

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0371/2007

8.10.2007

REPORT

on the Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts (2007/2026(INI))

Committee on Legal Affairs

Rapporteur: Kurt Lechner

CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
EXPLANATORY STATEMENT	6
OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS	8
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS.....	11
RESULT OF FINAL VOTE IN COMMITTEE	14

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on the Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts
(2007/2026(INI))**

The European Parliament,

- having regard to the Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts (COM(2006)0618),
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Economic and Monetary Affairs (A6-0371/2007),
- A. whereas the cashless transfer system and cross-border payments have made significant headway and, in view of the SEPA* project, are destined to spread more widely,
- B. whereas almost all Member States have arrangements for enforcing attachment measures, but the differing legal systems and procedural requirements mean that these are enforceable throughout the EU only by complicated, protracted procedures, enabling debtors to transfer their money to foreign accounts,
- C. whereas a single European procedure for cross-border cases would benefit those who litigate in many countries and the banking institutions that will receive orders from several Member States,
- D. whereas a creditor has to be able to counter the possibility that his debtor might rapidly and perhaps repeatedly transfer money to foreign accounts,
1. Welcomes the fact that, by publishing the Green Paper, the Commission has taken an initiative aimed at establishing a cross-border European procedure for temporarily freezing bank deposits;
 2. 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
 3. Believes that a standard European system should exist independently of, and in addition to, the Member States' respective national enforcement rules;
 4. 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;

* Single Euro Payments Area

5. Maintains that the above procedure should apply only to cross-border cases;
6. Maintains that regulation should be confined to attachment of accounts and the temporary freezing of bank deposits and under no circumstances extend to satisfaction of the creditor;
7. Is of the opinion that a legal basis for such a procedure might be found in Article 65(c) of the EC Treaty;
8. Points out that a procedure of the type concerned must be possible to initiate before the main proceedings begin;
9. Points out that what is involved is merely a summary procedure requiring the creditor to furnish persuasive evidence of his claim and demonstrate that his case is urgent and his rights are in jeopardy;
10. Is 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; considers that assets over the amount of the monetary claim, including costs, should not be frozen;
11. Is of the opinion that justification for an order is necessary, such as risk of dissipation of assets; Points out that there should be safeguards to prevent orders from covering more accounts than is necessary;
12. Believes that there has to be a careful balance between the rights of creditors to recover debts and the provision of adequate protection for defendants;
13. Believes that 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;
14. Considers that 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;
15. Considers it appropriate to examine the question of reimbursing the costs incurred by banks in processing account seizures;
16. Believes that the creditor should be obliged to institute the main proceedings within a fixed time limit;
17. Is of the opinion that an extension in the event of outstanding legal proceedings should be permitted provided the proceedings are being conducted with due diligence;
18. Is of the opinion that 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;
19. Points in particular to 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;

20. Believes that, 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;
21. 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;
22. Believes that a debtor should be entitled to appeal and allowed to end the attachment by providing security;
23. Is of the opinion that trust accounts need to be specially protected against attachment;
24. Maintains, 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;
25. Is of the opinion that 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; believes that 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;
26. Considers that the instrument required for the above purposes might need to take the form of a regulation;
27. Calls on the Commission, 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;
28. Instructs its President to forward this resolution to the Council and Commission.

EXPLANATORY STATEMENT

The rapporteur applauds the Green Paper for the detail in which all the relevant questions and difficulties are set out and endorses the aim of establishing a fast, effective procedure in the EU for the attachment of bank accounts. Given the continuing progress of integration as regards euro-denominated payments, an arrangement of this kind seems a particularly necessary and sensible step to take.

This report will not discuss every question and indeed cannot do so, because many points still need to be examined more closely – not least from a comparative law perspective – and it is too early to reach firm decisions at the present time. The findings below should be considered to be subject to that proviso.

Almost all of the Member States have systems enabling creditors to temporarily freeze sums held in bank accounts. In principle, therefore, distraint, attachment, or the like can be effected in a Member State other than a creditor's country of origin. In reality, however, because of the different procedures and legal consequences, to say nothing of language problems and the time factor, such measures are difficult and expensive for creditors to enforce. This state of affairs makes it easier for debtors to escape their creditors' clutches, thus impairing the efficiency of the internal market. The 'Brussels I' Regulation does not address this problem, or at any rate not fully. Furthermore, the desired aim would probably not be achieved by bringing existing national rules more closely into line through harmonisation, because the legal systems are so different that the task would be virtually impossible.

That is why an independent EU-wide procedure should be introduced alongside the national arrangements. It should apply only to cross-border procedures and be confined to bank deposits, excluding other assets. It would be intended solely to freeze money for the benefit of a creditor and not to give him ultimate satisfaction, that is to say, it would now allow money to be paid out.

Article 65(c) TEC might be an appropriate legal basis.

Faced with the threat that his creditor's claim could be enforced through the courts, a debtor might be tempted to move his money out of the way. Consequently, bearing in mind the objective of the Green Paper, a creditor should be allowed to apply for attachment at any time, and that includes before the main proceedings have started.

The creditor should be called upon to persuade the court, in a summary procedure, that he has a claim and that an attachment order is required urgently. An order should be treated as a matter of urgency if there is reason to fear that enforcement of the claim might otherwise be prevented or made considerably more difficult. Given that what is involved is a summary procedure, a statutory declaration, as well as certificates or other written declarations, could be regarded as credible evidence. In such cases it would have to be stipulated that making a false statutory declaration would be a punishable offence.

Unjustified attachment could entail serious consequences for a debtor, possibly even ruining his livelihood, and undermine confidence in the European legal system. That is why particular attention needs to be focused on ways of protecting the debtor, for example through security

to be provided by the creditor, a right to contest the attachment, a limit on the attachable amount, an obligation for the creditor to institute the main proceedings within a fixed time limit, and so on.

The rapporteur does not believe that a standard attachment exemption level should be laid down on an EU-wide basis: it should be up to the debtor to invoke the respective national limit governing non-attachable amounts.

Attachment should, as a matter of principle, be ruled out if the account concerned is a trust account and the account holder is not the debtor himself, but, say, a notary or lawyer.

In addition to the problems discussed above, there are a number of individual vexed questions, for example jurisdiction, details of the enforcement procedure, or payment of fees to banks, that still require thorough examination, as do practical legal considerations such as ranking of creditors for attachment purposes. Rather than probing further at this stage, these points should be left for future discussions.

20.7.2007

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Legal Affairs

on the Green Paper on improving the efficiency of the enforcement of judgments in the
European Union: the attachment of bank accounts
(2007/2026(INI))

Draftsman: Panayiotis Demetriou

SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Regards it a major drawback that the Green Paper contains no statistical data making it possible to understand the extent of the problem of the evasion of justice by debtors; considers that such statistical information would be very useful for the purpose of evaluating the expediency of attachment as a judicial measure in the light of the practical difficulties involved in its implementation and having regard to the principles of proportionality and subsidiarity;
2. Takes the view, first of all, that the proposal should be formulated in a way that will avoid conflict between national and Community procedures; considers in this respect that it would be better to adopt the harmonisation method but that, since that method does not seem to be feasible at present, the next best way of regulating the attachment of bank accounts is the self-standing procedure;
3. Considers, moreover, that the procedure should be solely protective and should be made available as an urgent measure at all stages of proceedings pursuant to an *ex parte* application; that the issue of an attachment order should be left to the discretion of the court; and that the existence of a good cause of action, the probability of success in the action and the risk of being unable to enforce the judgement at a later stage if the attachment order is not given should constitute the grounds for issuing an attachment order, substantiated by a statement of facts, preferably in the form of an affidavit;

4. Is of the opinion that the application for such an order should be set for hearing within a reasonable time, so as to give the respondent the right to be heard and to enable the court to re-evaluate the situation and decide accordingly, and that notice should be given to the respondent by the bank and by the court as well; considers that the practical difficulties with regard to service of an attachment order, the authenticity of the order and its speedy service on the bank could be addressed by the use of modern communications technology; takes the view that the costs should in the first instance be borne by the applicant, who could finally recover them from the respondent in the event that he succeeds in his court action;
5. Is of the opinion that, since the freezing of a bank account can affect other creditors and, of course, the financial activities of the respondent, the relevant order should limit the amount to be frozen to the amount claimed plus interest and reasonable costs;
6. Considers that the order should be directed to a specific bank or banks, if the amount claimed necessitates freezing more than one bank account, and that it should not be made against the whole world; that the name of the respondent and the account or accounts should be identifiable as far as possible; and that joint accounts and nominee accounts should not be exempted at the initial stage but could be unfrozen after the respondent has been heard and has persuaded the court, on the weight of the evidence, that the account or accounts do not belong to the respondent;
7. In the event of opposition to an order of attachment of bank accounts or of an application for annulment of such an order by the respondent, the same principles applicable to the issue of the order, including that of urgency, should apply as far as the respondent is concerned;
8. Emphasises that, for the issue of an order attaching a bank account, proper security should be given by the applicant in a sum sufficient to cover any loss or damage which the respondent may be found to have sustained in the event that the application later proves to be abortive, and that the nature and extent of the security should be left to the discretion of the court;
9. Considers that jurisdiction to make an attachment order should vest in the courts of the country of habitual residence or domicile of the respondent or of the country in which the claim arose or in which the bank account is situated, and that such an order could be used as an *exequatur* tool for the enforcement of a judgment in lieu of the ordinary *exequatur* procedure;
10. Is of the opinion that, in order to prevent the applicant from abusing the attachment process by unreasonably protracting the main proceedings, the respondent should be given the right to apply for the order to be set aside on that ground, and that the issuing court should also be empowered, in its discretion, to annul the attachment order upon proof of *mala fides* or gross negligence on the part of the applicant with regard to the progress of the proceedings.

Procedure

Title	Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts		
Procedure number	2007/2026(INI)		
Committee responsible	JURI		
Opinion by Date announced in plenary	LIBE 15.2.2007		
Enhanced cooperation – date announced in plenary			
Drafts(wo)man Date appointed	Panayiotis Demetriou 20.3.2007		
Previous drafts(wo)man			
Discussed in committee	5.6.2007	27.6.2007	17.7.2007
Date adopted	17.7.2007		
Result of final vote	+: 35 -: 0 0: 0		
Members present for the final vote	Alexander Alvaro, Philip Bradbourn, Mihael Brejc, Giuseppe Castiglione, Giusto Catania, Jean-Marie Cavada, Esther De Lange, Panayiotis Demetriou, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Giovanni Claudio Fava, Kinga Gál, Patrick Gaubert, Jeanine Hennis-Plasschaert, Roger Knapman, Magda Kósáné Kovács, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Sarah Ludford, Dan Mihalache, Javier Moreno Sánchez, Athanasios Pafilis, Martine Roure, Søren Bo Søndergaard, Károly Ferenc Szabó, Ioannis Varvitsiotis, Manfred Weber		
Substitute(s) present for the final vote	Edit Bauer, Gérard Deprez, Iratxe García Pérez, Sophia in 't Veld, Jean Lambert, Marianne Mikko, Siiri Oviir		
Substitute(s) under Rule 178(2) present for the final vote			
Comments (available in one language only)			

27.6.2007

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs

on the Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts
(2007/2026(INI))

Draftswoman: Sharon Bowles

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. 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;
2. Attachment orders should be available from the time of filing of monetary claim proceedings; justified urgency may allow earlier orders, providing proceedings follow; 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; assets over the amount of the monetary claim, including costs, should not be frozen;
3. Justification for an order is necessary, such as risk of dissipation of assets; there should be safeguards to prevent orders from covering more accounts than is necessary;
4. The duration of an attachment should not exceed 18 months; however, an extension in the event of outstanding legal proceedings should be permitted provided the proceedings are being conducted with due diligence;
5. Instantaneous transaction possibilities contra-indicate hearing the debtor prior to the granting of a bank attachment; rights to object after the order has been made must exist, with reimbursement of costs if a debtor's appeal is successful, and therefore cross undertakings should apply; creditors must pursue proceedings with due diligence;
6. To safeguard the rights of the debtor before and while the attachment order is in force, the

responsibility of the creditor must be clearly delimited in cases of improper behaviour against the debtor;

7. 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; attachments to joint accounts should be possible with an assumption of equal shares in the assets and the attachment applying to the debtor's share;
8. 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; formal notification must go from the bank to the enforcement authority and creditor as to whether the amount liable has been secured; the bank must also formally notify the debtor when the attachment order becomes effective; standardised formal notices, available for all EU languages, that eliminate or reduce the need for customised translations may be desirable;
9. Bank costs must be covered on the basis of a true reflection of the actual costs incurred for the service, including searches;
10. The court should set a level of living expenses that are exempt from freezing, which can be appealed; the Member State of residence should be the guideline for the amount;
11. Consideration should be given as to whether the EU procedure should be restricted to cross-border situations or whether it should also be made available as an option within Member States.

PROCEDURE

Title	Green paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts	
Procedure number	2007/2026(INI)	
Committee responsible	JURI	
Opinion by Date announced in plenary	ECON 15.2.2007	
Enhanced cooperation – date announced in plenary		
Drafts(wo)man Date appointed	Sharon Bowles 24.1.2007	
Previous drafts(wo)man		
Discussed in committee	8.5.2007	11.6.2007
Date adopted	27.6.2007	
Result of final vote	+: 30 -: 0 0: 0	
Members present for the final vote	Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Ieke van den Burg, David Casa, Elisa Ferreira, Jean-Paul Gauzès, Donata Gottardi, Benoît Hamon, Sophia in 't Veld, Othmar Karas, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Cristobal Montoro Romero, Joseph Muscat, Lapo Pistelli, John Purvis, Heide Rühle, Eoin Ryan, Antolín Sánchez Presedo, Olle Schmidt, Margarita Starkevičiūtė	
Substitute(s) present for the final vote	Katerina Batzeli, Harald Ettl, Werner Langen, Gianni Pittella, Kristian Vigenin	
Substitute(s) under Rule 178(2) present for the final vote		
Comments (available in one language only)	...	

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	4.10.2007
Result of final vote	+ : 22 - : 0 0 : 0
Members present for the final vote	Carlo Casini, Bert Doorn, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Katalin Lévai, Hans-Peter Mayer, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Gary Titley, Diana Wallis, Rainer Wieland, Jaroslav Zvěřina, Tadeusz Zwiefka
Substitute(s) present for the final vote	Charlotte Cederschiöld, Kurt Lechner, Jacques Toubon, Marie Panayotopoulos-Cassiotou, József Szájer
Substitute(s) under Rule 178(2) present for the final vote	Iles Braghetto, Michael Cashman, Genowefa Grabowska, Lily Jacobs