Civil and commercial judicial cooperation, enforcement of judgments: Brussels I, Lugano Conventions

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This document constitutes a Staff Paper forming an annex to the Green Paper on improving the efficiency of the enforcement of judgments in the European Union, with specific reference to the attachment of bank accounts. It is intended to provide additional background information on the questions raised and, on the different approaches of Member States' legal systems towards them.

The attachment of bank accounts exists in practically all Member States and can be a powerful weapon against bad debtors. However, while debtors are today able to move their monies almost instantaneously out of accounts known to their creditors into other accounts in the same or another Member State, creditors are not able to block these movements of monies with the same swiftness. Although provisional remedies, which secure the future enforcement of a monetary claim by freezing bank accounts, are available in all Member States, the current legislation does not ensure that such remedies are recognised and enforced throughout the EU. The paper points out that the Brussels I Regulation does not provide adequate remedies. A consistency of approach amongst the Member States as regards the attachment of bank accounts might also help to avoid potentially discriminatory effects where remedies in different Member States create disparity in outcomes quite apart from the potential, and probably actual, affects on the functioning of the Internal Market.

The paper goes on to look at the possibility of creating **a European system for the attachment of bank accounts.** This would allow a creditor in certain circumstances to secure the payment of a sum of money due to him by preventing the removal or transfer of funds held to the credit of his debtor in one or several bank accounts within the territory of the EU. The attachment order under this system would be a protective measure issued by a court in summary proceedings which would only allow a creditor to block funds, not to effect their transfer.

The decision whether or not to put forward a legislative proposal for the attachment of bank accounts will be subject to an impact assessment in which will be analysed the extent of the problems of cross-border debt recovery and the likely effectiveness of possible alternatives to a European instrument. An obvious alternative to Community action would be to maintain the status quo; another might be to abolish the exequatur procedure for attachment orders without at the same time establishing common standards for the procedure of granting attachment orders. The possibilities outlined in the Green Paper and Staff Paper are not intended to prejudice the result of the impact assessment.

There are two different possibilities for creating a European system for the attachment of bank accounts: one would consist of designing a new European procedure which would be available to citizens and companies in addition to existing national procedures for banking seizures. Alternatively, Member States' national rules on the attachment of bank accounts could be harmonised by way of a European Directive which would guarantee that the same standards for the granting of an attachment order apply throughout the EU. In this case, the rules on provisional and protective measures in Regulation Brussels I would need to be amended in order to ensure that an attachment order issued in one Member State is recognised and enforced in all other Member States.

The creation of a new European procedure would have the advantage that it would supplement the existing remedies under national law without requiring Member States to substantially modify their

national enforcement systems. Given the wide divergence of these systems, this solution might be preferable. On the other hand, the Commission's approach to juxtaposing self-standing European procedures with procedures under national law has been criticised for creating an overcomplicated system of remedies which would hamper rather than encourage individuals and businesses to exercise their rights. One solution to this situation would obviously be to create a European procedure which would not only be available for the attachment of bank accounts situated in a Member State other than the one where the order was issued but also for the attachment of bank accounts situated in the same Member State.

Irrespective of the type of instrument chosen, a Commission proposal on the attachment of bank accounts would have to deal with a number of issues which are discussed in more detail in the paper. These include clarification of the procedure for obtaining an attachment order, defining the amount and possible limits of the attachment order, and assessment of the effects of the order and procedural safeguards for the debtor.

The paper describes the procedure for obtaining an attachment order, and details possible features, including circumstances where a creditor can apply for an attachment order, the conditions of issue, the details of account information required and jurisdictional issues. It also discusses the effects of an attachment order, including how and when the attachment order should become effective; how the defendant might be adequately protected during the procedure; what impact the attachment order will have on other creditors and their possible ranking and finally, how an attachment order can become "executory", so that, after the court has made an order on the merits, the claimant can receive payment out of the attached account.