

# EUROPEAN PARLIAMENT

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*Committee on Civil Liberties, Justice and Home Affairs*

**2007/2026(INI)**

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

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## 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

<b>Title</b>	Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts		
<b>Procedure number</b>	2007/2026(INI)		
<b>Committee responsible</b>	JURI		
<b>Opinion by</b> Date announced in plenary	LIBE 15.2.2007		
<b>Enhanced cooperation – date announced in plenary</b>			
<b>Drafts(wo)man</b> Date appointed	Panayiotis Demetriou 20.3.2007		
<b>Previous drafts(wo)man</b>			
<b>Discussed in committee</b>	5.6.2007	27.6.2007	17.7.2007
<b>Date adopted</b>	17.7.2007		
<b>Result of final vote</b>	+: 35 -: 0 0: 0		
<b>Members present for the final vote</b>	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		
<b>Substitute(s) present for the final vote</b>	Edit Bauer, Gérard Deprez, Iratxe García Pérez, Sophia in 't Veld, Jean Lambert, Marianne Mikko, Siiri Oviir		
<b>Substitute(s) under Rule 178(2) present for the final vote</b>			
<b>Comments (available in one language only)</b>			