

PROJECT OVERVIEW



EN4s

DIVERSITY OF ENFORCEMENT TITLES IN
CROSS-BORDER DEBT COLLECTION IN THE EU



Project EU-En4s - JUST-AG-2018/JUST-JCOO-AG-2018
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GENERAL INFORMATION

Of the many obstacles faced in cross-border enforcement, perhaps the most pertinent is the lack of mutual trust between national authorities of different EU Member States. National authorities treat enforcement titles from other Member States with reservations and mistrust. This problem is exacerbated by the diversity of enforcement titles in the various Member States, namely, their structure and effects. The Project aims to analyse these differences and tackle identified problems, with a primary goal of strengthening mutual trust.



KEY POINTS ABOUT EU-EN4S

- 1 The Consortium is comprised of 15 partners from across the EU and 1 partner from a Candidate State.
- 2 Comparative research into national judgments, court settlements and notary acts.
- 3 Research on the European legal framework on cross-border enforcement in civil and commercial matters.
- 4 Unique findings which will facilitate the circulation of judgments in the EU.
- 5 Integrating IT tools to assist partakers in a better understanding of foreign enforcement titles.
- 6 Prospects of automated cross-border enforcement.

DIVERSITY OF ENFORCEMENT TITLES WHAT IS IT ABOUT?

Enforcement titles vary from Member State to Member State. They differ in a wide variety, including name, type of decision, structure and effects.

EU law does not concern itself with harmonising genuinely national enforcement titles. Thus, national law autonomously defines the characteristics of enforcement titles.

A COMPARATIVE ANALYSIS WILL ATTEMPT TO IDENTIFY DIFFERENCES AND SIMILARITIES IN 3 DISTINCTIVE CATEGORIES OF ENFORCEMENT TITLES

JUDGMENTS

COURT SETTLEMENTS

ENFORCEABLE NOTARY ACTS

Partners have provided samples of national enforcement titles as well as practical and theoretical insights into the procedures of their respective Member State. They will analyse and identify points of contention regarding foreign enforcement titles. Partners will aim to find solutions to currently contentious and ambiguous issues, so as to bring better clarity to this subject, with the ultimate aim of improving mutual trust across the Member States.

EFFECTS OF ENFORCEMENT TITLES

A MULTIFACETED TOPIC

Under the Brussels Ia Regulation, an enforceable judgment in the Member State of origin shall also be enforceable in the Member State addressed.

The study will provide a comprehensive overview of the effect of “enforceability” in a national and comparative framework. It is important to elaborate the prerequisites which lead to enforceability and to dissociate enforceability from the finality of the judgment (if possible). Research into the relation between the two is often either marginalized or completely ignored in the doctrines of respective national jurisdictions. Special attention is devoted to the effects of *res judicata* (finality). A comparative assessment on the personal boundaries and the objectives and temporal dimensions of *res judicata* will be undertaken, coupled with an exhaustive analysis of the notion of the “cause of action” under national law.

Comparative conclusions will take account of different approaches to *res judicata* under systems of civil law, common law and EU law. All of the findings will provide an excellent foundation for drawing conclusions in the cross-border context.

Notarial acts are enforceable according to rigid substantive requirements and subject to strict rules on form, which may vary considerably across Member State.



STRUCTURAL DIFFERENCES WHY ARE THEY IMPORTANT?



Judges or enforcement agents may experience difficulties when parties attempt to enforce a foreign enforcement title. For example, identifying the operative part of the judgment may prove difficult, if the operative part is not self-contained, but is instead entangled with the reasoning of the judgment or if the specification of the claim is altogether reserved for a subsequent (judicial) decision.



Furthermore, the calculation of interest can often prove challenging if the enforcement title does not specify both the duration and rate of the claim.



Foreign enforcement titles may contain characteristics as well as enforcement measures unknown in the Member State addressed.



The proper identification of the creditor and debtor from the enforcement title becomes important in instances of party succession, as well as *in rem* effects of judgments.



Discerning the operative part of the judgment and the legal and factual grounds of the reasoning might also present a challenge. This issue is particularly important for the prohibition of *revision au fond*.

IN THE CROSS-BORDER CONTEXT

Research activities address many unsolved issues in the cross-border context. These are not limited to the sphere of recognition and enforcement, but also pertain to jurisdiction.

Beginning with fundamental concepts of a “judgment” and “authentic instrument”, the project aims to provide a detailed catalogue of national decisions and instruments, which conform to their euro-autonomous counterparts.

The project aims to shed light on the illusive concepts of “related actions” under the Brussels Ia Regulation. National experiences and theoretical standpoints will help identify closely related situations giving rise to “irreconcilable” judgments.

The concept of “irreconcilable” judgments will also be thoroughly explored for the purposes of determining international *lis pendens* and *ne bis in idem*.

An associated aspect of this problem is further manifested in problematic “torpedo actions”, which are still a viable outcome under the Brussels Ia Regulation and thus require attention.

Doctrinal research will provide valuable insight into the extension of effects of judgments (the scope of its authority and effectiveness in Member States other than of origin).

In the context of enforcement, the project will address the relationship and possible disparities between the certificates on enforceability and the enforcement title. These may prove to be particularly troublesome and prompt the enforcement authority to take notice of the enforcement title, rather than the certificate.



ADVANCING THE CIRCULATION OF JUDGMENTS IN THE DIGITAL ERA

EU-En4s does not evade reckoning with the challenges and opportunities of digitalisation. Two outputs are designed to help partakers in cross-border enforcement.

1

Prototype of an Enforcement Title Oracle. An interactive tool, featuring judgments from participating Member States, with useful, practical and theoretical information on their structure and effects.

2

Research into the prospects of automated enforcement proceedings. Many Member States already operate with some form of electronic enforcement proceedings. The project will compile the forms utilized in these proceedings and attempt to demonstrate their usefulness in individual steps.

PAST ACTIVITIES

- ✓ Kick-off Meeting at University of Maribor, Slovenia
- ✓ Expert Meeting at UCLan, Cyprus
- ✓ National Workshops in each participating Member State
- ✓ Drafted project Questionnaire
- ✓ Drafted National Reports
- ✓ First International Conference in Portorož, Slovenia

FUTURE PROJECT ACTIVITIES TO BE AWARE OF


- Second International Conference in 2021
- Prototype Enforcement Title Oracle
- International Comparative Assessment
- Final Expert Report



The research is headed by the University of Maribor, Faculty of Law and its Institute for Civil, Comparative and Private International Law, which has extensive experience with similar projects in the field of cross-border enforcement.



MORE INFORMATION

 www.pf.um.si/en/acj/projects/pr09-eu-en4s/

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NOTARSKA
ZBORNICA
SLOVENIJE

 inštitut za primerjalno pravo



 Maastricht University



UNIVERSITÄT GRAZ
UNIVERSITY OF GRAZ 



MUNI
FACULTY
OF LAW



UNIVERSIDADE
PORTUCALENSE



zagotovila z učinkorn



Faculty of Law

