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
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European Banking Federation (EBF)
Over 5,000 banks

Major cross-border institutions and small regional entities

Wholesale and retail financial institutions
EBF CONTRIBUTION TO THE ECONOMY

- 20,000 billion € Assets
- Employs over 2.2 million people
- Contributes 3% of GDP
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
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
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.
The case for a European Bank attachment order

Three options:

- Status quo
- Harmonisation of Member States’ legislation
- Self-standing European procedure
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- 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
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- **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 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
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 of 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).
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- **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 your attention

For further information: www.ebf-fbe.eu

EBF 50th Anniversary