



IMPACT ASSESSMENT OF IDENTIFIED SENARIOS

ENABLE

Enabling dematerialised access to information and assets for judicial enforcement of claims in the EU



International Union of Judicial Officers
Union internationale des buissiers de justice



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This report was funded by the European Union's Justice Programme (2014-2020)



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1. Introduction

The project ENABLE explores e-justice solutions for dematerialized exchanges and secure access to and exchange of information for enforcement in the European Union.

The project is co-financed by the Justice Programme of the European Union and is implemented by the Centre for European Constitutional Law (CECL) in cooperation with the International Union of Judicial Officers (UIHJ) and the Aristotle University of Thessaloniki (AUTH).

As a first step, the ENABLE project mapped the existing situation in eight Member States (Belgium, Bulgaria, Estonia, Greece, Latvia, Lithuania, Netherlands and Portugal) with regard to:

- e-justice initiatives undertaken by the Government and the profession;
- existing databases and systems collecting information related to enforcement of claims (such as debtors registers, assets of debtors, official registers for businesses);
- e-signature systems (existence of e-signatures, procedures, legal and technical specifications, standards and requirements);
- systems for e-certification of judicial officers (knowledge on who is certified);
- systems for initialization of enforcement proceedings, including service of documents and enforcement of claims;
- the legal and technical conditions and requirements for the above

The mapping of existing solutions, compiled in 8 country-reports, led to a comparative report and analysis that highlighted six main barriers that stand in the way of dematerialization of judicial enforcement of claims:

- *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

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of digital signature nationally and in crossborder 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

- *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) and the lack of alternative means to verify documents' authenticity
- *information barriers* resulting from insufficient information available on competent judicial officers, debtor's domicile or location of property
- *linguistic constraints* in accessing information, communicating, monitoring and obtaining feedback on the enforcement proceedings.
- *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.

Based on this analysis, the project team formulated three main scenarios to address the identified barriers and progress with the dematerialization of enforcement of claims:

- Scenario 1 focuses on dematerializing access to information on enforcement of claims and emphasis is placed on an accessible and secure dematerialized

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environment for accessing reliable information on enforcement agents and procedures across the EU

- Scenario 2 focuses on dematerializing the transmission of enforcement of claims and emphasis is placed on the cross border dimensions of enforcement of claims and a secure dematerialized environment for the transmission of enforcement claims
- Scenario 3 projects an advanced e-justice environment at EU and national levels that integrates dematerialized access to information, transmission of documents and actual enforcement of claims.

The present study identifies and sketches some minimum legislative, practical and technical specifications required for the implementation of these scenarios at European and national level.

Outline of the paper

Three scenarios will be studied in further detail, in order to assess the way forward towards the dematerialization for the judicial enforcement of claims in the EU. Each scenario is presented via a short story, describing what the situation would be in the scenario case. A flowchart for each scenario is also presented along with three separate sections explaining the specifics of each scenario: its legal and regulatory aspects (i.e. amendments that may be needed at EU or member state's legislation), practical aspects for the implementation of the scenario (i.e. liability of the claim enforcers across Europe) and technical standards such as interoperability (both from an IT point of view as well as from a semantics point of view) among the e-justice systems in place across the EU member states.

After having presented these aspects of each scenario, the paper makes a comparative assessment of the scenarios weighting the advantages and

disadvantages of each one, in order for an informed decision to be taken on the towards the dematerialization of the cross-border enforcement of claims in the EU.

2. Background

Every year, 1 million small businesses in the EU face problems with collecting cross-border debts, and as much as €600 million in cross-border claims are never satisfied. This is partly because creditors do not see as worthwhile to pursue their claim in civil proceedings abroad. At the same time, up to 80% of claims filed in courts of first instance in the EU Member States (MS) are never contested by defendants. Many MS have introduced special accelerated and simplified procedures for the recovery of uncontested claims which allow for swift issue of an 'order for payment'. If the debtor does not oppose such an order, it becomes enforceable. In practice, only a minority of debtors does so (e.g. in France only 6-8% of orders of payment are opposed).

Domestic orders for payment are an effective tool for debt collection in the Member States. Although they exist in many Member States, they differ to a great extent, and are often not practical for cross-border use. In order to supplement the existing national order for payment measures, the EU legislature created a European Order for Payment ('EOP') procedure. The procedure is available for cross-border claims for money, mainly those arising from a contract. It is based on standard forms and the claimant does not need to prove the case before an order is issued. Once an EOP is served upon the defendant, they may oppose it. This then makes the EOP unenforceable and the case is moved onto standard civil proceedings. Although the EOP procedure is an autonomous civil procedure in EU law, several aspects are regulated by national law. These include the designation of the competent authority or court, permissible languages, court fees and detailed rules on service.

EU competence to create a cross-border order for payment procedure is based on Article 67(4) TFEU, which gives the Union the power to facilitate access to justice, and Article 81 TFEU which allows the Union to develop judicial cooperation in civil matters with cross-border implications.

3. Three scenarios for the future

Scenario 1

The scenario 1 suggests maintaining the status quo. According to scenario 1, the countries involved in a transnational judicial enforcement of claims will only provide information and not an e-transaction. Scenario 1 reflects a situation where 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

In the second scenario there will be an electronic transmission of documents but not a dematerialized service of documents, in the cases of cross border enforcement of claims.

Scenario 3

Scenario 3 describes an advanced e-justice environment based on a significant level of integration of workflows across countries and a dematerialized environment in member states. It builds on scenarios 1 and 2. It 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.

4. Analysis of the three scenarios

4.1. Scenario 1: Minimum standards for dematerialized exchanges

Description of the scenario:

The scenario 1 suggests maintaining the status quo. According to scenario 1, the countries involved in a transnational judicial enforcement of claims will only provide information and not an e-transaction. Scenario 1 reflects a situation where 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.

In Scenario 1, FAB is the main cooperation point between citizens, legal professionals and enforcement agents and the main enabling tool is information. The citizen or professional can access openly and at no cost at least the following reliable information:

- Status of enforcement agent (active, non active etc)
- Qualifications
- Authorisation
- Name and contact details
- Jurisdiction (in relation to city and zip code)
- Language skills
- Fees
- Type of payment accepted (transfer, credit card etc)

Today, if there is a case in which a citizen or his/her legal representative in country A has an enforceable claim against B who lives in country B, then, A's legal representative identifies through a colleague in country B a competent enforcement agent. The citizen or his legal representative provides the necessary authorizations to the EA in country B to empower him/her to act on a judicial enforcement in country B. So, the first level for

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an environment of Scenario 1 evolves the current situation simply by ensuring the accessibility of reliable information about enforcement procedures, structures and competent agents. The process to be followed in the first scenario is depicted in figure 1.

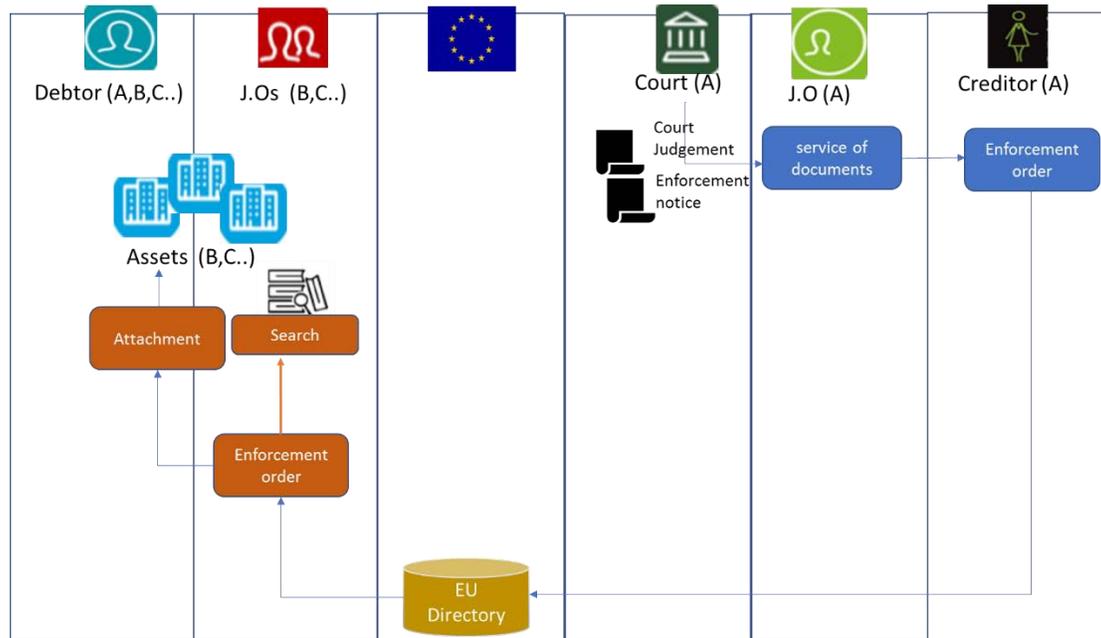


Figure 1: The process in the case of the scenario No 1

More specifically, if there is a case where a citizen or his/her legal representative in country A has an enforceable claim against B who lives in country B, then, A or his/her legal representative accesses the EU directory (FAB Directory services) on the internet to identify one or several competent enforcement agents in country B and select the one they want to cooperate with.

At the moment the FAB Directory (<http://www.eubailiff.eu/>) does not cover all EU member states (only 10), is not linked to national registries of certified enforcement agents and does not provide official or reliable information. Further the information is not updated.

Through the European Judicial Atlas the interested parties can access limited, and very general, information on the practical aspects of enforcement and the legislation and procedures applicable in each member state, which are by no means sufficient to

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provide reliable information to citizens or professionals interested in enforcing their decisions in another member states.

Legislative aspects

In order for the first scenario to function there must be:

- An obligation for national associations to maintain their registries updated and
- An obligation to make the information available in national registries accessible online

Public or private agent: Member states' legislation on data protection and rights to handle personal information varies. As a general rule of thumb one can say that the public sector has enhanced rights to deal with personal data, especially in cases of enforcing judicial decisions. For the cross-border exchange of information the legal status and competences of the judicial officers in each country shall be taken into consideration.

For example:

In Portugal there are two different classes of judicial officers. One private and one public. The private Enforcement Agents and the public Judicial Officers. More than 90% of the enforcement proceedings is handled by the private enforcement agents. The judicial officers only handle the public enforcement procedure.

In Latvia, on the other hand, bailiffs practice only individually. Co-operation with other bailiffs is permitted only in technical and economic matters. The Minister for Justice appoints bailiffs to office for life and they may hold this office up to the age of seventy. They are as civil servants. Reimbursement of bailiffs is subject to the value added tax. the execution of adjudications of a court. Bailiffs perform adjudications on recovery; securing of a claim; vacating of a dwelling (eviction); being put in possession, confiscation of property; removal of specific objects from a debtor and transferring to an enforcer of the debt. Clause 34.4. of this document sets out the measure of the plan of actions of the government – to introduce unified procedures for organizing electronic

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

Since January 2, 2012 in Latvia there has been functioning the state information system – The Register of Enforcement Cases, which was developed within the framework of the project *The Register of Enforcement Cases* co-funded by the European Commission in order to simplify the activities of bailiffs and to facilitate recovery procedures in enforcement cases. 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. After July 1, 2019 all credit institutions and payment service providers shall ensure the receipt and execution of attachment orders only electronically in online format.

There is also another legal requirement that must be attended: National databases must be interconnected with a minimum information. There is no need (for the first scenario) to maintain or update the existing databases. Just a minimum interconnection among them is needed, according to the eIDAS building blocks. It goes without saying that the national databases need to have valid and updated information of the judicial officers registries.

It would also be a plus, to include information about the language skills of the professionals registered in the national registries.

Enforcement and practical aspects

For scenario 1 to be fully functional, it is necessary that the EU Directory represents an interconnection of national professional registries of Judicial Officers. This will guarantee that information is up to date, trustworthy and complete at all times and any changes

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as to the status of the professional in the MS of affiliation will be immediately reflected in the EU Directory. Furthermore, it will be necessary that it has an EU wide coverage.

So there must be an

- Obligation for national associations to maintain electronic registries
- Obligation for national associations to connect their registries to FAB

Another issue is that the FAB (Find a Bailiff) is not established. Just one-two EU member states provide valid and updated information. As long as the FAB is not linked to the national databases there is no secure information. An overarching coordination is needed in order to form a sort of a federation of national registries.

Certain minimum requirements are also necessary in order for the first scenario to apply. For example, if a citizen of country A wants to search in the FAB for a bailiff in country B, the search is done by using either the address or the postal code – at best – of the bailiff. But if a bailiff resides to neighbouring municipality to the address searched, he cannot be found in the FAB although he is competent to serve documents in the neighbouring municipality. A solution to that sort of problems will be to enter while searching for a bailiff in FAB, the courts zip code, in order to find who the competent bailiffs are.

The language is another issue, which can be addressed by making better use of the eIDAS regulation, through the enactment of e-translation services and nodes.

Another practical issue is the payment method of the bailiff. The FAB shall include certain payment options such as card payments or paypal. There are jurisdictions (i.e the United States of America) where you need to submit the bailiff's payment slip in order for the enforcement procedure to be initiated.

In the first scenario case – as well as in the two other that follow – there is an issue with the judicial enforcement profession and professional rights. As judicial officers are exempted from the services directive, it is, from a regulatory point of view, more difficult to coordinate an alignment of the judicial officer profession. The union in each member state (or whatever entity is responsible) shall assess the qualification requirements for

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judicial officers who are then authorized according to the laws applying at national level per member state, to do all acts necessary to enforce a claim. But for the FAB to be practically operating and safeguard the interests of both the EU citizens and the judicial officers, some minimum requirements shall be demanded. For example the Belgian chamber of bailiffs have asked to include in the registry:

- i. Mandatory continuous training
- ii. The status of the bailiff. That means that they are not suspended and they have paid their insurance according to the law.

Technical standards

The specific technical requirements for the scenario to work are the following:

- Common interoperability specifications followed by all national registries
- Accessibility of information online
- Ability to export data in a specific format
- Common search criteria

Availability also in English (in addition to national language)

Who shall do what and at what cost

The 1st scenario entails mainly the update of the FAB directory. FAB does not cover all EU member states, is not linked to national registries of certified enforcement agents and does not provide official or reliable information. That's why the EU shall undertake an overarching action to meet those challenges. We suggest that an amendment to

4.2. Scenario 2: Dematerialising transmission of documents)

In the second scenario there will be an electronic transmission of documents but not a dematerialized service of documents, in the cases of cross border enforcement of claims.

Description of the scenario

The case of the second scenario is as following:

A court judgement concerning a debtor that is resident in country A and a creditor that is resident of country B, is issued by a court in country A. The debtor's immovable assets are in country B. The debtor maintains movable assets and bank accounts also in country C.

- The court judgement is issued in the form of an electronic document and it is digitally signed by the judge and sealed by the court.
- An electronic enforcement notice is also issued, signed and sealed rendering this judgement enforceable.
- The documents are served to the parties and/or their authorized representatives electronically using the EU Judicial enforcement collaboration platform supporting the cross border work flow for electronic service of documents.
- The claimant in country A authorizes a local enforcement agent to act on the enforcement of the decision.
- The enforcement agent performs a preliminary search and finds that the debtor maintains assets in more than one countries
- He identifies enforcement agents with competencies in the jurisdictions concerned
- He engages in a collaboration with them and contracts out parts of the enforcement procedures

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- The small team collaborates over a commercial, secure collaboration platform to which they subscribe, to jointly carry out the tasks.

The flowchart of the second scenario is presented in figure 2.

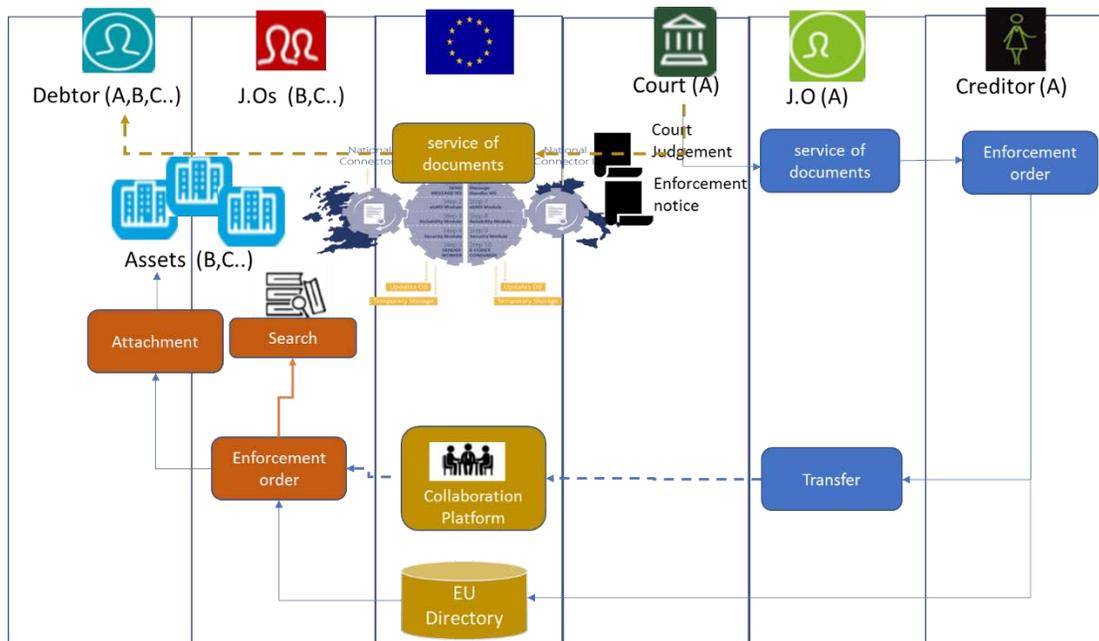


Figure 2: The second scenario

This scenario may be supported by a European Collaboration Platform for Judicial for Enforcement Agents, which would manage contractual, communication and information exchange issues for assigning cross border enforcement orders. While such a platform may leverage on CEF Building Blocks, such as the e-Delivery and the eID BBs and services¹, it is not clear at the moment if and to what extent it will require e-CODEX functionality. It may however be one area for Value added services linked to the e-CODEX platform in support of innovation in this collaboration service area.

The CEF building blocks, referred above, offer basic capabilities that can be used in any European project to facilitate the delivery of digital public services across borders. The basis for the CEF building blocks are interoperability agreements between European

¹ The CEF eID building block provides a set of services primarily to help Member States successfully deploy an eIDAS-Node, thus complying with European legislation on electronic identification. More information on the eIDAS on the section on technology under the second scenario.

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Union member states. The aim of the building blocks is thus to ensure interoperability between IT systems.

Legislative aspects

- For scenario 2 to apply in practice there must be a regulatory provision for each EU member state to be connected to e-codex.
- In the countries where the e-codex functions today, it is usually used by the judges. For scenario 2, to apply, the bailiffs must also be able to be connected and work on the e-codex platform.
- The status of the persons allowed to enforce claims is different from EU country to EU country: There are countries where that person has the status of a civil servant, or a judicial clerk or a personally liable professional. For example, in Estonia bailiffs are considered as independent public authorities who are individually liable for any damaging occurring due to their fault when they are performing their official duties. The different status of the enforcer results into different approach in relation to the data protection provisions. In the countries where the enforcer is a civil servant, there is usually an easier access to personal data than the access that would have been possible if the enforcer was a professional – non-state agent. So, for the second scenario to apply, there must a legal provision – umbrella for all EU member –states, according to which the same access to personal data criteria shall be applied to both state and private claims' enforcers.
- In certain EU-countries the court decision is enough in order for the bailiff to claim the debt. But in some countries an executive order is needed after a court decision has been issued. To overpass this anomaly, the EU must take action: either an alignment to all documents necessary across the EU countries in order to file a claim shall be streamlined or some clear guidance, fine-tuned to each country's system shall be issued.

For example if person A from Greece has a claim from person B also from Greece, and a court decision is issued by a Greek court according to which the debtor has some assets in the Netherlands that are to be confiscated. But in the Netherlands'

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legal order, the court decision is not enough: on top of that an execution order is needed. Then the Greek bailiffs' chamber could confirm that the court's decision is also the equivalent of an execution order.

- We also need to refer to the Proposal for a Regulation of the European Parliament and of the Council amending Regulation 1293/2007 on the service of judicial and extrajudicial documents as it was published 31 May 2018 (COM2018)379. According to the draft regulation, documents, requests, confirmations, receipts, certificates and any communication carried out on the basis of the standard forms between the transmitting agencies and receiving agencies, between those agencies and the central bodies, or between the central bodies of the different Member States shall in future also be transmitted through a decentralised IT system composed of national IT systems interconnected by a communication infrastructure enabling the secure and reliable cross-border exchange of information between the national IT systems (article 3A of the draft regulation). It is not clear in how far here the E-CODEX functionality plays a role.
- At cross-border transactions the courts' decision authentication is not done by the courts. So it should be regulated that the judicial officer (or else after consultation) will be responsible to authenticate the courts decisions.
- Time is essential at cross border transactions. The Court of Justice of the European Union has held² that the Brussels I Regulation on jurisdiction and enforcement of civil and commercial judgments within the EU does not prevent national legislation from imposing a time limit for the enforcement of an attachment order which has been adopted in another Member State and is enforceable in the Member State in which enforcement is sought. While judgments may be recognized and enforced cross-border subject to certain conditions being fulfilled, the rules of enforcement are the local rules and failing to understand how they operate may deprive the litigant of the benefits of having an enforceable order. In order to avoid such problems, a set of minimum common standards among Member States shall be established, such as

² Case C-379/17 *Società Immobiliare Al Bosco Srl*; Judgment of 4 October 2018

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the time limit for enforcement and the professional status of the officials responsible for the enforcement.

Enforcement and practical aspects

For the scenario 2 to apply, there must be a server to be used as a gateway. Such a server can be usually located in the Ministry of Justice in each country.

Furthermore, each participating country (that is all EU countries) must be members of the e-codex network. At present, the participating countries to the e-codex project are: Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Romania, Spain, United Kingdom (and Turkey).

It has to be noted that usually the professionals (attorneys, bailiffs etc) use the e-codex system where it exists, and citizens use the e-justice system of their respective country – wherever such an e-justice system applies. That's why there must be a connection between the national system and the e-codex, in order for different national systems to be able to connect among themselves. By the moment the e-codex project will have been completed in all EU member states, it will be transferred and governed by the EU-LISA. EU-LISA is the European Agency for the operational management of large-scale IT Systems in the area of freedom, security and justice, which is based in Tallin, Estonia and ensures the uninterrupted operation of large-scale IT systems within the area of freedom, security and justice. At present EU-LISA is responsible for the operational management

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of IT-systems EURODAC3, SIS II4 and VIS5, while ensuring information security and data protection.

The creditors' orders shall also be categorized. For example, a creditor may give a general order "I need an attachment to enforce this decision", or a specific one "I only want an attachment on bank accounts". So it would be useful to have a multiple choice in the beginning: What attachments do you want?

- i. All possible
- ii. Mobile
- iii. Immobile
- iv. Bank accounts

Technical standards

- In order for scenario 2 to be applicable, the debtor's country must have established an e-service of documents.
- The eIDAS (electronic IDentification, Authentication and trust Services) shall create nodes to the national registries. The eIDAS does not get involved in the content of the registry. It just identifies the two entities at the end of a transaction.
- The IT service needed under the second scenario may well be a candidate service to be supported by the e-CODEX Infrastructure through an "API-for-Justice" as explored in the relevant project⁶. As a use case however it may present an

³ European Dactyloscopy, which is a fingerprint database for identifying asylum seekers and irregular border-crossers. All EU member states currently participate in the scheme, plus three additional European countries: Norway, Iceland and Switzerland.

⁴ The Schengen Information System (SIS) is a governmental database maintained by the European Commission. The SIS is used by 31 European countries to find information about individuals and entities for the purposes of national security, border control and law. The type of data about people kept in SIS includes: requests for extradition; undesirability of presence in particular territory; minor age; mental illnesses; missing person status; a need for protection; requests by a judicial authority; and suspected of crime. The SIS also keeps data referring to lost, stolen and misappropriated firearms, identity documents, motor vehicles and banknotes.

⁵ The European Union Visa Information System (VIS) is a database containing information, including biometrics, on visa applications by Third Country Nationals requiring a visa to enter the Schengen area.

⁶ https://www.e-codex.eu/sites/default/files/articlesAndPublications/Envisioning_the_Next_Step_in_e-Justice.pdf

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investment interest for a Value Added service provider to develop and offer a service on a commercial basis. This collaboration Platform may interact and exchange with other platforms (e.g. the EJE7 platform if and when operable), on the formal aspects of the workflow, such as for example, communicating enforcement orders and providing authorizations.

- Currently, access to the e-codex is only possible via the official channels – usually the ministry of justice in each country. It is suggested that judicial officers are given access to e-codex, perhaps by paying some fee per transaction.

4.3. Scenario 3: The state-of-the-art approach – dematerialized service of documents

Scenario 3 describes an advanced e-justice environment based on a significant level of integration of workflows across countries and a dematerialized environment in member states. It builds on scenarios 1 and 2. It 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.

Description of the scenario

In the third scenario, think of the enforcement of a cross-border claim in which a court judgement concerning a debtor that is resident in country A and a creditor that is resident of country B, is issued by a court in country A. The debtor's immovable assets

⁷ CEHJ 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 1393/2007/10 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters including 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 for the transmission of documents between judicial officers in application of EU procedures.

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are in country B. The debtor maintains movable assets and banks accounts also in country C, D etc. The description of the workflow is the following

- In all member states the enforcement system is managed through an electronic enforcement procedure information system and an electronic auction environment for enforcement agents. Enforcement agents are obliged to enter all professional acts in the electronic system
- Enforcement agents obligatorily use an electronic signature.
- Enforcement files and the information related to enforcement proceedings are processed exclusively in electronic format.
- Any written information received and forwarded by the enforcement agent is digitized, while written documents are processed and digitally stored. In case a written document cannot be digitized, the enforcement agent adopts a reasoned ordinance to store documents exclusively in a hard copy format and enter a note thereof in an electronic enforcement file
- The enforcement agents' information system enables the enforcement agent to make information requests from national registers and databases and to connect with the e-governance infrastructure. If an enforcement agent connects with the information system, the request is audited
- The parties to enforcement proceedings and the persons concerned have the right to access the electronic enforcement file and obtain copies of the documents contained therein. They have, in accordance with the procedure laid down by law, the right to access completed enforcement files. An enforcement agent's office provides the necessary technical conditions to exercise these rights
- The persons submitting documents using electronic communication sign them by an advanced electronic signature or prove their identity by other means or be registered in the enforcement agents' Information System. Requirements for and ways of proving a person's identity are specified by the Government.

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- The digital copy indicates the time of digitization of a document and the person who has performed the digitization of the document. The digital copy holds an e- signature of the person who digitized it
- Court judgements are issued in electronic form, are digitally signed by the judge and sealed by the court
- An electronic enforcement notice is issued, signed and sealed rendering this judgement enforceable
- The documents are served to the parties and/or their authorized representatives electronically using the national e- enforcement information system platform supporting the cross border work flow for electronic service of documents.
- The claimant in country A authorizes a local enforcement agent to act on the enforcement of the decision.
- The enforcement agent performs a search through a number of interconnected national asset registers in order to identify attachable assets.
 - The agent identifies and authenticates himself in the electronic service provided by the DB “owner”
 - If the agent provides in addition proof of authorization, e.g.
 1. By providing access to an enforcement order located in some part of national level infrastructure OR
 2. By the Platform requesting confirmation by the citizen, in which case,
 - The citizen identifies and authenticates himself/herself
 - Provides authorization
- He supplements his search, where such interconnection does not exist, or where access is not permitted to non-territorially competent agents, by contracting out local competent agents, using a Judicial co-operation platform to which he subscribes.
- Where appropriate assets have been identified the execution agent from country A, may (i) request an attachment on assets in MS B or (ii) contract the task out to a territorially competent agent.

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The third scenario is designed in such a way so that a citizen can apply to a judicial officer/bailiff in another country in the case he/she wants to enforce a claim. In the large group of “citizens”, lawyers are also included, but the scenario does not differentiate among them. In figure 3, the proposed workflow is presented.

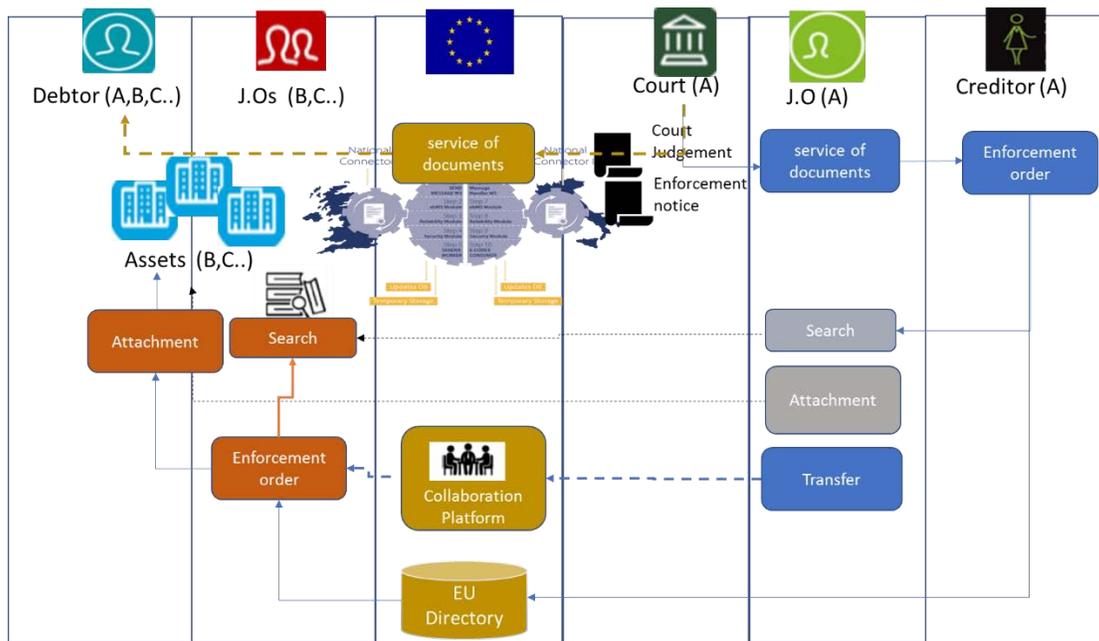


Figure 3: Scenario No 3

Legislative aspects

- For the third scenario to be applied it would be better to have in place common rules for claim enforcement among member states. Civil procedures in many MS (e.g. UK, France, Germany, Italy, Poland and Spain), have simplified order for payment proceedings for the recovery of uncontested claims. But there are differences between national procedures, especially with regard to the extent of evidence the claimant must produce, and the exact consequences of the defendant's lack of reaction. In order to supplement existing national order for payment procedures, the EU adopted the European Order for Payment Procedure in Regulation No 1896/2006 which has applied since December 2008 in all MS except Denmark. The main aim of the EOP procedure is to simplify, accelerate and reduce the costs of

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cross-border civil litigation concerning uncontested claims for money. For this reason, at all stages of the EOP procedure, claimants, defendants and courts are obliged to use standard forms. For the third scenario to properly be applied the EOP regulation will need to be extended in such a way as to streamline certain national aspects of the enforcement of a claim. Today, the EOP procedure is intended to be an additional and optional way of pursuing claims. Claimants may still use national procedures even in cross-border cases. Furthermore, the Regulation does not affect national order for payment procedures. With regard to certain aspects, such as the competent court, court fees or details of service (delivery) of documents, the regulation refers to national law.

- It must be noted that in this scenario, enforcement is only about court decisions and not any other claims, i.e. rentals etc. So a repeal to regulation 3093 is needed, because it foresees that extrajudicial documents can also be served (i.e from notaries).
- To that end, an amendment is also needed in order to streamline the recognition of professions and professional rights of the judicial officers across Europe.

Enforcement and practical aspects

- Language is a problem for the interconnection of data bases. The cost for establishing certified translation services for the enforcement of claims in every country is high, so that although the scenario is the best case in terms of serving the EU citizens, the funds to establish it will not be easily available. What moreover, those costs are not one-off costs but need an everyday support to properly provide the services described in the scenario.
- Electronic judgments shall be issued by the courts at national level. At the moment the e-justice systems in Member states are not aligned to that goal. But even if the EU reaches a phase where all court decisions are issued electronically, they must be interoperable and have some common characteristics all over Europe in order for

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the this scenario to apply. It will take a lot of effort and coordination among policy makers in order to achieve such homogeneity.

- Another point of entry to the system in order for someone to claim small claims, or for citizens not at ease with using the e-justice system of their country, could be the chambers. The chambers could offer such a service at a relevant cost and at the same time ensure the authentication of the documents served and transmitted.
- The authorization needed to enter the system for cross border claim enforcement shall be extended to the national databases. That means that there must be adopted common prerequisites that shall apply in order for a citizen to be authenticated to enter any national database to initiate a claim enforcement procedure. That is an issue which relates to the national policies in the EU member states that apply for access to non-public national databases. Those access policies shall also be streamlined across EU.

Technical standards

- An issue to be solved for the third scenario to apply is the authentication of the transmitted and served documents. In the scenario described above a court decision can be transmitted by the citizen and not necessarily a judicial officer anymore. So a decision needs to be taken on who is going to authenticate the court decision. For a cross-border authorization services to apply, the national registries shall meet certain minimum data requirements.
- The e-codex system today connects the interested parties to the EU – level through the e-justice portal of each member state. But in most cases, the e-justice portals just provide information to citizens and they don't offer much transaction services. So, the e-justice systems of the member states shall start offering services as well for the third scenario to apply. More specifically, the e-justice portals of the member states shall offer: e-transmission of documents, e-judgements, e-authentication and e-signature.
- The e-codex system shall also extend its functionalities to the enforcement agents instead just to the judicial that is the case today.

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- The FAB II (Find a Bailiff II) shall interconnect all national professional registries for the third scenario to apply. The European Commission has selected the project “Find a Bailiff II” to provide co-funding for the enlargement of the European directory gathering the contact details of the bailiffs/enforcement authorities of the 28 Member States. But it takes as a prerequisite that the national databases are updated and well informed with valid information. It is an advantage that the costs related to the development of the national digital directory can be covered by the Find a Bailiff II EU project.
- The national eIDAS nodes shall connect their e-justice systems to the EU eIDAS system. According to regulation (EU) No 910/2014 (eIDAS Regulation) by 29 September 2018 all online public services requiring electronic identification assurance corresponding to a level of 'substantial' or 'high' must be able to accept the notified eIDAS schemes of other European countries. The eIDAS nodes shall identify and authorize users for enforcement purposes as well.

5. Comparison of the 3 scenarios

5.1. Costs-disadvantages

Scenario No1: Scenario 1, may not be seen as a real change by professionals who will go on doing their job as usual. That means that EU citizens will not be aware that they have new possibilities for informing themselves on the bailiffs available in a country where they could have enforced a claim. Scenario 1, does not bring major changes, which means that it does not build a cooperation culture and a momentum towards common EU standards for enforcing a claim.

Scenario No 2: Scenario 2, is a step towards a more integrated common market, which needs some major resources and effort in order to happen. Most countries have not allocated such funds in their budgets, so the cost shall be – at least some of it – included to EU budget for the next programming period, after 2020. Such a delay may be a reason for the project to lose its momentum.

Cultural differences among the judicial systems of each member state can hinder the project. Lack of trust can also be an issue, especially in this period when the trust to the EU institutions is not at its highest level. There will also be practical difficulties, for example a case is considered closed when a document is served, and according to this scenario only transmission of documents can take place. Not being able to close a case electronically once you have created such an appetite to the user can result to frustration and disappointment.

Scenario No 3: Scenario 3 is the most expensive scenario in terms of both financial and time resources as well as the effort needed to coordinate such a project and build consensus and common understanding among the different actors. Some major legislative initiatives are needed at EU level, which means that it will take time for the scenario to be feasible, as the law-making procedure at EU level takes time. The e-

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justice systems of member states must step up their efforts in order to – at least – be able to introduce electronic judgements (in the states where this is not yet the case). This is not an easy task, and may also raise difficulties.

5.2. Benefits – advantages

Scenario No1: The advantages of the first scenario are that it is comparatively easy to implement, and establishes a culture of openness step by step, without major changes to the existing national systems for enforcing a claim. That means that it will be easier accepted by the professional in each member state, who will not feel threatened by major changes. At the same time it will make it possible to raise the cross-border enforcement rate, which is now quite low. Scenario 1, is also a low cost scenario as there are not major technology investments that need to take place for it to apply.

Scenario No 2: In order for scenario 2 to be implemented some explanatory guidelines for national courts should be published. This will be beneficiary for all – not only the ones that have a cross-border claim to enforce. The FAB II project which will also have to be implemented in order for scenario 2 to apply, will add value to the data and procedures already in place in the member states. It will also be a stimulant for member states to update their own registries.

Scenario No 3: Scenario 3 is at its best if common rules apply for the enforcement of claims in member states. This will be a major step towards a fully functional common market. Scenario 3, also opens up the process to citizens, which will strengthen the sense of ownership among EU citizens: Being themselves able to navigate across countries for exercising their right to enforce a claim, will enforce the EU citizenship idea. Scenario 3 also puts in place a robust cooperation mechanism among the justice systems of member states. With such a mechanism in place, a major step towards the EU integration will have been achieved.

5.3. Risks

Scenario No1: There is a risk that scenario 1, will not apply in the countries where you cannot choose your bailiff. In Austria, Germany, Italy for example, you don't choose the enforcing officer: there is an allocated enforcing officer per zip code. In those cases, it is possible that you have to contact the court and not the judicial officer directly. So, there is a need to include into the system the courts' contact information as well. The difficulties arising from such differentiation can be overcome if you are guided through a wizard with specific questions, before getting the information needed. A decision tree questionnaire shall guide the interested party, for example: In which country do you want to find a bailiff? If this is i.e. Germany then go to that court site, etc.

Scenario No 2: There is a risk when using the e-codex platform to lose critical information, because the e-codex works with forms and not the original decisions. Transforming the decisions to forms can be risky especially if this task is performed by staff who is not properly trained. The standardized e-codex forms can also be automatically translated which again includes a risk of losing or misinterpreting information.

Scenario No 3: A major risk in scenario 3 arises by the language difficulties. If decisions and documents are not properly translated in order to bring the required judicial results in each country, then justice will not be served. Such an ICT project with so many actors to be coordinated and act in an organized manner, raises the risk of fraud and breaching the security of the system. A well designed monitoring and accountability process shall also be put in place for scenario 3 to win the trust of the stakeholders.

5.4. Opportunities

Scenario 1: Scenario 1, can offer a communication opportunity to the EU policy makers. It can be used as a period where the EU citizens are targeted with communication campaigns in order to be aware of their rights related to the enforcement of claims. Having risen awareness, it will be then be easier to implement more substantial streamlining reforms to that policy area.

Scenario 2: The use of semantics can play a crucial role in implementing scenario 2. Implementing scenario 2 shall lead to convergence in the national procedures for enforcing a claim. To that end data protection regulations shall be easier to abide by. Another opportunity arising from the second scenario is the creation of updated national registries as well as national e-justice eIDAS nodes. Last but not least, the mapping of the national procedures in place for the enforcement of claims, is another positive side-effect that will arise if scenario 2 is implemented. According to the research for administrative burdens in EU, much of the time and resources are spent in order to identify what are the necessary steps to be taken in order to fulfill an administrative task. Having mapped the process in order to run scenario 2, will then be an opportunity to reduce administrative burdens. Scenario 2 may also present an investment interest for a Value Added service provider to develop and offer a service on a commercial basis. This collaboration Platform may interact and exchange with other platforms (e.g. the EJE⁸ platform if and when operable), on the formal aspects of the workflow, such as for example, communicating enforcement orders and providing authorizations.

⁸ CEHJ 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 1393/2007/10 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters including 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 for the transmission of documents between judicial officers in application of EU procedures.

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Scenario 3: In scenario 3 member states will not be able to uphold their own inefficient rules. Scenario 3 provides an opportunity for the best practices transfer across member states to take place in an organized and coordinated manner. Enforcing claims in an organized manner all over Europe is a major step towards European integration. It can prove to be a pivotal point for achieving the declared goal of the EU towards administrative convergence as well.

The three scenarios are not exclusive of each other. In fact the Impact Assessment showed that they are stepping stones towards a fully interoperable electronic system for enforcing claims. As it is the situation today, it would be a risky movement to jump directly to the third scenario. EU citizens money would be better used if the initiatives towards a de-materialized exchange of documents took place step by step: Start by implementing scenario 3, while designing and putting into practice scenario 2 afterwards in order to end up with the case as described in scenario 3. That way, both momentum and knowledge will be built on the issues of cross-border enforcement. Possible mistakes in the design of the transition procedure will be fine-tuned and corrected in the process, before having spent the budget to the complex and difficult to change ICT projects needed for the implementation of scenario 3.

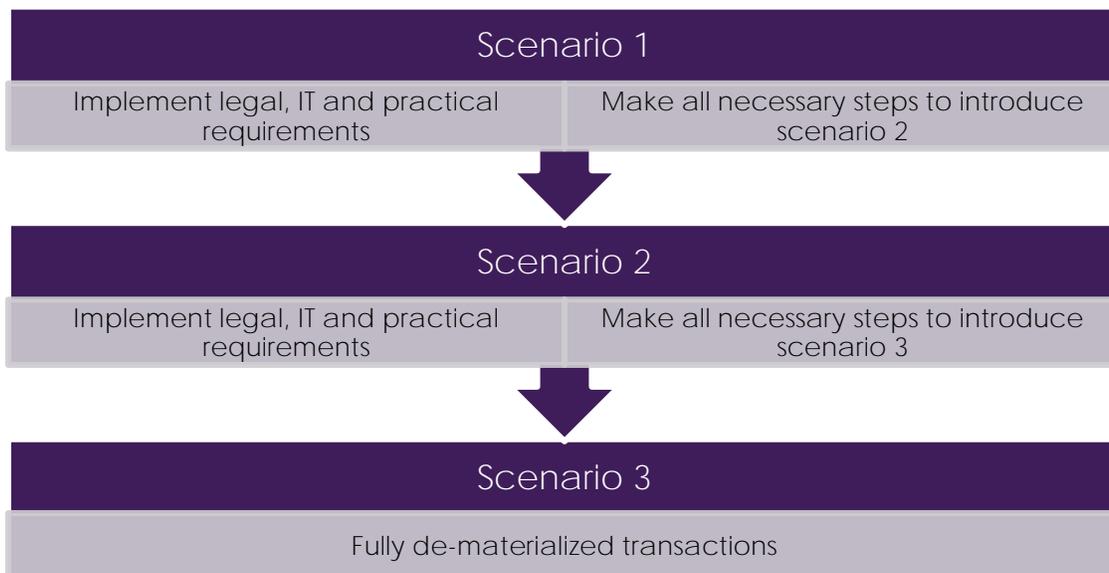


Table 1: Comparison of the three scenarios

	At what level action shall be taken (EU-national)	Estimated time  Long  Medium  Short	Estimated cost  High  Medium  Low	Overall Feasibility	Level of businesses' and citizens' estimated satisfaction	Comments
Scenario 1	EU level to coordinate national systems			Feasible	Low	Coordination at EU level is needed in order for the FAB to include updated and valid information by each member state.
Scenario 2	EU level and national level			Difficult	Medium	In the second scenario there will still be matters of internal legislation, reflecting the different legal (and procedural) cultures of the Member States. Enforcement in the European countries is carried out differently and much depends on the qualification and the organisation of the enforcement organs (and their staff). The legal relationships between the creditor, the enforcement organ and the debtor are weighted differently: in some Member States, enforcement agents control the whole enforcement process and have considerable discretionary powers. The different status of enforcement agents may also pose some difficulties in implementing the second scenario: Enforcing agents may work in the context of a public or a private status, and there are some

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						states have a mixed status where public and private agents coexist (ie Portugal).
Scenario 3	Deep changes at national level are a prerequisite for the 3 rd scenario			Very difficult	High	Structural differences among Member States exist in later stages of the proceedings, especially in relation to the distribution of proceeds. The different distribution schemes influence the structure of enforcement proceedings considerably. Further legislative action shall be undertaken both at EU and member states level. The content of the documents to be served needs to be of a certain standard and meet certain minimum requirements in all member states: there are many obligatory data and information necessary in order to correctly serve the documents, which have to be streamlined across EU. There is also a need to differentiate among serving a document to a legal entity and a physical person.



6. Conclusions

The three scenarios present consequential steps in the possible evolution of dematerialization of enforcement procedures in the judicial space in the European Union. Each comes with a distinct set of advantages and disadvantages, costs, benefits, opportunities and risks that have been highlighted in this paper in order to be taken into account in the further developments of policies and initiatives.