can only be addressed through a “holistic” approach where all residents in a MS shall have one “official e-address” for service, as of the day that their habitual residence in a MS is established. However, such solutions do not appear feasible at the moment or in the coming years.

The same applies to e-systems allowing attachment on movables which also promises little for the future, not only due to the lack of resources but, most importantly, as this area does not seem to be a priority. Along the same vein, dematerialization of the process of e-enforcement on immovable property is not an easy task, at least to the extent that it requires a fully digitalized cadaster, which is not in place in several MS. E-auction on the other hand is the final step required for e-enforcement and is a field where important progress is observed. An existing gap concerns a platform in each MS with carefully designed access levels for professionals such as notaries and enforcement agents. E-enforcement on bank accounts is the most developed area in the context examined by the project. To conclude:

- The current cross border e-Justice infrastructure can be used to support use cases of judicial enforcement. In addition to the e-CODEX DSI, two additional types of infrastructure can be considered:

  (i) Directory services for finding territorially competent enforcement agents in another MS and
(ii) A platform for supporting in particular the workflows necessary in cross border judicial enforcement.

- The minimum requirements for national infrastructures are for implementing the Gateway and the Connector for connecting to the e-CODEX Infrastructure. Additional use cases will need to be developed and supported by e-CODEX, including but not limited to electronic service of documents.
- Dematerialized procedures used at national level is an asset, however if they are not available nationally, this does not constitute a limiting condition.

The cross-border process itself is expected to provide insights into the electronic governance of e-Justice services, support national strategies including through exchange of good practices and contribute to accelerate national level e-Justice deployment.
Chapter 6: Conclusions and scenarios for the future

E-justice is a challenging and quickly evolving area at European and national levels. E-enforcement, as a specific part of e-justice, has developed only at national level, if at all. Exchange and information in this field is limited and mainly restrained in professional circles and stakeholders. Some important initiatives, in the form of projects, for example the EJE project and the “Find a Bailiff” project (FAB II) are currently being implemented.

E-justice policies are in place in all countries participating in ENABLE project, although more or less developed. However, the organization of e-justice, the degree of centralization of e-justice solutions, the existence of a binding legislative framework, the nature and scope of e-justice projects, the use of electronic tools to monitor the enforcement profession vary significantly. From this overview, it becomes clear that

- There is a need to secure exchanges of dematerialized acts between judicial officers in different states
- the e-CODEX infrastructure can be used to securely transmit documents between judicial officers in application of EU procedures
- a European directory of judicial officers, in the form of a “Find a Juridical Officer” service, is necessary to allow any citizen to identify competent judicial officers for the service of documents and for proceeding with enforcement measures in another MS.

Access to information is critical for e-enforcement. Without secure, reliable, exhaustive and interconnected information, e-enforcement is impossible. The status quo shows important discrepancies between the data bases that exist in member states, but overall “holistic” or integrated information system are not the standard to be expected. Consequently, comprehensive, fully accessible and workable e-databases at EU level does not look immediately possible. To conclude:

- Making it possible for Judicial Officers to access non-public national databases in another country is currently not feasible. As European e-Justice and e-Gov achieves greater integration, over time and enabled through EU legal instruments, this priority is likely to come into focus.
- The most realistic scenario in the short term for cross border access to information, is the mediation of a competent judicial officer in the country where the search is required.
- When it comes to interconnection of national databases, professional Registries of Judicial Officers, towards a European Directory should be prioritised.
E-identification, authentication and authorization are essential for the operation of an e-service and e-enforcement system and an essential step for a future all-encompassing e-justice system in the EU. Electronic identification, authentication and authorization services are prerequisites for establishing cross border services supporting dematerialization of documents for co-operation on judicial enforcement across borders. However, in this area different levels of development are observed in the MS taking part in the project.

E-service marks the commencement of enforcement procedures yet stumbles on a number of ‘barriers’. For one matter, it relies on the existence of e-signatures and the consent of the addressee for the service. For another, attachment on movables does not seem to be a priority while dematerialization of the process of e-enforcement on immovable property requires a fully digitalized cadaster. More positive developments are in place in the field of e-auction. In this context, the current cross border e-Justice infrastructure can be used to support use cases of judicial enforcement. In addition to the e-CODEX DSI, two additional types of infrastructure can be considered:

(iii) Directory services for finding territorially competent enforcement agents in another MS and

(iv) A platform for supporting in particular the workflows necessary in cross border judicial enforcement.

- The minimum requirements for national infrastructures are for implementing the Gateway and the Connector for connecting to the e-CODEX Infrastructure. Additional use cases will need to be developed and supported by e-CODEX, including but not limited to electronic service of documents.

- Dematerialized procedures used at national level is an asset, however if they are not available nationally, this does not constitute a limiting condition.

The cross-border process itself is expected to provide insights into the electronic governance of e-Justice services, support national strategies including through exchange of good practices and contribute to accelerate national level e-Justice deployment.

Overall, six main sets of barriers stand in the way of the development of e-justice solutions for dematerialized exchanges in the (enforcement) legal and extra-judicial field across EU member states.

Firstly, technical barriers resulting from incompatible technical standards at national level, lack of inter-operational databases, lack of inventories and publicly accessible information allowing the identification and selection of judicial officers by EU citizens and businesses, great number of certification authorities, limited use of digital signature nationally and in cross border communication, lack of validated databases and information on assets of
debtor, not to mention the need for security of electronic exchanges, data protection and other concerns.

- **Secondly**, legal barriers related to the highly diversified national frameworks in relation to the status, role, competences of enforcement agents and the service and enforcement procedures (CEPEJ\(^{35}\)) and the lack of alternative means to verify documents’ authenticity\(^{36}\).
- **Thirdly**, information barriers resulting from insufficient information available on competent judicial officers, debtor’s domicile or location of property.
- **Fourthly**, linguistic constraints in accessing information, communicating, monitoring and obtaining feedback on the enforcement proceedings.
- **Fifthly**, cost constraints resulting from different tariffs, delays and the need to translate necessary documents to the official language of the receiving Member State and
- **Last but not least**, barriers resulting from the limited trust in dematerialized exchanges and enforcement from the part of authorities and citizens.\(^{37}\)

Taking into account the findings of this comparative analysis, three main scenarios that best capture the capacity for incremental development of dematerialized enforcement of claims in the European Union:

- **Scenario 1** reflects (more closely compared to other scenarios) the evolution of the status quo and is based on the establishment of an accessible and secure dematerialized access to information on enforcement agents and procedures.

  In this scenario there is no integration of judicial enforcement workflows across countries. Enforcement is a national issue and when all or part of it needs to be performed in another MS, cooperation with enforcement agents with the territorial competence to act on attachment to movables, immovables and bank accounts, conducting searches, acts of attachments etc is necessary.

- **Scenario 2** focuses on the cross border dimensions of enforcement of claims and is based on the establishment of a secure dematerialized environment for the transmission of enforcement claims. National systems

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\(^{35}\) [https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes8Execution_en.pdf](https://www.coe.int/t/dghl/cooperation/cepej/series/Etudes8Execution_en.pdf)

\(^{36}\) See for example: Study No. JAI/A3/2002/02 on making more efficient the enforcement of judicial decisions within the European Union: Transparency of a Debtor’s Assets Attachment of Bank Accounts Provisional Enforcement and Protective Measures, 2004

\(^{37}\) UIHJ Position paper, 2010
are only interconnected through a service that ‘transmits’ enforcement claims but do not interact.

- **Scenario 3** reflects an **advanced e-justice environment** at EU and national levels that integrates the **dematerialized access to information, transmission of documents and enforcement of claims**. This scenario presupposes a significant level of integration of workflows across countries and a dematerialized environment in member states. It builds on scenarios 1 and 2 and visualises an environment where all aspects of enforcement of claims are dematerialized both at EU, cross border and national level. Hence, a citizen or professional can access secure and reliable information in a dematerialized form, can securely transmit information in a dematerialized form to another member state and can enforce decisions in a dematerialized way across the EU.