The EJE project partners have adopted a position on the creation of a European procedure for the attachment of bank accounts.

- Project News [1]

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Regarding the re-launch of the work on improving the enforcement of court judgments within the European Union, the EJE project partners adopted a common position to support the creation of a European procedure for attaching bank accounts in line with certain procedural principles which they deem essential.

Following on from the publication of a Green Book on improving the enforcement of court judgments within the European Union: the attachment of bank accounts by the European Commission in 2006 (COM(2006)618 final), and the public hearing organised by the European Commission in June 2010, which marked the re-launch of the work on this issue, the EJE project partners adopted a common position to support the creation of a European procedure for attaching bank accounts in line with certain procedural principles which they deem essential.

The European Commission has since stated that it intended to submit a legislative proposal on the issue between now and July 2011.

By way of a reminder, the European order for an attachment of bank accounts is a strictly protective measure in so far as it puts a stop on the funds in the debtor’s bank account without transferring them to the creditor’s account.

The position of the EJE project partners on the creation of a European system for attachment of bank accounts

At a time when more and more debtors have bank accounts in different Member States, thanks to free movement, and developments in technologies have made it possible to transfer sums from one Member State to another very quickly, the creation of a European system for attachment of bank accounts would enable rapid, cost-efficient attachments of accounts in different Member States. However, there must be safeguards.

In order to ensure better efficiency in the process and complete protection of the debtor, the EJE partners consider that the bailiff/enforcement officer should have the power to effect the attachment of bank accounts and to notify the debtor of that attachment. And so this intervention ensures legal certainty and the protection of the debtor’s rights. This protection is of prime importance in that the European order for the attachment of bank accounts would be made as a result of ex parte proceedings. Informing the debtor is the first of these guarantees. And so, only the bailiff or court officer has the power to ensure the debtor is properly informed.

Furthermore, the EJE partners consider that:

- Creditors who do not have an enforcement order have to be authorised by the court before they can effect a precautionary seizure of a bank account in another Member State.

- Under the principle of the territoriality of enforcement measures, the enforcement officer in charge

of the attachment operation should be the authorised officer for the place where the measure is enforced, i.e., the place where the establishment which holds the account to be attached is located. This authority, determined in accordance with national law, does not prevent creditors who want to make an application to the State Officer for the place of enforcement of their choice, where this is possible under the law of that State.

- In relation to ex parte proceedings, because the attachment authorised by the order was effected by the enforcement officer, the debtor must be informed that the account has been blocked and given the opportunity to contest this attachment or to limit the amount thereof. The debtor must be given formal notice by the enforcement authority responsible for implementing the order, and this will be achieved through service with proof of receipt by the debtor, if necessary to comply with Regulation 1393/2007 on the cross border service of documents.

- The bank would be bound to respond to the enforcement officer within the time limit to be set by future provisions. The enforcement officer should be required to notify the debtor of the attachment within a specified time limit, which will also be set by future provisions.

- In view of the range of procedural costs at national level, provision may be made for establishing a single through fee to be set in advance by that Member State and which abides by the principles of proportionality and non-discrimination.

- Fees levied by the banks in an attachment operation should be capped and banking establishments should be prevented from attempting to impose charges on the non-attachable portion of the bank account because the attachment would have been ineffective because the sum in the account was immune from attachment.
Read about the position adopted by the EEJ project partners [2]

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