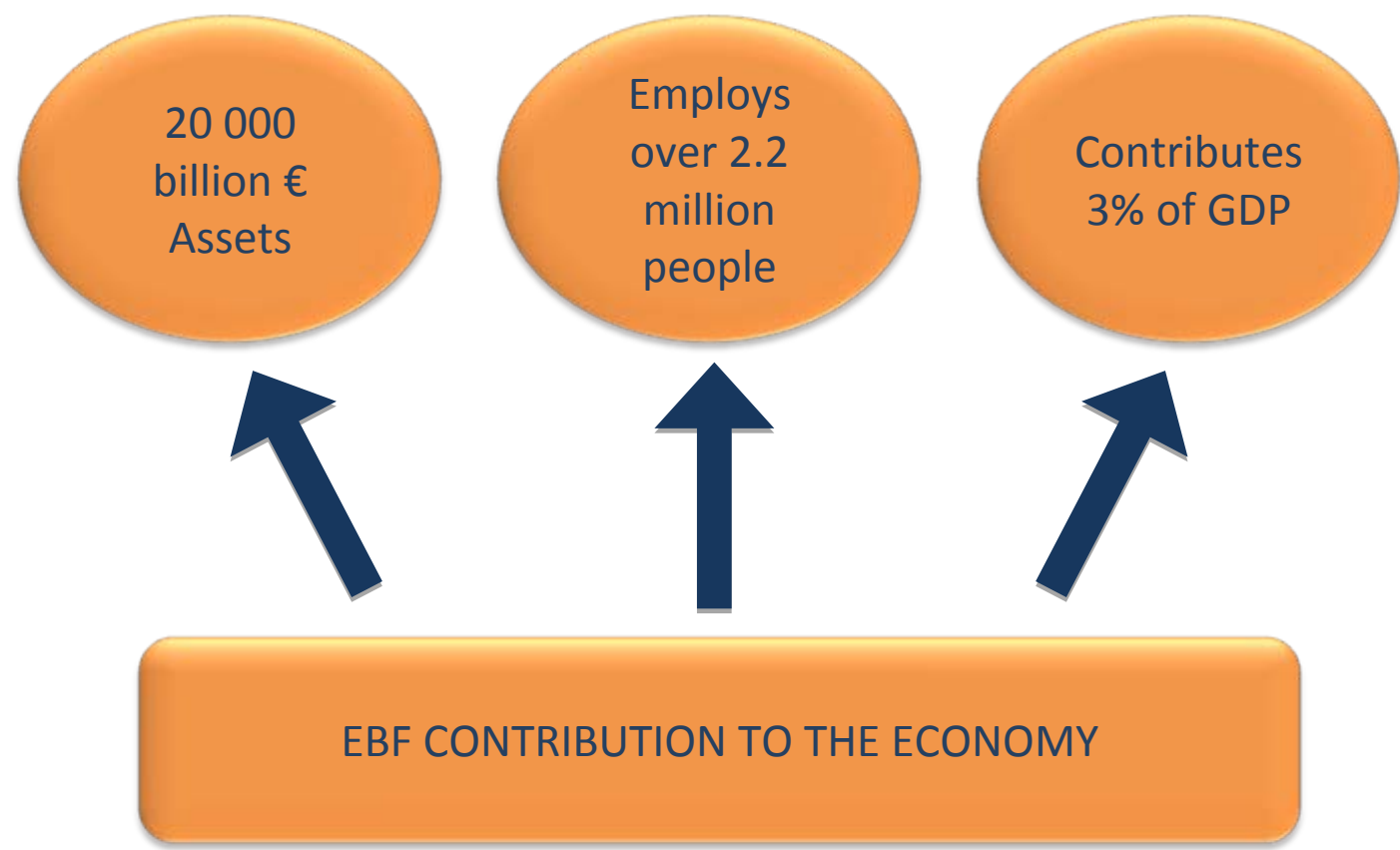


Improving the enforcement of Judgments and facilitating cross-border debt recovery

**Public Hearing organised by the Commission
A case for a European Bank Attachments order
1 June 2010**

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- Over 5 000 banks
- Major cross-border institutions and small regional entities
- Wholesale and retail financial institutions





31 national member associations:

-  27 EU Member States
-  4 EFTA countries
-  13 Associates

50 years
of sound banking representation

We aim to achieve an integrated European
financial services market

- Green Paper on improving the efficiency and the enforcement of judgments in the European Union : the attachment of bank accounts – October 2006
- EBF response to the Green Paper – April 2007
- Summary of replies to the Green Paper
- EP report (Kurt Lechner) – October 2007
- CSES Study on the possibility of introducing a European bank attachment order

- Aim : this instrument would be used where a court says that you are owed money by a defendant in another country. Using the European bank attachment order you could try and get the debtor's bank account frozen to stop assets being moved or have a bank attachment to pay the debt.
- At the moment, this type of action has to be pursued through national courts in the two countries which can be very costly, complex and time-consuming. A European bank attachment order would simplify and speed up the process.

- Three options :
 - Status quo
 - Harmonisation of Member States' legislation
 - Self-standing European procedure

■ General comments

- Banks agree on the purpose to allow debt recovery at domestic and EU levels to function smoothly
- A new efficient procedure may therefore be needed if it is proved that the current situation is source of significant problems – extent of the problem ?
- Subsidiarity and proportionality principles
- Impact assessment
- Should as much as possible leave unaltered the (sometimes newly adopted) procedures which already work efficiently in individual Member States
- Guarantee both the debtor's right to a defense and the creditor's right to a rapid debt recovery

- Both options (harmonisation and new self-standing procedure) raise difficulties
 - A harmonisation appears rather long and complex
 - A self-standing procedure would impose stakeholders to accommodate two regimes – confusion ? Conflict with national legislation ? Legal uncertainty ? Risk of dissymmetry between creditor/debtor at national and cross-border level

- Any procedure should
 - be restricted to the attachment of bank account and the temporary freezing of bank account deposits (not extend to the satisfaction of the creditor)
 - The creditor should be able to issue the attachment order at any stage of the procedure provided that the conditions for issuing it are met
 - The creditor should demonstrate (summary proceedings) that he has a monetary claim, that his case is urgent and his right is in jeopardy (*periculum in mora*)
 - Be standardized (including the servicing of bank attachment and the communication)
 - Protect the rights of the debtor :
 - Creditors' liability in case of wrongful attachment
 - Debtor should have the right to appeal (non suspending effect) and to have the attachment lifted if he provides sufficient security/guarantee for the creditor's claim
 - The judge may require the creditor to provide security or bank guarantee in case of unfounded bank attachment

- Banks' main points of attention
 - Avoid fishing expeditions : stringent controls and standardized procedure + the arrestment should be based upon the provision by the creditor of specific information : exact identity, name of the bank (if possible branch), account number
 - Banks should not have to verify the validity and enforceability fo the order – should be served through e.g. the office of a public official – banks should be contacted by a executive authority
 - Order should be transmitted in a standardized form and written in all language of the Member States
 - Costs incurred by banks in monitoring and processing account seizures should be reimbursed (see also EP opinion)

■ Other open issues

- Should the amount be limited to a specific amount : debtor protection but different regimes across Member States (question of priority for creditors)
- Should the enforcement authority be informed ? Different regimes – only the arrestment has been validated ? Data protection and banking secrecy rules ?
- National exemptions ? Domestic law of the debtor ? Up to the debtor to invoke them ? In any case the determination of the exempted amount should not be left to the banks
- Attachment – revocable ? Lapse after a certain period of time ? This should be specified by the court of the executive authority

Thank you for you attention

For further information: www.ebf-fbe.eu

EBF 50th Anniversary

