The members of the EJE project make comments on the proposal for a regulation creating a European Account Preservation Order

- Project News [1]

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The partners in the EJE project welcome the initiative of the European Commission which aims to establish a European bank account preservation order. They are also delighted at the recognition of the role of enforcement agents in the implementation of the European account preservation order. However, the partners of the EJE project consider that some articles must be clarified.

The partners in the EJE project, which brings together the representative organisations of the profession of judicial officer in Germany, Belgium, Scotland, Hungary, Italy, Luxembourg, the Netherlands and Poland in order to improve the enforcement of court judgments in Europe, support the creation of a European procedure for the attachment of bank accounts.

The partners of the EJE project welcome the initiative of the European Commission which aims to establish a European bank account preservation order. They are also delighted at the recognition of the role of enforcement agents in the implementation of a European freezing order, since enforcement agents are the best guarantee of legal certainty, of the speed of the procedure and of the protection of the rights of the parties involved.

Indeed, at present, procedures for recovering debts from another country’s jurisdiction are complex and expensive. A creditor wishing to attach sums deposited in a foreign bank account must then refer the matter to the judge in the country where the bank is located.

But there are disparities between Member States’ national legislation. Obstacles for creditors are created by the differences in legal systems, varying procedural requirements and linguistic barriers, which all results in difficult access to the law and entails additional costs and delays in implementing the procedure, even though the main point of a procedure to attach bank accounts is that it be done quickly.

However, the attachment of a debtor’s bank accounts should be an effective way for a creditor to recover sums of money due to him. At a time when, because of the free movement of people, companies, services and goods, debtors increasingly have bank accounts in different Member States and at a time when the development of technologies has enabled sums of money to be transferred very quickly from one Member State to another, the current system does not allow these funds transfers to be blocked just as quickly and at a low cost.

Given these obstacles, it seems to us that it is a necessity to create a European order for the attachment of bank accounts which would enable accounts in different Member States of the EU to be attached while still ensuring a high degree of protection of debtors, in particular through allowing the notification of the attachment at short notice.

However, a high level of protection of the rights of parties, in particular the debtor’s right, should be ensured. A judicial officer’s intervention – as the enforcement agent under the European procedure for the attachment of bank accounts - guarantees legal certainty and the protection of the debtor's rights. For the procedure’s effectiveness to be enhanced and for the debtor to be fully protected,

judicial officers/enforcement agents are the key agents to make the attachment of the property in the hands of the bank and to notify the debtor of the attachment. This protection is crucial, given that a European order for the attachment of bank accounts would be issued following ex parte proceedings. Notification of the debtor is the first of these guarantees. Only the judicial officer is able to ensure that the debtor is given adequate information.

However, the partners of the EJE project consider that some articles must be clarified and consequently they wished to make their comments.

Among these comments, and even if the implementation of the EAPO and the service of the order on the debtor by the hand of a judicial officer – enforcement authority - is the best guarantee of the protection of the rights of the debtor (because only the judicial officer is able to ensure adequate information of the debtor), the EJE partners invite the European institutions to provide additional information regarding the time limit in which the EAPO shall be served.
Article 24 paragraph 3 subparagraph c) provides that " The competent authority shall serve the EAPO on the bank or banks specified therein. The competent authority shall take all necessary steps to effect service of the order within 3 working days of receipt at the latest ». This article does not reflect the situation in which the competent authority receive an EAPO which would require obtaining additional information in accordance with the procedure laid down in Article 17.

Article 25 paragraph 1 of the proposal is as follows: " The defendant shall be served with the EAPO and all documents submitted to the court or competent authority with a view to obtaining the order without undue delay after service on the bank has been effected pursuant to Article 24 and the bank has issued the declaration pursuant to Article 27".The project partners EJE consider the notion of "undue delay" cannot provide legal security required by the implementation of a EAPO. A specified period, which could be 8 days from the date of service of the EAPO, should be stated.

- **Read the proposal for a regulation creating a European Account Preservation Order** [2]
- Read the comments of the EJE partnership on the proposal for a regulation creating a European Account Preservation Order **[3]**

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