

# THE ASSOCIATION OF HER MAJESTY'S DISTRICT JUDGES

## **Response to the Green Paper on effective enforcement of judgments in the European Union: the transparency of the debtor's assets**

The Association represents all District Judges in the County Courts and District Registries of the High Court in England and Wales.

District Judges are responsible for case management of most civil claims issued in England and Wales, and conduct final hearings in over 80% of civil claims that go to trial. They deal regularly with applications and procedures for enforcement of judgment debts.

### ***Question 1***

*Do you consider that there is a need for measures to increase the transparency of debtor's assets?*

*Do you consider that the interface between the enforcement of judgments and debtor protection or the role of non-public organisations in the enforcement of judgments need explicit attention in this context? If so which are elements you consider it important?*

We believe that measures which will make it easier for creditors to enforce judgment debts against debtors in other jurisdictions within the European Union should be welcomed provided there is no greater derogation from the right of debtors to privacy than is reasonably necessary for enforcement purposes. We are strongly of the view that any such measures should only be available to creditors who have obtained a court judgment. Since there appear to be significant discrepancies between the information and procedures available in some member states compared with others, measures at Community level may well be appropriate.

### ***Question 2***

*In what way do you consider that a manual containing all information about the enforcement systems of the Member States would be helpful?*

It is self-evident that a manual detailing enforcement procedures and sources of information available in each Member State would assist creditors from other Member States. It would also make it easier to make comparisons between Member States regarding procedures and sources of information and so to consider whether steps towards harmonisation would be appropriate.

***Question 3***

*Should the information available in and access to commercial registers be increased? If so, how?*

In the context of enforcement of judgment debts, it seems to us that proposals for extending requirements to register details of businesses and individuals (which or who may never incur a judgment debt) may well be disproportionately intrusive and expensive to maintain, without any certainty that registers would be accurate and up-to date. We prefer a system where those who do incur judgment debts can be compelled to disclose relevant information to the creditor.

***Question 4***

*Should access to existing population registers be improved? If so, how?*

Tracing individual debtors can be problematic; such registers of addresses as there are can rapidly become out of date. A national register of addresses for each Member State might make enforcement of judgment debt easier although whether it would be proportionate or indeed feasible to impose such a requirement is essentially a political matter on which we express no view.

***Question 5***

*Should access to social security and tax registers by enforcement authorities be increased? If so, how and to what extent?*

It may well be the case that access to social security and tax registers would assist enforcement; again however, the extent to which it would be proportionate to make such access available is essentially a political question. In our view any such access should be restricted to enforcement authorities, which should mean the courts in this context in England and Wales, who would decide how and to what extent the information should be made available to a creditor. Legislation enacted in England and Wales but not yet in force (ss. 95-105 Tribunals Courts and Enforcement Act 2007) will provide that the court may obtain from government departments and other persons (to be prescribed) limited information held by them (for example details of the debtor's employer) to enable the court to give the creditor information about what kind of enforcement action it may be appropriate to use.

***Question 6***

*Should the exchange of information authorities be improved? If so, how?*

We think the difficulties in this respect are great, given the very different kinds of information registers which exist in different Member States and the differing types and statuses of "enforcement authorities".

***Question 7***

*Do you consider that a European Assets Declaration should be introduced?*

This procedure exists in England and Wales under the guise of an Order for a debtor or an officer of a company to attend court to give information about his/her or the company's means. It may well be that creditors would find it helpful if there were such a procedure in other jurisdictions where it does not already exist.

***Question 8***

*If so, under what conditions should it be possible to obtain it? Should there be sanctions for incorrect statements contained in the declaration? If so, which?*

***Question 9***

*What degree of harmonisation do you consider appropriate for the European Assets Declaration? What should be the precise content of the European assets Declaration?*

We consider that the procedure presently available in England and Wales could provide a useful model. It is well used and generally produces the information needed by creditors to enable them to make decisions about enforcement processes. We do not believe it would be helpful to limit the Declaration to those assets which the debtor thinks should be sufficient to pay the debt; such a restriction would limit the creditor's choice of action. If a debtor has more than sufficient assets to pay the debt, why would he not have paid? We believe the sanctions for non-compliance and for false statements are proportionate. Experience indicates that asking debtors to fill in forms and submit them by post or electronically rarely produces all the required information; attendance before a judge or a court officer enables deficiencies to be identified and dealt with. Debtors should of course be able to avoid making the Declaration by paying, but whether or not payment by instalments would be reasonable may well depend on the information revealed in the Declaration.

***Question 10***

*Which other measures at EU level do you propose to increase the transparency of debtors' assets?*

We have no suggestions.

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