

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.