



*European Economic and Social Committee*

**INT/428  
Green Paper -  
Transparency of debtors'  
assets**

Brussels, 3 December 2008

**OPINION**

of the

European Economic and Social Committee

on the

**Green Paper - effective enforcement of judgments in the European Union:  
the transparency of debtors' assets**

COM(2008) 128 final

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On 6 March 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Green Paper - Effective enforcement of judgments in the European Union: the transparency of debtors' assets.*

COM(2008) 128 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 6 November 2008. The rapporteur was **Mr Pegado Liz**.

At its 449th plenary session, held on 3 and 4 December 2008 (meeting of 3 December), the European Economic and Social Committee adopted the following opinion by 161 votes to two with seven abstentions:

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## 1. **Conclusions**

- 1.1 The Green Paper on the effective enforcement of judgments in the European Union: the transparency of debtors' assets (COM(2008) 128 final of 6 March 2008) follows on from the Green Paper on the attachment of bank accounts (COM(2006) 618 final) and fits in with the broad range of measures that the Commission has adopted in the aim of establishing a European judicial area in order to support the judicial aspects of the completion of the single market.
- 1.2 The EESC has by and large supported these initiatives, but has at the same time highlighted the need for them to be properly justified in terms of subsidiarity and proportionality. The initiatives should also comply with the basic principles of procedural law common to all Member States and should fully respect people's fundamental rights.
- 1.3 In both its opinion on the previous Green Paper, on the attachment of bank accounts, and in this opinion, the EESC has taken the view that the initiatives are inadequately geared to the specific situations they are intended to address. A number of the measures put forward also far exceed, in terms of proportionality, what is necessary and what cannot be achieved through existing national measures. In some cases, they could even result in breaches of fundamental rights, such as the right to privacy or to a fair opportunity to defend oneself.
- 1.4 In the EESC's view, much progress can and must be made on the areas currently under consideration, through better cooperation between national authorities, greater efficiency and

swiftness in the workings of existing national systems, better access to existing registers and information, a more extensive exchange of information and a better mutual understanding of how national systems work and of how to make them more flexible.

- 1.5 The EESC is thus firmly opposed to the ideas of a) setting up a central register of European citizens, b) giving any creditor total and indiscriminate access to tax and social security registers and c) adopting a standard Community-level declaration form detailing all of a debtor's assets,
- 1.6 The Committee considers that the creation of a comparative database, compiled by competent professionals and continually updated, could help to provide a clearer picture of national enforcement systems and their practical operation.
- 1.7 Lastly, the EESC suggests that particular consideration be given to a number of alternative initiatives (point 5.8) that share the aim put forward in the Green Paper but which do not require further Community legislation.

## 2. **Gist of the Green Paper**

- 2.1 With this Green Paper, the Commission is launching a second consultation<sup>1</sup> of interested parties on how to improve the enforcement of judgments, concerned here with how to overcome the problems arising from difficulties in accessing reliable information on debtors' whereabouts or their assets.
- 2.2 The Commission considers that knowing a debtor's correct address and having access to accurate information about his assets are the starting point for more effective enforcement proceedings. It acknowledges, however, that national systems of registers and debtors' declarations of assets, whilst comparable, differ considerably in terms of conditions of access, procedures for obtaining information and the content of the information itself, which all undermine the reliability and speed of such systems.
- 2.3 The Commission recognises that cross-border debt recovery is hampered by the differences between national legal systems and by insufficient knowledge on the part of creditors about the information structures in other Member States. The Green Paper is thus a step towards the possible European-level adoption of a series of measures to improve the transparency of debtors' assets and strengthen the rights of creditors and national enforcement authorities to obtain information that will ensure the effective enforcement of judgments to enforce payment of civil and commercial debts, whilst respecting the principles of the protection of the debtor's privacy, as laid down in Directive 95/46/EC.

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<sup>1</sup> The first was the Green Paper on the attachment of bank accounts [COM(2006) 618 final]; EESC opinion: OJ C10, 15.1.2008.

2.4 To this end, the Commission takes a detailed look at the measures under consideration, which it summarises in the form of 10 questions.

### 3. **Background**

3.1 This initiative quite rightly fits in with the broad range of measures that the Commission has adopted in the laudable aim of establishing a European judicial area in order to support the judicial aspects of the completion of the single market<sup>2</sup>. Here the focus is on facilitating the enforcement of judgments in the European Union through measures that help to identify the debtor's home address or registered office where he can be served the enforcement order, as well as accurate information on assets belonging to him which could cover the outstanding debt, and which could be located in any part of any Member State.

3.2 This time, the Commission has taken the trouble – for which it deserves praise - to ask for reactions not only from the 15 Member States whose situation was examined in the study forming the basis for this Green Paper<sup>3</sup>, but also from the other 12 Member States that are now part of the European Union. Nevertheless, the data collected are not always accurate and have on occasion been misinterpreted.

3.3 It should also be pointed out that this initiative appears to have taken on board the recommendation made by the EESC in its opinion on the Green Paper on the attachment of bank accounts, concerning the considerable need for "(...) a proper assessment of measures aimed at ensuring greater transparency regarding debtors' assets (...)".

3.4 Regrettably, the Commission provides no statistical data concerning the scale of the problem it is seeking to address. Nor does it clearly define the nature of the problem or who precisely might benefit from the measures it is putting forward.

### 4. **General comments**

4.1 This Green Paper follows on from and supplements the Green Paper on the attachment of bank accounts [COM(2006) 618 final], on which the EESC issued an opinion on 31 July 2007<sup>4</sup>, to which the reader is referred.

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<sup>2</sup> A sufficiently exhaustive list of such measures can be found in the EESC opinion INT/342 of 31 July 200 – OJ C10, 15.1.2008, on the aforementioned Green Paper on the attachment of bank accounts, to which the reader is referred.

<sup>3</sup> For a full understanding of this Green Paper, account must be taken not only of the Commission Working Paper SEC(2006) 1341 of 24.10.2006 but also of Study No. JAI/A3/2002/02, in the version updated on 18.2.2004, by Prof. Dr. Burkhard Hess, Director of the Institute for Comparative International Private Law at the University of Heidelberg, the text of which can be found at [http://europa.eu.int.comm.justice\\_home/doc\\_cent/civil/studies/doc\\_civil\\_studies\\_en.htm](http://europa.eu.int.comm.justice_home/doc_cent/civil/studies/doc_civil_studies_en.htm).

<sup>4</sup> [OJ C 10, 15.1.2008.](http://eur-lex.europa.eu/juris/cesec/2007/07070001.htm)

- 4.2 As stated above, the issue raised in this Green Paper inevitably precedes the attachment of bank accounts and accurately reflects the need for sufficient information on a debtor's assets to be available in order to provide creditors with an effective common guarantee, which is a fundamental and definitive principle of civil procedural law. Any consideration of this issue, however, must question the Community-level harmonisation of a whole range of areas within the field of substantive civil law that inevitably precede this matter.
- 4.3 The EESC thus acknowledges the need for the authorities responsible for enforcement in any Member State to have access to accurate information on a debtor's whereabouts, starting with his registered office or home address, and on the property, both moveable and immovable, that forms his assets, irrespective of its location.
- 4.4 As also applies to the opinion referred to above, the EESC does, however, have serious reservations and well-founded doubts concerning the real need for specific measures to harmonise legislation at Community level in the area in question, although it recognises that the European Union does have competence in this field and that a legal base for such measures does exist.
- 4.5 Indeed, all of the requirements for better information, better data and better access identified in the Green Paper still do not necessarily suggest the need to establish new, Community-level registers or obligations for a debtor to declare his assets. This measure is furthermore unlikely to meet the criterion of proportionality, and could result in unacceptable breaches of fundamental rights.
- 4.6 The EESC considers that, rather than setting up registers held centrally in Brussels, covering the general population, traders or consumers, movable or immovable property or tax and social security registers, a more effective exchange of information between national authorities and easier and more rapid access to existing data would provide sufficient guarantees of equal opportunities and treatment when identifying a debtor's assets, whatever the creditor's nature or nationality.
- 4.7 This does not mean that the Community should not devise incentives and guidelines on improvements to be made to the content and workings of and access to the abovementioned public registers and to other private data-bases, provided that the data are duly protected, in line with the applicable Community directives and on condition that the information is limited solely to the stated purpose of the request and to the extent needed to repay outstanding debts.
- 4.8 There should be no discrimination between private and public creditors in accessing data, and the latter should not benefit – as a result of their privileged position - from having more rapid and easier access to public registers, whether these cover tax or social security systems or a debtor's assets.

4.9 Cooperation with third countries, specifically Andorra, Switzerland, Liechtenstein and all other countries with close links to tax havens or financial markets in Europe, should also be guaranteed.

5. **Specific comments: the 8 questions**

5.1 *A Community-level initiative?*

5.1.1 The ten questions raised in this Green Paper are actually eight, each of which is considered in detail.

5.1.2 As to whether measures to improve the transparency of debtors' assets should be adopted at Community level, the EESC considers that, in line with the reservations expressed above in "General comments", Community-level initiatives should be implemented solely to ensure better coordination and cooperation between national authorities and to improve the content of and access to existing national registers, which would make it possible to identify and locate debtors and the assets needed to repay outstanding loans.

5.2 *A manual of national enforcement systems?*

5.2.1 In the EESC's view, any measure that could help to improve knowledge and information concerning national laws and practices should be supported and encouraged. The Committee does not believe, however, that this can be achieved by producing a basic "manual", given the complexity of the matter. This manual cannot be simplified for use by the general public, as quality and accuracy might be lost in the process.

5.2.2 The EESC therefore suggests that the Commission instead consider the option of setting up a database of comparative law on the enforcement procedure in the 27 Member States, with guarantees that the database will be updated on an ongoing basis, will include explanatory notes, and will be accessible via electronic means and in all Member-State languages. This database should be produced by competent and qualified professionals from the respective Member States.

5.3 *Better information in commercial registers and improving access to them?*

5.3.1 The degree of harmonisation that already exists in this field would appear to be sufficient for the stated aims. The EESC does not deem it necessary or appropriate to go further by establishing central commercial registers at Community level, whilst not ruling out the possibility of harmonising the common elements involved.

5.3.2 Furthermore, nothing precludes adopting measures to improve the content of the information in such registers, including, in particular, individual businessmen, updating this information and making it easier to access, specifically by electronic means.

5.3.3 The same should apply to land registers, as demonstrated by EULIS (the European Land Information Service), a European consortium of land registries<sup>5</sup>.

5.4 ***Better access to population registers?***

5.4.1 By the same token, no central register of the entire population of Europe is feasible, since it falls to the Member States to maintain central or local civil registers of their populations and to set conditions for access to these registers, ensuring that no undue discrimination is applied.

5.4.2 The enforcement authorities in any country should, however, still be guaranteed easy access to such registers in order to obtain information regarding the address of individual debtors, specifically through electronic means.

5.5 ***Better access to tax and social security registers?***

5.5.1 The EESC firmly rejects the idea of granting widespread and indiscriminate access to tax and social security registers.

5.5.2 The Committee considers that only the judicial authorities should have access to such information, in clearly defined situations and with guarantees that the personal data contained in such registers will be properly protected.

5.5.3 In any event, access of this nature in a country other than that of the enforcing authority should always involve cooperation with a judicial authority in the country in which the register is held.

5.6 ***Better exchange of information between enforcement authorities?***

5.6.1 As stated in the general comments above, the EESC considers that the area of improved cooperation between national enforcement authorities on exchanging information is precisely where Community initiatives should be implemented, by setting up a system for the direct electronic exchange of information in order to identify and locate debtors and to determine their assets.

5.6.2 It is important, however, to ensure that in Member States where the enforcement authorities are not public bodies, the information obtained is monitored by the competent judicial authorities supervising the enforcement proceedings.

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<sup>5</sup> This consortium is an association of land registries created in 2006, and represents a first step towards providing access to land registries in the consortium's member countries (England, Ireland, Lithuania, Norway, Wales, the Netherlands and Sweden) website: [www.eulis.org](http://www.eulis.org).

- 5.6.3 With the necessary changes, systems such as those provided for in Regulation 1206/2001<sup>6</sup> on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, or in Directive 76/308/EEC, could be models worth adopting<sup>7</sup>.
- 5.6.4 The use of electronic means here, or even the establishment of an intranet system linking all national authorities to one another, must be viewed as essential.
- 5.6.5 The information circulated through this cooperation network should only be accessible to the authorities responsible for enforcement, such as enforcement agents, parties requesting enforcement, courts and insolvency practitioners. Further, debtors should in all cases be informed of the results.
- 5.6.6 Use of the IMI – the Internal Market Information system – should not be discounted as a possibility for exchanging information between national enforcement authorities.
- 5.7 *A European assets declaration?*
- 5.7.1 The EESC is firmly against the Community-level adoption of a standard declaration form that would disclose all of a debtor's assets for the purposes of enforcement and totally rejects the idea that failure to comply with this obligation could lead to imprisonment.
- 5.7.2 Primarily, because not all of a debtor's assets are distrainable and the onus is on the Member States to define the assets that cannot be attached, fully, partially or in relative terms.
- 5.7.3 It should be added that the obligation for a debtor to disclose his assets should be confined to those assets necessary to repay the debt and that it is up to the national judicial systems to ensure that this statement of a debtor's assets is completed accurately, or financial penalties may ensue.
- 5.7.4 Further, in the Committee's view, establishing a Community-level standard form for a uniform declaration of assets far exceeds the objectives that a measure of this type should have. The EESC considers instead that this is precisely the type of area in which closer cooperation should take place between enforcement bodies. These bodies should work together, using the legitimate means available to them, to identify those of a debtor's assets that are necessary to repay a debt, specifically giving enforcement agents the power to conduct their own investigations of a debtor's assets.

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<sup>6</sup> Council Regulation 1206/2001 of 28 May 2001, in OJ L 174, 27.6.2001. In this area, one issue of particular importance is that of communication between authorities regarding language differences, which the provisions of Article 5 of this regulation have proved unable to address.

<sup>7</sup> Council Directive 76/308/EEC of 15 March 1976, in OJ L 073, 19.3.1976.



5.7.5 In any event, the debtor should always have the right to avoid having to disclose attachable assets if he has already repaid the outstanding debt, demonstrates that he has sufficient assets to repay the debt or provides securities or equivalent payment guarantees, such as bank guarantees or a similar security. The debtor should also have the right to oppose the attachment of assets not needed to repay the outstanding debt or any ancillary sums prescribed by law.

5.7.6 Another element that must be rejected out of hand, because it breaches fundamental principles of respect for a debtor's privacy, is the publication of any declaration of a debtor's assets in a publicly accessible register (a "debtors' list").

5.8 *Any other measures to improve transparency?*

5.8.1 The following suggestions are put forward, merely by way of observation:

- a) Access could be provided to the register listing a debtor's shares and holdings in any company
- b) Access could be provided, with the appropriate precautions in place, to consumers' data registers concerning consumer or mortgage credit
- c) A single European vehicle register<sup>8</sup> could be set up
- d) A register of all pending enforcement proceedings, which could be consulted online from any Member State, could be established
- e) Access to registers of share investments exceeding a certain threshold could be allowed.
- f) Access to land registries providing information on the owners of immovable property could be allowed.

Brussels, 3 December 2008

The President  
of the  
European Economic and Social Committee

The Secretary-General  
of the  
European Economic and Social Committee

Mario Sepi

Martin Westlake

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<sup>8</sup>

As proposed in the EESC own-initiative opinion CESE 1630/2004 on A European highway code and vehicle register, for which the rapporteur was the author of this opinion (OJ C157, 28.6.2005).