

Proposal for a  
Regulation of the European Parliament and of  
the Council

creating a

# European Account Preservation Order

to facilitate cross-border debt in civil and  
commercial matters

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## Main reasons for adoption

- different **conditions** for issuing orders preserving assets in bank accounts under national laws within the EU (encourages forum shopping)
- creditors face **difficulties to obtain information** about the whereabouts of debtors' bank account
- procedures are **cumbersome, lengthy and costly**

## *Subject matter*

- Once obtained, the EAPO prevents the withdrawal or transfer of funds held by the debtor in a bank account within the Union.
- EAPO is an alternative measure to existing protective measures in the Member States.

## Scope

- Pecuniary claims in civil and commercial matters (with x-border implications) as well as in matters of matrimonial property and succession

What is excluded?

- customs and administrative matters
- bankruptcy and insolvency procedures
- social security and arbitration

## Conditions for cross-border implication

A case is considered to have cross-border implications where **one or more** of the following are **located or domiciled** in **different MS**:

- THE COURT SEISED
- THE BANK ACCOUNT
- THE PARTIES.

## Availability

- **prior** (*only 30 days!*) **to the initiation of proceedings** on the substance of the matter against the defendant **or at any stage during** such proceedings
- **after** the claimant has obtained an enforceable judgment against the defendant which is enforceable in the MS of origin but has not yet been declared enforceable in the MS of enforcement where such a declaration is required
- **after obtaining a title enforceable in the MS of enforcement**

## Jurisdiction

(prior to obtaining an enforceable title)

- Courts of the MS where **proceedings on the substance** of the matter have to be brought in accordance with the applicable rules on jurisdiction
- Courts of the MS where the **bank account is located** (*caveat*: such EAPO can solely be enforced in that particular MS).

## Competence for issuing the EAPO **after** obtaining an enforceable title

- The same Court that issued the judgement or court settlement
- Competent authority that issued an authentic instrument
- Issuing (enforcement) authority

## Conditions for granting the EAPO

1. ***fumus in boni juri***

*(deemed fulfilled when the claimant has already obtained a judgement which is enforceable in the MS of origin and entitled to recognition in the MS of enforcement!)*

2. ***periculum in mora***

3. Court may require **security** (for compensation for potential damage) provided by the claimant

4. **complete application** (name and address of C&D, accounts, facts, copy of the judgement etc.)

## Aspects of the procedure

- EX PARTE and ABOLISHED EXEQUATUR - with sufficient safeguards for the debtor:
  - security provided by the claimant,
  - the responsibility of the claimant to initiate the proceedings on the substance in timelimit,
  - right of the debtor to provide alternative security and
  - the liability of the claimant to provide the defendant appropriate
  - compensation for any injury caused by the order.

## Obtaining information on the debtor's accounts

Member States have the choice between two different mechanisms:

1. MS can provide for an order of disclosure obliging all banks in their territory to disclose whether the debtor has an account with them.
2. MS can grant their enforcement authorities access to information held by public authorities in registers or otherwise.

## Service of the order on the bank

- If the court is situated in the same Member State as the bank, service is governed by national law.
- If service has to be effected across borders, this has to be done in accordance with Regulation (EC) No1393/2007.

**IMPORTANT MODIFICATION:** the documents are transmitted directly to the competent authority of enforcement!

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