

Editors' Preface

MADS ANDENAS, BURKHARD HESS AND PAUL OBERHAMMER*

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The European Union's long-term goal, stated at the Tampere Summit in 1999, is to create an area of free 'movement' of judgments in the same way that there is free movement of goods, persons, services and capital within the EU. Just as the free movement of goods has required the harmonization of standards relating to the manufacture and distribution of goods, the free movement of judgments will require the harmonization of procedural standards and the creation of new interfaces between the national systems. The result should be lower transaction costs for businesses and consumers, and more confidence that agreements will be honoured. The differences between the systems of civil procedure in the European Member States are deep-seated and relate in particular to different approaches to judicial organization. These approaches are underpinned by different policies and expectations. The development of appropriate rules for the European Judicial Area (EJA) is a complex task. Misunderstandings are commonplace and inhibit the design of suitable interfaces and the removal of obstacles to judicial cooperation. Practitioners typically do not have the time or the incentive to explore the reasons for the difficulties they face in cross-border disputes. Policy-makers lack input from practitioners into the policy-making process. It is essential that a framework be created within which detailed comparative information can be provided on subjects of interest to policy-makers so that structural differences can be properly taken into account.

Enforcement proceedings is a new subject in comparative research. Legislation and procedural cultures have remained separated along national lines. Cross-border interaction has been limited as in the traditional view enforcement measures are strictly limited by the principle of territoriality. Private international law does not traditionally address enforcement proceedings. International conventions only regulate the recognition of foreign judgments. The execution of the title after its recognition remains a purely national matter, and is not affected by the Brussels Convention. The current fragmentation hampers transborder debt collection. Creditors are confronted with different legal systems, language barriers, additional costs and delay and sometimes with a reluctance on the part of national

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authorities to enforce foreign but enforceable judgments. Different enforcement structures effectively divide up markets along national borders. Access to justice in the European Judicial Area in enforcement matters is not available. The question is, as Sir Jonathan Mance elegantly puts it in his foreword: [How] do you get your money? One reply is, business often gives up enforcing their claims abroad and write them off.

Enforcement proceedings have increasingly become a subject of comparative research and of legislation in the Member States and the European Union. All Member States have recently adopted extensive reforms in order to improve enforcement. The Storme Group published in 1993 a 'Draft of a Directive on the Approximation of Civil Procedures in Europe'. The Draft suggested extensive European harmonization of enforcement proceedings. There was some reluctance expressed by Member States and in the academic literature. In the Commission's 1997 'Communication on the Free Movement of Judgments', under a 'sectoral' approach the interfaces between national enforcement procedures and the Brussels' Convention were to be harmonized, especially concerning provisional and protective measures, and the transparency of the debtor's assets, and the possibilities explored for an exchange of information between enforcement authorities. The European Council at the Tampere Summit adopted the proposed strategy. Article 65 (c) of the Amsterdam Treaty (1997) entrusts the Community to 'adopt measures in the field of judicial cooperation in civil matters having cross-border implications'. This competence includes cross-border enforcement. In 2003, a group of legal experts under Professor Hess's direction completed a study on the transparency of debtor's assets, garnishments and provisional enforcement and protective measures, see Study JAI A3/02/2002 'on making more efficient the enforcement of judicial decisions within the European Union'. The legal and practical situation in 16 national jurisdictions was described and evaluated on the basis of questionnaires, best practices were identified and several proposals for Community measures were presented. The results of this study (now extended to cover the new EU Member States) will provide the basis for proposals in a Commission Green Paper on Enforcement in the European Judicial Area.

The Enforcement Agencies project and this book examine the structure, status and procedures of selected Member States' enforcement agencies and the implications for individuals and companies in seeking to enforce a judgment in the EJA. The project is part of a more ambitious programme. It constitutes one starting point for a long-running effort to make a substantial contribution to the development of the EJA.

The British Institute of International and Comparative Law has promoted the European Research Interchange (ERI), a network of academics expert in the problems of the EJA and cross-border enforcement. The ERI is a network of academics from institutions of eight Member States. The participants in the ERI work together, sharing information and research outcomes, and cooperating closely with one another with the view to establishing a European Area of Freedom and Justice. Most of the participants in the ERI and in the Enforcement Agencies

project have contributed to this book. Throughout it has had the good fortune of receiving external revision and advice from Professor Dr Peter Schlosser, University of Munich, the leading European, German and comparative civil proceduralist who most English readers will recognize as the author of the *Schlosser Report on the 1st Treaty on Accession to the European Treaty on Jurisdiction and the Enforcement of Judicial Decisions* (OJ C 71, 1979). Dr Wendy Kennet, an expert on European enforcement issues, has also provided important assistance to the project. The editors would also like to express their gratitude to Sir Jonathan Mance for writing the foreword.

The topic chosen for research, and which attracted funding from the European Commission, that of Enforcement Agencies, has provided an interesting, shorter-term focus for the ERI; Professor Hess's project on transparency of debtor's assets, garnishments and provisional enforcement and protective measures, another focus. ERI is here to stay. Additional funding will be sought by the institutions involved in this project so that wider and more ambitious projects can be pursued. The flexibility of the ERI, with its low maintenance costs and an ability to expand, is its main strength, combined with the profile of the participants. This is already demonstrated by the cooperation that will be undertaken in the context of yet other initiatives funded by the Commission.

Parts III–V of the book are based in part on proceedings from the final meeting for this project held at the British Institute of International and Comparative Law in London on 23 April 2004 and entitled *Enforcement Agency Practice in Europe: Cooperation or Harmonization?*

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