

TABLE OF CONTENTS

List of Authors	xxi
-----------------------	-----

C.H. van Rhee & A. Uzelac

Enforcement and Enforceability – An Introduction	xxv
--	-----

Acknowledgements	xxxii
------------------------	-------

Bibliography	xxxiii
--------------------	--------

PART I: ENFORCEMENT IN A EUROPEAN AND TRANS-NATIONAL CONTEXT

M. Freudenthal

Attitudes of European Union Member States towards the Harmonisation of Civil Procedure	3
--	---

1. Introduction	3
-----------------------	---

2. Background	4
---------------------	---

2.1. Legislation in the EU	4
----------------------------------	---

2.2. Purpose	5
--------------------	---

2.3. Mutual Trust	6
-------------------------	---

3. Attitudes of Member States towards Harmonisation	6
---	---

3.1. Introduction	6
-------------------------	---

3.2. Reasons for Reluctance	7
-----------------------------------	---

3.2.1. Necessity of the Proposed Measure	7
--	---

3.2.2. Principles of Subsidiarity and Proportionality	8
---	---

3.2.2.1. Scope of Legal Measures: 'National and Cross-Border' versus 'Cross-Border'	8
---	---

3.2.2.2. Regulation on Maintenance in Family Matters	9
--	---

3.3. Techniques or Methods to Demonstrate Reluctance	10
--	----

3.3.1.	Emphasising One's own Domestic Procedural Principles and Rules during the Legislative Process	10
3.3.2.	Implementation of the Measure	11
3.3.2.1.	'Uncontested Money Claims' in the EEO Regulation	11
3.3.2.2.	Recital No. 19: no Obligation to Adapt National Legislation to the Minimum Procedural Standards of the EEO Regulation	12
3.3.3.	Interpretation by the Member States	12
3.3.3.1.	Kostenfestsetzungsbeschluss Certified as EEO	13
3.3.3.2.	Interest of the Party: no Requirement for Certifying under Article 6 EEO Regulation	14
4.	Conclusion	14
	Bibliography	16
 X.E. Kramer		
	Enhancing Enforcement in the European Union. The European Order for Payment Procedure and Its Implementation in the Member States, Particularly in Germany, the Netherlands, and England	17
1.	Introduction	17
2.	The Establishment of Uniform European Procedures	18
2.1.	Community Basis and New Policy Horizons	18
2.2.	From Brussels I, via Enforcement Order, to Payment and Small Claims Procedure	19
3.	The European Order for Payment Procedure	21
3.1.	Scope and Key Features	21
3.2.	Conduct of the Proceedings	23
3.2.1.	Application and International Jurisdiction	23
3.2.2.	Examination of the Application	24
3.2.3.	Rejection or Issue of the European Order for Payment	25
3.2.4.	Opposition and Review	25
3.3.	Enforcement	27
4.	Implementation in the Member States	27
4.1.	General Remarks on Implementation	28
4.2.	Implementation in Germany	29
4.3.	Implementation in the Netherlands	32
4.4.	Implementation in England & Wales	34
4.5.	Is the Implementation of the European Order for Payment Procedure Effective?	35
5.	Concluding Remarks	36
	Bibliography	37

B. Hess

Different Enforcement Structures	41
1. Enforcement in a Comparative Perspective	41
1.1. Enforcement and Debt Collection.....	41
1.2. Constitutional Requirements pertaining to Enforcement.....	43
2. Different Structures of Enforcement Organizations.....	44
2.1. Centralized and Decentralized Systems	44
2.2. Different Enforcement Organs	45
2.2.1. Bailiff-oriented Systems	46
2.2.2. Court- oriented Systems.....	46
2.2.3. Mixed Systems.....	47
2.2.4. Administrative Systems	48
2.3. Regulation and Qualification of Enforcement Agents	48
3. Correlations between Enforcement Structure and Procedure – Some Examples	50
3.1. The Prerequisites of Enforcement.....	50
3.2. The Challenging Issue: The Gathering of Information for Enforcement Purposes	51
3.3. Remedies and Control of Enforcement Agents.....	52
4. The Impact of Enforcement Cultures	53
4.1. Different Concepts of Enforcement: Debt Collection or Mediation	53
4.2. The Role of the Creditor and the Enforcement Organ	54
4.3. Incentives for Speeding Up Enforcement Proceedings.....	54
5. Concluding Remarks	56
Bibliography	58

J. Uitdehaag

Enforcement in the Western Balkans and its Compatibility with the Human Rights Standards of the Council of Europe	63
1. Introduction: Proper Enforcement of Judicial Decisions as a Human Rights Standard Developed by the Council of Europe	63
1.1. Enforcement as an Integral Part of the Right to a Fair Trial.....	63
1.2. The 2003 Recommendation on Enforcement of the Council of Europe	66
2. Enforcement Cases from the Western Balkans before the European Court of Human Rights.....	67
2.1. Albanian Cases: Non-enforcement of Decisions against the State and other Public Authorities	67

2.2.	Enforcing State Debts in Bosnia and Herzegovina: 'Old' Foreign Currency Savings	69
2.3.	Croatian Cases: from War-related Compensation to 'Regular' Court Backlogs and Delays in Enforcement	72
2.4.	Cases from Kosovo: a Matter of the Near Future	74
2.5.	FYROM and the ECtHR: Systemic Deficiencies of the Old Enforcement System, New Private Bailiffs Still Untested.....	74
2.6.	ECtHR Cases from Montenegro: Serious Problems with Enforcement.....	76
2.7.	Serbian Cases and the ECtHR: Police Reluctance and the Privileged Role of the State.....	77
3.	Conclusion: A Look into the Future	79
	Bibliography	81
A. Uzelac		
	Privatization of Enforcement Services – A Step forward for Countries in Transition?.....	83
1.	Introduction	83
2.	Historic Roots of Ineffective Enforcement.....	84
3.	Challenges of Reforms – International Aspects	84
4.	Privatization Experiences in the Region	86
5.	Reforming Enforcement in Croatia: What to Do and Not to Do?.....	88
6.	Conclusions.....	93
	Bibliography	100
N. Betetto		
	Implementation of European Civil Procedural Regulations in the Case Law of Slovenian Courts	103
1.	Introduction	103
2.	The Implementation of the Regulations of the EU Civil Procedural Law in the Case Law of Slovenian Courts.....	104
2.1.	The Implementation of the EU Civil Procedure Regulations in the Case Law of the Supreme Court of the Republic of Slovenia	104
2.2.	Implementation of EU Civil Procedural Law Regulations in the Case Law of Higher Courts	108

3.	Conclusion	109
	Bibliography	111
M. Chardon		
	How to implement Common Standards of Enforcement Law?	113
1.	The CEPEJ	116
1.1.	The 2006 (2004 Data) Report on European Legal Systems	116
1.2.	The 2008 (2006 Data) on European Legal Systems	116
1.3.	Report on the Enforcement of Court Decisions in Europe	117
1.4.	The Working Group CEPEJ-GT-EXE.....	118
2.	ALI/UNIDROIT.....	120
3.	Forum Justice.....	120
4.	The UIHJ	122
	Bibliography	124
	PART II: ENFORCEMENT IN A NATIONAL CONTEXT.....	125
N. Andrews & R. Turner		
	The System of Enforcement of Civil Judgments in England	127
1.	Introduction.....	127
2.	Statutory Changes not Yet Implemented.....	128
3.	Overview of Methods of Enforcement.....	128
4.	Enforcement of Money Judgments	129
4.1.	Seizure of Goods	129
4.2.	Third Party Debt Orders	130
4.3.	Charging Orders	131
5.	Enforcement of Injunctions.....	131
	Bibliography	135
R. Turner		
	A Model for an Enforcement Regime. The High Court Enforcement Officers of the Supreme Court of England and Wales.....	137
1.	Introduction	137

2.	The Historical Provenance	138
3.	The Reforms of 2004	139
4.	Integrity	141
5.	The Honest Judge.....	141
6.	Who is the Client?	142
7.	The Services Offered to the Public.....	142
8.	Specialist Services offered by the HCEOs.....	143
9.	HCEOs and the Police in the Maintenance of Law and Order	143
10.	Independence and Discretion.....	144
11.	Conclusion	144
	Bibliography	146
 M. Chardon		
	Enforcement in France: an Overview of Legislation and Practice.....	147
1.	Enforcement Measures	147
1.1.	Garnishee Orders	147
1.1.1.	Definition	147
1.1.2.	Effects	147
1.2.	Attachment of Earnings Orders	148
1.2.1.	Definition	148
1.2.2.	Procedure	148
1.2.3.	Effects	148
1.3.	Seizures and Apprehension of Goods.....	148
1.3.1.	Definition	148
1.3.2.	Procedure and Effects.....	149
1.4.	Enforcement Measures on Motor Vehicles.....	149
1.4.1.	Prefectural Declaration.....	149
1.4.1.1.	Procedure	149
1.4.1.2.	Effects	149
1.4.2.	Immobilization of the Motor Vehicle	149
1.5.	Seizures of Company Shares and Intangible Assets	150
1.5.1.	Definition	150
1.5.2.	Procedure	150
1.5.3.	Effects	150
1.6.	Eviction Measures.....	150

2.	Interlocutory Measures and Other Methods of Enforcement	150
2.1.	Interlocutory Measures	150
2.1.1.	Common Elements of all Interlocutory Measures	150
2.1.2.	Interlocutory Measures	151
2.1.3.	Securing Claims by Mortgage	151
2.1.3.1.	Definition	151
2.1.3.2.	Procedure	151
2.2.	Other Means of Enforcement.....	151
2.2.1.	Recovery of Alimony	151
2.2.1.1.	Definition	151
2.2.1.2.	Procedure	152
2.2.2.	Seizure of Counterfeits	152
2.2.3.	Seizure of Goods Placed in a Safe	152
2.2.3.1.	Enforcement Measure.....	152
2.2.3.2.	Interlocutory Measures	152
3.	Reform Plans.....	153
3.1.	Access to Information.....	153
3.2.	Electronic Attachment of Bank Accounts	153
3.3.	Tariff and Fees	153
3.4.	Access to the Profession	154
3.5.	Compulsory Ongoing Training.....	154
3.6.	Code of Ethics.....	154
 M. Chardon		
	Training Judicial Officers in France	155
1.	Degree Course of the Trainee Judicial Officer.....	155
1.1.	The Necessity of a University Degree in Law	156
1.2.	Practical 'on the Job Training'	156
1.3.	Theoretical Training 'off the Job'	156
1.3.1.	Optional Training.....	156
1.3.2.	Compulsory Training	157
1.4.	Professional Examination	158
1.5.	Exceptions and Exemptions.....	158
1.5.1.	Alternative Qualifications.....	158
1.5.2.	Exemptions for Qualified Legal Professionals	158
2.	The Training of Employees of Judicial Officers	158
3.	Permanent Training of Judicial Officers	159
3.1.	The Division for the Permanent Training of Judicial Officers of the National Chamber of Judicial Officers	159
3.2.	Professional Meetings and Seminars.....	159
3.2.1.	National Meetings.....	159
3.2.2.	International Meetings	159

3.3.	Journals, Websites and Professional Publications	159
------	--	-----

C.H. van Rhee

	The History of the 'Huissier de Justice' in the Low Countries.....	161
--	--	-----

1.	Introduction	161
2.	The Origins of the <i>huissier de justice</i>	162
3.	Duty of Office	163
4.	Some Specific Tasks and Duties of the Historic <i>huissier</i>	164
4.1.	Serving the Summons.....	164
4.2.	Enforcement against Immovable Property	168
5.	The Modern <i>huissier de justice</i>	169
5.1.	Rules and Regulations	169
5.2.	Professional Associations and Journals	170
5.3.	Education	171
5.4.	Non-official Commercial Activities	173
5.5.	The Court Bailiffs Act (Gerechtsdeurwaarderswet) 2001	173
6.	Final Remarks	174
	Bibliography	175

A.W. Jongbloed

	The Dutch Court Bailiffs Act Eight Years after its Introduction.....	179
--	--	-----

	Introduction	179
1.	Court Bailiff: a Special Office.....	180
2.	The Task assigned to the Committee and Its Working Method	183
3.	The KBvG as a Professional Regulatory Authority – a Review Framework.....	183
4.	The KBvG reviewed as a PRA	185
4.1.	'Communicates Responsibility for Good and Independent Professional Practice'	186
4.2.	'Is Well-Embedded and has Sufficient Status in the Professional Group'	187
4.3.	'Promotes Professional Competence of the Bailiffs'	188
4.4.	'Has an Internal Organization that Functions Adequately and Democratically'	188
4.5.	'Promotes a "Guild Feeling" and the Independence of the Practitioners'	188

4.6.	'Maintains Internal and External Relationships'	189
4.7.	'Plays an Initiating, Agenda-determining Role'	189
4.8.	'Enforces Rules where Necessary and Ensures in this Way that the Standard of Professionalism is held high'	189
4.9.	'Exercises its Regulatory Authority Proactively, on the Basis of Subsidiarity and Proportionality'	190
4.10.	'Exercises its Regulatory Authority Proactively specifically to Protect the General Interest'	191
4.11.	'Pays Sufficient Attention to the Actual Effect of Professional Values in Rules of Conduct and Rules of Professional Practice'	191
5.	Internal Management	192
6.	Internal and External Supervision	194
7.	Quality of Professional Practice	195
8.	Closer Ties with the Courts	196
9.	The Debtor's Interest	197
10.	Court Bailiffs and Commercial Activities	200
11.	Possibilities and Impossibilities for Establishment	200
12.	Disciplinary Law	201
13.	Conclusion	203
	Bibliography	206
 E. Silvestri		
	The Devil is in the Details: Remarks on Italian Enforcement Procedures	207
1.	Introduction	207
2.	The Sources of the Law on Enforcement.....	207
3.	An Outline of Enforcement.....	208
3.1.	'Enforceable Instruments'	208
3.2.	A Court-controlled Enforcement	209
4.	Critical Aspects of Italian Enforcement Procedures.....	210
4.1.	A Labyrinth of Judicial Procedures for the Enforcement of Money Judgments and Orders	210
4.2.	The Difficulties related to the Identification and Location of Assets	211

4.3.	Trials and Tribulations of the Enforcement of Mandatory and Restraining Orders.....	212
5.	Evaluation of Italian Enforcement Procedures	213
6.	Final Remarks	214
	Bibliography	215
 V. Yarkov & V. Abolonin		
	Enforcement in Russia: A Short Outline	217
1.	Reform of the Enforcement Procedure.....	217
1.1.	Introduction	217
1.2.	Main Stages of the Reform.....	218
2.	The Rules regulating Enforcement in Russia, both Nationally and Internationally	219
2.1.	Sources of Russian Enforcement Law	219
2.1.1.	National Sources of Law	219
2.1.2.	International Sources of Russian Enforcement Law.....	219
2.2.	The EU, Russia and the Enforcement Procedure	220
2.3.	The Russian Key Rules on the Recognition of Foreign Judgments and Arbitral Decisions.....	220
2.4.	Areas in which a Treaty on Mutual Enforcement between Russia and the EU is most Urgently Required	221
2.5.	What Model should be taken for an Agreement on Legal Assistance between the EU and Russia, including Enforcement of Civil Judgments of State Courts?.....	222
3.	The Structure and Main Characteristics of Enforcement Procedure in Russia.....	222
3.1.	Principles of Enforcement.....	222
3.2.	The Basic Features of Enforcement Procedure in Russia.....	223
3.3.	Main Problems in the Enforcement Procedure	224
3.4.	Private Enforcement: Pros and Cons.....	225
4.	Enforcement of Court Decisions and Other Enforceable Documents in Russia	226
4.1.	Main Stages of the Enforcement Procedure	226
4.2.	Enforceable Documents	226
4.2.1.	Enforceable Court Decisions (Titles)	226
4.2.2.	Judicial Orders.....	226
4.2.3.	Notarial Deeds or Certified Copies of Agreements on Alimony.....	226
4.2.4.	Certificates of the Commission on Labour Disputes (CLD).....	227
4.2.5.	Certificates of State Bodies for the Collection of Debts Owed to Them	227

4.2.6.	Judicial Orders and Orders of State Administrative Bodies and Officials concerning Administrative Penalties.....	227
4.2.7.	Orders of the Enforcement Officer (Article 12(1) FSEP)	227
4.2.8.	Certificates of Other State Bodies in Cases Specifically Provided by Federal Law	227
4.2.9.	Enforceability by Orders of the Notary.....	228
4.3.	Initiation of Enforcement Proceedings.....	228
4.4.	Pre-enforcement Stage.....	228
4.5.	Second Stage of the Enforcement Procedure.....	228
4.6.	Measures to be taken when the Debtor does not Comply Voluntarily with the Enforceable Document.....	229
4.7.	Priorities	229
4.8.	Time Limits for Submitting Enforceable Documents for Execution	229
4.9.	Order of Attachment	230
4.10.	Appraisal of Property	230
4.11.	Sale of the Debtor's Property	230
4.12.	The Sale of Real Estate.....	231
5.	Conclusion	231
	Bibliography	232
 V. Babunski		
	Reform of the Enforcement Procedure in the Republic of Macedonia.....	233
 N. Pajic		
	Avenues for Enforcement and Execution of Judgments in the United States.....	237
1.	Introduction	237
2.	Generally Applicable Rules	237
3.	Enforcing Sister State Judgments.....	238
3.1.	Common Law Domestication.....	238
3.2.	Domestication under UEFJA	239
3.3.	Limitations on Full Faith and Credit.....	240
3.4.	Executing Against a Judgment.....	240
4.	Enforcing Federal Judgments.....	240
4.1.	Recording a Judgment.....	241
4.2.	Registering a Judgment.....	241
5.	Enforcing Foreign Judgments.....	242
5.1.	Uniform Foreign Money-Judgments Act (UFMJA).....	243

6.	Public Enforcement of Judgments	244
6.1.	Sheriffs, Constables.....	244
6.2.	The United States Marshals Service.....	244
7.	Private Enforcement	245
8.	Executing Judgments.....	246
8.1.	Information Resources	246
8.2.	Writs of Execution.....	246
8.3.	Effective Execution	247
9.	Exemptions from Enforcement	248
9.1.	California Exemptions.....	248
10.	Conclusion	249
	Bibliography	250
PART III: SPECIAL ISSUES: SELF-COMPLIANCE, ENFORCEABILITY IN MEDIATION AND FAMILY LAW, CIVIL IMPRISONMENT, COMBINED PROCEEDINGS, COSTS OF ENFORCEMENT		
	R. Verkerk	
	Procedural Fairness and Compliance.....	253
1.	Introduction.....	253
2.	Understanding Compliance	254
3.	Procedural Fairness	256
3.1.	What Modes of Dispute Resolution are Perceived to be Fair?	256
3.2.	When do Litigants Rate a Procedure as Fair?.....	258
4.	The Relationship between Fairness and Compliance	259
4.1.	Fairness and Perceived Legitimacy of Institutions.....	260
4.2.	Fairness, Legitimacy and Compliance	261
4.3.	Fairness and Compliance: Civil Cases in Dutch District Courts	262
4.4.	Fairness, Legitimacy and Compliance: New York Police.....	263
4.5.	Fairness, Anger with Institutions and Compliance: Australian Taxation.....	264
5.	Conclusions.....	265
	Bibliography	267

R. Jagtenberg & A. de Roo

Enforcing Mediated Settlements in Europe	271
1. Introduction	271
2. From Trier to Brussels (via Tampere and Strasbourg)	272
3. Belgium and the <i>Homologation</i> Issue	280
4. The Netherlands: Efficiency versus Regulation	282
5. Relevance of the Enforceability Issue	284
6. Concluding Observations	286
Bibliography	288

B. Rešetar

Enforcement of Contact Orders concerning Children	291
1. Introduction	291
2. Enforcement of Contact Orders in Croatia	292
2.1. Enforcement of Contact Orders under the Croatian Family Law Act 2003	292
2.2. Enforcement of Contact Orders in Practice	294
3. Differences between Some European and the Croatian Enforcement Systems	294
4. A Lesson for Croatia: <i>Karadžić v. Croatia</i> at the ECtHR	295
5. Conclusion	296
Bibliography	297

B. Assink, M. Dekkers, N. Pepels & F. Fernhout

Civil Arrest as a Means of Enforcement of Civil Judgments: Dickensian or Indispensable?	299
1. Introduction	299
2. Defining Civil Arrest	300
3. Some Historical Remarks	301

4.	When Civil Arrest is Useful and Acceptable.....	304
5.	Margins set by International Law	306
6.	Dutch Law on Civil Arrest.....	307
7.	Concluding Remarks	309
	Bibliography	310

J.T. Johnsen

	Enforcement of Civil Claims in Criminal Litigation: The Norwegian Example.....	313
--	--	-----

1.	Introduction	313
1.1.	Subject-matter.....	313
1.2.	Background.....	314
2.	Essential Procedural Elements	315
2.1.	Connectivity.....	315
2.2.	Access to Connected Proceedings.....	316
2.3.	Production of Evidence	317
2.4.	The Hearing, the Judgment and Appeals	317
2.5.	Enforcement.....	318
3.	International Comparison.....	319
4.	Combined Proceedings and Human Rights	321
5.	Combined Proceedings in Practice	322
6.	Pros and Cons of Combined Proceedings	323
6.1.	Better Access to Legal Aid and Improved Enforcement.....	323
6.2.	Societal Gains.....	324
6.3.	Questionable Features	325
	Bibliography	326

J. Marston

	Fee Systems for Enforcement Agents	327
--	--	-----

1.	Introduction	327
2.	Court Procedure	327
3.	Judges	328

4. The Provision of Training 329

5. Fees 329

6. Regulation 330

7. Note..... 331