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# **WHY EXECUTION OF JUDGMENT KEEPS BEING THE ACHILLES HEEL OF THE EUROPEAN AREA OF JUSTICE?**



## GRATITUDE

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AUDIENCE



## ADVANTAGES AND DISADVANTAGES OF UNIFICATION OF RULES SIMPLIFYING CROSS- BORDER EXECUTION OF JUDGMENTS

### WHO IS SPEAKING?

- EUROPEAN BELIEVER
  - AIMS OF THE EUROPEAN UNION
  - IMAGINARY BIRDS - BORGES
- IMPORTANCE OF THE AREA OF FREEDOM, SECURITY AND JUSTICE
- PRACTICING LAWYERS: LACK OF CONSISTENCY OF POLITICAL WILL TO CHANGE THE JUDICIARY BOTH IN THE MEMBERS STATES AND IN THE EU



## WHAT SHOULD WE TALK ABOUT?

- CROSS-BORDER EXECUTION
- ADVANTAGES AND DISADVANTAGES OF UNIFICATION OF RULES SIMPLIFYING PROCEDURES
- IS UNIFICATION EFFICIENT AND EFFECTIVE?
- ARE BUSINESS AND CITIZENS HAPPY??



## WHERE DO WE COME FROM?

- EUROPEAN HISTORY AND EVOLUTION OF THE EUROPEAN UNION
- TREATY OF MAASTRICHT 1.993
- THIRD PILLAR – AREA OF JUSTICE
- COMMISSIONER VITORINO – GREAT WORK
- AND THEN....
  - AGENDA 2.000
  - FROZEN BUDGET
  - EUROPEAN CONSTITUTION???
  - CRISIS??

## SOME FACTS

- Personal experiences y the EU Commission
- 1999, first multi-annual programme on justice and home affairs policies (Tampere)
  - ***Much has been done, but much also remains to be done,***” stated Antonio Vitorino
- 10 years later is the EU actually delivering a common Area of Freedom, Security and Justice (AFSJ)?

## TAMPERE RESULTS

- Better access to justice for individuals and firms has been secured by the principle of mutual recognition of judgments in civil and commercial matters

## PRACTICAL CONSIDERATIONS OF THE ACHIEVEMENTS

The Commission's endeavour of fostering Europeanization in areas so closely intertwined with **member states' national sovereignty** – such as borders, migration, integration, asylum, police and judicial cooperation in criminal matters – has experienced obstacles difficult to circumvent.

These obstacles **have greatly influenced the ways in which DG JFS attains 'results' in an EU at 27 as well as the quality and policy coherency of these results** at the EU.



## EXPECTED GUIDELINES AFTER TAMPERE

- Adequate **institutional and financial resources**.
- The adoption and entry into force of the **new Constitutional Treaty**.
- The adoption of the **Charter of Fundamental Rights** of the European
- **Union citizenship promoted**
- Regarding judicial cooperation in civil and commercial matters, the **implementation of the mutual recognition principle** needed to go further and deeper, in order to guarantee rapid and effective procedures.
- **Eurojust and Europol** must acquire full status among European mechanisms



# HAGUE PROGRAMME

- **Second multiannual programme (2004 – 2009)**
  - Flexibility – Opt-outs (ej. UK, DK)
  - Distinctive institutional and decision-making configurations and numerous legal complexities
  - Open methods of coordination (OMC) ≠ Formal Harmonisations
  - EU legislation of minimums and the principle of national predominance.

**The Stockholm Programme -  
An open and secure Europe serving and protecting  
the citizen**

**HAGUE ACHIEVEMENTS IN  
CIVIL AND COMMERCIAL  
MATTERS AND STOCKHOLM  
PROGRAMME**

## MRS REDING`S - "ACHILLES HEEL"

- European Justice Commissioner - first time
- Only **around 37% of cross-border debt can be recovered today.**
- As a good mathematician and politician, she also took it the other way round since it means **that in our internal market more than 60 % of cross-border debt is not recovered.**
- **If you are a businessman, how can you really contract on a cross-border basis if this is true?**

## MAIN PROBLEM OF INTERNATIONAL LAW

- **PUBLIC INTERNATIONAL LAW**
- **PRIVATE INTERNATIONAL LAW**
- **EUROPEAN LAW ;?**
  - **Direct Effect and Supremacy of European Union Law**
  - **Decision making process**

## The European Commission for the Efficiency of Justice (CEPEJ)

- Report Council of Europe – 2.008
- Remaining differences y lack of efficiency in our judicial systems
- The well known obstacles to obtaining a judgment in another jurisdiction still continue and even are increased in such a cross-border context

## SOME POSITIVE NEWS

- Most Member States have introduced simplified and accelerated procedures in which local rules are relaxed, mainly in cases where the value of the claim is below a certain threshold (“**Small Claims**” procedures)
- And where the claim is not disputed by the debtor (“**Order for payment**” procedures). These procedures vary, however, significantly from one Member State to another. In order to improve and facilitate access to justice, the EU has set itself the aim of laying down common rules for simplified and accelerated litigation.



## ENFORCEMENT – KEY ISSUE

- Study on “*making more efficient the enforcement of judicial decisions within the European Union*”, undertaken by Prof Burckhard (2003)
- Two Green Papers,
  - on the attachment of bank accounts (2006)
  - on the transparency of the debtor's assets (2008)
- The European Commission intends now to elaborate a global strategy for making enforcement abroad as “easy” as in a domestic context



## EUROPEAN BANK ATTACHMENT ORDER

- HOPING TO REACH AN “HARMONISATION” IN THIS FIELD
- REMAINING PROBLEMS
  - SECURE PAYMENT
  - INSOLVENCY ISSUES
  - INTERNAL APPEALS AND LENGTH OF THE PROCEEDINGS
  - COSTS AND PROCEDURAL BURDENS



## EUROPEAN BANK ATTACHMENT ORDER – PENDING ISSUES

- **Consistency** of the European procedure with existing national enforcement schemes is to be sought.
- Regarding the level of difficulty of cross-border recovery **the nature and amount of the unpaid debt** has to be considered.
- Many differences remain. Currently **16 different enforcement systems** in the European Union



## A PRACTICAL EXAMPLE

## EXECUTION OF A GERMAN JUGMENT IN SPAIN

- JUDGMENT OBTAINED IN HAMBURG (PAYMENT OF 800.000 € DUE TO NOT COMPLIANCE WITH CONTRACTUAL OBLIGATIONS) – JUN 2005
- EXECUTION ASKED IN SPAIN IN OCTOBER 2005
- IN NOVEMBER – 2011 ONLY 40.000 HAVE BEEN PAID (VAT MONEY SEIZED FROM THE TAX AUTHORITIES)

## EXECUTION OF A GERMAN JUGMENT IN SPAIN

- HOW IS IT POSSIBLE?
- MORE THAN 8 APPEALS AND NATIONAL PROCEEDING, INCLUDING CRIMINAL PROSECUTION OF DIRECTORS
- ASSETS IN THE COMPANY DISAPPEAR BEFORE PAYING DUE TO COMPLEX CONTRACT AND COMMERCIAL PRIVATE AGREEMENTS
- SLOWNESS AND COSTS OF JUSTICE MAKE US ALL DESPERATE .... BUT NO SOLUTION IS GIVEN

## PRINCIPLES – FUTURE LEGISLATIVE PROPOSAL

- **Efficiency of the Attachment Order.- Surprise effect** - no hearing or notification to the debtor is required.
- **Safeguarding the debtor's rights.- right to object**, order creditor to provide security against damage
- **Bank Secrecy and Protection of personal data**
- **Priority for creditors**
- **National exemptions**

## CONCLUSIONS

- Harmonization is really a need, and therefore an advantage since they may be an obstacle to the free circulation of payment orders throughout the Union consequently they impede the proper functioning of the Single Market. As it was agreed, late payment and non-payment jeopardize the interest of our businesses and consumers alike.

## CONCLUSIONS

- Oscar Wilde.- *“When I was young, I used to think that money was the most important thing in life. Now I am old, I know that it is.”*
- Let’s apply this statement to debt collection.

## CONCLUSIONS

- While **forthcoming proposals** will be of interest to those who regularly seek to **enforce judgments** in the EU, the sensitive nature of the issue is likely to mean that progress will be relatively slow. **The Attachment Order seems to be a great step forward and a need, more than an advantage, in the field of European debt collection.** At the moment, this type of action has to be pursued through national courts in the two countries which can be very costly, complex and time time-consuming. A European bank attachment order would really **simplify and speed up the process.**