



Position Paper - European Bank Attachments order
June 2010

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European Bank Attachments Order

**Presented by the International union of the judicial officers
June 2010**

The European commission wrote a green book on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts (SEC(2006)1341), with for objective of launching a broad consultation among interested parties on how to improve the enforcement of monetary claims in the European Union. The green book describes the problems inherent in the current situation and proposes the creation of a European system for the attachment of bank accounts as a possible solution. The Commission invited interested parties to submit comments.

The International Union of the judicial officers (UIHJ) is a nongovernmental international organization created in 1952. The UIHJ has the role to represent its members to international organizations and to ensure collaboration with the national professional bodies. It works to improve national procedural law and international treaties and makes every effort to promote ideas, projects and initiatives which help to move forward and elevate the independent status of the judicial officer.

Furthermore, the UIHJ takes part in the structural actions of officers of Court, notably via its involvement in the setting up and development of national professional organisations with a view to their becoming members of the UIHJ.

It participates in investigation missions in relation to governments and international bodies.

Lastly it promotes, wherever possible, the creation of a body of officers of Court made up of professionals and high-level legal officers fulfilling the task of the officer responsible both for the service of judicial and extra-judicial documents and the enforcement of orders.

An enforcement measure necessarily impacts the private life of the citizen who is subjected to it. It is very difficult to harmonize or to unify civil enforcement procedures on a European or international level because enforcement measures are related to the culture of each State.

If it is important to develop minimum standards, it is also necessary to consider human rights, rights of defense, legal security, or right of the defendants to information relating to the procedure in progress.



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1. Conditions of issue

If it is not the case where the creditor has an enforceable title (a legal decision or an authentic instrument), **it is essential that the creditor shows that if his claim is grounded and can be provisionally estimated together with an urgency to implement the considered measure**, the urgency being characterized by facts such as circumstances likely to threaten its collection.

2. Range of the European Bank Attachment Order

The UIHJ does not approve the method which would consist in authorizing a withdrawal or a transfer of the funds without control, because that would not offer sufficient guarantees and legal security for the debtor. **The European bank attachment order should be limited to conservative measures** preventing the withdrawal and the transfer of sums held on bank accounts.

The European bank attachment order should have a wide geographical field. According to the opinion of the UIHJ, the procedure should apply not only to cross-border litigations but also to strictly domestic litigations.

3. Recognition

In order to ensure its effectiveness, the **procedure of exequatur of the decision authorizing the European bank attachment order should necessarily be abolished**

4. Aspects

The attachment on a bank account is an enforcement measure which cannot be compared with a simple service of document carried out for example within the framework of article 14 of Regulation (EC) n°1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters.

5. Implementation

The attachment on a bank account is necessarily conceived within the framework of a trilogy: applicant, defendant and third party. By its effectiveness and its speed, the attachment can have devastating and disastrous effects on the situation of defendants, particularly when they are legal persons (the blocking of the accounts can lead to the impossibility of paying employees' wages, and can sometimes lead to bankruptcy or voluntary liquidation). Because of these effects and to meet security standards as well as professional secrecy, **this enforcement measure should be accomplished by a qualified, competent and responsible professional, drawing up authentic documents: the enforcement agent (judicial officer).**



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It is furthermore the enforcement agent (judicial officer) who should act in order to transform the attachment into an executory measure, according to the domestic or Community provisions, depending on circumstances at this moment. After that, the distribution of monies should be ruled according to domestic legal provisions.

6. Bank Secrecy

As a third party, the bank should not be able to oppose to the enforcing authority its professional secrecy. On the contrary, the bank should be obliged to declare without delay to the enforcing authority the extent of its obligations towards the debtor as well as how they could be affected and, when required, the transfers of debts, delegations or previous attachments.

7. Access to information

For the bank attachment to be effective and efficient, and for reasons of legal security, **the enforcement agent (judicial officer) in charge of the measure and carrying an executory title - and him/her only - should have a complete access to information allowing him to achieve his mission**, in particular to avoid the harmful effects of the "*Fishing Arrestment*" mentioned in the green book

8. Information of the debtor

The bank attachment should be carried out without preliminary information of the debtor (element of surprise). Taking account of the rights of the defense of the debtor, **it is essential that the seized debtor is formally and duly informed of the bank attachment and this within a given time** for example within eight days of the date of the measure. In order to ensure safety and legal security, **this information should be made by an authentic document served by an enforcement agent** (judicial officer).

9. Nullity of the measure

It is important to avoid that conservatory measures are carried out only to exert a pressure on the debtor. **The bank attachment order should be null and void when the measure is not implemented within a certain time.**

Should the creditor fail to start proceedings to obtain a court decision relating to his/her claim, within one month for example, with the obligation to inform the bank by an authentic document served by an enforcement agent (judicial officer) as soon as the proceedings have been initiated, **the bank attachment should be null and void.**



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