Public Hearing on Improving the Enforcement of Judgments and facilitating cross-border debt recovery

Brussels, 1 June 2010, 9:00-13:00

Conference Centre Albert Borchette, Room OA

Closure speech by Ms Salla Saastamoinen,

European Commission , DG JLS, Head of Unit Civil Justice

- As this public hearing comes to its end, it's worth drawing-up some provisional conclusions from our discussions of this morning

Outcome of the hearing

- This hearing has made a valuable and significant input to the research on cross-border debt recovery, especially in terms of the problem definition and clarifying the arguments for and against different policy options.

- Firstly, it is now patent that problems of cross-border debt recovery may have adverse effects to the prosperity of the European Union, for the following reasons:
  1. they may be an obstacle to the free circulation of payment orders throughout the Union;
  2. they may impede the proper functioning of the Single Market;
  3. furthermore, late payment and non-payment jeopardise the interest of our businesses and consumers alike.

- Second, it appears that the level of difficulty of cross-border recovery is closely connected to different factors:
  1. the nature and amount of the unpaid debt – i.e. SMEs and consumers are more exposed to payment default from their debtors as they have limited cash-flow;
  2. the country where enforcement is sought – the literature review on this issue underlines the considerable divergences between the national systems, with one source estimating that there are currently 16 different enforcement systems in the Union ! Countries where effective domestic procedures for bank attachment and for disclosure of debtor's assets apply are likely to provide more guarantees to creditor's rights.

- The scope and size of current shortcomings calls for a coordinated action at EU level. As you are aware, different options are still being examined, subject to the on-going IA study.

- Without prejudice to the completion of the IA, following the replies to the 2006 Green Paper and the discussions this morning, it seems that the most preferred option would be a new self-standing European procedure: a European Bank Attachment Order.

- The aim is to enable a creditor to preserve, as security for the debt owed, money held to the credit of his debtor in one or several bank accounts within he territory of the EU. The procedure should be available for all monetary claims arising from a commercial transaction; nevertheless the relationship between this future instrument and the 2008 Regulation on Maintenance Claims is to be examined.

How your contributions to the hearing will be taken into account?

- Today, your reactions have been recorded. They will be thoroughly analysed by the Commission and CSES as part of the IA process. Conclusions of the hearing and the text of the speeches and ppt presentations will be published on our website soon.

- Eventually your input will give a new insight to the Commission for devising a future legislative proposal. At this stage, I can only tell you that such a proposal should be based on the following principles:
  1. efficiency of the Attachment Order: In view of keeping the "surprise effect", it should be made *ex parte* (no hearing or notification to the debtor is required) and served on the branch of the bank holding the debtor's account as quickly as possible;
  2. safeguarding the debtor's rights: The defendant's right to object to the order must be ensured as regards possible grounds for objection, and jurisdiction to hear objections to the same court as the one which issued the order; further, in order to avoid "abusive" bank attachment, the court will have discretion to order creditor to provide security against damage to the debtor, if the order proves unjustifiable;
  3. protection of personal data: Processing of banking data must comply with the provisions of the Data Protection Directive 95/46/EC and Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the EU Institutions;

4. cost-neutrality for banks, it means that the enforcement of the order is likely to create certain costs for the bank –e.g. for execution of the order and monitoring of the account. Accordingly, it may be possible charging specific fees for executing the order; or in countries where enforcement authorities, such as bailiffs, should be given an important role in serving the order, it would help reducing additional costs for the bank.

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