

QUESTIONNAIRE:

SIMPLIFICATION OF DEBT COLLECTION IN SWEDISH LAW

2012-06-15

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(European Order for Payment Procedure and European Small Claims Procedure)

Literature and some other sources

Enforcement Code

Fridén, H, En av kvarstadens rättsverkningar – accessorisk men förutsebar ? in Vänbok till Torleif Bylund, Iustus, Uppsala 2003, pp. 85-119, Utsökningsbalken – En kommentar, Wallin, G, Gregow, T, Löfmarck, P, Millqvist, G, Persson, A H, fourth edition, Norstedts Juridik, Stockholm 2009, Utsökningsrätt, Gregow, T, fourth edition, Norstedts Juridik, Stockholm 2012, Utmätning, Enforcement Authority, Stockholm 2011, and the official translation into English The Swedish Enforcement Code, Ministry of Justice, Departementsserien (Series of Swedish Ministries), Ds 2002:45.

Small claims

Judicial Procedure Code: Rättegång tredje häftet, Ekelöf, P-O, Bylund, T, Edelstam, H, seventh edition, Norstedts Juridik, Stockholm 2006, Domstolsprocessen, En kommentar till rättegångsbalken, Fitger, P, Mellqvist, M, second edition, Norstedts Juridik, Stockholm 2002, and Rättegångsbalken, Fitger, P, Norstedts Juridik, Stockholm 2011.

Summary proceedings

Hur är kronofogdemyndighetens arbetsuppgifter organiserade i några EU-stater och i Norge ?, Berglund, M, Ny juridik, no 4: 2000, p. 61, Handledning för summarisk process – Ett förenklat rättegångsförfarande vid Kronofogdemyndigheten, Enforcement Authority, third edition, 2005, also available on the website of the Enforcement Authority, www.kronofogden.se, and Betalningsföreläggande och handräckning – En kommentar, Häggman, B, Boström, J, Linders, J, fifth edition, Norstedts Juridik, Stockholm 1999.

EU-regulations

Cross-Border Enforcement of Claims in the EU – History, Present Time and Future, No. 65 in the series European Monographs, Berglund, M, Kluwer Law International the Netherlands 2009, Cross-Border Enforcement of Debts in the European Union, Default Judgments, Summary Judgments and Order for Payment, Crifó, C, Kluwer Law International the Netherlands 2009, Internationell verkställighet, Enforcement Authority, Stockholm 2011, and the European Judicial Network in civil and commercial matters, www.e-justice.europa.eu.

Swedish law

Rättegångsbalken, Official Journal number 1942:740, (Judicial Procedure Code)

Utsökningsbalken, Official Journal number 1981:774, (Enforcement Code)

Lag om betalningsföreläggande och handräckning, Official Journal number 1990:746, (Act on order to pay and decision of enforcement assistance)

Lag om europeiskt betalningsföreläggande, Official Journal number 2008:879, (Act on European summary proceedings)

Lag om europeiskt småmålsförfarande, Official Journal number 2008:1038, (Act on European small claims proceedings)

I. Introduction - main features of the national summary procedures for recovery of monetary claims (general overview)

1.1 Types of litigation: overview over the different possibilities to gain a judgment in judicial proceedings. Shortly describe the summary procedures in your country (simplified and accelerated procedures) and other possibilities for judicial collection of debts. Present any special rules for certain type of claims (e.g. consumer disputes, bills of exchange etc.).

Litigations falling under the Judicial Procedure Code (Rättegångsbalken) and resulting in e.g. a court judgment, verdict or decision, and a settlement that is confirmed by a court.¹

The act on order to pay and decision of enforcement assistance (Lag om betalningsföreläggande och handräckning) is a simplified and accelerated procedure in summary proceedings for order of payment under the responsibility of the Enforcement Authority.² In the European Union, since 1990, Sweden is the only Member State which treats unopposed claims in summary proceedings outside the court system.³

The purpose of Summary Proceedings is to deliver a verdict that is directly enforceable. The procedure is for private individuals and enterprises alike and both can stand as either applicant or respondent. Normally claims are uncontested money orders but they can just as well be non-money orders. Non-money orders include requests for verdicts regarding for example eviction, to shut off electricity or move a fence.

¹ Swedish Official Journal number 1942:740.

² Swedish Official Journal number 1990:746.

³ See article 4.7 of the European enforcement order for uncontested claims and article 5.3 of the European order for payment procedure. Also see Hur är kronofogdemyndighetens arbetsuppgifter organiserade i några EU-stater och i Norge ?, Berglund, M, Ny juridik, no 4: 2000, p. 61.

In order for a claim to be handled by the process it needs to fulfil some basic requirements. The claim must be overdue and mediation has to be allowable. The application must be in writing and signed by the applicant. The claim itself, as well as the grounds for the claim, should be complete. One cannot add to the application during the process, only subtract from it.

There is neither an upper nor lower limit to the size a financial claim can be. A money order can also be combined with a non-money order if, for example, an applicant landlord not only wants a respondent evicted but also wants to collect the rent owed.

Summary truly means summary in Sweden as we do not question the validity of a claim. The applicant need not supply any evidence nor is there any examination of the case. As long as the application does not have any obvious faults in its format and all obligatory information is included, papers are automatically sent to the respondent. It is then the responsibility of the respondent to react to the claim.

After having been served with the claim the respondent has a certain time frame within which he/she has to object to the claim. If the respondent is not heard from a verdict will be rendered in accordance with the original application. If the respondent contests the claim however, the applicant has a choice of either having the case turned over to the District Court for a verdict or to terminate the process.

Neither the applicant nor the respondent need representation during the process, all parties may represent themselves. Forms and written instructions are designed for this purpose, they are to be easily understood by non-professionals. The process is not obligatory and an applicant may take his claim directly to the District Court instead.

On average the process takes just short of 2 months from application to a decision. A decision is rendered in 80% of incoming applications. A decision such as this is directly enforceable by the recoveries department. It is noteworthy that any and all decisions from the Summary Proceedings are appealable, meaning a final decision may be contested by either party.

Sweden has no counter part to the Notary system which in other Member States is able to create titles of execution. Bills of exchange require a judgment or a decision in Summary Procedure to be accepted as a legal basis for enforcement. Written and signed undertakings concerning maintenance allowances by the parties in front of two witness constitute an enforceable title of execution according to the Enforcement Code (Utsökningsbalken).⁴

1.2 Explain the current state of IT operational options in judicial procedures for recovery of monetary debts. Can the actions in general be filed electronically (please explain under points II. and IV. below the details about potential electronic submission of the application for national order for payment or small claims procedure)? Is there available an e-service of judicial documents? Is electronic communication between parties and the court mandatory or just optional? How often do parties use e-tools in judicial proceedings?

About 20 private collection companies have been granted permission by the Enforcement Authority to submit the applications of enforcement for private claims on behalf of their creditors by use of electronic means directly to the Enforcement Authority. Major public

⁴ Chapter 3, §1 point 5 compared to §19 Enforcement Code, Swedish Official Journal number 1981:774.

creditors such as the Tax Agency, the Police and the Social Insurance Office, have also been granted permission by the Enforcement Authority to submit their applications for enforcement by use of electronic means directly to the Enforcement Authority.

II. National order for payment procedure

The act on order to pay and decision of enforcement assistance is treated initially, see under 1.1 above. More comments to the act are available in literature.⁵

2.1 Scope of the procedure

a) What types of claims are eligible (e.g. only monetary claims, only contractual claims etc.)?

Monetary claims of all kind are eligible. The procedure is for private individuals and enterprises alike and both can stand as either applicant or respondent.

b) Is there an upper limit regarding the value of the claim (e.g. in Austria up to 75.000 EUR)?

There is no upper limit.

c) Is the use of order for payment procedure optional or obligatory?

As long as it is about uncontested claims the procedure is mandatory but at the same time there is nothing that prevents the claimant to address the court instead.

d) Is the procedure available if the defendant lives in another Member State or in a third country - is the national order for payment procedure possible in cross-border cases?

In rare cases it is possible, for example when the defendant has property in Sweden.

e) Is it one-step procedure (like according to Regulation 1896/2006) or two-step procedure (like in Germany having *Zahlungsbefehl* und *Vollstreckungsbescheid*)?

It is a two-step procedure.

f) Rules on representation by a lawyer.

No it is not compulsory to be represented by a lawyer. Any person may in principle appear as a representative for the creditor, subject to that he is authorized by a proxy. There exist no specific conditions.

2.2 Competent court. Are there applicable general rules on subject matter and local jurisdiction or is there only one court or body authorized to issue national order for payment? Discuss the advantages and disadvantages of your national rules on jurisdiction.

There is only one competent court (Enforcement Authority).

⁵ See Handledning för summarisk process – Ett förenklat rättegångsförfarande vid Kronofogdemyndigheten, Enforcement Authority, also available on the website of the Enforcement Authority, www.kronofogden.se, and Betalningsföreläggande och handräckning – En kommentar, Häggman, B, Boström, J, Linders, J.

2.3 Application for an order for payment - formal requirements:

a) Are there provided any standardised forms for application for an order for payment? If so, is the use of a standardised form obligatory and where can that form be obtained? Please describe the content of the standard form.

There are standardised forms available at the Enforcement authority but it is optional. The standard form contents date for application, applicant, representative, defendant, representative, interest, information concerning the claim, compensation for costs of the case and for collection costs and signature.

b) Is it necessary to be represented by a lawyer?

No it is not compulsory to be represented by a lawyer. Any person may in principle appear as a representative for the creditor, subject to that he is authorized by a proxy. There exist no specific conditions.

c) Must the reasons for the claim be described in detail?

Not every detail but it must be possible for the respondent to understand the claim.

d) Must written evidence be presented in respect of the claims asserted? If so, which documents are admissible as proof (e.g. invoice, bill of exchange etc.) and in what kind of form (written, online, other)?

No written evidence is necessary.

e) Can the application be filed electronically? If so, please describe the procedure.

It is possible to apply electronically. In order to do that you have to have a permit in advance from the Enforcement authority. A permit includes that you applies for a large number of cases each year.

2.4 Issue of the order for payment

a) Specific rules for dealing with submitted application for order for payment and issuing the court decision. The extent of the examination of the claim by the court.

The authority makes a summary examination of the application and then send it to the respondent.

b) The decision of the court on the payment order.

As long as the application does not have any obvious faults it will be sent to the respondent.

c) Information of the defendant on his procedural rights and obligations along with the decision: are there any legal instructions or guidelines to submit the application? If so please explain the content of the legal instructions (*Rechtsbelehrung*) on the order for payment.

Service of documents will be done either by post or in person. The defendant will be informed about his procedural rights and obligations along and also legal instructions or guidelines to submit opposition against order for payment. He will also be informed about what could happen after a final verdict.

d) Service of the order for payment on the defendant.

See c) above.

2.5 Rejection of the application

If the creditor contests the claim he just have to inform the authority within a certain period of time (at this moment 10 days).

2.6 Opposition by the defendant against order for payment – prerequisites and procedure, especially:

a) Procedural rules: e.g. form (paper or electronic form), representation by a lawyer, deadline, court fees etc.? As to the deadline for the objection against the order for payment, please discuss arguments for shorter or longer term.

It is possible to contest in paper or by e-mail, there is no need for a lawyer and as far as the time limit of 10 days we think it is a descent time for both parties.

b) Does the objection against order for payment have to be substantiated or not (e.g. Article 16 (3) Regulation No. 1896/2006). If so, which are the most frequent reasons for successful objection?

It is enough to write "I contest".

c) Effect of notice of opposition. If the objection is allowed, does the court revoke (annuls) order for payment, does the order for payment lose its effect *ex lege* or does the court uphold the order for payment and decides about its destiny with judgment in the subsequent litigation?

The opposition will always be allowed and therefore the order of payment never arises. After an opposition the authority asks the applicant if he wants to take the case to court. If he wants to do that the authority sends the case to the court for a verdict.

d) The nature and structure of the procedure following the successful objection filed against order for payment.

See above.

2.7 Effects of the absence of timely opposition.

a) What is the consequence, if the objection is not filed? Does that mean that defendant only admits facts or recognizes the justification of the claim?

It will mean that he recognizes the justification of the claim.

b) What needs to be done in order to obtain an enforceable judgment? Does the court issue a certificate or declaration of enforceability (*Vollstreckbarkeitsbestätigung*), similar to one that is foreseen in Article 18 Regulation 1896/2006? If so, does it do it on application or on its own motion? Do there exist any legal remedies against the certificate or declaration of enforceability?

When the authority makes the final decision it means that it is enforceable. In extra ordinary cases it is possible to discharge an enforceable verdict.

c) Effects of order for payment - is it only enforceable or also final (*rechtskräftig*)? Is it still possible to appeal against this decision?

It is enforceable and final.

2.8 Costs of procedure.

The costs are 300 SEK (about 9 crowns correspond to 1 euro).

2.9 Enforcement of the national order for payment domestically and abroad. Describe main difficulties of cross-border enforcement on the ground of your national payment order.

See under 4.7 below. The Brussels I regulation is possible to apply, but it requires, however, presently exequatur proceedings.

2.10. Comparison between national and EU order for payment procedure (differences and similarities) and final critical evaluation of the national order for payment procedure.

A decision in Summary Proceedings at the Enforcement Authority is directly enforceable and is normally transferred for enforcement to the enforcement department of the same authority. However, any and all decisions from the Summary Proceedings department are appealable, meaning a final decision may be contested by either party. This shall be compared to that an EU order for payment procedures also requires the submission of an application for enforcement.

III. Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

An act on European summary proceedings (Lag om europeiskt betalningsföreläggande) includes some complementary provisions to the Regulation.⁶ Some comments to the Regulation are available in literature.⁷

⁶ Swedish Official Journal number 2008:879. For some further comments to this act see Internationell verkställighet, Enforcement Authority, pp. 317-318.

3.1 Competent court (subject matter, local jurisdiction). Which courts have jurisdiction to issue a European order for payment? Is only one court competent (centralised system like in Austria and Germany: das Bezirksgericht für Handelssachen Wien; das Amtsgericht Berlin-Wedding) or is there a decentralised system in force?

Recital 12 states: "When deciding which courts are to have jurisdiction to issue a European order for payment, Member States should take due account of the need to ensure access to justice". In how far did your country take into account that notion?

It is only one competent court (Enforcement Authority).

3.2 Application for a European order for payment:

a) The means of communication accepted for the purposes of the European order for payment procedure and available to the courts (Article 7(5)). Can the application be submitted electronically? Does there exist alternative electronic communications system in the courts of the Member State of origin pursuant to Article 7(8)?

At this point there is no option to apply electronically.

b) Admissible language of the application?

Swedish.

c) How many copies of the application are required?

One.

d) The amount of the penalties under the law of the Member State of origin in case of debtor's deliberate false statement (Article 7(3))?

There are no specific rules to deal with a false statement from a debtor. According to Swedish penalty law you could get fined for a false statement but that hardly not happens.

⁷ See Cross-Border Enforcement of Claims in the EU – History, Present Time and Future, Berglund, M, p. 187, Cross-Border Enforcement of Debts in the European Union, Default Judgments, Summary Judgments and Order for Payment, Crifó, C, pp. 101-147, Internationell verkställighet, Enforcement Authority, pp. 312-316. Also see the European Judicial Network in civil and commercial matters, www.e-justice.europa.eu.

3.3. Issue of the European order for payment:

a) Recital 16 states: "The court should examine the application, including the issue of jurisdiction and the description of evidence, on the basis of the information provided in the application form. This would allow the court to examine prima facie the merits of the claim and inter alia to exclude clearly unfounded claims or inadmissible applications. The examination should not need to be carried out by a judge."

Describe the examination of the application. Who issues the order for payment – judge, *Rechtspfleger*, clerk or computer?

See under 2.4 a) above. The examination and issuing is done by a enforcement officer.

b) Service of the European order for payment on the defendant pursuant to Article 13 and 14.

See under 2.4 c) above.

3.4. Opposition to the European order for payment:

a) Form of the statement of opposition - paper form or by any other means of communication, including electronic (Article 16(4))?

It is possible to contest in paper or by e-mail.

b) Pursuant to Article 17 (1) where a statement of opposition is lodged, the proceedings shall continue before the competent courts of the Member State of origin. Does the court revoke (annul) the European order for payment (e.g. by decree) or it ceases to be in force by law?

If the proceedings shall continue, the order for payment is considered as ceased.

c) Legal remedies against the court decision on statement of opposition?

It is not possible to appeal against a decision to hand over a case to a court.

3.5. Absence of timely opposition:

a) Describe the certificate procedure (declaration of the European order for payment for enforceable pursuant to Article 18).

There are no specific rules in Sweden.

b) Explain the formal requirements for enforceability according to Article 18 (2).

There are no specific rules in Sweden.

c) Effects of the absence of timely opposition: does the European order for payment become final (*rechtskräftig*) or it is only enforceable.

It will become final.

3.6. Safeguarding the debtor's rights.

a) Problems with certificate. On one hand it may happen that certificate shall be rectified where, due to a material error, there is a discrepancy between the European order for payment and the certificate. On the other hand can the certificate wrongly granted (e.g. to early certification without due waiting on statement of opposition to arrive). Describe the procedures for rectification and withdrawal of the declaration of enforceability referred to in Article 18?

There are no specific rules in Sweden.

b) Explain the review procedure and the competent courts for the purposes of the application of Article 20.

You have to turn to a higher regional court to appeal.

3.7 Costs of procedure.

The costs at the Enforcement Authority for handling a case is about 30 euro.

3.8 Enforcement in the Member State of enforcement:

a) Which authorities have competence with respect to enforcement?

In Sweden all enforcement measures concerning every kind of title of execution related to pecuniary claims from both the private and public law areas and other enforcement matters are entrusted to one single national authority, the Enforcement Authority, administered by the State.

b) What should be done for the European enforcement order to be executed in the Member State of enforcement? Are there required any court proceedings, administrative proceedings or activities of an execution body (agency)? How long will it take from issue of the order to the beginning of the execution? Which languages are accepted pursuant to Article 21(2)(b)?

An application for enforcement has to be submitted together with the relevant documents related to the European enforcement order. The yearly fee to be paid to the Enforcement Authority at an application for enforcement measures is 600 Swedish crowns (about 9 crowns correspond to 1 euro). No court proceedings, administrative proceedings or activities of an execution body are required. No legal provision concerning time limit exists about when at the latest an enforcement decision has to be taken after the reception of an application for enforcement. There only exists a policy within the Enforcement Authority aiming at a decision within three months concerning applications submitted for new debtors. Although no support of up-dated official statistics presently exist it seems, however, at a rough overall estimation that the majority of decisions are taken within six months. In some old or more complicated enforcement matters the time before a decision may be more than six months. Swedish and English are accepted pursuant to Article 21(2)(b).

c) Legal remedies in the Member State of enforcement: Which authorities have competence for the purposes of the application of Article 22 (1) and (2) and Article 23? Describe the procedure for those legal remedies.

The Enforcement Authority has competence for Article 22 (1) and (2) and normally the general Court of the first instance, the District Court, for Article 23. At the present there exist no experiences and legal usage on the interpretation of these provisions. The decisions of the Enforcement Authority and of the District Court is appealable in court.

IV. National small claims procedure

4.1 Scope of the procedure, threshold. Is it applicable only for monetary claims or reserved to certain types of disputes (e.g. consumer disputes)? Is a national small claims procedure as an option or an obligation for the plaintiff?

The small claims procedure is governed by the Judicial Procedure Code.⁸ This procedure is applicable for all monetary claims where a conciliation is possible and with an amount less than a base amount (21 400 SEK during 2011, about 9 crowns correspond to 1 euro). If the application for summons is below this amount and the plaintiff does not have any arguments indicating that the amount may be increased over that level or is connected to other already pending court cases and the total amounts of them will not exceed that level, the small claims procedure becomes an obligation for the plaintiff.

4.2 Competent court (subject matter and local competence).

The District Court where the defendant has his/her residence.

4.3 Introduction of the procedure.

a) Forms (orally, paper form, electronically)? Are there available any standard forms?

The application for a summons should be written and signed by the applicant. A standard form of an application for a summons can be found on the court's website.

b) Mandatory representation by the lawyer?

No, any person may in principle appear as a representative for the creditor, subject to that he is authorized by a proxy. There exist no specific conditions.

c) Assistance: is there any support by a court clerk or help desk for the introduction of a procedure?

No.

⁸ See Chapter 1 §3d and chapter 10 §8a Judicial Procedure Code. See, for more detailed comments on these provisions of the Code, Domstolsprocessen, En kommentar till rättegångsbalken, Fitger, P, Mellqvist, M, pp. 16-18 and 58 and Rättegångsbalken, Fitger, P, sections 1:18a-b, 1:19-24a, and 10:22.

4.4 Peculiarities of the small claims procedure compared to regular procedure, e.g.:

a) Relaxation of certain rules concerning the taking of evidence.

There is no difference between the procedures concerning the rules of the taking of evidence.

b) Oral or written procedure. Is there a possibility of a purely written procedure?

It is the complexity of the case that decides whether the procedure should be oral, written, or both.

c) Limitations concerning *ius novorum*.

No.

d) Shorter deadlines (e.g. for answer to an action).

There is no difference between the procedures concerning the content of the judgment.

e) Relaxation of rules concerning the content of the judgment, time limit for the delivery of the judgment. Is there any time frame for resolving the case?

There is no difference between the procedures concerning the content of the judgment. There is no time limit for the court resolving the case.

4.5. Is there any exclusion or restriction of the possibility to appeal against the judgment? If so, on which grounds can the appeal be based and within which time should it be lodged?

All judgments can be appealed against within three weeks from the judgment. The court of appeal will only adjudicate a judgment if the court has left a leave to appeal. Leave to appeal is given on four grounds. 1. If there is reason to doubt the accuracy of the judgment. 2. When it is not possible to assess the accuracy of the judgment without a leave to appeal. 3. When it is important for the guidance of the adjudication that the appeal is adjudicated by the court of appeal. 4. When there is extraordinary reasons to adjudicate the judgment.

4.6. Reimbursement of costs.

All costs of the winning party shall be reimbursed. In small claims procedures legal costs are limited. Only one hour counsel costs is reimbursed.

4.7. Enforcement of judgment domestically and abroad

4.7.1 Enforcement of judgment in Sweden

4.7.1.1 Enforceable titles of execution

Enforceable titles of execution are, according to the Enforcement Code: a court judgment, verdict or decision, a settlement that is confirmed by a court, an approved criminal penalty

order or approved order to pay a breach of regulations fine, arbitration award, undertakings concerning maintenance allowances, decision of an administrative authority that in accordance with a special regulation may be enforced, document that in accordance with a special regulation may form a basis for enforcement, the verdict or decision in cases concerning payment orders or enforcement assistance made by the Enforcement Authority.⁹

4.7.1.2 Sequestration

No provisional enforceability exists, but the procedure of sequestration could be used. The general courts are responsible for issuing orders of precautionary measures. Provisions exist in the Judicial Procedure Code.¹⁰ A referral provision to the Judicial Procedure Code exists in the act on order to pay and decision of enforcement assistance¹¹. The applicant must show that danger exists in delay and that there is a risk that the debtor will abscond, remove property or in a similar way attempt to avoid the fulfilling of his duties. He must also show probable cause generally and put up security for any damage that might be caused the debtor by the action.

It is then up to the Enforcement Authority to carry out the provisional action of enforcement.¹² After this action the debtor is forbidden to transfer the property or in any other way dispose of it in a harmful way to the creditor. A provisional action does not give the creditor a priority right. An order of precautionary measures is in principle enforced by an application of the same rules of the Enforcement Code as apply in cases of ordinary enforcement matters.

4.7.1.3 After a title of execution, debtor's declaration/third debtor's (garnishee's) declaration

If the debtor fails to pay the debt he is contacted by the Enforcement Authority. He is obliged to give information about his assets and where they are located. Third parties are also required to provide information about persons who have financial dealings with the debtor but who is himself not a creditor. A debtor, or a third party, who refuses to disclose information may be served an injunction to do so by the Enforcement Authority under the threat of fines.¹³ Such fines, which are imposed by the District Court, are not subject to any particular limit.

The debtor can be instructed to submit a list of his assets and sign an affirmation on his faith and honour that the information given in the list is correct.¹⁴ Another possibility is to hold a hearing with the debtor, and third parties, at the office of the Enforcement Authority.¹⁵ Such a hearing is reserved for matters when the debtor refuses to co-operate with the Authority and when other, less far reaching procedures, are deemed to be insufficient.

4.7.1.4 Information available before and after a title of execution, registers

⁹ Chapter 3, §1 Enforcement Code.

¹⁰ Chapter 15 Judicial Procedure Code. See, for more detailed comments on this chapter of the Code, Rättegång tredje häftet, Ekelöf, P-O, Bylund, T, Edelstam, H, pp. 11-36, and Rättegångsbalken, Fitger, P, section 15:1-40.

¹¹ See §62 Act on order to pay and decision of enforcement assistance.

¹² Chapter 16 §12-16 Enforcement Code. See for more detailed comments: Utsökningsbalken – En kommentar, Wallin, G, Gregow, T, Löfmarck, P, Millqvist, G, Persson, A H, pp. 628-643, Utsökningsrätt, Gregow, T, pp. 129 and 385-394, Fridén, H, En av kvarstadens rättsverkningar – accessorisk men förutsebar ? in Vänbok till Torleif Bylund, pp. 85-119, and Utmätning, Enforcement Authority, pp. 413-424.

¹³ Chapter 2 §15 Enforcement Code.

¹⁴ Chapter 4 §14 Enforcement Code.

¹⁵ Chapter 2 §10 Enforcement Code.

The public may contact or visit the Enforcement Authority and receive information about individuals and legal entities who are registered as debtors in the enforcement register. The enforcement register contains all registered debtors and is a central computer base used by the Enforcement Authority. This register contains public and private claims. All payments and actions taken in relation to the debtors are recorded in the register.

With the help of the personal identity number or the organization registration number of a company one can find out if the individual or the company is subject to enforcement, what kind of debt the individual or the company has and what action the Enforcement Authority has taken.

For applicants handling large numbers of matters, applications can be transferred directly via computer from the applicant to the Enforcement Authority. Judgment and other material is sent by mail. Provisions for the handling of the register can be found in the enforcement register act.

Information regarding the debtor's assets is available to the following extent at the Enforcement Authorities for enforcement purposes through search in public registers, to which the Enforcement Authorities has direct access by computer.

The tax register is kept and administered by the Tax Agency for taxation purposes. The Enforcement Authority has direct access by computer concerning tax debtors. All taxpayers, both individuals and legal entities, are recorded in the register. Information which could be found in this register is for instance the debtor's sources of income, name of employer, bank accounts and real estate holdings.

The register of limited liabilities corporations is a computer register kept and administered by the Patent and Registration Office, which contains all limited liabilities companies, both public and private, the size of the share-capital of the company, the members of the board of directors and information about who is legally authorized to sign on behalf of the company. It is also possible to receive copies from the company's annual accounts. Information about all the limited liability companies in which a certain person is involved as a member of the Board of directors or as a deputy is also available.

The trade- and association register is kept and administered by the Patent and Registration Office and contains information about partnership companies, limited partnership companies, private firms, economic associations, certain foundations and non-profit associations. From the register one can for instance obtain information on who are the partners of the companies and which companies a certain person is involved in. Copies of the annual accounts are also available.

The vehicle register is a computerized register kept and administered by the National Road Administration. The register contains information regarding all registered vehicles and their registered owners. One can find out who the registered owner to a certain vehicle is, which vehicles a certain person is registered for as owner and the last three previous owners to a certain vehicle.

The real estate register is a computer based register kept and administered by the National Land Surveying Office. This register contains information regarding all real estates and site

leasehold rights in the country. Information to be found in this register is the ownership status, the taxation value and mortgages of the real estate. Also, other registers exist to which the Enforcement Authority has access, but not directly via computer.

The register for order of payment and enforcement assistance is a computer based register kept and administered by the Enforcement Authority containing certain information related to the applications.

4.7.1.5 Enforcement action

The enforcement normally begins with that a demand of payment is sent to the debtor where he is urged to pay his debt within a certain period of time. If there is no payment the Authority is obliged to initiate an investigation to find out if the debtor has any property that can be subject to enforcement. The Authority can give the debtor a respite to pay. Enforcement can only apply to the property owned by the debtor, an individual or a legal entity, and that property must, when enforcement takes place, be in the possession of the debtor. It must also be possible to transfer the property and it must also have a value.¹⁶

Some assets are excepted from enforcement: furniture, household machines, clothes and other personal belongings, such as watches, rings and jewellery, at a reasonable value. Also tools and equipment necessary for a person to perform his work are excepted from enforcement. Memorabilia are also protected from enforcement such as for instance honorary medals, family bibles, etc. Tenancy rights to apartments are excluded as well as tenant owner's apartments under a certain value, as opposed to real estate which is not. Other examples of exceptions are: cash, if it is necessary for the debtor's support up to a month, as well as the right to pension, but not the monthly pension payments as such, which can be attached. There also exist other exceptions but these just mentioned are the most important.¹⁷

Some assets can be subject to enforcement at distant without the officer being present at the place where the procedure is taking place.¹⁸ An example is the attachment of money in bank accounts. Another example relates to registered vehicles, where enforcement is done only provisionally to be followed by a proper enforcement proceeding within a certain time limit. Ships registered in Sweden can be subject to enforcement even if they are sailing between ports abroad. A protocol of the enforcement action/attachment is kept by the officer in charge, and a copy is sent to the debtor, if he is not present at the proceedings. A preliminary evaluation is made, to be followed later by expert evaluation.

An enforcement action/attachment in relation to a debtor's property means that the creditor obtains a priority right compared to other creditors, which is of importance for instance in the case of a later bankruptcy of the debtor. The Enforcement Authority can, if it is deemed necessary, take the distrained/attached property in custody until it can be auctioned. Until that time it is possible for the debtor to stop auction proceeding if he pays his debt.

¹⁶ See Gregow, T, p. 114 and Utmätning, Enforcement Authority, p. 94.

¹⁷ See e.g. chapter 5 §2 Enforcement Code. See for more detailed comments: Utsökningsbalken – En kommentar, Wallin, G, Gregow, T, Löfmarck, P, Millqvist, G, Persson, A H, pp. 220-222, Utsökningsrätt, Gregow, T, pp. 141-146, and Utmätning, Enforcement Authority, pp. 97-106.

¹⁸ Chapter 4 §7 Enforcement Code. See for more detailed comments: Utsökningsbalken – En kommentar, Wallin, G, Gregow, T, Löfmarck, P, Millqvist, G, Persson, A H, pp. 134-136, Utsökningsrätt, Gregow, T, pp. 118-121, and Utmätning, Enforcement Authority, pp.117-119.

In certain circumstances it is possible for the Authority to correct its own decision. Otherwise the debtor can appeal against the decision of the Authority at the District Court. A third party can also appeal if he claims the property is his favour. Before an enforcement action/attachment the debtor is notified about the proceedings unless there is reason to believe that he might attempt to hide and move away property.

After the just mentioned preparation the proceeding can take place in the home of the debtor or in the premises of the company owned by the debtor in search of assets if deemed necessary, but only if the officer has reason to believe that property can be found there. If the debtor tries to stop the officer from entering into his home or into the premises of his company, a locksmith and/or the police can aid the Authority to get into the building.

If the enforcement officer concludes that the debtor has no assets that can be subject to enforcement, that fact is noted in a protocol, which is later reported back to the applicant creditor. Such a report can then be used by the creditor to apply to court for a bankruptcy order against the debtor. This means for the State, as a creditor, that the Tax Agency may make an application to a District Court for a bankruptcy order against the debtor. If the District Court issues a bankruptcy order an official receiver seizes the debtor's property and uses it for the payment of the debts.

In some matters concerning some types of property some extra care has to be observed. The property can be mortgaged in relation to both personal property and real estate, right of lien can be applicable, the goods can be sold on credit and not be fully paid and there may be a chattel as security for due payment, if the debtor for instance is a company. If the property is a right of use, bank account, promissory bond or patent, some special research and extra care may also have to be observed before any action of enforcement.

The Enforcement Authority can order the debtor to do, or not to do, something under the threat of an order of a penalty of a fine.¹⁹ Also a third party can be given such an order. However, there must exist a strong reason for issuing such an order. The size of the fine is not stipulated in the Enforcement Code. Therefore the officer can determine as high a fine as he considers to be necessary.

The enforcement officer is allowed to use force. This can involve breaking a lock to gain entry into an apartment. However, force against persons may only be used if the officer runs into opposition and the use of physical force is considered necessary. In these matters the police is called in to aid the enforcement officer. If a debtor is unwilling to indicate the location of his property the officer can do no more than to issue an order of a penalty of a fine.

A research for assets aims at the location of all assets of the debtor, but is adopted to the circumstances in the specific matter. When the Enforcement Authority has an option to make a choice between several assets the authority shall seize the asset which, in order to have the total debt paid, causes the least loss and inconvenience for the debtor.²⁰ The authority decides

¹⁹ Chapter 2 §15 and chapter 16 §12 Enforcement Code. See for more detailed comments: Utsökningsbalken – En kommentar, Wallin, G, Gregow, T, Löfmarck, P, Millqvist, G, Persson, A H, pp. 47-49 and 628-630, Utsökningsrätt, Gregow, T, p. 65, and Utmätning, Enforcement Authority, pp. 400-402.

²⁰ Chapter 4 §3 Enforcement Code. See for more detailed comments: Utsökningsbalken – En kommentar, Wallin, G, Gregow, T, Löfmarck, P, Millqvist, G, Persson, A H, pp. 130-132, Utsökningsrätt, Gregow, T, pp. 121-123, and Utmätning, Enforcement Authority, p. 96.

in which order the seizure shall take place. Normally, the following order of seizure is applicable: money, bank accounts and other financial assets which are at an immediate disposal, attachment of earnings, shares and other securitises, other tangible property, and real estate.

4.7.2 Enforcement of judgments abroad

The enforcement of a judgment abroad is normally for efficiency reasons governed by the legislation of the Member State of enforcement.²¹ An example of an explicit referral provision to the enforcing Member State's legislation is found in the Order for Payment Procedure Regulation (1896/2006).²²

4.8 Comparison between national and EU small claims procedure. Differences and similarities.

The procedures, and related forms, concerning the EU small claims procedure seem to be more complex to handle for a creditor than those for the corresponding national procedure.

V. Implementation of Small Claims Regulation (861/2007) in Member States

An act on European small claims proceedings (Lag om europeiskt småmålsförfarande) includes some complementary provisions to the Regulation.²³ Some comments to the Regulation are available in literature.²⁴

5.1 Competent court: Which courts or tribunals have subject matter and local jurisdiction to render a judgment in the European Small Claims Procedure?

The District Court.

5.2 Formal prerequisites for the introduction of the procedure:

a) Which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1)?

The application must be submitted directly to the court or sent by mail. The application must be signed.

²¹ See, about the use of referral provisions to national laws, Cross-Border Enforcement of Claims in the EU – History, Present Time and Future, Berglund, M, pp. 213-215.

²² Article 21.1 of the Order for Payment Procedure Regulation.

²³ Swedish Official Journal number 2008:1038. For some further comments to this act see Internationell verkställighet, Enforcement Authority, p. 322.

²⁴ See Cross-Border Enforcement of Claims in the EU – History, Present Time and Future, Berglund, M, pp. 187-188, Internationell verkställighet, Enforcement Authority, pp. 318-322. Also see the European Judicial Network in civil and commercial matters, www.e-justice.europa.eu.

b) Which languages are accepted pursuant to Article 6 (1)?

Swedish or any of the national minority languages.

5.3 Conclusion of the procedure:

a) Issue of a judgment.

By judgment or default judgment.

b) Certificate procedure – certificate concerning a judgment referred to in Article 20 (2).

A court will, if someone requests it, on a copy of a ruling or decision issued by the court certify that the decision is genuine.

5.4 Appeal against judgment:

a) Is there available an appeal under the national procedural law against a judgment in accordance with Article 17 and with which court or tribunal this may be lodged?

It is possible to appeal against a judgment. This is done to the Court of Appeal. A default judgment can not be appealed but you can apply for a reopening in the District Court.

b) If so, within what time limit such appeal shall be lodged and on which grounds?

An appeal of a judgment or a decision of the Court shall be submitted within three weeks from the date after the judgment was served on the complainant. A default judgment shall be served on the parties and an application for reopening must be filed with the court within one month after the default judgment was served.

5.5 Safeguarding the debtor's rights.

a) Problems with certificate referred to in Article 20 (2). On one hand it may happen that certificate shall be rectified where, due to a material error, there is a discrepancy between the judgment and the certificate. On the other hand the certificate can be wrongly granted (e.g. the judgment does not fall within the scope of Small Claims Regulation).

Describe the procedures for rectification and withdrawal of the certificate concerning a judgment referred to in Article 20 (2).

There is no special procedure for this. The court may rectify the certificate if it contains an obvious inaccuracy as a result of the court or anyone else's typos, calculation errors or similar oversight. The Court can not withdraw a certificate.

b) Explain the procedures for review referred to in Article 18.

Application for a reopening of a default judgment or extraordinary remedies such as for example restoration of expired time. Restoration of expired time means that a person who has

failed to appeal a judgment or a decision in due time are entitled to do so. For this to happen, the person has to have a lawful excuse for his actions. Examples of lawful excuse is illness or disruption of public transport and communications.

5.6 Costs of procedure.

Application fee of 450 SEK (about 9 crowns correspond to 1 euro).

5.7. Enforcement of the judgment in the Member State of enforcement – procedure and requirements:

a) Which authorities have competence with respect to enforcement?

In Sweden all enforcement measures concerning every kind of title of execution related to pecuniary claims from both the private and public law areas and other enforcement matters are entrusted to one single national authority, the Enforcement Authority, administered by the State.

b) Provide basic information on the methods and procedures of enforcement in the Member State.

See under 4.7 above.

c) Which languages are accepted pursuant to Article 21(2)(b)?

Swedish and English.

d) Legal remedies in the Member State of enforcement. Which authorities have competence for the purposes of the application of Articles 22 and 23? Describe the procedure.

The Enforcement Authority has competence for Article 22 (1) and (2) and normally the general Court of the first instance, the District Court, for Article 23. At the present there exist no experiences and legal usage on the interpretation of these provisions. The decisions of the Enforcement Authority and of the District Court is appealable in court.

VI. Final critical evaluation of EU Regulations on Simplifying Cross-Border Debt Collection

6.1. Do Regulations 1896/2006 and 861/2007 in your opinion really simplify, speed up and reduce the costs of litigation in cross-border cases concerning pecuniary claims and ease cross-border enforcement of judgments?

The frequency of making use of the three regulations is very low so far. According to the monitoring system of the Enforcement Authority 595 000 individual civil law matters were during 2010 entered into the system. The system does not provide any specific statistics about the various types of enforcement orders. However, an approximation (2011-02-22) shows that, as compared to the total of 595 000 civil law claims, the European Enforcement Order amounted to 30 cases, the European payment order procedure amounted to 10 cases, and no European Small Claims cases. Another approximation shows that about 5% of the total civil law enforceable titles of execution are based on a requirement on exequatur (EU-law and conventions) or on Nordic conventions. As regards the European order for payment, it is used,

but in comparison with the Swedish order for payment, to a limited extent. In 2010 1.2 million applications for the Swedish procedure were received compared with a total of 35 applications for the European procedure. No statistics are available on the number of European Small Claims cases which are dealt with in the Court system. There exist no rulings from the Swedish Supreme Court on the three regulations.

6.2. Are the national procedures truly frequently impracticable in cross-border cases (recital 7 Regulation 1896/2006), especially having in mind that some of the classical features of cross border litigation constitute direct or indirect discrimination on grounds of nationality and are thus prohibited, for instance the security for the costs of judicial proceedings (*cautio iudicatum solvi*) as an example of direct discrimination (see ECJ case of 26 September 1996, *Data Delecta v MSL Dynamics*, C-43/95, ECR 1996, p. I-04661). Do the advantages of Regulations 1896/2006 and 861/2007 truly outweigh potential obstacles in national procedures involving a party from other Member State (e.g. address for service within local jurisdiction (*Wahldomizil*) or representative ad litem (*Zustellungsbevollmächtigter* etc.)?)

Compare 2.9 above and 6.4.1 below.

6.3. Which is, from the creditor's point of view, the most convenient alternative in your country in case of cross-border collection of debts in EU?

In case the creditor holds a claim representing a mayor amount he would likely for a start contemplate the possibilities of applying for sequestration according to the national law in the Member State where the assets of the potential debtor are located and then initiate legal proceedings in the relevant Member State. The creditor may alternatively, depending on the circumstances, contemplate an application for bankruptcy under the Insolvency regulation. Also, some ideas to promote improvements for the benefit of the creditor are here developed, see 6.3.1-3 below.

6.3.1 Substantial need for improved transparency of the debtor's assets

An improvement of the creditor's mayor problem of non efficient access to/lack of information for enforcement purposes to the debtor's assets for enforcement purposes in the cross border or national context in commercial and contractual matters having cross-border implications in support of securing the result of previous judicial procedures is essential.

An important and possible explanation to the low frequency use of the regulations may not primarily be due to their construction, functioning, and the way they have been implemented into the national legislations of Member States, but also, be explained by the problem of the creditor to obtain an efficient access to information for enforcement purposes in the cross border or national context.

If the creditor do not have access to any reliable information about the location of the debtor and his assets in other Member States he may not find it worth the time and efforts to make use of the regulations, and instead write the claim off. This is in particular likely in case when the creditor's claim concerns a minor amount.

The Commission's proposal in article 86 for a new Brussels I regulation that a more detailed and updated description of national rules and procedures concerning enforcement, including authorities competent for enforcement, information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods shall be included in the European Judicial Network in civil and commercial matters is a good initiative.²⁵ However, in this context, as a first step of improvement, it should be suggested that Member States also should be obliged to make available to the network a description of the national information available for enforcement purposes, including any limitations. This suggestion would no doubt be of some value to both the creditors and the professionals, but is not enough to solve the creditor's problem on a practical level of non efficient access to/lack of information for enforcement purposes in the cross border or national context in matters having cross-border implications.

Therefore, this situation needs to be more efficiently addressed, irrespectively of the amount of the claim, and be substantially further improved by reforms of EU law, based on the Council's reform programmes, with the aim to provide more efficient access to information for enforcement purposes in commercial and contractual matters having cross border implications in relation to all EU regulations in these areas.²⁶

A particular interesting solution of comparative interest, which may be used as a model for reforms in the commercial and contractual areas, is the Maintenance regulation, which includes some rather advanced provisions on a co-operation between central authorities, as representatives for a creditor, for an exchange of information for the purpose to recover efficiently a maintenance claim, on the access to information and on the notification of information to the debtor.²⁷

6.3.2 An application for cross-border enforcement to the Member State of origin

In contrast to the Brussels I regulation, there exists in the Maintenance regulation a practical and efficient matter of service to a private creditor.²⁸ A creditor may file an application for enforcement, by the use of a multilingual officially approved form, to the competent enforcement authorities in the Member State of origin of the title of execution, instead of filing it directly to the corresponding authorities in another Member State. The Member State

²⁵ See the Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, COM(2010) 748 final.

²⁶ See about some reform proposals for such EU law, Berglund, M, Scope of Application of EU Law in the Judicial Procedures of Debt Collection in Civil and Commercial Matters, *LeXonomica - Journal of Law and Economics*, University of Maribor, Faculty of Law, Slovenia, Volume II, No. 2, December 2010, pp. 176-181.

²⁷ See articles 50.1 a), 51.1 c) and 61-62 of the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ 2009 L 7.

²⁸ Another example with a similar concept as the Maintenance regulation is the Convention between Denmark, Finland, Iceland, Norway and Sweden regarding the enforcement of maintenance claims, done in Oslo on 22 March 1962, as amended on 25 February 2000. See, for further information about the convention, Berglund, M. Scope of Application of EU Law in the Judicial Procedures of Debt Collection in Civil and Commercial Matters, *LeXonomica - Journal of Law and Economics*, University of Maribor, Faculty of Law, Slovenia, Volume II, No. 2, December 2010, p. 165.

of origin should, according to the Maintenance regulation, then be obliged to transfer the application to the competent body of actual enforcement in the other Member State.²⁹

It should be considered, as a practical and an efficient matter of service to a private creditor, not only to introduce a corresponding possibility of service for him, as in the Maintenance regulation, in the Brussels I regulation, but also in all other EU regulations dealing with matters having cross-border implications in the commercial and contractual areas.

It remains, however, to be discussed to what extent and in what proportion private creditors, respectively the Member States, should pay for the services made available under such a service obligation under these regulations in commercial matters, i.e. what possible fees creditors should pay, or not pay, to their national regulated enforcement agents.

6.3.3 Improved means of freezing the debtor's assets in another Member State

Another important problem for the creditor in the cross border context is the present lack of efficient measures of freezing the debtor's assets. This problem may, however, be improved by the Commission's reform proposal for the Brussels I regulation, and the recent Commission's proposal for a regulation of the Parliament and of the Council Creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters.³⁰

²⁹ Articles 51.1 a) and 55.

³⁰ COM(2011) 445 final.