

**EU GREEN PAPER ON EFFECTIVE ENFORCEMENT OF JUDGMENTS IN
THE EUROPEAN UNION –
TRANSPARENCY OF DEBTORS' ASSETS**

RESPONSE OF THE COUNCIL OF HER MAJESTY'S CIRCUIT JUDGES

QUESTION 1

- a. *Do you consider that there is a need for measures at Community level to increase the transparency of debtors' assets?*
- b. *Do you consider that the interface between 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 elements do you consider important?*

RESPONSE

- a. Yes. This is a logical next step to the harmonisation of EU practice on attachment of bank accounts. Without greater access to sufficient information on debtors' assets, enforcement of judgments will be far more difficult.
- b. Consideration will have to be given to the extent to which member states have implemented Directive 95/46/EC so that measures to increase transparency are compatible with the minimum requirements under the Directive to ensure a proper and lawful balance between the protection of private data and the legitimate purpose of effective enforcement of judgments. The Directive will be adhered to if rules for disclosure of information on debtors and their assets are precise and do not result in the disclosure of information which is irrelevant to securing effective enforcement of judgments or is more than is necessary for that purpose.
- c. As to the role of non public organisations, the impact of the Directive must be borne in mind and there is a strong case for retaining Court control over the disclosure of data.

QUESTION 2

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

RESPONSE

We agree that such a manual would be of assistance. The European Judicial Network website already sets out enforcement measures and contact details in relation to many member states (England and Wales do have comprehensive details on the site – Estonia have none) and we consider that that should be the basis of an enhanced manual. The manual would make the information accessible, comprehensive and up to date.

QUESTION 3

Should information in and access to commercial registers be increased. If so, how and to what extent?

RESPONSE

While it plainly would be preferable that corporate details such as are required to be provided in each member state by the Publicity Directive should be centrally recorded, we consider that such records, even if locally held, should be electronically recorded and should be accessible online by searches authorised by member state courts for information about corporate assets. Sufficient sanctions should be prescribed to ensure up to date and accurate information about company assets and liabilities, giving their balance sheet and profit and loss account for the latest financial year. It is clearly too expensive and onerous to extend such registers to partnerships as defined in UK law. We are unable to answer the technical question of how online access to the available or to improved registers could be achieved.

QUESTION 4

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

RESPONSE

On the basis of the widely disparate nature of member state population registers, there seem to us to be very large cost implications in the way of improving access to the existing registers, let alone very substantial problems of inconsistency in the States' approaches to such registers. We doubt that the advantages of greater access outweigh the current cost. It seems sensible to postpone consideration of this issue until such time as member states population registers more closely resemble each other.

QUESTION 5

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

We regard this as essentially a political issue and one to which our organisation should not make a response.

QUESTION 6

Should the exchange of information between enforcement authorities be improved? If so how?

RESPONSE

If the answer to question 5 is yes, then it seems to us that the answer to this question should also be yes. It seems sensible to use the IMI as a model and the suggested method appears to us to be appropriate. However, we question if the suggested improvement is worth embarking upon if the differences between information

available to enforcement authorities in member states is as great as suggested in the paper. If some member states could not provide any information determined and substantial debtors might evade enforcement by domiciling in those states.

QUESTION 7

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

RESPONSE

Yes. We regard this as the most effective of the measures suggested in the paper to introduce greater transparency in relation to the assets of individual debtors including members of partnerships.

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?

RESPONSE

The declaration should be obtained by being made to an appropriate officer of a civil court or a judge. We agree that the debtor should be able to avoid the obligation of making the declaration by offering payment, either in full or by secured instalments. There should only be the obligation to disclose assets sufficient for enforcement of the debt. Those latter restrictions are compatible with the individual's right to privacy. There should be sanctions imposed for refusing without good cause to make the declaration or, if made, giving incorrect information in it. The main sanction should be a short period of imprisonment, either served or suspended at the discretion of the court.

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?

RESPONSE

So far as possible the same form, preferably tick box, should be used. Providing that the debtor is not required to disclose assets above and beyond those sufficient for enforcement we see no reason why all types of assets, wherever situated, should not be disclosed. Harmonisation of member state legislation should be to that extent at least.

QUESTION 10

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

RESPONSE

None.