

Pre-judgment attachment of bank accounts across Europe soon cheaper and more efficient

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A recently adopted European regulation, applicable as of 18 January 2017, sets out a procedure that facilitates cross-border debt recovery in civil and commercial matters within the EU. The procedure will make the recovery of debts easier and cheaper. In cross-border cases within the EU, the new rules will enable creditors to obtain a 'European Account Preservation Order' – given by one single judge in one member state – and attach debtors' bank accounts in other EU member states without any further court proceedings. The preservation order will apply directly and be subject to uniform conditions. European cross-border pre-judgment attachment will prevent assets from disappearing before a court ruling has been enforced and promotes the more effective enforcement within the EU of court rulings affecting debtors' bank accounts and other assets. This new preservation measure will provide more confidence to creditors seeking to recover their claims and will strengthen trust in the internal market.

The new '[EAPO Regulation](#)' is in line with the EU's objective to adopt measures relating to judicial cooperation in civil matters with cross-border implications if the proper functioning of the internal market requires this. At this time, the conditions for granting protective measures – such as account preservation orders – vary considerably in the various EU member states. The same applies to how effectively these measures are enforced. Moreover, practice shows that recourse to national protective measures may prove time-consuming and expensive in cases that have cross-border implications. This problem is seen most often where a creditor seeks pre-judgment preservation of several accounts located in different member states.

The introduction of the European Account Preservation Order will enable creditors to obtain an order for pre-judgment attachment of bank accounts in any of the following situations:

- before the creditor initiates proceedings on the merits against the debtor
- at any stage during principal proceedings against the debtor until a judgment is delivered or a court settlement has been approved or entered into
- after the creditor has obtained a judgment, court settlement or certified instrument that requires the debtor to pay the creditor's claim.

If the creditor has not yet obtained a judgment, the national courts that have jurisdiction to rule on the merits of a case will also have jurisdiction to issue the European Account Preservation Order. If the creditor has already obtained a judgment, that jurisdiction lies

with the courts of the member state where the judgment was issued.

The creditor may use the new account preservation order as an alternative to existing remedies under national law. The order will only be available in matters that have cross-border implications and may only serve preservation purposes. This means that the debtor's bank account is provisionally frozen up to the amount seized or – if national law provides this – the amount seized is transferred to a dedicated account kept by the competent enforcement authority.

The EAPO Regulation ensures that there is a balance between the creditor's interest in getting a preservation order and the debtor's interest that the procedure is not abused. In this connection, the creditor must show that he will probably obtain a favourable judgment against the debtor in the proceedings on the merits. This is why the preservation order should have a surprise effect on the debtor, to avoid assets disappearing before the judgment on the merits is enforced. The debtor will therefore not be informed of the creditor's application and he will not be heard before the preservation order is issued. The debtor may also not be informed of the order before it is enforced.

The EAPO Regulation will not apply in a number of instances, including where claims are concerned against a debtor who is involved in insolvency proceedings. In addition, the preservation order will not be available where funds are exempt from attachment under the laws of the member state of enforcement, for example funds needed by the debtor for his maintenance.

The EAPO Regulation sets out common rules with regard to the criteria and procedure for issuing a preservation order. It provides how account information should be obtained and how the order should be enforced by national courts and authorities. The Regulation also contains rules to protect the debtor, notably those setting out the debtor's remedies against a preservation order.