

Procedure file

Basic information			
INL - Legislative initiative procedure	2009/2169(INL)	Procedure completed	
Proposed interim measures for the freezing and disclosure of debtors' assets in cross-border cases			
Subject 2.50.04 Banks and credit 2.50.04.02 Electronic money and payments, cross-border credit transfers 7.40.02 Judicial cooperation in civil and commercial matters			
Key players			
European Parliament	Committee responsible JURI Legal Affairs	Rapporteur S&D <u>MCCARTHY Arlene</u>	Appointed 14/12/2009
	Committee for opinion ECON Economic and Monetary Affairs	Rapporteur for opinion PPE <u>STOLOJAN Theodor Dumitru</u>	Appointed 24/11/2009
European Commission	Commission DG <u>Financial Stability, Financial Services and Capital Markets Union</u>	Commissioner BARNIER Michel	
Key events			
11/11/2009	Committee referral announced in Parliament		
12/04/2011	Vote in committee		Summary
14/04/2011	Committee report tabled for plenary	<u>A7-0147/2011</u>	
10/05/2011	Results of vote in Parliament		
10/05/2011	Decision by Parliament	<u>T7-0193/2011</u>	Summary
10/05/2011	End of procedure in Parliament		
Technical information			
Procedure reference	2009/2169(INL)		
Procedure type	INL - Legislative initiative procedure		
Procedure subtype	Request for legislative proposal		

Legal basis	Rules of Procedure EP 47
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/01379

Documentation gateway

Committee opinion	ECON	PE442.908	05/10/2010	EP	
Committee draft report		PE454.396	16/02/2011	EP	
Amendments tabled in committee		PE462.543	24/03/2011	EP	
Committee report tabled for plenary, single reading		A7-0147/2011	14/04/2011	EP	
Text adopted by Parliament, single reading		T7-0193/2011	10/05/2011	EP	Summary
Commission response to text adopted in plenary		SP(2011)6333	19/09/2011	EC	

Proposed interim measures for the freezing and disclosure of debtors' assets in cross-border cases

The Committee on Legal Affairs adopted the own-initiative report by Arlene McCARTHY (S&D, UK) with recommendations to the Commission on proposed interim measures for the freezing and disclosure of debtors' assets in cross-border cases (Initiative ? Rule 42 of the Rules of Procedure).

The report stresses that it is essential that the millions of businesses and citizens who make use of the internal market and the right to live, work and travel throughout the EU have effective remedies in the event that they have a claim against another citizen or business.

However, the current level of successful cross-border debt recovery is remarkably low, as regards both the assets of natural persons and those of undertakings. The cost of cross-border debt recovery is currently prohibitive for creditors in cases where a debtor has assets in several Member States. Such prohibitive costs have a negative impact on the extension of cross-border loans and even cross-border commercial transactions, representing a major barrier for the full functioning of the internal market.

Parliament in its [resolution of 25 November 2009](#) on the future Stockholm Programme called for proposals for a simple and autonomous European system for the attachment of bank accounts and the temporary freezing of bank deposits. The Commission's proposal is foreseen for June 2011. A legislative initiative on the transparency of debtors' assets is scheduled for 2013.

In order to simplify and speed up this recovery process, the committee has drawn up this report in which:

- requests the Commission swiftly to submit to Parliament, on the basis of Article 81(2) of the Treaty on the Functioning of the European Union, legislative proposals on measures for the freezing and disclosure of debtors' and alleged debtors' assets in cross-border cases;
- sets out the key features that Parliament would wish to have included in these proposals.
- Members request the following instruments: (a) a European order for the preservation of assets (EOPA); and (b) a European order for the disclosure of assets (EODA). The form of Union action should be that of a regulation. Both instruments should be free-standing remedies additional to those available under national law. They should apply only in cross-border cases.
- According to the report, the requested instruments should contain uniform jurisdictional rules specifying which national courts are competent to issue them. The court which has initiated the EOPA or EODA should have exclusive jurisdiction to hear oppositions to it where such oppositions are to the EU-wide effect of an order. Both orders should be requestable via a standard multilingual form, including through the European e-Justice portal.

The committee has set out a number of detailed recommendations as follows:

(1) European Order for the Preservation of Assets: it is essential to be able to obtain an EOPA ex parte, that is, without initial notice being served on the party whose assets are concerned. The order should be available before, during, and after the main proceedings. The effect of the EOPA must be confined to the attachment of bank accounts and the temporary freezing of bank deposits, and should not grant the creditor any form of ownership of the assets. Further consideration should be given to the issue of whether the order could cover other types of assets, such as immovable property or future assets (a claim about to become payable or an inheritance). The order should affect no more bank accounts than necessary, and should be limited to the amount of the debt, plus any legal fees and interest. The EOPA should impose on banks an obligation to give effect to the order immediately (i.e. within certain strictly defined time-limits) and a further obligation to inform the enforcement authority of the success or failure of any attachment. This processing should comply with applicable data protection rules.

Members urge the Commission to design the requested instrument in such a way as to minimise the cost of its use. They consider that the requested instrument should include a comprehensive set of safeguards for debtors and alleged debtors.

(2) Transparency order: it should be possible to seek the order at least following a judgment establishing a debt. Each Member State should be required to decide which authority or authorities are competent to initiate an EODA. Such designated authorities would be able to issue EODAs on a case-by-case basis, taking into account the circumstances of each case.

Members consider that debtors should as a general rule be required to disclose all assets located within the area of freedom, security and justice, in order to give the creditor the widest possible choice of action. The order should be enforceable throughout the EU without any intermediate measures being required.

The requested instrument should set out a framework of penalties for non-compliance or false statements, in order to achieve effective and uniform compliance with the order throughout the area of freedom, security and justice.

Proposed interim measures for the freezing and disclosure of debtors' assets in cross-border cases

The European Parliament adopted a resolution containing recommendations to the Commission on proposed interim measures for the freezing and disclosure of debtors' assets in cross-border cases.

Members stress that it is essential that the millions of businesses and citizens who make use of the internal market and the right to live, work and travel throughout the EU have effective remedies in the event that they have a claim against another citizen or business.

However, the current level of successful cross-border debt recovery is remarkably low, as regards both the assets of natural persons and those of undertakings. The cost of cross-border debt recovery is currently prohibitive for creditors in cases where a debtor has assets in several Member States. Such prohibitive costs have a negative impact on the extension of cross-border loans and even cross-border commercial transactions, representing a major barrier for the full functioning of the internal market.

Parliament in its [resolution of 25 November 2009](#) on the future Stockholm Programme called for proposals for a simple and autonomous European system for the attachment of bank accounts and the temporary freezing of bank deposits. The Commission's proposal is foreseen for June 2011. A legislative initiative on the transparency of debtors' assets is scheduled for 2013.

In order to simplify and speed up this recovery process, Parliament requests the Commission swiftly to submit to Parliament, on the basis of Article 81(2) of the Treaty on the Functioning of the European Union, legislative proposals on measures for the freezing and disclosure of debtors' and alleged debtors' assets in cross-border cases, following the detailed recommendations annexed to this resolution.

Members request the following instruments:

- (a) a European order for the preservation of assets (EOPA); and
- (b) a European order for the disclosure of assets (EODA).

The form of Union action should be that of a regulation. Both instruments should be free-standing remedies additional to those available under national law. They should apply only in cross-border cases.

The legislative action requested in this resolution should be based on detailed impact assessments. It shall not have financial implications for the Union budget.

According to the resolution, the requested instruments should contain uniform jurisdictional rules specifying which national courts are competent to issue them. The court which has initiated the EOPA or EODA should have exclusive jurisdiction to hear oppositions to it where such oppositions are to the EU-wide effect of an order. Both orders should be requestable via a standard multilingual form, including through the European e-Justice portal.

Parliament has set out a number of detailed recommendations as follows:

(1) European Order for the Preservation of Assets: it is essential to be able to obtain an EOPA *ex parte*, that is, without initial notice being served on the party whose assets are concerned. The order should be available before, during, and after the main proceedings. The European Parliament considers that the granting of an EOPA by a national court should be discretionary. Furthermore, the burden of proof should be on the claimant to make a good *prima facie* case (*fumus boni juris*) and to establish urgency (*periculum in mora*). The effect of the EOPA must be confined to the attachment of bank accounts and the temporary freezing of bank deposits, and should not grant the creditor any form of ownership of the assets. Further consideration should be given to the issue of whether the order could cover other types of assets, such as immovable property or future assets (a claim about to become payable or an inheritance). The order should affect no more bank accounts than necessary, and should be limited to the amount of the debt, plus any legal fees and interest. The EOPA should impose on banks an obligation to give effect to the order immediately (i.e. within certain strictly defined time-limits) and a further obligation to inform the enforcement authority of the success or failure of any attachment. This processing should comply with applicable data protection rules.

Parliament urges the Commission to design the requested instrument in such a way as to minimise the cost of its use. It considers that the requested instrument should include a comprehensive set of safeguards for debtors and alleged debtors.

(2) Transparency order: it should be possible to seek the order at least following a judgment establishing a debt. Each Member State should be required to decide which authority or authorities are competent to initiate an EODA. Such designated authorities would be able to issue EODAs on a case-by-case basis, taking into account the circumstances of each case.

Members consider that debtors should as a general rule be required to disclose all assets located within the area of freedom, security and justice, in order to give the creditor the widest possible choice of action. The order should be enforceable throughout the EU without any intermediate measures being required.

The requested instrument should set out a framework of penalties for non-compliance or false statements, in order to achieve effective and uniform compliance with the order throughout the area of freedom, security and justice.