



Brussels, 30 March 2007

**Position Paper of the European Federation of Building Societies  
concerning the Green Paper on improving the Efficiency of the Enforcement of  
Judgments in the European Union:  
the Attachment of Bank Accounts**

The members of the European Federation of Building Societies welcome the European Union's intention to introduce a swiftly functioning and efficient instrument of attachment of bank accounts. The experience of our member institutions shows that provisional cross-border enforcement procedures in the single European market have been extremely difficult so far and actually even been impossible in part. Market actors would be all the more satisfied if they had the choice between provisional attachment measures under national law and under European law in future. The procedure should permit creditors to choose whether they wish to obtain an attachment order under EU law in order to recover monetary claims or whether they prefer to avail themselves of national instruments for this purpose. The rules governing an EU attachment order should also take into account that the outlays and costs arising to credit institutions in this context should be appropriate in level. The costs generated by creditors through their decision to seek enforcement should not be allowed to be shifted to credit institutions. We therefore wish to comment as follows on the questions below taken from the Green Paper:

***Question 1: Do you see a need for a Community instrument for the attachment of bank accounts as a way to improve debt recovery in the EU? If so, should it create a self-standing European procedure or harmonise Member States' legislation on the attachment of bank accounts?***

In view of the difficulties existing in respect of cross-border enforcement procedures mentioned also by the European Commission in its Green Paper, we would regard an EU regulation on provisional attachment of bank accounts as reasonable and necessary. To this end, a self-standing procedure at the EU level should be created and exist in addition to national instruments. This means for market actors that they would be able to opt in favour of the European procedure instead of the existing national measures. However, this should be limited to blocking a debtor's funds in his bank account.

***Question 3: Should an attachment order be available in all of the four circumstances outlined above in paragraph 3.1 or only in some of them?***

From our point of view, there are no objections to permitting the procedure for provisional attachment of bank accounts to be started already before the beginning of the main court proceedings. This means that creditors should be able to file an application at any moment. After all, the measure blocking a debtor's funds in his account is only provisional.

***Question 4: What onus should lie on the creditor to persuade the court that he has a claim against the debtor sufficient to justify the granting of an attachment order?***

***Question 5: Should urgency be a condition for granting an attachment order prior to obtaining an enforceable title? If so, how should this condition be defined?***

In order to prevent abuse, creditors seeking to obtain a provisional attachment order for a bank account should be required in any case to substantiate the rightfulness of their claims on the basis of a summary procedure. But, in order that uniform rules pertaining to the EU attachment of bank accounts can be developed EU-wide, it is then a simple matter of logic that there would be a need for closely defined stipulations of the elements of proof required for substantiating the rightfulness of a claim. Urgency should be another unalienable element justifying applications to be filed for provisional attachment orders of bank accounts. In this regard a case of urgency exists in our opinion especially where creditors would otherwise run the risk of losing their claims. This would always be the case with credit balances kept in current accounts or in untied savings accounts, for instance. The urgency requirement must be especially stressed because, otherwise, it could not be seen why there should be a need for applying for a provisional order of attachment. For if there were no such requirement, creditors could just as well take court action right away, prove the rightfulness of their claims in the main proceedings and subsequently enforce their claims in the manner prescribed by the law. Systems that do not require the rightfulness of claims to be substantiated and the urgency of applications for an attachment order to be proven would run counter to the rights and interests of debtors. Besides, it would also be difficult to make customers of credit institutions understand the reasons why funds have been blocked. Only in cases of existing legally enforceable claims could it be considered to abstain from requiring proof of urgency.

***Question 6: Should the court have discretion when granting an attachment Order to require the creditor to provide a security deposit or a bank guarantee? How should the amount of any such security deposit/guarantee be calculated?***

The purpose of a security deposit that must be made when filing an application for a provisional attachment order is to protect debtors from unjustified enforcement. This may happen especially where, pending conclusion of the main proceedings, the court ultimately rules that the creditor's claim is unjustified. The damage debtors would sustain from such unjustified enforcement would be funded from the security deposits made by the creditors. It cannot be excluded that debtors would sustain damage not only from enforcement in the proper sense, but also from the fact that money is blocked in their accounts. For instance, damage may arise to them where funds are blocked in a current account because this would preclude them from using the cashless money transfer facility. Where funds are blocked in savings accounts tied to specific arrangements, it may mean for the owners of such accounts that they lose the advantages agreed upon with the account-keeping bank serving notice of the termination of the agreed special arrangement, precisely because of the blocking of funds. Consequently, it should be left to the discretion of the courts to decide whether security deposits must be made and, if so, what the amount of such deposits should be.

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***Question 7: Should the debtor be heard or notified prior to the granting of a bank attachment?***

The question whether the debtor is to be heard should be decided upon by the competent court in anyone case. For the point ultimately is to weigh the interests of the debtor against those of the creditor. The outcome of such weighing of interests will vary from one case to another. Where, for example, an enforceable title already exists against the debtor recognising the creditor's claim as rightful, the interest in hearing the debtor will be less pronounced. But, in any event, the interests of the credit institution acting by way of execution of a court order should be taken into account as well, because the institution may sustain damage under the attachment order as well, should it be unable to identify the debtor, for example.

***Question 8: What should be the minimum degree of account information required for the issue of an attachment order?***

The data should permit the debtor to be sufficiently identified. This is of vital importance also for credit institutions in charge of execution. This means for creditors that, as a minimum, they must know the name (company name, where appropriate) of the debtor and his address. In addition, they should also be able to give the debtor's date of birth. If the account number and bank code and/or IBAN and BIC codes were known as well, this would make it easier to identify debtors, although the latter codes are not absolutely necessary.

***Question 10: Do you agree that the attachment should be limited to a specific amount? If so, how should this amount be determined?***

Considerations to regulate in general the maximum amount of money subject to attachment should not be held, but the yardstick should be the amount of the contested claim of the creditor and of the costs stemming from interest due as well as from enforcement fees.

***Question 11: Do you consider that the banks should be paid for the execution of an attachment order? If so, should the amount to which they would be entitled be capped? Should the creditor have to pay the bank in advance or should the amount due be deducted from the credit balance of the account seized?***

The banks executing the attachment order should in any event be compensated for in respect of its personnel and technical outlays as well as in respect of its legal liability risks. Otherwise credit institutions would be forced to require all their customers to share in the funding of attachment costs. This would mean a highly undifferentiated and inequitable distribution of attachment costs. It would be more to the point to hold the originator of such costs, i.e. the debtor, responsible for meeting them. Where attachment orders of bank accounts are implemented by persons specifically appointed for this purpose by the state, e.g. bailiffs, provision is, as a rule, also made for the service charges due to such a person. It would therefore be hard to understand if, on the other hand, credit institutions were not compensated for in respect of their expenditures. Credit institutions should be paid by creditors in advance and should not be left with the need to recover their costs from the supposedly bankrupt debtor. For the creditor is the originator of the

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attachment costs, after all. For this reason, it would appear to be perfectly in order that creditors take the risk and the initiative of enforcing their claims in their own best interest. It should

therefore not be permissible to shift the costs of obtaining an attachment order to credit institutions. Moreover, the level of the remuneration due to credit institutions should also be fixed, because costs arise to credit institutions independently of the amount of the contested claim.

***Question 14: Should the question whether amounts are exempt from execution be dealt with ex officio when issuing/executing the attachment or should the onus be on the debtor to object on this ground? How and by whom should the amount exempt from execution be calculated and on what basis?***

It is essential that an amount exempt from execution be fixed under a European attachment order. For, if no such clearly defined amount is fixed together with the attachment order, creditors would again face the need to recover their monetary claims with the help of their national courts that would then have to fix an amount exempt from execution. Or else, the EU attachment order would run the risk of being contrary to the law, because every debtor is entitled to a minimum amount of subsistence allowance exempt from execution. Attachment without previous fixation of a general execution-free minimum would most probably be illegal under the legal systems of most countries. On the other hand, fixing a uniform execution-free amount, Europe-wide, would appear to be counter-productive because the income situation continues to vary strongly as between Member States. So, the best option would be a procedure where under the competent court fixes the income limit exempt from execution according to the law applicable in the debtor's country. It follows there from that the applicable law depends on the debtor's ordinary place of residence.

***Question 15: Do you agree that the exequatur procedure should be abolished for the attachment order?***

Insofar as a European order for the attachment of bank accounts is adopted, the exequatur procedure should be lifted. For, if a national law court in whose area of jurisdiction the respective credit institution is located had to recognise in addition the European order for the attachment of bank accounts within the framework of an exequatur procedure, the meaningfulness and purpose of a European attachment order for bank accounts would be questionable. The EU order would not be more effective than an attachment order of a Member State under its national law.

***Question 16: How should an attachment order be transmitted from the issuing court to the bank where the account is situated? What time limit should the bank have to respect in order to implement an attachment? What should the effect of an attachment order be on ongoing operations?***

Transmission from the issuing court to a bank of an attachment order should be made dependent on the rules Member States have adopted to this end. The length of time allowed for implementing the order should, however, be harmonised EU-wide. The effect of the order for the attachment of a bank account is that the debtor is no longer able to give instructions to his bank and that his bank does not accept instructions from the debtor any longer.

Within the framework of electronic delivery mentioned in the Green Paper, we should like to point out a number of aspects that would have to be taken into account in this regard, in our opinion. In

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view of credit institutions' large volumes of incoming electronic mail, a certain length of time is necessary before knowledge of an attachment order can be assumed to have safely reached the

correct recipient and to have been processed. It must therefore be recommended to link proper and effective delivery of an order for attachment of a bank account to a previously designated e-mail address. Moreover, it would be necessary to safeguard in any event that the authenticity of e-mail messages can be established beyond doubt, i.e. that a guarantee can be given to the sender/the competent court.

***Question 17: Do you agree that upon receipt of an attachment, it should be the duty of the banks to inform the enforcement authority whether and to what extent an attachment has successfully secured the monies liable to be paid by the debtor to the creditor?***

Credit institutions should be in a position to furnish information of this kind in their own language to the respective enforcement authority. Translation costs, if any, should not be debited to credit institution accounts (cf. justification offered under Question No. 11). It may also be necessary to bear in mind the fact that, insofar as it is known to date, it will be the national enforcement authority that has undertaken to actually satisfy claims from the debtor's account, i.e. to take responsibility for the execution procedure. Credit institutions should not be forced, at their own costs, to provide identical information more than once, i.e. to each of the enforcement authorities concerned. It would rather seem to be more recommendable to consider whether there should be a general interchange of data among authorities.

***Question 18: When and by whom should the debtor be notified formally that an attachment has been granted and taken effect?***

Notification should also be a task of enforcement authorities or creditors. It must be pointed out also in this context that the procedure is one that has been launched by a creditor against a debtor. Creditors seek to recover from their debtors claims, either recognised or presumed, that originate in the legal relationship existing between them. The obligations arising from such relationship should not be allowed to be easily transferred to the respective account-keeping credit institution. The question whether a credit institution informs its customers is one that touches upon a matter of entrepreneurial freedom and company policy as well the bank's relationship with its customers: for this reason, it should therefore be decided upon by credit institutions.

***Question 19: Should the attachment be revocable or lapse automatically if the creditor does not file the principal action within a specific time period?***

To prevent abuse and to protect debtors, attachment orders should automatically lapse after a certain length of time. However, debtors should be in a position to extend this period. This would have to be justified on objective grounds and would increase legal security and legal clarity also for credit institutions as third parties.

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***Question 21: Should the creditor's liability in case the attachment proves to be unfounded be harmonised on a European level and, if so, how?***

***Question 22: Should there be European rules that determine the ranking of competing creditors? If so, which principle should apply?***

The liability and ranking of debtors should not be governed by national provisions. The EU attachment order should only block the debtor's funds in his account. This would do sufficient justice to the purpose the EU Commission is pursuing through its Green Paper, i.e. to prevent that debtors have an account in one of the other EU Member States in order to escape enforcement of claims against themselves. There is no further reason requiring regulation of the liability of debtors or their ranking.