



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2011)

Opinion

Title **DG JUST - Impact Assessment for a Regulation on facilitating cross-border recovery**

(Resubmitted draft: version of 6 May 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

While the report has been significantly improved along the lines of the recommendations issued by the Board in its first opinion, a number of important aspects should be further strengthened. First, although the report is now more transparent regarding the scale of the problem, it should further clarify some of the assumptions underlying the estimates of the economic effects of cross-border border debt recovery. Second the report should be clearer on the level of costs that creditors may still incur even if a European Freezing Order is in place. Finally, the report should provide further clarification on the proposed time limits to be included in a freezing order, in particular as to how these limits will be set and their impact on Member States.

(C) Main recommendations for improvements

(1) Clarify some of the assumptions relating to the scale of the problem. While the revised report now better describes the underlying problem and its drivers, further explanation is required for some of the assumptions relating to the scale of the problem. In particular, the assumption that the amount of cross-border debt not being currently recovered could be improved by 50% in addition to the 10% gain likely to arise from the implementation of the revised Regulation Brussels 1 should be explained.

(2) Further improve the intervention logic to highlight the value added. While the report claims that a European Freezing Order would remove the need to retain a lawyer in more than one jurisdiction it is acknowledged that additional costs will nevertheless arise in relation to the actual recovery of the debt and the possibility that debtors may contest the claim in their own jurisdiction. In order to better support the case for intervention the report should therefore be more precise on the costs that would still be incurred even if a European Freezing Order were in place with an account of whether such costs would fall disproportionately on SMEs.

(3) Better explain procedural time limits and fully assess their impacts. The revised report now indicates that specific time limits for all or at least some of the different stages of the procedure should also be defined. However, the report does not specify any such time limits but states that these should be in line with existing European legal instruments. Given that the imposition of time limits for various stages of the processing of a European Freezing Order could have significant impacts on Member States where procedures are currently slow, the report should better explain how and when these time limits will be established and provide a full assessment of their impacts, including administrative burden as well as the stipulated implementation period for Member States to comply. The report should also clearly highlight any other elements of the preferred option that are to be defined at a later stage and what their potential impacts would be.

(D) Procedure and presentation

The newly added explanations (such as in section 3.2 and 3.3 on the procedural stages of cross-border debt recovery) can be improved by further editing. Given that 'European Freezing Order' and 'bank attachment' have different meanings (the option of full recovery by bank attachment is discarded) the report should avoid using these terms interchangeably at various points in the text. The account of how the IAB recommendations have been taken up in the report should be indicated in greater detail. Finally, efforts should be made to bring the report closer to the 30 page limit.

(E) IAB scrutiny process

Reference number	2008/JUST/123
External expertise used	No
Date of Board Meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 18 April 2011.