

THE EUROPEAN ACCOUNT PRESERVATION ORDER AT A GLANCE

7 QUESTIONS & 7 ANSWERS

The EU Regulation No 655/2014 of 15 May 2014 established a European Account Preservation Order (“**EAPO**”). The Regulation became applicable as of 18 January 2017 within the EU except for the United Kingdom and Denmark¹.

WHO SHOULD BE INTERESTED IN THIS REGULATION?

Subject to the reservation in 2 below, anybody who holds money claims against a debtor domiciled in another EU Member State, whether a company or a consumer, provided that no insolvency proceedings are pending with regard to the debtor.

CAN CREDITORS BASED OUTSIDE THE EUROPEAN UNION ALSO MAKE USE OF THE REGULATION?

No, the creditor must be domiciled in an EU Member State. However, it does not make a difference whether the creditor is the original holder of the claim or whether he acquired it by way of assignation.

WHAT IS THE ADDED VALUE OF THE REGULATION?

Creditors can obtain an order – the EAPO – issued by one court of an EU Member State, which entitles the creditor to seize accounts from the debtor in other EU Member States as well. The creditor only needs to show in one court procedure that the conditions for account preservation are met and can then use the same EAPO to obtain account preservation in other EU Member States. The EAPO is issued *ex parte* in order to ensure its surprise effect for the debtor. Further, courts are required to act quickly and decide on requests for issuance of an EAPO within a couple of days.

DO I NEED AN ENFORCEABLE COURT DECISION TO BENEFIT FROM THE REGULATION?

No, account preservation is also available before the creditor holds an enforceable court decision, provided that the creditor initiates litigation on the substance within a period of 30 days from lodging the request for issuance of the EAPO or 14 days after its issuance, whichever is more recent. If the creditor has an enforceable title, the regulation offers more options to ensure the preservation of accounts, in particular to track account information unknown to the creditor.

¹ Therefore, „Europe“ „European Union“ or „EU Member States“ for the purposes of this overview means the European Union or its Member States except the United Kingdom and Denmark.

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IS IT NOW ANY EASIER FOR CREDITORS TO HAVE BANK ACCOUNTS SEIZED IN EUROPE?

Yes, for creditors holding an enforceable title. The creditor can use a single EAPO in other EU Member States without further procedural hurdles. Another useful tool is the ability to identify bank accounts previously not known to the creditor.

For creditors without an enforceable title, the answer is more complex. The Regulation provides for conditions in order to qualify for an order, many of them are similar to those required in domestic enforcement laws. First, the creditor needs to show that he has a prima facie case, i.e. his claim is likely to succeed in substance. Second, the creditor needs to show to the court that without the preservation order enforcement, his claim will be impeded or made substantially more difficult, i.e. there is a real risk that the debtor might otherwise dissipate, conceal or destroy assets or dispose of them under value. The mere non-payment or contesting of the claim because the debtor has multiple creditors would not justify such an order. That the debtor is financially weak or in difficulties would not suffice either.

Finally, the court may order the creditor to deposit a security to cover potential damage caused to the debtor following the seizure of accounts. The creditor may become liable for damages towards the debtor if the EAPO has been unlawfully obtained.

DOES THE REGULATION ASSIST IN TRACING BANK ACCOUNTS OF WHICH THE CREDITOR IS NOT AWARE?

The Regulation does not provide for means to track this information for creditors who do not yet hold a judgment, settlement or so-called "authentic instrument", e.g. an enforceable deed.

If the creditor has obtained an enforceable title and has reasons to believe that the debtor holds an account with a bank in a specific Member State without knowing further details, he may request the court issuing the Preservation Order to request this information from the authorities of the other EU Member State(s).

If the creditor holds a judgment or settlement which is not yet enforceable, the creditor may be granted the right to obtain account information if there is an urgent need to preserve the creditor's rights.

The details as to how the account information can be obtained vary in each EU Member State. E.g. under Austrian law, the debtor can be compelled to disclose his bank account details. False or incomplete information would be subject to criminal prosecution. In contrast, the German legislator granted the competent authority access to bank account information held by the German Federal Central Tax Office (Bundeszentralamt für Steuern).

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WHERE CAN I OBTAIN AN EAPO?

Where the creditor has not yet obtained an enforceable title, the order must be sought from the courts of the EU Member State which are competent to rule on the substance of the matter, i.e. the debtor's domicile, or any other place of jurisdiction available (e.g. subject to the Brussels Ia Regulation the place of performance of the contractual obligation or the place of the damaging event etc.).

Where the creditor has already obtained a judgment or court settlement, jurisdiction to issue an EAPO for the claim specified in the judgment or court settlement shall lie with the courts of the Member State in which the judgment was issued or the court settlement was approved or concluded.

For more information, have a look at the latest [Wolf Theiss Dispute Resolution Newsletter](#).

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