



Atelier 2 - Le rôle de l'agent d'exécution mondial pour favoriser le développement économique

Table ronde - L'agent d'exécution : interface juridique avec les partenaires économiques

Workshop 2 – The Role of the Global Enforcement Agent as an Answer on Economic Development

Round Table – The enforcement Agent: Legal Interface with Economic Partners

The Enforcement Agent: Legal Interface with Economic Partners

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The status of a bailiff in the Polish legal system is a particular, special one.

The bailiff is a public official, a special kind of the state body authorized to impose penalties, subordinated to the supervision executed by a court at which he operates, the body which maintains the public relationship with the parties (not a private one). At the same time he runs his business (economic activity) on his own account i.e. he collects the fee for the enforcement activities he carries out (apart from, disconnected from the principle of the budget connection with the State Treasury), whereby it is worth also noting that the bailiff is not an entrepreneur within the meaning of the Polish Act on Freedom of Economic Activity, the status of a public authority makes it impossible as well as the fact of being subjected to the provisions restricting the possibility of the pursuit of the maximization of the profit or the inability to act on their own behalf.

In order to improve the economic turnover in Poland, the bailiffs have been conducting the wide range of the consultations not only with the representatives of the creditors - entrepreneurs, but also with the representatives of the judiciary and the Ministry of Justice. The regular conferences have been organized with the participation of the organizations representing the employers, the representatives of the Ministry of Justice, which enable to generate the optimal models of the legal solutions - also in the widely understood context of IT.

The computerization of the judiciary is a huge challenge, in legal as well as in the technological terms. The current state of this process, particularly with regard to the examination proceedings and the enforcement proceedings, requires not only the improvements, but above all, the acceleration. This is important especially not only from the point of view of the judicial officers who face on a daily basis a time-consuming and generating unnecessary costs procedures, but above all from the point of view of the creditors who see the development process of computerization as the opportunity of the streamlining and the rationalization of the debt recovery process.

A partial response to the expectations of the creditors was to create an electronic writ system, launched in 2010, introduced as a separate procedure, having the character of an order for payment in cases where the state of facts is not complicated and does not require any inquiry (the evidence procedure). The writ of payment issued via electronic proceedings has only the electronic form and is available via the e-court system.



The benefits that entails the electronic writ system is mainly the simplification and the reduction of the procedure costs, as well as shorten the time needed to issue an order for payment and unburden the courts by taking over the simple cases. The electronic forms facilitate the construction of a lawsuit. The communication between the plaintiff and the e-Court is carried out exclusively by mail.

The plaintiff based on the electronic enforceable title may apply for the enforcement to the bailiff of his choice via the e-Court system.

The electronic request for enforcement must indicate the bailiff selected from a list of the available bailiffs, then there is a possibility of making the change or updating the data of the creditor as well as indicating from which assets the enforcement must be conducted. This solution did significantly accelerated the execution procedure conducted via the electronic writ system, however four years of its functioning was far more than enough to identify and analyze its shortcomings. The Conference of Financial Enterprises, the organization that unites more than 80 key enterprises from the financial market in Poland (including the banks, the counsellors and the financial intermediaries, the loan and insurance companies) and the Polish National Council of bailiffs as the bailiff's representative, have created the Team on the Improvement of the computerization of the judiciary. The inaugural meeting was held in July 2014 in Warsaw. The Team comprises the representatives of the bailiffs and the creditors.

The result of the cooperation and the consultation with the participation of the entrepreneurs is also a recent amendment to the Polish Code of Civil Procedure based on the computerization of the enforcement proceedings. The main changes are:

- The implementation of the ICT system to handle and support the enforcement proceedings,
- The ICT system and the electronic means of communication as the sole method of communication with the administrative law enforcement agencies and tax authorities,
- The electronic movables auction (via the ICT system produced and maintained by the Polish National Council of Bailiffs),
- The electronic bank account attachment.

As concerning the widely understood IT, it is worth to mention about the project called: Enforcement Procedure Monitor (MPE). This will be the access portal for the bailiffs and the creditors that will enable the exchange of the information on the ongoing enforcement proceedings. For the banks, the telecoms, the secondary creditors, the debt collection companies, for the law firms, the debt collectors this platform constitutes an excellent tool for the formulation of the legislative demands, essential for the debt management market.

The Enforcement Procedure Monitor (MPE) as a tool facilitating the creditors - bailiffs communication became the subject of work of the Joint Team of Experts of the Conference of Financial Companies and the Polish National Council of Bailiffs on the Improvement of the computerization of the judiciary. The system contains all relevant information for the participants of the enforcement proceedings, made available based on the data provided directly from the bailiffs' offices data bases. This ensures the accuracy and timeliness of this information. At the same time the data sharing process is done with the guarantee of the highest standards of safety. MPE immediately



enables to obtain all the relevant information located in one place and in a standardized format that users of the system will be able to adapt to the needs and requirements of their systems.

Regarding the issue of the debt collection I would like to note that this issue is very important for the Polish Community of the Enforcement Officers. The implementation of the debt collection institution to the Polish legal system is an important postulate de lege ferenda. The debt collection, as we know, successfully works in more than 65% of the countries in the world and in more than 55% of European countries. I would like to mention that in August 2014, Rafał Fronczek the President of the National Council of judicial officers of Poland sent a letter to the Polish Minister of Economy containing the draft of the detailed regulations in this regard. The implementation of the proposed solutions, enabling consensual investigation duties by the judicial officers will undoubtedly contribute to the state where the unnecessary, lengthy and costly court proceedings may be avoided while improving the functioning of the economic activity.

The arguments for the introduction of the debt collection to the Polish legal system will definitely provide the research conducted within the Commission Stobra 7 created at the initiative of the President of the Polish National Council of Bailiffs Raphael Fronczek. I had the pleasure to present to the Council of the European Presidents in last November in Paris a detailed plan of the action of the Commission; if I may I would like to remind the essential steps of the Commission to be taken:

There are three basic stages:

1/ The first stage –preparation- is a two-pronged activity:

On the one hand, we will prepare a draft questionnaire with specific questions to individual European countries where the debt collection is used;

On the other hand, we will prepare a detailed scheme of visits to the judicial officers' offices in selected countries where the debt collection is practiced.

2/ The second stage would be the analysis of the gathered information that is the responses to the questionnaires and the post-visitation protocols.

3/ The final third stage would consist of organizing an international scientific conference. The conference would include:

- A detailed report of the Stobra 7 Commission's work, -A presentation of the general report; the analysis and the conclusions,
- The future prospects of the development of the institution of the debt collection.