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As of 18 January 2017, EU Regulation 655/2014, establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (the Regulation), will become effective. In this newsflash we set out what the European Account Preservation Order (the Preservation Order) is and how it works to seek cross border debt recovery.

## European Account Preservation Order – what it is

The Preservation Order is a protective measure which is available for creditors with cross-border claims on debtors with bank accounts held with banks within the EU. By obtaining a Preservation Order, creditors can seize the bank accounts of their debtors held with banks within the EU and/or obtain information on those bank accounts through a unified procedure available in EU member states.

The Preservation Order does not replace existing procedures available in member states to obtain protective measures. These procedures remain available. Creditors should carefully consider what (local) protective measure best serves their interest.

## European Account Preservation Order – how it works

### Filing a standard application form with the competent EU Court

A creditor seeking recovery of its claim on a debtor with (presumably) a bank account held by the debtor with a bank in another EU member state can apply to a competent Court for obtaining a Preservation Order.

Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, jurisdiction to issue a Preservation Order shall lie with the courts of the member state which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of jurisdiction applicable. Where the debtor is a consumer, jurisdiction to issue a Preservation Order intended to secure a claim relating to a consumer contract shall lie only with the courts of the member state in which the debtor is domiciled. Where the creditor has already obtained a judgment or court settlement, jurisdiction to issue a Preservation Order for the claim shall lie with the courts of the member state in which the judgment was issued or the court settlement was approved or concluded. Finally, where the creditor has obtained an authentic instrument, jurisdiction to issue a Preservation Order for the claim shall lie with the courts of the member state in which that instrument was drawn up.

Example: a creditor domiciled in the Netherlands wishes to collect a claim on a Belgian debtor pursuant to a

purchase agreement. Under the purchase agreement, the district court of Amsterdam has jurisdiction to decide on any and all disputes between the parties. In this example the Dutch creditor will need to apply to the Amsterdam court for obtaining a Preservation Order in relation to bank accounts of the Belgian debtor held with banks located in Belgium and/or other member states.

Applying is done by filling out and filing a standard application form, accompanied by all relevant supporting documents (agreements, invoices et cetera). The debtor shall not be notified or heard regarding the application.

## Conditions for issuing the Preservation Order

The court shall issue the Preservation Order when the creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for a protective measure in the form of a Preservation Order because there is a real risk that, without such measure, the subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult. In case the creditor has not yet obtained a judgment, court settlement or authentic instrument against the debtor, the creditor shall also submit sufficient evidence to satisfy the court that he is likely to succeed on the substance of his claim against the debtor.

## Security to be provided by the creditor

Before issuing the Preservation Order in a case where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court shall require the creditor to provide security. The Court may dispense with this requirement by way of exception, if it considers this necessary and appropriate in the circumstances of the case.

## Issuance and enforcement of the Preservation Order

If all conditions and requirements are fulfilled, the court shall issue the Preservation Order using a standard form. The Preservation Order shall inter alia include an instruction to the relevant bank(s) to implement the Preservation Order by preserving a specified amount in the debtor's bank account.

The Preservation Order is enforced in accordance with the local procedures applicable to the enforcement of orders. In the Netherlands, enforcement will be effected by the bailiff, who will serve the Preservation Order on the relevant bank. The bank will then need to implement the Preservation Order by preserving the amount specified in the Preservation Order. By the end of the third working day following the implementation of the Preservation Order, the bank shall issue a declaration indicating whether and to what extent funds in the debtor's account or accounts have been preserved and, if so, on which date the Order was implemented.

## Request for the obtaining of account information

If a creditor has obtained an enforceable judgment, court settlement or authentic instrument against the debtor in a member state and the creditor has reasons to believe that the debtor holds one or more accounts with a bank in a specific member state, but the creditor knows neither the name and/or address of the bank nor IBAN, BIC or another bank number allowing the bank to be identified, the creditor may also request the competent court 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 (under certain conditions this request can also be made if the judgment, court settlement or authentic instrument is not yet enforceable).

## European Account Preservation Order – pros and cons

Below we set out some pros and cons regarding the Preservation Order:

Pros

- simple and unified procedure to seize multiple bank accounts throughout the EU;
- short timeframes for handling the application and enforcement of the Preservation Order to ensure quick preservation of amounts;

#### Cons

- prejudgment creditors must provide security;
- in some cases, existing protective measures under local law may be more effective than a Preservation Order (to be verified with local counsel)

## Your Key Contacts



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