

The European Account Preservation Order^{**}

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Introduction

1. On 18 January 2017, Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters became fully applicable¹⁾ in all Member States, with the exception of the United Kingdom²⁾ and Denmark³⁾. The measure is a bold initiative, permitting a court in one Member State to authorise the freezing of accounts in other Member States. Its success in practical application remains to be tested.

2. The scope of this Regulation covers all civil and commercial matters apart from certain well-defined matters.

3. The matters excluded are : a) revenue, customs or administrative matters and social security; b) rights in property arising out of marriage or equivalent relationship, and wills and succession and; c) claims against a debtor who is the object of bankruptcy or insolvency proceedings, judicial arrangements, compositions or other similar proceedings. In particular, this Regulation does not apply to claims against a debtor in insolvency proceedings. Therefore, no European Account Preservation Order (EAPO) can be issued against the debtor once insolvency proceedings have been opened in relation to him⁴⁾.

4. The procedure established by this Regulation should serve as an additional and optional means for the creditor, who remains free to make use of any other procedure for obtaining an equivalent measure under national law⁵⁾. National procedures for obtaining protective measures such as account preservation orders exist indeed in all Member States,

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1) See Article 54 of Regulation (EU) No 655/2014.

2) See Recital (50) of Regulation (EU) No 655/2014.

3) See Recital (51) of Regulation (EU) No 655/2014.

4) See Recital (8) of Regulation (EU) No 655/2014.

5) See Recital (6) of Regulation (EU) No 655/2014.

but the conditions for the grant of such measures and the efficiency of their implementation vary considerably. Moreover, recourse to national protective measures may prove cumbersome in cases having cross-border implications, in particular when the creditor seeks to preserve several accounts located in different Member States⁶⁾.

5. This Regulation establishes a uniform European procedure enabling a creditor to obtain a protective measure in the form of an EAPO preventing the transfer or withdrawal of funds held by his debtor in a bank account maintained in a Member State⁷⁾.

1 – Procedure for obtaining a EAPO

6. **The EAPO is available** to the creditor: a) **before** he initiates proceedings in a Member State against the debtor on the substance of the matter, b) **at any stage** during such proceedings up until the issuing of the judgment or the approval or conclusion of a court settlement, or c) **after** he has obtained in a Member State a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim⁸⁾.

7. **Where the creditor has not yet obtained a judgment**, court settlement or authentic instrument, **jurisdiction to issue an EAPO shall lie with the courts of the Member State which have jurisdiction to rule on the substance of the matter**⁹⁾.

8. **Where the creditor has already obtained a judgment, court settlement or an authentic instrument**, **jurisdiction to issue a EAPO for the claim specified in those instruments shall lie with the courts of the Member State in which the judgment was issued, the court settlement was approved or concluded or the courts designated for that purpose in the Member State in which the authentic instrument was drawn up**¹⁰⁾.

9. **If the debtor is a consumer** who has concluded a contract for a purpose that can be regarded as being outside his trade or profession, **only the courts of the Member State in which the debtor is domiciled can issue an EAPO**¹¹⁾.

10. If the debtor is a consumer who has concluded a contract for a purpose that can be regarded as being outside his trade or profession, only the courts of the Member State in which the debtor is domiciled can issue an EAPO¹²⁾. If the creditor requests an EAPO before obtaining a judgment, court settlement or authentic instrument that requires the

6) See Recital (5) of Regulation (EU) No 655/2014.

7) See Recital (7) of Regulation (EU) No 655/2014.

8) See Article 5 of Regulation (EU) No 655/2014.

9) See Article 6(1) of Regulation (EU) No 655/2014.

10) See Article 6(3) and (4) of Regulation (EU) No 655/2014.

11) See Annex I of Commission Implementing Regulation (EU) 2016/1823 of 10 October 2016 establishing the forms referred to in Regulation (EU) No 655/2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

12) See Article 7(1) of Regulation (EU) No 655/2014.

debtor to pay the claim, the EAPO can be granted only if he presents relevant facts, reasonably corroborated by evidence, to satisfy the court that the claim against the debtor is likely to succeed in the amount for which the EAPO is sought¹³⁾.

11. **The court shall take its decision by means of a written procedure on the basis of the information and evidence provided by the creditor** in or with his application. If the court considers that **the evidence provided is insufficient**, it may, where national law so allows, request the creditor to provide additional documentary evidence¹⁴⁾.

12. **In order to ensure the surprise effect of the EAPO, the debtor shall not be notified** of the application for a EAPO **or be heard** prior to the issuing of this order¹⁵⁾. Where, on the basis of the evidence and information provided by the creditor or, if applicable, by his witness(es), the court is not satisfied that the preservation of the account or accounts in question is justified, it should not issue the EAPO¹⁶⁾.

13. **A specific form is to be used in order to apply for an EAPO, together with all supporting documents.** The form to be used to apply for an EAPO, as referred to in Article 8(1) of Regulation (EU) No 655/2014, shall be as set out in Annex I to Commission Implementing Regulation (EU) 2016/1823 of 10 October 2016 establishing the forms referred to in Regulation (EU) No 655/2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

14. **Short time limits** are set by which the different steps in the procedure must be completed; these vary depending on whether the creditor has already obtained a judgment or not. If the creditor applies for the EAPO **before initiating proceedings** on the substance of the matter, the creditor must initiate such proceedings and provide to the court proof of such initiation within 30 days of the date on which he lodged his application or within 14 days of the date of the issue of the EAPO, whichever date is the later¹⁷⁾. Where **the creditor has already obtained a judgment**, court settlement or authentic instrument, the court shall issue its decision by the end of the fifth working day after the creditor lodged or, where applicable, completed his application¹⁸⁾.

15. **The creditor who does not know the debtor's account information can**, under certain conditions, **request the court to obtain account information from designated authorities in the EU country of enforcement.** If the creditor has no information about the bank with which the debtor holds one or more accounts, nor any account number, and he has already obtained **an enforceable** judgment, court settlement or authentic instrument that

13) See Article 7(2) of Regulation (EU) No 655/2014.

14) See Article 9(1) of Regulation (EU) No 655/2014.

15) "Ex parte procedure". See Article 11 of Regulation (EU) No 655/2014.

16) See Recital (15) of Regulation (EU) No 655/2014.

17) See Article 10(1) of Regulation (EU) No 655/2014.

18) See Article 18(2) of Regulation (EU) No 655/2014.

requires the debtor to pay the claim, he can ask the court to request that the “information authority”¹⁹⁾ of the Member State where he has reason to believe one or more accounts of the debtor are located attempt to obtain the necessary information. Where the judgment, court settlement or authentic instrument **is not yet enforceable**, a request for the obtaining of account information can only be made if additional conditions are fulfilled, pursuant to Article 14(1) of Regulation (EU) No 655/2014.

2 – Recognition, Enforceability and Enforcement of the EAPO

16. The EAPO issued in a Member State in accordance with the Regulation is **recognised** in the other Member States without any special procedure being required and is enforceable in the other Member States without the need for a declaration of enforceability²⁰⁾.

17. The EAPO is **enforced** in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State of enforcement²¹⁾. The competent authority of the Member State of enforcement shall act without delay²²⁾ and take the necessary steps to have the Order enforced in accordance with its national law²³⁾.

18. A bank to which an EAPO is addressed shall **implement** it without delay following receipt of the EAPO²⁴⁾. **To implement the EAPO**, the bank shall preserve the amount specified either by ensuring that that amount is not transferred or withdrawn from the account or accounts indicated in the EAPO or, where national law so provides, by transferring that amount to an account dedicated for preservation purposes²⁵⁾.

19. **Banks will be required within a three-day period to send a declaration to the local national authority** that relevant accounts with them have been identified and frozen²⁶⁾. Any liability of the bank for failure to comply with its obligations is governed by the law of the Member State of enforcement²⁷⁾.

20. Until the 18 July 2016, the Member States were required to communicate to the Commission notably the courts designated as competent to issue a EAPO, the authority designated as competent to obtain account information, the methods of obtaining account information available under their national law, the courts with which an appeal against a

19) We await details of how Member States have complied with their duty to create such authority and to give its details to the Commission.

20) See Article 22 of Regulation (EU) No 655/2014.

21) See Article 23(1) of Regulation (EU) No 655/2014.

22) See Article 23(2) of Regulation (EU) No 655/2014.

23) See Article 23(5) of Regulation (EU) No 655/2014.

24) See Article 24(1) of Regulation (EU) No 655/2014.

25) See Article 24(2) of Regulation (EU) No 655/2014.

26) See Article 25 of Regulation (EU) No 655/2014.

27) See Article 26 of Regulation (EU) No 655/2014.

refusal to issue the EAPO is to be lodged, the authority or authorities designated as competent to receive, transmit and serve the EAPO and other documents and the authority competent to enforce the EAPO²⁸⁾.

3 – Remedies and other safeguards for protection of the debtor’s interests

21. In order to counterbalance the absence of a hearing prior to the issuing of the EAPO, the Regulation grants the debtor a variety of remedies against the EAPO itself or its enforcement. Under articles 33 to 39 of the Regulation, the debtor can, for example, request a review of the EAPO notably if the conditions for issue set out in the Regulation were not met, because the issuing court did not have jurisdiction, or the creditor’s claim did not exist or existed only in a lower amount, or because the creditor’s claim was not in urgent need of protection in the form of an EAPO.

22. The Regulation also contains a number of additional provisions protecting the debtor’s interests. Thus, certain amounts can be exempt from preservation under the Regulation where these are exempted from seizure under the law of the Member State of enforcement whether at the request of the debtor or otherwise according to that law²⁹⁾. These will include, for example, amounts needed for the maintenance of the debtor and their dependents³⁰⁾. In addition, the creditor is liable for any damage caused to the debtor by the EAPO due to fault on the creditor’s part³¹⁾.

4 – Conclusion

23. The EAPO procedure contains a number of innovative features. Apart from the fact that the debtor is not heard prior to the issuing of the EAPO, its enforcement has to take place without delay and with the maximum of efficiency. In addition, the procedure is the first whereby the EU provides directly for the execution of judgments³²⁾.

24. Its success will depend on judicial confidence across frontiers, individual experiences of the use of the measure in concrete cases, and above all the absence of errors and abuses. To date, due to its limited time of application, the Commission have not yet conducted a formal evaluation of the application of the EAPO Regulation. The Commission has, however, some informal indications that its use is still rather limited, notably because it may not be well enough known.

28) See Article 50(1) of Regulation (EU) No 655/2014.

29) See Article 31(1) of Regulation (EU) No 655/2014.

30) See EUROPEAN COMMISSION, *Judicial cooperation in civil matters in the European Union – A guide for legal practitioners*, Publications Office, 2015, p. 109.

31) See Article 13 of Regulation (EU) No 655/2014.

32) See EUROPEAN COMMISSION, *Judicial cooperation in civil matters in the European Union – A guide for legal practitioners*, Publications Office, 2015, p. 106 and 107.

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