



THE EUROPEAN PLATFORM
FOR JUDICIAL AUCTIONS

JUSTICE PROGRAMME (2014 – 2020)

JUST-AG-2020

Call for proposals for action grants 2020

Grant Agreement No. 101007385

LEILA – towards a muLtilingual European platform for judlciaL Auctions

Mapping stakeholders

**Data collection on the legal, organizational, and technological
setting of judicial auctions at the national level for defining
needs-based functional and technical requirements**

Deliverable D2.1

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This project was funded by the European Union's Justice Programme (2014-2020) under Grant Agreement No. 101007385



Executive Summary

The present report is the first deliverable to be provided within the framework of the Working Package 2 of the LEILA Project ‘Defining Functional and Technical Requirements’, which has the main objective “of **mapping stakeholders** (most relevant target groups, including end-users) and their engagement in project activities **in order to ensure project outcome alignment with stakeholders’ needs**; data gathering related to stakeholders’ requirements and best practices and assessment of project developments through multiple methods (online questionnaires, participative workshops, public meetings, semi-structured interviews, and workshops involving stakeholders) to gather feedback, impressions and suggestions.”

In order to identify the previously mentioned items, **survey-based research** has been conducted from March 10 to April 27, 2021 (action requested by Task 2.1 of the LEILA Project) sending a questionnaire to all MS partners (IT, LV, HR, PT, FR, LT, CZ, AT, BG) with a broader scope and aimed to capture information for the identification and engagement of a stakeholders’ community (mapping stakeholders) and the data collection of their needs starting from the recognition of their reference framework (legal, organizational and technological) at the national level, in particular:

- a) the legal framework relative to online judicial auctions;
- b) e-auctions steps in practice;
- c) the characteristics of existing electronic (and paper-based, if not available) auctions related registers of assets;
- d) the characteristics of online national judicial e-auction systems (if available);
- e) an assessment of the information available on the e-Justice Portal about judicial auctions;
- f) an opinion on existing barriers and opportunities related to developing an EU online search engine from the national perspective.

Based on the questionnaire’s replies, in the nine Member States analysed under this project, judicial auctions are governed mainly by **legal framework** provided for by the Civil Procedure Code (BG, CZ, IT, LV, LT) and enforcement law (AT, HR, LV, LT) together with some other complementing legal tool regulating the professions of bailiffs and judicial officers and the technical specifications to comply with when performing judicial sales online through dedicated websites (CZ, FR, IT, LV, PT).



In light of the findings gathered, in all the Member States surveyed judicial auctions can be conducted to perform the sale of movable and immovable properties.

The basic steps marking the procedure to have these items auctioned are similar, but significant differences have been detected as to the criteria based on which these properties are sold, and the methods adopted to implement the above steps. For example, in some countries, different procedural rules apply depending on the type of asset involved.

Overall, e-auctions can be legally carried out in all the Member States under examination. In only one of the surveyed countries, e-auctions are not used yet in practice because the Information Technology infrastructure to support their deployment is still under development (BG). More specifically, in some States, the current legislation only provides for telematics sales to be performed (CZ); while in others, both traditional and online auctions can be used (AT, HR, FR, IT), depending on the type of item to be auctioned. Some States, for example, only allow the online sale of movable goods (AT, FR). In FR, where this mixed regime is into force, judicial e-auctions are partially computerised; these can only be conducted in “live mode”, meaning that the sale takes place at a given physical location, while it is broadcasted live on the website of the professional/body performing the sale, or on one of the websites available to professional auctioneers.

In each of the countries investigated, the main steps marking the **e-auction process** are pretty similar to those characterising the traditional system adopted at a national level.

By and large, the procedure is triggered by the creditor or his/her legal representative, who submits a request to have a judicial decision executed. The debtor’s properties that are deemed suitable to cover the debt are then seized and evaluated. Bailiffs and other appointed professionals are usually entrusted with evaluation tasks, but the technical supports of authorised experts or licensed appraisers can be required, especially with respect to real estate or properties of higher value. After such an assessment has been conducted, the basic price of the item can be set by the bailiff or by court decision.

Notice of the auction must be available in advance of the auction starting date for a period that varies from State to State and can be given in different formats. Online advertising is generally required in all the countries investigated. This is usually made available on the auction site and on official registers/journals accessible to the public in electronic form. In some states, the notice has to be also given in the paper form in specific physical locations, e.g. the municipality, the competent court, or the judicial officer’s office in charge (BG, FR).



Advertisement generally includes the description of the item to be auctioned and the details about the conduct of the sale. In the case of higher value items (e.g. real estate), in all the Member States surveyed the description provided is more detailed. Sometimes, a technical report is also attached (IT). Where pre-emptive rights can be used by individuals entitled to exercise them, this information must be made public in advance (CZ; PT).

In this respect, it is worth noting that most MSs provide special electronic registers containing information about all the seized properties, which are available free of charge to the public. However, they are usually maintained by different types of entities/authorities, are not interoperable with auction websites and do not provide structured data for publication. Moreover, in some cases, their use is not mandatory and therefore, they do not contain complete information on available auctions.

Based on the information gathered, the range of **possible stakeholders** is broad and diverse. Together with creditors and debtors, who have an interest in ensuring that the auctioned property is advertised to the widest possible audience and that the pending debt is rapidly repaid, many other actors come into play in the perspective of developing an EU online search engine.

For example, policymakers have a duty to regulate judicial e-auctions and promote their use by facilitating and putting measures for enhancing the cross-border exchange of auctions' information and sales. Along with them, judges (or their delegates) are in charge of selling seized assets at judicial auctions, experts who estimate the value of seized assets and individuals or companies or competent authorities in charge of the sales operation. Also, legal practitioners handling cross-border e-delivery and exchange of documents and evidence can have an interest in the developments that this project will achieve, and so do research and academia representatives work on the field of e-procurement, e-auctions, e-justice, and their related aspects.

Specifically, the survey has allowed identifying several stakeholders' clusters.

Based on the national experts' opinions, one of the **main existing barriers** related to the development of an EU online search engine – from the national perspective – is information-related.

First of all, the national rules governing this matter vary widely from country to country, and for the individual living in a foreign MS, access to this type of information is extremely complicated. The Justice Portal could fill this information gap, but at the moment the data



entered by MSs is not even. As far as the countries surveyed are concerned, only a few MSs have provided full (FR, HR) or partial (IT, CZ) data about their national auction systems. Information regarding PT, LT, LV, BG and AT are still lacking.

In addition to this, acquiring the necessary information is generally not easy for both domestic and foreign audiences. As mentioned above, most of the States surveyed provide special electronic registers containing relevant information about the properties to be auctioned, but they hardly provide structured and complete data for publication. Moreover, in some cases, their use is not mandatory.

Along with this, the language in which the information is made available is also an obstacle in most cases. Dedicated auction websites are often only available in the national language, making it harder for potential foreign bidders to participate in the auction process.

Issues were also raised regarding the registration of participants on the auctions' websites and the methods/procedures potential bidders have to comply with to prove their own identity. To participate in e-sales, interested persons need to register as users and prove their identity and legal status. This can imply providing a personal, national identity number issued in accordance with the procedure established by national law, indicating a national bank account code or domestic tax code. In some cases, electronic identification (e.g. electronic signature) issued according to national rules and procedures is required (IT).

Finally, in some cases, the terms of payment of the deposit are considered as a barrier to participation in the sale by individuals living abroad, where such an amount is required to be paid in person.