

## Garnishment (2)

	Legal status of the garnishee	Declaration of garnishee	Debtor's protection	The collection of the claim	Cross border garnishment allowed?	Recognition of foreign orders for enforcement
<b>Austria</b>	<p>-Service of gnm order to garnishee is a prerequisite for validity (whereas service to debtor is not)</p> <p>- In principle, Garnishee's position is not changed by transfer of the claim to debtor, he can assert the same objections as previously</p> <p>- Good faith protection against erroneous payment very much in dispute; garnishee has the right to make a deposit; the amount will be distributed by the court</p> <p>- Garnishee receives partial compensation for his efforts, payable out of the attached claim (normally up to 23.- EUR)</p>	<p>-Court requests garnishee to give information; delay: 2 weeks</p> <p>-Subject of declaration covers any kind of information concerning bank account, existence of the claim, gnms of competing debtors, obligations of the debtor to provide maintenance</p> <p>- Failure to provide declaration is not treated as an acknowledgement of the claim</p> <p>-Garnishee incurs liability in tort if he/she makes an incorrect declaration or fails to provide declaration. Must also pay costs of litigation, even if he/she wins in process against the creditor</p>	<p>-Gnm also includes salary account</p> <p>-Minimum income of the debtor and his family can be excluded from the seizure by court decision on application by the debtor</p> <p>-Creditor can claim special need of protection during enforcement of a maintenance claim; in this case exemption limits are reduced</p> <p>-Banks are not allowed to pay out attached monies to the creditor for a period of 2 weeks after attachment. During that period the debtor may apply for a protective order.</p> <p>-No special protection for creditor during enforcement of tort claim</p> <p>- Garnishee can request that specific questions be clarified by the court</p>	<p>-In practice the creditor obtains an almost exclusive right to claim payment.] sec. 308 EO. The creditor can sue the garnishee for payment, although the debtor remains the formal owner of the claim</p> <p>-With regard to competing creditors the priority principle applies</p> <p>-If several creditors institute garnishment proceedings, the claim may be distributed (according to the priority of the seizures) by the enforcement court</p> <p>-In addition there are other possibilities:</p> <p>--the claim itself can be transferred to the creditor in lieu of payment</p> <p>--the value of claim can be realised by forced sale of the claim, sec. 318, 319 EO</p>	<p>- gnm against a garnishee abroad (cross-border gnm) had been considered a violation of foreign sovereignty but, following a recent decision of the Supreme Court, cross-border gnm is allowed</p>	<p>-to date foreign orders have not been recognised; as legal practice has changed with regard to cross-border gnms, recognition of foreign orders must be reconsidered as well</p>

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<b>Belgium</b>	<p>- If service of gnm order (<i>exploit de saisie</i>) to third debtor is not effected:</p> <ul style="list-style-type: none"> <li>-- no obligation to provide debtor's declaration and</li> <li>-- no prohibition against payment to debtor</li> </ul> <p>- Garnishee can assert all existing defences against the claim before the attachment</p> <p>- Depending on the circumstances and the (non)professional status of garnishee, protection against erroneous payment to debtor can be provided for</p>	<p>-Garnishee is obliged to make various declarations; gnm order produces legal obligation; reminder by the bailiff or the creditor quite common</p> <p>- Period for making declaration: two weeks</p> <p>-Subject matter of declaration covers information necessary to specify the rights of any party, including current balance of bank account, other bank accounts (unless gnm is explicitly limited to a certain account), gnm of competing debtors etc.</p> <p>-Declaration is treated as an acknowledgement of the debt, unless claim is contested in the declaration itself</p> <p>-Failure to make declaration is not deemed to be acknowledgement; no shifting of burden of proof</p> <p>- Failure to make declaration or incorrect declaration: third debtor can be declared debtor of the claim of creditor at courts discretion (negligence necessary); not restricted to actual damages incurred by the creditor</p> <p>-Garnishee can reimburse the expenses of his declaration from the creditor by deducting them from the amount due</p>	<p>- Earned income is only protected as long as it is not transferred to bank account</p> <p>- Gnm of bank account includes transferred income</p> <p>-No particular protective provisions for debtor or his / her family</p> <p>-Creditor cannot claim special need of protection</p>	<p>-Bailiff is empowered to collect account balance and to distribute it to the creditors (group principle);</p> <p>-Further claims are registered in an index (<i>fichier des saisies</i>)</p> <p>-Among competing creditors, proportional distribution takes place unless there are privileged claims</p>	<p>-Enforcement law in Belgium is strictly territorial: no cross-border gnm allowed</p> <p>-Gnm that contains foreign element can only take place, if assets are located within Belgium</p> <p>-The service of a foreign gnm order over a claim located abroad on a person domiciled in Belgium is possible under Reg. 1348/00/EC</p>	<p>- Accordingly, no recognition of foreign garnishment orders takes place.</p>

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<b>Denmark</b>	<p>-Garnishee can raise any objection to the debt</p> <p>-Good faith protection against erroneous payment of the debtor</p> <p>-Garnishee can claim reimbursement of his expenses from the debtor. These may be deducted from the account (which, in the end, reduces the funds available to satisfy the debt)</p>	<p>-Garnishee only has an obligation to give information to the debtor; there is no formal garnishee's declaration. Debtor is obliged to give information to the court</p> <p>-Subject of declaration in practice is the current account, although it will often cover the existence of the claim, objections against the claim and garnishments of competing creditors; general statements are not possible in this respect, since there are no specific rules on this matter</p> <p>-Declaration is treated as acknowledgement of the debt unless bank declares reservation;</p> <p>-Failure to make declaration is not deemed to be acknowledgement, but shifting of the burden of proof possible</p> <p>-Incorrect declaration – but not failure to make declaration - is treated as acknowledgement, 35 Gbl. by analogy</p> <p>-Failure to assert objections entails to their exclusion</p> <p>-No obligation to pay damages</p>	<p>-Gnm includes salary on account, even if wage paid in advance, but no future earnings (similarly for social security benefits etc.)</p> <p>-Exemption limits exist; partially regulated by law, 509 Rpl.</p> <p>In cases of doubt, court defines limits</p> <p>Protection ex officio</p> <p>-Creditor can claim special need of protection in case of enforcement of a maintenance claim</p>	<p>-Claim is transferred to creditor, only as an exception, when agreed with debtor;</p> <p>generally creditor is empowered to collect claim, using "Inkassator", 558 Rpl. (normally his lawyer)</p> <p>-No further decision of court after "Inkassator" was confirmed</p> <p>- Separate court proceedings against third debtor only necessary if third debtor denies debt</p> <p>-Priority principle applies</p> <p>- Applications filed the same day have the same rank</p>	<p>-Gnm possible against debtor domiciled abroad</p> <p>--if bank / branch where money is payable is located in Denmark</p> <p>--if debtor domiciled abroad is temporarily present in Denmark;</p> <p>-No cross-border gnm allowed against garnishee domiciled abroad (exception: account payable in Denmark)</p> <p>-Gnm against Danish bank does not affect account payable abroad</p> <p>(reason: territoriality of the enforcement act; Danish execution orders are not expected to be recognised abroad)</p>	<p>-Enforceable titles and provisional measures are recognized</p> <p>-Attachment order itself is not recognized</p>

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<b>Finland</b>	-Service to garnishee not prerequisite for validity of garnishment	-There is no specific declaration of garnishee	<p>-Salary transferred to the current account is included</p> <p>-Protective provisions for debtor and his family exist; these are regulated by law</p> <p>-Normally, only 1/3 of debtors are attached</p> <p>-Protective provisions applied ex officio</p> <p>-Creditor can claim special need of protection during enforcement of maintenance claim, but not during enforcement of tort claim</p>	<p>-As bailiff collects the claim, creditor himself does not have any powers to collect; nor is the claim transferred to him;</p> <p>- Collection normally does not require a further court decision</p> <p>- In regard to competing creditors, group principle applies; preferential rights in case of child maintenance; all creditors are paid proportionally;</p> <p>there is no registration with regard to further claims; there is no public proclamation</p>	<p>-Cross-border gnm is only possible, if garnishee has assets within Finnish territory domicile/ seat of garnishee/ debtor irrelevant</p> <p>-Cross-border gnm is considered inadmissible because of the territoriality of the enforcement act</p>	<p>-Foreign orders for enforcement are neither recognised nor enforced</p> <p>-No statutory law about effects of foreign orders for enforcements; effects are considered in each individual case</p>

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France	<ul style="list-style-type: none"> <li>-Service to garnishee is necessary condition for valid attachment</li> <li>-Garnishee can raise any objections, including defences against the claim of the debtor</li> <li>-Claim of unjust enrichment against debtor if payment to creditor in excess of debt towards debtor</li> <li>-Claim against <i>mala fide</i> creditor concerning payments in excess</li> </ul>	<ul style="list-style-type: none"> <li>-Garnishee must provide information "on the spot" to the bailiff; additional information to be provided after 2 week period (supra)</li> <li>-Declaration includes all accounts (exception: service to branch), seized amount, defences, cessions, earlier garnishments etc.</li> <li>-Positive declaration constitutes acknowledgment of the claim (?)</li> <li>-Failure to make declaration renders garnishee liable to pay the whole debt of debtor, even if greater than his debt towards debtor (payment then basis for claim of unjust enrichment against debtor) Exceptions: valid excuse; debtor has no claim whatsoever against bank; invalid garnishment; additional delay granted by bailiff</li> <li>-Incorrect declaration renders garnishee liable to damages</li> </ul>	<ul style="list-style-type: none"> <li>-Salary income and social benefits are protected, even if transferred to a bank account; regulation by law</li> <li>-Debtor can demand from the bank the immediate release of the protected parts of his income (less monies already withdrawn) by showing protected source of income and providing an affirmation made by his employer concerning extent of protection</li> <li>-Additionally, debtor can demand the immediate release of a sum corresponding to minimum social benefits by simple letter to the bank</li> <li>-joint account-holder can demand from the bank the release of a sum equal to his / her monthly salary</li> <li>-Special regulation for over-indebted consumers</li> <li>-Special regulation for creditors of alimony claims</li> </ul>	<ul style="list-style-type: none"> <li>-The garnishment order immediately "attributes" the claim to the creditor; the bank itself becomes debtor to the extent of it's obligation to debtor,</li> <li>The creditor can collect the claim (i.e. demand payment or transfer of the money to his own account) <ul style="list-style-type: none"> <li>--by presenting written agreement of debtor</li> <li>--after one month if debtor does not contest the gnm</li> <li>--presenting court decision dismissing debtor's challenge to gnm</li> </ul> </li> <li>-Decision of execution court can constitute title against the garnishee in case of <ul style="list-style-type: none"> <li>-- acknowledgment of the claim by garnishee</li> <li>--already existing title of debtor against creditor [rarely applicable in case of bank accounts]</li> <li>--absence of declaration (supra)</li> </ul> </li> <li>-Priority principle applies (exception: claims lodged on same day treated equally)</li> <li>-If several creditors institute garnishment proceedings, the claim may be distributed (according to the priority of the seizures) by the enforcement court</li> </ul>	<ul style="list-style-type: none"> <li>-Gnm possible if debtor is domiciled abroad</li> <li>-Gnm not possible if bank is domiciled abroad</li> <li>-Gnm of accounts held at foreign branch offices of French banks in principle possible. But: foreign law applies to bank secret with respect to foreign branch offices of French banks; this law must allow [provides ?] that information must be given to head office</li> <li>(French law on bank secrets does not allow French branch offices [of foreign banks?] to transfer information on accounts to foreign enforcement agents.)</li> <li>-In general, <i>lex loci</i> of foreign branch applicable (?)</li> </ul>	?

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<b>Germany</b>	<p>-Service to garnishee is prerequisite for valid attachment</p> <p>-Garnishee can raise any objections, including defences against the claim of the debtor</p> <p>-Good faith protection in case of payment to the debtor after attachment (e.g. in case of public service of the attachment order)</p>	<p>-Garnishee is obliged (on application of the creditor) to declare</p> <p>--whether a valid claim does exist</p> <p>--whether competing creditors did seize the claim</p> <p>- Period for making declaration: two weeks</p> <p>-If the third party's declaration is incomplete or inaccurate, the garnishee is liable for the damages incurred by the debtor. (sec. 840 ZPO).</p> <p>- Declaration (or failure to make one) is not considered an acknowledgment of the claim</p>	<p>-Salary of the debtor is protected under secs. 850 et seq. ZPO. Salary transferred to a bank account is also protected (sec. 850k ZPO)</p> <p>-Minimum income of the debtor and his family, as defined by sec. 850c ZPO, is automatically excluded from the seizure (in case of social services) or by court decision on request of the debtor (in case of earned income)</p> <p>-Banks are not allowed to pay out attached monies to the creditor for a period of 2 weeks after attachment. During that period the debtor may apply for a protective order under sec. 850 k ZPO.</p> <p>-Creditor and debtor may ask the enforcement court for additional protection in specific circumstances (collection of maintenance or tort claims)</p>	<p>-The claim seized is collected by the creditor, who must ultimately sue the garnishee for payment</p> <p>-Priority principle applies</p> <p>-If several creditors institute garnishment proceedings, the claim may be distributed (according to the priority of the seizures) by the enforcement court</p>	<p>-According to the principle of strict territoriality, German enforcement courts do not seize debt located abroad (if the garnishee was domiciled abroad). Cross border garnishments were excluded, because service to the garnishee was not effected by the Central Authorities.</p> <p>-Under Art. 14 Reg. EC 1348/00, postal service (on a garnishee abroad) is possible. Since 2001, German enforcement courts have served garnishment orders to garnishees abroad (Austria, France).</p> <p>-To date, no case law has been reported on the question of whether such a garnishment order was recognised as a valid transfer of the claim to the creditor.</p>	<p>-Foreign garnishment orders are not recognised ( Art. 32 Reg. 44/01).</p> <p>-However, under conflict of law rules private law effects of foreign attachments can be recognised</p>

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Greece	<p>-Service to garnishee is prerequisite for valid attachment</p> <p>-Garnishee can raise any objections, including defences against the claim of the debtor</p>	<p>-Garnishee must make declaration about existence of claim, objections, former attachments etc.</p> <p>-A positive declaration constitutes an enforceable instrument</p> <p>-Failure to make declaration considered as denial of claims of debtor</p> <p>-On objection of the creditor, court will decide on existence of the claim Debtor=&gt;Garnishee; this also constitutes an enforceable instrument</p> <p><i>[Query whether this in line with regulation 44/2001 !?]</i></p> <p>-Garnishee liable for damages caused by non-performance of obligation to make declaration; proof of fault not required</p> <p><i>[Strict liability? Or is only the burden of proof reversed?]</i></p>	<p>-Salaries that have been transferred to an account (including pensions) shall not be attached; attachment is valid as such but nullified by the court on request of the debtor</p> <p>-Exception: enforcement of maintenance claims</p> <p>-Maintenance claims can not be attached</p>	<p>-Normally, the claim is transferred to the creditor who must ultimately sue the garnishee for payment</p> <p>-Competing garnishments are considered if effected within 8 days after service of garnishment order to debtor (30 days in case of debtor domiciled abroad).</p> <p>-If the funds are insufficient to satisfy all relevant garnishment creditors, they will be deposited with the court. A public notary will proceed with distribution in proportion to the creditors claims; certain claims are privileged (?)</p> <p>-Special first- in-time-rule applies, under which creditors are grouped according to their standing</p>	<p>-Cross-border gnm probably allowed</p> <p>--against garnishee abroad (?)</p> <p>--against debtor abroad (extended time limits)</p> <p>Service under Regulation 1348/00/EC</p>	<p>-Foreign orders for enforcement are neither recognized nor enforced (?)</p> <p>-Effects of foreign orders are not acknowledged, because execution acts are strictly territorial (?)</p>

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Ireland	<p>-Garnishee is only bound following service of order or receiving notice of it</p> <p>-Garnishee can assert any objection against debt or any inaccuracy in application</p> <p>-Cheques drawn before making of the order should not be honoured unless specifically allowed by the order</p>	<p>-If garnishee wants to contest obligation of payment created by conditional order, he must respond by delivering an affidavit in reply</p> <p>-Failure to make declaration allows conditional order to become absolute by default</p> <p>-If garnishee allows conditional order to become absolute, this could imply a breach of the contract with judgment debtor (liability for damages)</p> <p>-No standard form</p> <p>-Costs incurred by garnishee normally deducted from attached sum</p>	<p>-Court can limit quantum of the garnishment order, if it would cause unnecessary hardship to debtor</p> <p>-Future wages and future social benefits are not liable to attachment</p> <p>-Wages due can be attached, but the order can be set aside or varied if the attachment will not leave a sufficient amount for maintenance of debtor and his/her family</p> <p>-Special rules apply to family law applications for attachment of earnings</p>	<p>-Absolute garnishment order constitutes title for the creditor against the garnishee; money can be paid into court</p> <p>-Attachment does not create any priority that did not previously exist; there is no registration of further claims in the attachment process</p>	<p>-cross-border gnm is considered inadmissible because of the territoriality of the enforcement act</p> <p>-the claim proposed to be attached must be recoverable in Ireland from a garnishee present in Ireland; accounts held at foreign branch offices can not be seized if the bank's obligation to pay (only) arises abroad</p>	<p>-No recognition without further act of Irish court</p> <p>--However private law effects of foreign attachments can be "recognised" as a matter of fact</p> <p>-Court will not order garnishment where there is a risk that bank might be compelled to pay again abroad</p>

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Italy	<p>-Garnishee can assert any objection he had against debtor before seizure took place</p> <p>-Where the debtor's claim did not exist, garnishee has a claim of unjustified enrichment against debtor;</p> <p>-Where creditor's claim did not exist, garnishee has a claim of unjustified enrichment against creditor</p> <p>-Garnishee can claim reimbursement of his expenses from the creditor (?)</p>	<p>-Declaration must be made in front of the judge</p> <p>-Garnishee must make declaration about current balance of account, further bank accounts of debtor, gnms of competing creditors, objections against the judgement debtor's claim, ancillary rights;</p> <p>-Positive Declaration is treated as an acknowledgement, failure to assert objections leads to their exclusion</p> <p>-Failure to make declaration is not deemed to be an acknowledgement</p> <p>-Incorrect/ lack of declaration can make garnishee liable to pay costs and damages (gross negligence required)</p>	<p>-Gnm also includes salary account;</p> <p>-Protection of salary claims does exist but does not extend to money transferred to a bank account</p>	<p>-Further court decision based on 1-2 hearing(s) required</p> <p>-If third debtor denies claim during the hearing at court, creditor has to prove accrual of claim, bank has to prove extinction;</p> <p>- A positive court decision constitutes title against the garnishee</p> <p>-Claims due during the next 90 days are immediately transferred to the creditor(s)</p> <p>-Otherwise, execution sale takes place (exception: different consensus of the creditors)</p> <p>- Competing garnishments effected before the hearing share the same rank; the amount seized is distributed among all such creditors in proportion to their claims (exception: privileges)</p> <p>-Competing creditors intervening after this date are only satisfied if funds remain</p> <p>-The active creditor must inform those creditors who are privileged</p>	<p>-Garnishment allowed against debtor abroad, according to the same rules as a national gnm; no service according to Reg. 1348/00/EC (?); lex fori is mostly applicable</p> <p>-No garnishment allowed against garnishee abroad; Reason: Protection of garnishee against need to give a declaration in Italian Court</p> <p>- Garnishment against Italian bank does not affect accounts held abroad</p>	<p>-Foreign enforcement orders are to be authorised by the public ministry (?)</p> <p>-Effects of foreign orders are not acknowledged, because an execution act must be a national act (?)</p>

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Luxembourg	<p>-There is no protection against erroneous payments to debtor</p> <p>-Garnishee cannot receive reimbursement of expenses</p>	<p>-Special declaration proceedings</p> <p>-Garnishee obliged to give any information (and to provide documentation/proofs) about debtor's assets (including safe deposit boxes and security papers!); separate proceeding (assignation en déclaration) definitive</p> <p>--at all branch offices within Luxemburg if served at headquarters (subsidiaries not included)</p> <p>--at branch office if served at branch</p> <p>-Declaration includes ancillary rights and gnms of competing creditors</p> <p>-Declaration as such is not treated as acknowledgement</p> <p>-If garnishee refuses to make the declaration, he can be liable to pay the entire debt;</p> <p>-Incorrect declaration also incurs a claim for damages</p> <p>-If garnishee claims to have never been debtor of the judgment debtor, this declaration is assumed to be true; creditor must prove the converse</p>	<p>-Protection of salary claim does exist but does not extend to funds transferred to a bank account</p>	<p>-From the time gnm is declared valid by the court and service to garnishee has taken place, a transmission of claims is conducted; the creditor steps into judgment debtor's position;</p> <p>if garnishee contests claim of debtor, a further judgment is required as part of the declaration proceedings (see above)</p> <p>-Competing creditors (even without title) can assert their claims up to the point at which gnm is declared valid by the court;</p> <p>-Creation of title for additional creditor can be combined with validation proceeding</p> <p>- Distribution in proportion to the amounts due</p> <p>-The registration of competing creditors is accomplished by service upon garnishee, who has to declare them</p>	<p>-Gnm allowed against debtor abroad who has assets within Luxemburg</p> <p>-No cross-border gnm against garnishee abroad because of the territoriality of the enforcement act</p> <p>-Accounts held at branch offices abroad are not subject to gnm by Luxemburg authorities</p>	<p>-Foreign orders for enforcement are not recognized or enforced</p> <p>-Effects of foreign orders for enforcement are not recognised</p>

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<b>Netherlands</b>	<p>-Possibility of pleading certain defences in declaration procedure</p> <p>-If garnishee pays to debtor after having been notified, there is no good faith protection and no claim of unjustified enrichment</p> <p>-Garnishee can claim reimbursement of his expenses of the creditor, unless expended unnecessarily</p> <p>- If garnishee wrongfully transfers funds to the debtor, he is only liable to the first garnishor</p>	<p>-Bailiff requests garnishee to provide information about the account within 4 weeks</p> <p>-Subject matter covered by garnishee's declaration: current balance; liens and securities are to be mentioned; declaration includes counterclaims that might be balanced; other gnms against the same account</p> <p>-Garnishee's declaration is an "extra-judicial declaration"; it is not treated as an acknowledgement; errors can be corrected afterwards</p> <p>-If garnishee denies claim of debtor, garnishee may dissolve the contract with the debtor, which he may use as a defence against the garnishor</p> <p>-If garnishee fails to make declaration, creditor can commence proceedings for a "judicial declaration", also with the objective of making the garnishee liable for the sum for which gnm was requested (plus damages) if he does not make the declaration; fault is not an element;</p> <p>-Creditor may demand amendment / completion of the declaration within a period of 2 months</p>	<p>-Protection of salary claims and social benefits does exist but does not extend to money transferred to a bank account</p> <p>-Exception: child allowance if it is still identifiable on the account</p>	<p>-Creditor has no powers to collect the claim, the claim is neither transferred to him nor is he empowered to collect the claim;</p> <p>-following a positive declaration by the garnishee, funds are transferred by the garnishee to the bailiff, who then transfers funds to creditor(s)</p> <p>- As between competing creditors group principle applies; the amount to be seized is collected by the bailiff and distributed among the creditors. In any case,;</p> <p>further gnms are created by the service of gnm orders; garnishee's declaration must include information about competing creditors as well as the acting bailiffs informing each other</p> <p>-Claims are distributed in proportion to the amounts of the particular claims</p>	<p>-Gnm against debtor abroad possible; order must be served on the debtor according to Reg. 1348/00/EC if debtor resident in an EU member state;</p> <p>-Direct cross boarder gnm not possible</p> <p>-Service to the domestic head office can cover bank accounts held with branch offices abroad</p> <p>- the law of the place of enforcement is applicable to cross-border gnm</p>	<p>No recognition of foreign orders (since execution is strictly territorial) except in case of a bank account held with branch office in the Netherlands.</p>

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Portugal	<p>-Garnishee can assert any irregularities in the gnm procedure and contest debtor's claim but cannot assert debtor's objections;</p> <p>-No protection against erroneous payment to the debtor necessary, since there is no prohibition for garnishee to pay to debtor</p> <p>-Garnishee can claim reimbursement of expenses from debtor</p>	<p>-Bailiff requests garnishee to make declaration;</p> <p>-Declaration has to be made within 14 days; content: existence of claim and amount that can be seized (not including questions of debtor's protection?)</p> <p>-If gnm covers more than one account, garnishee must provide information about any claim seized;</p> <p>-Declaration includes ancillary rights, objections against the claim and gnms of competing creditors</p> <p>-Declaration is treated as an acknowledgement, 820 CC</p> <p>-Failure to make declaration is deemed as an acknowledgement</p> <p>-Incorrect declaration makes garnishee only liable for damages in case of gross negligence</p>	<p>-Gnm includes salary account</p> <p>-Amount corresponding to national minimum wage (350 EUR) cannot be attached</p> <p>-Monies out of sources that can not be attached remain unattachable, even if transferred to bank account, § 824 CPC:</p> <p>-Salaries / pensions between 350 EUR and 1050 EUR can only be attached up to 1/3 of their value.</p> <p>-Court asked to grant garnishment orders checks these general levels</p> <p>-Additional protection concerning the needs of the debtor and his family considered during remedy proceedings</p> <p>- The creditor can also claim a special need for protection (e.g. alimony claims)</p>	<p>-Creditor can apply for a transfer of the claim by the court, 861CPC</p> <p>-Priority principle applies with regard to substantive securities (garantie réelle)</p> <p>-Subsequent garnishment proceedings are suspended after the seizure by decision of the bailiff; second garnishor must join the proceedings initiated by the first creditor and is restricted to the remainders of the monies following satisfaction of the first creditor (priority principle)</p> <p>-Creditor can not shift to debtor the costs of counsel used during attachment proceedings</p>	<p>-Gnm against debtor abroad is possible</p> <p>-Garnishment against Portuguese bank includes accounts held with branch offices abroad; notification to debtor must be effected by the bank</p> <p>-Garnishment possible if account is held at Portuguese branch office of a foreign bank (not yet decided by court);</p> <p>Portuguese law is applicable as <i>lex fori</i> with regard to the enforcement act itself and with regard to the protection of the debtor as well as the protection of the garnishee;</p> <p>For competing creditors it is the Portuguese procedural law that applies; <i>lex rei sitae</i> applies to substantive law</p> <p>-Cross-border gnm against bank abroad is considered to be inadmissible because of the territoriality of the enforcement act and the comitas doctrine</p>	<p>-No recognition of foreign orders, since execution is strictly territorial</p> <p>-Effects of foreign orders for enforcement are not recognised in Portugal</p>

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<b>Spain</b>	<ul style="list-style-type: none"> <li>- Garnishee obliged to cooperate with court; penal sanctions possible in case of failure to make declaration or incorrect declaration (contempt of court)</li> <li>- No special rules exist to protect garnishee; only normal procedural defences (against gnm order or particular acts ordered by the judge)</li> </ul>	<ul style="list-style-type: none"> <li>-No rules about declaration exist, but debtor must respond to any question asked by judge</li> <li>-No liability for damages; only penal sanctions</li> </ul>	<ul style="list-style-type: none"> <li>-Gnm includes salary account and earnings</li> <li>-There are exemption limits for debtor and his family; regulated by law: 607, 608 LEC</li> <li>-Rules applied ex officio</li> <li>-Creditor cannot claim special need of protection</li> </ul>	<ul style="list-style-type: none"> <li>-If the Court orders the attachment of debtor's property; the bank account is attached immediately, assets are transferred to court bank account; court transfers monies to creditor</li> <li>-Competing creditors may have privileged claims, 613-621 LEC (mainly established by 1921-1929 CC)</li> </ul>	<ul style="list-style-type: none"> <li>-Cross-border gnm permissible against garnishee/ debtor abroad/ in Spain;</li> <li>-Service probably accomplished pursuant the rules of CE 1348/00, but very little case law;</li> <li>- rules on substituted service exist, but they normally do not apply for gnm</li> <li>-The law applicable to the enforcement act itself, the protection of debtor and garnishee and the competing creditors is the law where the execution takes place</li> </ul>	<ul style="list-style-type: none"> <li>-Recognition of foreign acts of execution pursuant to international treaties and especially the Brussels I-Regulation</li> </ul>

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<b>Sweden</b>	<p>-Incorrect service does not invalidate the gnm; enforcement authority can be held liable to pay damages</p> <p>-Garnishee can assert (formal) objections to attachment by appeal</p> <p>-In case of uncertainty with regard to the attached claim, EA orders the creditor to institute court proceedings against garnishee within one month. If no proceedings are started within this period by creditor (or garnishee) attachment will be revoked (Ch 4 Sec. 23)</p>	<p>-Garnishee must provide any kind of information (current balance of account, further accounts etc.), if asked by the Enforcement Authority to make declaration (even if banking secrecy provisions would normally apply); creditor does not receive the information</p> <p>-Since enforcement authority is obliged to investigate debtor's assets without having the right to review the substantive merits of judgment or order by court, declaration itself has no legal effect</p> <p>-If declaration is not made, garnishee can be ordered to make declaration or be fined (no particular limits for these fines)</p>	<p>-Enforcement authority decides what proportion of debtor's earnings can be retained (attachment amount) and amount left to the debtor (reserve amount)</p> <p>-Amount corresponding to subsistence level is exempt from gnm; exemptions regulated and defined by law</p> <p>-Protective provisions applied ex officio</p>	<p>-Enforcement authority collects account balance and distributes it to the creditors</p> <p>-Priority principle applies, cf. 4 Sec. 30 Enforcement Code.</p> <p>-Creditor only has to apply for enforcement proceedings and does not conduct any enforcement actions</p> <p>-In case of uncertainty with regard to the attached claim, EA orders the creditor to institute court proceedings against garnishee within one month. If no proceedings, are commenced within this time by creditor (or garnishee) attachment will be revoked (Ch 4 Sec. 23)</p>	<p>-Gnm allowed against debtor abroad, if he/she has assets in Sweden</p> <p>-No cross-border gnm allowed against garnishee abroad, nor against account held at branch office abroad</p> <p>Cross-border gnm is considered to be inadmissible because of the territoriality of the enforcement act</p>	<p>-Foreign orders for enforcement neither recognised nor enforced</p>

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<p><b>United Kingdom</b></p> <p><b>England/Wales</b></p>	<p>-Service of order is prerequisite for the validity of garnishment</p> <p>-Final order will not be granted if it would be inequitable to do so; e.g. court will not make final order in case of danger that bank might be compelled to pay twice (domestically and abroad)</p> <p>-If bank pays based on interim order, it will not be protected if final order is not made</p> <p>-Bank can deduct its expenses from the account of the debtor (£55; this can reduce the amount available to the creditor)</p>	<p>-Court requests bank to make declaration within 7 days</p> <p>-Bank must identify all accounts held with it, give detailed information for each account (number; balance if insufficient to cover amount specified in order, ancillary rights, objections, competing garnishments)</p> <p>-Positive declaration has the same effect as an acknowledgement, if order is made absolute based on the declaration</p> <p>-As an exception to general rule, a failure by a bank to make a declaration is not deemed as an acknowledgement</p> <p>-Objections not contained in declaration can still be asserted during hearing</p> <p>-No special provision for claims for damages in case of incorrect declaration (but general tort law may apply)</p>	<p>-Special rules on protection of salary claims and social benefits do exist but do not extend to money transferred to a bank account</p> <p>-If debtor or his/her family are suffering hardship in meeting ordinary living expenses, court may, on request of the debtor, make a "hardship payment order" that permits bank to make certain payments out of account (protection <i>ex officio</i> if making final TDO would be inequitable, e.g. clearly insolvent debtor)</p>	<p>-Final order constitutes title against bank ("shall be enforceable as an order to pay money")</p> <p>-If there is more than one interim order (e.g. by different courts), normally the first one is made absolute. However, as the making of the order only creates a charge in equity, the decision to make one or more of them (partially) absolute is based on the discretion of the court(s).</p>	<p>-Gnm not allowed against debtor abroad (?)</p> <p>-Bank must be present in jurisdiction</p> <p>-Account at foreign branch of English bank can be attached, but Court will not issue final order in case of real danger that bank might be compelled to pay again abroad</p> <p>-Debt must not be recoverable within the jurisdiction, if garnishee is / was physically present in the jurisdiction</p>	<p>-Foreign court orders are normally considered having quality of judgments and are recognised under Reg 44/2001</p> <p><i>[Query whether this also applies to decisions like the German PtÜB]</i></p> <p>-Court will not order garnishment in case of danger that bank might be compelled to pay again abroad</p>

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<p><b>United Kingdom</b></p> <p><b>Scotland</b></p>	<p>Correct service is condition for validity of arrestment</p> <p>Good faith protection of garnishee</p>	<p>No direct legal obligation of garnishee to provide for information. (The introduction of such an obligation is being discussed). Bank receives no fees when giving information voluntarily.</p> <p>But garnishee (bank) is liable for damages, if there are funds available and information is not given.</p> <p>Theoretically, if garnishee pays out the money to the debtor in spite of the arrestment, this constitutes contempt of court (fine or imprisonment possible)</p>	<p>-Special rules on protection of salary claims and social benefits do exist but do not apply to money transferred to a bank account</p> <p>(an extension of the protection is currently under review)</p>	<p>Arrestment is followed by "action on furthcoming" (separate decree by the court)</p> <p>Priority principle (day of seizure) applies (Execution of Diligence Act Sec.1)</p> <p>Other creditors can join the first arrestment procedure (multiplepointing procedure) and will receive the remainders</p>	<p>No. Account must be held in Scotland.</p> <p>In principle, debtor must also be domiciled in Scotland (CJJA 1982 Schedule 8).</p> <p>Exception: If</p> <ul style="list-style-type: none"> <li>- debtor is domiciled in Brussels/Lugano area,</li> <li>- has a bank account in Scotland</li> <li>- and creditor obtains a foreign title that is to be recognised under Brussels Regulation / Lugano Convention,</li> </ul> <p>enforcement can also take place in Scotland</p>	<p>-Foreign court orders are normally recognised under Reg 44/2001</p>