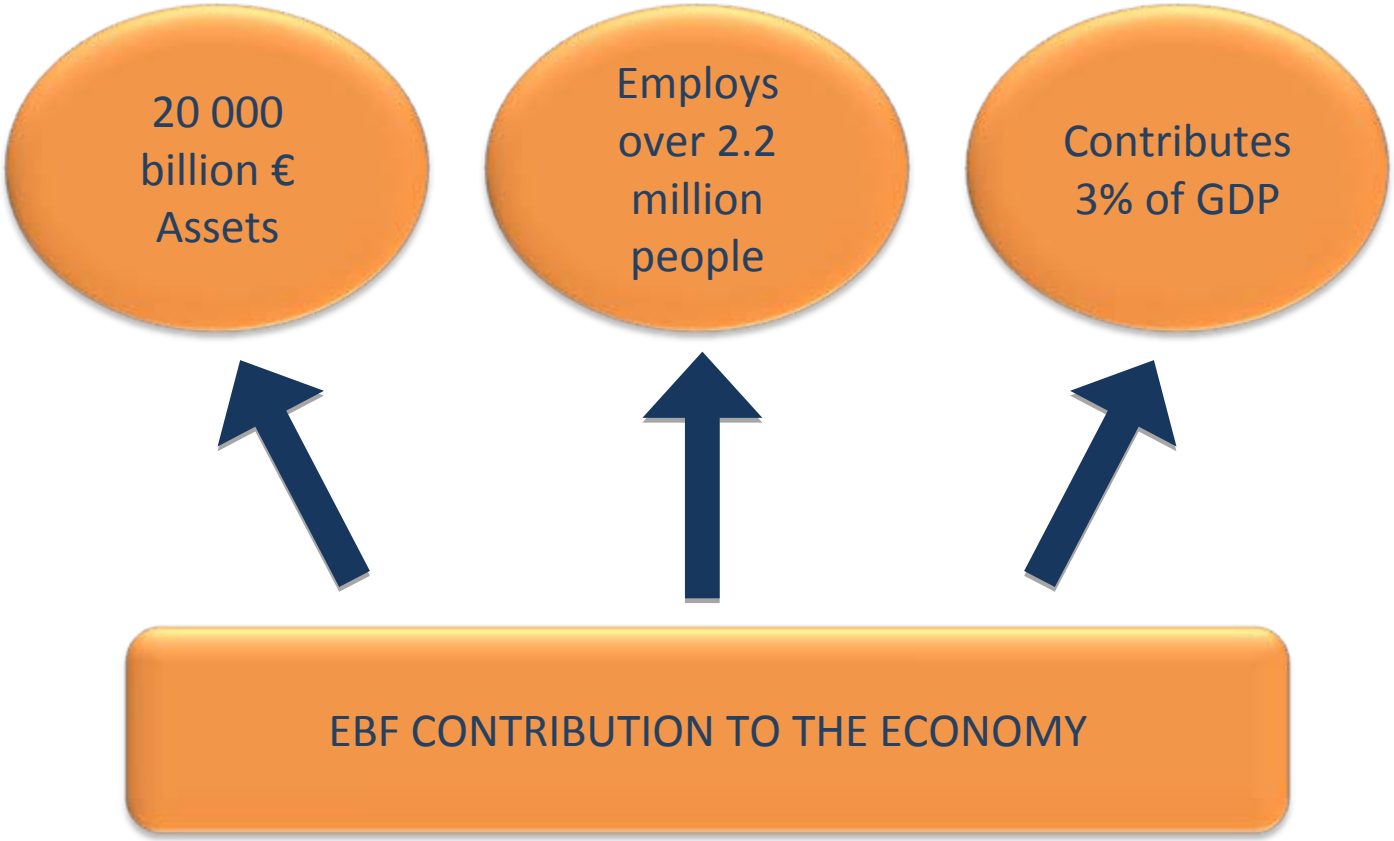
European Banking Federation

Improving the enforcment 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

Sébastien e Brouwer
Head of department
Retail, legal ,Economic and Social affairs
European Banking Federation (EBF)

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


20 000 billion € Assets
Employs over 2.2 million people
Contributes 3% of GDP
EBF CONTRIBUTION TO THE ECONOMY

European Banking Federation

EBF MEMBERS

31 national member associations:

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

WHAT WE STAND FOR

50 years

of sound banking representation

We aim to achieve an integrated European financial services market

European Banking Federation

The case for a European Bank attachment order

- 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

European Banking Federation

The case for 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.

European Banking Federation

The case for a European Bank attachment order

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

European Banking Federation

The case for a European Bank attachment order

- 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 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

European Banking Federation

The case for a European Bank attachment order

- 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

European Banking Federation

The case for a European Bank attachment order

- 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 his urgent and his right are 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

European Banking Federation

The case for a European Bank attachment order

- 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)

European Banking Federation

The case for a European Bank attachment order

- 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

European Banking Federation

Thank you for you attention

For further information: www.ebf-fbe.eu

EBF 50th Anniversary