



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : the Presidency
to : Council

No. prev. doc. : 16571/13 JUSTCIV 275 CODEC 2660

No. Cion prop. : 13260/11 JUSTCIV 205 CODEC 1280

Subject : Proposal for a Regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters [**First reading**]
– General Approach

1. By letter of 25 July 2011, the Commission transmitted to the Council a proposal for a Regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters. The proposal is based on Article 81(2) of the Treaty on the Functioning of the European Union and is thus subject to the ordinary legislative procedure.
2. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of the proposed Regulation.

3. The United Kingdom has made no notification under Article 3 of the abovementioned Protocol on the position of the United Kingdom and Ireland and will therefore not take part in the adoption of the proposed Regulation.¹ In accordance with Article 4 of the said Protocol, the United Kingdom will however be able to accept the Regulation after its adoption.
4. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption of the proposed Regulation and will not be bound by it or subject to its application.
5. The proposed Regulation will establish a new European procedure for the preservation of bank accounts in cross-border cases. It will create the possibility for a creditor to obtain a European Account Preservation Order ("Preservation Order" or "Order") which will block funds held by a debtor in a bank account in a Member State. This Order will prevent the removal of funds from the debtor's account, thereby ensuring that the attempts of the creditor to recover his debt cannot be frustrated.
6. The Working Party on Civil Law Matters (Account Preservation Order) has examined the proposed Regulation at regular meetings since September 2011.
7. The Council (Justice and Home Affairs) held a first orientation debate on the proposed Regulation on 6 and 7 December 2012 and approved on that occasion a set of general guidelines for the future work², emphasising in particular the important objective that the proposed Regulation should strike an appropriate balance between the creditor's and the debtor's interests. Following on from those guidelines the Council (Justice and Home Affairs) on 6 and 7 June 2013 endorsed a number of key principles which are of particular relevance for achieving such balance³.

¹ See document 5173/12 JUSTCIV 5 CODEC 54 explaining the position of the United Kingdom.

² See document 16350/13 JUSTCIV 335 CODEC 2706.

³ See document 10047/13 JUSTCIV 133 CODEC 1200.

8. The proposed Regulation is subject to the ordinary legislative procedure. Informal contacts have been held with the European Parliament for information purposes with a view to reaching a first reading agreement. The European Parliament is expected to adopt its position at first reading in early 2014.
9. On the basis of the general guidelines and key principles approved by the Council in December 2012 and June 2013 substantial progress has been made in the discussions in the Working Party on Civil Law Matters (Account Preservation Order).
10. In the light of that substantial progress, the Presidency is of the opinion that a general approach on the text of the Articles and on some key recitals as presented in Addendum 1 to this note can now be achieved at Council level, which will pave the way for negotiations with the European Parliament in order to achieve a first reading agreement before the end of its legislative term. The remainder of the recitals will be subject to further discussions and will be finalised as soon as possible after the approval by the Council of the general approach.
11. On 20 November 2013, Coreper expressed overall support for a first draft of the general approach presented by the Presidency, subject to further examination of a few outstanding issues which were subsequently discussed at a meeting of the JHA Counsellors on 21 November 2013.
12. In the light of that meeting the Presidency submitted a revised draft general approach as a compromise package to Coreper on 27 November 2013. During the discussions at Coreper it proved necessary to amend that compromise package with regard to the scope of Article 17. With that amendment (which is reflected in Article 17(1) and in point (b) of Article 51(1) as drafted in the text in Addendum 1 to this note) Coreper decided to submit the compromise package to the JHA Council on 5 and 6 December 2013 for approval as the Council's general approach.¹

¹ It being understood that the text of the Articles may still undergo minor technical amendments and terminological changes in certain language versions and will, in any event, have to be reviewed by the legal/linguistic experts at a later stage.

13. Against this backdrop, the Council is invited:

- (a) to approve as a compromise package the draft general approach set out in Addendum 1 to this note, and
- (b) to take note that the remainder of the recitals will be finalised at technical level as soon as possible after the Council.
