



14 September 2011

Our ref: ICAEW Rep 85/11

Eral Knight
International Directorate
Ministry of Justice
102 Petty France
London SW1H 9AJ

By email: european.policy.unit@justice.gsi.gov.uk

Dear Mr Knight

Proposed EU Regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters - How should the UK approach the Commission's proposal?

ICAEW is pleased to respond to your request for comments on *Proposed EU Regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters - How should the UK approach the Commission's proposal?* published by the Ministry of Justice on 3 August 2011, a copy of which is available from this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

This response reflects consultation with the ICAEW Business Law Committee, which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

ICAEW's regulation of its members and affiliates in insolvency is overseen by the Insolvency Service, and ICAEW is the largest of the Recognised Professional Bodies under the Insolvency Act, currently licensing around 700 practitioners. ICAEW's Insolvency Committee is a technical committee made up of Insolvency Practitioners working within large, medium and small practices. The Committee represents the views of ICAEW licence holders.

Concern regarding this EU initiative

We note that the proposed EU Regulation is intended to facilitate cross-border debt recovery in civil and commercial matters by providing an alternative to existing domestic freezing orders in cross-border cases. However, we are very concerned about the proposals, which in our view are not as good as the existing 'injunction' arrangements in the UK and with none of the safeguards.

We are particularly concerned that:

- the procedure for obtaining an EAPO would be *ex parte*, allowing an application to be granted with no obligation to notify the subject or to at least be forced to justify why the application should be *ex parte*, where there appears no obligation on the applicant to give full and frank disclosure of both sides of the argument (a standard protection in the UK);
- there are no cross-undertaking in damages provisions, which in the UK would be likely to be required so that the subject was compensated if the order were wrongly given or pursued;
- amounts would be exempt from enforcement to the extent necessary '*to ensure the livelihood of the defendant and his family, or to ensure the possibility to pursue a normal course of business*'. It is very unclear what this might mean in practice. How is an amount to be calculated reasonably if there is no contact with the subject and no review by the court of the subject's views on what is required?
- the jurisdiction in which it could be obtained is not based on the usual COMI considerations, instead being brought in either 'the State where proceedings on the substance of the matter' have to be brought (which may very easily not be where the subject of the EAPO is located, giving rise to substantial issues around notice of the proceedings to those banks who will have to comply) or the State where the bank account is located; and
- revocation of an EAPO is lengthy and resource intensive and – unless you are a consumer - would need to be carried out in the overseas jurisdiction (where the EAPO had been granted).

Accordingly, we strongly believe it is **not** in the UK national interest to opt in to this proposal. We would be very happy to meet with you to explain/expand on our reasoning, if that would be helpful.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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