Efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts. Green Paper

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The Committee on Legal Affairs adopted the initiative report by Kurt **LECHNER** (EPP-ED, DE) in reponse to the Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts.

The report welcomes the fact that the Commission has taken an initiative aimed at establishing a cross-border European procedure for temporarily freezing bank deposits. It suggests that, when further studies are conducted, statistics should also be compiled with a view to gauging the real extent of those instances in which debtors evade justice and hence to giving a more accurate indication of the expediency of the measures to be proposed.

The committee believes that a standard European system should exist independently of, and in addition to, the Member States' respective national enforcement rules. It considers that a coherent and easy-to-use self-standing European procedure for attachment of bank accounts, subject to strong procedural safeguards, is preferable to harmonisation of Member States' legislation.

In addition, the report maintains that: i) the above procedure should apply only to cross-border cases; ii) the regulation should be confined to attachment of accounts; iii) the temporary freezing of bank deposits and under no circumstances extend to satisfaction of the creditor; iv) a legal basis for such a procedure might be found in Article 65(c) of the EC Treaty.

MEPs are of the opinion that orders should freeze accounts, not transfer funds until there is a subsequent court order from the Member State where the account is held, which should also resolve any issue of priority of claim. They consider that assets over the amount of the monetary claim, including costs, should not be frozen. Moreover, they state that justification for an order is necessary, such as risk of dissipation of assets. They point out that that there should be safeguards to prevent orders from covering more accounts than is necessary.

The committee also highlights the following issues:

- there has to be a careful balance between the rights of creditors to recover debts and the provision of adequate protection for defendants;
- where a creditor has had a bank account attached without good reason, it might be appropriate for him to be made liable for the resulting damage to the debtor;
- sufficient information to identify an account must be given, even if banks have to conduct searches on name and address, which must be done diligently;
- it is appropriate to examine the question of reimbursing the costs incurred by banks in processing account seizures;
- the creditor should be obliged to institute the main proceedings within a fixed time limit;
- an extension in the event of outstanding legal proceedings should be permitted provided the proceedings are being conducted with due diligence;
- attachment of bank accounts needs to be subject to a quantitative limit in order to prevent too much money being frozen for the benefit of the creditor and to protect the debtor;

- the need to protect the debtor to the extent that unjustified damage to his reputation must be avoided and he must be guaranteed the wherewithal to live on;
- to protect the debtor and prevent abuse by the creditor, for as long as there is no unappealable enforceable title, the creditor should be required to provide security, the amount of which should be based on the sum to be frozen;
- a debtor should be entitled to appeal and allowed to end the attachment by providing security;
- trust accounts need to be specially protected against attachment;
- as regards the service of attachment orders, that uniform standards need to be laid down within the EU to govern communication between courts and banks;
- attachment orders should be transmitted by means that guarantee service upon the bank by the first day after transmission and processed within 24 hours of identification of the account;
- believes that formal notification must go from the bank to the enforcement authority and the creditor as to whether the amount liable has been secured;
- the bank must also formally notify the debtor when the attachment order becomes effective;
- considers that standardised formal notices, available for all official languages of the European Union, that eliminate or reduce the need for customised translations may be desirable.

The committee is opposed to a standard EU-wide attachment exemption level and believes that it should be up to the debtor to invoke the respective national limit governing non-attachable amounts.

Lastly, the Commission is called upon, before it submits any proposal, to clear up the – in some cases – thorny unresolved issues by conducting detailed, wide-ranging studies and in particular to carry out a legislative impact assessment.