

Freeze! EU Proposal to Block Debtors' Accounts

The European Commission has adopted a Proposal for a Regulation creating a European Asset Preservation Order. As the press release accompanying the Proposal explains:

The Regulation would establish a new European Account Preservation Order that would allow creditors to preserve the amount owed in a debtor's bank account. This order can be of crucial importance in debt recovery proceedings because it would prevent debtors from removing or dissipating their assets during the time it takes to obtain and enforce a judgment on the merits. This will raise the prospects of successfully recovering cross-border debt.

The new European order will allow creditors to preserve funds in bank accounts under the same conditions in all Member States of the EU. Importantly, there will be no change to the national systems for preserving funds. The Commission is simply adding a European procedure that creditors can choose to use to recover claims abroad in other EU countries. The new procedure is an interim protection procedure. To actually get hold of the money, the creditor will have to obtain a final judgment on the case in accordance with national law or by using one of the simplified European procedures, such as the European Small Claims Procedure.

The European Account Preservation Order will be available to the creditor as an alternative to instruments existing under national law. It will be of a protective nature, meaning it will only block the debtor's account but not allow money to be paid out to the creditor. The instrument will only apply to cross-border cases. The European Account Preservation Order will be issued in an ex parte procedure. This means that it would be issued without the debtor knowing about it, thus allowing for a "surprise effect". The instrument provides common rules relating to jurisdiction, conditions and procedure for issuing an order; a disclosure order relating to bank accounts; how it should be enforced by national courts and authorities; and remedies for the debtor and other elements of defendant protection.

The proposed European Account Preservation Order Regulation will now pass to the European Parliament and the Council of the EU for adoption under the ordinary legislative procedure and by qualified majority.

Good news, it seems, for Italian cheesemakers, but less so for French frozen pizza manufacturers planning to default on mozzarella invoices.

There will, no doubt, be more discussion of the Proposal on this site, once all have had a chance to digest its contents.