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Attachment DEBA / LC

The Federal Court refuses to relax the requirements

Par Joël Pahud le 20 April 2026

When a creditor seeks to have assets located in Switzerland that belong to a foreign state placed under sequestration under the Swiss Debt Enforcement and Bankruptcy Act (DEBA), the creditor must, in particular, demonstrate that its claim has a sufficient connection to Swiss territory. In its decision 5A_617/2025 of January 29, 2026, the Federal Supreme Court confirmed that this requirement applies even when (i) the creditor is itself a foreign state, (ii) it relies on a final release order (Art. 271(1)(6) DEBA), or (iii) the attachment is ordered as a protective measure under Art. 47(2) of the Lugano Convention (LC). The Federal Court thus rejects the argument put forward by the appellant—in this case, the European Union itself—that the requirement of a sufficient connection is incompatible with the LC.

This ruling arises in the context of a long-running dispute between the European Union (the creditor seeking attachment) and the Syrian Arab Republic (the debtor), which stems from several loans granted by the European Investment Bank to the debtor between 2000 and 2008, totaling over 439 million euros. Although the Federal Court uses pseudonyms, the parties were identified in the decisions of the General Court of the European Union of June 6, 2019 (T?541/17) and of the *High Court of Justice of England and Wales* of June 29, 2018 ([2018] EWHC 1712 (Comm)), to which the Federal Court refers and which are invoked by the creditor as grounds for definitive release.

In June 2024, the Court of First Instance of Geneva (CFI) authorizes a sequestration based on Art. 271(1)(6) DEBA in conjunction with Art. 47(2) CL, at the request of the European Union, on bank assets in Switzerland belonging to the Syrian Arab Republic or its Central Bank. In January 2025, the TPI upheld the debtor's objection. By judgment of July 8, 2025, the Court of Justice of the Canton of Geneva dismissed the appeal filed by the European Union against this decision. The European Union then appealed to the Federal Supreme Court, which also dismissed the appeal. The attachment was thus lifted.

The reasoning behind the Federal Supreme Court's judgment begins with a reminder. According to settled case law, the attachment of assets in Switzerland belonging to a foreign state (or an international organization) requires the fulfillment of three conditions, in addition to those set forth in Art. 272(1) DEBA (existence of the claim ; grounds for attachment ; assets belonging to the debtor).

First, the foreign state must not have acted as a holder of public authority ("*iure imperii*") in the legal relationship underlying the attachment claim, but rather as a holder of private rights ("*iure*

gestionis”).

Second, the legal relationship in question must have a sufficient connection to Swiss territory. The concept of “sufficient connection” is interpreted relatively narrowly, at least in comparison with the requirement of a sufficient link set forth in Art. 271(1)(4) DEBA. This condition is met, in particular, when the contractual relationship giving rise to the disputed claims originated in or is to be performed in Switzerland, or when the foreign state has performed acts in Switzerland that have established a place of performance in Switzerland. Conversely, it is not sufficient that the foreign state’s assets are located in Switzerland or that the claim was awarded by an arbitral tribunal seated in Switzerland.

Finally, the foreign state’s assets located in Switzerland must not be used for sovereign purposes (Art. 92 para. 1 no. 11 DEBA).

In the present case, the Federal Supreme Court held that the cantonal court’s conclusion that the claims do not have a sufficient connection to Switzerland is not arbitrary.

Rejecting the European Union’s arguments, the Federal Supreme Court then confirmed that the requirement of a sufficient connection also applies when (i) the creditor is itself a foreign state, (ii) it relies on a final release order (Art. 271(1)(6) DEBA), or (iii) the attachment is ordered as a protective measure under Art. 47(2) CL, that is, in connection with the *exequatur* in Switzerland of a judgment, an authentic instrument, or a court settlement originating from a State bound by the CL.

This last point caught our attention because it raises an issue that goes beyond the question of the attachment of a foreign State’s assets. The issue is the compatibility of the conditions for attachment under DEBA with the Lugano Convention.

According to the appellant, applying the criterion of sufficient connection in the presence of a “Lugano judgment” would be incompatible with the Lugano Convention, thereby violating the principle of the primacy of international law (Art. 5 para. 4 of the Swiss Constitution). The Federal Supreme Court flatly rejects this argument : the European Union “misunderstands the system provided for in Art. 47(2) CL.”

Art. 47(2) LC provides that the declaration of enforceability (*exequatur*) entails authorization to proceed with protective measures. The Federal Supreme Court notes that access to the protective measure cannot therefore be subject to requirements other than the declaration of *exequatur*, but that the LC leaves it to the national legislature to choose the appropriate measure. Furthermore, the conditions for this measure are governed by domestic law. The Federal Supreme Court observes that the Swiss legislature has chosen the attachment under Art. 271 et seq. DEBA as the protective measure under Art. 47(2) LC and rules that there is therefore no reason to disregard the criterion of sufficient connection when an attachment is ordered, in this context, on assets located in a foreign state.

This approach contrasts with that adopted by the Zurich Obergericht in a judgment of July 10, 2025 (published in ZR 2026 3). In that case, which did not involve the attachment of assets belonging to a foreign state, the *Obergericht* held that the requirement to establish a prima facie case regarding the existence of assets belonging to the debtor (Art. 272(1)(3) DEBA) would, in essence, be incompatible with Art. 47(2) LC. According to the Obergericht, the creditor seeking

attachment based on a Lugano judgment should only be required to make a “plausible and reasoned allegation” regarding the existence of the debtor’s assets (critique : Pahud, Seizure and the Provisional Protection of Monetary Claims, 2018, paras. 542–550).

To our knowledge, the matter has not yet been brought before it, but upon reading the judgment, it is doubtful that the Federal Supreme Court would endorse this interpretation by the Obergericht. In our view, prudent litigants would therefore be well advised to assume that it is (always) their responsibility to establish a prima facie case that the debtor has assets in Switzerland, even when they rely on a “Lugano title” (judgment, authentic instrument, settlement, or judicial acquiescence).

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