



| Basic information  |                     |
|--|---------------------|
| <b>2011/0204(COD)</b><br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation  | Procedure completed |
| European Account Preservation Order<br><br><b>Subject</b><br>2.50.04 Banks and credit<br>2.50.04.02 Electronic money and payments, cross-border credit transfers<br>7.40.02 Judicial cooperation in civil and commercial matters |                     |




| Key players                   |   |  |   |                  |
|-------------------------------|---|--|---|------------------|
| European Parliament           | <b>Committee responsible</b>              |  | <b>Rapporteur</b>                               | <b>Appointed</b> |
|                               | <b>JURI</b> Legal Affairs                 |  | BALDASSARRE Raffaele (PPE)                      | 21/11/2011       |
|                               |   |  | Shadow rapporteur<br>HELLVIG Eduard-Raul (ALDE) |                  |
|                               | <b>Committee for opinion</b>              |  | <b>Rapporteur for opinion</b>                   | <b>Appointed</b> |
|                               | <b>ECON</b> Economic and Monetary Affairs |  | BESECU Elena (PPE)                              | 13/09/2011       |
| Council of the European Union | <b>Council configuration</b>              |  | <b>Meetings</b>                                 | <b>Date</b>      |
|                               | General Affairs                           |  | 3313  | 2014-05-13       |
|                               | Justice and Home Affairs (JHA)            |  | 3298  | 2014-03-03       |
|                               | Justice and Home Affairs (JHA)            |  | 3244  | 2013-06-06       |
|                               | Justice and Home Affairs (JHA)            |  | 3279  | 2013-12-06       |
| European Commission           | <b>Commission DG</b>                      |  | <b>Commissioner</b>                             |                  |
|                               | Justice and Consumers                     |  | REDING Viviane                                  |                  |

| Key events |   |  |         |
|------------|---|--|---------|
| Date       | Event   | Reference  | Summary |
| 25/07/2011 | Legislative proposal published                          | COM(2011)0445<br> | Summary |
| 13/09/2011 | Committee referral announced in Parliament, 1st reading |  |         |

|            |   |   |                         |
|------------|---|---|-------------------------|
| 30/05/2013 | Vote in committee, 1st reading                        |   |                         |
| 06/06/2013 | Debate in Council                                     |   |                         |
| 20/06/2013 | Committee report tabled for plenary, 1st reading      | <a href="#">A7-0227/2013</a>  | <a href="#">Summary</a> |
| 06/12/2013 | Debate in Council                                     |   |                         |
| 15/04/2014 | Decision by Parliament, 1st reading                   | <a href="#">T7-0367/2014</a>  | <a href="#">Summary</a> |
| 15/04/2014 | Results of vote in Parliament                         |  |                         |
| 13/05/2014 | Act adopted by Council after Parliament's 1st reading |   |                         |
| 15/05/2014 | Final act signed                                      |   |                         |
| 15/05/2014 | End of procedure in Parliament                        |   |                         |
| 27/06/2014 | Final act published in Official Journal               |   |                         |

| Technical information             |  |
|-----------------------------------|--|
| <b>Procedure reference</b>        | 2011/0204(COD)   |
| <b>Procedure type</b>             | COD - Ordinary legislative procedure (ex-codecision procedure) |
| <b>Procedure subtype</b>          | Legislation  |
| <b>Legislative instrument</b>     | Regulation   |
| <b>Legal basis</b>                | Treaty on the Functioning of the EU TFEU 081-p2                |
| <b>Other legal basis</b>          | Rules of Procedure EP 165                                      |
| <b>Stage reached in procedure</b> | Procedure completed  |
| <b>Committee dossier</b>          | JURI/7/06629   |

| Documentation gateway   |                                |                              |            |                         |
|---|--------------------------------|------------------------------|------------|-------------------------|
| <b>European Parliament</b>                                      |                                |                              |            |                         |
| Document type   | Committee                      | Reference                    | Date       | Summary                 |
| Committee opinion   | <a href="#">ECON</a>           | <a href="#">PE475.906</a>    | 01/03/2012 |                         |
| Committee draft report  |                                | <a href="#">PE483.539</a>    | 05/02/2013 |                         |
| Amendments tabled in committee                                  |                                | <a href="#">PE506.176</a>    | 01/03/2013 |                         |
| Amendments tabled in committee                                  |                                | <a href="#">PE510.699</a>    | 16/05/2013 |                         |
| Committee report tabled for plenary, 1st reading/single reading |                                | <a href="#">A7-0227/2013</a> | 20/06/2013 | <a href="#">Summary</a> |
| Text adopted by Parliament, 1st reading/single reading          |                                | <a href="#">T7-0367/2014</a> | 15/04/2014 | <a href="#">Summary</a> |
| <b>Council of the EU</b>  |                                |                              |            |                         |
| Document type   | Reference                      | Date                         | Summary    |                         |
| Draft final act   | <a href="#">00034/2014/LEX</a> | 15/05/2014                   |            |                         |
| <b>European Commission</b>                                      |                                |                              |            |                         |
| Document type   | Reference                      | Date                         | Summary    |                         |
|   | <a href="#">COM(2011)0445</a>  |                              |            |                         |

|  |  |            |                         |
|--|--|------------|-------------------------|
| Legislative proposal                           |                   | 25/07/2011 | <a href="#">Summary</a> |
| Document attached to the procedure             | SEC(2011)0937<br> | 25/07/2011 |                         |
| Document attached to the procedure             | SEC(2011)0938<br> | 25/07/2011 |                         |
| Commission response to text adopted in plenary | SP(2014)471  | 09/07/2014 |                         |

#### National parliaments

| Document type | Parliament /Chamber | Reference     | Date       | Summary |
|---------------|---------------------|---------------|------------|---------|
| Contribution  | DE_BUNDESRAT        | COM(2011)0445 | 18/10/2011 |         |
| Contribution  | RO_CHAMBER          | COM(2011)0445 | 07/11/2011 |         |
| Contribution  | PT_PARLIAMENT       | COM(2011)0445 | 08/11/2011 |         |

#### Other institutions and bodies

| Institution/body | Document type                                  | Reference                                    | Date       | Summary                 |
|------------------|--|--|------------|-------------------------|
| EDPS             | Document attached to the procedure             | N7-0036/2012<br>OJ C 373 21.12.2011, p. 0004 | 13/10/2011 | <a href="#">Summary</a> |
| ESC              | Economic and Social Committee: opinion, report | CES1034/2012                                 | 26/04/2012 |                         |

#### Additional information

| Source               | Document | Date |
|----------------------|----------|------|
| National parliaments | IPEX     |      |
| European Commission  | EUR-Lex  |      |
| European Commission  | EUR-Lex  |      |

#### Final act

|  |                         |
|--|-------------------------|
| <a href="#">Regulation 2014/0655</a><br><a href="#">OJ L 189 27.06.2014, p. 0059</a> | <a href="#">Summary</a> |
|--|-------------------------|

## European Account Preservation Order

2011/0204(COD) - 20/06/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Raffaele BALDASSARRE (EPP, IT) on the proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters.

The committee recommends that Parliament adopt its position in first reading following the ordinary legislative procedure, and amend the Commission proposal as follows:

**Scope:** the following will be excluded from the scope of the Regulation: (i) testamentary and inheritance law; (ii) property claims arising out of a matrimonial relationship or a relationship deemed by the law applicable to such relationship to have comparable effects to marriage.

**Matters having cross-border implications:** the amended text clarified that a case has cross-border implications if the bank account to be preserved by the EAPO is held in a Member State other than:

- the Member State of the court seized of the application for the EAPO;
- the Member State in which the creditor has obtained, against the debtor, a judgment, court settlement or authentic instrument relating to the claim which is subject of the application for the EAPO;
- the Member State in which the creditor or the debtor are domiciled or located.

The relevant point in time for determining whether a case has cross-border implications shall be **the date on which the application for the EAPO is received by the court having jurisdiction** to issue the EAPO.

**Conditions for issuing an EAPO:** the claimant must submit sufficient and relevant facts, reasonably corroborated by evidence, which make **a prima facie case and which satisfy the court**.

With a view to making a prima facie case, the applicant may use all forms of evidence admissible in the Member State concerned, including an affirmation in lieu of an oath.

**The application form** for an EAPO shall include a declaration to the effect that the information supplied by the claimant in the application for an EAPO is true and complete and that the claimant is **aware of the penalties** to which anyone knowingly making false and incomplete declarations is liable under the law of the Member State in which the application is made.

**Procedure:** for the purpose of providing greater legal certainty, the court to which application is made for an account preservation order should be able to take a **reasoned decision to hear the debtor** in exceptional cases where this is essential in order to reach a final decision and insufficient information and evidence is available for that purpose.

**Liability of debtor:** the Regulation will provide for statutory liability on the part of the claimant for any damage caused to the defendant by an order that is subsequently found to be unjustified. The compensation for such damage will cover, as a minimum requirement, **any loss of earnings and the costs incurred during the proceedings**. In addition, the claimant should also be **liable for any damage caused to the defendant** as a result of failure to effect the prompt release of sums over and above the amount specified in the order.

**Implementation of the order by the bank:** the Regulation will lay down appropriate rules for implementation of the order by the bank, including rules on the order in which accounts will be preserved in the event that the debtor holds more than one account with one and the same bank, and will oblige the bank to declare whether the order has successfully caught any funds of the debtor.

## European Account Preservation Order

2011/0204(COD) - 06/12/2013

The Council agreed on a **general approach** on the draft regulation creating a European Account Preservation Order to facilitate cross border debt recovery in civil and commercial matters. This general approach will constitute the basis for negotiations with the European Parliament in order to agree the final text of the regulation.

**The remaining recitals** will be subject to further discussions at technical level. They should, inter alia, clarify the following issues:

### Subject-matter:

- A creditor should be able to obtain a protective measure in the form of a Preservation Order preventing the transfer or withdrawal of funds held by his debtor in a bank account maintained in a Member State if he is facing the risk that, without such a measure, the subsequent enforcement of his claim against the debtor will be impeded or made substantially more difficult.
- The preservation of funds held in the debtor's account should entail that not only the debtor himself, but also persons authorised by him to make payments through this account, e.g. by way of a standing order or through direct debit or the use of a credit card, are prevented from using the funds.
- The procedure established by this Regulation should serve as an additional and optional means for the creditor, who remains free to make use of any other procedure for obtaining an equivalent measure under national law.

### Scope:

- This Regulation should cover all civil and commercial matters apart from certain well-defined matters. Notably, this Regulation should not apply **to claims against a debtor in insolvency proceedings**.
- The exclusion should allow an insolvency administrator seeking to recover detrimental payments made by the debtor to third parties to use the Preservation Order to secure such recovery.

### Cross-border cases:

- This Regulation should apply to cross-border cases only and should define what constitutes a cross-border case in this particular context.
- For example, a cross-border case should be considered to exist when the court dealing with the application for the Preservation Order is located in one Member State and the bank account targeted by the Preservation Order is maintained in another Member State.

### Claims:

- The Preservation Order should be available for securing claims that have already fallen due. It should also be available for claims that are not yet due as long as such claims arise from a transaction or an event that has already occurred and their amount can be determined.

### Geographical scope:

- The procedure for obtaining a European Account Preservation Order provided for in this Regulation should therefore be available only to creditors who are domiciled in a Member State bound by this Regulation.

### Jurisdiction:

- In order to ensure a close link between the proceedings for the Preservation Order and the proceedings on the substance of the matter, international jurisdiction to issue the Order should lie with the courts of the Member State whose courts have jurisdiction on the substance of the matter.

#### Conditions for issuing a Preservation Order:

- When the creditor applies for a Preservation Order prior to obtaining a judgment, the court with which the application is lodged should have to be satisfied on the basis of the evidence submitted by the creditor that the creditor is likely to succeed on the substance of his claim against the debtor.
- The creditor should in all situations, also when having already obtained a judgment, demonstrate to the satisfaction of the court that his claim is in urgent need of judicial protection and that, without the Order, the enforcement of the existing or a future judgment may be impeded or made substantially more difficult.
- The court should assess the evidence submitted by the creditor to support the existence of such a risk.

#### Application for a Preservation Order:

- A recital could explain that the creditor should be able to request that the Preservation Order be issued in the amount of the principal claim or in a lower amount.

#### Ex parte procedure:

- The debtor shall not be notified of the application for a Preservation Order or be heard prior to the issuing of the Order. If, on the basis of the evidence and information provided by the creditor or, if applicable, by his witness(es), the court is not satisfied that the preservation of the account or accounts is justified it should not issue the Order.

#### Security to be provided by the creditor:

- This Regulation should provide sufficient safeguards against abuse of the Order. Depending on national law, such security could be provided in the form of a security deposit or an alternative assurance, such as a bank guarantee or a mortgage.
- The Regulation should, as a minimum standard, provide for the liability of the creditor for any damage caused to the debtor by the Preservation Order due to a fault on the creditor's part and provide for a harmonised rule on the burden of proof as regards specific grounds for liability listed in the Regulation.

#### Request for obtaining account information:

- The recitals could give examples of situations which would give reasons to believe that a debtor holds an account in a specific Member State, e.g. that the debtor works or exercises a professional activity in that Member States or has property there.

#### Enforcement of the Preservation Order:

- A recital could clarify that the right of the creditor to appeal pursuant to this Article shall be without prejudice to the possibility of the creditor to make, on the basis of new facts or new evidence, a new application for a Preservation Order.

#### Implementation of the Preservation Order:

- A recital could explain that the implementation of the Preservation Order could be done by either blocking the preserved amount in the debtor's account or by transferring this amount to an account dedicated for preservation purposes, which could be an account held by the competent enforcement authority, the court or the primary bank.

#### Forms:

- In order to standardise and speed up the procedures, it is suggested to insert an additional form for requesting the release of over-preserved amounts.
- This Regulation should ensure that the preservation of the debtor's account does not affect amounts which are exempt from seizure under the law of the Member State of enforcement.

## European Account Preservation Order

2011/0204(COD) - 15/04/2014 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 597 votes to 33 with 37 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary were the result of a compromise between Parliament and Council. They amend the Commission's proposal as follows:

**Purpose and scope:** Parliament and Council agreed on establishing a Union procedure enabling a creditor to obtain a **European Account Preservation Order**, which prevented the subsequent enforcement of the creditor's claim from being jeopardised through the transfer or withdrawal of funds up to the amount specified in the Order, which were held by the debtor or on his behalf in a bank account maintained in a Member State.

The Preservation Order should be available to the creditor as an **alternative to preservation measures under national law**.

The Regulation would apply to pecuniary claims in civil and commercial matters in **cross-border cases** and would not apply to bank accounts held by or with central banks when acting in their capacity as monetary authorities.

The following would be excluded from the application of the regulation: (i) wills and succession; (ii) rights in property arising out of a matrimonial relationship or deemed by the law to have comparable effects to marriage; (iii) claims against a debtor in relation to whom bankruptcy proceedings, have been opened.

**Availability:** the Preservation Order would be available to the creditor in the following situations: (a) before the creditor initiates proceedings in a Member State against the debtor on the substance of the matter, or at any stage during such proceedings up until the issuing of the judgment; (b) after the creditor has obtained in a Member State a judgment requiring the debtor to pay the creditor's claim.

Where the creditor has already obtained a judgment, **jurisdiction to issue a Preservation Order will lie with the courts of the Member State in which the judgment was issued.**

**Conditions for issuing a Preservation Order:** where the creditor had not yet obtained in a Member State a judgment, **the creditor should also submit sufficient evidence to satisfy the court that he was likely to succeed on the substance of his claim against the debtor.**

In any event, **the court should issue the Preservation Order when the creditor had submitted sufficient evidence to satisfy the court that there was an urgent need for a protective measure because there was a real risk that, without such a measure, the subsequent enforcement of the creditor's claim against the debtor would be impeded or made substantially more difficult.**

Applications should be lodged using the form established in accordance with the advisory procedure referred to in the regulation.

The application should include **certain prescribed information**, such as: **the name and address of the court with which the application is lodged;** details concerning the creditor: name and contact details, his date of birth and, if applicable and available, his passport number; a number enabling the identification of the bank; the amount for which the Preservation Order is sought; a declaration as to whether the creditor has lodged with other courts or authorities an application for an equivalent national order. The application should be accompanied by all relevant supporting documents

In order to ensure the surprise effect of the Preservation Order, **the debtor should not be informed about the creditor's application** nor be heard prior to the issue of the Order or notified of the Order prior to its implementation. Where the court was not satisfied that the preservation of the account or accounts in question was justified, it should not issue the Order.

**Security to be provided by the creditor:** the co-legislators provided for specific safeguards in order to prevent abuse of the Order and to protect the debtor's rights. One such important safeguard was the possibility of requiring the creditor to provide security so as to ensure that the debtor can be **compensated at a later stage for any damage** caused to him by the Preservation Order.

In cases where the creditor has not yet obtained a judgment, the provision of security should be the rule. In cases where the creditor has already obtained a judgment, court settlement or authentic instrument, the provision of security should be left to the discretion of the court.

**Liability of the creditor:** the creditor should be liable for any damage caused to the debtor by the Preservation Order due to fault on the creditor's part. The burden of proof will lie with the debtor. The law applicable to the liability of the creditor will be the law of the Member State of enforcement.

**Request for the obtaining of account information:** in order to overcome existing practical difficulties in obtaining information about the whereabouts of the debtor's bank account in a cross-border context, the amended text set out **a mechanism** allowing the creditor to request that the information needed to identify the debtor's account be obtained by the court, before a Preservation Order is issued, from the designated information authority of the Member State in which the creditor believes that the debtor holds an account.

Access to account information should, as a rule, be given only in cases where the creditor had already obtained an enforceable judgment.

In order to **ensure protection of the personal data** of the debtor, the information obtained regarding the identification of the debtor's bank account should not be provided to the creditor, only to the requesting court and, exceptionally, to the debtor's bank.

**Recognition and enforceability:** a Preservation Order issued in a Member State in accordance with the Regulation should be recognised in the other Member States **without any special procedure being required and be enforceable in the other Member States** without the need for a declaration of enforceability.

**Implementation of the Order by the bank:** the Regulation should provide for the imposition on the bank of an obligation to declare whether the Order had led to the preservation of any funds of the debtor. The creditor should ensure the release of any funds preserved that exceed the amount specified in the Order.

**Appeal:** the creditor should have the right to appeal against any decision of the court **rejecting, wholly or in part, his application for a Preservation Order.**

Measures were also provided to **safeguard the debtor's right to a fair trial and his right to an effective remedy.** In this context, the Preservation Order, all documents submitted by the creditor to the court in the Member State of origin and the necessary translations must be **served** on the debtor promptly after the implementation of the Order.

The debtor should be able to request a **review of the Preservation Order**, in particular if the conditions or requirements set out in the Regulation were not met.

Lastly, the preservation of the debtor's account **must not affect amounts that were exempt from seizure** under the law of the Member State of enforcement, for example amounts necessary to ensure the livelihood of the debtor and his family.

## European Account Preservation Order

2011/0204(COD) - 15/05/2014 - Final act

**PURPOSE:** to create a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters.

**LEGISLATIVE ACT:** Regulation (EU) No 655/2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

**CONTENT:** this Regulation shall **facilitate cross-border debt claims** by creating a European procedure leading to the issuing of a **European Account Preservation Order.** By means of this new European procedure, a creditor will be able to obtain a Preservation Order which will block funds held by the debtor in a bank account in a Member State.

**Scope:** this European procedure will be available to citizens and businesses as an **alternative** to national procedures, but will not replace national procedures. It will apply to pecuniary claims in civil and commercial matters in cross-border cases. It does not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority.

This Regulation does not apply to: (i) rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage; (ii) wills and succession; (iii) claims against a debtor in relation to whom bankruptcy proceedings, proceedings for the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions, or analogous proceedings have been opened; (iv) social security.

**Availability:** the Preservation Order shall be available to the creditor in the following situations: (a) before the creditor initiates proceedings in a Member State against the debtor on the substance of the matter, or at any stage during such proceedings up until the issuing of the judgment or the approval or conclusion of a court settlement; (b) after the creditor has obtained in a Member State a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim.

In order to ensure a close link between the proceedings for the Preservation Order and the proceedings on the substance of the matter, international jurisdiction to issue the Order should lie with the courts of the Member State whose courts have jurisdiction to rule on the substance of the matter.

**Conditions for issuing the Preservation Order:** the creditor should be required in all situations, including when he has already obtained a judgment, to **demonstrate to the satisfaction of the court** that his claim is in urgent need of judicial protection and that, without the Order, the enforcement of the existing or a future judgment may be impeded or made substantially more difficult because there is a real risk that, by the time the creditor is able to have the existing or a future judgment enforced, the debtor may have dissipated, concealed or destroyed his assets or have disposed of them under value, to an unusual extent or through unusual action.

The court should assess the **evidence** submitted by the creditor to support the existence of such a risk.

The Preservation Order shall be issued using the **form** established by means of implementing acts adopted in accordance with the advisory procedure referred to in the Regulation. The form should comprise of information such as the name and address of the court where the application is made; information concerning the creditor and debtor; an identification number of the bank; the amount for which the Order is requested.

The application shall be accompanied by all relevant supporting documents.

Under specific conditions, it will also be possible for a creditor to obtain information as to whether the debtor holds one or more accounts in a specific Member State.

**Ex parte procedure:** in order to ensure the surprise effect of the Preservation Order, and to ensure that it will be a useful tool for a creditor trying to recover debts from a debtor in cross-border cases, the debtor should not be informed about the creditor's application nor be heard prior to the issue of the Order or notified of the Order prior to its implementation.

In order to counterbalance the absence of a prior hearing of the debtor, the regulation will make a series of **remedies** available to the debtor so that he can challenge the Order as soon as he is informed of the blocking of his accounts.

Moreover, as further **safeguards** against a possible abuse of the Preservation Order, the regulation will contain rules on the provision of a security by the creditor and on the creditor's liability for any damage caused by the Preservation Order to the debtor.

This Regulation should grant the creditor the right to **appeal against a refusal** to issue the Preservation Order.

**Time-limits for the decision on the application for a Preservation Order:** in order to ensure that the Preservation Order is issued and enforced swiftly and without delay, this Regulation establishes time-limits by which the different steps in the procedure must be completed. Where the creditor has already obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the **fifth working day** after the creditor lodged or, where applicable, completed his application and at the end of the tenth day where the creditor has not yet obtained a judgment).

**Recognition and enforceability:** a Preservation Order issued in a Member State in accordance with the Regulation should be recognised in the other Member States without any special procedure being required and be enforceable in the other Member States without the need for a declaration of enforceability.

**Implementation of the Order by the bank:** the Regulation should provide for the imposition on the bank of an obligation to declare whether the Order had led to the preservation of any funds of the debtor. The creditor should ensure the release of any funds preserved that exceed the amount specified in the Order.

Lastly, this Regulation should ensure that the preservation of the debtor's account does not affect amounts which are **exempt from seizure** under the law of the Member State of enforcement, for example amounts necessary to ensure the livelihood of the debtor and his family.

ENTRY INTO FORCE: 17.07.2014. It shall apply from 18.01.2017.

## European Account Preservation Order

2011/0204(COD) - 25/07/2011 - Legislative proposal

PURPOSE: to create a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: at present, a creditor seeking to recover his debt in another Member State faces significant difficulties. Currently, debtors can easily escape enforcement measures by swiftly moving their monies from a bank account in one Member State to another. As a result, many creditors are either unable to successfully recover their claims abroad or do not consider it worthwhile pursuing them and write them off.

Essentially, **four main shortcomings** of the current situation can be identified:

- the conditions for issuing orders preserving assets in bank accounts under national law vary considerably throughout the EU;
-

in many Member States it is difficult, if not impossible, for a creditor to obtain information about the whereabouts of his debtor's bank account without having recourse to the services of private investigation agencies;

- the costs of obtaining and enforcing an account preservation order in a cross-border situation are generally higher than in domestic cases, which deters creditors from recovering their claims abroad with the help of the judicial system;
- lastly, the divergences in and length of national enforcement systems constitute a serious problem for creditors seeking to enforce a judicial decision. This jeopardizes the effectiveness of provisional measures like account preservation orders which by definition depends on a swift implementation.

Although much progress has been made towards the creation of a genuine European Area of Civil Justice since then, these issues have not yet been addressed by the European legislator.

To date, the procedural modalities of enforcement of a judgment or other enforceable title are exclusively governed by national law. This approach does not change with the [proposed revision of Regulation Brussels I](#).

On 24 October 2006, the Commission adopted a [Green Paper](#) which suggested to create a European provisional measure for the preservation of bank accounts.

The [Commission Action Plan implementing the 2009 Stockholm Programme](#) provides for a Regulation on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts.

The need for improving cross-border debt recovery was most recently emphasized by the European Parliament which adopted in May 2011 a [resolution](#) calling on the Commission to put forward a proposal on interim measures for the freezing and disclosure of debtor's assets in cross-border cases.

IMPACT ASSESSMENT: the Commission analysed the costs and benefits of the main aspects of the proposed reform in its [Impact Assessment](#) which accompanies this proposal.

LEGAL BASIS: points (a), (e) and (f) of Article 81(2) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the general objectives of this proposal are to **facilitate the recovery of cross-border claims for citizens and businesses**, in particular SMEs and improve the efficiency of enforcement of judgments in civil and commercial matters concerning cross-border disputes, thereby reducing the risks involved in cross-border trade, increasing confidence of traders, improving payment behaviour of debtors in cross-border situations and encouraging more cross-border business activity.

More specifically, this proposal aims at

- enabling creditors to obtain account preservation orders on the basis of the same conditions irrespective of the country where the competent court is located;
- allowing creditors to obtain information on the whereabouts of their debtors' bank accounts; and
- reducing costs and delays for creditors seeking to obtain and enforce an account preservation order in cross-border situations.

The proposed Regulation will establish a **new and self-standing European procedure for the preservation of bank accounts** which will enable a creditor to prevent the transfer or withdrawal of his debtor's assets in any bank account located in the European Union. The European procedure will be available to citizens and companies as an **alternative** to procedures existing under national law.

The instrument provides for common rules as regards the conditions and procedure of the issue, enforceability and enforcement of the order, remedies against the European Account Preservation Order, as well as other provisions concerning legal representation and cost issues.

The European account preservation order would be of a **protective nature only**, i.e. it would only block the debtor's account but not allow money to be paid out to the creditor. In order to ensure the surprise effect of the account preservation order, the debtor should not be informed about the application, be heard prior to its issue or notified of the order prior to its implementation by the bank. The debtor should, however, be able to contest the order immediately after it was implemented.

In line with the legal traditions of the large majority of Member States, the European order will have an *in rem* effect, i.e. be directed against specific accounts and not at the debtor personally.

BUDGETARY IMPLICATION: this proposal has no budgetary implication for the Union budget.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

## European Account Preservation Order

2011/0204(COD) - 13/10/2011 - Document attached to the procedure

### Opinion of the European Data Protection Supervisor on a proposal for a regulation of the European Parliament and of the Council creating a European account preservation order to facilitate cross-border debt recovery in civil and commercial matters

Whilst the EDPS is pleased to see the application of and the references to the principle of necessity, he believes that the proposed regulation would still require some further improvements and clarifications.

**Removal of claimant's address:** according to Article 25 of the proposal, the defendant shall be served with the EAPO and all documents submitted to the court or competent authority with a view to obtaining the order, which seems to include the information provided in Annexes I, II and III. There is no indication of the possibility for the claimant to request the removal of his address details from the different documents before they are sent to the defendant. As there might be circumstances in which revealing the address details of the claimant to the defendant might entail the risk of the claimant being subject to out of court pressure from the defendant, the EDPS suggests that the claimant should be able to request the removal of these details from the information provided to the defendant.

**Telephone number and e-mail address of defendant:** if this information is included as data fields in Annex I which can be used if other contact information of the defendant is missing, this should be clarified. Otherwise, there seems to be no reasons to keep these data fields.



**Defendant's bank accounts:** Article 17(2) requires the claimant to provide 'all information available to the claimant' about the defendant and the defendant's bank account(s). This is a broad formulation, which could entail the transfer of all kinds of information on the defendant. The provision does not make clear that such information should be restricted to information which is necessary to identify the defendant and determine his or her bank account(s). The EDPS recommends restricting the information provided by the claimant to what is necessary to identify the defendant and to determine his or her bank account(s).

**Appropriate and reasonable means of obtaining information:** the reference in Article 17(4) to 'all the appropriate and reasonable means' could imply methods of investigation which severely intrude into the private life of the defendant.

In order to prevent any misunderstanding on the scope of the means available to the competent authority, the legislator could consider replacing the reference to 'all appropriate and reasonable means' by 'one of the two methods referred to in paragraph 5'.

**Existing public registers:** the two methods are as follows: obliging all banks in the territory of the Member State of enforcement to disclose whether the defendant holds an account with them, and access by the competent authority where the information is held by public authorities or administrations in registers or otherwise. The EDPS has questions with regard to the second one. In Annex I to the proposal, reference is made to 'existing public registers'

For the sake of clarity, it should be explained what is actually meant by Article 17(5)(b) of the proposal. Furthermore, the methods for collecting the information should comply with the principles of necessity and proportionality.

Lastly, the EDPS feels that Article 27(3) should stipulate that the bank may transmit its declaration by electronic means of communication, if these means are secure in line with Articles 16 and 17 of Directive 95/46/EC.