

# A European system for the attachment of bank accounts

Procedural aspects



This project is co-financed by the European Union

## Europe

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### The EJE project partners' position

The EJE project, which is co-financed by the European Union, brings together the representative organisations of the profession of judicial officers in Germany, Belgium, Scotland, Hungary, Italy, Luxembourg, the Netherlands and Poland in order to improve the enforcement of court judgments in Europe.

This position has been drawn up as part of restarting work on creating a European procedure for the attachment of bank accounts.

In this respect, the EJE project partners recall that the European Commission highlighted in its Green Paper dated 24 October 2006

(COM(2006)618) that the European order for the attachment of bank accounts 'would have protective effect only, i.e. it would block the debtor's funds in a bank account without transferring these to a creditor.' Therefore, this document addresses only the attachment procedure and only incidentally touches on the issue of its transformation.

The members of the EJE project support the creation of a European procedure for the attachment of bank accounts based on the principles given below.

### 1. Obstacles to the cross-border implementation of an order for the attachment of bank accounts

Each State has a monopoly of jurisdiction over its own territory. Only the authorities in the place where the asset is held may implement enforcement orders.

In view of this principle, and in order to avoid the order's having any off-shore impact, in the present legislative situation national judges refuse to order the attachment of a bank account located abroad.

A creditor wishing to attach sums deposited in a foreign bank account must then refer the matter to the judge in the country where the bank is located.

However, there are disparities between Member States' national legislation. Obstacles for creditors are created by the differences in legal systems, varying procedural requirements and linguistic barriers, which all results in difficult access to the law and entails additional costs and delays in implementing the procedure, even though the main point of a procedure to attach bank accounts is that it be done quickly.

The attachment of a debtor's bank accounts should be an effective way for a creditor to recover sums of money due to him. At a time when, because of the free movement of people, companies, services and goods, debtors increasingly have bank accounts in different Member States and at a time

when the development of technologies has enabled sums of money to be transferred very quickly from one Member State to another, the current system does not allow these funds transfers to be blocked just as quickly and at a low cost.

Given these obstacles, it seems to us that it is a necessity to create a European order for the attachment of bank accounts which would enable accounts in different Member States of the EU to be attached while still ensuring a high degree of protection of debtors, in particular through allowing the notification of the attachment at short notice. Of course, this European attachment system must, considering the requirements of the Community Treaties, comply with Member States' sovereignty in terms of civil enforcement procedures. For this reason, we must comply with the principle of territorial jurisdiction over the methods of enforcement, while also enabling the attachment order to be circulated.

### 2. Procedural aspects

**We recall that the outcome of the public hearing organised by the European Commission on 1 June 2009 was that the European procedure for the attachment of bank accounts would consist of the following:**

- ▶ proceedings without mandatory representation (in line with existing European procedures);
- ▶ issue of the order following ex parte proceedings;

- ▶ abolition of exequatur;
- ▶ notification of the debtor and option for debtor to contest the attachment;
- ▶ procedure using forms (in line with existing European procedures - pre-prepared forms available in all the languages of the European Union).

For the procedure's effectiveness to be enhanced and for the debtor to be fully protected, judicial officers/enforcement agents must be competent to make the attachment of the property in the hands of the bank, as the 'third party debtor', and to notify the debtor of the attachment.

A judicial officer's intervention - as the enforcement agent under the European procedure for the attachment of bank accounts - guarantees legal certainty and the protection of the debtor's rights.

This protection is crucial, given that a European order for the attachment of bank accounts would be issued following *ex parte* proceedings. Notification of the debtor is the first of these guarantees. Only the judicial officer is able to ensure that the debtor is given adequate information.

#### **The following principles must be taken into account:**

- ▶ a creditor who does not have an enforceable right must be authorised by a judge to carry out the attachment of a bank account in another Member State. A creditor who has an enforceable right and who wishes to carry out an attachment would not have to refer the matter to a judge. It is sufficient for him to give this right to the enforcement agent, accompanied by a revised Brussels I certificate (for cases of abolition of enforcement under the revised Brussels I Regulation).
- ▶ Pursuant to the principle of territoriality as regards enforcement means, the enforcement agent in charge of the attachment operation is the agent of the place where the order is to be enforced, i.e. the place where the bank holding the account to be attached is situated. The jurisdiction of the enforcement agent shall be governed by national laws and, especially, cannot prevent Member States to maintain the rule giving to a creditor the right to choose a judicial officer in the territory of the Member State of the place of enforcement.
- ▶ To the extent that the proceedings are *ex parte*, as soon as the enforcement agent has made the attachment authorised by the order, the debtor must be informed that his account has been blocked and must be put in a position to contest the attachment or restrict its amount. The debtor must then be formally informed by the enforcement authority responsible for implementing the order, which then makes an accompanying notification of the proof of the debtor's receipt of this information. The services of documents by postal services directly to a debtor, omitting the judicial enforcement officer, wouldn't be safe.
- ▶ In order to ensure enhanced debtor protection, the notification of the attachment to the debtor, where this occurs in a cross-border situation

(i.e. where the debtor resides in a different Member State to the place of enforcement of the order, that is, the place where the account to be attached is located), must be carried out in compliance with Regulation (EC) No 1393/2007 on the cross-border service of legal documents.

- ▶ The bank would be obliged to answer questions from agent of execution within a set time period established by the future regulation, whereas the agent of execution would be obliged to denounce the seizure to the debtor within a set time period established by the future regulation.

#### **The procedure may be as follows:**

1. A creditor, if he does not have an enforceable right, applies to a competent judge for a European order for the attachment of bank accounts - form 1 (application).
2. If the conditions are met, the judge issues him with an order as soon as possible. This judgment is accompanied by a 'European certificate' issued by the judge (form 2) (certificate of the kind accompanying a judgment issued by a judge under Regulation (EC) No 861/2007 establishing a European Small Claims procedure - this certificate enables the judgment to be recognised and enforceable in other Member States without an exequatur procedure having to be undergone);
3. The creditor gives the European order for the attachment of bank accounts, accompanied by form 2, to the judicial officer/enforcement agent of the bank holding the account.
4. If he has an enforceable right, the creditor gives the enforceable right, accompanied by the European certificate obtained under the revised Brussels I Regulation, to the judicial officer/enforcement agent of the bank holding the account.
5. The judicial officer/enforcement agent carries out the attachment in the bank using form 3 (attachment form) accompanied by the attachment order and form 2 (certificate) (or the enforceable right and the revised Brussels I certificate).
6. The judicial officer/enforcement agent carries out the notification of the attachment using form 4 (attachment notification form) accompanied by the attachment order, form 2 (certificate) (or the enforceable right and the revised Brussels I certificate) and form 3 (attachment form).
7. The judicial officer/enforcement agent issues the creditor with a certificate of completion of the attachment by giving him forms 3 (attachment form) and 4 (attachment notification form).

#### *Transformation of the attachment:*

8. Within a set time period, the creditor must file an action on the substance of the matter in order to obtain an enforceable right. A judge issuing a judgment of an enforceable nature must accompany this judgment with a European certificate (European order for payment/European enforceable right certificate/Small Claims settlement certificate/future revised Brussels I certificate) enabling the recognition

and enforcement of the judgment in the various Member States of the European Union.

**9.** The creditor gives the enforceable judgment, accompanied by the European certificate, to the judicial officer/enforcement agent of the place where the bank holding the account is situated.

**10.** The judicial officer/enforcement agent of the place where the bank holding the account is situated gives the bank a deed of transformation (form 5), accompanied by the enforceable judgment and the European certificate.

**11.** A copy of this deed is then served on the debtor.

### Disputing the attachment:

The European attachment order may only be disputed by the debtor within a set time period from the day on which he was informed of the order and before the judge who issued it. A dispute form should be provided (form 6). For this purpose, the certificate accompanying the order (form 2) should also state the contact details of the national authority to contact to dispute the order.

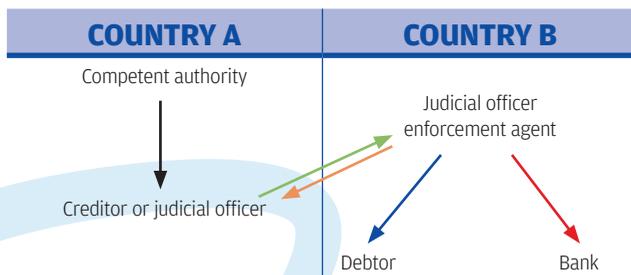
Any dispute of the enforcement of the order must be able to be brought before the judge of the place of enforcement of the order.

### Illustrations

The scenarios given below show situations where the creditor does not have an enforceable right.

#### Scenario 1:

The creditor resides in country A. The competent authority in the matter is the courts of country A. The debtor resides in country B. The bank account to be attached is in country B.



→ The competent authority issues an attachment order, accompanied by a European certificate (form 2 – certificate accompanying a judgment issued by a judge as part of a European procedure for the attachment of bank accounts).

→ The creditor (or judicial officer whom he has decided to commission in the matter – optional) passes the attachment order accompanied by the certificate (form 2) to the judicial officer/enforcement agent of country B.

NB: the creditor will be able to access the contact details of the competent enforcement agents in the various Member States via the EJE website, which will contain a directory of enforcement agents in Europe. If he so wishes, he may commission a judicial officer in his own country, who will be responsible for passing the dossier to a competent judicial officer abroad. In this case, the (optional) intervention of the judicial officer in the original country is not as such included in the European procedure (and its cost must be added to the cost of the European attachment procedure).

→ The judicial officer in country B draws up the attachment form and serves it on the bank (form 3 – attachment form).

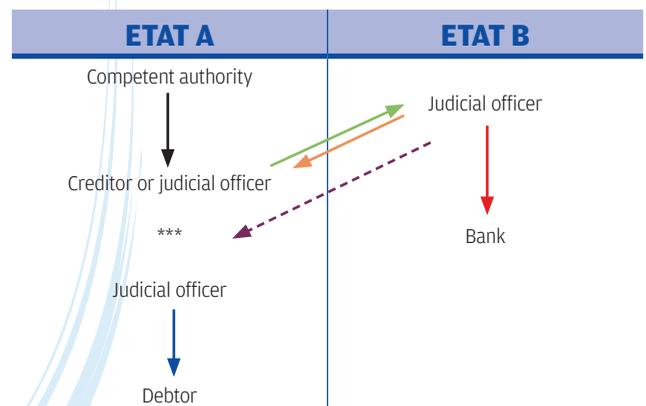
→ Once the report on the attachment has been drawn up (form 3 completed), the judicial officer in country B notifies the debtor of the attachment by means of a form (form 4 – notification of attachment). The judicial officer gives the debtor the order, as well as forms 2 (certificate) and 3 (attachment form), at the same time as form 4.

→ The judicial officer in country B informs the creditor of the successful completion of the attachment and supplies him with a copy of forms 4 and 5 (attachment form and attachment notification form).

After receiving an enforceable right from the competent authority in country A, the creditor gives the judicial officer in country B the court judgment, accompanied by the European certificate. The judicial officer in country B draws up a transformation deed (form 5) and serves it on the bank which is the third party debtor, accompanied by the court judgment and the certificate. He also serves a copy of it on the debtor.

#### Scenario 2:

The creditor resides in country A. The debtor also resides in country A. The competent authority in the matter is the courts of country A but the bank account to be attached is in country B.



→ The competent authority issues an attachment order, accompanied by a European certificate (form 2 - certificate accompanying a judgment issued by a judge as part of a European procedure for the attachment of bank accounts).

→ The creditor (or the judicial officer representing him) communicates the attachment order, accompanied by the certificate (form 2), to the judicial officer in country B.

NB: the creditor will be able to access the contact details of the competent enforcement agents in the various Member States via the EJE website, which will contain a directory of enforcement agents in Europe. If he so wishes, he may commission a judicial officer in his own country, who will be responsible for passing the dossier to a competent judicial officer abroad. In this case, the (optional) intervention of the judicial officer in the original country is not as such included in the European procedure (and its cost must be added to the cost of the European attachment procedure).

→ The judicial officer in country B draws up the attachment form and serves it on the bank (form 3 - attachment form).

→ Having drawn up the report on the attachment (by completing form 3 - attachment form), the judicial officer in country B draws up form 4 - the notification of attachment - and sends this attachment notification form, accompanied by forms 2 (certificate) and 3 (attachment form) to the competent authority to serve the deed in country A.

Regulation (EC) No 1393/2007 on the service of legal documents applies in this context, and the judicial officer in country B serves the documents:

- ▶ to the competent organisation in country A, pursuant to Article 4 of the Regulation; the competent organisation in country A, if it is not the judicial officer with territorial jurisdiction, communicates these documents to the judicial officer who has territorial jurisdiction to serve the attachment notification to the debtor,

- ▶ or to the judicial officer with territorial jurisdiction, pursuant to Article 15 of the Regulation as soon as this method has been accepted by the Member State of the place where the attachment notification was served,
- ▶ or, depending on the method of communication under Article 14 (service or notification by postal services) of Regulation (EC) No 1393/2007, as soon as this method has been recognised by the Member State of the place where the attachment notification was served (e.g. France considers that a deed to be served cannot be sent to a foreign defendant by the postal method in Article 14).

→ In situations 1 and 2, the judicial officer with territorial jurisdiction communicates the attachment notification deed to the debtor by serving form 4 - attachment notification form - accompanied by the attachment order and forms 2 (certificate) and 3 (attachment form). In situation 3, the judicial officer in country B serves form 4 directly to the debtor.

NB: Application of Regulation (EC) No 1393/2007 and the formalities required under the application of this regulation

→ The judicial officer in country B informs the creditor of the successful completion of the attachment and supplies him with a copy of forms 3 and 4 (attachment form and attachment notification form).

After receiving an enforceable right from the competent authority in country A, the creditor gives the judicial officer in country B the court judgment, accompanied by the European certificate. The judicial officer in country B draws up a transformation deed (form 5) and serves it on the bank which is the third party debtor, accompanied by the court judgment and the certificate. He also serves a copy of it on the debtor.

### 3. The cost of the procedure

#### The costs to be taken into account

- ▶ the cost of the attachment operation carried out at the bank
- ▶ the cost of notifying the debtor of the attachment
- ▶ the cost of communicating the deed under Regulation (EC) N° 1393/2007

In view of the varied procedural costs at the national level, it might be useful to establish, as part of the European procedure for the attachment of bank accounts, a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination for the service of the attachment to third party debtors (communication of form 3) and the attachment notification to debtors (communication of form 4).

It should be required from Member States to provide the general public and professional circles with information on costs of the attachment operation carried out at the bank and costs of notifying the debtor of the attachment.

NB: if the defendant resides in a Member State other than the location of the third party debtor and the attachment is notified in line with the methods in Regulation (EC) N° 1393/2007, a lump-sum payment to the judicial officer or authorised body should be added to cover the cost of the communication.

#### Bank charges

An upper limit should be set for the charges made by banks in connection with an attachment. Moreover, the practice carried out by banking establishments of levying these charges on the part of the bank account immune from attachment, even though such an attachment would be ineffectual due to the immunity of the sum in the account from attachment, must be prohibited.

**For further information, please contact**  
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*This document only binds its author.*

## Forms

### Form 1. – Request form

#### 1. Court

Court  
Address

Case number *(to be completed by the court)*

Received by the court *(to be completed by the court)*

#### 2. Parties and their representatives

Claimant – identification  
*Claimant's representative (optional)*

Defendant – identification  
*Defendant's representative (optional)*

#### 3. Jurisdiction

Grounds for the court's jurisdiction  
Cross-border nature of the case

#### 4. Bank details (optional) for payment of court fees by the claimant

#### 5. Claim

- ▶ Principal: .....
- ▶ Interest: ..... (rate, starting from...to...)
- ▶ Contractual penalties (if applicable)
- ▶ Costs (if applicable)

#### 6. Description of conditions justifying an attachment of bank account

#### 7. Additional statements and further information (if necessary)

### Form 2. - Certificate

#### 1. Court / Tribunal

#### 2. Claimant

#### 3. Defendant

#### 4. Judgement

Date  
Case number  
Substance of the judgment:

The court/tribunal has authorised ... (claimant) to attach the bank accounts of ... (the defendant) for the following amount:

- ▶ Principal
- ▶ Interest: ..... (rate, starting from...to...)
- ▶ Cost

The court/tribunal asked the defendant to lodge of a security: yes/no

#### 5. The procedural requirements for contesting the order

The judgement will be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

### Form 3. – Attachment form

#### 1. Enforcement agent

#### 2. Claimant

#### 3. Defendant

#### 4. Bank

#### 5. Judgement

- ▶ Court / Tribunal
- ▶ Date:

#### 6. Counting

- ▶ Principal : .....
- ▶ Interest: ..... (rate, starting from...to...)
- ▶ Costs
- ▶ Total

#### 7. Identification of bank account(s)

#### 8. Amounts available on the bank account(s)

#### 9. Amounts made inalienable by the attachment

Mention :

That the third party have to declare the full extent of its obligations towards the debtor as well as the modalities which could affect them and, if necessary, transfers of debts, delegations or previous attachments;

That the bank is prohibited to dispose of sums attached within the limits of what is owed to the debtor;

That the attachment interrupts the period of limitation of the debt

**Annexes :** Order / Certificate (form 2)

#### **Form 4. - Attachment notification form**

1. Enforcement agent

2. Claimant

3. Defendant

4. Bank

5. Judgement

▶ Court / Tribunal

▶ Date:

6. Date of the attachment

7. Amounts attached

8. Mention that if the notification does not intervene within ... from the realization of the attachment, the attachment becomes avoid

9. Information of the debtor about procedural requirements for contesting the order (see form 2)

10. Information of the debtor about procedural requirements for contesting the enforcement of the measure

11. Information of the debtor about the possibility of asking the bank, in «x» days following the attachment, amounts exempt from execution in accordance with national law

**12. Information du débiteur sur les possibilités de demander au tiers saisi, dans les « x » jours suivant la saisie, la mise à disposition de la somme insaisissable en application du droit national, dans la limite du solde créditeur du compte au jour de la réception de la demande.**

**Annexes :** Order / Certificate (form 2) / Attachment form (form 3)

#### **Form 5. - Transformation**

1. Enforcement agent

2. Claimant

3. Defendant

4. Bank

5. Description of the conservatory attachment

6. Description of the enforceable title

7. Amounts:

▶ Principal

▶ Interest

▶ Costs

8. Other

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**[eje@huissier-justice.fr](mailto:eje@huissier-justice.fr)**

