

Effective enforcement of judgments in the EU: the transparency of debtors' assets

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PURPOSE: to launch a broad consultation among interested parties on how to improve the transparency of debtors' assets in the European Union (Green Paper).

BACKGROUND: there is a risk that problems of cross-border debt recovery may be an obstacle to the free circulation of payment orders within the European Union and may impede the proper functioning of the Internal Market. Late payment and non-payment jeopardise the interests of businesses and consumers alike. This is particularly the case when the creditor and the enforcement authorities have no information about the debtor's whereabouts or his assets.

The search for the debtor's address and/or for information about his financial situation is often the starting point of enforcement proceedings. At present, transparency of debtors' assets is generally achieved at national level through different sources of information, in particular through registers and the debtor's declaration. While the basic structures of the national systems appear similar, there are **considerable differences in the conditions of access, the procedures for obtaining information, the content and the overall efficiency of the systems.**

There are two different kinds of techniques providing access to information: 1) the first is a system of declaration of the entire patrimony by the debtor. In some Member States, there is a similar system under which the debtor is also obliged to disclose his assets, but only to the extent necessary for the satisfaction of the claim. 2) other Member States, especially those where the debtor is not required to disclose his patrimony, allow access to search systems which provide specific information.

The cross-border recovery of debts is hampered by the differences between the national legal systems and by insufficient knowledge on the part of creditors about the information structures in other Member States. However, the **similarity of the underlying structures of the legal systems of the Member States could provide a basis for approximation.** As an objective, possible measures at European level could improve the transparency of the debtors' assets and the right of creditors to obtain information whilst respecting the principles of the protection of the debtor's privacy, which counterbalance the creditor's right to efficient recovery and which are prescribed by the Data Protection Directive 95/46/EC.

CONTENT: the purpose of this Green Paper is to launch a broad consultation among interested parties on how to improve the transparency of debtors' assets in the European Union which is provided through registers and by the debtor's declaration. It focuses on improvements of public enforcement of judgments. This means that neither questions of (material) limits to enforcement nor the roles of private or semiprivate organisations in the enforcement process are discussed.

The Commission believes that it is worth taking into account a **number of measures** that might improve the current situation, helping to ensure that the creditor obtains reliable information on his debtor's assets within a reasonable period of time, and in particular:

- **Drawing up a manual of national enforcement laws and practices:** such a manual could contain all the sources of information about a person's assets which can be accessed in each Member State, the contact addresses of persons who can obtain access to that information if access is limited, the costs of access and other relevant details. This manual could be made available on the website of the European Judicial Network in civil and commercial matters.
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- **Increasing the information available in and improving access to registers (social security, tax registers):** the main sources of information are public records, and the most important of these are commercial registers.
- **Exchange of information between enforcement authorities:** in the absence of Europe-wide registers - one option could be to enhance cooperation between national enforcement authorities and introduce the direct exchange of information between them. Enforcement bodies in one Member State would be able to request the assistance of the competent bodies in other Member States. In this regard, the existing Community instrument on the mutual assistance of tax authorities could serve as a model.
- **Measures relating to the debtor's declaration:** one possibility would be a Community instrument setting out the obligation of Member States to introduce a procedure for the taking of a debtor's declaration, but leaving them discretion as to the conditions under which such a declaration would have to be made. Another option would be to create a Community instrument setting out the obligation of Member States to introduce a procedure for the taking of a debtor's declaration or the introduction of a uniform "*European Assets Declaration*" which would oblige debtors to disclose all assets in the European Judicial area.

The Commission invites interested parties to submit comments by 30 September 2008.