



EUROPEAN COMMISSION
Impact Assessment Board

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Opinion

Title

Impact Assessment for a Regulation on Cross-border debt recovery: A European Freezing Order

(draft version of 2011)

(A) Context

The Stockholm Programme to deliver justice, freedom and security to citizens, adopted by the European Council in December 2009, states that "the European judicial area should serve to support economic activity in the Single Market". It invites the Commission to put forward appropriate proposals for improving the efficiency of enforcement of judgements in the EU regarding bank accounts and debtors' assets.

At present the fragmentation of national rules in the EU on enforcement severely hampers cross-border debt recovery. The EU initiative on freezing of bank accounts aims to address problems with cross-border debt recovery. The aim is to provide legal certainty to the recovery of claims in another Member State in commercial, consumer and family law cases. The initiative aims to complement Regulation Brussels 1, which will ensure that judicial decisions are enforceable in another Member State, by addressing the procedure of enforcement in another Member State.

(B) Overall assessment

The report needs to be strengthened significantly in several respects. First, the report should describe the problem more clearly by outlining the various stages involved in a cross-border debt recovery, by identifying precisely where in that process this initiative is targeted and by providing more precise evidence on the size of the problem. The report should also better establish the intervention logic, explaining the relationship of the proposed initiative with existing EU level instruments and clearly demonstrating its added value. To do so, the report should better define the baseline scenario and analyse more consistently impacts for all options, including elements of the preferred option that have not yet been decided upon. Finally, the report should better reflect stakeholders' views on all major points throughout the document.

Given the nature of these recommendations, the Board asks DG JUST to submit a revised version of the report, on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Strengthen the analysis of the problem. In outlining the problem the report should better explain the problem drivers so that the precise nature of the intervention can be more clearly understood. In that context the report should first better describe (possibly in diagrammatic form) how cross-border debt recovery works in practice, including clarifying the jurisdiction in which each stage of this process normally takes place and, second, describe the stage in that process at which the proposed initiative is targeted. The report should better explain why problems of enforcement remain despite the fact that the related Regulation Brussels I ensures the enforceability of judicial decisions in another Member State and what would change with the proposed revision of 'Brussels I' in the successive stages of cross-border debt recovery. Having clarified the nature of the problem, the report should also be clearer on its scale, particularly by contrasting the size of the problem of cross-border debt recovery and domestic debt recovery. The report should also provide greater clarity on the distinction between unrecovered cross-border debt, the level of debt that is actually recoverable under the status quo and the level of debt that could be recovered as a result of the measure proposed.

(2) Develop a full baseline scenario and present clear intervention logic to highlight the value added. The report should provide a fuller assessment of the baseline scenario assuming that the revision of Regulation Brussels I is adopted. Against this background, it should explain more fully the intervention logic by elaborating on the value-added of the preferred option compared to existing EU level instruments such as Regulation Brussels I and the Late Payment Directive. The report should highlight how these instruments are related and may complement each other through the entire process of cross-border debt recovery. The report should clearly explain how, and to what extent, the Freezing Order would address the problem, namely a costly and lengthy process, given that additional legal costs and/or possible translation costs would still be incurred in order to ensure actual recovery of cross-border debts. The report should better justify the selection of a European Freezing Order as opposed to an approach involving full Bank Attachment.

(3) Improve the assessment of impacts. The report should analyse all options, including the baseline, in accordance with the same criteria. In particular the report should assess more fully the impacts of all options on SMEs and Member States (such as discussing whether harmonised deadlines for issuing freezing orders could have significant impacts in terms of cost of compliance for those Member States where procedures are currently slow and that would have to revise their procedures significantly). The report should also clearly highlight any other elements of the preferred option that have not been defined yet, but will be part of the legal proposal, and assess their potential impacts. In addition, the report should consider whether the creation of a low-cost European procedure alone will have a significant effect on the number of judicial proceedings being launched or whether additional measures, such as targeted information campaigns, are also needed. The report should clarify the expected economic benefits of a European Freezing Order in terms of the potential and actual additional debt likely to be recovered beyond the baseline scenario. Finally, the report should better explain whether in some cases the European Freezing Order could lead to a more favourable situation for persons seeking cross-border debt recovery than for those seeking to recover debts in their own Member State.

(D) Procedure and presentation

The report should reflect the comments of all stakeholders throughout the document and on all major points.

(E) IAB scrutiny process

Reference number	2008/JUST/123
External expertise used	No
Date of IAB meeting	6 April 2011