



BANKING AND FINANCE

NEW EUROPEAN BANK ACCOUNT PRESERVATION ORDER

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Regulation (EU) no. 655/2014 (“**Regulation**”) was published the Official Journal of the European Union on 27 June 2014. This binding Regulation with direct application, introduces a number of very relevant innovations to facilitate cross-border debt recovery in civil and commercial matters by creating an EU-wide system for preservation of bank accounts. In fact, the protective measures currently in force in the national law of each Member State vary considerably. If a creditor intends to attach accounts located in different Member States, instead of applying for protective measure in each country, he will be able to make use of this new single uniform procedure aimed at facilitating cross-border debt recovery.

The new procedure allows a creditor to obtain, as an additional and optional means to the preventive measure existing under national law, an order to preserve accounts across the European Union (“**preservation order**” or “**order**”) preventing the transfer or withdrawal of funds held by the debtor in a bank account maintained in a Member State if there is a risk that, without such a measure, the subsequent recovery of the debt will be impeded or made substantially more difficult.

The creditor may present an application for a preservation order in the following situations:

- (i) before beginning, in a Member State, proceedings on the substance of the matter against the debtor, or at any stage of the proceedings up to the judgment is pronounced or approved or a court settlement is made;
- (ii) after obtaining, in a Member State, a judgment, court settlement or authentic instrument¹ requiring the debtor to pay the creditor’s claim.

¹ Defined in the Regulation as a document which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which: (a) relates to the signature and the content of the instrument; and (b) has been established by a public authority or other authority empowered for that purpose.

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The competent court (which may vary according to whether or not there is a judgment, settlement or authentic instrument and also on whether the debtor is a consumer) will make the preservation order when the creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for a protective measure, because there is a real risk that, without such a measure, the subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult.

If the creditor has not yet obtained a judgment, court settlement or authentic instrument, the creditor must submit sufficient evidence to satisfy the court that he is likely to succeed on the substance of his claim against the debtor. The application for the order, the order itself, the declaration concerning the preservation of funds and the application for a remedy or appeal are made on standard forms.

In order to ensure the surprise effect of the preservation order, and to ensure that it will be a useful tool for a creditor trying to recover debts from a debtor in cross-border cases, the debtor should not be informed about the creditor's application nor be heard prior to the issue of the order or notified of the order prior to its implementation. The creditor must begin the proceedings on the substance of the matter (and provide proof of such initiation to the court with which the application for the preservation order was lodged) within 30 days of the date on which he lodged the application or within 14 days of the date of the

issue of the order, whichever date is the later. Before issuing a preservation order in a case where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court will require the creditor to provide security for an amount sufficient to prevent abuse of the procedure and to ensure compensation for any damage suffered by the debtor as a result of the preservation order. Even if the creditor has already obtained a judgment, court settlement or authentic instrument, the court may, before issuing the order, require the creditor to provide the above mentioned security if it considers this necessary and appropriate in the circumstances of the case.

Where the creditor has obtained in a Member State an enforceable judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim and the creditor has reasons to believe that the debtor holds one or more accounts with a bank in a specific Member State, but does not know the name and/or address of the bank or the IBAN, BIC or another bank number allowing the bank to be identified, he may ask the court to request that the information authority of the Member State of enforcement obtain the information necessary to allow the bank or banks and the debtor's account or accounts to be identified.

The court decision on the application for a preservation order must be issued within 5 working days if the creditor has obtained a judgment, court settlement or authentic instrument or, if not, within 10 working days.

A bank to which a preservation order is addressed must implement it without delay. After this, the bank must issue a declaration indicating whether and to what extent funds in the debtor's account or accounts have been preserved and, if funds have been preserved, the date on which the order was implemented. Any funds deposited in joint accounts or in nominee accounts may only be preserved under this regulation under the law of the Member State of enforcement.

The preservation order and its enforcement may be subject to appeal by the debtor and either the creditor or debtor may, in turn, appeal the decision on the debtor's appeal. Third parties also have the right to challenge a preservation order and its enforcement. The fees charged by the authorities may not be higher than the fees charged in connection with equivalent national orders in the Member States or the fees for an appeal against this order. Fees may also be due for the enforcement of the preservation depending on the provisions of the national law of the Member State of enforcement. It should also be noted that some matters are excluded from the scope of application of this Regulation namely claims subject to insolvency proceedings. The Regulation takes effect as from 18 January 2017.

It should also be noted that some matters are excluded from the scope of application of this Regulation including debts owed by debtors subject to insolvency proceedings. The Regulation takes effect as from 18 January 2017.

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