

Welcome on EJE Newsletter

Part 1 THE EJE PROJECT AT THE FOREFRONT OF CURRENT EVENTS IN EUROPE

The EJE project partners have adopted a position on the attachment of bank accounts.

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 EJE project partners](#)

PRESENTATION

Co-financed by the European Union, the EJE project aims to improve the enforcement of court judgments in Europe by providing European citizens, court bailiffs and enforcement officers with the information needed to enforce court judgments in the territory of another member state. This project also intends to improve the mechanisms for cooperation and communication among judicial officers in Europe. In order to reach these objectives, the EJE project is equipped with a key instrument: the EJE web site - www.europe-eje.eu - which provides citizens and legal professionals with the information on the legal tools and procedures to be used when they want to enforce a judgment in the territory of another member state.

In this regard the EJE project publishes a newsletter which aims to inform European bailiffs and law officers and people interested in the progress made with this project. It also seeks to provide information about the latest developments in European legislation and case law that may be of interest to the profession as an essential player in constructing the European area of justice, freedom and security.

► **The work of the European Parliament on the creation of a European system for the attachment of bank accounts**

On 10 May 2011, the European Parliament adopted a resolution with recommendations to the Commission on proposed interim measures for the freezing and disclosure of debtors' assets in cross-border cases. The report invites the European Commission to submit without delay proposals relating to measures allowing the freezing and transparency of debtors' assets in the form of rules that would be superimposed on national procedures and would only be applied in cross border situations. It details the methods and safeguards which these rules should make provision for.

More particularly, in relation to attachments of bank accounts, the report emphasises that:

- the rules should contain uniform provisions on jurisdiction and specify which national courts are competent;
- the order must require banking institutions to give effect to the order within a strictly defined deadline and to inform the competent authority of the success or failure of the attachment;
- the process must comply with the applicable rules on data protection;
- the measure must be designed to reduce the cost of its use to a minimum: Having regard to the significant differences in the cost of attaching bank accounts from one member state to another, an examination should be made of the issue of whether the measure sought should aim to harmonise these costs, or whether the decision on the level of those costs should be left to the Member States; in any event, these costs should not exceed a cap set by the regulation, they should be transparent and non-discriminatory, they should reflect the actual costs incurred and they should take account of the establishment of the single European area for payments, as well as the fact that these procedures should be harmonised where possible;
- as the order is made ex parte, the defendant must be formally notified and given any information needed to object to the order without delay following implementation;
- the defendant should have the right to object to an order and the grounds for objection should be harmonised.

[Read the resolution](#)

The EEJ project presented at the conference on European e-Justice

Jean-Daniel Lachkar, President of the National Chamber of Judicial Officers, gave a talk on the EEJ project at the conference on European e-Justice organised jointly by the European Commission and the Hungarian Presidency of the Council of the European Union on 14 and 15 April 2011 in Budapest.

e-Justice is a priority for the European Institutions, which came about through the launch of the European e-Justice portal (<https://e-justice.europa.eu/>). This portal is intended as an on-line, one stop shop for citizens, businesses and legal professionals alike. Representatives of the three main institutions – the European Commission, the Council of the European Union and the European Parliament – representatives of the Ministries of Justice of the different Member States and e-Justice stakeholders in Europe gathered to take stock of ongoing projects, such as the interconnection of national registers, payment on-line or the interoperability of authentication mechanisms. It was in this context that the representatives of the legal professions at European level were invited to present their contributions to the shaping of European e-Justice which is a cornerstone of the European edifice. Alongside representatives of the Council of Bars and Law Societies (CCBE) and the Council of the Notariats of the European Union (CNUE), who presented works aimed at drawing up a directory of European lawyers and a directory of European notaries, Jean-Daniel Lachkar presented the EEJ project which makes provision for the development of a web site that will provide the public with information sheets in different languages on the law and procedures for enforcing a court judgment in another Member State, as well as a European directory of Bailiffs and Law Officers. This conference was an occasion for European judicial officers to raise awareness about their extremely important role in the development of European e-Justice and more broadly in the building of an area of freedom, security and justice.

[Read the presentation given by President Lachkar \(in French only\)](#)

Part 2

OTHER EUROPEAN NEWS

Judicial Cooperation in Civil Matters

► **Promoting free movement of public documents and recognition of the effects of civil status records**

On 14 December 2010, the European Commission published a Green Book entitled "Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records". The Commission questions the ways of improving the free movement of documents and proposes avenues of reflection for remedying the administrative obstacles and difficulties faced by citizens. It also puts forward options aimed at facilitating the recognition of civil status records. Thus it proposes the introduction of optional standard forms for the most common civil status records. These would be valid throughout Europe, and they would avoid recognition and translation costs. It also proposes the automatic recognition of civil status records and legal situations through the harmonisation of existing rules. The responses to the Green Book were to be sent to European the Commission no later than 30 April. On the basis of the responses received, the European Commission will prepare two legislative proposals announced for 2013, namely a proposal on the free circulation of public documents and a proposal on the recognition of civil status situations.

[Consult the Green Book](#)

► **Promoting the general abolition of exequatur in civil and commercial matters**

On 14 December 2010, the European Commission presented a proposal for a regulation revising Regulation (EC) no. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the so-called Brussels I regulation. In pursuit of the objective of developing the European area of justice, freedom and security, the European Commission proposes the abolition of exequatur, except for decisions given in defamation cases and class actions for damages. Therefore decisions given in civil and commercial matters would automatically be enforceable throughout the European Union without the need to obtain a declaration of enforceability from the courts of the enforcing member state, as is provided for under the current version of the Brussels I regulation. This abolition would however be accompanied by administrative formalities (certificates or standard forms) as well as the introduction of legal remedies for the party against whom the enforcement is sought, either in the member state of origin (a review procedure in the case of non-appearance), or in the executing member state (in the case of a decision that is incompatible with an earlier decision or in case of a breach of fundamental rights).

[Consult the regulation proposal](#)

► **Signing the Hague Convention on the International Recovery of Child Support and other forms of Family Maintenance**

By a decision dated 31 March 2001, the Council of the European Union signed the Hague Convention, of 23 November 2007, on the International Recovery of Child Support and other forms of Family Maintenance. This Convention establishes a system of administrative cooperation between authorities of the contracting states and a system for recognising and enforcing decisions and agreements on maintenance obligations. Specifically, it makes provision for free legal assistance in child maintenance cases and effective measures for the rapid enforcement of maintenance judgments. The areas covered by the Convention are also covered by Regulation (EC) no. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

[Consult the Convention](#)

[Consult regulation 4/2009](#)

► **Promoting the adoption of measures concerning the matrimonial and property rights of international couples within the Union.**

On 16 March this year, the European Commission published proposals for a regulation to bring legal clarity to the property rights for married international couples and for registered partnerships with an international dimension. The first regulation is intended to apply to married couples, as marriage is a legal institution recognised in all the 27 member states of the European Union, and the second to registered partnerships, which are a legal institution recognised in 14 member states of the European Union (Germany, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Hungary, Ireland, Luxembourg, the Netherlands, Slovenia, Sweden and the United Kingdom). The propositions do not harmonise nor do they amend the substantive legal provisions on marriages and registered partnerships in the member states. Both these proposals are specifically aimed at enabling international couples to determine the legislation applicable to their property rights and the competent jurisdiction, particularly when the marriage or partnership ends. They are intended to establish rules for recognising and enforcing court judgments relating to the assets of the couples concerned in all the member states of the European Union by way of a single, streamlined procedure.

[Consult the proposal relating to matrimonial property regimes](#)

[Consult the proposal relating to registered partnerships](#)

Citizenship and fundamental rights

► **Publication of the first annual report on the application of the Charter of Fundamental Rights**

On 30 March 2011, the European Commission published its first annual report on the way in which the Charter of Fundamental Rights is applied in the European Union. By way of a reminder, the Charter of Fundamental Rights became legally binding when the Lisbon Treaty came into force on 1 December 2009, both for the EU institutions when they draw up new European legislative provisions and for the authorities of the member states when they implement EU law. This report highlights the fact that the Charter concerns a whole series of policies that are the responsibility of the Union. Highlighting the fact that the Charter is often misunderstood, the report provides clarification for cases where the Charter applies and where it does not. This report also seeks to help European citizens ascertain the body they must address when they consider that their fundamental rights were not respected by an EU institution or a national authority. It is up to the European Commission to ensure that fundamental rights are actually implemented so that they become a reality for citizens. The Commission will present this report every year in order to measure the progress made with the implementation of and compliance with the Charter.

[Consult the report](#)

[Download the brochure](#)

► **Publication of a Handbook of European Law on Discrimination**

In March this year, the European Court of Human Rights and the European Union Agency for Fundamental Rights published a "handbook of European law on non-discrimination". This handbook sets out the context and scope of the European provisions relating to non-discrimination, it examines the categories of discrimination and the corresponding defences and it details the case law of the ECHR and the Court of Justice of the European Union. It also contains items relating to the issue of proving discrimination.

[Download the manual](#)

E-Justice

► Promoting the interconnection of commercial registers in Europe

On 24 February 2011, the European Commission published a proposal for a directive on the interconnection of trade and companies' registers within the European Union. This proposal aims to facilitate cross border e-access to information contained in these registers (legal form of the business, registered address, capital, legal representatives, etc.). It seeks to ensure that the data contained in the commercial registers is kept up to date as well as making access to that information easier. Currently, the commercial registers are organised at national, regional and even local level, and they are able to exchange information in an effective, transparent manner. The proposal is currently being studied by the European Parliament and the Council of the European Union.

[Read the directive proposal](#)

► New online forms on the e-Justice portal

The European e-Justice portal now provides European citizens and legal professionals with dynamic forms for the European order for payment procedure, legal aid applications in another member state and the application for a hearing by video conference. These forms were drawn up in line with the relevant regulations and directives, and they contain additional features to the forms previously available on the European Judicial Atlas, such as the possibility of saving a preliminary draft and the translation of templates without changing page numbers.

[Try out the dynamic forms](#)

Internal Market

► Combating late payments in commercial transactions

On 16 April 2011, the European Parliament and the Council of the European Union adopted Directive 2011/7/EU on combating late payment in commercial transactions, which will replace Directive 2000/35/EC as of 16 March 2013. This new Directive, which will apply to all payments made as remuneration for commercial transactions between the economic operators or between economic operators and public bodies, introduces new rules on time limits for payments. As regards transactions between undertakings and public bodies, the Directive requires States to set a maximum time limit of 30 days, which may in very exceptional circumstances be extended to 60 days. As regards transactions between private operators, the rule is payment within 30 days where the contract is silent. In relation contractual time limits for payments between undertakings, these are now capped at 60 days, even if it is possible to depart from this in a contract by explicitly agreeing on additional time limits, and provided this extension is not a manifest abuse against the creditor. Furthermore, undertakings are now entitled to claim interest for late payments without any prior reminder being necessary, and they will be able to obtain a flat rate indemnity of a minimum of 40 euros for the costs of recovery. They will also be able to claim damages for all other reasonable recovery costs. This Directive must be transposed before 16 March 2013.

[Read the Directive](#)