

European Account Preservation Order and enforcement of judgments

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Introduction

- The European Account Preservation order entered into force on 18 January 2017, exactly five years ago
- The regulation allows creditors to freeze (in common law terminology) or attach (in continental law terminology) the accounts of their debtors within the European Union (excluding Denmark) pending litigation.
- The EAPO Regulation marked a significant shift towards a specific approach (instead of an attempt for general harmonisation) in the field of EU-wide provisional and protective measures.

Background and problem before the EAPO

- The 2009 Stockholm Programme stated that ‘the European judicial area should serve to support economic activity in the Single Market’.
- In line with the political mandate, the EAPO focused on facilitating to obtain provisional measures for preserving a debtor's assets and on improving the efficiency of enforcement of decisions in the European Union.
- As it was stated before the implementation of the EAPO, problems of cross-border debt recovery affected in the first-place businesses which are trading or providing services in other Member States.
- The scale of the cross-border bad debt that could be potentially secured could be estimated between €1,12 and €2bn on the basis of different sources of data.

Basis and nature of the EAPO regulation

- The idea of the proposed Regulation was based on garnishment proceedings. In all Member States, garnishment is the most important form of monetary enforcement.
- At the first stage, the garnishee is informed about the attachment of the judgment debtor's bank account and the enforcement organ prohibits any payment by the garnishee to the judgment debtor. In the second stage the judgment creditor gets an enforceable title against the garnishee. The structure of garnishment proceedings favours the enforcement of provisional measures (seizure of assets) as well as provisional enforceability while the judgment is still appealable.
- At the time of the Commission's Green Papers there was uncertainty about whether any attachment procedure would be provisional in nature only or might be extended to allow a mechanism for garnishment. The proposal, however, was finally restricted to provisional measures.

The relationship between enforcement measures in the different Member States and the EAPO as well as other EU-wide instruments

- The different member states face significant problems of enforcement of judgments. There is no available data in the latest EU Justice Scoreboard
- There is also a number of other procedural instruments related to EU-wide enforcement: (a) European Enforcement Order (b) European Payment Order (c) Small Claims procedure
- There are problems with enforcement within member states when the enforcement of a judgment from another member state does not fall within the above.

An EU-wide garnishment order? Is it time to consider any amendments in the different instruments to better facilitate the enforcement of judgments around the EU?

- In other proposals such as the one for the European Payment Order Regulation or the Small Claims Regulation, the Commission had tried to expand the scope of application of the new instruments beyond cross-border cases.
- At the origin of this tension, there is what has been called the “competence problem”, ie the concern that the principle of subsidiarity as protected by the treaties was insufficient to safeguard the prerogatives of the Member States and contain EU action.
- Also, at the roots of the problem is the question of whether new EU uniform procedures alternatives to national ones, such as the EAPO fulfil the aim of the policy area as expressed by the legal based, Art 81(2) TFEU especially letters (e) and (f) ie effective access to justice and the proper functioning of civil proceedings.
- The question is: Is enforcement of judgments within the member states and across EU-member States up to standard? If not, action is required for uniform, effective EU instruments such as an EU-wide garnishment order which will apply for both domestic matters as well as cross-border disputes.