Garnishment Questionnaire

Swedish National Report

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1. Competence of the enforcement organs
2. The procedure for obtaining the garnishment order
3. Commencement of the garnishment order
4. Object of the garnishment order
5. Effect of the garnishment order
6. The legal status of the garnishee
7. Debtor's protection (immunities)
8. The collection of the claim
9. Information in law and in fact
10. Cross-border garnishment of bank accounts

Thoughts about the preliminary remarks

It has been a widely known fact that an Enforcement Authority is only entitled to take measures within its own country. The limitation for the competence of the Swedish Enforcement Service are the Swedish boarders. If the debtor has assets in Sweden the Swedish Enforcement Service is entitled to attach those assets even if the debtor is living in an other country or is a foreign legal entity (Bogdan, Om svensk exekutionsbehörighet, SvJT 1981 p. 401 and Berglund, Riksskatteverket, Svensk internationell exekutions- och obeståndsrätt, p. 55 and NJA 1980 p. 84).

On the other hand Sweden does not accept attachment orders issued by Enforcement Authorities in other countries. Neither would Sweden accept that an officer from another country came to Sweden and made enforcement measures (Berglund, p. 59).
A creditor from another country has to make an application for enforcement to the Swedish Enforcement Authority. He must have an enforcement title; EC chapter 4 or Reg. 44/01/EC.

As mentioned above the Swedish Enforcement Authority is only entitled to attach assets within Sweden. If the debtor has assets outside Sweden, i.e. a bank account in Germany, it is not possible for the Swedish Enforcement Authority to attach that bank account. Instead the creditor is supposed to make an application for enforcement to the German Enforcement Authority.

According to the EU Insolvency Regulation (1346/2000/EG) a trustee in bankruptcy (liquidator or Konkursverwalter) is entitled to act within all the member states (except for Denmark). He has the power to seize all the debtors’ attachable assets. When doing this the trustee has to follow the law in the state where he is acting or where the asset is situated (lex sitae). For example the trustee has possibilities to seize all the debtors bank accounts located in the European Union (except for Denmark).

Should in the future the Enforcement Authorities in the European Union have the same possibilities as a trustee in bankruptcy to make cross-borderer measures? I think the answer is no.

EU:s Insolvency Regulation is meant for international insolvency matters of a certain size. An enforcement case might concern a small sum of money. A bankruptcy is a rather expensive procedure. An enforcement case is (in Sweden) relatively cheap for the parties. The proceeding actor is supposed to act under the laws of the country in which he is acting or rather where the assets are situated. If there should be an “EU Enforcement Regulation” similar to the EU Insolvency Regulation it would open possibilities for Officers of the Enforcement Authorities of Europe to travel round Europe in order to attach vehicles, boats, racehorses and other movable assets. I do not think this would be rational.

In my opinion it is better that an Enforcement Authority, like today, can only take measures within its own country. Instead we should expand the
possibilities to enforce verdicts and other titles issued by courts and authorities in other countries.

It might, however, be contemplated to harmonize the different possibilities, or lack of possibilities, to attach bank accounts in the member states of the European union, by way of implementing a level of "minimum standards" in this area into the legislations of the member states of the union.

**Garnishment questionnaire – preliminary remarks 2 - case**

The claim is enforceable since it is based on a judgment by a court of law. The creditor G has to submit an application for attachment to the Enforcement Authority. The creditor can demand that the Enforcement Authority attaches the bank balance but the Enforcement Authority does not have to obey that demand. The Enforcement Authority is free to attach any property that the Authority finds appropriate.

If the Enforcement Authority decides to attach the bank balance the Authority informs the bank about the attachment and the bank is forbidden to transfer any money to anyone else but the Enforcement Authority.

If the bank has any objections to the attachment it can lodge an appeal to the district court. The bank is not liable to pay damages for the delay that an appeal might cause. The second creditor can also lodge an appeal. Once the attachment is final the Enforcement Authority collects the money and transfers it to the creditor.

The second creditor can not on its own seize the bank balance. If the second creditor wants the balance to be seized or attached he has to submit an application to the Enforcement Authority. If the second creditor submits the application later than the first creditor the Enforcement Authority can only attach what is left of the bank balance to cover the second creditors claim. The Enforcement Authority can attach other property belonging to the debtor to cover what is remaining of the claim.

3. Different concepts for cross-border garnishment of bank accounts.

   (1) This concept is the most far-reaching proposal. It will enable each National Enforcement Organ to take measures outside its own territory, which from a
Swedish horizon seems strange. I believe that better solutions to speed up the cross-border enforcement of bank accounts could be found.

(2) On the other hand, this solution seems to be very efficient and possible to create (even if the bank associations are likely to disagree). There are already some law cases in this matter.

(3) This concept also seems possible to create and is worth developing, although some questions arise; for example how does the creditor attach the foreign account (saisie conservatoire)? By court order in the country corresponding to the bank account, or how?

(4) There is also a forth solution, see below.

The situation today

Enforcement of provisional and protective measures is today limited to the territory of the State where they were taken. Judicial decisions authorizing provisional or protective measures are not included in Article 16.5 of the Brussels Convention (BC) and in Article 22.5 of the Brussels Regulation (BR). Such decisions can only be taken on the basis of the Member States’ own national legislation (Articles 24 BC and 31 BR). If the courts of the Member State A are competent according to their national legislation to take judicial decision authorizing provisional or protective measures, in spite of the fact that the assets in question are situated in the Member State B, and that enforcement consequently only can take place there, Article 24 of the BC and Article 31 of the BR do not prevent such a decision.

Case law

There are several law cases in the Court of Justice of the European Communities; e.g. Case 125/79 Denilauer v. Couchet Frères. In 1978, a dispute between a creditor, Couchet Frères, and its debtor, Denilauler, was brought before the Tribunal de Grande Instance (regional court/France). On 7 February 1979, the president of this court, exercising the powers conferred on him by article 48 of the French code of civil procedure, and at the request of the creditor, without the other party having been summoned to appear, made an order which was declared provisionally enforceable, authorizing the creditor to freeze the account of the debtor at a bank in Frankfurt am Main as security for the debt (saisie conservatoire). The creditor was thus authorized to carry the order on the debtor whose assets were seized. The court, exercising the power conferred on the court by French National legislation at the request of a creditor and without the other party having been summoned to appear, made an order, which was declared provisionally enforceable.

The landgericht (regional court) ordered enforcement on 23 March 1979, resulting in the seizure of the funds on 28 March, all without the debtor having been a party to the proceedings.
Later, the Court of Justice of the European Community had to consider whether decisions of the judicial authorities of a contracting state, ordering provisional and protective measures, where the party against whom they are directed has not been summoned to appear and does not become aware of them until after their enforcement, may be recognized and made enforceable in another contracting state without prior service on the party against whom they are directed.

The court gave a negative answer on this and said that it was not possible.

It is urgent to add, that the European Commission in this case expressed the opinion in their observations, that such judgments must be recognized as enforceable in the contracting state addressed without prior service on the party against which they are directed.

According to the Commission, the surprise element is very important when safeguarding the threatened rights of the party seeking them, thus preventing the party against whom they are directed from removing assets in its possession.

**Solution/Proposal**

In order to create more efficient and fast procedures for provisional and protective measures, we propose that if the courts of the Member State A are competent according to their National legislation to take a judicial decision authorizing provisional or protective measures, despite the fact that assets are situated in the Member State B and that enforcement consequently only can take place there, it should be possible to recognize such a decision in the Member State B. The court of Member State B should only have to exercise discretion and eventually revalue the security posted by the creditor. The demanding of the court for security - and revalue if necessary - means that the interests and the protection of the debtor are secured.

In Sweden we have seen great interest in this type of measures. Many companies and lawyers have demanded such solutions.
Questionnaire: Garnishment of bank accounts

1. Competence of the enforcement organs

1.1. Which enforcement organ is competent for the garnishment of bank accounts?

The Enforcement Authority (Kronofogdemyndigheten, KFM) is the national Authority for confirming and collecting debts. The National Tax Board (Riksskatteverket, RSV) is the central Authority for the Enforcement Administration, including a Department for Administration of the Enforcement Authority.

1.1.1. What legal (educational) qualifications does the enforcement officer have?

It requires a law degree (LL.M) and at least two years of Authority as a law clerk at a court to become a senior enforcement officer, (kronofogde). Most of the enforcement cases are handled by other officers than senior enforcement officers (i.e. chief inspectors and inspectors). For a post as an inspector or chief inspector, no university degree is required. The (chief) inspectors are educated within the Enforcement Authority. The senior enforcement officers who also, under certain circumstances, have the power to change their decisions supervise them.

1.1.2. What is the relationship between the enforcement organ and the enforcement court (Control - to legal remedies of the involved parties see questions 2.5. + 2.7.)?

The Enforcement authorities are independent from the courts. The Enforcement authorities decisions are contestable. An appeal has to be lodged within three weeks after the debtor was notified of the decision. The appeal has to be submitted to the Enforcement Authority who hands it over to the district court. A decision by a district court can, in certain circumstances, be contested by appealing to a Court of Appeal and to the Supreme Court, see 2.7
1.2. International competence / jurisdiction

1.2.1. Does the jurisdiction depend on the domicile of the garnishee?

Matters concerning attachment are considered by the Enforcement Authority in the region where the debtor has his domicile, where property belonging to the debtor is located or where enforcement can otherwise take place, Enforcement Code (EC), chapter 4 section 8.

1.2.1.1. If the account is kept at a branch office (succursale) - does the enforcement organ at the place of the branch office have jurisdiction or the one at the place of the head office / holding company?

Both the Enforcement Authority at the place of the branch office and the Authority at the place of the head office have jurisdiction see 1.2.1.

1.2.1.2. Which enforcement organ has jurisdiction if the account is kept at a legally independent subsidiary / branch office?

See 1.2.1.

1.2.2. Does jurisdiction depend on the situs of the assets of the garnishee?

Yes, see 1.2.1.

1.2.2.1. Is jurisdiction limited to the assets located in the territory of the enforcement organ?

No, see 1.2.1.

1.2.3. Does jurisdiction depend on the domicile of the debtor?

See 1.2.1.

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1 To the extent necessary, please answer the following questions both with regard to issues of international and local jurisdiction.
1.2.3.1. Is jurisdiction limited to the assets located in the territory of the enforcement organ?

No, see 1.2.1.

1.2.4. Are the jurisdictions of the enforcement organ and the court responsible for decision in the substantive action identical?

No, the jurisdiction is not identical.

1.2.5. Does the jurisdiction of the enforcement organ depend on the jurisdiction of the court of the action against the garnishee?

No, jurisdiction does not depend on the jurisdictions of the court of the action against the garnishee.

A decision of the Enforcement Authority may be appealed against in writing to a district court within the Enforcement Authority’s operational area, EC chapter 18 section 1.

1.2.6. Are there special jurisdictional grounds for safeguard enforcement?²

Matters concerning enforcement of obligations, that do not relate to an obligation to pay, together with issues concerning enforcement of decisions concerning provisional attachment or other security measures, are considered by the Enforcement Authority in the region where the defendant is resident or where the property that is involved is located, or where the enforcement may otherwise advantageously take place, EC chapter 16 section 10.

2. The procedure for obtaining the garnishment order

2.1. When requesting an enforcement action, what conditions does the creditor have to satisfy:

2.1.1. General conditions for enforcement?

² Please illustrate the special regulations in the order of questions 1.2.1. – 1.2.5.
The authorities of the Enforcement Administration are responsible for the enforcement of both public and private claims.

Public claims are debts to central and local authorities (taxes, VAT, excise duties, social security contributions and also for instance television licenses and parking fines).

Private claims are based on judgments by general and administrative courts. They also include titles based on the summary debt recovering procedure handled by the Enforcement Authority. Even repossessions and evictions are ordinarily also based on summary decisions by the Enforcement Authority.

The Enforcement Authority acts as creditor on behalf of the state and other public entities and this role of the Authority is regulated in the Collection Act.

Whether it is an individual or a legal entity enforcement can only apply to property owned by the debtor, or deemed to be the owner of the property, EC chapter 4, section 18-19 and 24. It must also be possible to transfer the property and it must also be of some value.

Apart from what is stated above, there are no general or special conditions, which the creditor must satisfy.

2.1.2. Special conditions for enforcement (periods)?
See 2.1.1

2.1.3. Which documents does the creditor have to submit?
If it is a private claim the creditor only has to submit an application. In the application the creditor has to state whether the claim is based on a judgment or on a title based on the summary debt recovering procedure. The judgment or title must be attached to the application.

2.1.4. Is there a prescribed or often-used form? (If so, please attach the form)
There is a prescribed form but it’s not necessary to use it. It is possible to make an application for enforcement orally. Some creditors and debt collecting companies are permitted by the National Tax board to make their applications in a medium for automatic data processing, EC chapter 2, section 1.

2.2. How precisely must the account to be seized be identified?

When a creditor demands an attachment or garnishment order he is obliged to request a limited or complete investigation of the debtor’s assets. If the creditor requests a limited investigation the Enforcement Authority investigates to see whether the debtor has a wage which can be garnished or attached or whether he receives excess tax or any other refund from the State. If the creditor has required a complete investigation of assets, the Enforcement Authority also investigates other personal property such as a car, banking assets or securities.

The debtor can be instructed to submit a list of his assets and sign an affirmation on oath that the information given in the list is correct.

Therefore the creditor does not have to specify the account to be seized at all. If the creditor has information about the debtor’s assets he can provide that information to the Enforcement Authority.

2.2.1. Is the general indication of the debtor’s and his/her bank’s name sufficient?

As stated above, the creditor doesn’t have to specify anything at all. It is the Enforcement Authority’s assignment to investigate the debtor’s assets.

2.2.1.1. If so, are search orders permissible?

The bank is liable to provide information about a debtors bank balance, EC chapter 4 section 15 even if banking secrecy normally is applicable.
A bank, which refuses to disclose information, may be ordered to do so or be fined. Such fines, are imposed by the District Court, and are not subject to any particular limitations, EC chapter 2 sections 15 and 16.

2.2.2. Does the bank’s branch office where the account is kept have to be indicated, and potentially (when there are several bank accounts) also the precise account number? Is another description sufficient?

As stated above the bank is liable to provide information about the debtor’s bank assets. If the bank balance is seized by the Enforcement Authority the bank naturally has to be informed.

2.2.2.1. Does the creditor have to set out in detail the legal basis, parties, amount, etc.?

The creditor has to fill in an application were he or she has to state the claim, state who is the debtor, and whether the claim is based on a judgment or a title based on the summary debt recovering procedure. The creditor also has to hand in the enforcement title to the Authority.

2.3. What investigations does the enforcement organ generally undertake:

2.3.1. With regard to the conditions of enforcement?

The Enforcement Authority has to investigate whether the conditions for enforcement are fulfilled. The enforcement Authority investigates whether the creditor has an enforcement title and if the conditions mentioned above (2.1.1. paragraph 8) are fulfilled.

2.3.2. With regard to the claim to be garnished?

The adjudication of the subject matter, which constitutes the basis for an enforceable instrument, is a matter for the court and only for the court. The enforcement Authority has no legal right to revue the substantial merits of a

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3 The German case law and legal literature describes this as the "principle of enforcement law certainty" (vollstreckungsrechtlicher Bestimmtheitsgrundsatz).
judgment or order by a court, or to order a re-examination of the subject matter. They are not allowed to re-examine reasons referred to at the trial or reasons which could have been, but for some reason have not been, referred to.

2.4. Can the creditor make amendments to the enforcement request (e.g. provide additional proofs etc.)?

Yes, the creditor can provide additional proof but that is not necessary since the Enforcement Authority investigates the debtor’s assets.

2.5. Does the debtor have a right of hearing before enforcement action is taken?

The debtor must always be informed of the claim against him. He is always given a chance to state his opinion. Only if there is a risk that the debtor will conceal or destroy property or if the matter is otherwise urgent, the debtor need not be notified. Nor is notification necessary if the debtor does not have a known domicile or it has not been possible to establish where he is residing, EC chapter 4 section 12. A hearing with the debtor and third parties at the office of the Enforcement Authority is possible, if necessary. Such a hearing is reserved for cases when a debtor refuses to co-operate with the Authority and when other, lesser procedures are deemed insufficient.

2.5.1. If not, are exceptions made with special accounts (e.g. salary accounts)?

See 2.5.

2.5.2. Can the debtor request protective orders before enforcement actions begin / possibly deposit a protection writing?

Court judgments, decisions, resolutions, settlements confirmed by court, decision in the summary debt recovery procedure and obligations to pay maintenance allowance are enforceable titles. Default judgments can also be enforced in the same way as injunctions to pay. All titles and judgments involving an obligation to pay can be enforced even though the time to appeal has not expired. Also decisions or orders by administrative
authorities can be enforced, if they are enforceable according to provisions in acts. Other documents can also be accepted as enforceable.

In public cases the Enforcement Authority represents the creditor, the Swedish State, and can make agreements (i.e. payment plans) with the debtor. The Enforcement Authority can also give the debtor a respite to pay. In private cases all agreements have to be made with the creditor.

The court can decide to stop the enforcement, if there are sufficient grounds.

2.6. In what time frame is the enforcement action normally effected?

The Enforcement Authority handles a private case for one year from the application date. If property has been attached or garnished, the handling procedure continues until that property has been sold.

2.7. Which legal remedies can the creditor request if the application is rejected?

Almost all decisions by the Enforcement Authority can be appealed against by the debtor, the creditor or by a third party.

The appeal is to be directed to the District Court but sent to the Enforcement Authority. According to the Enforcement Code anyone concerned by the decision has a right to appeal. Some preparatory decisions in the procedure cannot be appealed against. If the Authority refuses to correct its decision, the decision can be appealed. If a decision can be appealed against it must include a written instruction on how to appeal.

The main provision of the Enforcement Code provides a period of appeal of three weeks from the time the decision has been served. In decisions concerning attachment to earnings there is no time limit of appeal. A third party can also appeal, in this case there is no time limit. The writ of appeal must contain information on the decision that is appealed against, what change is demanded, the grounds for change, the evidence referred to and what the complainant wants to prove by it.

2.7.1. Who decides on the remedy?
See 2.7.

2.7.2. Must the debtor be heard?
Yes, the debtor always has an opportunity to state his opinion, although not necessarily oral, see 2.5.

2.8. Must the creditor advance the costs? On request of the Enforcement Authority the creditor must pay the application fee in order to get a garnishment order.

2.8.1. If so, to what amount?
The application fee is 500 SEK or 1000 SEK depending on if the creditor requests a limited or a complete investigation of assets. Extra outlays (i.e. for transport of goods, evaluation) should be paid in the same way by one of the parties.

2.8.2. How are the costs remunerated?
The winning party is normally entitled to be reimbursed for his litigation expenses by the losing party. If the enforcement is completed the debtor is considered to be the losing party. If a party is considered to have won in part, the reimbursement for costs may be adjusted correspondingly.

2.9. Do different regulations apply if the creditor applies solely for security measures? If so, please provide answers to questions 2.1-2.8 regarding these regulations.

No, the same regulations apply in relative parts.

3. **Commencement of the garnishment order**

3.1 Upon whom is the attachment order served:

3.1.1. the debtor?

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4 Regarding the height of the costs see 9.6.

5 Please illustrate the special regulations in the succession of questions 2.1. – 2.8.
Yes, the debtor is served.

3.1.2. the garnishee?
Yes, the garnishee is served.

3.1.3. Is substituted service permitted\(^6\)?
No, the same regulations apply in relative parts.

3.2. Who initiates the delivery:
3.2.1. the enforcement organ?
Yes, the Enforcement Authority is obliged to serve.

3.2.2. the creditor?
No, there is an obligation for the Enforcement Authority to serve.

3.2.3. Which person/organ conducts the delivery?
The Enforcement Authority conducts the delivery or anyone the Authority engages.

3.3. Which legal consequences does an incorrect delivery have:
3.3.1. for the garnishee?
An appeal has to be lodged within three weeks after the debtor/garnishee was notified of the decision. If an appeal is not lodged within that time the decision becomes final. There are no time limits for appeals against wage attachment or garnishment orders. If the delivery is conducted incorrectly the debtor/garnishee may request restitution for expired time. The debtor/garnishee may also lodge a demand for a new trial if the Enforcement Authority or a court has committed a grave procedural error.

Decisions by the Enforcement Authority are not considered invalid simply due to a delivery being incorrect.

The state can be liable to pay damages if a delivery is conducted incorrectly.

3.3.2. for the debtor?
See 3.3.1.

4. Object of the garnishment order
4.1. Which account balances are included:
4.1.1. the balance at the time of delivery?
Yes, all account balances at the time of the delivery are included. The Authority sends an order for collection to the debtor and provides him with the possibility to state his expenses.

After having received necessary information on the account balances and expenses of the debtor the Authority determines the distress amount of the debtor's bank balance, which is to be withdrawn, and accordingly on how much the debtor is allowed to keep for his expenses.

4.1.2. future account balances?
No, it is not possible to garnish future account balances. This requires a new garnishment order.

4.1.3. future closing of accounts?
No, it is not possible to garnish future closing of accounts.

4.1.4. future deposits?
No, it is not possible to garnish future deposits, see 4.1.2

7 To the extent that different rules apply to different types of accounts, please indicate the differences. For the scope of the study, cf. the preliminary remarks.
4.1.5. the basic or overdraft credit line?
No, it is not possible to garnish basic or overdraft credit line.

4.2. Is the access to the account limited to the amount of the enforcement title?
Yes, access is limited to the amount in the enforcement title including the Enforcement Authority’s expenses.

4.2.1. If so, are possible secondary claims to be considered?
Not if the possessor of the secondary claim hasn’t demanded a garnishment order.

4.2.2. Are the enforcement costs considered?
Yes, the enforcement costs are considered and automatically enforceable.

4.2.3. If the access to the account is not limited to the amount of the enforcement title, is there a general “upper limit”?
Access is limited to the amount in the enforcement title and to the Enforcement Authority’s costs.

4.2.4. How does the release of the account from garnishment take place?
If the account is released of garnishment the bank is informed that it may transfer the attached bank balance to the debtor or to whomever the debtor requests. If the Enforcement Authority already has collected the balance the Authority re-transfers the sum to the bank including interest.

4.2.4.1. Which enforcement organ is responsible?
The Enforcement Authority can release the garnishment on demand of the creditor or if the Authority finds that the conditions for garnishment are no longer fulfilled.

A court can also release the garnishment if an appeal is lodged against the garnishment order.
4.2.4.2. Is the creditor to be heard?
No, the creditor is not necessarily heard.

4.2.4.3. Are other persons to be heard?
No.

4.3. Effects of the agreement to an account current?
4.3.1. Are bank accounts usually kept as an account current?\(^8\)
No, bank accounts are not usually kept as an account current.

4.3.2. Could you please describe briefly the legal basis and the legal effects of the account current:
4.3.2.1. Legal basis of the account current?
The account current is a civil law agreement. The legal basis and the legal effect depend on the agreement between the parties.

4.3.2.2. Legal effects of the account current?\(^9\)
See 4.3.2.1.

4.3.3 Does an agreement to an account current take priority over the garnishment order:
No it does not.

4.3.3.1. Is the garnishment order limited?
The garnishment order is limited to the amount of the execution claim including application fees.

\(^8\) If giro accounts of individuals are not current accounts in the proper sense (e.g. in France: compte de dépôt), please comment on their legal status following the structure of questions 4.3.1. - 4.3.3.

\(^9\) Please attach the pertinent contract forms, respectively the law regulations in the annex to the national report.
4.3.3.2. Can the creditor cancel the account?
No, the creditor can not cancel the account.

4.3.3.3. Can the bank cancel the account because of the garnishment?
No, the bank can not cancel the account of the garnishment.

4.3.3.4. Which effects do earlier assignments of a claim of the debtor over the account have?
It does not have any effect. The Enforcement Authority can only attach the balance on the day of the attachment.

Only if the debtor is declared bankrupt can earlier assignments of the account be reclaimed. A demand for such a reclaim is lodged by the trustee and it requires certain conditions to be fulfilled. The Enforcement Authority does not have the power to reclaim earlier assignments of the account.

4.3.3.4.1. Do these dispositions remain effective, even if they concern future claims?
See 4.3.3.4.

4.3.3.4.2. What conditions have to be fulfilled to perpetuate the effectiveness of the dispositions?
See 4.3.3.4.

4.3.3.4.3. Is the effectiveness of such dispositions subject to time constraints?
See 4.3.3.4.

4.4. Are there special regulations for joint accounts?
There are no special regulations regarding joint accounts. If two people have a joint account the account balance is considered to belong to the debtor if the other person can not prove otherwise. According to case law 50 % of the
balance is normally considered to belong to the debtor if a married couple have a joint account.

4.4.1. Can the other party to a joint account make further dispositions over the account?
No, the account balance is seized.

4.4.2. Are there any restrictions?
See 4.4.1.

4.4.3. Does the enforcement organ decide on this?
See 4.4.2.

4.5. Are there regulations concerning the concealment of bank accounts (e.g. trust accounts, accounts of straw men)?
No there are no regulations concerning the concealment of bank accounts.

4.5.1. Is the bank required to verify the existence of such accounts?
The bank is required to verify the existence of all accounts. See 2.2.

4.5.2. Is the title against the debtor sufficient for the garnishment?
Yes it is.

5. Effect of the garnishment order

5.1. Interdiction of payment for the garnishee?
The bank is informed about the garnishment order and it is forbidden to transfer any money to anyone else but the Enforcement Authority. The Enforcement Authority collects the account balance and distributes it to the creditor.

5.2. Interdiction of collection for the debtor?
See 5.1.

5.3. Legal status of the creditor:

5.3.1. Does the creditor obtain a lien on outstanding accounts, which grants him priority?
The creditor does not obtain a lien but his claim has priority over later garnishment demands.

5.3.2. Are competing garnishments by other creditors to be considered?
No, competing garnishments are not considered.

5.3.3. If so, within which period must competing garnishments be attached?
See 5.3.2.

5.3.4. Is the claim transferred to the creditor for the collection of the sum?
The claim itself is not transferred to the debtor for the collection of the sum. When the garnishment is final the Enforcement Authority collects the account balance and distributes it to the creditor.

6. The legal status of the garnishee

6.0. The service of the garnishment order to the garnishee, is it a necessary element for the validity of the garnishment?
The service not a necessary element for the validity of the garnishment itself but the absence of service might have other consequences, se 3.3

6.1. The declaration of the garnishee

6.1.1. Who requests the garnishee to give information about the claim/account:

6.1.1.1 the enforcement organ?
Yes, The Enforcement Authority requires that information.
6.1.1.2. the creditor?
No, the bank has no obligation to provide that information to the creditor.

6.1.2. Is there a period, within which the declaration is to be executed?
There is no period within which the declaration is to be executed.
Duration of the period?

6.2. The object of the declaration of the garnishee\textsuperscript{10}.
6.2.1. Current balance of the account?
The garnishee has an obligation to provide that kind of information, see 2.2.

6.2.2. Further bank accounts of the debtor?
See 6.2.1.

6.2.3. Existence of the claim?
See 6.2.1.

6.2.3.1. Also possible ancillary rights?
See 6.2.1.

6.2.3.2. Objections against the claim?
If the garnishee has any objections against the claim he would be wise to say so but the garnishee is not obligated to state any objections from a third part against the claim.

6.2.4. Garnishments of competing creditors?
One would expect the Enforcement Authority to know about garnishments from competing creditors.

\textsuperscript{10} If available, please attach a common form for the garnishee declaration.
6.3. Legal effects of the garnishee declaration:

The adjudication of the subject matter, which constitutes the basis for an enforceable instrument, is a matter for the court and only for the court. The Enforcement Authority has no legal right to review the substantial merits of a judgment or order by a court or to order a reexamination of the subject matter. They are not allowed to re-examine reasons referred to at the trial or reasons which could have been, but for some reason have not been, referred to.

Once the claim has been settled by the court it is the Enforcement Authority’s task to collect the claim. In order to do so the Enforcement Authority has to investigate the debtor’s assets. The garnishee declaration itself therefore has no legal effect.

Therefore the questions 6.3.1- 6.3.2 are neither relevant nor applicable in Swedish law besides what has been stated above.

6.3.1. Is the declaration treated as an acknowledgement of the claim?

6.3.1.1. Is the missing declaration feigned as an acknowledgement?

6.3.2. If not, what are the effects for the lawsuit of the creditor against the garnishee (shifting of the burden of proof)?

6.4. Sanctioning the garnishee declaration

As stated above, the bank is liable to provide information about a debtor’s bank balance, EC chapter 4 section 15, even if banking secrecy normally would be applicable.

A bank, which refuses to disclose information, may be ordered to do so or be fined. Such fines, are imposed by the District Court, and are not subject to any particular limit, EC chapter 2 sections 15 and 16.

6.4.1. Does the incorrect / missing declaration lead to the acknowledgement of the claim?

See 6.4.
6.4.2. Does the missing assertion of objections lead to their exclusion?
See 6.4.

6.4.2.1. Is there an obligation of the garnishee to pay damages?
See 6.4.

6.4.2.2. Please name the factual requirements of the obligation to pay damages, in particular whether guilt of the garnishee is necessary?
See 6.4.

6.4.2.3. Extent of liability for damages?
See 6.4.

6.4.2.4. How can the obligation to pay damages be made valid?
See 6.4.

6.5. The protection of the garnishee
6.5.1. Which objections can the garnishee assert?
6.5.2. Is there a protection against erroneous payments to the debtor:
6.5.2.1. as a good faith protection?
6.5.2.2. as a claim of unjustified enrichment against the creditor?
6.5.3. Can the garnishee claim reimbursement of his expenses?
6.5.3.1. If so, of the creditor?
6.5.3.2. If so, of the debtor?

7. Debtor’s protection (immunities)
7.1. Does the garnishment of the claim also include the so-called “salary account” (including social security benefits, pensions, etc.) of the debtor?
See 7.2.

7.2. If not, please explain the procedure of enforcement in salary accounts\textsuperscript{11}

According to the Enforcement Code garnishment (attachment of earnings) is possible concerning both public and private claims and maintenance allowance, and can in principle continue indefinitely. If the creditor has asked for garnishment the Enforcement Service sends an order for collection to the debtor and provides him with the possibility to state his expenses. Different kinds of earnings can be subject to garnishment: employees pay, other remuneration for work efforts by the debtor, if his status is comparable with that of an employee, periodic payments for use of a patent, rights to literary or artistic work or other such rights or for the transfer of a business, payment that comprises a pension or annuity, sick pay, parental benefits, rehabilitation benefit and unemployment compensation.

Outstanding pay from an employer may be attached by the employer who is ordered to retain and pay out a particular part of the pay to the Enforcement Service. The decision concerning attachment may relate to future payments of salary or to a particular item of pay.

After having received necessary information concerning salary and expenses of the debtor the Enforcement Service decides how much at most shall be retained on each occasion of the earnings (attachment amount) and how much the debtor is allowed to keep for his expenses (reserve amount). Instead of determining an attachment amount, the Service may decide that all pay that exceeds the reserve amount shall be taken in claim.

Attachment of earnings shall take place only if its justifiable having regard to the amount that may be expected to be received.

\textsuperscript{11} In doing so take the pattern of questions 7.3. and 7.4. for orientation.
7.3. If so, are there special protective provisions for the debtor and his family?

Yes, in cases concerning attachment of earnings, instead of the rules of beneficium, there are rules on deduction of a sum corresponding to the subsistence level.

The part of the earnings that cannot be taken in claim through attachment (reserve amount) is decided with the guidance of an amount multiplied by a figure that specifies the relationship between the general price level in the month of October in the immediately proceeding year and the price level in October 1993 (normal amount). This amount is 43 800 kronor for a single person, 72 360 kronor for cohabiting spouses and persons equated thereto, 23 240 kronor for each child up to and including the calendar year when the child turns six years and 26 750 kronor for time thereafter.

The normal amount shall be deemed to comprise all ordinary living expenses except housing expenses, which are calculated separately and added to the normal amount.

7.3.1. Are there exemption limits of the garnishment for the debtor himself?

Yes, earnings may be taken in claim by attachment only to the extent that exceeds what the debtor needs for his and his family's maintenance and also to satisfy payment obligations to others who upon attachment of earnings have a superior right to pay.

7.3.1.1. Are those regulated by law?

Yes, in chapter 7 of the Enforcement Code.

7.3.1.2. Does the enforcement court define those limits?

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7.3.2. Are there exemption limits of the garnishment for the relatives of the debtor (in particular alimony creditors)?
Yes, see the answer to question 7.3.1.

7.3.2.1. Are those exemption limits regulated by law?
Yes, in chapter 7 of the Enforcement Code.

7.3.2.2. Does the enforcement court determine the limits?
No, they are defined by law.

7.3.3. Is there an indexation of the exemption limits?
Yes, the normal amount is determined every year by the National Tax Board.

7.4. The procedure of debtor’s protection

7.4.1. Are the protective provisions applied ex officio or upon application (by the debtor and his relatives)?
The protective provisions are applied ex officio.

7.4.2. Can the debtor claim the disbursement of a certain allowance for his living costs:
Yes, observe the answer to question 7.3.1.

7.4.2.1. on the basis of a decision of the enforcement court?
No, by the Enforcement Service. It’s only a matter for the court if the decision has been appealed against.

7.4.2.2. directly from the garnishee on presentation of a form?
Yes.

7.4.3. Who calculates the allowance:
See 7.4.3.1.
7.4.3.1. the enforcement organ?
Officials of the Enforcement Service.

7.4.3.2. the garnishee?
No, Officials of the Enforcement Service.

7.5. Can the creditor on his part claim a special need of protection:
7.5.1. during the enforcement of a maintenance claim?
7.5.2. during the enforcement of a tort claim?
7.5.3. Which enforcement organ decides on the request?

8. The collection of the claim
8.1. Which powers does the creditor have to collect the garnished claim?

When someone does not comply voluntarily to a court’s judgment, or when someone does not fulfill his duties according to law or to a contract, the entitled person ought to be able to get help from the state to submit the counterpart to fulfillment. It is the Enforcement Authority’s task to collect debts. Once the enforcement proceedings are final the Enforcement Authority distributes the collected sum to the creditor. In other words, all enforcement actions are conducted by the Enforcement Authority. The creditor only has to apply for enforcement proceedings.

Therefore the questions 8.1 – 8.2.2.3 are neither relevant nor applicable in Swedish law besides what has been stated above.

8.1.1. Is the claim transferred to him?
8.1.2. Is he empowered to collect the claim?
8.1.3. Does the collection require a further decision of the enforcement organ?
8.1.4. How does the title of the claim in favour of the creditor take place:
8.1.4.1. in a separate process between creditor and garnishee?
8.1.4.2. Title by the enforcement court, if the garnishee recognizes the claim.

8.2. What are the rights of competing creditors?

8.2.1. Does the priority principle apply or is the sum seized distributed among all participating creditors (group principle)?

8.2.2. If the group principle applies:

8.2.2.1. How does the registration of further claims take place?

8.2.2.2. Is there a public proclamation?

8.2.2.3. Are there periods for registration? What is the legal consequence of the failure to observe the time limit?

8.2.2.3. How are the claims distributed?

9. Information in law and in fact

9.1. How many garnishments of claims are caused annually in your country?

The amount of garnishments of claims was, for the whole of Sweden, 6,279 during year 2002. The corresponding amount for year 2001 was 5,264.

9.2. In which relation do these measures stand to:

9.2.1. enforcement measures altogether (quantity/extent)?

Attachment of wages was during year 2002 done in 91,574 cases. The corresponding amount of cases for year 2001 was 88,744.

Attachment of real property was during year 2002 done in 2,984 cases. The corresponding amount of cases for year 2001 was 3,160.

Attachment of personal property was during year 2002 done in 5,693 cases. The corresponding amount of cases for year 2001 was 4,747.

Other attachments were during year 2002 done in 831 cases. The corresponding amount of cases for year 2001 was 789.
The most common distraint is, as seen above, attachment of wages. The second most common distraint is garnishment of claims. See 9.1.

9.2.2. the execution levied upon movable goods (quantity/extent)?
See above, under 9.2.1, attachment of personal property is not as frequently used as attachment of wages or garnishment of claims.

9.3. Is there any information about the duration of proceedings with account distraint:
9.3.1. with regard to the garnishment of the account?
When the Enforcement Authority knows or believes that the debtor has a bank account at a certain bank, the Enforcement Authority can demand the bank to state if this is the case and the sum in the bank account. According to Chapter 4 Section 15 EC the bank is obligated to answer. If the debtor has a bank account the Enforcement Authority drafts an attachment order and sends the order to the bank (by mail or by facsimile transmission). This order contains an order to the bank to pay the fund to the Enforcement Authority. This procedure normally takes one or two weeks. In most cases the bank delivers the fund to the Enforcement Authority within some days, perhaps a week.

9.3.2. with regard to the satisfaction of the creditor?
If the enforcement title is legally binding, hence an appeal has not been made against the attachment, the Enforcement Authority pays out the funds to the creditor about a month after the day for the attachment.

9.3.3. with regard to possible remedies of the garnishee at the enforcement courts?
The debtor can appeal against the attachment within three weeks after the day when he has been served the attachment order. The appeals are handled by the District Court. An average time for this procedure is two to four months.
9.3.4. when the creditor asserts the claim judicially against the garnishee?

The Swedish Enforcement Authority handles the Swedish summary debt recovering procedure. The procedure is applicable on applications for injunctions to pay, including demands for determination of payment in real estate, and also on applications for enforcement assistance. Unlike the summary procedures of many other Member States there are no limitations related to a maximum amount. Fundamental to the Swedish system is the handling of all cases by computer support, which has now lead to about 60 percent of all applicants filing their applications on computer based media. The application fee for summary procedure amounts to SEK 300. An applicant may demand compensation for his own work from his opposing party at a maximum of SEK 315 for an injunction to pay (respectively SEK 345 for a matter concerning enforcement assistance). Furthermore, compensation for certain costs for necessary collection measures and for serving can be demanded. Each year nearly 600 000 cases are decided upon by the Enforcement Authorities. The average time for handling 80 percent of all cases is shorter than three months. Only a few percent of the cases have not been decided upon within six months. This is mainly due to problems concerning serving the debtor. Only a few percent of the cases are referred to Courts due to the claim being disputable. The share of the decisions in the summary procedure, which are set aside by the Courts due to the existence of procedural errors, amounts to less than one promille.

When the decision has been rendered and an application for enforcement has been made the Enforcement Authority will start handling the distraint. The Authority will hereby decide if an attachment of salary shall be done or what other measure the Authority shall take.

9.4. Are there reports of any execution problems in practice in your country?

OBJECTIONS

It is not unusual that the debtor makes an objection against enforcement. He might state that the prescription time has run out. (In Sweden there are some “professional creditors” or debt collecting companies who systematically apply for enforcement of “old” enforcement titles. Sometimes they have bought the enforcement title from a company that has winded up.) – In eviction cases there are sometimes objections from the defendant stating that he has a new oral agreement with the landlord (applicant) according to which he is entitled to stay in the apartment in spite of the enforcement title. Sometimes a third party who lives in the apartment presents a similar objection.
ATTACHMENT OF MOVABLE ASSETS

There is sometimes a problem for the Enforcement Authority to find an asset (i.e. a vehicle). The Enforcement Authority knows that the debtor owns a valuable car but both the debtor and the car are difficult to find.

ATTACHMENT OF PAY

The reserve amount is decided with the guidance of a normal amount (determined every year by the National Tax Board). But also the reserve amount must be decided so that the debtor is allowed to keep what he needs for his and his family’s maintenance. In practice there are lots of problems with debtors who state that he or a member of his family has need for new glasses, dentist bills, medicine and so on. According to Chapter 7 Section 2 EC a decision concerning attachment shall be amended, if there is a reason to do so. Some debtors demand for amendment very often, sometimes once a month. When this occurs the Enforcement Authority is obliged to review the decision.

APPEALS

A debtor can appeal against a decision concerning attachment of pay without limitation to a particular period or without limitation of an earlier appeal. Many appeals are made against decisions concerning attachment of tax repayments. Those appeals are “in vain” because in those situations the debtor has no right to have a non-attachable sum of money. Still those appeals cause a lot of trouble for both the Enforcement Authority and the District Courts.

9.5. Are there political proposals to legally alter the procedure of garnishing bank accounts?

No political proposals concerning attachment of bank accounts are known.

9.6. Provided that an amount of 10.000,- € is executed, what are the resulting costs for the enforcement act:

The costs for the Enforcement authority do not differ with regard to the amount, which is to be executed.
9.6.1. with the enforcement organ?

The costs for execution of bank deposits are fees for stamps and telephone calls. Other costs are for serving. In a normal case the total costs for this procedure is approx. SEK 100, not including costs for wages.

9.6.2. for the availment of an attorney (by the creditor)?

An applicant for the summary debt recovering procedure does not (or very rarely so) require a lawyer or any professional help while the case is handled by the Enforcement Authority. If a case is referred to a court, due to being disputable, maybe such help could be needed. If so he will have to organize, and pay, for this himself. See under 9.3.4.

If a debtor appeals against a decision on attachment, by the Enforcement Authority, he may decide that he needs a lawyer. If so he will have to organize, and pay, for this himself. If he wins the case, the court will order his opponent, to pay his legal costs. However, if he loses the case, he will have to pay the cost, and any legal costs his opponent has had, by himself.

9.6.3. Who has to carry these enforcement costs?

The Enforcement Authority charges the applicant with a fee for enforcement. If possible this fee shall later be enforced from the debtor.

The State is responsible for costs for translations of applications or other documents that are not drawn up in Swedish. The State is also responsible for costs if a locksmith is hired and for announcements of an auction where personal property, which has been attached, will be sold. If other costs occur the applicant will have to pay them if it is not possible to take it from what has amounted from the selling of the property.

10. Cross-border garnishment of bank accounts

10.1 Is a cross-border garnishment of bank accounts permissible in your country:

10.1.1 against a garnishee abroad?
No, the Enforcement Authority only has jurisdiction within Sweden

10.1.2 against a debtor abroad?

Yes, if the debtor has assets in Sweden, see 1.2.1

10.2 If such an account distraint is inadmissible, which reasons are given for that:

10.2.1 Territoriality of the enforcement act?

The Enforcement Authority only has jurisdiction to garnish assets within Sweden.

10.2.2 Protection of the debtor?

No, see 10.2.1.

10.2.3 Protection of the garnishee?

No, see 10.2.1.

10.2.4 Protection of competing creditors?

No, see 10.2.1.

10.2.5 Could you please give further reasons

No, see 10.2.1.

10.3 If a cross-border garnishment of bank accounts is permissible, how is it accomplished:

10.3.1 by delivering the enforcement act to the debtor/garnishee according to Reg. 1348/00/EC?

Cross-border garnishments of bank accounts are not permissible in Sweden.

10.3.2 by serving the enforcement act to the domestic head office of the bank, however with the consequence that also accounts are seized abroad?
10.3.3. Are fictitious deliveries permissible?
See 10.3.1.

10.3.4. Which law is applicable to the cross-border enforcement act (with regard to the foreign account):
See 10.3.1.

10.3.4.1. with regard to the enforcement act itself?
See 10.3.1.

10.3.4.2. with regard to the protection of the debtor?
See 10.3.1.

10.3.4.3. with regard to the protection of the garnishee?
See 10.3.1.

10.3.4.4. with regard to competing creditors and material collateral [material securities]?
See 10.3.1.

10.4. Recognition of foreign orders for enforcement (particularly garnishment orders) 12

10.4.1. Are foreign orders for enforcement recognized and enforced in your country (procedural recognition13) ? If so:

Principles of private international law and international procedural law allow a distinction between the recognition of the enforcement process itself on the level of (international) procedural law and the recognition of some effects of the foreign process on the level of substantive law. 10.4.1. addresses the first issue, 10.4.2. the second issue.

The form of procedural recognition in this sense would closely resemble the recognition described in Art. 32 et seq. Regulation 44/01/EC.
10.4.1.1. What rules apply to the question of recognition?
Foreign orders for enforcement are not recognized or enforced in Sweden.

Enforcement of foreign public and private claims are enforceable in Sweden under conditions laid down in international agreements but it is always the Swedish Enforcement Authority who has jurisdiction within Sweden to pass an enforcement order.

10.4.1.2. What law applies to the order for enforcement?
See 10.4.1.1.

10.4.1.3. What law is applicable regarding the protection of the garnishee (including the duty to give information):
See 10.4.1.1.

10.4.1.4. What law is applicable with regard to competing creditors?
See 10.4.1.1.

10.4.1.5. What law is applicable with regard to debtor protection?
See 10.4.1.1.

10.4.1.6 If not: which reasons are given for that (see 10.2.)?

10.4.2. Does your national law acknowledge the effects of a foreign order for enforcement when applying substantive\(^{14}\) rules of law?
See 10.4.1.1.

10.4.2.1. What conflict of law rules apply to the consideration of foreign orders for enforcement?

\(^{14}\) In this context, “substantive” is used in contradistinction to conflict of laws rules. It is intended to include procedural law.
10.4.2.2. What effects are recognised?

See 10.4.1.1.

10.4.2.2.1. Restraints on the debtors capability to dispose of the claim (due to the attachment) ?

See 10.4.1.1.

10.4.2.2.2. Transfer of the claim to the creditor ?

See 10.4.1.1.

10.4.2.2.3. Other effects ?

See 10.4.1.1.

10.5. Debtor’s procedural options to avoid enforcement where changes of circumstances occur after the decision giving rise to the title (particularly where the judgment debt has been satisfied) \(^{15}\)

The debtor can avoid enforcement by proving to the Enforcement Service that the judgment debt and all costs are paid, alternatively proving that he has a set off able counterclaim against the creditor. He can also claim other circumstances in order to avoid enforcement by the Enforcement Service. The decision of the Enforcement Service in these matters can be appealed to the district court (EC chapter 3 section 21). The court can only change the decision after an appeal.

\(^{15}\) Concerning the questions in section 10.5., please indicate the positions taken by your national law in case of a) a title produced in your country, b) the claim being situated (account held) in your country.
10.5.1. Jurisdiction

10.5.1.1. Of the court responsible for decision in substantive action?

Normally the district court/enforcement organ where the claim is located. The court can only change the decision after an appeal. See above.

10.5.1.2. Of the court / enforcement organ where the claim is located?

See 10.5.1.1.

10.5.1.2.1. If so: Is there some form of cooperation with the court responsible for decision in substantive action?

Yes, if there is an urgent matter the court and the Enforcement Service cooperate in order to avoid an incorrect enforcement. This cooperation can be quickly and efficiently carried out, using e-mail, fax, or telephone.

10.5.1.2.2. If so: How does the cooperation take place?

10.5.2. Would the realisation of the proposal on the European Enforcement Order (see supra note 15) change this situation?

No, the same laws rules will be applied.

10.5.3. Additional remarks

10.6. Would you please illustrate briefly which one of the enforcement models for a cross-border garnishment of a bank account, specified in the preliminary remark, is to be preferred and – accordingly - which concerns you might have against the permission of such an enforcement act?

See above under section 3 “Different concepts for cross-border garnishment of bank accounts”.

O:utland/GarnishmentFinal