

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.

