TOWARDS EFFECTIVE ENFORCEMENT OF UNCONTESTED MONETARY CLAIMS: LESSONS FROM EASTERN AND CENTRAL EUROPE

Delivered by the World Bank in collaboration with the Ministry of Foreign Affairs of the Kingdom of the Netherlands

June 2017
TOWARDS EFFECTIVE ENFORCEMENT
OF UNCONTESTED MONETARY CLAIMS:
LESSONS FROM EASTERN AND CENTRAL EUROPE
Acknowledgements

This report examines enforcement of unpaid utility bills in Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, FYR Macedonia, Poland, Romania, Slovakia and Slovenia, and outlines the various policy options available to countries wishing to reform these procedures.

The report was produced by Ms. Svetozara Petkova (Lead Author and Bulgaria Country Expert) and Ms. Georgia Harley (Task Team Leader and Justice Reform Specialist). Country Experts Ms. Ana Krnic (Croatia), Ms. Luba Beardsley (Czech Republic and Slovakia), Ms. Shirley Salm (Estonia), Mr. Péter Szajlai (Hungary), Ms. Dana Rone (Latvia), Mr. Mindaugas Vaiciunas (Lithuania), Ms. Nena Ivanovska (FYR Macedonia), Dr. Jaroslaw Beldowski (Poland), Ms. Ana Maria Andronic (Romania) and Ms. Vesna Pavlič Pivk (Slovenia) collected information on legal regulations in comparator countries and contributed comments and ideas to the overall analysis. Ms. Marina Matic Boskovic and Mr. Srdjan Svircev provided valuable guidance and advice.
# Table of Contents

Executive Summary ........................................................................................................... 1  
Methodology....................................................................................................................... 3  
1. Problem Statement ........................................................................................................ 3  
2. Statute of Limitations ................................................................................................... 4  
3. Prevention of Default .................................................................................................. 6  
4. Uncontested Monetary Claims ...................................................................................... 7  
5. Stages of Enforcement ................................................................................................. 8  
6. Types of Procedures for Obtaining Enforceable Title .................................................. 9  
7. Authority Competent to Issue Enforceable Titles for Uncontested Claims ............... 13  
8. Territorial Jurisdiction ............................................................................................... 15  
9. ICT and Possibilities for Electronic Filing ................................................................ 17  
10. Standardized Forms and Need to Attach Evidence ...................................................... 17  
11. Court and Notary Fees ............................................................................................. 18  
12. Duration of the Procedure for Obtaining Enforceable Title ....................................... 20  
13. Service of the Enforceable Title to the Debtor ......................................................... 20  
14. Objections to Enforceable Titles ................................................................................ 23  
14.1. Forms of Absence of Objection .............................................................................. 23  
14.2. Forms of Objection ................................................................................................ 24  
14.3. Frivolous Objections ............................................................................................. 25  
15. Small Claims ............................................................................................................... 26  
16. Competent Authority Carrying out Execution over Debtor’s Assets ......................... 26  
17. ICT and Execution on Debtor’s Assets ..................................................................... 28  
18. Protecting Debtors ..................................................................................................... 29  
18.1. Restrictions on directing enforcement at some categories of debtors’ assets .......... 30  
18.2. Insolvency of Natural Persons .............................................................................. 32  
19. Reform Management ................................................................................................. 33  
19.1. Reform Management of the Process of Obtaining Enforceable Title ...................... 33  
19.2. Reform Management of the Process of Execution .................................................. 37  
20. Reducing Backlogs ..................................................................................................... 38  
21. Opposition to Reforms .............................................................................................. 40  
21.1. Opposition to Reforming the Process for Obtaining Enforceable Title .................. 40  
21.2. Opposition to Reforming Execution ..................................................................... 41  
22. Conclusions ................................................................................................................. 42  
References ...................................................................................................................... 46
Executive Summary

1. This comparative analysis examines the **enforcement of uncontested monetary claims in the EU-11, as well as in FYR Macedonia** (hereinafter “comparator countries”), and outlines options available to policymakers. The **users of this analysis** will be policymakers in environments that are strained by backlogs of such claims. Primarily, these will be Western Balkans countries, especially those of the former Yugoslavia. The analysis may also benefit policymakers elsewhere who wish to improve enforcement of uncontested claims.

2. When exploring enforcement of uncontested claims, the report gives particular attention to **utility bills** since they form a significant portion of such claims. Additionally, enforcement of utility bills is a sensitive policy matter due to the social significance of these services.

3. Uncontested claims are enforced in **two stages**: **first, obtaining enforceable title; and second, execution of the enforceable title**. In all comparator countries, these two stages are carried out by two different authorities. None of the comparator countries have chosen to combine the two stages. In contrast, in Serbia and in Montenegro these two stages form part of a single enforcement procedure carried out by an enforcement agent.

4. The report divides procedures for obtaining enforceable title into **two principal types of procedures**: **an order for payment** or **issuance of writ of execution based on authentic document**. These have different scopes (with the order for payment procedure being broader in scope) but are based on common characteristics: they are designed to enforce uncontested claims and are non-litigious in nature.

5. The non-litigious nature of obtaining enforceable title calls for **competent authorities** to enforce uncontested claims in a manner that is fast, fair and cost-effective. Most comparator countries have bestowed this responsibility on **first-instance courts**. Hungary, Croatia and FYR Macedonia have assigned this function to **notaries**. In contrast, in Serbia and in Montenegro, enforcement agents both issue enforceable titles and execute them.

6. A few countries have opted for a centralized process whereas others rely on the traditional **territorial jurisdiction** of competent authorities. Some countries with limited territorial jurisdiction report unequal caseload of officials and serious regional differences in timelines. Centralized systems, on the other hand, ensure uniform workload across the country.

7. **Use of information and communications technologies (ICT)** often helps to ensure quick and efficient processing of requests for issuance of enforceable titles. In all comparator countries with centralized systems, electronic filing is mandatory for creditors wishing to use the expedited procedure. Comparator countries with non-centralized systems either have only paper-based filing or provide creditors the choice to file electronically.

8. **An important instrument in managing procedural conduct is the fee** collected by competent authorities. The fee covers the costs for operating the system and should incentivize creditors to choose the most cost-efficient procedure.

9. Procedures for obtaining enforceable titles for uncontested claims are **designed to be quick**. In comparator countries with centralized, electronic systems, authorities issue the
enforceable title within a few days from the filing. Elsewhere, timelines are less predictable. **Timelines** are the longest where procedures incorporate litigious elements.

10. **Service of enforceable titles** to debtors in uncontested claims is critical to ensuring debtors’ right to fair trial. Service in comparator countries is carried out by different types of entities: court employees, notary employees, postal service. Methods of service without proof of receipt by the debtor often give rise to protests. However, such methods are usually seen as indispensable to the effective enforcement of uncontested claims.

11. **Objections** are critically important in enforcing uncontested claims since titles enter into force only in the absence of objection. Most comparator countries allow partial objections, which may lead to increases in processing times but allow for more flexibility. Frivolous objections may increase caseloads and expenses for creditors and debtors.

12. In all comparator countries, **execution** over debtors’ assets is carried out by authorities that are different from the ones issuing the enforceable title. Usually, these are private professionals operating in highly regulated environments. Effective execution may be aided by ICT facilitating case management, disciplinary proceedings, identification and freezing of debtors’ assets, or obtaining information on companies’ and citizens’ indebtedness.

13. **National enforcement policies** should ensure adequate mechanisms for preventing disproportionate measures or excessive harm to debtors in the course of enforcement. The two main groups of measures for **protecting debtors** are the prohibitions or restrictions on directing enforcement at some categories of debtors’ assets, and the adoption of laws on insolvency of natural persons/households.

14. The report explores **reform management** at both stages of enforcement. Obtaining enforceable title for uncontested claims is generally reformed by: introducing an order for payment procedure; assigning notaries with the authority to issue enforceable titles; digitalization; and/or centralization of this function. The most significant reform in the area of execution is the introduction of private enforcement agents.

15. The report explores **factors contributing to the generation of backlogs** in the area of enforcement. It finds that rules on the interruption of periods of limitation in the course of pending execution and rules on dormant execution cases have a direct effect on the likelihood of accumulating backlog.

16. Finally, the report explores **opposition to reforms** in comparator countries and finds that while there was generally little opposition to reforming the issuance of enforceable titles. The introduction of private enforcement agents was met with opposition in some comparator countries. Opposition to reforms often occurred not at the time of their introduction but at a later stage, after the systems had been operating for a few years and their deficiencies had been observed. Nevertheless, successful reforms in the region offer good models for countries that experience similar problems and share common cultural and legal traditions.
Methodology

17. This comparative analysis examines the manner in which enforcement of unpaid utility bills is organized in the EU-11\(^1\), as well as FYR Macedonia (hereinafter referred to as “comparator countries” or “comparator states”), and outlines the various policy options available to countries wishing to reform these systems. It is expected that the primary users of this analysis would be Western Balkan countries where court resources are strained by a massive backlog of unresolved cases for enforcing unpaid utility bills. At the same time, the identified efficiencies and good practices might also benefit countries further afield, including comparator countries wishing to optimize these processes in their regulatory framework.

18. The analysis subdivides the process of enforcement of utility bills into two distinct stages and explores the main features of both stages in comparator countries. The first of these stages is obtaining an enforceable title based on an unpaid utility bill. The second stage is the actual execution of the enforceable title. For countries that implemented reforms, the study examines the reform management process, the main drivers of reform, opposition that reform efforts may have encountered and implementation problems that may still persist. The study explores the issue of backlogs in enforcement and discusses possible contributing factors.

19. The methodology for developing this analysis entailed desk research and the use of country rapporteurs who filled out detailed questionnaires regarding utility bills enforcement in comparator countries. In each comparator country, there may be more than one route to enforce utility bills. The report explores the routes that are ordinarily chosen by utility providers as the quickest and most cost-efficient. Additionally, the optimal procedural path for enforcing utility bills in each comparator country is never tailored solely to utility bills. It usually applies to many other types of pecuniary claims. Therefore, the usefulness of this comparative analysis extends beyond utility bills and applies to most monetary takings, especially uncontested ones.

1. Problem Statement

20. Enforcement of claims based on utility bills has been recognized as a major reason for court overload in some Western Balkan states. The Serbia Judicial Functional Review 2014 estimated that unpaid utility bills make up around 80 percent of enforcement caseload. Around 1.7 million of the 2 million enforcement cases pending in Basic Courts at the end of 2013 related to unpaid utility bills.\(^2\) Following legislative amendments, new enforcement cases are channeled through private enforcement agents but it remains a challenge to both clear existing backlog at Basic Courts and ensure that the pattern of excessive caseload is not

\(^1\) EU-11 refers to the former Eastern Bloc countries, which are currently European Union (EU) member states: Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

simply transferred from courts to private enforcement agents. The Judicial Functional Review identifies the principal causes for utility case backlogs in Serbia³.

**Box 1: Drivers of Utility Backlog in Serbia**

- **Statute of limitations:** Companies have 12 months to initiate an enforcement case or their claims will expire under the statute of limitations. They therefore flood the courts with thousands of enforcement cases using a process automatically generated by their software systems.
- **Non-joining of cases:** The nominal value of unsettled claims is often trivial (e.g., below 10 EUR). Repeated small-value enforcement cases (with the same creditor, same type of debt, and the same debtor) for persistent non-payers accumulate over time but are never joined.
- **Social issues:** Poor residents who are unable to service their bills accumulate debts over time.

21. **Bosnia and Herzegovina** (BiH) also struggles with enforcement of utility bills. A Diagnostic Assessment of the Enforcement Regime of Final Civil Claims in BiH estimates that in 2015 approximately 1.5 million utility cases represented 93.5 percent of the total enforcement caseload.⁴ The same study identifies four principal causes for utility case backlogs in BiH⁵.

**Box 2: Drivers of Utility Backlog in BiH**

- **Poor quality of data** about the users of utility services: many cases refer to people whose address is wrong, who are deceased, who pay in installments, or who have already paid their debt.
- **Difficult socio-economic situation** of many BiH citizens.
- **Lack of an effective enforcement system** which encourages reduced compliance with financial obligations.
- **Massive inflow of cases** sent by utility companies, due to short statute of limitations and very rigid rules that publicly owned companies have to follow.

22. As illustrated in the cited analyses, Western Balkan states share common traits and problems. Some of these could be addressed using comparator countries’ experience.

### 2. Statute of Limitations

23. A peculiar characteristic of countries that were part of the former Yugoslavia is the short statute of limitations for utility claims against natural persons. In **BiH, Croatia, FYR**

---

³ Ibid., p. 99 – 100.
⁵ Ibid., p. 99.
**Macedonia, Serbia and Slovenia**, such receivables need to be claimed within one year of their due date. This legal peculiarity affects the procedural conduct of utility companies since they file for enforcement frequently over relatively small amounts. The frequent filing leads to a proliferation of enforcement cases for utility bills. By contrast, in all other comparator countries the statute of limitations for utility claims is much longer, as illustrated Figure 1.6 **Latvia** and **Lithuania** have significantly longer statutes of limitations for utility claims as compared to all other comparator countries.

![Figure 1: Statute of limitations (years)](image)

24. The limitation periods for claims based on utility bills are usually shorter than the general limitation periods in comparator jurisdictions. However, these shorter limitation periods are applicable only with respect to the first stage of enforcement, i.e. obtaining an enforceable title. Usually, once the enforceable title is obtained, the grounds for the claim are considered to have been transformed (i.e. it is no longer considered a claim based on an unpaid utility bill but a claim based on an enforceable title) and the general and ordinarily longer limitation period becomes applicable. Thus, in **Bulgaria**, the limitation period for utility claims is three years but upon obtaining an enforceable title, a new five-year limitation period commences; in **Poland**, it is three years but upon obtaining a title, the renewed limitation period’s length is ten years; in **Croatia**, a one-year limitation period is applicable to utility claims but once there is a writ, the new period of limitation is ten years.

25. The statute of limitations that affects creditors’ decision when to seek enforcement of their claims is the shorter limitation period, which is applicable before obtaining enforceable title. This limitation period for utility claims is particularly short in the countries of the former Yugoslavia (i.e. one year). This policy choice was possibly based on social protection considerations. However, it leads to very frequent filing for issuance of enforceable titles for utility bills and may contribute to the overburdening of

---

6 For countries, in which the period of limitation for utility claims is different in respect of natural persons and companies, the graph illustrates the statute of limitations applicable to natural persons.
courts/enforcement authorities. Depending on the fee structure for the particular enforcement action, this setup could ultimately burden debtors excessively as well.

3. Prevention of Default

26. Countries that have effective measures in place to prevent default can preempt a range of problems with utility bill enforcement. The most common default prevention measure is the possibility for utility companies to stop providing the service in case of non-payment. Where cut-off of services is admissible, this encourages higher rates of voluntary payment of bills. However, due to the social significance of the service, utility cut-off may be prohibited or constrained by law, leaving utility companies with the sole option to seek enforcement through the legal system.

27. Romania, Estonia and the Czech Republic allow utility shut-off in case of non-payment. In Croatia, Latvia and Bulgaria, utility companies also have such rights by law. However, in these countries the cut-off may prove practically impossible where it requires entry into the premises of the debtor (e.g. heating for households in Bulgaria) because the debtor cannot be obligated to provide access. Additionally, if provision of the utility service is technically connected to other households – for example, in communal heating of apartment complexes – cut-off might again be impossible in practice.

28. In other countries, cut-off is restricted by law. FYR Macedonia and Hungary prohibit cut-off of water supply to households for hygienic reasons (but limitation of water supply is possible in Hungary). In Lithuania, electricity supply to socially vulnerable consumers shall not be terminated if they owe less than three basic social benefits (i.e. if they owe less than EUR 114). Vulnerable consumers’ electricity supply may not be cut-off on Fridays, weekends, before festivals, on public holidays or in emergency situations (when the maximum day temperature is lower than -15 or higher than +30 degrees Celsius). Lithuanian legislation allows for termination of utility services provision only in case there are appropriate technical conditions to terminate the service only for the particular household. In Slovakia, cutting off electricity and gas supply is possible. However, shutting off water supply and waste water service to apartment buildings where the contract regarding these services is between the supplier and an administrator of the building is not allowed.

29. Another measure that prevents default in the payment of utility bills is pre-payment. In Hungary, a recent development aims to prevent the accumulation of unpaid utility bills by allowing the public utility providers to install (at request) pre-paid meters at the premises of certain high-risk groups (i.e. individuals with a history of unpaid bills, etc.). Such pre-paid meters must be ‘charged’ in the same way as pre-paid cell phone SIM-cards. Consequently, if

---

7 While fees for relatively large claims are usually calculated as a percentage of the claim, there are in many countries minimal fixed amounts of the fee (e.g. 2% but no less than EUR 20). Thus, when several small claims are not joined (as in the case of frequent filing), the resulting fee would be larger than if they had been joined. In some countries (Estonia), there is a single, flat fee for the electronic processing of orders for payment. In these cases, too, non-joining would lead to much higher costs. If the creditor is successful in the enforcement action, these fees would ultimately be paid by the debtor.

8 These are persons who due to a very bad financial position receive financial support from the State.

9 In Lithuania, the current value of one basic social benefit is EUR 38, i.e. the cumulative value of three basic social benefits is appr. EUR 114.
a debtor fails to charge the meter, the service would automatically be suspended, but no debts would accrue vis à vis the public service provider.

**Box 3: Linking Utility Bills to Credit Dossiers**

An interesting example of a measure that effectively reduced arrears in payments to utility companies is cited in Doing Business 2017. In the United States, DTE Energy—an electricity and natural gas company—began fully reporting customer payment data to credit bureaus in August 2006. DTE customers with no prior credit history (8.1% of the total) gained either a credit file or a credit score and began to prioritize making payments to DTE. Within six months DTE had 80,000 fewer accounts in arrears. This good practice is also being implemented in some developing economies.

30. Prevention measures have a role to play in reducing the volume of utility claims, but the scale of their effect is not sufficient to reduce the volume of incoming claims for enforcing utility bills.

### 4. Uncontested Monetary Claims

31. Oftentimes unpaid utility bills fall within the category of uncontested monetary claims. In other words, even though debtors do not pay their bills, they would not actively contest the claims in a court of law. As a result, enforcement of an unpaid utility bill ordinarily commences using the procedure for enforcing an uncontested claim in the respective country. If the debtor does not object, an enforceable title can be acquired quickly and inexpensively. On the other hand, if the debtor objects, the nature of the procedure changes and the case follows the path of a civil claim. This report explores mainly the procedures for enforcing utility bills as uncontested claims since this is the route utility cases usually take.


---

Box 4: Which Claims Are Uncontested?

Article 3 of Regulation (EC) No 805/2004 defines the situations in which a claim may be considered uncontested. These are:

(a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or
(b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or
(c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or
(d) the debtor has expressly agreed to it in an authentic instrument.

33. Thus, when enforcing unpaid bills, the utility company initiates the procedure based on the assumption that the debtor would not contest the claim. In the course of this procedure the claim needs to meet the conditions enumerated above in order to qualify for issuance of enforceable title for uncontested claims.

5. Stages of Enforcement

34. In all comparator countries, unpaid utility bills are not directly enforceable. Therefore, the procedure for enforcing them entails two distinct stages: first, obtaining an enforceable title; and second, execution of the enforceable title.

35. In all comparator countries, these stages of enforcement represent two distinct procedures that are carried out by different authorities. The authority competent for issuing an enforceable title is usually a court or a notary, whereas the responsibility for carrying out execution usually lies with enforcement agents. Countries rarely combine these two stages. Exceptionally, in Serbia and Montenegro these two stages are combined and both form part of a single enforcement procedure carried out by an enforcement agent. This policy decision is questionable for several reasons that will be discussed later on in this analysis, as well as in the examination of competent authorities in comparator countries.

36. Assignment of responsibility for issuance of an enforceable title and for execution to two different authorities serves several purposes. First, when the authorities are different, the authority that issues the enforceable title is disinterested in the outcome of the case. Once the creditor has paid the fee for the request, the decision to issue or not an enforceable title does not affect the competent authority’s future workload or income. Second, most comparator countries have procedures for issuance of enforceable titles that very quickly distinguish contested from uncontested claims and allow the latter to proceed on a separate, fast track. If claims are uncontested, an enforceable title is issued. If claims are contested, the enforcement case proceeds as a litigious claim. Third, specialization of competent authorities is more easily achieved with two separate procedures. Finally, when the two stages represent separate procedures, the first one is closed quickly and does not remain unduly pending because of difficulties in execution unrelated to the contestability of the claim.
37. Under the Serbian and Montenegrin systems, which bundle the two stages of enforcement into one, one of the reasons for the heavy caseload is the non-joining of similar cases\textsuperscript{12}. In principle, there are economic mechanisms to encourage joining of cases, one of which is the advance fee paid by the creditor for every single small claim that would be enforced. The fee is usually a percentage of the claim, but if the value of the claim is small, as is often the case with utility claims, the fee is a fixed minimum amount exceeding that percentage. This type of fee structure encourages the creditor to join identical claims rather than file them separately.

38. However, when enforceable titles for utility claims are issued by private professionals who also carry out their execution, some of these professionals seek to attract large creditors by proposing economic incentives, which may discourage joining of claims. Examples of such incentives would be allowing the creditor not to pay fees in advance or providing a discount on fee payment. In this situation, utility companies would have no incentive to join claims. On the contrary, both the utility company and the private enforcement agent may be incentivized to enforce a large number of identical small claims rather than one large claim since upon successful execution, the debtor would have to pay higher fees and/or legal costs. There is no such incentive to file numerous small claims separately when the issuance of enforceable title and its execution are two separate procedures carried out by different authorities.

6. Types of Procedures for Obtaining Enforceable Title

39. There are two principal types of procedures used to obtain enforceable title on unpaid utility bills in the comparator countries: first, order for payment; and second, issuance of writ of execution based on authentic document. While they differ in every comparator state, they are based on common characteristics. The main feature of these procedures is that they are designed to ensure enforceability of uncontested claims. Therefore, they are non-litigious in nature. In the course of these procedures, the competent authority examines the request of the creditor and makes a pronouncement without the debtor’s participation. The examination is administrative in nature, regardless of whether the competent authority is judicial or not. If an adversarial element appears in these procedures, such as a debtor’s objection, the dispute is decided in a separate litigious civil case.

\textsuperscript{12} The term “similar cases” as used here shall mean cases including the same creditor, the same debtor and the same type of debt, i.e. cases that under the relevant procedural laws could be joined but the creditor has chosen to file them separately.
Table 1: Procedures for enforcing utility claims in comparator countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Order for payment</td>
</tr>
<tr>
<td>Croatia</td>
<td>Writ based on authentic document</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Order for payment</td>
</tr>
<tr>
<td>Estonia</td>
<td>Order for payment</td>
</tr>
<tr>
<td>Hungary</td>
<td>Order for payment</td>
</tr>
<tr>
<td>Latvia</td>
<td>Civil case</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Order for payment</td>
</tr>
<tr>
<td>FYR Macedonia</td>
<td>Writ based on authentic document</td>
</tr>
<tr>
<td>Poland</td>
<td>Order for payment</td>
</tr>
<tr>
<td>Romania</td>
<td>Quasi-order for payment</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Quasi-order for payment</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Writ based on authentic document</td>
</tr>
</tbody>
</table>

Figure 1: Types of procedures

- Order for payment
- Writ based on authentic document
- Quasi-order for payment
- Civil case

40. The **Order for Payment** procedure is used for obtaining enforceable titles for utility claims in most comparator countries. It is also widely available in most EU member states. This procedure is designed to ensure a quick and inexpensive path for obtaining an enforceable title for a broad array of uncontested monetary claims. In some of the comparator countries (Estonia, Bulgaria, Poland, Czech Republic), there is a **cap on the value of the claim**; in others (Lithuania, Romania, Slovakia), the amount of the claim is irrelevant. In **Hungary**, the value cap for the use of the procedure is so high (EUR 1.33 million) that it has no effect on the enforcement of utility bills (for practical purposes, Figure 2 shows Hungary as having no value cap for the initiation of the procedure). Another peculiarity of the Hungarian system is that for monetary claims with a value of up to approximately EUR 3,300, the use of the order for payment procedure is mandatory.

Figure 2: Value caps for use of the order for payment procedure

13 The mandatory use of the procedure in Hungary means that for a claim with a value under EUR 3,300 the uncontested claims route would have to be tried first even if the creditor believes that there would be an objection on the part of the debtor and the case would anyway need to proceed to a full-blown civil case).
41. Creditors file a standardized request to initiate an order for payment procedure. The request is examined by the competent authority and if it meets all formal requirements, a payment order is issued. Normally, the debtor has a short period of time to object following the service of the order. If no objection is filed, the payment order becomes final and triggers the issuance of an enforceable title (or the final order itself represents an enforceable title). If an objection is filed, this procedure is stayed or aborted and the claim converts to a litigious civil case. Thus, in a typical order for payment process there should be no litigious element at all. Any objections would take the case outside of the order for payment procedure and would initiate a new civil case. In some comparator countries, an objection would automatically transform the case into a litigious one (Poland, Croatia). In others, following an objection, the creditor would have to decide whether to initiate a litigious case or not within short timelines after the objection (Bulgaria, Estonia). The latter arrangement where the creditor needs to actively pursue a litigious case following an objection contributes to a policy of discouraging litigious cases and allows creditors more flexibility in managing their costs and procedural behavior.

42. The procedure for issuance of a writ based on authentic document is currently used for utility bills only in those comparator countries that formed part of the former Yugoslavia. It bears many similarities to the Order for Payment procedure but is narrower in scope. It generally applies to utility bills, bills of exchange, checks, public documents, business records excerpts, legally certified private documents and documents considered by law as public. In jurisdictions where the issuance of a writ based on authentic document is the only type of expedited procedure for obtaining an enforceable title for uncontested claims, there may be a large number of pecuniary claims which, although uncontested, are not based on an authentic document. In the absence of an order for payment procedure, enforceable titles for such claims should be obtained through the standard civil cases track. This may present an unnecessary burden for the court system, which would have to engage in expensive litigious proceedings for a case that may have been resolved in a non-litigious fashion.

43. The scale of the difference in scope between the authentic documents procedure and the order for payment procedure can be illustrated with an example of Bulgarian court statistics. Before the introduction of the order for payment procedure, Bulgarian law provided only for issuance of a writ based on authentic document (a procedure which at that time applied also to utility providers). According to court statistics, the procedure for issuance of a writ based on an authentic document accounted for approximately 20 percent of civil proceedings in first-instance courts in 2006. The introduction of the order for payment...

---

14 In most comparator countries, the authority issues the order for payment and in case of absence of objection it becomes final. In other comparator countries (e.g. Estonia), the authority issues a proposal for the order for payment and in case of absence of objection issues the order for payment itself. These differences are purely technical and do not change the nature of the procedure.

15 Other countries (e.g. Bulgaria) also have an expedited procedure for authentic documents (Based on Art 417 of Bulgaria’s Civil Procedure Code); however, it does not apply to utility bills.

16 For example, in Slovenia utility bills are enforced through the authentic documents track; however, Slovenia also has a standard order for payment procedure for other uncontested claims, e.g. issuance of writ based on authentic document is not the only type of expedited procedure for obtaining an enforceable title for uncontested claims.

procedure, and the consequent expansion of the categories of cases eligible for expedited enforceable title to all pecuniary claims under a certain threshold, led to a significant increase of the share of such proceedings. Currently, orders for payment account for over 50 percent of all civil proceedings in Bulgarian first-instance courts. Clearly, the scope of order for payment procedures vastly exceeds the scope of authentic title procedures, providing an inexpensive fast-track option for a vast number of cases that would otherwise be excluded from such fast-track review and would need to use the standard and slower track for litigious civil cases.

44. The fact that under the authentic document procedure utility bills are given the status of official (also referred to as authentic or trustworthy) documents even though utility companies are commercial entities (oftentimes fully or partially privately owned), may create the perception of a preferential treatment of utility providers as opposed to other economic operators in the country. From this perspective, the order for payment procedure is more inclusive because all citizens and businesses can use it to seek enforceable titles for their pecuniary claims.

45. As illustrated in Table 1, two comparator countries, Romania and Slovakia, have procedures in place that bear the name “order for payment”. However, they lack the essential feature of the order for payment, i.e. they are not necessarily non-litigious. Specifically, in Romania, the procedure often entails collecting evidence and a court hearing, to which the parties are summoned. In Slovakia, when approached with a creditor’s request, judges have discretion to decide whether the procedure would move through the expedited track or would represent a litigious civil case. Due to the possible litigious nature of the order for payment procedure in Romania and Slovakia, the procedures in these two countries are qualified as quasi-order for payment procedures for the purposes of this study.

46. Another exception to the non-litigious nature of requests for enforcement of utility claims is Latvia, where utility bills are generally enforced via a standard litigious civil case. Rules may be simplified when the value of the claim is below a certain threshold but proceedings are still much more complex and expensive than the generally non-litigious procedures used in the other comparator countries. Interestingly, utility companies in Latvia tend to choose the litigious procedural route despite the availability of a “warning” procedure that resembles the order for payment procedure. This may be due to lack of cost-effectiveness in the design of the “warning” procedure. Latvian law also provides for a procedure for issuance of a writ of execution based on authentic document. However, utility bills are not considered authentic documents in Latvia.

47. Bulgaria’s experience adds another nuance to utility companies’ choice of procedural route for enforcing unpaid bills. Even though procedures for enforcing uncontested claims are designed to be inexpensive and quick, they may be prolonged due to debtors’ objections or to court overload (especially in the capital city of Sofia). Therefore, a few utility companies, as well as mobile phone operators, used to incorporate arbitration clauses in their consumer

\[18\] The view of the non-litigious nature of the order for payment as an essential feature of the procedure is derived from the characteristics of the order for payment process per Regulation (EC) No 1896/2006 — creating a European order for payment procedure, which is designed as a procedure for uncontested claims only. See Preamble of Regulation (EC) No 1896/2006, as well as Article 1, 1 (a).
contracts selecting obscure courts of arbitration. Thus, instead of opting for the order for payment procedure with the general courts, creditors would initiate a litigious case with the selected court of arbitration. These courts’ impartiality would often be called into question. As a result, in January 2017 Bulgarian legislators prohibited arbitration clauses in consumer contracts.\(^{19}\)

48. Overall, orders for payment organized as fully non-litigious procedures are the most typical way of enforcing utility bills in comparator countries. When compared with procedures for issuance of a writ based on an authentic title, which are used in the Western Balkan countries, order for payment procedures are broader in scope and display equal treatment for all creditors, without assigning a special status to utility providers.

### 7. Authority Competent to Issue Enforceable Titles for Uncontested Claims

49. As discussed above, both the order for payment and the issuance of writ based on authentic document procedures are, as a rule, non-litigious and administrative in nature. This poses the policy choice of selecting the authority which would be competent to carry out these procedures in a manner that is both cost-effective and protects citizens’ rights. Comparator countries have assigned this responsibility either to first-instance courts or to notaries.

<table>
<thead>
<tr>
<th>Table 2: Competent authorities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bulgaria</strong></td>
</tr>
<tr>
<td><strong>Croatia</strong></td>
</tr>
<tr>
<td><strong>Czech Republic</strong></td>
</tr>
<tr>
<td><strong>Estonia</strong></td>
</tr>
<tr>
<td><strong>Hungary</strong></td>
</tr>
<tr>
<td><strong>Latvia</strong></td>
</tr>
<tr>
<td><strong>Lithuania</strong></td>
</tr>
<tr>
<td><strong>FYR Macedonia</strong></td>
</tr>
<tr>
<td><strong>Poland</strong></td>
</tr>
<tr>
<td><strong>Romania</strong></td>
</tr>
<tr>
<td><strong>Slovakia</strong></td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
</tr>
</tbody>
</table>

50. As illustrated in Table 2 above, the authority for issuing enforceable title usually rests with the court. However, given the administrative nature of examining uncontested claims, some countries, where first-instance courts are the authorities competent to issue the enforceable title, have made an effort to relieve judges, as much as possible, of this work. Thus, the E-court in **Poland** issues orders for payment for the entire country but engages just 8 judges and 119 court clerks with legal education (referendarz) who are authorized to sign on the issuance of payment orders. Another example is the Central Department for the Authentic Document (hereinafter COVL) of the Local Court of Ljubljana, **Slovenia**, which employs just 4 judges and 62 support personnel and issues the writs based on authentic title for the entire country. In **Estonia**, the specialized centralized court department issuing orders

---

\(^{19}\) Amendment to Art. 19 of Bulgaria’s Civil Procedure Code of 24 January 2017.
for payment for the entire country employs only 4 assistant judges and 29 other court officers. In other words, when a country chooses to have courts be the competent authority to issue enforceable titles, it may still unburden judges of this type of work and assign most of the responsibility to support personnel with legal education. All of these specialized court departments work solely with orders for payment and are therefore able to specialize and streamline processes. The efficiencies of these departments are due to the specialization of staff and the ensuing streamlining of processes, as well as to the uniform distribution of workload between officials ensured by centralization.

51. Notaries have been assigned responsibility for the issuance of an enforceable title in three comparator countries: Hungary, Croatia and FYR Macedonia. FYR Macedonia is not an EU Member state. However, with regard to Hungary and Croatia, it is important to explore the compatibility of this policy choice with Regulation (EC) No 805/2004 as this analysis does below.

52. In defining the situations in which a claim may be considered uncontested, Regulation (EC) No 805/2004 makes repeated reference to “court” and “court proceedings”. Additionally, Article 4, para 7 of the Regulation explicitly notes that “in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande), the expression ‘court’ includes the Swedish enforcement service (kronofogdemyndighet)”. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters extends this exception by adding Hungarian notaries to it in Article 3: “in Hungary, in summary proceedings concerning orders to pay (fizetési meghagyásos eljárás), the notary (közjegyző).”

53. Given the explicit exceptions for Sweden and Hungary, Croatia has enquired with the Court of Justice of the European Union whether its notaries could be regarded as courts for the purposes of issuing enforceable writs of execution based on authentic documents.20 The case is undecided at the time of publication of this report. However, in September 2016 the Advocate General issued his opinion on the matter: if a writ of execution is to satisfy the criteria for certification as a European Enforcement Order, it could be issued by a notary provided there had been guarantees as to the notary’s independence and impartiality. It remains to be seen whether the Court of Justice of the European Union will accept the Advocate General’s view and recognize Member States’ authority to decide which authorities are independent and impartial or whether specific exclusions would be required, similar to those regarding Sweden and Hungary, in order to allow authorities other than courts to issue certifiable enforceable titles.

54. The above discussion of EU rules raises questions as to the compatibility with EU legislation of the current Serbian and Montenegrin procedures, where the enforcement agent both issues the enforceable title and executes it. The assignment of both functions to a single, private professional calls into question the independence and impartiality of the enforcement agent. When enforcement agents are private entities, they may have a direct commercial interest in issuing an enforceable title because they would also be executing it. Currently, the only EU member state where these two functions are performed by the same authority is

---

**Sweden.** The Swedish Enforcement Authority is responsible both for issuing the enforceable title and for executing it. However, the Enforcement Authority in Sweden is a governmental agency, therefore it is quite different from an enforcement agent who acts as a private entrepreneur, as is the case in Serbia and Montenegro.

55. Interestingly, in 2003, **Croatia** attempted to assign both the issuance of enforceable titles and the execution of monetary claims to notaries through legislative amendments. These provisions were never implemented and were repealed in 2004 due to concerns that they contradicted the right to fair trial under the European Convention on Human Rights.

56. It can be concluded that the option most countries have chosen is to assign responsibility for issuance of enforceable titles in uncontested claims to courts. Nevertheless, countries that have assigned this responsibility to notaries do not face any particular difficulties either. The expected pronouncement of the Court of Justice of the European Union in Case C-484/15 will determine whether the issuance of enforceable titles by notaries would need to be addressed by a specific exception in the EU legislation, if such titles are to be certifiable as European Enforcement Orders under the relevant rules of EU law. While enforceable titles for utility claims would normally not need to be enforced in countries other than the jurisdiction issuing the title, ensuring compliance with EU law is important for two reasons. First, EU instruments set minimal standards for the fairness of uncontested claims procedures, which need to be present even if no enforcement abroad would be necessary. Secondly, as discussed above, the procedures used for utility bills’ claims are never tailored solely to these claims but are applicable to a much broader range of receivables. As such, the enforceability of such titles on the EU level is highly desirable.

**8. Territorial Jurisdiction**

57. Regarding the territorial jurisdiction of the competent authority for issuing enforceable titles, few countries have opted for a centralized process whereas most rely on the traditional territorial limits of jurisdiction.

<table>
<thead>
<tr>
<th>Table 3: Territorial jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
</tr>
<tr>
<td>Croatia</td>
</tr>
<tr>
<td>Czech Republic</td>
</tr>
<tr>
<td>Estonia</td>
</tr>
<tr>
<td>Hungary</td>
</tr>
<tr>
<td>Latvia</td>
</tr>
<tr>
<td>Lithuania</td>
</tr>
<tr>
<td>FYR Macedonia</td>
</tr>
<tr>
<td>Poland</td>
</tr>
<tr>
<td>Romania</td>
</tr>
<tr>
<td>Slovakia</td>
</tr>
<tr>
<td>Slovenia</td>
</tr>
</tbody>
</table>

58. Countries where competent authorities have limited territorial jurisdiction face a host of problems, including unequal workload of officials deciding requests and, as a consequence, significant regional differences in the timelines for deciding on creditors’ requests.
example, in Bulgaria, first-instance courts in small towns are able to decide on a request for issuance of an order for payment within the three-day timeline prescribed by law. In larger urban areas, such decisions take approximately one week and in the capital city Sofia, where judges are overburdened, up to six months. Similarly, in Slovakia timelines differ significantly, with the courts in the capital city of Bratislava considered the slowest. A centralized system for reviewing creditors’ requests, on the other hand, ensures uniform distribution of workload across the country, as well as uniform practices and interpretation of the law. It also allows for efficiencies in the organization of work, as in the examples of the E-court in Poland, COVL in Slovenia and the Orders for Payment Department in Estonia where such work is performed predominantly by court staff with legal education.

59. In three of the four centralized systems in comparator countries (Poland, Slovenia and Estonia), the competent authority has been established as a division of an existing first-instance court. Thus, in Poland, the E-court is a civil division of the district court in the city of Lublin; in Slovenia, COVL was established as a department of the Local Court of Ljubljana; and in Estonia the payment order department is at the Haapsalu courthouse of Pärnu County Court. Even though Slovakia’s system is currently not centralized, preparations are underway for the introduction of a centralized system similar to the Polish model, namely the introduction of a specialized electronic court (possibly in Banska Bystrica), which would have jurisdiction throughout the country.

60. All centralized systems operate using a fully electronic platform for filing and processing creditors’ requests, therefore there is no need for all officials who decide on requests to be working at the same physical location. For example, the Polish E-court engages 50 court clerks who are residing in Lublin and 69 court clerks who are outside of Lublin. Similarly, in Hungary, the centralized electronic system for filing creditors’ requests distributes them evenly to all notaries in the country. Thus, a notary in one part of the country may decide on a request from another part of the country. The system ensures uniform workload and the location of the official is irrelevant.

61. Based on the examination of the rules on the territorial jurisdiction of competent authorities, it can be concluded that centralized systems for issuance of enforceable titles for uncontested claims generally ensure more predictable timelines, equal workload for officials and opportunities for cost savings.
9. ICT and Possibilities for Electronic Filing

To ensure quick and efficient processing of requests for issuance of enforceable titles, many comparator countries have introduced a dedicated IT system for filing and processing such requests.

<table>
<thead>
<tr>
<th>Table 4: Electronic filing</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bulgaria</strong></td>
</tr>
<tr>
<td><strong>Croatia</strong></td>
</tr>
<tr>
<td><strong>Czech Republic</strong></td>
</tr>
<tr>
<td><strong>Estonia</strong></td>
</tr>
<tr>
<td><strong>Hungary</strong></td>
</tr>
<tr>
<td><strong>Latvia</strong></td>
</tr>
<tr>
<td><strong>Lithuania</strong></td>
</tr>
<tr>
<td><strong>FYR Macedonia</strong></td>
</tr>
<tr>
<td><strong>Poland</strong></td>
</tr>
<tr>
<td><strong>Romania</strong></td>
</tr>
<tr>
<td><strong>Slovakia</strong></td>
</tr>
<tr>
<td><strong>Slovenia</strong></td>
</tr>
</tbody>
</table>

63. In comparator countries with centralized systems, the use of electronic filing is a mandatory requirement for creditors wishing to use this expedited procedure. A caveat needs to be made in respect of Hungary where electronic filing is mandatory for all legal entities and for all individuals represented by a lawyer. Private individuals who are not represented by a lawyer may file a paper application personally at a notary’s office but this is rare. An alternative, paper-based procedure may exist but it is generally more expensive and slower and therefore is rarely selected by creditors. For example, in Poland, the fee for the centralized and electronic procedure with the E-court is 1.25 percent of claim value whereas for the “paper” procedure with regular courts it amounts to 5 percent of claim value.

64. Comparator countries with non-centralized systems either have only paper-based filing or provide creditors with a choice to file electronically. In these cases, the procedure is identical regardless of how filing was done, but there might be economic incentives for electronic filing (e.g. reduced fees). For example, Lithuania provides a 25 percent discount for electronic filing and charges no postal fees in case of electronic service.

65. Electronic filing facilitates the work of both creditors and competent authorities. If a country has the political will and the technical preparedness to make the electronic route mandatory for those wishing to use the expedited procedure (e.g. Poland, Slovenia, Hungary, Estonia), these efficiencies can be multiplied.

10. Standardized Forms and Need to Attach Evidence

The duration of the process for deciding on a creditor’s request for issuance of an enforceable title depends on numerous elements. One of them is the complexity and volume of the documents that the competent authority would have to examine in order to make a decision. To facilitate the process of examination, many comparator states have introduced, in addition to electronic filing, standardized forms. The layout of the forms is usually approved
by the Ministry of Justice. The use of such forms helps ensure that all legally required elements of the request will be present in order to be easily verifiable by the competent authority. Additionally, the introduction of simple forms means that creditors may be able to file such requests without using lawyers’ services.

67. In addition, in many countries, filling out the form in an electronic filing system or on paper is sufficient and there is no need to attach any evidence to the request. Evidence should be available in case the debtor objects and the case proceeds to a full civil dispute, but at the stage of the initial request for enforceable title such evidence need not be presented. This feature of the procedure significantly simplifies and shortens the time that competent officials need to give to the request.

<table>
<thead>
<tr>
<th>Table 5: Need to attach evidence to the request</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
</tr>
<tr>
<td>Croatia</td>
</tr>
<tr>
<td>Czech Republic</td>
</tr>
<tr>
<td>Estonia</td>
</tr>
<tr>
<td>Hungary</td>
</tr>
<tr>
<td>Latvia</td>
</tr>
<tr>
<td>Lithuania</td>
</tr>
<tr>
<td>FYR Macedonia</td>
</tr>
<tr>
<td>Poland</td>
</tr>
<tr>
<td>Romania</td>
</tr>
<tr>
<td>Slovakia</td>
</tr>
<tr>
<td>Slovenia</td>
</tr>
</tbody>
</table>

68. As illustrated in Table 5, in all countries with centralized authorities responsible for issuing enforceable titles, there is no requirement to attach evidence to the request. The same policy choice has been made also by some comparator countries that have decentralized systems, such as Bulgaria and Lithuania.

11. Court and Notary Fees

69. The fee collected by the competent authority in the procedure for issuing enforceable title is an important instrument in managing creditors’ and debtors’ behavior. The first purpose of the fee is to cover the costs for the operation of the system. Second, the fee should serve as an incentive for creditors to choose the type of procedure that is the most cost-efficient for them, as well as for the State. This is why the fee for electronic filing may be lower than for paper filing. This is also why filing for an expedited procedure is usually cheaper than filing a civil case. The fee for the uncontested claims procedure should be separate from the fee for the standard court claim that would be instituted in case of objection so as not to encourage frivolous objections to the enforceable titles by debtors. Thus, in the example of Romania, where the examination of the debtors’ objections is incorporated in the procedure, the debtor has no incentive to refrain from objecting. On the other hand, in countries where

21 Most of the data on the need to attach evidence has been obtained from the European Judicial Network in Civil and commercial matters e-portal at https://e-justice.europa.eu/content_order_for_payment_procedures-41-ee-en.do?member=1.
objections are examined in a separate court case, the debtor is generally aware that an ungrounded objection would add the cost for the civil case to his/her debt.

70. Figure 7 below illustrates the approximate level of fees for obtaining an enforceable title for unpaid utility bills in comparator countries for claims amounting to EUR 100, EUR 500 and EUR 1000, respectively.²²

![Figure 7: Court/notary fees in EUR](image)

71. Some countries encourage creditors to use the procedure for uncontested claims by ensuring that in the case of objection, the total fee for the continuation of the dispute does not exceed the fee for a standard civil case. This also serves as a disincentive for frivolous objections from debtors. Specifically, in such countries the total fee due if the creditor choses to proceed directly with a litigious civil case is equal to the sum of the fee for obtaining enforceable title for an uncontested claim and the fee for the civil case that would ensue from a potential objection. When the procedure is completed, the losing party bears the costs for all fees that have been paid in the various stages of the procedure. For example, in Hungary the court fee for a standard civil case is six percent of the claim, while the fee to obtain an order for payment and treat the pecuniary claim as an uncontested one is only three percent. In case the debtor objects to the order for payment and a standard civil case is initiated, an additional three percent would have to be paid in order to reach the usual six percent fee. Thus, in choosing whether to object to the order for payment or not, the debtor would be aware that an ungrounded objection would increase his/her future expenses (in case of losing the case) by three percent of the claim. This may serve as a disincentive for frivolous objections. Similarly, Bulgaria has set the standard civil case fee to four percent of the value of the claim and the fees for a payment order and a case following an objection to two percent.

---
²² To ensure comparability, local currencies have been converted to Euro. In cases of different fees for electronic and paper filing, the chart reflects the fee for electronic filing. Fee calculations are based on the assumption that the debtor would not object, i.e. only the cost for obtaining an enforceable title through the uncontested claims procedure has been factored into the calculations, without the cost of a potential subsequent civil claim. As regards Latvia, the graph reflects the court fee for a standard civil claim since this is the avenue most frequently used for enforcement of utility bills.
of claim value for each. Here, again, the sum of the two fees equals the fee for a standard court case. In Lithuania, the court fee for an order for payment is one quarter of the common court fee and in case of objection the remaining three-quarters of that fee must be paid. Such a ratio could further motivate the debtor not to object frivolously.

12. Duration of the Procedure for Obtaining Enforceable Title

72. The expedited procedures for obtaining enforceable title for uncontested claims should be able to issue the enforceable title within just a few days from the filing of a claim.\(^{23}\) In Lithuania, the court fee for an order for payment is one quarter of the common court fee and in case of objection the remaining three-quarters of that fee must be paid. Such a ratio could further motivate the debtor not to object frivolously.

73. The information provided by national rapporteurs for the purposes of this analysis indicates that centralized systems are able to ensure more predictability of timelines and are generally speedier than decentralized ones. In Slovenia and Hungary, where the filing and processing of requests is centralized and electronic, the time period between filing and issuance is up to three days. In Estonia and Poland, which also have centralized electronic systems, the time period is approximately 10 days. Short processing times of just a few days are also reported in Lithuania and FYR Macedonia where the systems are not centralized. On the other hand, in other comparator countries timelines are less predictable. As discussed above, in Bulgaria and Slovakia they vary largely between courts and may stretch to several months in capital cities. In Romania, if the claim is uncontested, the maximum timeline is 45 days, however, if an objection is filed the litigious nature of the procedure may lead to significant delays. In Latvia, the civil claim procedure may take one-to-two years.

13. Service of the Enforceable Title to the Debtor

74. One of the most important elements of the procedures for obtaining enforceable titles for uncontested claims is the service of the title to the debtor. Given the fact that the procedure is usually document-based and non-litigious, service of the enforceable title to the debtor is the first time the debtor finds out about the claim and can defend himself/herself against it. In many jurisdictions, this is also the last moment when the debtor can quickly and effectively carry out such defense. In order to ensure the smooth operation of the process for enforcing uncontested claims, legislators in most countries limit debtors’ possibilities for defense at later stages of enforcement. Thus, if the debtor, after being served with the enforceable title, misses the deadline for filing an objection, he or she would have very limited opportunities for defense later on.

75. Regulation (EC) No 805/2004 sets minimum standards for service of the document instituting uncontested claim proceedings. If member states deviate from these standards, the resulting document cannot be certified as a European Enforcement Order. Naturally, such certification is usually not needed in case of enforcing utility claims because they are normally enforced within the territory of the state. Nevertheless, the minimum standards of service set an important benchmark for protecting the rights of the debtor in such procedures and could be applied by countries even without particular concern as to the fitness of the document to be certified as a European Enforcement Order. Regulation (EC) No 805/2004

\(^{23}\) The title would not be final and executable at that stage, it would become executable only after ascertaining that the debtor does not object to it within the specified timelines.
allows for service by any type of competent authority, as well as service by postal service and by electronic means, as long as these are verifiable.

76. Service of legal documents in comparator countries is carried out by different entities. Where parties to a case have given prior consent, e-service may be used. In utility claims, though, it is usually necessary to perform physical service of the legal document to the premises of the debtor. While such service is always organized by the authority issuing the enforceable title, its physical implementation need not necessarily be done by that authority (i.e. by court or notary officials). It is often more cost-efficient to assign physical service to postal services or couriers. Bulgaria maintains a large body of dedicated court employees who serve legal documents. In FYR Macedonia, service is carried out by notary employees. On the other hand, in most comparator countries (e.g. Estonia, Lithuania, Hungary, Poland, Romania, Czech Republic, Slovakia) courts and notaries send legal notices via registered mail.

| Table 6: Entities carrying out non-electronic service of legal documents |
|-----------------------------|---------------------------|
| Bulgaria                    | Court officials           |
| Croatia                     | Registered mail (or notary employees) |
| Czech Republic              | Registered mail           |
| Estonia                     | Registered mail           |
| Hungary                     | Registered mail           |
| Latvia                      | Registered mail           |
| Lithuania                   | Registered mail           |
| FYR Macedonia               | Notary employees          |
| Poland                      | Registered mail           |
| Romania                     | Registered mail           |
| Slovakia                    | Registered mail           |
| Slovenia                    | Registered mail           |

77. While it is difficult to assess the quality of service, Bulgaria, Poland and Slovakia report frequent complaints of improper service, whereas the rest of the comparator countries appear not to have significant issues in this respect.

Box 5: The Automated Postal Dispatch System in Slovenia

Slovenia has employed an innovative approach with regard to organizing service of process. An automated postal dispatch system has been created under COVL and outsourced to a contractor. The contractor accepts documents from the court in e-form, prints, collects and folds them, prints data on envelopes, mechanically inserts documents in the matching envelopes (using bar code for pairing), controls the quality of outgoing mail, creates a post ledger for all mail that is submitted to the Post Office, and delivers the post to the Post Office.24

---

The minimum standards for service to the debtor under Regulation (EC) No 805/2004 are quite broad and cover the two principal methods: service with proof of receipt by the debtor and service without proof of receipt by the debtor. Methods of service without proof of receipt by the debtor are particularly important because in procedures for obtaining enforceable titles debtors are often perceived to be actively avoiding personal service. Additionally, in a few of the comparator states the methods for service without proof of receipt by the debtor were one of the most frequent grounds for protests against enforcement of utility bills. Therefore, it is important for these types of methods to meet certain minimum standards so as to have wider acceptance by society.

Box 6: EU Rules on Service without Proof of Receipt

According to Regulation (EC) No 805/2004, for service without proof of receipt to be admissible, the debtor’s address needs to be known with certainty, and a wide array of methods is admissible under Article 14 of the Regulation:

(a) personal service at the debtor’s personal address on persons who are living in the same household as the debtor or are employed there;
(b) in the case of a self-employed debtor or a legal person, personal service at the debtor's business premises on persons who are employed by the debtor;
(c) deposit of the document in the debtor’s mailbox;
(d) deposit of the document at a post office or with competent public authorities and the placing in the debtor's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits;
(e) postal service without proof pursuant to paragraph 3 where the debtor has his address in the Member State of origin;
(f) electronic means attested by an automatic confirmation of delivery, provided that the debtor has expressly accepted this method of service in advance.

Service pursuant to (a) to (d) above shall be attested by:
(a) a document signed by the competent person who effected the service, indicating:
(i) the method of service used; and
(ii) the date of service; and
(iii) where the document has been served on a person other than the debtor, the name of that person and his relation to the debtor, or
(b) an acknowledgement of receipt by the person served, for the purposes of paragraphs 1(a) and (b).

Comparator countries have opted for a number of different solutions for service without proof of receipt. For example, in Hungary the Order for Payment is sent to the debtor via registered mail and in case the debtor is not found at the address, the postal service leaves a notice inviting him/her to collect the registered mail. If the debtor does not respond to the notice, the documents are presumed to have been delivered on the fifth day following the second attempt to deliver the document by the Hungarian mail service (typically after 10-14 business days). In Bulgaria, service is carried out by a category of court clerks. If the debtor cannot be found at the address, the court notice can be glued on the entrance door. In case the debtor does not obtain the documents personally from the authority within two weeks
of gluing the notice, the documents are considered served. In FYR Macedonia, notices that cannot be delivered are published on the court bulletin. In Poland, there is no verification of whether the letter actually reached the debtor as there is a presumption that it did. The E-court usually issues a writ if it has not received an objection within a month of sending the Order for Payment to the debtor.

80. **Estonia** is an exception because it does not allow service without proof of receipt in the case of Orders for Payment. If service to the debtor has proven impossible, the payment order procedure is terminated and a litigious civil case must be initiated in order to enforce the claim.

81. In some comparator countries service is viewed as problematic both for creditors and for debtors. Creditors complain that debtors actively avoid service; meanwhile, debtors argue that service without proof of receipt means that execution could start without the debtor’s knowledge. One way to minimize such controversies is by introducing clear rules that determine the address for legal notices as regards natural persons. For example, in some comparator countries, addresses where natural persons have their registration are obsolete or the rules of service are not unequivocal as regards address for service. As a result, service to various addresses is attempted, time-periods for service are lengthy and objections for improper service are frequent. Other comparator countries appear to have clearer rules and less problematic service. For example, the 2003 Declaration of Place of Residence Law of Latvia obligated every citizen to register an address where he or she would be reachable in terms of legal relations with the state or local government. When such an address is not registered, the law puts into place certain assumptions that facilitate service. In Hungary, there are similar rules in place.

82. Service of enforceable titles to debtors is critical both for the efficiency of the entire procedure and for its acceptance by society. Therefore, service should be organized in a manner that is both effective and cognizant of citizens’ right to fair trial. Special attention should be given to the methods of service without proof of receipt by the debtor since those methods most frequently give rise to public discontent and perceptions of violations of debtors’ rights.

**14. Objections to Enforceable Titles**

83. An important element of the enforcement of uncontested claims is the rule that the enforceable title enters into force if the debtor does not object. In case the debtor objects, most systems institute a new, litigious civil case to solve the dispute between the parties.

**14.1. Forms of Absence of Objection**

84. The absence of objection is an important precondition for entry into force of enforceable titles in procedures for uncontested claims. Paragraph (6) of the Preamble of Regulation (EC) No 805/2004 outlines the two most typical forms of absence of objection: (1) “default of appearance at a court hearing” or (2) “failure to comply with an invitation by the

---

court to give written notice of an intention to defend the case”. In most comparator countries, the absence of objection takes the form of failure to comply with an invitation by the court (or the notary, where applicable) to give written notice of an intention to defend the case. In other words, if the debtor is served with the enforceable title and he/she does not react within a legally stipulated time-period, the enforceable title becomes effective. Very few comparator countries provide for a court hearing as part of the procedure for enforcing uncontested claims. One such country is Romania, which provides for a possibility of a court hearing and collection of evidence in the framework of the order for payment case.

85. Another interesting example is Latvia, where the “warning” procedure for uncontested claims deviates from the two forms of absence of objection as described in Regulation (EC) No 805/2004. Specifically, in the framework of the “warning” procedure in Latvia, the lack of reaction by the debtor means that the enforceable title cannot become effective (i.e. unlike other countries Latvia treats silence as an objection). The only manner in which an enforceable title issued in the framework of this procedure could become effective is upon the explicit acceptance by the debtor of the claim. This is probably one of the reasons why the warning procedure in Latvia is used very rarely and is not the procedure of choice for enforcing utility bills.

14.2. Forms of Objection

86. Given the simplified and non-litigious procedure through which creditors can obtain enforceable titles, it is important to provide debtors with equally easy avenues for objection. In most comparator countries objection does not require the debtor to provide any justification. A simple “I object” is usually sufficient grounds for preventing the title’s entry into force. It is also possible to provide the debtor with a form for filing the objection together with the service of the enforceable title (e.g. in Bulgaria).

87. An important detail of the procedure for objection to the enforceable title is the possibility for partial objection. The debtor may accept part of the claim and disagree with another part of it (e.g. the debtor may consider that interest is not due or is not calculated correctly or that the statute of limitations has expired for part of the amount under the claim). In such circumstances, it is useful for the debtor to be able to make a partial objection. If partial objection is admissible, the creditor and/or the debtor would be able to reduce the court fee for a potential future civil claim because it would not be on the full amount of the initial enforceable title but just on the contested part. Additionally, the creditor may accept a partial objection and choose not to sue for the remainder of the amount. Most comparator countries allow partial objections.

88. On the other hand, partial objections require higher processing times than full objections. Therefore, some countries do not allow such objections. For example, in Poland and Bulgaria, debtors can either accept the claim as a whole or be ready to be sued and pay additional expenses for the entire amount.
14.3. Frivolous Objections

89. Given the simplicity of objecting to an enforceable title, some debtors may do so mechanically even though they may not have any arguments to present in a future litigious case. If such frivolous objections are frequent, they would burden the court system with the ensuing civil cases. Additionally, frivolous objections would add to the debt court and lawyer’s fees for a full-blown civil case thus causing costs to increase exponentially. By the time such debts go through all the stages of their enforcement (uncontested claims procedure, litigious civil case, execution), they usually exceed many times their initial amount. This may create financial hardships and a sense of social injustice among debtors that do not understand why the debt has increased. For these reasons, frivolous objections are undesirable and countries should design policy responses to discourage them.

90. In order to design a policy response to frivolous objections, countries should first quantify the scale of objections to enforceable titles obtained through procedures for uncontested claims. Even though it is not particularly challenging to statistically measure the number of civil cases that were launched as a consequence of an objection, few of the comparator countries have such statistics. Slovenia, for example, collects such information and reports that debtors object in approximately 11 percent of cases. In Hungary, the percentage of objections is a little under 7 percent (e.g. in 2013, 6.81 percent of claims were objected against.) In Estonia, debtors object in approximately 10 percent of cases.

91. Knowledge of the percentage of enforceable titles that are objected to each year allows to evaluate the efficiency of the uncontested claims procedure and its contribution to the reduction in the number of litigious civil cases in the country. Also, if such statistics establish that a large percentage of enforceable titles are objected to, certain measures could be taken to discourage frivolous objections. Extensive information on the risks of increasing the value of the claim in case of frivolous objections should be made available to debtors so that they can make an informed decision whether to object or not. Allowing partial objections could also be an option for countries that currently prohibit them. Another option is introducing a fee for filing the objection. For example, in Slovenia, there is a EUR 40 fee for filing an objection. In Croatia, filing an objection launches a litigious case (i.e. unlike in other jurisdictions, the creditor does not need to make a decision whether to defend the claim that has been objected against; a debtor’s objection automatically launches the litigious case). Hence, the fee for filing an objection in Croatia is equivalent to the fee the party would be obliged to pay for filing any litigious case and is dependent on the value of the dispute. Fees for filing an objection may be required in systems that have a procedure for issuance of writ

---


27 Information in the Hungarian language available here: http://birosag.hu/sites/default/files/allomanyok/Mailath-palyazat-erdmenyek/MGYTP-P-B-3-Szabados_Janos-Kiserteku_perek_A_gyorsabb_jobb.pdf

28 Based on statistics from 2013 and 2014 and concerning cases where the debtor is a natural person.
of execution based on an authentic document because these procedures rest on the assumption that there is a high degree of certainty as regards the enforceability of the document. Countries with order for payment procedures (e.g. Bulgaria, Hungary, Poland) generally do not charge a fee to file an objection.

92. In sum, any system for enforcing uncontested claims needs to provide easy mechanisms for debtor’s objections but at the same time discourage frivolous ones. In order to do that, policy makers have to be able to track the percentage of objections and design policy responses in situations of increasingly frequent, unjustified objections that both burden the court system and aggravate debtors’ position.

15. Small Claims

93. Given the fact that most utility bills are for relatively small amounts, in the cases where a claim proceeds to a civil case it becomes important whether the respective country has a dedicated small claims procedure that fast-tracks minor disputes. All comparator countries, with the exception of the Czech Republic and Bulgaria, have a dedicated small claims procedure providing faster and more economic case resolution. In Hungary, the small claims procedure applies specifically to disputes involving a statement of opposition to an order for payment.

94. Small claims procedures incorporate numerous elements that make the process quicker and cheaper. Simplifications of the procedure include fully written process, without oral hearings; waiving or easing of evidentiary rules, legal representation, and rules regarding the form of judgments; introducing shorter deadlines; and reducing court fees as compared to regular procedures. Introducing special small claims procedures may contribute to clearing backlogs related to litigious utility claims cases.29

16. Competent Authority Carrying out Execution over Debtor’s Assets

95. Execution over debtor’s assets is the second stage of the process for enforcing utility bills. As discussed above, in all comparator countries this procedure is separate from the procedure for obtaining an enforceable title and is carried out by authorities that are tasked specifically with execution. These may be private entities entrusted with public functions, public authorities or a mix of the two.

---

Table 7: Authorities executing enforceable titles

<table>
<thead>
<tr>
<th>Country</th>
<th>System</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>Dual</td>
</tr>
<tr>
<td>Croatia</td>
<td>Public</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Dual</td>
</tr>
<tr>
<td>Estonia</td>
<td>Private</td>
</tr>
<tr>
<td>Hungary</td>
<td>Private</td>
</tr>
<tr>
<td>Latvia</td>
<td>Public</td>
</tr>
<tr>
<td>Lithuania</td>
<td>Private</td>
</tr>
<tr>
<td>FYR Macedonia</td>
<td>Private</td>
</tr>
<tr>
<td>Poland</td>
<td>Private</td>
</tr>
<tr>
<td>Romania</td>
<td>Private</td>
</tr>
<tr>
<td>Slovakia</td>
<td>Private</td>
</tr>
<tr>
<td>Slovenia</td>
<td>Private</td>
</tr>
</tbody>
</table>

Figure 9: Authorities executing enforceable titles

96. As illustrated in Table 7 above, in most comparator countries (Estonia, Hungary, Lithuania, FYR Macedonia, Poland\textsuperscript{30}, Romania, Slovakia, Slovenia) execution is carried out by private professionals. They generally operate under highly regulated conditions and are often appointed following an exam conducted by a state authority (e.g. the Ministry of Justice). At the same time, these professionals operate at their own business risk and fund their offices and practice from the fees they collect.

97. Two comparator countries, Czech Republic and Bulgaria have a dual system, which means that execution is carried out by both private and public enforcement agents. However, in both countries, the share of cases that go to public agents is negligible due to the higher efficiency of private ones. Even though private enforcement agents in Bulgaria are more efficient than public ones, their efficiency has seen a decline recently due to the continual increase in caseload. Currently Bulgaria has set a restriction on the number of private enforcement agents (1 agent per 30,000 inhabitants), which may be leading to overload of agents and decline in the quality of customer service.

98. Two comparator countries, Latvia and Croatia, rely on public authorities for the execution of enforceable titles. In this regard, Croatia is an unusual example. In Croatia, final writs of execution based on authentic documents for enforcement on monetary assets (on bank accounts) are executed by the Financial Agency (FINA). FINA is a state-owned company specialized in processing payments and providing other financial services. In practice, this means that the creditor can submit a final writ of execution to FINA and carry out execution on all debtors’ accounts in all banks in Croatia.

\textsuperscript{30} Due to certain peculiarities of the Polish system, the status of its enforcement agents is sometimes referred to as mixed. Nevertheless, they act on their own business risk and therefore for the purposes of this analysis, they are classified as private. The Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice" of the European Commission for the Efficiency of Justice (CEPEJ) also classifies Polish enforcement agents as having a private status, p. 406, at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf.
17. ICT and Execution on Debtor’s Assets

99. Effective execution usually entails various degrees of digitalization, which facilitate case management, disciplinary proceedings, identification and freezing of debtors’ assets, or obtaining information on companies’ and citizens’ indebtedness.

100. The first area that could benefit greatly from the introduction of information technologies is case management. Ideally, a case management system for enforcement agents would enable electronic filing and processing of documents, reference tools for debtors and creditors, as well as authorized access to enforcement agents’ case files for the purpose of conducting disciplinary proceedings in cases of alleged abuse of powers or court appeals of their actions. In some comparator countries, there is no unified case management system for all enforcement agents and they have come up with different individual ICT solutions (e.g. Bulgaria, Estonia[31]). In others, there is a single system that allows for unified case management of all enforcement agents’ offices (e.g. Hungary, FYR Macedonia, Poland, Croatia).

101. Enforcement agents in comparator countries have different levels of access to information about debtors. They often have direct access to civil registries, property registries, vehicle registries, and tax authorities’ databases. Access may be automatic and unlimited or may require a specific request to the respective authority. Additionally, enforcement agents’ access to such registries may be free or may be granted upon the payment of a fee. The level of access that enforcement agents have to such information, related costs and the ease of accessing information and paying for it, all have an effect on the speed and cost of enforcement.

102. Thus, in Estonia, following a one-time application process, enforcement agents have direct access to most registries (e.g. Business Register, Land Register, Tax and Customs Board registers, Population Register).

103. In Bulgaria, enforcement agents have direct access to the civil registration database, the social security and property registries. Access to the registries of the National Revenue Agency and the Motor Vehicles Registry maintained by the Ministry of Interior is provided based on individual requests. Private enforcement agents in Bulgaria pay individual fees every time they access these registries. The administration of these fees slows down execution; therefore, the Bulgarian Chamber of Private Enforcement Agents is currently working on introducing a credit-based system for automatic payment of these fees.

104. In Hungary, enforcement agents do not have automatic access to such databases. However, they can approach the administrators of these databases (including banks and other financial institutions, etc.) in order to obtain such data. The administrators are required to disclose any information related to the debtor’s assets within eight days of receiving the enforcement agent’s request. Most communication is carried out by means of a secure, electronic communication system maintained by the Hungarian Chamber of Enforcement Agents. The obtained information must be handled so as to ensure the confidentiality of any data and must be deleted ten years after the enforcement procedure ceased.

---

[31] Even though currently Estonian enforcement agents use a variety of ICT systems, the country is in the process of introducing a unified system for all enforcement agents.
105. In **FYR Macedonia**, enforcement agents do not have automatic access to any public information. They can obtain information regarding a debtor - whether it is a natural person or a legal entity - from the public registry for a fee. The only information, to which they have free access is on the employment status of the debtor. This can be obtained from the Employment Agency upon a written request.

106. Enforcement agents in **Croatia** can only access public registries (land, company) or information in the court case management system. All other types of information should be specifically requested.

107. Another important element of the digitalization of enforcement is the availability of a technical tool for electronic freezing of debtors’ bank accounts in the respective country. In some countries, such electronic freeze of accounts may need to be done individually for every bank (e.g. **Hungary**\(^32\)) while in others, the system may be designed in a manner that allows for simultaneous electronic freezing of accounts in all banks in the country (e.g. **FYR Macedonia**, **Estonia**). Electronic freezing of bank accounts happens in real time and may prevent hiding of debtors’ assets. In countries where electronic freezing of accounts is not available (e.g. **Romania**, **Bulgaria**\(^33\)), enforcement agents may charge separately for sending a paper notice of the freeze to every bank in the country, which raises the cost of enforcement and slows it down thus creating some potential for hiding debtors’ assets.

108. Finally, an important tool both for effective enforcement and potentially for prevention of indebtedness are various types of debtors’ registries. Such registries are usually maintained by enforcement agents. They may provide access to information on whether enforcement has been undertaken with respect to companies and/or individuals. **Bulgaria, Poland, Hungary, Slovakia, and the Czech Republic** maintain debtors’ registries. In Bulgaria, only information on legal persons that are debtors is accessible to anybody for a fee. Information on individuals can be obtained only by the individual concerned, by enforcement agents and by certain types of institutional creditors having verified data protection policies. In **Lithuania and Estonia**, there are several private registers of debtors. Usually, their function is to publicize debtors and the service is financially supported by creditors. In **Estonia**, there is also a public register of debtors of child support and a draft law is on the way that would give the Estonian Chamber of Bailiffs and Trustees in Bankruptcy the right to give out information about debtors and the amount of debt.

### 18. Protecting Debtors

109. National enforcement policies should be cognizant of the rights of the debtor and the traumatizing effect aggressive enforcement measures may have on vulnerable debtors. This is especially important in the enforcement of utility claims since utility services represent a basic necessity in the modern world. Recognizing this, national legislations frequently put in place safeguards to prevent disproportionate measures or harm to individuals.

---

\(^32\) The fact that electronic freezing of assets in Hungary should be done individually for each bank does not slow down the process in any significant manner because automation leads to instantaneous freezing, regardless of the protocol.

\(^33\) Bulgarian law provides for electronic freezing of accounts but the system is not introduced yet.
On 25 April 2017, the European Court of Human Rights (ECHR) made a pronouncement in the case Vaskrič v. Slovenia in which the court examined the lawfulness of the sale of the applicant’s house in the course of judicial proceedings aimed at enforcing a utility debt. The initial value of the debt was EUR 124, which increased to around EUR 500 when interest and enforcement expenses were added to it. The debtor had received numerous notifications of the debt but had failed to act, which led to the institution of enforcement proceedings. The recovery of the sum through the sale of the debtor’s movable property proved impossible, therefore court allowed the sale of his house, evaluated at EUR 140,000. The first public auction was not successful and ultimately the house was sold at a second public auction for EUR 70,000.

In its decision, ECHR noted the “manifest disproportion between this measure and the amount of debt it aimed to enforce” and held that the Slovenian court had violated the applicant’s right to property. Having regard for the “low value of the debt that was enforced through the judicial sale of the applicant’s house and the lack of consideration of other suitable and less onerous measures by the domestic authorities”, the Court concluded that Slovenia had failed to strike a fair balance between the aim sought and the measure employed in the enforcement proceedings against the applicant and ordered the defendant state to pay EUR 80,000 in damages.

110. Legislators have introduced numerous measures to protect vulnerable debtors and make sure that enforcement would not deprive them of subsistence. The two main groups of measures for protecting debtors are:

   a. the prohibitions or restrictions on directing enforcement at some categories of debtors’ assets, and;

   b. the adoption of laws on insolvency of natural persons/households. These will be reviewed separately below.

18.1. Restrictions on directing enforcement at some categories of debtors’ assets

111. In order to ensure that enforcement does not endanger the livelihood of the debtor, most national laws in the region prohibit or restrict enforcement against certain types of assets. These protected assets can roughly be divided into four categories.

112. First, the law may entirely prohibit the recovery of the debt against certain types of income, e.g. social security payments, child allowances, scholarships, payments made in connection with the death of a relative, unemployment benefits, maternity benefits, disability benefits, etc. Such payments are usually targeted and made by the state in order to alleviate the situation of an already vulnerable person. The prohibition to seize such types of income in the context of enforcement serves an important social function. Among the comparator countries, Bulgaria, Croatia, Estonia, FYR Macedonia, Hungary, Lithuania, Romania and Slovakia exclude entire categories of income. When such protection is available for certain categories of payments, it may be necessary that the debtor withdraws these assets immediately upon receiving them because if they are re-directed to a savings account, protection may be lost. In Croatia, if debtors wish to save protected income from

---

enforcement, they need to open a “protected account”. If the debtor fails to do so, all income – even the protected one, will be enforced automatically. This procedure is criticized because the debtors are often unaware that their action is needed to prevent enforcement on protected income and react only when the protected income has already been seized.

113. Secondly, for certain categories of payments the law may allow enforcement only of certain portions of the income. Such protection measures usually stipulate that the salary of the debtor cannot be frozen in its entirety and that certain portions of it should be available to the debtor. Some countries provide protection both to entire types of income (e.g. social benefits) and to portions of other types of income (e.g. salaries). In other jurisdictions, there are no types of income that enjoy absolute protection and only portions of the social benefits are protected. Thus, Poland protects only portions of some types of social benefits, whereas Bulgaria, Croatia, Estonia, FYR Macedonia, Hungary, Lithuania and Romania exclude both certain types of income and protect portions of other types of income.

114. Thirdly, most countries do not allow enforcement directed against some types of movable items that may either be necessary for the debtor’s subsistence or have an emotional value. Types of such movable assets may include clothes, pets, kitchen appliances, medical appliances, study materials, certain quantity of food, fuel and other consumables necessary for heating, cooking or lighting for a certain period of time, machines, tools, books, with which the debtor exercises his/her profession, cattle, bees and other farm animals up to a certain limit, as well as the food to feed them, accounting records, family records, marriage rings, etc. These lists of protected movable assets are usually quite extensive and may reflect cultural or moral values of the society.

115. Fourthly, few countries pose restrictions on the right to sell debtors’ immovable property. For example, Bulgaria does not allow enforcement against the only home of the debtor and the members of his family, and if it is too large for the household (as per a size chart determined by the Council of Ministers), part of it. Additionally, enforcement cannot deprive farmers in Bulgaria of agricultural land, up to a certain size. In Romania, the real estate having the destination of home, which was acquired by credit, cannot be foreclosed until the credit is paid up. In Croatia, the debtor is entitled to seek adjournment of enforcement against real estate, if it is the only immovable necessary for fulfillment of his/hers basic housing needs. This adjournment would be granted if the debtor proves that in all likelihood the debt can be paid in some other way (e.g. by collection of some of his/hers claims). In Lithuania, if the only residential estate of the debtor has been attached when recovering amounts outstanding for utility debt, the court may, on request from the debtor or his/her family members, prohibit the sale of the property taking into consideration the material situation and interests of the children, disabled persons, and welfare beneficiaries. In Slovakia, enforcement to recover a receivable not in excess of EUR 2,000 (“low-value enforcement”), cannot be conducted by selling the real estate in which the debtor has permanent or temporary residence. Overall, such restrictions on the sale of immovable property are rare as they severely limit creditors’ avenues for successful enforcement.

116. In addition to introducing specific categories of assets that may not be seized, national laws may allow debtors to object when the enforcement method selected by authorities is disproportionate to the size of the debt. If applied effectively, such provisions go a long way towards ensuring societal acceptance of enforcement legislation.
18.2. Insolvency of Natural Persons

117. In some extreme examples, the financial position of debtors may be so dire that debts cannot be collected within foreseeable timelines. This situation, coupled with active attempts at enforcement, may create “constant debtors” whose debts may accompany them for the rest of their lives thus preventing any meaningful participation of these individuals and/or households in economic activities. Moreover, the prolongation of a situation of unpaid debt generates undesirable legal uncertainty.

118. The primary targets of household/natural persons’ insolvency regimes are described succinctly in a 2011 report of the World Bank’s Insolvency and Creditor/Debtor Regimes Task Force: “Insolvency regimes are designed primarily and work best for individuals who are capable of producing sufficient income to support themselves and their families, but an overwhelming debt burden saps their initiative and depresses their productive capacity.” Thus, the legislation of the insolvency of natural persons is aimed at giving such individuals the chance of a fresh start. Depending on the type of rules it incorporates, it could also create positive incentives for the debtor to work towards repaying as much of the debt as possible. While the reasons for the introduction of such legislation are usually economic, such laws also serve important humanitarian and cultural aspects insofar as household insolvency may be perceived as a form of forgiveness.

<table>
<thead>
<tr>
<th>Benefits of personal insolvency regulation</th>
<th>Risks of personal insolvency regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Enhancing fair distribution of payment among the collective of creditors</td>
<td>• Moral hazard (offering incentives for debtors to act irresponsibly with respect to their finances and obligations)</td>
</tr>
<tr>
<td>• Fresh start for debtors and their families</td>
<td>• Debtor fraud (risk of debtors improperly gaining the extraordinary advantages of an insolvency system and evading their legitimate obligations by means of fraud)</td>
</tr>
<tr>
<td>• Benefits for society</td>
<td>• Stigma (“Formal and informal surveys of debtors in many well-established insolvency systems reveal pervasive and profound feelings of guilt, shame, and stigma.”)</td>
</tr>
<tr>
<td>• Establishing proper account valuation</td>
<td></td>
</tr>
<tr>
<td>• Reducing wasteful collections costs and destroyed value in depressed asset sales</td>
<td></td>
</tr>
<tr>
<td>• Encouraging responsible lending and reducing negative externalities</td>
<td></td>
</tr>
<tr>
<td>• Concentrating losses on more efficient and effective loss distributors</td>
<td></td>
</tr>
<tr>
<td>• Reducing costs of illness, crime, unemployment, other welfare-related costs</td>
<td></td>
</tr>
<tr>
<td>• Increasing production of regular taxable income</td>
<td></td>
</tr>
<tr>
<td>• Maximizing economic activity, encouraging entrepreneurship</td>
<td></td>
</tr>
<tr>
<td>• Enhancing stability, predictability in broader financial system, economy</td>
<td></td>
</tr>
</tbody>
</table>


37 Ibid. footnote 32 at p. 43.
In recent years, an increasing number of European states are regulating the insolvency of natural persons. Comparator countries are no exception.

| Table 8: Does the law provide for insolvency of natural persons? Timelines. |
|-----------------------------|------------------|
| Bulgaria                   | No               |
| Croatia                    | Yes, since 2016  |
| Czech Republic             | Yes, since 2008  |
| Estonia                    | Yes, since 2004  |
| Hungary                    | Yes, since 2015  |
| Latvia                     | Yes, since 2008  |
| Lithuania                  | Yes, since 2013  |
| FYR Macedonia              | No               |
| Poland                     | Yes, since 2015  |
| Romania                    | Not in force, but enacted |
| Slovakia                   | Yes, since 2006  |
| Slovenia                   | Yes, since 2008  |

As Table 8 above illustrates, most comparator countries have either regulated the insolvency of natural persons or are considering such reform. These laws are still rather new and an examination of their effect would be premature. Nevertheless, insolvency of natural persons increases in importance as means to ensuring that citizens and households are not permanently marginalized as a result of debt.

19. Reform Management

In comparator countries, facilitating enforcement of monetary claims, including utility bills, usually entailed reforms to both stages of obtaining enforceable title and execution. These reforms were varied and depended on the previously applicable regimes and on the legal traditions of the respective jurisdiction. The main drivers for reform were the EU accession process, as well as the need to optimize the use of court resources and clear backlogs. The publication of EU Commission pre-accession reports criticizing enforcement processes and exchange of experience in the framework of international cooperation and various EU Twinning projects also played a role as catalysts of change, as well as the complaints of business associations regarding efficiency of enforcement. Reform management in comparator countries is examined separately for each of the two stages of enforcement.

19.1. Reform Management of the Process of Obtaining Enforceable Title

Comparator countries carried out various types of reforms of the process for obtaining enforceable title for uncontested claims. One such reform entailed the introduction of an order for payment procedure. This reform is typically extended to all monetary claims (sometimes below a certain threshold) in the respective jurisdiction and provides an expedited procedure for obtaining enforceable titles for uncontested claims to a broad array of creditors. For example, before 2007, Bulgaria enforced utility bills using a procedure for obtaining writ of execution based on authentic title, similar to the one used by the countries
of the former Yugoslavia. In 2007, following a twinning project bringing together Bulgaria’s Ministry of Justice and the Austrian Center of Legal Competence, Bulgaria adopted its new Civil Procedure Code introducing the order for payment procedure. This reform moved utility bills out of the category of authentic documents and equated them to all other monetary claims up to a certain threshold. As discussed above, the use of the order for payment procedure in Bulgaria is so extensive that it currently makes up more than fifty percent of all first-instance civil cases. At the same time, the differences in caseload between judges in different regions of the country led to large regional differences in the processing times of such requests by the various first-instance courts.

123. Another type of reform entails assigning the function of issuing an enforceable title to notaries. Such reforms were carried out in Hungary, Croatia and FYR Macedonia. They have the effect of quickly relieving courts of large caseloads especially when notaries issue enforceable titles for all types of monetary claims (Hungary), as opposed to just claims based on authentic title (Croatia and FYR Macedonia). These measures, however, could move the excessive caseload from courts to notaries if the number of notaries is insufficient or if there are no systems in place to better organize the performance of this function. As discussed above, it remains to be seen whether enforceable titles issued by notaries could be certified as European Enforcement Orders directly or whether exceptions must be specifically provided in EU legal instruments, as in the case of Sweden and Hungary.

124. A large number of comparator countries sought to address excessive caseload through digitalization of this process. Electronic filing and processing of requests for enforceable titles is currently possible in Estonia, Czech Republic, Hungary, Lithuania, Poland, Slovakia and Slovenia. The ICT systems are sometimes part of the overall E-justice framework of the respective jurisdiction, while in other cases there is a dedicated IT infrastructure specifically for uncontested claims (e.g. the E-court in Poland, the system of notaries in Hungary, COVL in Slovenia). E-filing is often encouraged through financial incentives such as reduction of fees. In countries that have introduced a centralized system for issuing enforceable titles on uncontested claims, e-filing is the only available option if a creditor wishes to use the fast-track procedure.

125. Finally, wide-reaching and successful reforms were achieved through simultaneous centralization and digitalization of the function of issuance of enforceable titles, as in Poland, Estonia, Slovenia and Hungary. This type of reform builds on the experiences of the United Kingdom (Money Claim Online)38 and Germany.39 In both the UK and Germany, the electronic platform and filing are centralized while competent authorities continue to apply their limited territorial jurisdiction (i.e. the unified electronic platform directs filed requests to the territorially competent court). In comparator states with centralized systems, the competent authorities have jurisdiction over the territory of the entire country. Such centralized systems were introduced by assigning the function to a single court division. At the same time, given the digitalization of the process, in centralized systems it is not necessary to have all officials working on the subject residing in the same place. The ICT system would distribute workload evenly regardless of the whereabouts of the official examining the request, thus ensuring uniform deadlines throughout the country, as in the examples of

38 See https://www.moneyclaim.gov.uk/web/mcol/welcome.
39 See http://www.mahngerichte.de/.
Poland and Hungary. If such functions are assigned to a court, a large part of the work could be carried out by officials who are not judges, as in the examples of Poland (8 judges and 119 court clerks), Slovenia (4 judges and 62 support personnel) and Estonia (4 assistant judges and 29 other court officers).

Box 9: Slovenia’s Automated System for Enforcement of Authentic Documents

In 2010, the Crystal Scales of Justice Prize of CEPEJ was awarded to Slovenia for its Automated system for enforcement of authentic documents and the country reported the following efficiencies of the system:\(^{40}\):

- The introduction of COVL, at the start of 2008, lowered the number of pending cases by 6.6 percent in 2008 (to 284,302) and by 5.94 percent in 2009 (to 267,410).
- Decision making time has been lowered from an average of 6 months to less than 5 working days for over 90 percent of the requests.
- The work, previously done by around 350 court employees and judges at 44 courts, now involves just 4 judges and 62 support personnel.
- Introduction of an automated postal system, which has processed more than 1 million postal parcels in 2009, reduced the number of necessary staff by 60-70 over a year.

126. Data on the cost of reforms has proven scarce. Most costs of reforming the process of obtaining enforceable title are associated with building a dedicated information system for this process, such as the systems of the E-court in Poland, the notaries in Hungary or COVL in Slovenia. Where such systems employ additional legal personnel, e.g. the referendarz in Poland, the reform may also entail personnel costs. Additionally, when a large new entity is set up in connection with centralized processing of requests (e.g. the E-court in Poland), there may be housing costs. OECD estimates that the setting up of the E-court in Poland entailed a one-time investment of EUR 5.2 million.\(^{41}\) System development for the introduction of COVL in Slovenia cost EUR 3.2 million.\(^{42}\) Additionally, as of 2012, operational costs of the COVL system were approximately 6 million EUR per year and it generated around 11 million EUR in court fees.\(^{43}\)

---


\(^{43}\) Ibid. page 51.
In Poland, the most frequently used avenue for obtaining enforceable title for utility claims is the electronic order for payment procedure. It is carried out by the so-called E-court, which is established as a division of the Lublin-West Regional Court. The E-court functions since January 2010. It has jurisdiction over the entire territory of Poland regardless of the defendant’s domicile or seat. The E-court works exclusively with electronic orders for payment and employs 8 judges and 119 court clerks with legal education (referendarz). 69 of the referendarz are based outside of Lublin and work from a distance. Between 2010 and 2015, the E-Court had 11.8 million claims lodged (in 2015, around 2.4 million) with 10.3 million writs of execution issued (in 2015, around 2 million). According to OECD estimates, the setting up of the E-court in Poland entailed a one-time investment of EUR 5.2 million.

Claimants can choose whether to use the procedure with the E-court or the traditional paper-based procedure with regular courts; the latter however, is more expensive and slower. The court fee for the electronic procedure is 1.25 percent of claim value whereas the fee for the “paper” procedure with regular courts amounts to 5 percent of claim value. Creditors can file applications for the issuance of orders for payment with the E-court for pecuniary civil claims irrespective of the amount of the claim. To do that, they need to register with http://www.e-sad.gov.pl. There is no need to attach evidence to the electronic form. If the claim is well-grounded, the electronic system prepares a draft order for payment, which is subsequently signed by the court official using an electronic signature. If the claim appears groundless, no payment order follows and the case is transferred to the competent regular court for further consideration.

The order for payment is automatically served on the claimant through the electronic system while service to the defendant is carried out in the standard manner – by regular mail. The defendant can submit a written objection to the payment order within 2 weeks from the date of service. A peculiar element of the Polish system is the presumption of service - there is no verification whether the notice actually reached the debtor as there is a presumption that it did. If the E-court has not received an objection within a month of sending the Order for Payment, it issues a writ. The submission of an objection by the defendant annuls the payment order and results in the case being transferred for consideration to the competent court. If the defendant refrains from objecting, the order for payment becomes final and a writ of execution is issued.

Comparator countries reformed the process of obtaining an enforceable title in several ways: introducing the order for payment procedure; assigning the function to notaries; digitalization of the function; and simultaneous centralization and digitalization of the function. It appears that the simultaneous centralization and digitalization of the function leads to the most efficiencies across the board.
Box 11: Good practice in Estonia

On 1 September 2009, Estonia introduced centralized and electronic processing of orders for payment. All of them are reviewed by the Centre of Payment Orders located in the Haapsalu court house of the Pärnu County Court. This specialized court division works exclusively with electronic orders for payment and employs only 4 assistant judges and 29 other court officers. In 2014, the court division reviewed 37,542 applications for the issuance of expedited orders for payment. During the same year, county courts adjudicated on a total of 28,094 civil cases, which is illustrative of the scale of utilization of the expedited orders for payment procedure.

Creditors can file with the Centre of Payment Orders applications with regard to pecuniary civil claims with a value of up to EUR 6,400. Applications can be filed only electronically via a centralized e-File portal or via the X-road data exchange layer of information systems. The court fee for the procedure is EUR 45 irrespective of the amount of the claim. The system checks if the applications meet the formal requirements and if they do, automatically creates a proposal for payment. If there are any shortcomings, the Centre of Payment Orders either approaches the creditor or rejects the application with a court ruling. No proof of actual debt needs to be submitted to the court; however, there needs to be a description of the case and a list of documents proving the claim.

The proposal for payment is then served to the debtor. Unlike other comparator countries, Estonia does not allow service without proof of receipt regarding Orders for Payment. If personal service to the debtor proves impossible, the payment order procedure is terminated and the creditor is left with the option to initiate a litigious civil case. The debtor has 15 days after receiving the proposal for payment to file an objection. There is no need to provide any justification of the objection. If the debtor doesn’t object, the department of payment order will issue the order for payment, which is directly enforceable. If the debtor objects, it’s up to the creditor to decide whether to proceed to county court or close the case.

19.2. Reform Management of the Process of Execution

128. Most comparator countries reformed execution of enforceable titles by introducing private enforcement agents. This type of reform is not costly for the public sector because private professionals are responsible for covering the costs of equipping their offices and funding their operations. The reform creates performance incentives as the income of the agents depends on the collected amounts. At the same time, in all jurisdictions this is a highly-regulated profession because the state delegates to private professionals a part of its coercive power and needs to ensure it is not abused. The success of such reforms depends on the extent to which the state and the private professionals are able to ensure strict compliance with rules of enforcement, including through effective self-regulation and disciplinary measures.

129. All comparator countries except Latvia and Croatia have introduced private enforcement agents. This type of reform entails a number of policy choices. First, countries need to choose whether to completely replace state enforcement agents with private ones or let both systems operate in parallel. For example, Bulgaria and the Czech Republic have opted for a dual system while Estonia, Hungary, Lithuania, FYR Macedonia, Poland, Romania, Slovakia and Slovenia currently have only private enforcement agents. Opting for a dual system may reduce opposition toward the reform and may create a safety valve in case it proves unsuccessful. However, the preservation of the parallel public system engages budgetary resources that in the presence of private enforcement agents may well be
ineffectively spent. In addition, both in Bulgaria and in the Czech Republic, creditors overwhelmingly choose private as opposed to public enforcement agents, which suggests that they are seen as more efficient and effective.

130. The second policy choice relates to the **number of enforcement agents**. It may be limited by law or may depend on the market and the selection process (qualification exam) for entering the profession. For example, Lithuania, Romania, Slovakia, Poland do not set a limitation on the number of enforcement agents who would serve in the country, whereas in Bulgaria, Estonia, FYR Macedonia, Czech Republic and Slovenia this number is strictly limited. The liberalization of the number of enforcement agents allows for higher competition and flexibility in providing quality services to creditors. On the other hand, it creates difficulties in controlling the quality and performance of enforcement agents.

131. The third policy choice as regards setting up a system of private enforcement agents relates to their **territorial competence**. In some countries, enforcement agents have jurisdiction over the territory of the entire country while in others, they have limited territorial jurisdiction over a certain region. In Slovakia and FYR Macedonia enforcement agents can carry out enforcement actions on the territory of the entire country, while in Bulgaria, Estonia, Lithuania, Hungary and Poland, agents have jurisdiction only over the territory of their districts. Generally, unlimited territorial jurisdiction increases competition between enforcement agents and may result in better service to creditors. On the other hand, it may increase the costs of enforcement and decrease incentives for setting up of enforcement agents’ offices in less economically active parts of the country, thus reducing access to justice for economically disadvantaged creditors.

132. In sum, the majority of comparator countries have reformed execution of enforceable titles by assigning this function to a highly-regulated profession of private enforcement agents. In introducing this profession, different countries have opted for varying degrees of liberalization of the profession around policy choices such as: whether to completely replace state enforcement agents with private ones or let both system operate in parallel; whether to limit the number of agents or not; and whether to limit agents’ territorial competence. All of these choices shape the system and have a direct effect of competition and quality of services in the sector.

### 20. Reducing Backlogs

133. While reforms based on the policy options described above may accelerate processing of incoming cases and limit the accumulation of backlogs, old cases that stay open indefinitely may still burden the system. When discussing backlogs, it is again useful to separate enforcement of utility cases into two stages, obtaining enforceable title and execution of the title. By design, expedited procedures for issuing enforceable title on uncontested claims do not stay open indefinitely. The case is closed relatively quickly because one of the following scenarios materializes: (1) the competent authority refuses to issue the enforceable title when the request does not meet legal requirements; or (2) the court issues the enforceable title, it is served to the debtor, the debtor doesn’t object and the title enters into force; or (3)

---

44 In FYR Macedonia, enforcement agents have the competence to carry out enforcement actions on the territory of the entire country but only for enforceable titles issued in their respective district.
the court issues the enforceable title, it is served to the debtor, the debtor objects and the procedure for uncontested claims is closed leaving the creditor to defend the claim in a litigious case. Therefore, in essence, the procedures for issuance of enforceable titles based on uncontested claims do not have the potential to generate a backlog.

134. Matters are quite different as regards the execution of enforceable titles. Execution cases may stay open for a very long time, especially if the debtor has no assets, thus generating a backlog. In Serbia and Montenegro, where both stages are united in a single procedure, the possibility for a prolongation of the case and hence the potential for backlogs affect the entire procedure.

135. Two types of rules have the potential to significantly affect backlogs in the area of enforcement: first, the interruption of the period of limitations for a claim in a pending execution case for the same claim; and second, the possibility for execution cases to stay open indefinitely even if no enforcement action is undertaken (e.g. in cases where the debtor has no sufficient assets).

136. The statute of limitations in the course of pending execution may significantly affect a backlog. Thus, jurisdictions where the limitation period is suspended for the entire duration of an open execution case may favor prolongation of such cases and the accompanying uncertainty regarding the debtor’s financial situation. Examples of such jurisdictions are Poland and FYR Macedonia. In other countries, the presence of a pending enforcement case is not in itself sufficient to suspend the limitation period. Thus, in Bulgaria and Hungary each action in a pending execution case interrupts the limitation period, but if a case is dormant and there are no actions whatsoever in its framework, the limitation period for the claim would not be suspended. This would allow the period of limitation to expire for claims for which execution has been initiated but no further actions have been undertaken (e.g. due to lack of debtor’s assets, lack of sufficient level of interest by the creditor, etc.)

137. The possibility for execution cases to stay open indefinitely even if no enforcement action is being undertaken may also contribute to a backlog. Therefore, it is advisable to have rules regulating the fate of dormant cases. For example, in Hungary such cases are suspended with a document drawn up by the enforcement agents. In Croatia, if the enforcement agent has not been able to collect the case is closed. In Poland, the case shall be closed if the creditor has not acted within six months.

138. A rule on closing cases where no enforcement actions have been carried out in the course of two years exists in Bulgaria; however, in practice enforcement agents were not suspending or closing such cases. In order to remedy this situation and introduce more clarity, an Interpretative Decision 45 of Bulgaria's Supreme Court of Cassation pronounced that execution cases on which there has been no activity for two years shall be considered closed ex officio. While it is sometimes argued that such rules should be introduced by the legislature, as opposed to through case law, the decision brought certainty and closed a large

45 Interpretative Decision, Case No. 2/2013, issued on 26 June 2015, of Joint Assembly of the Civil and Commercial Division of the Supreme Court of Cassation of the Republic of Bulgaria at http://www.vks.bg/Dela/2013-02-%D0%9E%D0%A1%D0%93%D0%A2%D0%A2-%D0%A2%D1%8A%D0%BB%D0%BA%D1%83%D0%B2%D0%B0%D1%82%D0%B5%D0%BB%D0%BD%D0%BE%20%D1%80%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5.pdf.
number of dormant cases thus reducing the backlog. In this situation, *ex officio* closure of dormant cases proved an effective tool for addressing backlogs of inactive execution cases.

139. Both the rules on the limitation period and the rules on the fate of dormant execution cases can affect backlogs. Situations where the limitation periods are suspended for the entire duration of a pending enforcement, regardless if any actions are being carried out or not, combined with an absence of rules on closing dormant enforcement cases are the most conducive to generating backlogs.

**Box 12: Utility Providers Taking the Lead in Backlog Reduction**

Significant backlog reduction could be achieved on the initiative of utility providers. In 2011, Infostan, the largest utility company in Belgrade, invited their long-time debtors to reach an agreement and pay their accumulated debts in installments without interest. For those who agreed, Infostan withdrew the pending enforcement cases before the Belgrade First Basic Court, leading to a significant decrease in the pending stock. In 2014, Infostan replicated the offer and again numerous debts were settled. Initiatives combining debt restructuring for larger bills and debt write-off for small-value cases can go a long way towards reducing backlog. In this manner, both enforcement systems and companies can be relieved of futile efforts.46

21. Opposition to Reforms

140. Having in mind that reforms aimed at improving the efficiency of enforcement are bound to adversely affect a great number of persons who are often socially vulnerable, legislators usually approach such reforms with a certain degree of apprehension and an expectation of significant opposition. This report examines the actual opposition that was observed in comparator states with regard to these reforms, including the timing and the nature of such opposition. Again, reforms of the procedure for obtaining an enforceable title and reforms of the process of execution are examined separately since public reactions to them differ greatly.

**21.1. Opposition to Reforming the Process for Obtaining Enforceable Title**

141. None of the comparator countries reported opposition to reforming the process of obtaining enforceable title at the time of introduction of the new system. In a few countries, criticism arose following several years of implementation of the new system and was related primarily to two groups of issues: 1) problems with *service of the enforceable title to the debtor without proof*, and 2) excessive increase of the debt as a result of adding the costs of enforcement.

142. As discussed above, the possibility of *service of the enforceable title to the debtor without proof* is critically important to the effectiveness of enforcement since in the absence of such an option, the debtor may easily prevent enforcement by avoiding service. At the same time, this type of service can lead to real or perceived limitation of debtors’ right to fair trial. Several countries report criticism to reform related to this issue. In Poland, the presumption of service to the debtor within a certain time period after the sending of the

46 Ibid., footnote 2, p. 100.
enforceable title is an object of criticism. In Bulgaria, the procedure of sticking a notice on the debtor’s door in case of his/her absence is viewed as rather uncertain as such notes are frequently reported to “disappear”. In Romania, there has also been criticism of the procedure with regard to service.

143. Costs of enforcement are another reason for discontent. When court/notary fees for the issuance of an enforceable title are combined with enforcement agents’ fees and attorneys’ fees, the total sum may well exceed the principal of the debt, especially in the case of small claims such as those based on utility bills. Croatia, Bulgaria and the Czech Republic report discontent linked to the overall costs of enforcement.

144. Bulgaria provides an interesting example. Even though utility companies use in-house lawyers working for a flat salary to initiate enforcement of unpaid utility bills, at the phase of enforcement, the expenses for this labor were being calculated on the basis of attorneys’ expenses and were added to the debt. This used to increase the burden on debtors. This prompted Bulgaria’s Ombudsman to challenge before the Constitutional Court the legal provisions allowing judges to award expenses to companies represented by in-house lawyers on the basis of attorney fees. The Constitutional Court did not find this unconstitutional, but due to escalating public discontent in January 2017 Bulgarian legislators introduced a special provision in the law significantly limiting the fees that companies could claim for the work of their in-house lawyers.

21.2. Opposition to Reforming Execution

145. Reforms introducing private enforcement agents have prompted more opposition than reforms of the process for obtaining enforceable title and have at times been an important part of the political debate in some comparator countries. Given the fact that the institution of private enforcement agents represents a delegation of important coercive powers of the state to private professionals, in some comparator countries (particularly Croatia and Bulgaria) this reform has been met with fear and distrust.

146. Croatia has witnessed particularly strong opposition. The country introduced private enforcement agents in 2010, in the Private Bailiffs Act. The system was supposed to be in place and operating by January 1, 2012. By December 2011, private bailiffs were appointed, their offices were set up and the system was ready to start operating. However, due to great public concern over this reform, it became one of the main political campaign topics. The political party that had incorporated opposition to this reform in its political platform won the elections and the act was repealed in late December 2011, only a few days before the start date of its implementation.

147. Public protests were quite significant in Bulgaria as well. As a result of opposition at the time private bailiffs were introduced, Bulgaria made the policy decision to keep the public system functioning in parallel. Ten years after the introduction of the reform, there are several non-governmental organizations for the protection of debtors’ rights that have

---

47 Constitutional Court Decision No. 10 of 29 September 2016 on Constitutional Case 3/2-16, promulgated in State Gazette 79 of 7 October 2016.
participated in strategic litigation against aspects of the enforcement system, have attended parliamentary hearings on the topic and have organized small street protests. Aspects of the activities of private enforcement agents are frequently scrutinized by Bulgaria’s Ombudsman.

148. In Hungary, too, there have been complaints against the modus operandi of enforcement agents. Whilst their actions are strictly regulated by law, the legal framework is in certain cases perceived as not restrictive enough to prevent abuses: the costs and expenses in connection with enforcement actions often gave rise to criticism as enforcement agents can claim expenses which were not necessarily justified. Additionally, the mechanisms for handling complaints against actions of the enforcement agents are perceived as not sufficiently quick. A new legislative package will aim at rectifying these deficiencies.

149. Overall, the most important risk associated with the introduction of private enforcement agents is the potential for abuse of their powers. Since private enforcement agents have the authority to severely affect the property sphere of individuals and companies, there should be solid guarantees against the abuse of their powers, such as: strict disciplinary liability imposed by both enforcement agents’ professional chamber and by a governmental authority; procedural venues for timely court actions to prevent those types of violations that would inflict irreparable damage on debtors or creditors; obligatory professional liability insurance; and consistent imposition of civil liability for damages that private enforcement agents may have caused as a result of overstepping their powers.

150. Opposition to the introduction of private enforcement agents, where it occurred, was usually overcome by strong public information campaigns on the extensive and positive foreign experience with this system. Such opposition was easier to overcome where the previous system was functioning very poorly. In some countries opposition was overcome by modifying or softening reform proposals to make them more acceptable. Finally, even though opposition to reforms at the time of their introduction may be significant, such opposition does not end with adopting the new piece of legislation. It is necessary to carry out periodic reviews of the implementation of such reforms and adjust them to address any problems in implementation.

22. Conclusions

151. Experience from the comparator countries examined above demonstrates that enforcement of utility bills can take various routes. Different systems can yield comparably satisfactory results. Nevertheless, some systems display more efficiencies. The conclusions are summarized below:

a) The limitation period for utility claims is particularly short in the countries of the former Yugoslavia. Short statutes of limitation for enforcement of utility bills may lead to non-joining and thus proliferation of small claims and burden debtors with excessive costs for enforcement. Most comparator countries have opted for a 3-year statute of limitations.

b) Possibilities for cutting off access to utility services may be effective in reducing non-payment of utility bills and may affect the volume of such cases. However, due to the social significance of utility services as well as a number of technical limitations,
providing extended possibilities for self-help on the part of utility companies cannot be considered an acceptable policy tool for reducing the volume of utility cases.

c) Usually, enforceable titles for unpaid utility bills are obtained via procedures for enforcing uncontested claims.

d) Issuance of enforceable titles and execution over debtors’ assets are two distinct procedures implemented by two different authorities in all comparator countries. Uniting these procedures and assigning them to the same authority, as Serbia and Montenegro have done, is not the preferred solution.

e) Obtaining enforceable title for unpaid utility bills through an order for payment procedure, which is also applicable to a broad range of other monetary claims, is the more widely accepted policy choice. When compared to procedures for issuance of a writ based on an authentic title, which are used in the Western Balkan countries, order for payment procedures are broader in scope and display equal treatment for all creditors in the country, without assigning a special status to utility providers.

f) Issuance of enforceable titles for uncontested claims is usually assigned to courts. Nevertheless, countries that have chosen to assign this responsibility on notaries, do not face any particular difficulties either. The expected pronouncement of the Court of Justice of the European Union in Case C-484/15 will determine whether the issuance of enforceable titles by notaries would need to be addressed by a specific exception in the EU legislation, if such titles are to qualify as European Enforcement Orders.

g) Centralized and fully electronic systems for issuance of enforceable titles for uncontested claims generally ensure more predictable timelines and are more cost-efficient.

h) One way to ensure quick and efficient processing of requests for issuance of enforceable titles is the use of information technologies. In comparator countries with centralized systems, electronic filing is mandatory for creditors wishing to use the expedited procedure. Comparator countries with non-centralized systems either have only paper-based filing or provide creditors with a choice whether to file electronically or not. In these cases, there might be economic incentives for electronic filing.

i) In order to facilitate examination of requests, many comparator states have abolished the requirement to attach evidence to the request for issuance of enforceable title.

j) Fee structures of procedures for obtaining enforceable titles on uncontested claims are generally used as a policy tool that would encourage creditors to use the most cost-efficient procedural route.

k) Service of enforceable titles to debtors is critical both to the efficiency of the entire procedure and to its acceptance by society. Therefore, service should be organized in a manner that is both effective and cognizant of citizens’ right to fair trial.

l) Policy makers should track the frequency of objections to enforceable titles and work to introduce mechanisms that would facilitate legitimate objections while discouraging frivolous ones.
m) Efficient execution over debtors’ assets requires a high level of digitalization of this function, including automated access to various types of information about debtors.

n) In order to ensure that enforcement does not endanger the livelihood of the debtor, laws in the region introduce restrictions on enforcement against certain types of assets. Restrictions may be introduced in respect of entire categories of income (such as social assistance payments), portions of income (such as a minimum amount of the salary), movable items that are necessary for debtors’ subsistence or have an emotional value or immovable properties. Restrictions on enforcement on immovable are quite rare.

o) In order to prevent the permanent exclusion of debtors from economic activities, most countries in the region have enacted personal insolvency laws. They are designed to give debtors and their households the chance of a fresh start.

p) Comparator countries have reformed the process of obtaining an enforceable title in several principal ways: introducing the order for payment procedure; assigning the function to notaries; digitalization of the function; and simultaneous centralization and digitalization of the function. It appears that the simultaneous centralization and digitalization of the function leads to most efficiencies across the board.

q) The majority of comparator countries have reformed execution of enforceable titles by assigning this function to a highly-regulated profession of private enforcement agents. In introducing this profession, different countries have opted for varying degrees of liberalization of the profession around policy choices such as: whether to completely replace state enforcement agents with private ones or let both system operate in parallel; whether to limit the number of agents or not; and whether to limit agents’ territorial competence. All of these choices shape the system and have a direct effect on competition and quality of services in the sector. Poor supervision of private agents could, however, lead to abuse of their powers and public discontent.

r) The rules on the limitation periods in the course of execution and the rules on the fate of dormant execution cases can affect backlogs. Situations where the limitation periods are suspended for the entire duration of a pending enforcement, regardless if any actions are being carried out or not, combined with an absence of rules on closing dormant enforcement cases are the most likely to generate backlogs.

s) Reforms of the process of obtaining enforceable titles for uncontested claims do not tend to generate public outcry at the time of their adoption. However, special attention should be given to service of process and costs, if the public is to perceive these reforms as fair in the long run.

t) In some comparator countries, introduction of private enforcement agents was met with serious concerns and public opposition. The most important risk associated with the introduction of private enforcement agents is the potential for abuse of powers. There should be solid guarantees against the abuse of powers, such as: strict disciplinary liability imposed by both enforcement agents’ professional chamber and by a governmental authority; procedural venues for timely court actions to prevent those types of violations that would inflict irreparable damage on debtors or creditors; obligatory professional liability insurance; and consistent imposition of civil liability for
damages that private enforcement agents may have caused as a result of overstepping their powers.

152. The rich experience of EU-11 countries in improving enforcement through targeted reforms offers good models for countries that experience similar problems and share common cultural and legal traditions.
References

World Bank Materials:


EU Materials:

- Opinion Of Advocate General, Delivered On 8 September 2016, Case C-484/15, Ibrica Zulfikarpašić v Slaven Gajer at http://curia.europa.eu/juris/document/document_print.jsf?jsessionid=9ea7d2dc30d523a964266d8b4b6cab589d30b71070ff.e34KaxILc3qMb40Rch0SaxyKa3n0?doclang=EN&text=notary&pageIndex=0&part=1&mode=DOC&docid=183132&occ=first&dir=&cid=153610

CoE Materials:

- Presentation for the 2010 Crystal Scales of Justice Prize, Supreme Court of the Republic of Slovenia, for the scheme "Automated system for enforcement of authentic documents (COVL)" at http://www.coe.int/t/dghl/cooperation/cepej/events/EDCJ/Cristal/2010/Cristal2010projetsgagants_en.asp

Country-specific materials in English:

- Legal Enforcement Procedure for Money Claims – An Example of Effective Use of It in Automating of Court Procedures (COVL), Bojan Muršec, Director, Center of Information Technology, Supreme Court of the Republic of Slovenia at www.nispa.org/files/conferences/2010/papers/201004221029280.mursecbojan.doc
- Money Claim Online at https://www.moneyclaim.gov.uk/web/mcol/welcome
- The Insolvency Service, Annual Report and Accounts 2010-11, at www.bis.gov.uk/insolvency/Publications

Country Specific Materials in the Local Language:

- Interpretative Decision, Case No. 2/2013, issued on 26 June 2015, of Joint Assembly of the Civil and Commercial Division of the Supreme Court of Cassation of the Republic of Bulgaria at http://www.vks.bg/Dela/2013-02-%D0%9E%D0%A1%D0%93%D0%A2%D0%9A-%D0%A2%D1%8A%D0%BB%D0%BA%D1%83%D0%B2%D0%B0%D1%82%D0%B5%D0%BB%D0%BD%D0%BE%20%D1%80%D0%B5%D1%88%D0%B5%D0%BD%D0%B8%D0%B5.pdf
- Analysis of small claims litigation in Hungary: http://birosag.hu/sites/default/files/allomanyok/Mailath-erdmenyek/MGyTP-P-B-3-Szabados_Janos-Kiserteku_perek_A_gyorsabb_jobb.pdf
- Germany’s electronic portal for orders for payment: http://www.mahngerichte.de/