

Title: Impact Assessment on proposed EU Regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters Lead department or agency: Ministry of Justice Other departments or agencies: Devolved Administrations	Impact Assessment (IA)
	IA No: MOJ109
	Date: 3.8.2011
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Secondary legislation
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

To consider whether the UK should exercise its right, under its Protocol annexed to the Treaty on the Functioning of the European Union, to opt in to and therefore be bound by the European Commission's proposed Regulation creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters. Only the Government can decide whether it should participate in the proposed Regulation.

What are the policy objectives and the intended effects?

The proposed Regulation aims to establish a self-standing European procedure which will enable a creditor in a cross-border dispute to obtain a protective order to prevent the withdrawal or transfer of funds held by a defendant in a bank account located in the EU. This procedure is meant as an alternative to existing domestic procedures. It applies to claims for the payment of a sum of money but, in common with other EU instruments in the area of civil judicial cooperation, it does not extend to revenue, customs or administrative matters, bankruptcy, social security or arbitration. However, it will apply to matters of matrimonial property, the property consequences of registered partnerships or successions where they are covered by EU legislation.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The following options have been assessed against the base case of "no change". This would effectively mean the status quo continues with the UK exercising the right not to opt in to the revised Regulation and not participating in the negotiations :

Option 0 - Base Case ("Do Nothing"). A decision to not opt in at this stage would not necessarily preclude the UK from opting in at a later stage, but it would diminish the UK's influence in negotiations to shape the text, as the UK would not have any voting rights.

Option 1 - Exercise the right to opt-in to the Regulation and participate in the negotiations and be bound by the outcome.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed following conclusion and analysis of responses to consultation
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Not applicable

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:..... Date: 03 August 2011.....

Summary: Analysis and Evidence

Policy Option 1

Description: “Opt – In” to the Draft Regulation

To opt in to the Regulation from the outset.

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate			

Description and scale of key monetised costs by ‘main affected groups’

Other key non-monetised costs by ‘main affected groups’
 Option 1 will impose costs on the Government and banks and other financial institutions. Costs would be imposed on Government in the form of administrative, legal and procedural changes in implementing the Regulation, including the creation and maintenance of competent authorities in each of the UK’s legal jurisdictions to carry out the functions assigned to them under the Regulation. Banks and other financial institutions holding accounts and other financial instruments within the scope of the proposal which can be frozen will be required to provide a service to administer the freezing of these accounts and will incur costs to do so. Costs may also fall to either the Government or banks if the requirement for disclosure of account information under Article 17 is agreed as drafted.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		Optional	
High			
Best Estimate			

Description and scale of key monetised benefits by ‘main affected groups’

Other key non-monetised benefits by ‘main affected groups’
 A European procedure for the freezing of bank accounts will be useful to both businesses and citizens who wish to enforce a debt against someone with assets in another Member State where there is a fear that the defendant will try to dispose or conceal assets. It will be of particular benefit to those who frequently seek enforcement of debts in a number of different Member States as they will not have to use the different existing domestic procedures in each of those countries and will be able to familiarise themselves with this single procedure. As such this Regulation, if adopted, is likely to provide a useful additional tool to help to improve the working of the internal market.

Key assumptions/sensitivities/risks	Discount rate (%)	
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Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			UK and Gibraltar		
From what date will the policy be implemented?			To be confirmed		
Which organisation(s) will enforce the policy?					
What is the annual change in enforcement cost (£m)?					
Does enforcement comply with Hampton principles?					
Does implementation go beyond minimum EU requirements?					
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/a	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs:	Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	Yes	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	European Commission Green Paper on attachment of bank accounts (24 October 2006) COM(2006) 618 final
2	UK Government Response to Commission Green Paper (March 2007)
3	European Commission Green Paper on transparency of debtors' assets (6 March 2008) COM(2008) 128 final
4	UK Government Response to Green Paper (October 2008)
5	European Commission proposal creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters COM(2011) 445 final, plus Commission impact assessment SEC(2011) 938.
6	
7	
8	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

1. Scope of Impact Assessment

- 1.1 This Impact Assessment (IA) considers whether it is in the national interest for the Government, in accordance with the United Kingdom's (UK) Protocol annexed to the Treaty on the Functioning of the European Union (EU), to seek to opt-in to and therefore be bound by the European Commission's (from this point referred to as the Commission) proposed Regulation 'Creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters'. The IA accompanies the consultation document '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?' ("the consultation document"). It assesses the costs and benefits of opting into the Regulation for the UK. It follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.
- 1.2 On 25 July 2011, the Commission published its proposal, the aim of which is to establish a self-standing European procedure which creates a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters. This order will allow for the freezing of bank accounts in cases having cross-border implications.
- 1.3 The proposed Regulation follows two Green Papers issued by the Commission in recent years. The first, in 2006, was on the attachment of bank accounts. The second dealt with the transparency of debtors' assets and was issued in 2008. At the time of the Green Papers there was uncertainty about whether any attachment procedure would be protective in nature only or might be extended to allow a mechanism for enforcement. This proposal is restricted to protective measures.
- 1.4 As a result of its consultation, the Commission concluded that creditors seeking to recover debts in other Member States face significant difficulties - in particular because it is more cumbersome, lengthy and costly for creditors to obtain provisional measures to preserve assets of debtors located abroad.

Objectives of Regulation

- 1.5 According to the Commission, the aim of the proposed Regulation is to deal with four problems with the current situation:
 - First, the conditions for issuing orders preserving assets in bank accounts under national law vary considerably throughout the EU. This makes it more difficult for creditors to obtain an account preservation order in some Member States than in others and encourages forum-shopping. In addition measures issued without a prior hearing of the debtor are not currently recognised and enforced in another Member State under Regulation 44/2001 (also known as Brussels I).
 - Secondly, in many Member States it is difficult, if not impossible, for a creditor to obtain information about the whereabouts of a defendant's bank account without having recourse to the services of private investigation agencies. This can prevent a creditor from having access to this type of provisional measure.
 - Thirdly, the costs of obtaining and enforcing an account preservation order in a cross-border situation are generally higher than in domestic cases, which deters creditors from recovering their claims abroad with the help of the judicial system.
 - Finally, the divergences in and length of national enforcement systems constitute a serious problem for creditors seeking to enforce a judicial decision. This jeopardises the effectiveness of provisional measures like account preservation orders which by definition depend on a swift implementation.
- 1.6 The Commission's objectives for its proposal are, therefore, to facilitate the recovery of cross-border claims for citizens and businesses, and to improve the efficiency of enforcement of judgments by reducing the risks involved in cross-border trade, increasing confidence of traders, improving payment behaviour of debtors in cross-border situations

and encouraging more cross-border business activity. More specifically, the Commission has said its proposal aims to:

- enable creditors to obtain account preservation orders on the basis of the same conditions irrespective of the country where the competent court is located;
- allow creditors to obtain information on the whereabouts of a defendant's bank accounts; and
- reduce costs and delays for creditors seeking to obtain and enforce an account preservation order in cross-border situations.

Affected groups and sectors

- 1.7 The Regulation, if the Government elects to opt-in, would apply to all three separate UK jurisdictions: England and Wales, Scotland and Northern Ireland. Gibraltar, although a British Overseas Territory, is subject to EU Regulations in this field. The UK has responsibility on behalf of Gibraltar for the negotiation of relevant European instruments, and those instruments are directly applicable in Gibraltar if the UK decides to opt-in.
- 1.8 The following groups and sectors are likely to be affected by the Regulation, if adopted in the UK:
- **Judiciary:** When granting European Account Preservation Orders or dealing with challenges or objections to them.
 - **Legal profession:** Those acting for or on behalf of either the creditor seeking an order or a defendant who is subject to an order.
 - **Banks and other financial institutions:** When required to process an order to freeze an account and to deal with the administration of a European Account Preservation Order.
 - **Businesses:** If they are creditors who wish to obtain an order or if they are defendants who are subject to them.
 - **Individuals.** The creditors who wish to obtain an order or defendants who are subject to them.
 - **Government:** In terms of legislation and the systems that apply to enable the implementation of European Union legislation.

Analytical principles

- 1.9 The IA aims to identify, as far as possible, the impacts of the proposed Regulation on society. A critical part of the process is to undertake a Cost Benefit Analysis (CBA) of the proposals. The CBA assesses whether the proposals would deliver a positive impact to society, accounting for economic, social and distributional considerations. The IA should therefore not be confused with a financial appraisal, which is focused purely on assessing how much resource Government would save from certain proposals.
- 1.10 The cost benefit analysis under this IA rests on answering two basic questions:
- What is the problem that the Regulation is seeking to address that has led the relevant market or sector not to function properly?
 - In what way can Government intervention at the national and EU level help to mitigate this problem? What options are available to resolve the resultant problems, and would the available options recommended in the Regulation have the desired impact? To establish a case for Government action (to opt-in to the Regulation or not), an assessment of the possible costs and benefits of Government involvement must be made to show that benefits are likely to outweigh the costs.
- 1.11 In addressing these questions, the IA has focussed mainly on key-monetised and non-monetised impacts, with the aim of understanding what the net social impact on society might be from adopting the Regulation. It has not been possible to quantify costs and benefits at this stage. The IA indicates where further analysis might be done over the

consultation period to inform the post-consultation IA. This impact assessment should therefore be treated as tentative.

- 1.12 An important consideration for any IA is the relevant scope of the assessment. The scope of this IA includes:
- Impacts that fall within the physical geography of the UK. This means focusing on assessing the impacts of the Regulation on those in the UK (creditors, defendants and banks and financial institutions) who are seeking, will be subject to or will have to administer an order. The analysis excludes any impacts on other EU Member States.
 - Impacts that fall on UK nationals living outside the UK. Consideration has also been given to UK nationals or businesses resident in other Member States who are seeking the freezing of a bank account in the UK or who may have assets in the UK against which an order may be made. The analysis does not include any impact on UK banks or financial institutions who might have to administer the freezing of an account in another EU Member State through branches or offices not in the UK.
 - Impacts that fall on present and future generations. In line with HM Treasury Green Book, an assessment has been made of the potential impacts of the Government electing to opt in to the Regulation, particularly in terms of those who may be affected by it. As the proposed Regulation could affect future generations, consideration has also been given to its impact over a minimum appraisal term of ten years.
- 1.13 In the time available, it is not feasible to undertake a forensic assessment of the entire Regulation. As such the IA restricts itself to some broad elements of the Regulation, and in particular, to a basic assessment of whether the proposed provisions are sufficient to enable the Government to elect to opt in to the Regulation or not.
- 1.14 Although the Regulation is likely to change as a result of negotiations, for the purposes of this assessment it has been necessary to assume that the Regulation as drafted will be adopted.

2. Rationale for Intervention

Current Problem

- 2.1 The standard approach to regulatory or policy intervention is based on efficiency or equity arguments. Government usually intervenes if there is something wrong (a “failure”) with the way particular systems, markets or institutions operate. For example, the Government might consider intervening where existing or current laws are inadequate or where there is inefficiency or unfair outcomes. Through such interventions it is hoped that social welfare is increased through greater efficiency. Alternatively Government also intervenes to deliver distributive justice, e.g. poverty reduction or a reduction of inequalities.
- 2.2 The policy problem set out here concerns one of cross-border EU procedural law. The Regulation is designed to contribute to the continual development of a European area of justice, freedom and security in order to support economic activity in the Single Market. The Commission claims that a creditor seeking to obtain protective measures in a cross-border situation currently faces additional costs and delays compared to freezing assets in his own Member State. The creditor is also confronted with the fact that the conditions for issuing a protective measure differ considerably throughout the EU. As a consequence, whether he/she is able to obtain such a measure depends on the law of the Member State where the competent court is located. As a result, the creditor is often either not able to obtain a protective order or does not consider it worthwhile to try. The Commission believes its proposal will be of benefit to both businesses and consumers. For businesses it will increase the amount of debt that can be recovered. For consumers it will give them more confidence to undertake cross-border transactions.
- 2.3 The creation of a European Account Preservation Order will provide an alternative to existing domestic freezing orders and will be available only for cases with cross-border implications. The “economic problem” under consideration is therefore best viewed from two overlapping perspectives – the EU and UK perspective.

EU perspective

- 2.4 The underlying problem from the EU perspective is that creditors seeking to recover debts in other Member States face significant difficulties - in particular because it is more cumbersome, lengthy and costly for creditors to obtain protective measures to preserve assets of debtors located abroad.
- 2.5 The Commission's impact assessment states that there has been an increasing tendency for businesses to write-off bad debts in Europe. It estimates that on average 2.6% of the annual turnover of European companies is written off. Applied to the volume of intra EU trade, this means that more than €55bn of cross-border debt is annually written off by European companies. Of this the Commission says that the major part is not recoverable at all – e.g. because the debtor is bankrupt, the debt has not a good ranking as compared to other creditors or the creditor loses his case on the merits. A further part of it can be recovered by execution against moveable or immoveable goods rather than against bank accounts – e.g. by selling machinery. Of that recoverable from bank accounts, only part can be secured by freezing orders because the conditions for obtaining a freezing order will not be fulfilled in all circumstances and finally, only part of the amount secured by a freezing order will be recovered in the end because, for example, the creditor may lose the case on the merits or because the debtor successfully managed to contest the measure.
- 2.6 According to one survey quoted by the Commission only 11.6% of companies engaged in cross-border trade have applied for a freezing order to secure payment of a cross-border claim as opposed to 19.2% in domestic cases. In about half of the cross-border applications (53.3%) the order was granted, a significantly lower success rate than for applications in domestic cases (almost 65%). According to sample data from 13 European financial institutions, the average amount of a cross-border freezing order is about €20,000. The Commission was unable to obtain exact data on the number and value of cross-border freezing orders but estimated they were 1% of the total. On that basis they have calculated that there are 34,000 a year amounting to a value of €679 million. By estimating a likely increase in the number of successful orders of 10% because of proposed changes to Regulation 44/2001 (Brussels I) and a 50% increase because of the use of this procedure the Commission estimates the amount of cross-border bad debt that can potentially be secured at between €1.12 billion and €2 billion.
- 2.7 The Commission believes that additional debt recovered by consumers and maintenance creditors will increase the amount of bad debt that can be recovered but that amount is difficult to quantify. The Commission also estimates that cost savings for companies currently involved in cross-border trade would be in the range of €81.9 million to €149 million annually. In addition, it believes there would be savings also for consumers and maintenance creditors. They believe the procedure will be of particular benefit to SMEs which have little cash flow and limited access to credit and are therefore more reluctant than big companies to pursue their claims.

UK perspective

- 2.8 The Government supports measures which make it easier for both businesses and citizens to resolve disputes and enforce judgments across borders. Legal certainty and effective dispute resolution procedures are essential to ensure the internal market works properly and, as a major trading nation within the EU, the UK will benefit from such a measure if it achieves the Commission's aims. Therefore the Government welcomes, in principle, the Commission's proposal. In particular it is pleased to see that it is meant to be an alternative to domestic procedures and is not intended to replace them.
- 2.9 From the UK's perspective, the question is whether the procedure suggested in the proposed Regulation will address effectively the problems identified by the Commission. To answer that question there is a need for an assessment on the impact, benefits and likely costs of the proposal and, in particular, whether the proposal addresses UK concerns as well as bringing additional benefits to those who are likely to use or be affected by the Regulation.

- 2.10 The next sub-section assesses, from the UK perspective, the likely costs and benefits of the main provisions. It is hoped that the Government's consultation on the proposal will provide information to help quantify more accurately the scale of the benefits and impacts.

3. Options Analysis

- 3.1 This section sets out some potential costs and benefits of electing to opt in to the Regulation. Analytical judgements have been made about which impacts are likely to represent a cost or benefit and any associated risks. Where impacts are deemed insignificant or neutral these are not discussed.

Base Case – “Do Nothing”

- 3.2 IA Guidance requires that all options are assessed against a common “base case”. The base case for this IA has been assumed as “do nothing”. This means that the UK would effectively exercise the right not to opt in to the Regulation proposed by the European Commission. The UK Government can decide not to opt in at the start of negotiations but can request to participate after the Regulation has been adopted.
- 3.3 Under the base case there would be no changes to the current legal systems in the UK. The UK would continue to apply its relevant national law in this area and would not be bound by the Regulation.
- 3.4 As the base case compares against itself, the net present value is zero. However, it should be noted that certain drivers are likely to change over time and may amplify the profile of impacts within the base case over time relative to the current year. With more movement throughout the EU and more cross-border trade the number of potential disputes increases. In addition more EU cross-border civil law instruments are being adopted making it easier for claimants to seek redress. Therefore the number of cross-border cases is likely to continue to increase as will the demand for orders which protect claimants' assets.
- 3.5 By not opting in to the proposed Regulation there would be no changes to UK laws, judicial procedures and systems. Those wishing to freeze an account in the UK would need to use either existing domestic procedures or use the routes for protective measures under the existing private international law mechanism through Regulation 44/2001, also known as Brussels I.

Option 1 – “Opt-In into draft Regulation”

General Description

- 3.6 **Exercise the right to opt-in to the Regulation.** By participating from the outset, the UK would be bound by the terms of the Regulation once adopted. This would mean that the UK would have to provide for the procedure for issuing and enforcing European Account Preservation Orders in each of its jurisdictions in cases with a cross-border implication. This will not affect the working of existing domestic procedures.
- 3.7 The Regulation aims to establish a self-standing European procedure which will enable a creditor in a cross-border dispute to obtain a protective order to prevent the withdrawal or transfer of funds held by a debtor in a bank account located in the EU. This procedure is meant as an alternative to existing domestic procedures.
- 3.8 For ease of analysis and presentation, the assessment has focused on those areas which are likely to have relatively more substantial impacts to the UK and would be of relative interest to the general public. These are set out below.

General Principles

- 3.9 The proposed Regulation aims to facilitate the recovery of cross-border claims for citizens and businesses, and to improve the efficiency of enforcement of judgments by reducing the risks involved in cross-border trade, increasing confidence of traders, improving payment behaviour of debtors in cross-border situations and encouraging more cross-border business activity. More specifically, the Commission has said its objectives are to:
- enable creditors to obtain account preservation orders on the basis of the same conditions irrespective of the country where the competent court is located;
 - allow creditors to obtain information on the whereabouts of a defendant's bank accounts; and
 - reduce costs and delays for creditors seeking to obtain and enforce an account preservation order in cross-border situations.

Scope and Rules on Jurisdiction

- 3.10 The proposal aims to establish a self-standing European procedure which will enable a creditor to obtain a protective order to prevent the withdrawal or transfer of funds held by a debtor in a bank account located in the EU. The proposal has the following features :
- This procedure is meant as an **alternative to existing domestic procedures**.
 - It **applies to claims for the payment of a sum of money** but, in common with other EU instruments in the area of civil judicial cooperation it does not extend to revenue, customs or administrative matters. Other exclusions include bankruptcy, social security or arbitration. However, it will apply to matters of matrimonial property, the property consequences of registered partnerships or successions where they are covered by EU legislation.
 - It is **limited to cases having cross-border implications**. For the purposes of this Regulation, a matter is considered to have cross-border implications unless the court considering the application for an order, all bank accounts to be preserved by the order and the parties are located or domiciled in the same Member State. In cases where an order is sought prior to the initiation of proceedings or before judgment but after proceedings have started, jurisdiction to make the order will lie either with the courts having jurisdiction for the substance of the matter or where more than one court has jurisdiction the court where the claimant has brought proceedings on the substance or where the claimant intends to bring proceedings. However the courts at the place where the bank account is located can have jurisdiction where the order is to be enforced in that Member State. The same jurisdiction rules apply to a claimant who has already received a judgment etc. but, if necessary, it has yet to be declared enforceable in the Member State of enforcement.

Safeguards for defendants and abolition of exequatur

- 3.11 The claimant must satisfy a court that his/her claim appears to be well founded (unless an enforceable judgment etc. has already been obtained) and that without an order enforcement of a judgment etc. is likely to be impeded or made substantially more difficult, including because there is a real risk that the defendant might remove, dispose of or conceal their assets. The existence of a judgment etc. which is enforceable in the Member State of enforcement will be enough to allow the granting of an EAPO in such cases. A creditor must make his/her application on a standard form without notice to the defendant unless the claimant requests otherwise. A court may require a claimant to provide a security deposit or equivalent assurance to compensate the defendant for any damage suffered. Where an application is made prior to the initiation of proceedings if the proceedings on the substance of the claim is not initiated within 30 days of an order (or any deadline given by a court) it is revocable.
- 3.12 Any order granted can be only up to the amount of the judgment or claim plus any interest and costs. Where there may be different orders to secure the one claim the claimant must inform the court which will then decide whether those other orders sufficiently protect the

claimant's interests. A defendant can apply for a review of an order in the Member State of origin on the grounds that the conditions for its issue were not met or because the proceedings on the substance of the matter were not initiated within the specified time. In the Member State of enforcement the defendant can request that enforcement be limited on the grounds that certain amounts that are exempt from being frozen have not been properly taken into account. The defendant can also request enforcement be terminated because a judgment has dismissed the claim or that the account is exempt from seizure. In addition, the defendant can request the order be set aside as the claimant has failed to initiate proceedings in the given time. The defendant can also request the order be set aside or enforcement of the order be suspended on the grounds that the judgment, court settlement or authentic instrument has been set aside or suspended respectively. Enforcement of an order can be terminated on the grounds that the defendant provides a security deposit for the amount specified or equivalent assurance.

- 3.13 In the light of these procedural requirements the Commission proposes that a European Account Preservation Order issued in one Member State shall be recognised and enforced without the need for a declaration of enforceability and without any possibility of opposing its recognition. By doing this the so called exequatur procedure for recognition and enforcement of judgments will be abolished.

Requirement on banks

- 3.14 The Commission proposes that banks should implement orders immediately upon receipt or, if received outside of business hours, immediately at the start of the next business period. A bank should then declare within three working days whether and to what extent the account has been preserved. The value of financial instruments or any funds in a currency other than that in which the order was issued will be determined by reference to the relevant market or official exchange rate applicable on the day of implementation. A number of issues are left to the application of the national law of the Member State of enforcement including the liability of banks when complying with the obligations of implementing the orders and sending necessary declarations, the treatment of joint accounts, whether banks can charge for the process, amounts that are exempt from being frozen and the ranking of creditors.
- 3.15 Where banks are able to seek payment or reimbursement of the costs incurred by the implementation of the European Account Preservation Order there should be single fixed fees which are determined in advance by the Member State where the account is located and which respect the principles of proportionality and non-discrimination.

Disclosure of account information

- 3.16 A claimant is required to provide information on the defendant and his/her bank account or accounts to enable the bank or banks to identify the defendant. However the claimant can, under Article 17, request that the competent enforcement authority of the Member State of enforcement use all appropriate and reasonable means to obtain this information. Member States must ensure that there is a mechanism to either oblige banks in the territory to disclose whether the defendant holds an account with them or to allow the competent authorities to access account information held in registers or otherwise by public authorities or administrations.

Requirements on Government

- 3.17 The Government will be required to give effect to the Regulation if the UK chooses to opt in. It will have to ensure both that the courts and the judiciary are able to issue and process orders and that competent authorities are in place in each of the UK's jurisdictions. These competent authorities will be required to facilitate service of the orders on banks and defendants, to deal with issues arising from the declaration of banks following execution of orders, the release of funds where more than one bank account has been frozen and the determination of amounts that should be exempt. The competent authority will also be responsible for helping creditors to obtain the details of the bank accounts of defendants.

Costs of Option 1

- 3.18 The additional costs of the proposals on the UK discussed above will vary depending on the groups affected. These are considered below.

Defendants

- 3.19 There would be costs to defendants of the **reduced choice in utilising their resources**. By its very nature if a bank account is frozen, the person or business subject to a European Account Preservation Order will incur costs because they are unable to remove money or other assets up to the amount of the order. These costs might be in the form of penalty charges for any commitments they are unable to meet, opportunity costs because their assets cannot be used in the way they wish or legal costs. However such costs can occur currently for defendants subject to domestic orders.
- 3.20 The serious consequences of such an order mean that the threshold for issuing them needs to be high enough so that they are used only in appropriate cases. The likely costs are dependant, therefore, on ensuring the right threshold is negotiated during the negotiations. Protection against costs may be provided if there subsequently is proved to be no valid claim because a defendant may be able to recover any damages that arise as a result of the order. The claimant may be required to provide security to meet such costs.
- 3.21 The measure will **increase the justice costs to defendants** wishing to prevent imposition of an order. For example, if the jurisdiction rules dictate that the issuing court is not in their usual Member State of residence and they wish to challenge the order costs for all but the most vulnerable defendants (i.e. consumers, employees or the insured) will be greater as they will not be able to go to a court more local to them.

Banks and other financial institutions

- 3.22 The Regulation may impose substantial costs on banks and other financial institutions which hold accounts that can be frozen. There may be additional costs associated with upfront investment in necessary technology and to deal with the obligation to disclose information.
- 3.23 Continuous servicing of the orders will lead to resource costs for banks and other financial institutions. At this stage it is not possible to determine how many orders are likely to be made through the use of this procedure that would not have been made anyway under existing domestic procedures. Therefore while the type of procedure may change it is possible that the numbers might not increase significantly, at least in the short term. A limitation of scope of the proposal to cross-border cases will limit the numbers of requests banks will need to process and consequently limit the extra costs they will incur. Issues around jurisdiction will determine the number of orders a bank will receive from the courts of other Member States. There may be additional costs involved in such cases where there are language issues (even if the orders are made on standard forms and for incoming cases should be in English) and where any queries need to be raised with the issuing court.
- 3.24 Where there is a move to the European procedure, even if there is no significant increase in the total number of orders being requested, the impact on banks may be disproportionate if the costs of administering European orders are higher than those for domestic orders. However by ensuring that under the proposal many issues continue to be determined by national law this should align the processes as much as possible and hopefully mean that both any disparity in costs and increase in administrative burdens should be kept to a minimum.
- 3.25 Banks are able to levy single fixed fees set in advance to administer an order where they are entitled to a payment or reimbursement for freezing orders under national law. Where that is possible and such charges meet the costs incurred the effect on banks and financial

institutions may be neutral. In Member States which do not permit charges to be levied for national orders this route will not be open to the banks and financial institutions.

- 3.26 If banks or other financial institutions are obliged to disclose information on whether an account is held by them they will incur extra costs to undertake necessary searches and communicate any information found. The Commission's own impact assessment estimates such costs to be between €30 and €100 per case depending on the complexity. The Regulation does not specify whether banks will be able to charge for such searches. If they can, this will limit the extra costs that they might face, depending on whether the charges are capped at a particular level.
- 3.27 There is some uncertainty in the text about where the liability of banks for certain issues might lie. If this issue remains unresolved during the negotiations this could also lead to increased costs for banks.

Government

- 3.28 There would be **costs on the UK Government associated with legislation and implementation**. If the UK were to opt in, it would be necessary to introduce legislation to give effect to the procedure. Such changes would impose costs to Government, including those associated with Parliamentary time required to create necessary legislation, cross-Government action in putting in place the relevant systems needed for the Regulation to work in practice, e.g. retraining the judiciary and court staff. If the target times for processing applications and orders are shorter than under domestic procedures this could increase costs to the courts and judiciary involved.
- 3.29 The obligation to establish competent authorities may impose significant costs on Government, especially if they are required to facilitate the provision of information on a defendant's bank account.

Wider society

- 3.30 There may be other costs on society from second round impacts. For example the banks may pass on the costs of the new requirements on its customer base, which may include those not directly affected by account preservation issues.

Benefits of Option 1

Creditors

- 3.31 For creditors the introduction of this procedure will provide an additional tool in the area of cross-border debt recovery. Whereas at present they would have to apply to the court in the Member State where the assets were held to obtain an order and use the existing national procedure, under this proposal they will be able to use a European procedure which will be common to all Member States and information will be available in all EU languages. Therefore they will not need to use procedures in legal systems and languages with which they are not familiar. This will decrease legal and translation costs and will be of particular value to creditors who undertake litigation in a number of different Member States.
- 3.32 The possibility of obtaining information on the bank accounts of defendants will be very beneficial to creditors. It will mean that the orders will be more effective and they will have more opportunity to recover debts.

Wider society

- 3.33 In as much as creditors will be able to more easily recover their debts the provision of such information will facilitate the working of the internal market and therefore benefit business and could boost enterprise. This would have benefits for society in general.

4. Specific Impact Tests

Competition Assessment

- 4.1 The Impact Assessment Guidance sets out a number of tests which need to be assessed. We have focused on those tests that may be relevant to the Regulation.
- 4.2 The market affected by the proposed Regulation will be banks and financial institutions which provide accounts which can be frozen by European Account Preservation Orders. However this proposal is not thought to have any impact on competition within that market.

Small Firms Impact

- 4.3 The IA Guidance requires that new proposals are assessed on the extent to which they impose or reduce the costs on business. The main impact envisaged will be on banking and other institutions which are not likely to be small firms. The creditors seeking to use European Account Preservation Orders or the defendants subject to them could be small firms but that would be as parties to proceedings and this would not give rise to any extra regulatory burdens. The procedure is meant to be an alternative to existing domestic procedures and small firms can already be subject to domestic freezing orders.
- 4.4 It is possible that, as identified by the Commission in its own impact assessment, that SMEs as creditors may benefit in particular from this procedure because as they have fewer resources to devote to litigation they are currently more likely to write off cross-border debts. A European Business Test Panel survey found that 58% of firms employing up to 250 people said they would be 'more likely' to engage in cross-border trade if bank attachment/freezing order rules are made easier. This compares with just 33% of firms employing more than 250 people who gave this answer.

Justice Impact Test

- 4.5 The proposal will have an impact on current justice systems in terms of the need to make provision for the procedure – e.g. the need to amend the Civil Procedure Rules, train court staff and the judiciary. These impacts are not thought to be significant, however, and are discussed in the main IA above. Further consideration will be given to this from evidence received as a result of the Ministry's consultation.

Human Rights

- 4.6 The proposed Regulations, if adopted, will be compliant with the Human Rights Act.

Equalities Impact Assessment

- 4.7 A screening exercise for equalities duties shows no evidence to suggest any specific effects in this area whether or not the UK chooses to opt in to the Regulation. Consequently the Ministry of Justice has decided that a full equality impact assessment is not required.

Rural Proofing

- 4.8 Rural proofing is a commitment by Government to ensure domestic policies take account of rural circumstances and needs. It is a mandatory part of the policy process, which means as policies are developed, policy makers should consider whether their policy is likely to

have different impacts in rural areas, because of particular circumstances and if so adjust the policy where appropriate, with solutions to meet rural needs and circumstances. The initial assessment made suggests that there are no specific rural impacts from the proposals.

Health Impact Assessment

- 4.9 The Ministry of Justice has concluded that a health impact assessment is not necessary. The proposed Regulation will not have a significant effect on human health or have an effect on the wider determinants of health. In addition, it will not impact on the lifestyle-related variables provided in the guidance or on health or social care services.

Sustainable Development

- 4.10 The Ministry of Justice has concluded that there are not any significant environmental impacts resulting from the proposed amendments to this particular Regulation.

5. Enforcement and Implementation

- 5.1 The decision to opt in to the Regulation from the outset or to elect to participate in the Regulation at a later stage does not require any specific enforcement, sanction or monitoring mechanisms. The Regulation will be applied by the courts on a case by case basis.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

If implemented, the Regulation would be the subject of a review by the European Commission 5 years from the date of its adoption.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

The review would take account of the application of the Regulation since coming into force and whether problems have occurred which required rectification.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The European Commission will produce a report on the application of the Regulation which may be accompanied by a Green Paper proposing areas where the Regulation may be subject to amendment in future.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

From when the proposals are in force.

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

The application of the agreed Regulation will be monitored by the European Commission.