

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.