

## Terms of reference

### **Group of Experts on improving the efficiency of the enforcement of judgments in the EU: the attachment of bank accounts**

The Commission hereby invites applications from individuals with a view to establishing a list of experts who could be invited to participate in the Group of Experts dealing with the attachment of bank accounts.

#### **1. Background**

Enforcement has often been termed the "Achilles heel" of the European Civil Judicial Area. Currently, debtors can swiftly move their monies from a bank account in one EU country to another. A creditor, however, will face difficulties if seeking to block his debtor's bank accounts abroad to allow the payment of his bills. The fragmentation of national rules in the EU on enforcement severely hampers cross-border debt collection.

Existing EU instruments (the Regulations creating a European Enforcement Order, a European Payment Order and a European Small Claims Procedure) facilitate the recognition of foreign judgments by suppressing the need for a declaration of enforceability. However, there is no European instrument so far which regulates the phase of enforcement of judgements proper. Enforcement continues to be governed exclusively by national law.

Moreover, the Brussels I Regulation does not ensure that protective measures, such as bank attachments, which have been obtained *ex parte* can be recognised and enforced in a Member State other than the one where they were issued (cf the decision of the European Court of Justice in *Denilauler*).

Because of the complexities of cross-border debt recovery, creditors often simply write off their foreign claims. It has been estimated that companies recover as an average only 37% of cross-border debts. However, the possibility to efficiently recover one's debts is an essential element of a well-functioning Single Market. Efficient enforcement of monetary claims is of particular importance in the current situation where access to capital and credit is limited. There is therefore a need to improve cross border debt recovery.

The Commission has issued, in 2006, a Green Papers on the attachment of bank accounts which launched a broad public consultation on possible solutions to the problem of cross-border debt recovery. A total of 67 replies were received, most of which recognised the need of facilitating cross-border debt collection in an area where free movement of capital and new information and communication technologies enable recalcitrant debtors to dissipate their assets. Overall, a majority of replies to the Green Paper favoured the introduction of a new self-standing European procedure which would be available in addition to national procedures for the attachment of bank accounts and would enable a creditor under certain conditions to freeze the monies standing to the credit of his debtor in one or several bank accounts in the EU. The Commission Legislative and Work Programme foresees the adoption of a legislative proposal for summer 2011.

This legislative initiative raises a number of difficult questions which a future proposal will have to address. The expert group should assist the Commission in finding and formulating appropriate solutions to certain of these questions.

## **2. *Group of Experts***

The Group shall assist the Commission in the preparation of the legislative proposal on the attachment of bank accounts. The Commission may consult the group on any matter relating to the enforcement law, procedures or practices in this area.

In particular, the Group's task shall be to help the Commission to consider how

- to define appropriate conditions for issue of the attachment order in order to minimise abuse of the measure by creditors;
- to ensure adequate protection of the debtor wanting to contest the measure; notably how to ensure that a review is handled with the necessary swiftness by the courts,
- to achieve swift transmission of the order from the court to the bank in question; in particular, how electronic means of communications could be used in this context.

## **3. *Composition***

The group shall be composed of 15 members. The members shall be individuals appointed in a personal capacity. Members shall be appointed by the Director General of DG JUSTICE from specialists with competence in the area referred to above. They shall act independently and in the public interest.

## **4. *Eligibility***

Applications may be submitted by natural persons who are nationals of an EU country or, if appropriate, of an acceding country, European Economic Area country or third country.

The members of the group of experts shall be appointed from specialists with expertise and experience in the field of enforcement and, in particular, the attachment of bank accounts at national or international level:

- a. Experts from inter-governmental and international organisations or associations;
- b. Individuals with experience derived from academic research for public or private universities or institutes in Member States.
- c. Legal practitioners (e.g. lawyers, judges, internal legal counsels, in particular from banks);
- d. Experts from national enforcement authorities of the Member States;

Prospective experts are expected to currently hold or have held a position within a relevant stakeholder listed above. They are expected to have:

- skills and knowledge appropriate to the areas of activities in which they might be asked to assist;
- a high level of professional achievement in the enforcement field and at least 5 years of relevant work experience;
- an appropriate language skills, including, a demonstrable ability to work in English.

The above will be assessed on the basis of CVs and the completed application form.

## **5. *Call for applications***

Applications may only be submitted by filling in the model application form (Annex 1), attached to the Call for applications, and submitting a CV. Applicants are asked to clearly state in their application the area of law in which they possess particular expertise and it should be accompanied by material demonstrating that the proposed member meets the above conditions.

Applications should be sent by ..... at the latest either by email or letter to the following address:

European Commission  
 Directorate-general Justice  
 Unit A 1 Civil Justice - Secretariat  
 Rue Montoyer 59, 2/74  
 1049 BRUSSELS  
 Belgium  
[JLS-coop-jud-civil@ec.europa.eu](mailto:JLS-coop-jud-civil@ec.europa.eu)

Each application will be examined on the basis of the criteria set out above. The Commission will inform applicants of the outcome of the call and in particular of whether they have been included or not in the list of experts.

## **6. *Final determination of group composition***

The Commission shall decide upon the composition of the group of experts on the basis of proposals submitted in response to the call for applications.

The Commission will take the following criteria into account when assessing applications:

- proven competence and experience, including at European and/or international level, in areas relevant to cross border civil and commercial litigation and enforcement in the European Union;
- the need to strike a balance within the group of experts in terms of representativeness of applicants, gender and geographical origin;

The members shall inform the Commission in good time of any conflict of interests which might undermine their objectivity.

Members shall be appointed for a 2-year renewable term and shall remain in office until such time as they are replaced or their terms of office ends.

Members may be replaced for the remainder of their term of office in any of the following cases:

- (a) where the member resigns;
- (b) where the member is no longer capable of contributing effectively to the group's deliberations;
- (c) where the member does not comply with Article 339 of the Treaty;
- (d) where the member has failed to inform the Commission in good time of conflict of interests.

In view of the transparency policy of the European Institutions and the need to inform the public of the identity and qualifications of the experts advising the Institution, general personal data will be made publicly available<sup>1</sup> in accordance with the provisions of Regulation (EC) No 45/2001<sup>2</sup> in the Register of Expert Groups for as long as the membership upholds and/or until removal from the public site is requested.

## **7. Confidentiality**

To ensure the necessary security of sensitive information, experts called upon to participate in expert groups will have to sign a non-disclosure agreement (NDA). Throughout their work they shall observe complete confidentiality of the information and documents brought to their attention.

## **8. Operation**

The group shall normally meet on Commission premises in accordance with the procedures and schedule established by it. The Commission shall provide secretarial services for the meetings of the group. Representatives of interested Commission services may attend meetings of the group.

The Commission may publish, in the original language of the document concerned, any summary, conclusion, or partial conclusion or working document prepared by the group.

## **9. Meeting expenses**

Participants of the group shall not be remunerated for the services they render.

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<sup>1</sup> Data will be published in the Register of Expert Groups: [http://ec.europa.eu/secretariat\\_general/regexp/](http://ec.europa.eu/secretariat_general/regexp/)  
<sup>2</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8 of 12.1.2001, p.1)

Travel expenses incurred by participants will be reimbursed by the Commission in accordance with the provisions in force within the Commission.

Those expenses will be reimbursed within the limits of the annual budget allocated to the group by the responsible Commission services.