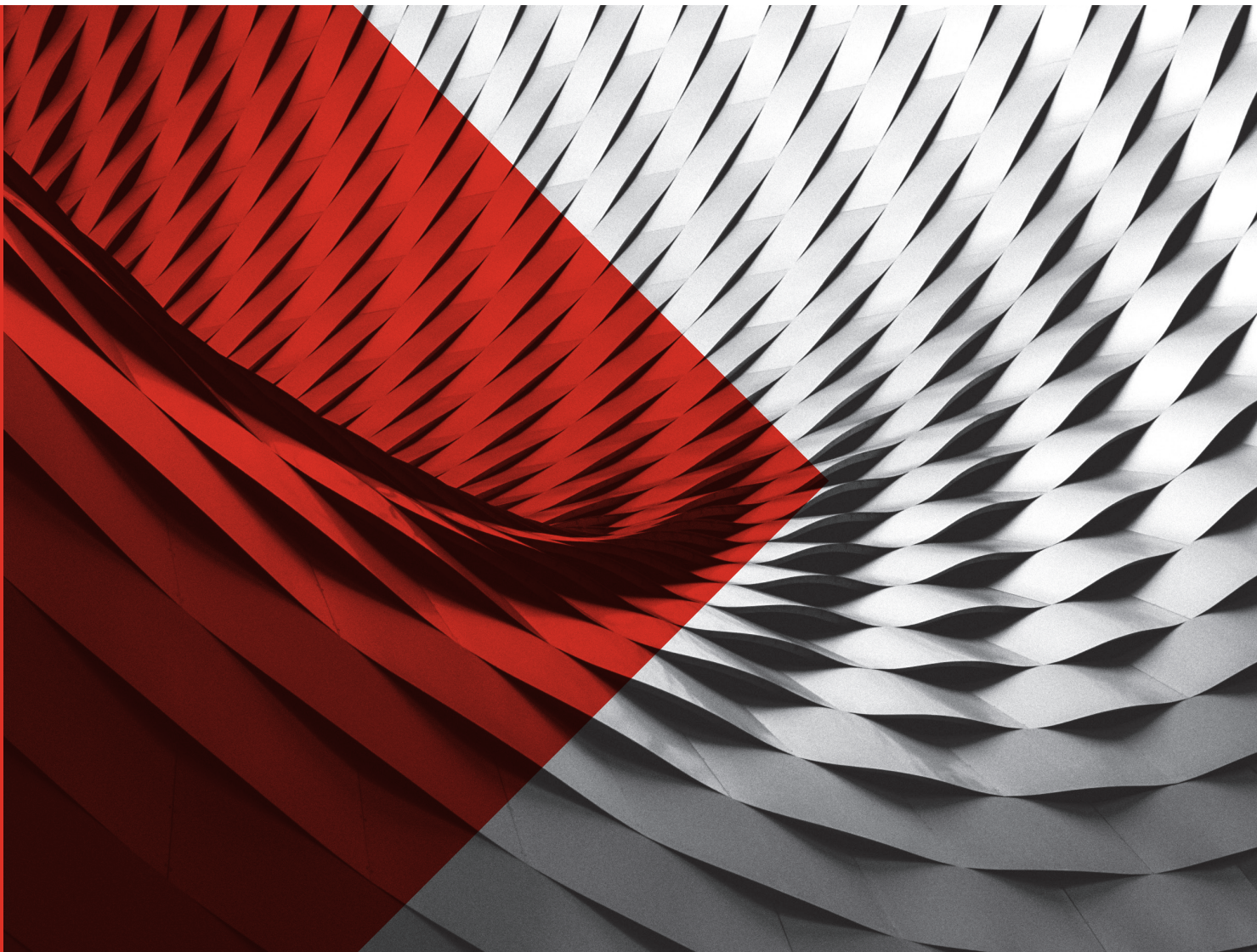


# **THE ROLE OF THE PORTUGUESE ENFORCEMENT AGENT AND THE COMPETENCES OF THE COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES**

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**PAULA MEIRA LOURENÇO**



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THE COMPETENCES OF THE COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES<sup>1</sup>**

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<sup>1</sup> This text corresponds to the intervention of the author, on 8<sup>th</sup> October 2011, at the 7<sup>th</sup> International Seminar on "Roman Law and present time", that took place on days 7-8<sup>th</sup> October 2011, at the Russian Law Academy of the Russian Federation of the Ministry of Justice, under the theme: "The legislation about enforcement of the judicial decisions on Russia and on European Union: theoretical analysis and practice", and its publication is in honor of Professor Jorge Miranda.

## I. INTRODUCTION: THE PORTUGUESE LEGAL ENFORCEMENT SYSTEM

### 1. THE CONSTITUTIONAL RIGHT TO ENFORCEMENT

In the Portuguese legal system the right to enforcement of the creditor is protected by the Constitution of the Portuguese Republic (CPR), as a fundamental right:

- a) “Everyone has the right to a cause in which they are involved in the decision subject to a *fair trial* within a *reasonable time*” (Article 20 § 4 of the CPR);
- b) “To defend our rights, freedoms and guarantees, the law provides citizens with legal procedures characterized by the speed and priority, to ensure effective protection and timely against threats or violations of human rights” (Article 20, § 5 of the CPR).

This fundamental right is guaranteed by Article 2 of the Portuguese Civil Procedures Code (CPC), under the title “*guaranty access to courts*”, which provides:

- a) “The legal protection in the courts is guaranteed by the right to obtain, within a reasonable time, a court decision on the merits of the case, which are attached to an authority of a final and binding” (Article 2, § 1 CPC);
- b) “All rights, except as otherwise provided by law, has its action in the courts to recognize, prevent or remedy the violation thereof and to do strongly, and the procedures required to maintain the effectiveness of action” (Article 2, § 2 CPC).

To understand the Portuguese enforcement system, let`s take a look at the following articles of the Portuguese CPC:

- a) Article 4 of the CPC provides for two types of legal actions: actions for declaration of rights, and actions to begin an enforcement process;
- b) Articles 45 to 60 of CPC, about enforcement proceedings;
- c) Sections 465 and 466 of the CPC, with the forms of proceedings;
- d) Articles 801 to 943, under Title III of the CPC - “Enforcement Procedures”.

As the elaboration of European Enforcement Law was born subject to the fundamental human rights, as defined by the European Convention of Human Rights (ECHR), especially Article 6 § 1, and interpreted by the Court Strasbourg, one can say that “*the enforcement is a right that takes part of the right of a fair trial, a right that requires States to create instruments available to the beneficiaries of the decision, on pain of State`s responsibility towards them*” (JACQUES NORMAND)<sup>2</sup> or that “*The existence of a right`s to enforcement, linked to a right to a trial, as identified by the jurisprudence of the ECHR under Article 6 § 1 of the European Convention of Human Rights, is no more questionable*” (JACQUES ISNARD).<sup>3</sup>

In the Portuguese legal system, the Article 45 § 2 of the CPC provides that “*Enforcement actions are those in which the author calls for appropriate measures to repair of the right violated.*”

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<sup>2</sup> See JACQUES NORMAND, “Rapport de synthèse”, in *L`aménagement du droit de l`exécution dans l`espace communautaire - Bientôt les premiers instruments*, International Conference, 17-18 October 2002, Éditions Juridiques et Techniques, Paris, 2003, pp. 95-96 and pp. 102-106.

<sup>3</sup> See JACQUES ISNARD, “Rapport Introductif”, in *L`aménagement du droit de l`exécution dans l`espace communautaire - Bientôt les premiers instruments*, Colloque International, 17-18 octobre 2002, Éditions Juridiques et Techniques, Paris, 2003, p. 16.

The performance measures are in the CPC, Title III, and Articles 801 to 943 of the CPC, in which there are 3 (three) main types of legal enforcement actions:

- To pay a specified amount;
- To do something;
- To delivery something.

In all of these cases, the judge may order the bank accounts attachment, and that opportunity plays a major role in Portugal, because the majority of enforcement procedures goal is to achieve the payment of a debt, as fast as the creditor can.

There are also special enforcement procedures, for example, to ensure the rapid implementation of decisions relating to maintenance obligations (cf. art. 1118-1121-A of the CPC).

## **2. THE CREATION OF THE PRIVATE ENFORCEMENT AGENT - 2003**

Until 2003, the Portuguese legal system of enforcement of judicial decisions and other enforcement titles (such as promissory notes, letters, checks) was based on the CPC, which was very complicated, depended only on the Judges and Judicial Officers' work and took too long.

As Portugal was frequently accused of violating the right to justice on a reasonable time (Article 6 of ECHR), because the procedures took too long to become really enforced, between 2000 and 2001 the Portuguese Ministry of Justice began the discussion of the guidelines of a legal reform, from which resulted the introduction of the Private Enforcement Agent in Portugal, one of the main cornerstones of our economic development.<sup>4</sup>

Keep in mind that legislative reform track's performance has begun in Portugal in October 1999-2000, during the term of the XIV Constitutional Government, which made the public debate (2000-2001), set the system model to follow (2001 - the model followed in France, the Netherlands, Luxembourg, Belgium, Germany, Sweden or Finland, where the creditor assigns the right to enforcement to an Enforcement Agent), and presented the Parliament the Bill to amend the CPC, because it's an area in which the Government needs the competent legislative authority, which was given in November 2001 and published in January 2002 (Act Nr 2/2002, January 2).

But Law n. ° 2/2002, January 2, lapsed, because we witnessed the fall of the Government, after the presentation by the Prime Minister of his resignation to the President of the Republic (November 2001).

And two months after the start of the new government (April 2002), the Minister of Justice asked the Parliament for another statutory authorization to modify the enforcement Law, benefiting most of the previous project. The law of authorization legislation was approved and

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<sup>4</sup> See PAULA MEIRA LOURENÇO, «L'Exécution forcée des obligations pécuniaires au Portugal: situation actuelle et projet de réformes», in *Nouveaux droits dans un nouvel espace européen de justice - Le droit processuel et le droit de l'exécution*, International Conference, 4-5 July, 2001, Éditions Juridiques et Techniques, Paris, 2002, pp. 267-274; JOÃO TIAGO DA SILVEIRA, «Saisie conservatoire et exécution forcée en matière de créance en droit portugais», in *L'aménagement du droit de l'exécution dans l'espace communautaire - Bientôt les premiers instruments*, International Conference, 17-18 October, 2002, Éditions Juridiques et Techniques, Paris, 2003, pp. 211-222.

published (Law n. ° 23/2002, August 21) and the Government approved the Decree Law Nr. 38/2003, March 8, which developed this authorization, by changing the rules on enforcement.

Then, during 2003 and March 31, 2009 (the data of the entrance into force of Legislative Decree-Law Nr. 226/2008, of 20 November), the delivery system were three enforcement organs in Portugal:

- a) The Enforcement Agent (bailiffs and Private Enforcement Agents);
- b) The judge;
- c) The court staff.

So, the legal system became divided in 2:

- a) The State credits were under the control of the Judge, and were enforced by the **Judicial Officers** at Courts;
- b) The other claimants credits are enforced by the **Private Enforcement Agent (“Solicitadores”)**, who were controlled by:
  - Judges – competence to depose the PEA;
  - The “Solicitadores” Chamber – legal competence to assured their discipline and regular and extraordinary inspections.

### **3. THE LEGAL REFORM OF 2009**

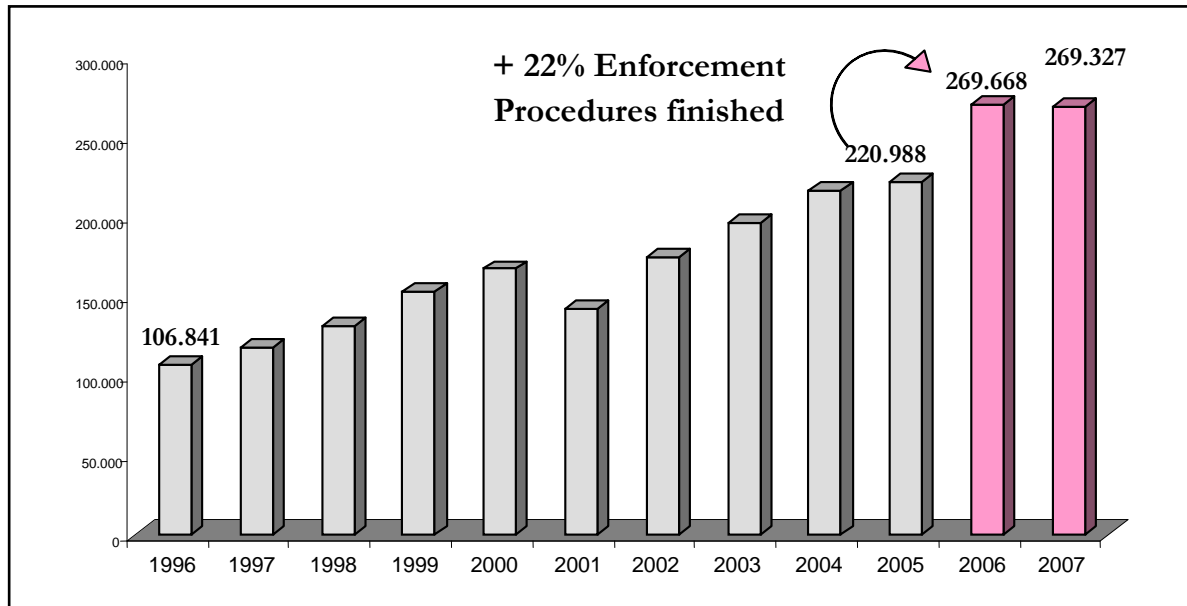
In 2005, the legislative reform was non-operational because:

- a) The enforcement special court had not been installed;
- b) Only the judges had free direct access to computer file`s execution;
- c) The use of electronic means, promised in 2003, was not effective;
- d) The public deposits of seized property, provided by law, were not installed;
- e) In 2005, approximately 125.000 procedures were pending distribution;
- f) The Private Enforcement Agents were not submitted to effective disciplinary procedures or to regular inspections by the “Solicitadores” Chamber.

During the years 2005 and 2008 the XVII Constitutional Government took the following measures:

- a) Creation of 6 courts to deal only with enforcement procedures;
- b) Increased the number of staff of the Courts in Lisbon and Porto, 75% and 150%, respectively;
- c) Distribution of 125,000 initial requests of enforcement;
- d) The possibility to make electronic submission of the application running, with the elimination of emails, avoiding the accumulation of civil proceedings;
- e) Ability of the creditor to choose the Private Enforcement Agent;
- f) Creating the necessary electronic mail to the access the Social Security data base;
- g) Creation of electronic means necessary to achieve the electronic attachment of shares of commercial companies and cars.

These measures have had good results during the years of 2006 and 2007 there were over 22% of enforcement procedures finished during the year 2005:



**SOURCE:** Ministry of Justice (2008)

In 2008, the CPC and the Statute of “*Solicitadores*” Chamber were again simplified by the Decree Law nr. 226/2008, November, 20 (in force since March 31, 2009), with the following 3 goals<sup>5</sup>:

1. **To simplify the enforcement procedures:**
  - The Private Enforcement Agent takes control of court processes; the judge only participates if the law requires it;
  - The procedure is divided in 3 Phases;
  
2. **To promote the efficiency of enforcement:**
  - **Electronic procedure** - Dematerialization of enforcement court processes: transparency, less bureaucracy, reduction of delay and higher efficiency;
  - **Creation of the Commission for the Efficiency of Enforcement Procedures:** public, independent and democratic body created to promote the efficiency of enforcement procedures and to assure an effective discipline and supervision / inspection of the Private Enforcement Agents;
  - **New rules for Enforcement Agents** (“*solicitadores*” and lawyers);
  
3. **To avoid unnecessary litigation** – create the **Public List of Enforcement Procedures** available on the Internet which denounces the name of more than 12.400 defendants who have no goods or money to pay their debts (<http://www.citius.mj.pt/Portal/execucoes/ListaPublicaExecucoes.aspx>).

After 2009, March, 31, **to simplify the enforcement procedures**, the staff of the courts still receives the initial requests of enforcement, but it’s **the Enforcement Agent that controls the proceedings**, except when it is necessary **the intervention of the judge to:**

<sup>5</sup> See PAULA MEIRA LOURENÇO, “*Les nouveautés législatives du Décret-loi n.º 226/2008, du 20 Novembre: le renforcement du rôle de l’agent d’exécution portugais et la création de la Commission Pour l’Efficacité des Exécutions*”, Liber Amicorum Jacques Isnard, Éditions Juridiques et Techniques, Paris, 2009, pp. 285-293.

- a) Examine the enforcement titles in some cases;
- b) Authorize the of bank accounts attachment;
- c) Authorize the assistance of the Enforcement Agents with Police Agents in cases where the doors of the houses/offices are closed or there is justified fear of the opposition of the debtor;
- d) Decide the oppositions to the enforcement procedures (in 3 months);
- e) Decide the oppositions to the attachment (in 3 months);
- f) Decide the lodge claims and the graduation of credits;
- g) Decide the claims regarding the acts of the Enforcement Agent (within 10 days).

The big news is that in Portugal, **to promote the efficiency of enforcement, the procedures are electronic**. The **Project CITUS** assures the simplification and dematerialization of court processes, improves management and organization of work in the courts, thus creating the conditions for faster procedures.

Undoubtedly, the **electronic enforcement process** is the cornerstone of efficiency, making possible to appoint the Portuguese system as a role model to be adopted by other European systems, increasing every level of effectiveness and efficiency, which seems to have the greatest importance in regard to cross-border enforcement.

The "CITIUS Portal" available on the Internet - <http://www.citius.mj.pt/Portal> -, is a real "one stop shop" for the Portuguese citizen, as it built a new relationship between the litigant and justice, for he may, for example:

- a) Use CITIUS to communicate with the courts on the Internet;
- b) Access to public information on electronic civil proceedings;
- c) Ask questions about the means of alternative dispute resolution through one `s new interactive platform;
- d) Use a new electronic instrument: "*Justice in the Card*", through which is possible if the location of each Portuguese court in the Map of Portugal.

The electronic enforcement procedures means:

- a) Justice that is more accessible and transparent: it is easier to examine and become informed of the content of proceedings, decisions and acts of Enforcement Agents;
- b) Swifter proceedings: proceedings become simpler, more automated and undergo a completely electronic "*circuit*";
- c) Better management and organization of work: judges and public prosecutors and Enforcement Agents have tools enabling them to better know and organize their proceedings;
- d) Drastic reduction of paper usage: the court files in paper form are smaller, simpler and better organized<sup>6</sup>.

So, now there are 4 (four) enforcement bodies in Portugal:

- a) The Enforcement Agents: Bailiffs and Private Enforcement Agents (lawyers and "*solicitadores*");

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<sup>6</sup> Taking into account three resolutions: Resolution Nr. 1 on "*Delivering Justice in the 21st century*", adopted at their 23<sup>rd</sup> Conference in London in June 2000; Resolution Nr. 3 on "*General approach and means of achieving effective enforcement of judicial decisions*", adopted at the 24<sup>th</sup> Conference of European Ministers of Justice, in 4-5 October 2001, Moscow (Russian Federation); Recommendation Rec (2003)14 of the Committee of Ministers to member states on the interoperability of information systems in the justice sector (adopted by the Committee of Ministers on 9<sup>th</sup> September 2003, at the 851<sup>st</sup> meeting of the Ministers' Deputies).

- b) The Judge;
- c) The staffs of the courts (as explained above);
- d) The Commission for the Efficiency of Enforcement Procedures (CPEE).

Let us analyze the role of the Private Enforcement Agents (II) and of the CPEE (III).

## II. THE ROLE OF THE PORTUGUESE PRIVATE ENFORCEMENT AGENT

The Portuguese Private Enforcement Agent takes control of court processes, and is mandatory to use the information and communication technologies (ICT):

- a) Electronic /direct access to public database with information on the identification of the defendant/his assets;
- b) Electronic /direct access to public register of all court processes with the identification of the defendant / the assets that were seized;
- c) Online disclosure of the name of the defendants without goods – more than 12.400 - *Public List of Enforcement Procedures*;
- d) Electronic Attachment (especially bank accounts attachments – according to the “Position Paper” of the UIHJ)<sup>7</sup>;
- e) Electronic notification of public creditors (tax administration and social security);
- f) Online Publications.

### 4. ACCESS TO THE PROFESSION AND STATUS

After 2009 March, 31, the legal system became divided in 2:

- a) The State credits are kept under the control of the Judge, and are enforced by the **Judicial Officers** at Courts;
- b) The other claimants credits are enforced by the **Private Enforcement Agent (“solicitadores” and Lawyers), who were controlled by the CPEE**, that concentrates the legal competence to depose the Private Enforcement Agent and to assured their discipline and regular and extraordinary inspections.

But the access to the profession has become more rigorous and demanding, because the candidates (“*solicitadores*” or lawyers) must:

- a) Submit to the initial exam of admission elaborated by an entity selected and appointed by the CPEE, an external entity, independent of the Chamber of “*Solicitadores*” and of the Bar Association. To be admitted to the initial training, applicants must have at least 50% of the classification in a national exam on enforcement;
- b) Going to 10 months of initial training (the responsibility of the Chamber of “*Solicitadores*”);
- c) Have good classification in the final evaluation made by an entity selected and appointed by the CPEE.

During 2009 and 2010 the CPEE designated the Law School of Lisbon` s Portuguese Catholic University.

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<sup>7</sup> The “*Position Paper*” of the UIHJ on bank accounts attachment is available at [http://www.uihj.com/en/position-papers\\_1012027.html](http://www.uihj.com/en/position-papers_1012027.html) .

Currently, the Private Enforcement Agents work on an electronic platform (managed by the Chamber of “*Solicitadores*”) which communicates with the electronic platform of judges, judicial officers, legal representatives (lawyers) and the CPEE (managed by the Ministry of Justice).

It must be emphasized that since March 2009, the *E-Enforcement Agent* must work in an electronic platform, not only to organize the work of his office, but also to search for property attachment, to perform attachments and do publications, and other enforcement acts by electronic means, to communicate with judges, lawyers and judicial officers, ensuring full transparency in the exercise of his activity.

## **5. THE CONTROL OVER THE ENFORCEMENT PROCEDURES**

To ensure the simplification of implementation, Decree Law n. ° 226/2008, of November 20, states:

- a) The elimination of intervention of the judge or the courts staff that involved a constant exchange of information between the legal representative, the court and the Private Enforcement Agent (for example, the Judge stops receiving and analyzing reports of Enforcement Agents of the procedures performed and the reasons for the frustration of the attachment);
- b) Reserve judicial intervention in a conflict of situations (the pronouncement of threshold decision; assessment of objections to the enforcement or the attachment, audit and graduation credits; trial of claims of acts of the Enforcement Agent);
- c) Strengthening the role of the Enforcement Agent: the legislator concentrates the majority of audit and procedural acts, in the Private Enforcement Agent. This change simplifies the execution model, removing powers and duties of the sphere of the court, giving it the noble function of arbitrating disputes between the parties appeared effective in the context of an execution.

Since the Decree Law Nr. 226/2008, it is the Private Enforcement Agent (and no longer the Judge or the staff in courts) that has the power to:

- a) Reject the submission of the initial electronic requests of enforcement (Article 811 / 1 of the CPC);
- b) Send the initial electronic request to the Judge (the article 812 / 1 and 812-A / 3 of the CPC);
- c) Determine the exemption from attachment for 6 months (Article 824/4 of the CPC);
- d) Reduce by half the share of revenue bonds (Article 824 / 5 of the CPC);
- e) Decision on the replacement of property seized at the request of the debtor (Article 834/3/a) of the CPC);
- f) Listen to the testimony of the third party / debtor (Article 856 / 3 CPC);
- g) Allow any action in relation to the conservation of the claim before it (Article 856 / 6 of the CPC);
- h) Admit debt payments by installments, if agreed between the creditor and the debtor (Article 882 / 1 of the CPC);
- i) To stop the enforcement procedure when they are not attachable assets (Article 919 CPC).

## 6. THE DIRECT ACCESS TO ELECTRONIC FILE OF ENFORCEMENT

The creation of the *Electronic File of Enforcement*, where data registry of civil enforcement and property seized, and the data of debtors / executed without assets subject to attachment (see Articles 806 and 807 of the CPC, and Decree -Law Nr. 201/2003 of 10 September), allows us to know in advance:

- a) The real risk to lend to the debtor;
- b) If he is useful to present the original query execution against those who have no property rights and attachment.

When in the *Electronic File of Enforcement* there is an enforcement proceeding against the same debtor, the Enforcement Agent should proceed with the presentation of the initial request to the court where the earlier enforcement process is already in progress. In this way, we would not have two civil proceedings against the same debtor, and therefore, useless multiplication of effort and resources.

When there was no enforcement process in progress, or when it was not possible to make the presentation of the initial electronic request of enforcement, the Enforcement Agent performs all the procedures necessary to identify location or other rights or property attachment, through the direct and electronic access to electronic public data bases of the financial services, social security records, public buildings, commercial and cars from the Ministry of Justice, and other similar files which have the same type of information (Articles 833-A and 833-B of the CPC)<sup>8</sup>.

To prevent unnecessary presentation of the original query, the Decree-Law No. 226/2008, has simplified the access to the *Electronic File of Enforcement*: since March 31, 2009, not only Judges but also the Enforcement Agent and Lawyers, have the direct access to this file.

## 7. THE PUBLICATION OF THE DEBTOR'S NAME IN THE PUBLIC LIST OF ENFORCEMENT PROCEDURES

The Decree-Law n. ° 226/2008 created the *Public List of Enforcement Procedures*. If the Private Enforcement Agent has not discovered some goods liable to attachment, the procedure is immediately extinguished, and the debtor is notified by the Private Enforcement Agent for, within 30 days, pay the debt or join a debt payment plan developed with the help of an entity recognized by the Ministry of Justice. Finished this time, if the debtor has not done anything, he is included in the *Public List of Enforcement Procedures*, available to the public in <http://www.citius.mj.pt/Portal/execucoes/ListaPublicaExecucoes.aspx>.

The *Public List of Enforcement Procedures*<sup>9</sup>:

- a) It is a strong deterrent of contractual default, contributing to the growth of confidence in the performance of the economy;

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<sup>8</sup> See ARMANDO BRANCO, « *Electronic File of Enforcement and the Public List of Enforcement Procedures* », presented at the 1st International Conference « *Promoting the Efficiency of Enforcement Procedures* », on 18-19 June 2010, organized by the CPEE, the Institute of the New Technologies of Information of the Ministry of Justice, which took place at the Superior Institute of Social and Political Sciences of the Technical University of Lisbon. The presentation is available online at [http://www.cpee.pt/media/uploads/pages/PAINEL\\_5\\_ARMANDO\\_BRANCO\\_.pdf](http://www.cpee.pt/media/uploads/pages/PAINEL_5_ARMANDO_BRANCO_.pdf).

<sup>9</sup> *Idem*.

- b) Allows future creditor to assess the true risk of the celebration with some contractual debtor;
- c) Enables the current creditor an analysis of the actual viability of establishing an executive against a trial run included in the list of public executions, preventing legal proceedings without viability;
- d) Allows recovery of Value Added Tax in debt up to € 8,000, provided that the creditor has celebrated a contract with which he did not pay, and it subsequently come to be included in the public list executions, and when the creditor has tried to recover the loan in writing, but without need for legal action or request certificates from the register of computer runs.

#### **8. THE DIRECT AND ELECTRONIC ACCESS TO THE DATA BASES OF PUBLIC INSTITUTIONS WITH THE INFORMATION ABOUT THE IDENTIFICATION OF THE DEFENDANT AND HIS ASSETS (TRANSPARENCY OF ASSETS)**

Since the Decree-Law Nr. 226/2008, the Private Enforcement Agent can access directly and electronically to the data bases provided by public entities: financial services, the social security public records, and the data bases of buildings, commercial registry and cars of the Ministry of Justice, and other similar files which have the same type of information (articles 833-A and 833-B of the CPC).

#### **9. THE ELECTRONIC ATTACHMENT OF GOODS AND THE ELECTRONIC PUBLICATIONS**

After obtaining the information on the debtor's assets, the Private Enforcement Agent performs the electronic attachment (from a computer), by focusing on bank deposits of the debtor.

Indeed, the new Article 834 CPC provides that the attachment must begin with bank accounts<sup>10</sup>, allowances, salaries or wages, negotiable instruments or securities and personal property subject to registration (cars, boats and aircraft).

Only in the case of attachment of movable property, the Private Enforcement Agent should transfer the property to public filings. The actual possession of the property must encourage the debtor to pay its debts.

In Portugal, the Private Enforcement Agent produces **electronic attachment** of:

- a) Shares of commercial companies;
- b) Cars - online service available after January 2008;
- c) Real estate;
- d) Patent and Trademark Office.

The publications to advertise the sale of goods are available on the Internet at <http://www.citius.mj.pt/Portal/consultas/ConsultasVenda.aspx> and <http://www.solicitador.org/vendas>.

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<sup>10</sup> Regarding the bank accounts attachments, see JOÃO TIAGO SILVEIRA, "Saisie bancaire en droit portugais: Le régime actuel et la réforme des voies d'exécution » in *L'aménagement du droit de l'exécution dans l'espace communautaire - bientôt les premiers instruments*", Éditions Juridiques et Techniques, Paris, 2003, pp. 211-222.

## **10. THE ELECTRONIC NOTIFICATION OF THE PUBLIC CREDITORS: FINANCE AND SOCIAL SECURITY SERVICES**

Since January, 2011, due to a Working Group created by the CPEE (called the *Working Group for the implementation of electronic legal measures*), to turn the *written law in law in action*, the Private Enforcement Agent can deliver a document exclusively by electronic means, to public creditors: financial and social security services.

That means that 4 different electronic systems are connected: electronic systems of the Ministry of Justice (CITIUS), Ministry of Finances, Ministry of Social Security and the one of the Chamber of “Solicitadores” (SISAAE). About 4.000 deliveries are made per month. This is a unique system all over Europe.

## **11. THE PRIVATE ENFORCEMENT AGENTS` DUTIES**

The increasing of the legal powers of the Private Enforcement Agents resulted in the need to increase the accountability and transparency of its work, and a new balance of guarantees of the parties, by providing as follows:

- a) The need for rigorous training of Private Enforcement Agents, through submission to an exam for initial admission and final evaluation, conducted by external and independent entity of the Chamber of “*Solicitadores*” and the Bar Association (entity selected and appointed by the CPEE) , along with the course of 10 months in charge of the Chamber of “*Solicitadores*” - see item c) of Article 69-C, combined with point b) of § 2 of Article 69-F, and Article 118, all of the “*Solicitadores*” Chamber Statue (SCS);
- b) The duty of the Private Enforcement Agent to provide specific information to the creditor, which is exclusively for the computer system, because while the Enforcement Agents practice all the steps taken in its electronic platform, those acts are available for viewing on the electronic platform CITIUS, in which working lawyers who represent creditors (Article 837 CPC);
- c) The free substitution of the Private Enforcement Agent by the creditor (first part of § 6 of Article 808 CPC);  
Once again, the creditor will now be able to act directly in relation to the enforcement officer in the substituent whenever necessary.
- d) The possibility of deposition of the Private Enforcement Agent by the in case of fraudulent or negligent conduct, or serious violation of duty that is imposed by the respective status (cf. second part of § 6 of Article 808 CPC);
- e) The subjection of the Private Enforcement Agent to the monitoring, inspection and disciplinary powers of CPEE (cf. e) to g) of Article 69-C, together with item a) of § 2 of Article 69-F, both of SCS);
- f) The provision of a rigorous regime of incompatibilities and impediments of the executing agency (Articles 120 to 122 of the SCS), supervised by the CPEE (see item h) of Article 69-C, combined with item a) of § 2 of Article 69-F, both the SCS).

Nowadays, the Private Enforcement Agent has to obey specific ethical rules, such as those provided for in points a) to p) of Article 123 of the SCS:

- a) Work on the SISSAE (the electronic system managed by the Chamber of “*Solicitadores*”), which communicates with CITIUS, and where all activity is registered and available to the parties / judge / CPEE;
- b) Practice diligently every pleading that is in with a scrupulous observance of statutory or judicial deadlines and ethical obligations;
- c) Submit to the judge's decision acts that depend on authorization and fill;
- d) Provide the parties and the court with the clarifications that are requested about the progress of the measures that are being taken;
- e) Deliver the amounts, objects or documents that are being held as a result of the procedures;
- f) Archive for 10 years and keep all documents relating to executions and other acts performed by them as part of its function in terms of regulation to be adopted by the General Council of the CS;
- g) Be responsible and manage 2 bank accounts: the “*Claimants bank account*” and the “*Defendants bank account*”;
- h) Rectify the irregularities or lack of funds within a 48 hours period, otherwise CPEE will take the proper measures considered necessary such as preventive suspension of the Enforcement Agent and the assignment of another professional to undertake the responsibility of the procedures as well as managing the customer accounts;
- i) Present the card to vote or in the exercise of its activities;
- j) To use the means of identification and signature recognized and regulated by the “*Solicitadores*” Chamber, including electronic signature;
- k) Use the electronic media when communicating with other public or private entities, especially with the courts;
- l) Use the electronic signature and a specified email address;
- m) To hold a liability and professional insurance in an amount no less than € 100.000;
- n) To record electronically by the “*Solicitadores*” Chamber, its stock of property seized under an order of the government member responsible for justice;
- o) Perform diligently the duties of skipper in the second period of the training of enforcement officers.

### **III. THE COMPETENCES OF THE COMMISSION FOR THE EFFICIENCY OF ENFORCEMENT PROCEDURES (CPEE)**

#### **12. THE CPEE`S MISSION: A PUBLIC, DEMOCRATIC AND INDEPENDENT ORGAN OF SUPERVISION OF THE ENFORCEMENT AGENTS ACTIVITY IN PORTUGAL**

The Commission for the Efficiency of Enforcement Procedures (CPEE) was created in Portugal after a rigorous and in-depth analysis, made from 2005 to 2007, of all legal constraints found in enforcement procedures after the reform of 2003 entered into force (as explained above), and is based on a legal resolution after a wide spread political and parliamentary consensus, thus originating Decree Law nr. 226/2008, November, 20, approved in the use of the legal authorization granted by the Parliament through Law nr. 18/2008, April, 21.

On 31st March of 2009 the CPEE started its activity as a new democratic, pluralistic and independent public body to serve the civil Justice, based on which works as a **Plenary and Executive Board**, responsible, among others, for (article 69.º-C of the Statute of the Chamber of “*Solicitadores*”, as amended by Decree-Law nr. 226/2008, November, 20:

- a) Issuing recommendations towards the efficiency of enforcement procedures;
- b) Issuing recommendations towards the training of Enforcement Agents (an independent professionals working as bailiffs);
- c) Increasing the quality of the access and final evaluation demands and procedures of training period to become Enforcement Agents;
- d) Analyzing the fulfillment of legal rules and upholding of the incompatibilities and impeachments of Enforcement Agents;
- e) The initiation of disciplinary proceedings and the application of proper penalties/sanctions to Enforcement Agents;
- f) Performing regular inspections to the Enforcement Agents.

The CPEE is driven by the following **guidelines**:

- a) **Efficiency**<sup>11</sup>: The enforcement procedure must be simple, uncomplicated and nonbureaucratic especially through the dematerialization of the process and of the communications expediency between all parties involved;
- b) **Speed**: The enforcement procedure must be as fast as possible, from the moment the pleading is presented until the completion of mentioned process, bearing in mind a balance between the rights of the claimant and the defendant;
- c) **Electronic Enforcement Procedure**: 21<sup>st</sup> century enforcement procedure is based on a paper free policy: a modern, transparent and fast process;
- d) **Paper free acts performed by judicial operators**: Judges, attorneys (lawyers, trainee-lawyers, “*solicitadores*”) and Enforcement Agents work on an electronic platform facilitating communications among themselves;
- e) **Transparency**: The electronic record of all actions taken ensures a complete and clear view of the entire enforcement procedure thus enabling to identify all blockades to the process and trigger their resolution;
- f) **Legality, ethics and deontology**: The enforcement agent must comply with the rigorous application of the Law and with deontological aspects related to his actions. CPEE will guarantee public interest thorough regular inspections to the enforcement agents and simultaneously through the initiation of disciplinary proceedings if deemed necessary or in sequence of denounced illegal enforcement procedure against the responsible enforcement agent. In case proven unlawful or even criminal practice, CPEE will present the situation to the injured part and to the competent authorities.

To ensure complete transparency of CPEEs activity, and aiming to create a trustful link between the Commission and all those that visit our website (justice operators, users of justice or business men), and because the efficiency of enforcement is very important for Portuguese Economy, the CPEE created an Internet website <http://www.cpee.pt>, which concretizes our goals to:

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<sup>11</sup> Efficiency measures the relation between obtained results and expected results. In an enforcement procedure it is expected to satisfy the rights of the plaintiff (as a rule of thumb, debt payment) in a reasonable time frame, wasting only the required time to concretize the citizen rights (speed) and thus obtain the desired effect, in the most economical way (economic efficiency).

- a) Ensure the transparency and clearness of our activity by publicizing our agenda, documents and other works done by the Commission;
- b) Present a wide range of information that we consider very useful to those who need to analyze the enforcement procedures (debt collections) or the statute of Enforcement Agents in Portugal, presented in a simple and decoded way.

Besides the information available to the public, CPEE also discloses information to the Members of the Plenary and of the Executive Board, so that they can work directly on the website, see the activity of the Commission, read the preparatory documents (that are not available to the public), and providing the President of the CPEE the possibility to organize the CPEEs meetings/ agenda.

### **13. COMPOSITION AND COMPETENCES**

#### **13.1. THE PRESIDENT**

The President is elected by all members of the Plenary, has a term of three years (from March 2009 to March 2012), renewable for three more years (until March 2015), and is immovable.

On the period from Mars 2009 until Mars 2012, the President Master Paula Meira Lourenço, Assistant Professor of the Law Faculty of the University of Lisbon and Member of the Scientific Council of the International Association of Enforcement Agents (UIHJ), was elected unanimously by all members at the 1<sup>st</sup> CPEE Plenary meeting which took place on the 31th of Mars 2009<sup>12</sup>.

It is the responsibility of the President of CPEE:

- a) To represent the Commission;
- b) To promote CEEP on a national and international level;
- c) To schedule and prepare the meeting agenda;
- d) To preside the meetings;
- e) To require of each of the Plenary Members the necessary information to prepare the Plenary meetings, mainly the Executive Board preparation of documents; also execute the necessary procedures for the Plenary to exercise its responsibilities:
  - i) Set the number of candidates to be admitted in each training program of enforcement agents;
  - ii) Select and appoint the external entity responsible for developing, defining the criteria for assessment and evaluation of the examination for admission to the training program of the enforcement agents;
  - iii) Approval of the annual activity report;
- f) To in advance suspend or close the Plenary meetings, whenever exceptional circumstances require so, but only by reasoned decision and it has to be included on the minutes;
- g) Promote compliance with resolutions of CEEP;
- h) To guide, coordinate and supervise the management of the Executive Board activities;

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<sup>12</sup> On March 31, 2009 the President of the CPEE was elected by unanimous vote of the members of the Plenary, with the support from the Ministry of Justice and the Chamber of “*Solicitadores*”, and initiated the public functions on 2009, April 6<sup>th</sup>.

- i) To introduce to the Plenary the basis for the resignation of a Member of the Executive Board, that has been chosen by the President and approved by the Plenary;
- j) Establish rules of action concerning the Commission that don't contradict the law and this regulation;
- k) Exercises the Plenary competences which were delegated by Rule nr. 5696/2010, Mars 29th, of "*Delegation of the Plenary competences on the President of the CPEE*";
- l) Exercise other powers conferred by law.

### **13.2.THE PLENARY**

The Plenary of CEEP is composed by:

- a) The President of the Commission, elected unanimously by all members: Master Paula Meira Lourenço;
- b) One member appointed by the Supreme Judicial Council;
- c) One member appointed by the member of government responsible for justice;
- d) One member appointed by the Government member responsible for finance;
- e) One member appointed by the member of government responsible for social security;
- f) One member appointed by the President of the "*Solicitadores*" Chamber;
- g) One member appointed by the president of the Bar Association;
- h) The President of the Specialty Enforcement Agents College;
- i) One member appointed by the associations of consumers or users of justice services;
- j) Two members appointed by confederations with a seat on the Permanent Committee for Social Dialogue of the Economic and Social Council.

Members of the Plenary are appointed for a period of three years and may be replaced when necessary by the designated entities, except the President of CEEP, who has a term of three years and is immovable.

There is the possibility of designating a vowel by the Board of Administrative and Fiscal Courts and by the Board of the Public Ministry, with seat and vote in the Plenary of CEEP, when the agenda includes matters within the competence of the court administrative or prosecutor, respectively.

Can take part in CPEE`s Plenary meetings representatives of other entities relevant to the discussion and implementation of specific tasks, but without voting rights.

The Plenary of CEEP assumes deliberative nature and has the power to:

- a) Issue Recommendations on the effectiveness of enforcement executions;
- b) Issue Recommendations on the training of enforcement agents;
- c) Set the number of candidates to be admitted in each enforcement agents stage;
- d) Select and appoint external entity responsible for developing, defining the criteria for assessment and evaluation of the examination for admission to the enforcement agents stage;
- e) Decide appeals on the decisions of the Executive Board of the Commission imposing penalties of suspension and expulsion of the enforcement agents;
- f) Approve the annual activity report;
- g) Exercise other powers conferred by law to the Commission.

### **13.3.THE EXECUTIVE BOARD**

The Executive Board comprises:

- a) President of the Commission for the Efficiency of Enforcement Procedures: Master Paula Meira Lourenço;
- b) President of the Specialty Enforcement Agents College, inherently;
- c) Three members chosen by the President and approved by the Plenary.

The Executive Board is the executive branch of CPEE and has the following responsibilities:

- a) Dismiss the enforcement agent;
- b) Instruct disciplinary procedures to enforcement agents;
- c) Apply disciplinary penalties to executions agents;
- d) Conduct inspections to enforcement agents;
- e) Conduct audits to enforcement agents;
- f) Decide issues related to impediments of the enforcement agents;
- g) Decide issues relating to the suspicions towards the enforcement agents;
- h) Prepare documents and complete the procedures necessary to exercise the following powers of the Plenary of the Commission:
  - i) Setting the number of candidates to be admitted in each training program of the enforcement agents;
  - ii) Select and appoint external entity responsible for developing, defining the criteria for assessment and evaluation of the examination for admission to the training program of the enforcement agent;
  - iii) Approve the annual activity report;
- i) Uphold all directives charged by the Plenary of the CEEP.

## **14. THE RESULTS ACHIEVED IN 2 YEARS OF ACTIVITY**

### **14.1.To issue recommendations regarding the efficiency of enforcement and the training of Private Enforcement Agents (2010) and monitoring its implementation**

In July 2010 the Plenary of the CPEE has issued 93 recommendations towards the efficiency of enforcement procedures (61) and the training of Private Enforcement Agents (32), after gathering the contributions collected at the International Conference of Lisbon, organized by the CPEE (June 2010), in which participated several national experts and also the International Association of Enforcement Agents and Judicial Officers (UIHJ) and the European Commission for the Efficiency of Justice (CEPEJ), of the Council of Europe.

The CPEE, before issuing the recommendations, analyzed the procedures following the rigorous and scientific criteria of the CEPEJ, and also some specific criteria regarding the legal system in Portugal identified the problems and suggested solutions to the relevant bodies (for example, apply the new information technologies to improve the efficiency of justice, or create a legal instrument)<sup>13</sup>.

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<sup>13</sup> To understand the criteria of the CPEE, see JOANA BERNARDO, "*Criteria for Analyzing the Efficiency of Enforcement Procedures and the Training of Enforcement Agents*", presented at the 1<sup>st</sup> International Conference «*Promoting the Efficiency of Enforcement Procedures*», on 18-19 June 2010, organized by the CPEE, the Institute of the New Technologies of Information of the Ministry of Justice, which took place at the Superior

At the 1<sup>st</sup> International Conference « *Promoting the Efficiency of Enforcement Procedures*», on 18-19 June 2010, organized by the CPEE, the President of the CPEE presented the summary of the “*1<sup>st</sup> Annual Report of Activities of the CPEE 2009/2010*”, highlighting the work done in the first twelve months of the new independent public body<sup>14</sup>.

One year after the issuing of the 91 recommendations, CPEE is evaluating its implementation, and in order to do so, CPEE has organized the 2<sup>nd</sup> International Conference « *Promoting the Efficiency of Enforcement Procedures*» and Workshop “*Best Practices on the Enforcement Agents Activity*”, on 23-24 September, 2011, in Espinho, where this theme was discussed and the President of the CPEE presented the summary of the “*2<sup>nd</sup> Annual Report of Activities of the CPEE 2010/2011*”<sup>15</sup>.

#### **14.2. To contribute to the higher level of training of enforcement officers, issuing recommendations deemed necessary and take responsibility for the quality of the access, admission to the training and the final exam**

The CPEE has jurisdiction to make recommendations as deemed necessary with respect to the initial and continuous training of the Private Enforcement Agents.

On 2010, July, 13, the Plenary of the CPEE issued 32 recommendations on the training of Private Enforcement Agents<sup>16</sup>.

The activity of the CPEE fully meets the standards defined to the efficiency of enforcement by the Council of Europe described in Recommendation (2003) 17 adopted in September 9, by the Committee of Ministers of the Council of Europe, and explained in detail in December 2009, by the European Commission for the Efficiency of Justice (CEPEJ) “*Guidelines for better implementation of existing recommendation of the Council of Europe execution.*”

Indeed, the points 3, 4 and 8 of the Recommendation Rec (2003) 17 of the Committee of Ministers to Member States on the Enforcement Agents performance, determines the following conditions of access to this profession (**IV. Enforcement Agents**):

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Institute of Social and Political Sciences of the Technical University of Lisbon. The presentation is available online at [http://www.cpee.pt/media/uploads/pages/JOANA\\_BERNARDO\\_MEMBER\\_OF\\_CEEP.pdf](http://www.cpee.pt/media/uploads/pages/JOANA_BERNARDO_MEMBER_OF_CEEP.pdf).

<sup>14</sup> See PAULA MEIRA LOURENÇO, «*Presentation of the Annual Report of Activities of the Commission for the Efficiency of Enforcement Procedures*» presented at the 1<sup>st</sup> International Conference « *Promoting the Efficiency of Enforcement Procedures*», on 18-19 June 2010, organized by the CPEE, the Institute of the New Technologies of Information of the Ministry of Justice, which took place at the Superior Institute of Social and Political Sciences of the Technical University of Lisbon. The presentation is available online at [http://www.cpee.pt/media/uploads/pages/ANNUAL\\_REPORT\\_ACTIVITIES\\_CPEE\\_2009\\_2010\\_Paula\\_Meira\\_Lourenco.pdf](http://www.cpee.pt/media/uploads/pages/ANNUAL_REPORT_ACTIVITIES_CPEE_2009_2010_Paula_Meira_Lourenco.pdf).

<sup>15</sup> See PAULA MEIRA LOURENÇO, «*The contribution of CPEE: the 2nd year of activity and proposals for the future*» presented at the 2<sup>nd</sup> International Conference « *Promoting the Efficiency of Enforcement Procedures*», and Workshop “*Best Practices on the Enforcement Agents Activity*”, on 23-24 September, organized by the CPEE, with the support of the Espinho City Hall, which took place at the Multimedia Center of Espinho. The presentation is available online at CPEEs website: [http://www.cpee.pt/media/uploads/pages/The\\_contribution\\_of\\_CPEE\\_2nd\\_year\\_activity\\_proposals\\_for\\_the\\_future\\_PAULA\\_MEIRA\\_LOURENCO\\_CPEE\\_President.pdf](http://www.cpee.pt/media/uploads/pages/The_contribution_of_CPEE_2nd_year_activity_proposals_for_the_future_PAULA_MEIRA_LOURENCO_CPEE_President.pdf).

<sup>16</sup> The CPEEs recommendations June 2010 are available online at CPEEs website: [http://www.cpee.pt/media/uploads/pages/RECOMENDACOES\\_DA\\_CPEE\\_2009-2010.pdf](http://www.cpee.pt/media/uploads/pages/RECOMENDACOES_DA_CPEE_2009-2010.pdf).

*"3. In recruiting enforcement agents, consideration should be given to **the moral standards of candidates and their legal knowledge and training in relevant law and procedure**. To this end, they should be required to take examinations to assess their theoretical and practical knowledge.*

*4. Enforcement agents **should be honorable and competent** in the performance of their duties and **should act, at all times, according to recognized high professional and ethical standards**. They should be unbiased in their dealings with the parties and be subject to professional scrutiny and monitoring which may include judicial control, the professional examination and monitoring which may include judicial review. (...)*

*8. Enforcement agents should undergo initial and ongoing training according to clearly defined and well-structured aims and objectives.*"<sup>17</sup>

In the words of GUILLAUME PAYAN "(i)n accordance with the European standards, the CPEE contributes to the quality of the work of Enforcement Agents and ensure the effectiveness of enforcement procedures, including by promoting an E-Enforcement Agent"<sup>18</sup>.

CPEE follows the CEPEJs guidelines on ethics, in particular the guidelines 25 to 28: of the "**Guidelines for a better implementation of the recommendation existing Council of Europe on the implementation**" of 17.12.2009:

*"25. For the fair administration of justice it is important that the quality of enforcement should be guaranteed. Member states should accredit enforcement agents only if the candidates concerned are of a standard and training commensurate with the complexity of their tasks. A high quality of training of professionals is important for the service of justice and to increase the trust of users in their justice system.*

*26. Enforcement agents should also be required to follow compulsory continuous training.*

*27. It is recommended that links be forged between national training institutions. Member states should ensure that enforcement agents are given appropriate training curricula and should set down common minimum standards for instructors in the different member states.*

*28. Initial and continuous training could encompass:*

- the principles and objectives of enforcement;*

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<sup>17</sup> See BERNARD MENUT, « *Compulsory continuous training and professional ethics* » presented at the 1<sup>st</sup> International Conference « *Promoting the Efficiency of Enforcement Procedures* », on 18-19 June 2010, organized by the CPEE, the Institute of the New Technologies of Information of the Ministry of Justice, which took place at the Superior Institute of Social and Political Sciences of the Technical University of Lisbon. The presentation is available online at CPEEs website: [http://www.cpee.pt/media/uploads/pages/PAINEL\\_3\\_BERNARD\\_MENUT.pdf](http://www.cpee.pt/media/uploads/pages/PAINEL_3_BERNARD_MENUT.pdf). The conclusions of this Conference are available at <http://www.cpee.pt/media/uploads/pages/CONCLUSIONS.pdf>.

<sup>18</sup> See GUILLAUME PAYAN, "*The Portuguese Commission for the Efficiency of Enforcement Procedures: a role model in Europe*", presented at the 1<sup>st</sup> International Conference « *Promoting the Efficiency of Enforcement Procedures* », on 18-19 June 2010, organized by the CPEE, the Institute of the New Technologies of Information of the Ministry of Justice, which took place at the Superior Institute of Social and Political Sciences of the Technical University of Lisbon. The presentation is available online at CPEEs website - [http://www.cpee.pt/media/uploads/pages/GUILLAUME\\_PAYAN\\_UIHJ.pdf](http://www.cpee.pt/media/uploads/pages/GUILLAUME_PAYAN_UIHJ.pdf).

- *professional conduct and ethics;*
- *stages in the enforcement process;*
- *the appropriateness, organization and implementation of enforcement measures;*
- *the legal framework;*
- *role-playing and practical exercises as appropriate;*
- *assessment of trainees' knowledge;*
- *international enforcement of judicial decisions and other enforceable titles”.*

In 2010, the CPEE gave special attention to Guideline 38 of the CEPEJ ("***Guidelines for better implementation of existing Council Recommendation of Europe on the implementation***" ) which provides:

**“38. Enforcement agents should be subject to clearly stated rules of ethics and conduct, which could be set out in professional codes of conduct. These Codes of conduct should inter alia contain professional standards regarding:**

- *information to be given to parties by enforcement agents concerning the enforcement procedure (grounds of action, transparency and clarity of costs, etc.)*
- *the rules governing the formulation of notices to parties (enforcement agents' social role, duty of advice, etc.)*
- *professional ethics (behavior, professional secrecy, ethical criteria governing the choice of actions, etc.)*
- *smooth enforcement (predictability and proportionality of costs and lead-times, co-operation between enforcement services, etc.)*
- *procedural flexibility (autonomy of enforcement agents, etc.).”<sup>19</sup>.*

CPEE is actually elaborating the ***Enforcement Agents Code of Ethics***.

### **14.3. To set the number of candidates for initial training**

From 2009 to 2011, the CPEE has set 850 candidates, divided in three years as followed:

- 2009 – 300 candidates;
- 2010 – 300 candidates;
- 2011 – 250 candidates.

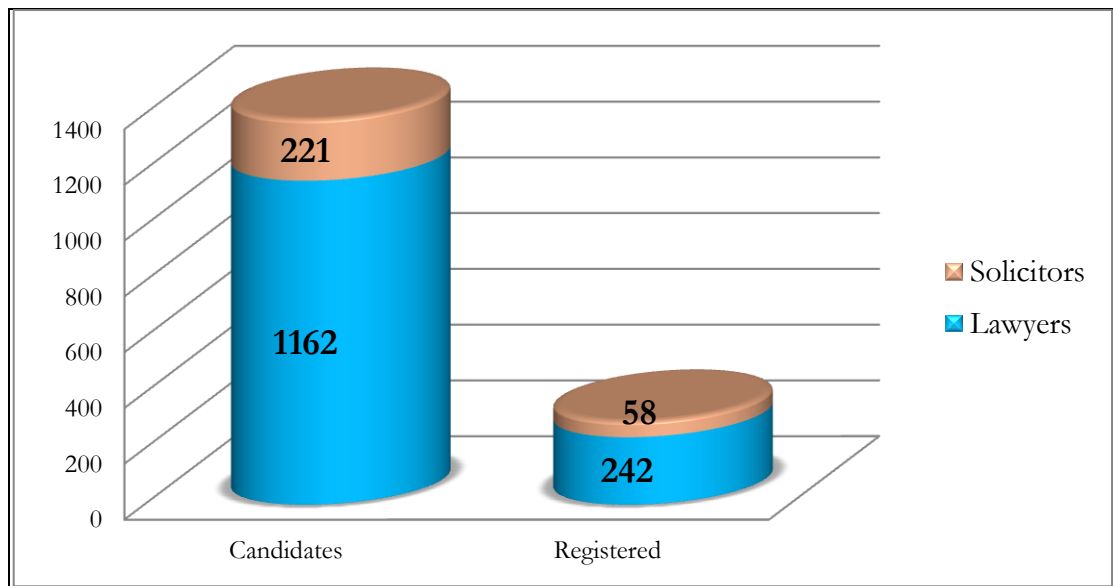
After March 31, 2009, the new Enforcement Agents are subject to review`s admission (initial exam on enforcement procedures, allowing to evaluate the `knowledge and practices of the candidates),<sup>20</sup> and to a final evaluation conducted by an entity chosen and appointed by the CPEE, independent of the Bar Association and the “*Solicitadores*” Chamber.

In the years 2009 and 2010 the CPEE has chosen the Law School of Lisbon of the Portuguese Catholic University, and 530 new Enforcement Agents had access to the first and the second initial training stage.

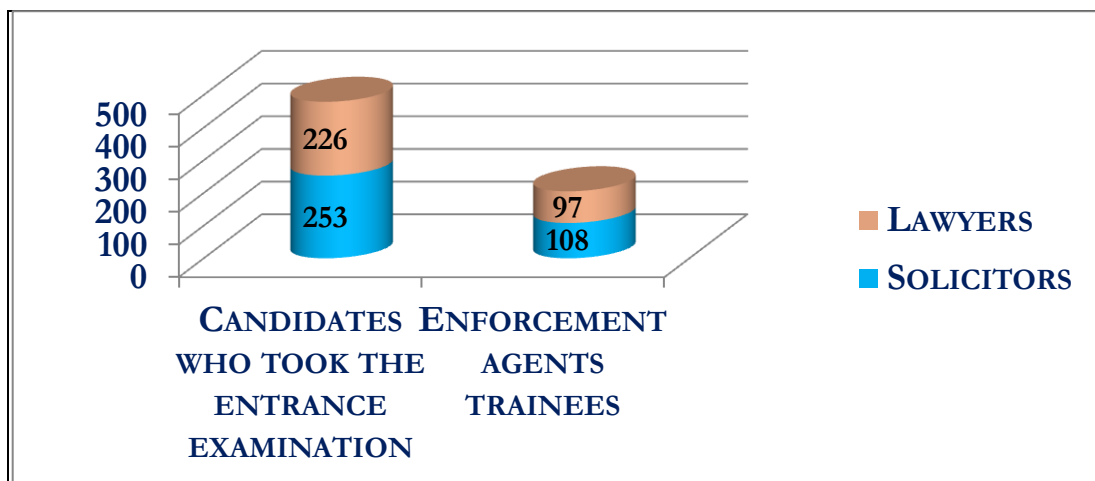
<sup>19</sup> See ANA LUÍSA RODRIGUES «*The Best Practices: the CPEEs Manuals of disciplinary proceedings and supervision*» - presented at the 1<sup>st</sup> International Conference «*Promoting the Efficiency of Enforcement Procedures*», on 18-19 June 2010, organized by the CPEE, the Institute of the New Technologies of Information of the Ministry of Justice, which took place at the Superior Institute of Social and Political Sciences of the Technical University of Lisbon. The presentation is available online at CPEEs website: [http://www.cpee.pt/media/uploads/pages/ANA\\_LUISA\\_RODRIGUES\\_MEMBER\\_OF\\_CEEP.pdf](http://www.cpee.pt/media/uploads/pages/ANA_LUISA_RODRIGUES_MEMBER_OF_CEEP.pdf) .

<sup>20</sup> See Recommendation of the Council of Europe of Lisbon, 2000, March.

### RESULTS OF THE 1<sup>ST</sup> INITIAL EXAM – JANUARY 2010



### RESULTS OF THE 2<sup>ND</sup> INITIAL EXAM – JANUARY 2011



In April 2010, the Law School of Lisbon of the Portuguese Catholic University approved new 270 Enforcement Agents in the final exam, after a 10 months training in the “*Solicitadores*” Chamber.

#### 14.4. To decide the Enforcement Agents requests to stop receiving new files

Between 2009 and September 2011, 144 Enforcement Agents requested the CPEE, for 208 times, to stop receiving new files, because they had a lot of work, or they were ill (and hadn’t enough staff to deal with the files).

#### **14.5. To decide the readmission of Enforcement Agents**

Between 2009 and September 2011, the CPEE permitted the readmission of 21 Enforcement Agents, and denied one request.

#### **14.6. To decide the questions about impeachments and incompatibilities**

The CPEE ensure the compliance of the "*Guidelines for a better implementation of existing recommendation of the Council of Europe on the implementation*" of 17.12.2009 of the CEPEJ, in particular the guideline 31, which provides:

*"31. Enforcement agents' status should be clearly defined so as to offer potential parties to enforcement procedures a professional who is impartial, qualified, accountable, available, motivated and efficient."*

Between 2009 and September 2011, the CPEE decided 96 requests related to legal impeachments.

#### **14.7. To analyze the complaints and ensuring the discipline of Enforcement Agents**

As CPEE is an independent entity, Portugal fulfilled the CEPEJ guideline nr. 81, of 2009:

*"81. Disciplinary procedures should be carried out by an independent authority. Member states should consider introducing a system for the prior filtering of cases which are filed merely as delaying tactics".*

Since 31/03/2009 (the day CPEE began functioning) until 30/09/2011, CPEE received a total of 1.601 Complaints:

- a) 71 Complaints in 2009;
- b) 409 Complaints in 2010;
- c) 1.121 Complaints (between 01/01/2011 and 30/09/2011).

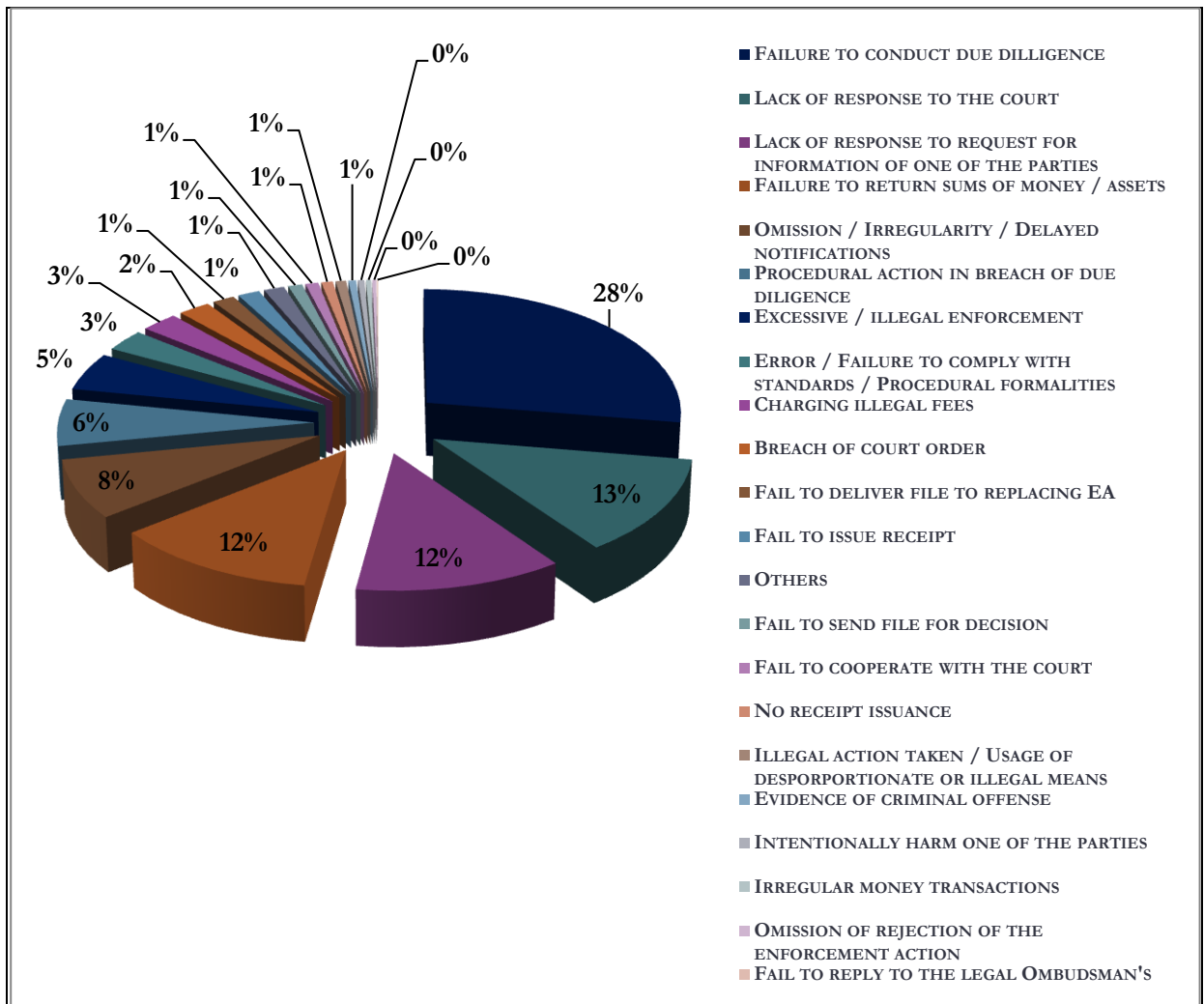
In the 1<sup>st</sup> year of activity, 60% of the complaints were due to:

- 33% - breach of duty of care;
- 17% - lack to refund objects, money;
- 10% - Excessive seizure.

In the second year of activity, we can see that 65% of the complaints are due to:

- 28% - failure to conduct due diligence;
- 25% - lack of response to the court / parties;
- 12% - failure to return sums of money /assets.

## 2<sup>ND</sup> YEAR OF CPEE ACTIVITY – COMPLAINTS



**SOURCE:** CPEE

Nowadays CPEE has considered 271 and has filed 60 complaints, so 1.330 complaints are pending.

CPEE issued 183 decisions to set disciplinary proceedings, 10 disciplinary sanctions implemented, and 2 Enforcement Agents were disbarred from their functions.

Besides the disciplinary proceedings, **CPEE take preventive measures, especially when there are any suspicions about the movements on the bank accounts of the Claimants, or the bank account of the Defendants:**

- a) **13 Enforcement Agents** were suspended preventively from their functions, and the bank accounts of the claimants/defendants were blocked – these decisions are available in our website at [http://www.cpee.pt/ae\\_suspensao/](http://www.cpee.pt/ae_suspensao/) ;
- b) **5 Enforcement Agents** are forbidden to receive new files – these decisions are available in our website at [http://www.cpee.pt/medida\\_cautelar\\_receb\\_proc/](http://www.cpee.pt/medida_cautelar_receb_proc/).

As part of its responsibility for discipline, the CPEE has developed the *Manual of the Preliminary Evaluation of Complaints and of the Disciplinary Proceedings 2009/2010*, approved in May 2010 and entered into force December 1, 2009.

Finally, the Plenary of the CPEE has recommended legislative change regarding the disciplinary procedure<sup>21</sup>:

- a) The distinction of three types of offenses: serious, grave and soft;
- b) The correspondence between the type of offense and the penalty to be applied;
- c) The creation of a form of simplified procedure for minor offenses: removal of early stage and the preliminary investigation, the electronic notification of the Administrator.

The CPEE has power to assess the sharing / Complaints about the activities of the enforcement agent and decide to be filed or disciplinary proceedings (CPEE Management Group).

#### **14.8. To depose the Enforcement Agents of a particular process in case of fraudulent or negligent action, or serious violation of duty that is imposed by the Law**

Up to the end of March 2011, the CPEE has deposed 6 **Enforcement Agents**.

#### **14.9. To ensure the supervision over the Enforcement Agents activity**

As part of its responsibilities for monitoring and inspections, the CPEE has developed:

- a) *The Manual of Supervision Procedures 2009/2010*, approved in December 2009 and entered into force November 25, 2009;
- b) *The Manual of Supervision Procedures 2011/2012*, approved in December 2010 and entered into force January 1, 2011.

The CPEE conducts inspections to **Enforcement Agents offices**, and in order to do so, created a Pool of CPEEs Inspectors, who are also Enforcement Agents:

- a) The recruitment and selection of the CPEEs Inspectors included: evaluation of the curriculum vitae, an interview and the inspection of the candidates office by the Members of the Executive Board of the CPEE;
- b) The CPEE has received a total of 32 candidates, and selected 10 Inspectors.

To promote high quality of public services provided by the Enforcement Agents, the CPEE has provided in the Practical Manual of Supervision Procedures the distinction of the Enforcement Agents that demonstrate a high quality of public service, by obtaining the following statement announcing:

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<sup>21</sup> The CPEEs recommendations 2010 are available online at CPEEs website: [http://www.cpee.pt/media/uploads/pages/RECOMENDACOES\\_DA\\_CPEE\\_2009-2010\\_.pdf](http://www.cpee.pt/media/uploads/pages/RECOMENDACOES_DA_CPEE_2009-2010_.pdf) .

***"Enforcement Agent under face to face supervision on (year) distinguished by the public service quality, checked and certified by the Commission for the Efficiency of the Execution."***

The CPEE has already distinguished 9 Enforcement Agents with this public statement, and their names are available on the CPEE website at [http://www.cpee.pt/ae\\_distinguidos/](http://www.cpee.pt/ae_distinguidos/).

Up to the end of September 2011, the CPEE has performed 731 Inspections:

- A) 105 Face to Face Inspections (especially between June 2010 and June 2011);
- B) 626 Electronic Inspections (from June 2001 until September 2011) – this type of inspection was created as a means to face the financial problems that CPEE and Portugal faces nowadays, as it is a cheap, fast and efficient.

#### **IV. THE CPEE: GOALS TO BE ACHIEVED**

After 2 years and 5 months activity, the CPEE, on one hand, after the presentation to the Portuguese Ministry of Justice (August, 2011), to the delegation of the European Union, the European Central Bank and the International Monetary Fund (August, 2011) and to the Portuguese Parliament (September, 2011), the results of its activity as new independent public body, was recognized to be a role model, which needs to strengthen its legal and institutional framework, with particular focus on the financing structure and authority, including to give CPEE full access to the Enforcement cases files, as we can read in the *1<sup>st</sup> update of the Memorandum of understanding on specific economic policy conditionality* (September 2011):

***“7.3. Given the pivotal role of enforcement agents in the debt enforcement process, strengthen the legal and institutional framework in line with international practice with a particular focus on the financing structure and authority of the oversight body, including adopting a decree law by end-December 2011 to ensure the oversight body’s full access to the enforcement case files”***<sup>22</sup>.

So, as we could listen in CPEEs 2<sup>nd</sup> International Conference « *Promoting the Efficiency of Enforcement Procedures*» and Workshop “*Best Practices on the Enforcement Agents Activity*”, which took place on 23-24 September, especially with the presentation of the activity of the Financial Supervision Agency of the Enforcement Agents in the Netherlands<sup>23</sup>, what CPEE needs is<sup>24</sup>:

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<sup>22</sup> The *1<sup>st</sup> update of the Memorandum of understanding on specific economic policy conditionality* is available at CPEE website at <http://www.cpee.pt/media/uploads/stories/memorandum-of-understanding-on-specific-economic-policy-conditionality-1st-update.pdf>.

<sup>23</sup> See ANTON SNOEREN, “*The Bureau of Financial Supervision of the Enforcement Agents in the Netherlands*” presented at the 2<sup>nd</sup> International Conference « *Promoting the Efficiency of Enforcement Procedures*», and Workshop “*Best Practices on the Enforcement Agents Activity*”, on 23-24 September, organized by the CPEE, with the support of the Espinho City Hall, which took place at the Multimedia Center of Espinho. The presentation is available online at CPEEs website: [http://www.cpee.pt/media/uploads/pages/Bureau\\_Financial\\_Supervision\\_of\\_Enforcement\\_Agents\\_in\\_the\\_Netherlands\\_ANTON\\_SNOEREN.pdf](http://www.cpee.pt/media/uploads/pages/Bureau_Financial_Supervision_of_Enforcement_Agents_in_the_Netherlands_ANTON_SNOEREN.pdf).

<sup>24</sup> See PAULA MEIRA LOURENÇO, «*The contribution of CPEE: the 2nd year of activity and proposals for the future*» presented at the 2<sup>nd</sup> International Conference « *Promoting the Efficiency of Enforcement Procedures*», and Workshop “*Best Practices on the Enforcement Agents Activity*”, on 23-24 September, organized by the

- a) Urgent technical assistance;
- b) New facilities;
- c) Full access to the enforcement case files;
- d) Reinforcement of supervision by CPEE of enforcement agents;
- e) Financial Independence.

As GUILLAUME PAYAN said in June 2010:

– *"The CPEE contributes to the quality of the work of enforcement officers (A) and ensures the effectiveness of enforcement procedures, including through the promotion of e-fulfillment (B). (...)*

– *If the mission of the Commission for the Efficiency of executions are mainly the improvement of the performance of Portuguese law with regard to European requirements, the effects of its actions already beyond the borders of Portugal.*

– *The CPEE is, today, as a player in the development of a genuine European judicial area (A). We believe that the international scope of the work of the CPEE could usefully increase further in the near future. Also, we allow some comments to that effect (B):*

- *Contribution of the CPEE to the emergence of a European legal culture;*
- *Contribution of the CPEE to increasing mutual trust between European states;*
- *The opportunity for active participation of the CPEE in the European forum for discussion of Justice;*
- *The opportunity for collaboration with the CPEE the European Commission for the Efficiency of Justice*"<sup>25</sup>.

For the results in its difficult mission, the CPEE should become completely independent - to make decisions and financial independence -, because without that the CPEE will always have difficulties to convince entities responsible for funding (the Ministry of Justice and the "Solicitadores" Chamber) of the indispensability of a real investment in achieving the goals of the CPEE.

As LEO NETTEN, President of the UIHJ, said at the 1<sup>st</sup> International Conference, June 2010, in Lisbon, the CPEE must become truly independent, as in the Netherlands, because its role is very important to stabilize the confidence of citizens and business man in the activity of the Private Enforcement Agents, and therefore to have a body of Enforcement Agents that deserves our trust<sup>26</sup>.

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CPEE, with the support of the Espinho City Hall, which took place at the Multimedia Center of Espinho. The presentation is available online at CPEEs website: [http://www.cpee.pt/media/uploads/pages/The\\_contribution\\_of\\_CPEE\\_2nd\\_year\\_activity\\_proposals\\_for\\_the\\_future\\_PAULA\\_MEIRA\\_LOURENCO\\_CPEE\\_President.pdf](http://www.cpee.pt/media/uploads/pages/The_contribution_of_CPEE_2nd_year_activity_proposals_for_the_future_PAULA_MEIRA_LOURENCO_CPEE_President.pdf).

<sup>25</sup> See GUILLAUME PAYAN, "The Portuguese Commission for the Efficiency of Enforcement Procedures: a role model in Europe", presented at the 1<sup>st</sup> International Conference «Promoting the Efficiency of Enforcement Procedures», on 18-19 June 2010, organized by the CPEE, the Institute of the New Technologies of Information of the Ministry of Justice, which took place at the Superior Institute of Social and Political Sciences of the Technical University of Lisbon. The presentation is available online at [http://www.cpee.pt/media/uploads/pages/GUILLAUME\\_PAYAN\\_UIHJ.pdf](http://www.cpee.pt/media/uploads/pages/GUILLAUME_PAYAN_UIHJ.pdf).

<sup>26</sup> See LEO NETTEN speech at the 1<sup>st</sup> International Conference, June 2010, on CPEE website, available at <http://www.cpee.pt/media/uploads/pages/CONCLUSIONS.pdf>.