

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 Commissions 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 creditors 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 creditors 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 debtors 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.