

Brussels, 1 June 2010

Public Hearing on Improving the Enforcement of Judgments and Facilitating Cross Border Debt Recovery



Centre for

**Strategy & Evaluation
Services**

Purpose of the hearing

- Consideration is being given to action at an EU level to improve the enforcement of judgments and cross border debt recovery by way of the attachment of bank account.
- In October 2006, the European Commission published a Green Paper and launched a public consultation. There were 67 replies from Member States and other interested parties. A majority of respondents supported the idea of a self-standing European procedure for bank attachments but of a purely protective nature.
- In March 2010, DG JLS launched a study to help clarify the policy options and to assess potential impacts.
- The purpose the hearing is to debate issues and to build on the earlier consultations.



Agenda

- **09.00 – 09.10:** Welcome, agenda/purpose of the hearing (Ms Salla Saastamoinen, Head of Unit Civil Justice, DG JLS)
- **09.15 – 09.30:** Keynote speech (Mr Martin Selmayr, Head of Cabinet of Vice President Reding)
- **09.30 – 10.00:** Discussion on problem definition and presentation of policy options (led by CSES)
- **10.00 – 11.45:** Discussion on main policy options. Session 1 - Case for status quo (Ms Mirjam Meijssen); Session 2 - Case for Brussels 1 option (Prof. Burkhard Hess); Session 3 – Case for a European bank attachment order (Leo Netten, Sebastien de Brouwer)
- **11.45 – 12.30:** General discussion
- **12.30 – 13.00:** Resume and next steps including impact assessment (Ms Salla Saastamoinen, Head of Unit Civil Justice, DG JLS)
- **13.00:** Close of hearing



Problem definition

- In any commercial transaction, unless there is payment in advance or a transaction involves fully-secured payment terms, there is a risk that a creditor will not be paid.
- There are various ways of minimising – or avoiding altogether - the financial consequences of non-payment of a debt. But these methods (e.g. credit insurance, factoring) can be costly.
- Otherwise, recovering sums owed to a creditor as a result of a cross-border transaction by means of litigation depends on obtaining a court judgment but also, crucially, on being able to enforce that judgment.
- Because of the costs inherent in proceedings outside the creditor's country, and the unfamiliarity of the procedures, there is a case for provisional or protective measures to secure at an early stage the possibility of recovering the debt.
- At present, obtaining a cross-border bank attachment order is costly and complex. This may be acting as a deterrent to cross-border trade.

Policy options

- **Status quo** - i.e. judgments requiring enforcement in another EU Member State require enforcement under the procedure of that country and protective orders are not applied across multiple Member States. Some steps could be taken to facilitate litigation, e.g. making more information available on procedures and rights.
- **An amendment of the Brussels 1 Regulation** - stating that ex parte orders made by a court of one EU Member State having jurisdiction over proceedings would be enforceable in courts throughout the EU. A variation on this would be to harmonize Member States' national rules on the attachment of bank accounts.
- **European Bank Attachment Order** - designing a new and self-standing European procedure which would be available to citizens and companies in addition to existing national procedures for bank attachments.



Questions for debate

- What is the **nature and magnitude of the problem**, how is it evolving, and who is most affected by it?
- What are the **arguments for (and against) the different policy options**?
- What are the likely economic, social and environmental **impacts of the various options**?
- How do the main options compare in terms of **effectiveness, efficiency and coherence** in solving the problems?

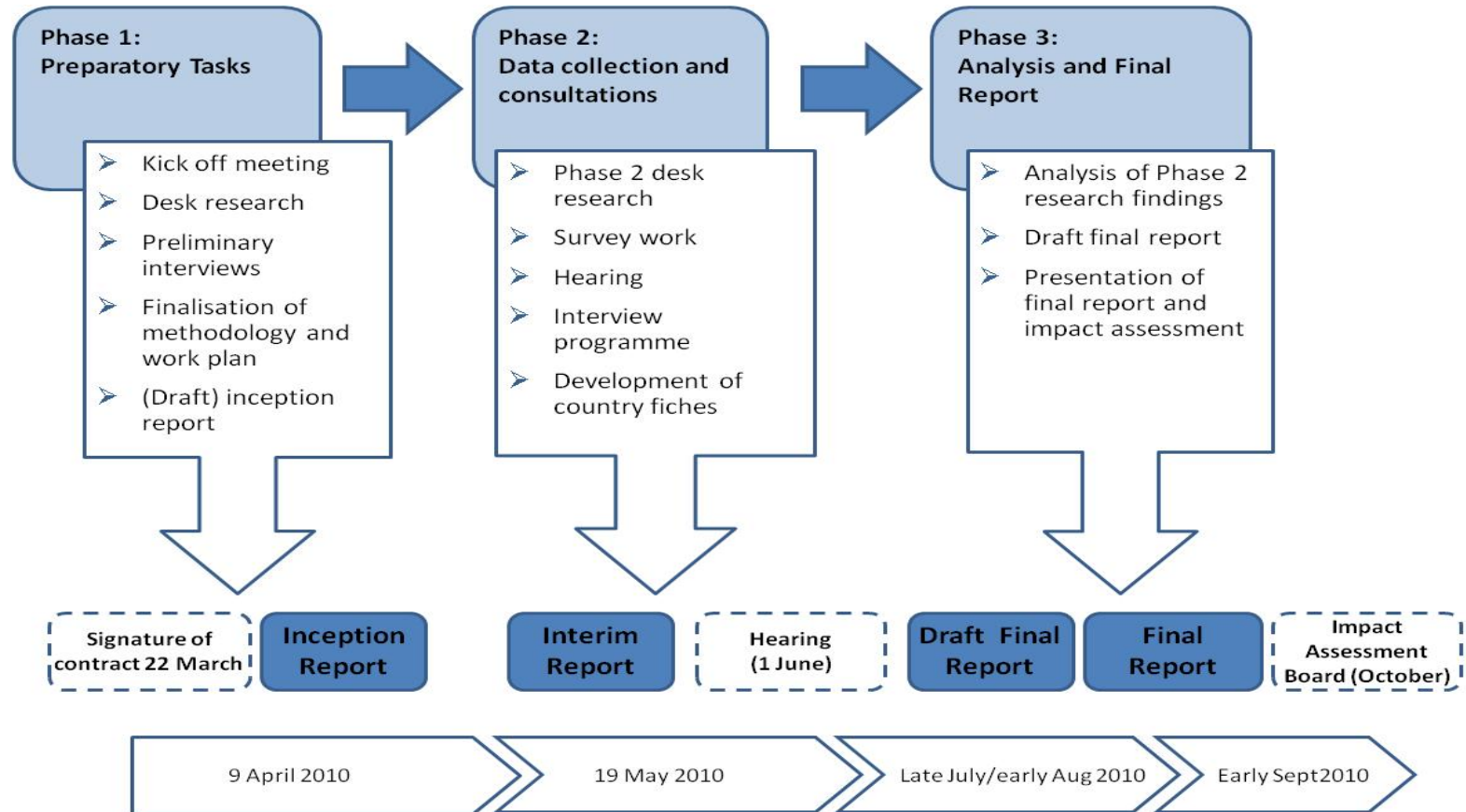
Impact Assessment

- Examine the situation as regards the attachment of bank accounts in the 27 EU Member States, both in domestic and in cross-border situations, with a focus on legislation, practices in force, and statistical data on the recovery of claims and bank attachments;
- Drawing on the data analysis, an assessment of the impact of a number of policy options having regard to the Commission's objective of improving mechanisms for the enforcement of cross-border claims;
- Prepare a report setting out the results of the study with conclusions and recommendations for future action.

Key 'stakeholders'

- **Businesses and consumers**, i.e. those directly involved in cross-border transactions, whether as the creditor or debtor.
- **Financial and legal intermediaries/authorities**, i.e. those who provide services to creditors and debtors, as well as those who provide the necessary institutional framework for trade and commercial dispute resolution.
- **The wider European economy** including not only businesses already engaged in cross-border trade but also those who have been deterred from trading because of the risks, and because of the complications and costs associated with legal proceedings to secure debt recovery.

Work plan and next steps



Links to survey questionnaire

- As part of the research, CSES is carrying out a survey to obtain views and information on various key issues. The questionnaire is available on-line at:

<http://www.cses.co.uk/survey/BankAttMain/intro.htm>

- If you would like to discuss the study with CSES, please contact Jack Malan or Nandita Kale by email (jmalan@cses.co.uk or nkale@cses.co.uk) or telephone +44 1959 525122.