

THE IMPLEMENTATION AT THE NATIONAL LEVEL OF THE BANK ACCOUNT INFORMATION MECHANISM UNDER THE EAPO REGULATION: A COMPARATIVE ANALYSIS

LA IMPLEMENTACIÓN DEL MECANISMO DE INFORMACIÓN SOBRE LAS CUENTAS BANCARIAS DE LA ORDEN EUROPEA DE RETENCIÓN DE CUENTAS: UN ANÁLISIS COMPARADO

CARLOS SANTALÓ GORIS

Research Fellow at the Max Planck Institute Luxembourg

Supported by the Luxembourg National Research Fund (FNR) - 10965388

Recibido: 15.12.2019 / Aceptado: 10.01.2020

DOI: <https://doi.org/10.20318/cdt.2020.5194>

Abstract: One of the most praised aspects of the Regulation n° 655/2015 establishing a European Account Preservation Order is its mechanism to gather information about debtor's bank accounts (Article 14). Situations in which creditors ignore the debtors' banking details are not unusual. Through Article 14 tool creditors who have already obtained a title (enforceable or not) are entitled to request that information. However, the EAPO Regulation only lays down the skeleton and the main features of this instrument, conferring Member States a wide margin of manoeuvre to decide how to accommodate it in their respective domestic legal systems. Member States are allowed to select the authorities in charge of collecting the information and they can decide on how the information is gathered. This freedom is a source of divergence. The objective of this paper is to provide a comparative analysis on the information mechanism.

Keywords: debtors, creditor, assets' transparency, pecuniary claims, EAPO Regulation, bank accounts, European Civil Procedural Law.

Resumen: Uno de los aspectos más alabados del reglamento n° 655/2014 por el que se establece el procedimiento relativo a la orden europea de retención de cuentas, es su mecanismo para obtener información sobre las cuentas bancarias del deudor (artículo 14). No es inusual que los acreedores ignoren dicha información. A través de este nuevo mecanismo, aquellos acreedores que ya disponen de un título, pueden solicitar búsqueda de la información sobre las cuentas bancarias del deudor. Sin embargo, el reglamento únicamente establece las líneas generales del mecanismo, dejando a los estados miembros un amplio margen de maniobra para implementarlo en sus respectivos ordenamientos jurídicos. Cada estado puede elegir no solo las autoridades encargadas de realizar la búsqueda de información, también los medios a través de los que se obtiene la información. Esta libertad de la que disponen los estados miembros se ha convertido una fuente de divergencias a la hora de implementar el reglamento. El objetivo de este artículo es ofrecer un análisis comparado sobre el mecanismo de información.

Palabras clave: deudores, creditors, transparencia patrimonial, crédito pecuniario, Reglamento OERC, cuentas bancarias, Derecho Procesal Civil Europeo.

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of the request. B) Form. C) Limitations. D) Prerequisites. a) For all the creditors. b) For creditors without an enforceable title. 3. Issuance of the order to investigate. A) Form. B) Language. C) Access to the information authority. 4. Procedure in the state of enforcement. A) Information authorities. B) Verification of the origin of the information request. C) Mechanism to gather the information on the bank account. D) Time limits. E) Costs procedure. F) Information gathered on the bank accounts. G) Informing the court of origin about the results of the investigation. H) Notification to the debtor about the disclosure of his personal data. 5. Eventual assistance to the banks. 6. The information mechanism in numbers. IV. Conclusions and policymaking recommendations. V. Annex – Questionnaire for information authorities.

I. Introduction

1. On 17 January 2017, Regulation 655/2014, establishing a European account preservation order entered into force.¹ In broad terms, this instrument has established the first uniform provisional measure at the European level. It affords creditors a mechanism for the provisional attachment of bank accounts in pecuniary cross-border claims. For bank accounts to be frozen, creditors have to identify the bank accounts they want to attach. A problem emerges in those cases in which creditors do not supply such information and are unsure about the existence of bank accounts. The European lawmaker, aware of this potential barrier, has introduced a specific mechanism within the EAPO Regulation that allows certain creditors to obtain such information. Although it is one of the most praised elements of the EAPO Regulation, it is also one of the most controversial, since it affects two major sensitive subjects: data protection and bank secrecy.² It might be for these reasons, among others, that the European lawmaker has decided to leave a broad margin of discretion for its implementation in Member States (“MSs”).

2. The aim of this article is to offer a coherent and extensive overview of the main features and functioning of the EAPO Regulation information mechanism. On the one hand, the article will provide a comparative theoretical analysis of the EAPO Regulation normative framework, including specific implementing legislation at national level. At this point, academic and doctrinal contributions on the topic will be also considered. On the other hand, the paper will also reflect on existing practical issues with the application of the information mechanism. These first hand experiences were collected from several sources: domestic case law gathered in several MSs (Germany, Lithuania, Luxembourg, the Netherlands, Poland and Spain); issues reported by legal practitioners (judges and judicial clerks) involved in the application of the information mechanism;³ and the answers given by the information

¹ 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, OJ L 189, 27 June 2014, p. 59 (“EAPO Regulation”).

² These concerns were reflected in the comments made by the MSs’ delegations during preparation of the EAPO Regulation. See: Comments from the delegation of Czech Republic, 13140/12 ADD 1, p. 5; Comments from the delegation of Austria, 13140/12 ADD 2; Comments from the delegation of the Netherlands, 13140/12 ADD 3, p. 7; Comments from the German delegation 13140/12 ADD 6, p. 15; Comments from the delegation of Romania, 13140/12 ADD 7, p. 4; Comments from the Delegation of Finland, 13140/12 ADD 11, p. 6; Comments from the delegation of France, 13140/12 ADD 13, p. 14; Comments from the delegation of Lithuania, 13140/12 ADD 14, p. 4; Comments from the delegation Belgium, 13140/12 ADD 15, p. 4; Comments from the delegation of United Kingdom, 13140/12, p. 12.

³ Part of the interviews took place in the context of the IC²BE project. In broad terms, this project funded by the European Commission aimed at assessing the functioning of several European regulations focused on facilitating cross-border debt recovery (European Enforcement Order, European Payment Order, European Small Claims Procedure, and the European Account Preservation Order) from the perspective of domestic practice. Seven academic institutions from seven MSs participated in the project covering eight MSs (University of Antwerp – Belgium; Max Planck Institute for Procedural law (“MPI Luxembourg”)– France, Luxembourg and the CJEU decisions; University of Freiburg – Germany; University of Milan – Italy; University of Wrocław – Poland; Erasmus University Rotterdam – the Netherlands; University Complutense of Madrid – Spain). Each project partner had to conduct interviews with different practitioners and entities involved in the application of the instruments in their respective countries, as well as collecting Court of Justice of the European Union (“CJEU”) and domestic judgments concerning the application of the instruments. Summaries of all CJEU judgments and the most relevant domestic decisions are available in a public database created by the University of Antwerp for that purpose. A collective work with all the national reports will be published in 2020. For a detail overview on the project and database, see: <https://www.uantwerpen.be/en/projects/ic2be/about-the-project/> (accessed on 9 December 2019).

authorities in 6 MSs (Belgium, Germany, Estonia, Ireland, Luxembourg and Poland) to a questionnaire prepared for that purpose.⁴

3. The last part of the paper will address a group of policymaking suggestions intended to improve the information mechanism under its current framework, as well as potential amendments.

II. Overview of the EAPO Regulation

4. The EAPO Regulation was the result of almost two decades work⁵ and is the partial response to a pressing economic reality insufficiently addressed by the Brussels System rules on provisional measures.⁶

5. The EAPO Regulation has established the very first uniform provisional measure at the European level.⁷ It allows creditors the provisional seizure of defendants' bank accounts in cross-border pecuniary claims.⁸ Without any intention of being exhaustive, this section aims at offering a very general overview of the main features of the EAPO Regulation.

⁴ Annex with the questionnaire.

⁵ The very first and distant reference to a European preservation order appeared in 1998, on the "Commission communication to the Council and the European Parliament 'towards greater efficiency in obtaining and enforcing judgments in the European Union'" OJ C 33, 31 January 1998, p. 3. Back in those days, there were also several embryonic academic works exploring the possibility of establishing a specific provisional measure for bank accounts. See among other authors: R. PERROT, "L'efficacité des Procédures Judiciaires au sein de L'Union Européenne et les Garanties des Droits de la Défense", in M.T. CAUPAIN, G. LEVAL (eds.), *L'Efficacité de la Justice Civile en Europe*, Bruxelles, Larcier, 2000, pp. 417-437; E. JEULAND, "Les Garanties de la Saisie-Européenne de Créances Bancaires", in J. ISNARD, J. NORMAND (eds.), *Nouveaux droits dans un espace européen de justice Le droit processuel et le droit de l'exécution*, Paris, Passerelle, 2002, pp. 395-406; N. ANDREWS, "Towards an European protective order in civil matters" in M. STORME (ed.), *Procedural Laws in Europe. Towards Harmonisation*, Antwerp, Maklu, 2003, pp. 267-304. On 2006, the European Commission published "Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts" (SEC(2006) 1341, COM/2006/0618 final). It was not until 2011 that the European Commission released the "Proposal for a Regulation of the European Parliament and of the Council Creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters, COM/2011/0445 final - 2011/0204 (COD)" ("EAPO Commission Proposal"). This first text was the object of a substantial review by the European lawmaker. The final version of the text appeared in 2014, and it entered into force two and half years later, on 17 January 2017. On the development of the EAPO Regulation, see: D. VILAS ÁLVAREZ, "El Reglamento por el que se crea una Orden Europea de Retención de Cuentas y Mercantiles: claves de su elaboración" *La Ley mercantil*, n° 6, September 2014, p. 1.

⁶ In this sense, see: Commission Staff Working Document, - Annex to the Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts (COM(2006) 618 final) SEC/ 2006/1341.

⁷ Despite its uniformity, there are many aspects left to domestic procedural law. At. This has been acknowledged by several authors. See among other authors: G. PAYAN, "La nouvelle procédure européenne de saisie conservatoire des comptes bancaires", *Lamy Droit de l'exécution forcée*, n° 85, September 2014, p. 2; S. PIEDELIÈVRE, "La saisie européenne des comptes bancaires: à propos de la proposition de règlement européen", in J. ATTARD, M. DUPUIS, M. LAUGIER, V. SAGAERT, J. VOINOT (eds.), *Un recouvrement de créances sans frontières?*, Brussels, Larcier, 2012, p.18.

⁸ For a more detailed overview on the EAPO Regulation, see among other authors: I. ANTÓN JUÁREZ, *Litigación Internacional en la Unión Europea III. La Orden Europea de retención de Cuentas*, Pamplona, Aranzadi, 2018; G. CUNIBERTI, S. MIGLIORINI, *The European Account Preservation Order Regulation. A Commentary*, Cambridge, Cambridge University Press, 2018; G. CUNIBERTI, "La procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires établie par le règlement UE n° 655/2014. Aspects de droit international privé", *Revue critique de droit international privé*, 2018, pp. 31-62; J. COVELO DE ABREU, "O Regulamento n.º 655/2014 que estabelece um procedimento de decisão europeia de arresto de contas: direitos à ação e de defesa em tensão reflexiva no contexto de uma integração judiciária em matéria civil – uma precoce antevisão", in A. SILVEIRA (ed.), *UNIO E-book Volume I Workshops CEDU 2016*, Braga, Centro de Estudos em Direito da União Europeia, 2016, pp. 253-277; P. FRANZINA, A. LEANDRO, *Il sequestro europeo di conti bancari. Regolamento (UE) N. 655/2014 del 15 maggio 2014*, Milano, Giuffrè, 2014; B. HESS, K. RAFFELSIEPER, "Die Europäische Kontenpfändungsverordnung: Eine überfällige Reform zur Effektuierung grenzüberschreitender Vollstreckung im Europäischen Justizraum", *IPRax*, 2014, pp. 46-52; E. JEULAND, "La clef de voûte de l'espace judiciaire européen : le règlement n° 655/2014 du 15 mai 2014 créant une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires (OESC)", *Revue internationale de droit processuel*, n° 2, 2016, pp. 282-293; F. MOHR, *Die vorläufige Kontenpfändung: EuKoPffVO*, Vienna, LexisNexis, 2014; N. RITZ, *Vorläufige Kontenpfändung in Europa*, Berlin, Peter Lang, 2019; L. SANDRINI, "Nuove prospettive per una più efficace cooperazione giudiziaria in materia civile: il regolamento", *Rivista di diritto internazionale privato e processuale*, n° 2, 2017, pp.283-355; C. SENÉS MOTILLA, *La orden europea de retención de cuentas. Aplicación en derecho español del reglamento (UE) n.º 655*, Pamplona, Aranzadi, 2015; T.L. SIKORSKI, *Vorläufige Kontopfändungen. Europäisches, deutsches und polnisches Recht im Vergleich*, Frankfurt a.M, Peter Lang, 2018; H. SCHUMACHER, "Artikle 14", in B. KÖLLENSPERGER, H. SCHUMACHER, M. TRENKER, *EuKoPffVO. Kommentar zur EU-Kontenpfändungsverordnung (UE) n. 655/2014*, Vienna, MANZ, 2017.

1. Material and territorial scope

6. Materially, the EAPO Regulation is only applicable to pecuniary claims in civil and commercial matters.⁹ Certain matters are expressly excluded from the scope of application of the EAPO,¹⁰ such as arbitration,¹¹ or wills and succession.¹²

7. Territorially, the EAPO Regulation is applicable in all MSs except the United Kingdom and Denmark.¹³ At least the bank account and the creditors' domicile have to be located in MSs where the EAPO Regulation applies.¹⁴ Furthermore, the EAPO Regulation only applies in cross-border claims. Again, the creditor's domicile and the location of the bank account are determinant to establish the cross-border element: one of them has to be located in a different MS from the one of the court which might grant the preservation order.¹⁵

2. Application stage

8. The preservation order is granted by a court. Creditors can apply for an EAPO before the initiation of a procedure on the substance of the matter; during the procedure; or even after, when creditors have already an enforceable title, which can be a judgment, but also a court agreement or an authentic title.¹⁶ If they apply before the initiation of the procedure on the substance of the matter, jurisdiction is determined on the basis of the rules governing jurisdiction in the main proceedings. In such cases, we should observe the rules of the Brussels I bis Regulation; the Maintenance Regulation;¹⁷ or the Insolvency Regulation,¹⁸ depending on the nature of the main claim. If the procedure on the substance of the case has already been initiated, then the competent court to grant a preservation order will be found in the MSs where the court which is hearing the main case is located. If the creditor obtains preservation order on the basis of an authentic instrument then jurisdiction corresponds to the courts of the MSs where the authentic instrument has been obtained.¹⁹ There is one exception. If one of the parties is a consumer, then jurisdiction lies with the courts of the country of the consumers' domicile.²⁰

9. Creditors also need to satisfy certain minimum material prerequisites.²¹ All creditors have to prove the existence of a risk to recovering the amount of the claim (the so-called *periculum in mora*).

⁹ Article 2(1) EAPO Regulation.

¹⁰ Article 2(2) EAPO Regulation.

¹¹ Article 2(2)(e). Nonetheless, this might not be an absolute exclusion if we observe this provision in the light of CJEU, 17 November 1998, *Van Uden*, 391/95, ECLI:EU:C:1998:543. In that decision the CJEU acknowledged the possibility of applying the Brussels Convention to a provisional measure granted by a court while the main proceedings were substantiated before an arbitration court. The rationale was the nature of the claim fell within the material scope of the Brussels Convention. In Poland, a regional court that confronted a similar problem concerning the EAPO Regulation decided to follow the *Van Uden* doctrine. See: G. POBOZNIAK, P. SIKORA, "The Admissibility of a European Account Preservation Order in the Event of an Arbitration Clause", *Czech and Central Europe Yearbook of Arbitration*, 2018, pp. 221-233.

¹² Article 2(2)(b) EAPO Regulation.

¹³ Recitals 50 and 51 EAPO Regulation. Nonetheless, in the Netherlands, a creditor tried to use it against bank accounts in the United Kingdom. See: *Rechtbank Noord-Nederland*, 22-05-2019/C/17/166749/KGZA19-118, ECLI:NL:RBNNE:2019:2267.

¹⁴ Article 4(4)(6) EAPO Regulation.

¹⁵ Article 3 EAPO Regulation. This means that we might have cases in which the court, which issues the preservation and the bank account, are located in the same MS. In those occasions, the whole procedure takes place in the same jurisdiction. In this sense: M. A. RODRÍGUEZ VÁZQUEZ, "La Orden Europea de Retención de Cuentas", *Revista Aranzadi de Derecho Patrimonial*, n° 38, September – December 2015, p. 150.

¹⁶ Article 5 EAPO Regulation.

¹⁷ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10 January 2009, p.1 ("Maintenance Regulation").

¹⁸ Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5 June 2015, p. 19.

¹⁹ Article 6(4) EAPO Regulation.

²⁰ Article 6(2) EAPO Regulation.

²¹ Cf. SENÉS MOTILLA (n 8), pp. 71-95.

Creditors who have not yet obtained an enforceable title²² have to prove the existence of a likelihood of success relating to the substance of the claim (the so-called *fumus boni iuris*). Creditors have to submit evidence to prove the existence of these prerequisites. Besides these two elements, creditors who have not obtained a title will also have to provide a security. Nonetheless, according to the ‘circumstances of the case’ they could be exempted from the security, just as creditors who have already obtained a title might be requested to provide to one.²³

3. Decision on the application

10. Once the court receives the application, it proceeds to the examination of the application, assessing if all the prerequisites, formal and material, are duly satisfied. If national law allows it, judges can request additional evidence.²⁴ The procedure incurs *inaudita parte debitoris*, meaning that a debtor is not summoned to appear before the court.²⁵ The purpose is to guarantee the ‘surprise effect’ of a proceeding.²⁶ The time limits depend on whether a creditor already has an enforceable title or not. If the creditor has an enforceable title, the judge has to deliver the decision within the next 5 days. If the creditor has not yet obtained a title, or the title is not yet enforceable, then the judge has 10 days to deliver the decision on the application. Eventually, if the judge decides not to grant the preservation order (e.g. the claimant could not prove the existence of a risk), the applicant has the possibility to lodge an appeal against that decision.²⁷ If the preservation order is granted, it will be referred to the enforcement authority in the MS where the bank account is held.

4. Enforcement

11. The enforcement authority will notify the bank of the EAPO. Depending on the law of the MS of enforcement, the bank will simply freeze the monies in the account,²⁸ or transfer the balance to an account dedicated for preservation purposes.²⁹ There are certain amounts which cannot be attached, in order to ensure the debtor’s minimum standard of living.³⁰ Once the attachment happens, the bank will issue a declaration concerning the attachment of the bank accounts.³¹ The declaration is sent to the enforcement authority, which transmits it to the court of origin and to the creditor.³² Nonetheless, if the bank and the court of origin are in the same MS, then the bank will inform the court and the creditor directly.³³

12. If the amount attached surpasses the amount of the claim, the creditor shall request the release of the surplus.³⁴ If not, they might be found liable for damage caused to the debtor.³⁵

²² The EAPO Regulation does not specify if the title has to be enforceable or not. Nonetheless, in the recent CJEU, 7 November 2019, *K.H.K.*, 555/18, ECLI:EU:C:2019:937, the court determined that despite the lack of an express reference to the enforceability, titles have to be enforceable if creditors want to access to the most lenient regime of the EAPO Regulation. See: C. SANTALÓ GORIS, “The CJEU renders its first decision on the EAPO Regulation – Case C-555/18” available at: <http://conflictoflaws.net/2019/the-cjeu-renders-its-first-decision-on-the-eapo-regulation-case-c-555-18/> (accessed on 4 December 2019).

²³ Article 12(1)(2) EAPO Regulation.

²⁴ Article 9(1) EAPO Regulation.

²⁵ Article 11 EAPO Regulation.

²⁶ This contrasts with the regime of the Brussels I *bis* Regulation, in which *ex parte* provisional measures are banned from benefiting from the simplified scheme of recognition and enforcement since the famous CJEU, 21 May 1980, *Denilauler*, 125/79, ECLI:EU:C:1980:130, para. 17.

²⁷ Article 21 EAPO Regulation.

²⁸ Article 24(2)(a) EAPO Regulation.

²⁹ Article 24(2)(b) EAPO Regulation.

³⁰ Article 31 EAPO Regulation.

³¹ Article 25 EAPO Regulation.

³² Article 25(3) EAPO Regulation.

³³ Article 25(2) EAPO Regulation.

³⁴ Article 27 EAPO Regulation.

³⁵ Article 13 EAPO Regulation.

13. Once the court of origin receives the declaration on the attachment of the funds, it informs the debtor about the preservation order. At this stage, debtors have four options. One, the debtor can do nothing and await the possible later enforcement of the creditor's title. Two, if the debtor considers that the EAPO Regulation was not properly issued, they could apply for remedy before the court of origin. Three, in certain cases, they could even lodge a remedy before the court of the MS of enforcement.³⁶ Four, if the creditor has expressly allowed it, the debtor could also pay the amount due, by requesting the bank to transfer the attached funds to the creditor's bank account.³⁷ Debtors can request the release of the amount attached if they provide to that court or authority, a security in the amount preserved by the EAPO granted.³⁸

14. The preservation order will last until the enforcement is terminated, or revoked, or the measure of enforcement of title takes effect.³⁹

III. Article 14 - Information Mechanism

1. Rationale

15. The inclusion of an information mechanism was not envisaged in the first *travaux préparatoires* of the EAPO Regulation. The 2006 Commission Green Paper on attachment of bank accounts did not mention anything regarding the information mechanism.⁴⁰ Instead, the Commission was planning to create an autonomous instrument strictly related to a defendant's assets transparency. This project was much more ambitious and explored, among other things, the possibility of creating a European Assets Declaration.⁴¹ Only when the latter was indefinitely postponed, did the Commission consider the possibility of including a tool to gather information on bank accounts within the EAPO Regulation.⁴² Nonetheless, the idea was not new. The Maintenance Regulation envisaged a similar tool, although not in such detail.⁴³ Under this Regulation, central authorities are entitled to gather information on a defendant's assets.⁴⁴ The central authorities have to, among other functions, find the location of the debtor's assets.⁴⁵ At the domestic level, most of MSs to a certain extent have tools to gather information on a debtor's assets.⁴⁶ Nevertheless, the non-inclusion of a specific tool to gather information on a defendant's bank accounts would have precluded many potential users from using the EAPO Regulation.

2. Creditors' request to investigate defendants' bank accounts

A) Moment of the request

16. Creditors must request information on the bank accounts when they submit the application for the preservation order. The information request is made in the same standard form as the application

³⁶ Article 34 EAPO Regulation.

³⁷ Article 19(2)(j) and Article 24(3) EAPO Regulation.

³⁸ Article 38(1) EAPO Regulation.

³⁹ Article 20 EAPO Regulation.

⁴⁰ European Commission, "Improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts" (Green Paper) COM/2006/0618 final.

⁴¹ European Commission, "Effective enforcement of judgments in the EU: transparency of debtors' assets" (Green Paper) COM (2008) 128 final. p. 11. This paper was the result of a more extensive study directed by Prof. Hess, from the University of Heidelberg. See: B. HESS, *Making More Efficient the Enforcement of Judicial Decisions Within the EU* (Study No. JAI/A3/2002/02, 2004).

⁴² Cf. CUNIBERTI, MIGLIORINI (n 8) pp. 176 – 177.

⁴³ Article 61(2)(d)(e) Maintenance Regulation.

⁴⁴ Article 35 of the Commission Proposal of the Maintenance Regulation (European Commission, "Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations" (COM (2005)0649 final)) foresaw the creating of an "order for temporary freezing of a bank account" similar to the EAPO Regulation.

⁴⁵ Article 51 Maintenance Regulation.

⁴⁶ Cf. HESS (n 41), pp. 26-47.

for the preservation order.⁴⁷ It is unclear whether a creditor can request information on the bank account after submission of the application for the preservation order. Sometimes, a creditor discovers certain information that leads him to suspect that there might be another bank account in another MS. This may occur after the creditor has made the application for a preservation order. Since the EAPO Regulation specifies that the information request has to be made using the standard application form, it is doubtful that a further application for information could be made at a later time.

B) Form

17. The information request is to be made by means of the same standard form as the application for the preservation order.⁴⁸

C) Limitations

18. Not all kinds of creditors have access to the information mechanism. Article 14 is restricted to those creditors who have a title (a judgment, a public document, or a transaction). The title does not have to be enforceable. Nonetheless, as will be explained, creditors who request the information based on a non-enforceable title have to fulfil more prerequisites than creditors who have an enforceable title.⁴⁹ The Commission Proposal did not contain such limitation - any kind of creditor could request information on the defendants' bank accounts.⁵⁰ Nonetheless, during the review of the first draft, several MSs advocated for a more restrictive approach.⁵¹ In their view, the draft of the Commission Proposal could lead to potential abuses.

D) Prerequisites

19. Those creditors who request information on the debtors' bank accounts have to satisfy certain prerequisites which vary depending on if creditors have an enforceable title or a non-enforceable title.⁵²

a) For all creditors

Lack of information of information on debtor's bank accounts

20. A literal reading of Article 8 seems to indicate that the bank account could be identified with the IBAN, the BIC, or the name and address of the bank. Any of the three would be enough to identify the bank account. Nonetheless, this is not always crystal clear. For example, in Spain a court refused to grant an EAPO when the creditors indicated the IBAN only. That court considered that the IBAN was

⁴⁷ Point 7, 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, OJ L 283, 19 October 2016, p. 1 ("EAPO Commission Implementing Regulation").

⁴⁸ Point 7, Annex I EAPO Commission Implementing Regulation.

⁴⁹ Article 14(1) EAPO Regulation.

⁵⁰ Article 17 EAPO Commission Proposal.

⁵¹ In this regard, France was particularly forthright. The French delegation stated: "Accordingly, in French law, access to information is only given if the creditor possesses an enforceable title. This restriction on access to information is justified by the fact that until a court has formally issued a judgment against a debtor, there is no reason to issue information" (Comments from the delegation of France, 13140/12 ADD 13, p. 14). Less explicitly, other delegations have also expressed their concerns. See: Comments from the delegation of Latvia, 13140/12 ADD 12, p. 8. Several authors are also of the same opinion, see among others: Cf. SIRKOSKI (n 8), p. 379; and I. ANTÓN JUÁREZ, "La orden europea de retención de cuentas: ¿adiós a la dificultad que plantea el cobro de la deuda transfronteriza en la UE?", Cuadernos de Derecho Transnacional, (Marzo 2017), Vol. 9, N° 1, p. 20.

⁵² Cf. SCHUMACHER (n 8), p. 157.

not enough to identify the bank account. The decision was reserved on appeal.⁵³ It is unclear if the national identification number of the bank account is sufficient to identify the debtor's bank. Article 8 says that it has to be provided only if the creditor knows it. While the IBAN, the BIC, or the bank and address of the bank are mandatory, the other number is optional. Nevertheless, Article 14(1) states that the creditor may request information on the bank account if he does know "the name and/or address of the bank nor the IBAN, BIC or another bank number allowing the bank to be identified". Does this mean that if I have the bank account number but not the IBAN, nor the BIC, nor the name and address of the bank account I can request a preservation order? If we look at Article 8 no, but if we observe Article 14, yes.

21. From the wording of the EAPO Regulation, It is also unclear whether a creditor could request information on the bank accounts if the creditor has already identified one of the bank accounts in a MS. For example, a creditor domiciled in Spain knows that the debtor, a German company, has a bank account in France; but for obvious reasons, the creditor suspects that the debtor might also have a bank account in Germany. Could the creditor request the attachment of the French bank account, and simultaneously, the investigation of the debtor's bank accounts in Germany? Although the EAPO Regulation is silent in this regard, the EAPO Implementation Regulation expressly allows it.⁵⁴ It is not evident either whether it is possible to request information on bank accounts simultaneously in more than one MS. Taking up the previous example, let us imagine that the creditor suspects that the debtor might have bank accounts in Germany and Poland, but not the details or the bank in which these accounts are held. Could the creditor request information in both MSs? As in the previous case, the EAPO Regulation does not say anything, but the EAPO Implementation Regulation allows this practice⁵⁵.

Generic prerequisites of the EAPO

22. If creditors want to request information on bank accounts, they have to satisfy most of the general prerequisites to obtain a preservation order.⁵⁶ Thus, they have to provide the court with all the information under Article 8, except, for obvious reasons, the identification of the bank account; and with evidence to prove the urgency and the *periculum in mora* under Article 7(1). Creditors with a non-enforceable title will have to prove also the existence of the *fumus boni iuris*. Whereas according to the text of the EAPO Regulation only creditors without a title have to satisfy this prerequisite, the CJEU understood that creditors with a non-enforceable title are under the same regime as creditors without any kind of title.⁵⁷ The sole prerequisite expressly excluded is the security.⁵⁸

Reasons to believe that the debtor holds one or more accounts with a bank in a specific MS

23. All creditors who request information on bank accounts must explain why they believe there might be bank accounts in a specific MS.⁵⁹ The preamble of the Regulation offers, as example, some of the grounds that could be invoked to substantiate this prerequisite. Recital 20 provides two indicators: "the debtor works or exercises a professional activity in that MSs" or "has property there". In the standard form, these two prerequisite fields are pre-established. Creditors have to tick a box corresponding

⁵³ Auto AP Valencia, 5 October 2017, no 358/2017, ES:APV:2017:3302; and Auto AP Valencia, 9 June 2018, no 192/2018, ES:APV:2018:2434.

⁵⁴ Point 6, annex I Commission Implementing Regulation: "Where you already know the details of one or more of the debtor's bank accounts but you have reason to believe that the debtor also holds one or more other accounts in a specific MS and you do not know the details of the latter account(s), you can — in the same application for a Preservation Order — give details of the debtor's bank account you do know (in this case, please fill in section 6) and, at the same time, lodge a request to obtain account information for other account(s) in a specific MS (in this case, please also fill in section 7)".

⁵⁵ Point 7, Annex I, EAPO Commission Implementation Regulation: "If you want to preserve accounts in more than one MS, please provide the information below for each MS concerned (when filling in the form on paper, please use separate sheets and number each page)".

⁵⁶ Cf. MOHR (n 8), p. 81.

⁵⁷ CJEU, *K.H.K.*, ECLI:EU:C:2019:937, paras. 30 – 45.

⁵⁸ Article 14(3) EAPO Regulation.

⁵⁹ Article 14(2) EAPO Regulation.

to the reason they would to invoke the EAPO and “give relevant details”.⁶⁰ The judge will assess if the information provided is sufficient or not. Besides these two indicators, the standard form features an additional one: the debtor’s habitual residence in the MS that creditors suspect the account is located.⁶¹ The list of indicators in the standard form is not *numerus clausus*. Any other reason could be invoked as long as the creditor can explain it. Unlike for the Article 7 material prerequisites, here creditors are not required to provide evidence to justify the reasons invoked.⁶²

b. Specific prerequisites for creditors without an enforceable title

24. Creditors who have not yet obtained an enforceable title must prove additional prerequisites.

The amount to be preserved is substantial

25. The EAPO Regulation does not fix any specific amount.⁶³ It will correspond to the judge to decide if the amount is substantial or not in the specific circumstances of the case and the claimants’ financial situation.⁶⁴ This is a subjective element that have to be observe jointly with the prerequisite of the substantial deterioration of the creditors financial situation.⁶⁵

Risk to jeopardize the subsequent enforcement

26. This is a stricter version of Article 7’s *periculum in mora*. Article 7 states that there must be a risk that the subsequent enforcement “will be impeded or made substantially more difficult”. For the purposes of Article 14 mere aggravation of the enforcement is not enough,⁶⁶ “the enforcement is likely to be jeopardized”. Has a creditor, who has already proven that there is justification that the enforcement will be impeded for the purposes of Article 7, to prove that the enforcement is likely to be jeopardized? In fact, in the standard form both appear separately, which might indicate that creditors are required to fulfil both parts of the standard form. Nonetheless, in practice, the creditor might invoke the same reasons to satisfy both prerequisites.⁶⁷

27. The EAPO Regulation does not provide any clue as to what should be understood by “likely to be jeopardized”.⁶⁸ Recital 14 of the Preamble contains certain indicators to determine Article 7’s *periculum in mora* that might also apply to Article 14’s notion risk.⁶⁹ Nonetheless, case law at domestic level, shows that courts and creditors have been struggled to determine the substantive content to this concept.⁷⁰ This might be the reason EAPO Regulation show that judges rely on their own national “concepts” to determine Article 7 material prerequisites.⁷¹

⁶⁰ Point 7(3) of the Annex I of the EAPO Commission Implementing Regulation.

⁶¹ Point 7(3) of the Annex I of the EAPO Commission Implementing Regulation.

⁶² Cf. SCHUMACHER (n 8), p. 157.

⁶³ Cf. SENÉS MOTILLA (n 8), p. 120.

⁶⁴ Conversely, one author affirmed that below 1000 euros it could not be considered a substantial amount. Cf. MOHR (n 8), p. 81.

⁶⁵ Cf. SCHUMACHER (n 8), p. 161 – 162.

⁶⁶ Cf. SCHUMACHER (n 8), p. 164.

⁶⁷ Cf. MOHR (n 8), p. 84.

⁶⁸ Article 14(1) EAPO Regulation.

⁶⁹ Recital 14 EAPO Regulation: “the debtor’s conduct in respect of the creditor’s claim or in a previous dispute between the parties, to the debtor’s credit history, to the nature of the debtor’s assets and to any recent action taken by the debtor with regard to his assets”.

⁷⁰ **Lithuania:** Lietuvos apeliacinis teismas (Appeal Court), Byla E2-1516-370/2018, 8/11/2018; Šiaulių apygardos teismas (District Court), Case 2S-170-357 / 2019, 29/1/2018; Šiaulių apygardos teismas (District Court), E2-15962-650 / 2018, 11/11/2018; Kauno apygardos teismas (Regional Court), E2-2120-555 / 2018, 8/7/2018 * **Luxembourg:** Tribunal d’Arrondissement de Luxembourg (District Court), Ordonnance, 17/11/2017; Tribunal d’Arrondissement de Luxembourg (District Court), Ordonnance, 26/01/2018; Tribunal d’Arrondissement de Luxembourg (District Court), Ordonnance, 30/08/2018; Tribunal d’Arrondissement de Luxembourg, Ordonnance n. dossier 5/2018, 14/12/2018 * **Poland:** Sad Rejonowy (District Court) in Bydgoszcz, XII Co 1446/17; Sad Apelacyjny (Appeal Court) in Katowice, V AGz 317/18.

⁷¹ **Germany:** OLG Hamm, 14.01.2019 – I-8 W 51/18, ECLI:DE:OLGHAM:2019:0114.8W51.18.00 * **Lithuania:** Klaipėda

Substantial deterioration of the creditor's financial situation

28. The potential failure to recover the claim must have also an impact on the creditor's financial situation. National judges might understand it in their own way, according to the specific circumstances of each case.⁷² The non-recovery of the debt has to hinder creditor's financial situation

Urgent need of the information

29. Apart from risk, there shall be an "urgent" need for the information.⁷³ The "urgency" will be evaluated by the court on the basis of the risk,⁷⁴ and as it happens for the risk, courts might rely on their own national understanding of urgency.

Evidence

30. The creditor must provide "sufficient evidence" to prove all these prerequisites.⁷⁵ The evidence is submitted with the application standard form.⁷⁶ Where national law so allows, courts might be entitled to request for further evidence than the one provided by the creditor.⁷⁷

3. Issuance of the Request to investigate the bank accounts

31. Once the court verifies that all the necessary conditions have been duly satisfied, it will send the request for information to the information authority in the MS of enforcement, which could be its own MS or a different one.⁷⁸

A) Form

32. The EAPO Regulation has established an almost entirely written procedure,⁷⁹ which operates through standard forms. Nevertheless, unlike in the majority of procedural steps of the Regulation,⁸⁰ there is no specific standard for requesting the information on the bank account, nor for the information authority to reply. During a meeting of the European Judicial Network on 20 and 21 June 2019, the

City Court, CASE E2VP-3571-793 / 2019, 27/02/2018 * **Portugal**: Acórdão do Tribunal da Relação de Lisboa, 22649/17.2T8L-SB.L1—7, 11/28/2017. This was adverted by some authors: J. LAGUS, "Freezing Europe: The European Account Preservation Order and Forum Shopping in the European Judicial Area", JFT, 2018, p. 251; J. WOLBER, "Die Europäische Kontenpfändungsverordnung Eine Analyse unter Einbeziehung des deutschen Durchführungsgesetzes", Zeitschrift für Internationales Wirtschaftsrecht, 2018, p. 7.

⁷² Cf. MOHR (n 8), p. 81.

⁷³ Article 14(1) EAPO Regulation.

⁷⁴ Cf. SCHUMACHER (n 8), p. 164.

⁷⁵ Article 14(1) EAPO Regulation.

⁷⁶ EAPO Commission Implementing Regulation.

⁷⁷ Article 9(1) EAPO Regulation.

⁷⁸ The EAPO Regulation only applies in cross-border cases (Article 3 EAPO Regulation). The cross-border element is determined in the following manner: the creditors' domicile or the bank account have to be located in a different MS from the court of origin. It might happen that the court of origin and the bank account are in the same MS. If so, the national judge could submit the information request to its own information authority.

⁷⁹ According to Article 11(2) EAPO Regulation, if national law allows it, there could be a hearing of the creditor or witnesses for evidence purposes.

⁸⁰ The EAPO Commission Implementing Regulation comprises 9 standard forms: one for the application of the preservation order (Annex I); one for the preservation order as such (Annex II); one for the revocation of the preservation order (Annex III); one for the declaration concerning the preservation order funds (Annex IV); one to request the release of over-preserved amounts (Annex V); one general for the acknowledgement of reception of the documents (Annex VI); one for the application for remedies (Annex VII); one for the transmission on a remedy to the Member State of enforcement (Annex VIII); and one for the appeal against the decision of the remedy (Annex IX).

Commission recommended the creation of a working group to establish standard forms for the information mechanism.⁸¹ At the domestic level, judges in Luxembourg have created a standard letter in French and German, to request information from the information authorities in other MSs.⁸²

B) Language

33. A further question arises over the language in which the judge can make the request. In most cases, the judge might have to make the request to another MS which might not have the same official language of his own MS.

34. The EAPO Regulation contains a general provision concerning the languages in which the documents should be addressed to courts and competent authorities. Article 49(1) states that “any documents to be addressed under this Regulation to a court or competent authority may also be in any other official language of the institutions of the Union, if the MS concerned has indicated that it can accept such other language”. Each MS had to inform the Commission by 17 July 2016 of the languages they would accept besides their own official language/s. The information given to the Commission shows that very few MSs indicated that they would accept any other official languages than their own. Cyprus, Estonia, Sweden, Malta, Slovakia and Finland accept information requests in English.⁸³ Slovakia and the Czech Republic accept each other’s official languages. Finland accepts Swedish.⁸⁴ Nonetheless, based on the answers provided by those contacted, the information authorities seem to have adopted a more flexible approach. For example, in Poland and Spain, they accept requests in French and English. In Belgium, besides French and Dutch, they also accept information requests in English. Luxembourg welcomes petitions in Italian, Spanish, Portuguese and English. In those cases in which there is no central body, it is harder to say. Some French bailiffs accept documents in other languages besides French,⁸⁵ and in the Netherlands, it might be difficult to find a bailiff that accepts requests only in English. Nonetheless, this information is not available from the *ejustice* portal.⁸⁶ Judges might discover if the information authority accepts other languages when they submit the information request, depending on whether the information authority accepts the information request or requests a translation.

C) Access to the information authority

35. Is there a specific channel of communication to transmit the information request? This is one of the questions that a judge might ask himself when requesting information on the bank accounts. The EAPO Regulation has established a special rule for the transmission of documents. This regime, more flexible than that of the information Service Regulation,⁸⁷ allows the transmission of documents “by any appropriate means, provided that the content of the document received is true and faithful to that of the document transmitted and that all information contained in it is easily legible”.⁸⁸ Thus, any means of transmission is permitted as long as it guarantees the faithfulness and the legibility of the documents. This

⁸¹ Reported by the Polish information authority in the standard questionnaire elaborated for this study (received on 23 August 2018). Notes on file with Author.

⁸² Interview with a Judge from Luxembourg (4 February 2019) (notes on file with Author).

⁸³ Cf. CUNIBERTI, MIGLIORINI (n 8), p. 344.

⁸⁴ *Ibid.*

⁸⁵ E. ALINA ONȚANU, *Cross-Border Debt Recovery in the EU. A Comparative and Empirical Study on the Use of the European Uniform Procedures*, Antwerp, Intersentia, 2017, p.176.

⁸⁶ National information and online forms concerning Regulation No. 655/2014, available in: https://e-justice.europa.eu/content_european_account_preservation_order-379-en.do (accessed on 27 October 2019).

⁸⁷ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, OJ L 324, 10 December 2007, p. 79. In this sense: Cf. CUNIBERTI, MIGLIORINI (n 8), p. 262.

⁸⁸ Article 29 EAPO Regulation.

rule applies to communications between the judge of the MS of origin and the information authority.⁸⁹ Therefore, it is up to the information authority to establish how the information requests can be submitted.

36. Some MSs have provided this information in the *ejustice* portal.⁹⁰ The large majority of MSs provide an address (we assume judges can request information by ordinary mail)⁹¹ or an email account address.⁹² Some MSs provide a telephone number, which might serve as a fax or to provide certain kinds of “technical” assistance. There are also some MSs which have not provided any information at all, apart from the name of the domestic body appointed as information authority.⁹³

37. Among the MSs where the EAPO Regulation applies, Germany has been particularly active in publicizing the existence of its information authority and how to contact it. Besides the information on the *ejustice* portal, there is a more detailed description available on the website of the Federal Office of Justice (*Bundesamt für Justiz*) in five different languages (English, Spanish, Czech, Polish and Italian).⁹⁴

4. Procedure in the MS of enforcement

38. Once the information authority in the MS of enforcement receives the information request, it will proceed to search for the bank accounts. This is perhaps the part of the procedure to obtain information on the bank accounts where the differences among MSs are more accentuated.

A) Information authorities

39. In the MSs of enforcement, information authorities are in charge of gathering information on the defendant’s bank accounts. Article 2(2) of the EAPO Regulation states that: “*information authority*” means the authority which a Member State has designated as competent for the purposes of obtaining the necessary information on the debtor’s account or accounts pursuant to Article 14. Based on that provision, MSs have freedom to establish which entity is appointed as the information authority.⁹⁵ Some countries have relied on pre-existing bodies with similar functions at the domestic level (e.g. France or the Netherlands); others have instead decided to appoint specific bodies with this function, though it did not belong to their normal tasks (e.g. Spain or Germany). According to Article 50(1)(b), by 17 July 2016, each MS should have communicated to the Commission “the authority designated as competent to obtain account information.” Up until November 2019, all MSs except Romania have appointed their respective national information authorities.⁹⁶ On 10 October 2019 the

⁸⁹ Article 14(3) EAPO Regulation.

⁹⁰ National information and online forms concerning Regulation No. 655/2014: https://e-justice.europa.eu/content_european_account_preservation_order-379-en.do (accessed on 27 October 2019).

⁹¹ See: Bulgaria, Germany, Estonia, Ireland, Cyprus, Lithuania, Luxembourg, Hungary, Poland, Portugal, Slovakia, Finland, Sweden, Malta.

⁹² See: Germany, Greece, Ireland, Estonia, Croatia, Cyprus, Lithuania, Luxembourg, Hungary, Poland, Portugal, Finland, Sweden, Malta.

⁹³ See: the Czech Republic, Italy, Austria, Latvia, Belgium, the Netherlands, Finland, Slovenia. Some of these States contain a hyperlink to the website of the information authority: Latvia, Belgium, France.

⁹⁴ Central Information Authority for the Obtaining of Account Information in Germany, see: https://www.bundesjustizamt.de/EN/Topics/Courts_Authorities/CAAI/CAAI_node.html (accessed on 27 October 2019).

⁹⁵ Nonetheless, during the *travaux préparatoires* two MSs requested to introduce a more specific definition of the concept of authority. Romania sought “clarification of the concept of competent authority” (Comments from the delegation of Romania, 13140/12 ADD 7, p. 4); whereas Latvia suggested that, only a court in the MS of enforcement could give the order to search for information in that MS (Comments from the delegation of Latvia, 13140/12 ADD 12, p. 9).

⁹⁶ F. J. FORCADA MIRANDA, “Circulation and enforcement of decisions; a view from the Spanish courts” (Workshop: Circulation and enforcement of foreign decisions involving pecuniary debts: the Spanish experience, University Complutense of Madrid, Spain, 10 October 2019). This information does not appear either in the *ejustice* page for the implementation of

European Commission initiated an infringement procedure against Romania for failing to appoint an information authority.⁹⁷ It is expected that the Romanian National Chamber of Bailiffs will be appointed as information authority by 2020.⁹⁸

40. The large margin of manoeuvre left to MSs is reflected by the different nature of the bodies designated as information authorities across the European landscape. Most MSs have chosen courts as their information authority. This is the case for Italy,⁹⁹ Austria,¹⁰⁰ Latvia,¹⁰¹ the Czech Republic,¹⁰² Malta,¹⁰³ Slovenia,¹⁰⁴ and Slovakia.¹⁰⁵ The second most popular bodies are Ministries of Justice (Bulgaria,¹⁰⁶ Ireland,¹⁰⁷ Germany,¹⁰⁸ Poland,¹⁰⁹ and Spain¹¹⁰), followed by the National Chamber of Bailiffs (Portugal,¹¹¹ Belgium,¹¹² Estonia,¹¹³ Hungary,¹¹⁴ and Romania¹¹⁵). A fourth group of MSs has relied on bailiffs (France,¹¹⁶ Finland,¹¹⁷ and the Netherlands)¹¹⁸. Luxembourg¹¹⁹ and Croatia¹²⁰ have opted for their national financial authorities, whereas Sweden has opted for its national enforcement authority.¹²¹

the EAPO in Romania. See: https://e-justice.europa.eu/content_european_account_preservation_order-379-ro-en.do?clang=ro (accessed on 26 October 2019).

⁹⁷ European Commission, Press release: October infringements package: key decisions. See: https://ec.europa.eu/commission/presscorner/detail/en/inf_19_5950 (accessed on 21 October 2019).

⁹⁸ Cf. FORCADA MIRANDA (n 96).

⁹⁹ European Account Preservation Order – Italy, Article 50(1)(b) Authority designated as competent to obtain account information, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-it-en.do?member=1 (accessed on 5 December 2019).

¹⁰⁰ Article 424(1) Austrian Enforcement Code (*Exekutionsordnung*).

¹⁰¹ Article 644(25)(7) Latvian Code of Civil Procedure (*Civilprocesa likumā*).

¹⁰² The Czech Republic was one of two MSs that did not approve any implementing legislative measure of the EAPO Regulation at the domestic level. According to the general provisions of the Czech Code of Civil Procedure (Articles 84, 85 and 86), courts would be in charge of gathering the information on the defendants' bank accounts. See: Evropský příkaz k obstavení účtů - Česká republika, čl. 50 odst. 1 písm. b) – orgán určený jako příslušný pro získání informací o účtu, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-cz-en.do?clang=cs (accessed on 5 December 2019).

¹⁰³ Section 4 Subsidiary Legislation 460.33 - European Account Preservation Order Procedure Order.

¹⁰⁴ Article 279(c) Enforcement and Insurance Act (*Zakon o izvršbi in zavarovanju*).

¹⁰⁵ Section 2(4) Act no. 54/2017 Coll. on the European Account Preservation Order and on the amendment of Act of the Slovak National Council No. 71/1992 Coll. on Court Fees and Fees for Excerpts from the Criminal Register, as amended (*Zákon č. 54/2017 Z. z. Zákon o európskom príkaze na zablokovanie účtov a o doplnení zákona Slovenskej národnej rady č. 71/1992 Zb. o súdnych poplatkoch a poplatku za výpis z registra trestov v znení neskorších predpisov*).

¹⁰⁶ Article 618(c)(2) Bulgarian Code of Civil Procedure (Граждански Процесуален Кодекс).

¹⁰⁷ Article 14(1) Statutory Instrument No. 645/2016 - European Union (European Account Preservation Order) Regulations 2016.

¹⁰⁸ Article 948 German Code of Civil Procedure (*Zivilprozessordnung*).

¹⁰⁹ Article 1144(6)(1) Polish Code of Civil Procedure (*Kodeks postępowania cywilnego*).

¹¹⁰ Final Disposition 27 Spanish Code of Civil Procedure (*Ley de Enjuiciamiento Civil*).

¹¹¹ Portugal was one of the few MSs which did not approve any implementing legislation concerning the EAPO Regulation. Nonetheless, the body appointed as information authority (*Ordem dos Solicitadores e dos Agentes de Execução*) approved an internal resolution acknowledging its role as information authority. See: Boletim da OSAE n.º14 de 2018, p. 34, available at: https://issuu.com/camara_dos_solicitadores/docs/boletim_14_de_2018 (accessed on 5 December 2019).

¹¹² Article 196 Belgian Judiciary Code (*Code Judiciaire*).

¹¹³ Section 78(23) of the Estonian Bailiffs Act (*Kohtuaituri seadus*).

¹¹⁴ Article 7(6) Act LIII of 1994 Law on Judicial Enforcement (1994. évi LIII. Törvény a bírósági végrehajtásról).

¹¹⁵ Although Romania does not yet have an information authority, in a communication between the Spanish and Romanian contact points for the European Judicial Network, the latter informed that the information authority would be the Romanian National Chamber of Bailiffs (*Uniunea Națională a Executorilor Judecătorești*).

¹¹⁶ Article L. 151 A of French Tax Procedure Code (*Livre des procédures fiscales*).

¹¹⁷ Section 4 Act 17/2017 on the European Account Preservation Order Procedure (*Laki 17/2017 eurooppalaisesta tilvarojen turvaamismääräysmenettelystä*).

¹¹⁸ Article 5(1) Dutch Act Implementing the EAPO Regulation (*Uitvoeringswet verordening Europees bevel tot conservatoir beslag op bankrekening*).

¹¹⁹ Article 2(6) of the Amended Law of 23 December 1998 establishing a Financial Sector Supervisory Commission (*Loi modifiée du 23 décembre 1998 portant création d'une commission de surveillance du secteur financier*).

¹²⁰ Article 364(b)(d) Croatian Enforcement Law (*Ovršni zakon*). Nonetheless, the Croatian Financial Agency (*Financijska agencija*) is also in charge of the enforcement of pecuniary claims.

¹²¹ Section 3 Law (2016: 757) on the attachment of bank funds within the EU (*Lag (2016:757) om kvarstad på bankmedel inom EU*).

Greece¹²² and Lithuania¹²³ have designated their respective Ministries of Finance. Finally, we find the unique case of Cyprus, which has appointed its national central bank as the information authority. Such designation was not without controversy. The Cypriot government requested the European Central Bank (“ECB”) to assess whether a central bank could be appointed as an information authority.¹²⁴ Despite the ECB suggesting that such task would fall out of the scope of the typical tasks of a central bank, the Cypriot government decided to proceed with the appointment.¹²⁵

Courts	Ministry of Justice	National financial authority	Bailiffs	National chamber of bailiffs	Ministry of Finance	Central bank	National enforcement authority
Austria Italy Latvia Czech Republic Malta Slovenia Slovakia	Germany Spain Ireland Poland Bulgaria	Luxembourg Croatia	France Netherlands Finland	Portugal Belgium Estonia Romania* Estonia Hungary	Greece Lithuania*	Cyprus	Sweden

Table 1. Classification of MSs according to the nature of their information authorities

41. From a different perspective, we could also distinguish between centralized and decentralized information authorities. Most MSs have opted for a sole central body to handle the information requests received in their respective countries. Nonetheless, in six MSs there is more than one single body which can search for information on the bank accounts. The major question with regards to decentralized authorities is whether foreign judges could contact, indifferently, any of the decentralized authorities or whether each has a delimited territorial scope and thus a judge who requests information has to contact the “correct” one. In France and the Netherlands, there is no specific geographical circumscription. Any bailiff in those MSs can obtain information on the bank accounts. A foreign judge could contact a *huissier* in Rouen or in Perpignan or a *gerechtsdeurwaarder* in Amsterdam or in Rotterdam. In Finland, foreign judges have the option to make the application to a central body, currently the Finnish national prosecutor¹²⁶ who forwards the application to the bailiff, who in turn then gathers the information on the bank accounts.¹²⁷ In Slovenia and Latvia, where district courts are the information authority, there is no mention in national law or the *ejustice* portal as to whether foreign judges must contact any specific court¹²⁸ so we assume that any would be competent. Conversely, the Czech Republic, which also relies on

¹²² European Account Preservation Order – Greece, Article 50(1)(c) – Methods of obtaining account information, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-el-en.do?member=1 (accessed on 5 December 2019).

¹²³ The specific provision of the transposing legislation of the EAPO Regulation at the domestic level states that the Lithuanian government will appoint the information authority. See: Act on the Implementation of the European Union and International Law Regarding Civil Procedure of the Republic of Lithuania, 2008 November 13 No. X-1809 (*Lietuvos Respublikos civilinį procesą reglamentuojančių Europos Sąjungos ir tarptautinės teisės aktų įgyvendinimo įstatymas, 2008 m. lapkričio 13 d. Nr. X-1809*). On the basis of the information available in the *ejustice* portal, the Lithuanian government appointed the State Tax Inspectorate (*Valstybinė mokesčių inspekcija*) which is part of the Lithuanian Ministry of Finance. See: Europinis sąskaitos blokavimo įsakymas – Lietuva, 50 straipsnio 1 dalies c punktą – informacijos apie sąskaitą gavimo metoda, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-lt-en.do?clang=lt (accessed on 5 December 2019).

¹²⁴ Opinion of the European Central Bank of 21 August 2017 on the designation of the Central Bank of Cyprus as the information authority and inclusion of relevant exception to bank secrecy requirement (CON/2017/32).

¹²⁵ *Ibid.*, p. 6.

¹²⁶ Nonetheless, from 1 January 2020, this task will pass to the Central Administration of Bailiffs (*Ulosottolaitoksen keskushallinnolle*). See: Section 4 Act 781/2019 amending the European Account Preservation Order Act (*Laki 781/2019 eurooppalaisesta tilivarojen turvaamismääräysmenettelystä annetun lain muuttamisesta*).

¹²⁷ Section 4 Act 17/2017 on the European Account Preservation Order Procedure (*Laki eurooppalaisesta tilivarojen turvaamismääräysmenettelystä*).

¹²⁸ **Latvia:** Eiropas kontu apķīlāšanas rīkojums – Latvija, 50. panta 1. punkta b) apakšpunkts — Iestāde, kas norādīta kā kompetenta iegūt informāciju par kontu, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-lv-en.do?clang=lv (accessed on 25 October 2019). Also: Article 644(25)(7) of the Latvian Code of Civil Procedure. **Slovenia:**

district courts as information authorities, addresses this specific issue. If the defendant is domiciled in the Czech Republic, the competent information authority is the district court of the debtor's domicile.¹²⁹ If the debtor's domicile is in another country, it would be the district court of the bank location.¹³⁰ This does not make sense, since if the creditor requests information on the bank, it is because the creditor is ignorant of any information on the debtors' bank account, including the name and the address of the bank. Thus, if the defendant's domicile is abroad, it is unclear which district court would be the competent authority.

42. Austria and Italy are two MSs which have adopted a hybrid solution with both centralized and decentralized authorities. If the debtor is domiciled in these MSs, the information authority will be the court of first instance jurisdictionally competent for the debtor's domicile.¹³¹ However, if the debtor is domiciled in another country, the competent authority will be the first instance court of Vienna,¹³² or the president of the first instance court of Rome, respectively.¹³³

Central authorities		Decentralized authorities	Mixed systems
Germany	Croatia	France	Austria
Luxembourg	Romania*	Latvia	Italy
Belgium	Slovakia	The Netherlands	
Spain		Slovenia	
Portugal		Czech Republic	
Ireland			
Sweden			
Poland			
Finland			
Estonia			
Lithuania			
Hungary			
Bulgaria			
Malta			
Greece			
Cyprus			

Table 2. Classification of MSs attending to the nature of the information authority (centralized/decentralized).

B) Verification of the origin of the information request

43. The first thing that an information authority should do once it receives an information request is to check that the request comes from a court of a MS where the EAPO Regulation applies. Although the EAPO Regulation does not state anything in this regard, it is necessary in order to avoid potential abuses. Information authorities have to be sure that the source of the request is an entitled judicial authority. Some creditors might feel tempted to obtain information on bank accounts directly from the information authorities. The Spanish information authority reported having received information requests from creditors' lawyers.¹³⁴ Three of the authorities participating in the questionnaire (Estonia, Belgium

European Account Preservation Order – Slovenia. Article 50(1)(b) – Authority designated as competent to obtain account information, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-si-en.do?member=1 (accessed on 4 December 2019). See also: Article 279(c) Slovenian Law on enforcement and security of claims (*Zakon o izvršbi in zavarovanju*).

¹²⁹ Evropský příkaz k obstavení účtů - Česká republika, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-cz-en.do?clang=cs (accessed on 25 October 2019).

¹³⁰ Ibid.

¹³¹ Italy: European Account Preservation Order - Italy, Article 50(1)(b) – Authority designated as competent to obtain account information, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-it-it.do?init=true&member=1 (accessed on 26 October 2019); Austria: Section 424(1) Austrian Enforcement Code (*Exekutionsordnung*).

¹³² Section 424(1) Austrian Enforcement Code (*Exekutionsordnung*).

¹³³ European Account Preservation Order - Italy, Article 50(1)(b) – Authority designated as competent to obtain account information, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-it-it.do?init=true&member=1 (accessed on 26 October 2019).

¹³⁴ Cf. FORCADA MIRANDA (n 96).

and Spain), said that they conduct a *prima facie* examination of the origin of the request. This superficial examination involves, if they have received the petition by email, corroborating that this email address belongs to a court; if they receive it by ordinary mail, they verify that the address corresponds to a court.

C) Mechanism to gather information on bank accounts

44. MSs also have the freedom to determine which method to employ to gather information on bank accounts.¹³⁵ The Commission Proposal established two methods that MSs could opt for:¹³⁶ “obliging all banks in their territory to disclose whether the defendant holds an account with them”; or allowing “access by the competent authority to the information where that information is held by public authorities or administrations in registers or otherwise”. Simultaneously, the Commission Proposal also affirmed that “the competent authority shall use all appropriate and reasonable means available in the MS of enforcement to obtain the information”.¹³⁷ It was not clear whether the MSs could only choose one of the two methods or whether they could opt for a third one as long as it was “appropriate and reasonable”. In that regard, the European Data Protection Supervisor (“EDPS”) affirmed that such provision should be deleted, and the methods of investigation should be strictly restricted to two mentioned above.¹³⁸ Some MSs have also expressed their concerns about the Commission Proposal.¹³⁹ Austria, for instance, affirmed that none of those mechanisms was available at the domestic level for creditors and that “national Austrian law provides no possibility to break banking secrecy to enforce civil-law claims”.¹⁴⁰ The Netherlands understood that such limited approach would oblige MSs to “set up a system to provide account information”.¹⁴¹ Germany recommended that “the possibility of defendants providing information about themselves to be included as an option for obtaining information”.¹⁴²

45. Based on the MSs’ comments, the European legislator decided to introduce a third method consisting of “obliging the debtor to disclose with which bank or banks in its territory he holds one or more accounts where such an obligation is accompanied by an *in personam* order by the court prohibiting the withdrawal or transfer by him of funds held in his account or accounts up to the amount to be preserved by the Preservation Order”.¹⁴³ Some authors considered it as a concession to common law systems where such mechanisms exist.¹⁴⁴ Nevertheless, requesting information from the debtor might defeat the “surprise” effect of the EAPO. The disappearance of the surprise effect in a specific MS might have unwelcomed collateral effects in other MSs. The following example is quite illustrative of potential adverse complications. A creditor domiciled in France requests an EAPO before the German courts, where the debtor, a consumer, is domiciled. The creditor suspects that the debtor might have bank accounts in Malta and Luxembourg. Since he is not certain about that, when he applies for the

¹³⁵ Article 14(5) EAPO Regulation.

¹³⁶ Article 17(5) EAPO Commission Proposal.

¹³⁷ Article 17(4) EAPO Commission Proposal.

¹³⁸ Opinion of the European Data Protection Supervisor on a proposal for a regulation of the European Parliament and of the Council creating a European account preservation order to facilitate cross-border debt recovery in civil and commercial matters, OJ C 373, 21 December 2011, para. 22.

¹³⁹ In this sense: Cf. VILAS ÁLVAREZ (n 5), p. 5. Conversely, other MSs found it adequate. Sweden affirmed “that the two different methods both are effective in the sense that they do not require the debtor’s participation, and therefore do not compromise the surprise effect (Comments from the delegation of Sweden, 13140/12 ADD 5, p. 4). Lithuania stated that “the possible mechanisms for obtaining the information about debtors’ accounts does not seem to raise any problems for Lithuania as national legal acts” (Comments from the delegation of Lithuania, 13140/12 ADD 14, p. 5).

¹⁴⁰ Comments from the delegation of Austria, 13140/12 ADD 2, pp. 8 – 9.

¹⁴¹ Comments from the delegation of the Netherlands, 13140/12 ADD 3, p. 7.

¹⁴² Comments from the delegation of Germany, 13140/12 ADD 6, p. 15.

¹⁴³ Article 15(5)(c) EAPO Regulation.

¹⁴⁴ Cf. CUNIBERTI, MIGLIORINI (n 7), p. 344. Indeed, the United Kingdom, though it ultimately did not participate in the EAPO Regulation, made comments on the Commission Proposal (Comments from the delegation of United Kingdom, 13140/12). One of them, suggesting the introduction of a debtor’s assets declaration, similar to the ones accompanying the Common law in *personam* freezing orders.

preservation order, he also requests for an investigation of the debtors' bank accounts in those MSs. The Maltese information authority sends the debtor an order of disclosure accompanied by an *in personam* restraining order prohibiting the transfer of funds into or out of any Maltese bank accounts. The Maltese restraining order will make the debtor aware of the existence of an EAPO procedure. He might use this "alert" as an opportunity to remove the assets from the Luxembourg bank accounts - unaffected by the Maltese restraining order - to a third State where the EAPO Regulation does not apply

46. Whereas MSs' suggestions were taken into consideration and even shaped the final text of the EAPO Regulation, the EDPS advice was not heeded.¹⁴⁵ The European legislator even adopted a more relaxed approach, allowing MSs to opt for "any other methods which are effective and efficient for the purposes of obtaining the relevant information, provided that they are not disproportionately costly or time-consuming".¹⁴⁶

47. In practice, most MSs have opted exclusively for a procedure requesting banks to provide information on bank accounts. For example, in Luxembourg and Estonia, the information authority sends a general request by email to all the banking institutions located in these countries. Banks have a deadline to inform the authority whether they hold the debtor's bank accounts or not. The situation is similar in Ireland,¹⁴⁷ Greece,¹⁴⁸ Cyprus,¹⁴⁹ Latvia,¹⁵⁰ the Netherlands,¹⁵¹ Finland,¹⁵² Sweden,¹⁵³ and the Czech Republic.¹⁵⁴

48. The second most popular choice is to access the information through public authorities or administrations in registers or otherwise. In many of these cases, the information authorities obtain the information through pre-existing national registers of bank accounts in the MS concerned. They are usually controlled by the tax authority. Such is the case for France,¹⁵⁵ or Germany.¹⁵⁶ Other MSs in this group are Bulgaria,¹⁵⁷ Croatia,¹⁵⁸ Italy,¹⁵⁹ Lithuania,¹⁶⁰ and Poland.¹⁶¹

¹⁴⁵ Ibid.

¹⁴⁶ Article 14(5)(d) EAPO Regulation,

¹⁴⁷ Section 15 Statutory Instrument No. 645/2016 - European Union (European Account Preservation Order) Regulations 2016.

¹⁴⁸ European Account Preservation Order – Greece, Article 50(1)(c) - Methods of obtaining account information, available in: https://e-justice.europa.eu/content_european_account_preservation_order-379-el-en.do?member=1 (accessed on 3 December 2019).

¹⁴⁹ Article 6(2A) of the Central Bank of Cyprus Laws of 2002 to 2017.

¹⁵⁰ Article 644(3) Latvian Code of Civil Procedure (*Civilprocesa likumā*).

¹⁵¹ Article 5(3) Dutch Act Implementing the EAPO Regulation (*Uitvoeringswet verordening Europees bevel tot conservatoir beslag op bankrekeningen*).

¹⁵² Sections 64 to 68 Finish Enforcement Act (*Ulosottokaari*).

¹⁵³ Section 4 Law (2016:757) on the attachment of bank funds within the EU (*Lag (2016:757) om kvarstad på bankmedel inom EU*).

¹⁵⁴ Section 128 Czech Code of Civil Procedure (*Zákona č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů*).

¹⁵⁵ In France, bailiffs obtain this information throughout the FICOBA, a national register of the bank accounts held in France, maintained by the French Tax Authority. The French law was modified on purpose in order to allow bailiffs to obtain information on the bank accounts through the FICOBA. See: Article L. 151 A of French Tax Procedure Code (*Livre des procédures fiscales*).

¹⁵⁶ Article 948(2) German Code of Civil Procedure (*Zivilprozessordnung*).

¹⁵⁷ European Account Preservation Order – Bulgaria, Article 50(1)(c) – Methods of obtaining account information, in https://e-justice.europa.eu/content_european_account_preservation_order-379-bg-en.do?clang=bg (accessed on 3 December 2019).

¹⁵⁸ European Account Preservation Order – Croatia, Article 50(1)(c) - Methods of obtaining account information, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-hr-en.do?member=1 (accessed on 3 December 2019).

¹⁵⁹ Italy approved in October 2019 an enabling law for the government that eventually will allow courts to obtain the information on the bank accounts telematically. See. European delegation act 2018, A.C. 1201-B (S. 944. - "*Delega al Governo per il recepimento delle direttive europee e l'attuazione di altri atti dell'Unione europea - Legge di delegazione europea 2018*" (*approvato dalla Camera e modificato dal Senato*) (1201-B)), p. 51. For a detail overview on the act and its *travaux préparatoires*, see: <https://www.camera.it/leg18/126?tab=1&leg=18&idDocumento=1201-b&sede=&tipo=> (accessed on 3 December 2019).

¹⁶⁰ European Account Preservation Order – Lithuania, Article 50(1)(c) - Methods of obtaining account information, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-lt-en.do?clang=lt (accessed on 3 December 2019).

¹⁶¹ Article 1144(6)(2) Polish Code of Civil Procedure (*Kodeks postępowania cywilnego*).

49. Only two MSs have chosen the third option. The first one was Austria which, in light of the amendments to the Commission Proposal, was very concerned about the compatibility of the two other mechanisms to obtain the information with its internal law.¹⁶² This might have been the reason why it opted for the request of disclosure by the debtor.¹⁶³ The other MS was Malta, one of the three common law systems where the EAPO Regulation applies.¹⁶⁴ Malta reported that this would be the method employed by its information authority.¹⁶⁵ Nonetheless, the Maltese implementation of the EAPO Regulation states that “for the purposes of Article 14 of the EU Regulation, banks are obliged to disclose, upon request by the information authority, whether a person holds an account with them”.¹⁶⁶ Therefore, there might be several means of obtaining information on bank accounts in Malta.

Request to the banks (Article 14.5.a)	Access to national authorities and registers (Article 14.5.b)	Request to the debtor (Article 14.5.c)	Combined Articles 14(5)(a) and 14(5)(b)	Combined Articles 14(5)(a) and Article 14(5)(c)	The three mechanisms
Estonia Ireland Greece Cyprus Latvia Luxembourg The Netherlands Finland Sweden Czech Republic	Bulgaria France Croatia Italy Lithuania Poland Germany	Austria	Portugal Spain Belgium Hungary	Slovakia Malta	Slovenia

Table 3. Classification of the MSs attending to the method to gather information on the bank accounts.

50. Unlike in the Commission Proposal, MSs can opt for more than one method.¹⁶⁷ We have already seen the case of Malta, but there are other countries which have opted for various methods too. In Spain,¹⁶⁸ Belgium,¹⁶⁹ Hungary,¹⁷⁰ and Portugal,¹⁷¹ authorities can request banks to provide the information or obtain information from other national authorities. In Slovakia, authorities can obtain information from banks “by electronic communication in an automated manner through a specific information system”.¹⁷² If this does not function, the Slovakian information authority would be able to

¹⁶² Comments from the delegation of Austria (13140/12 ADD 2) pp. 8-9.

¹⁶³ Cf. MOHR (n 8), pp. 84-85.

¹⁶⁴ The other two common law jurisdictions, Ireland and Cyprus, have opted for requesting the information on the bank accounts directly to the banks.

¹⁶⁵ European Account Preservation Order – Malta, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-mt_en.do?member=1&fbclid=IwAR0xic14FUzvVkJPrtih7TmsqO-kvWt0_DcZK43sfU4-bNgYJparvWkVjg (accessed on 27 October 2019).

¹⁶⁶ Article 6, Subsidiary legislation 460.33, European Account Preservation Order, 18 January 2017.

¹⁶⁷ During the *travaux préparatoires*, the Swedish delegation suggested “that those MSs whose national legal systems provide for the opportunity to use both methods can choose freely between them” (Comments from the Delegation of Sweden, 13140/1 ADD 5, p. 4).

¹⁶⁸ Article 749 Portuguese Code of Civil Procedure (*Código de Processo Civil*).

¹⁶⁹ Article 1391 Belgian Judicial Code (*Code Judiciaire*).

¹⁷⁰ Article 47(1) Act LIII of 1994 Law on Judicial Enforcement (*1994. évi LIII. Törvény a bírósági végrehajtásról*).

¹⁷¹ The EAPO *ejustice* page for Spain (https://e-justice.europa.eu/content_european_account_preservation_order-379-es-en.do?member=1 (accessed on 4 December 2019)), states that the information authority will have access to the relevant information where that information is held by public authorities or administrations in registers or otherwise. This corresponds to the second method of the EAPO Regulation (Article 14(5)(b)). Nonetheless, if we observe the specific provision implementing the EAPO Regulation in the Spanish Civil Procedural Code, we may understand that the Spanish authority could also obtain information from banks. Final Disposition 27 of the Spanish Code of Civil Procedure (*Ley de Enjuiciamiento Civil*) states that the Spanish information authority can gather information from public and private entities. This means that they could also obtain information directly from banking entities. In that sense: Cf. ANTON JUÁREZ (f 8), p.86.

¹⁷² Section 4 Act no. 54/2017 Coll. on the European Account Preservation Order and on the amendment of Act of the Slovak National Council No. 71/1992 Coll. on Court Fees and Fees for Excerpts from the Criminal Register, as amended (*Zákon č. 54/2017 Z. z. Zákon o európskom prikaze na zablokovanie účtov a o doplnení zákona Slovenskej národnej rady č. 71/1992 Zb. o súdnych poplatkoch a poplatku za výpis z registra trestov v znení neskorších predpisov*).

obtain the information directly from the debtor.¹⁷³ In Slovenia, the three options are formally available.¹⁷⁴ Nonetheless, in practice, requesting debtors to disclose information about their assets is barely applied.

51. Since the entry into force of the EAPO Regulation, problems have already appeared. In Romania, because an information authority has not yet been appointed, there is no information mechanism to gather information on bank accounts. Nonetheless, Romanian authorities have proposed an *ad hoc* solution for information requests while there is no information mechanism. Judges can request the information directly from the bank where the account is held (this is absurd - if the creditor knows in which bank the account is held, he does not need to request information on the bank accounts). Judges can also request the information through a rogatory letter to the Romanian tax authority.¹⁷⁵ Nonetheless, Romania is not the only “problematic” country. In Belgium, the information mechanism is still inoperative. It is expected that the method to gather information on bank accounts will be operative by 2020.¹⁷⁶ All the applications received so far have been rejected.¹⁷⁷ In Spain, for instance, for the information authority to obtain bank account information from the Spanish tax authority, the latter requires the national identification number of the debtor. This could be a problem if the debtor is not a Spanish national. If the debtor is a foreigner, the Spanish information authority obtains the national identification number with assistance from Interpol.

D) Time limits

52. Unlike in other procedural steps in the EAPO Regulation,¹⁷⁸ the information authority does not have a fixed time limit to provide the court with the outcome of the investigation. Article 14(5) states that information authorities have to act “expeditiously”. Considering the strong divergences at the domestic level, this vague term might be a reflection of the difficulties to establish a precise time limit.

53. Some of the authorities consulted supplied the “average” time they need to obtain the information. Germany seems to be the most efficient. Its information authority reported that it can obtain information on bank accounts in less than 48 hours. This fact has been corroborated by a Luxembourgish judge who requested information on bank accounts from the German information authority.¹⁷⁹ Most of the MSs consulted (Estonia, France, Poland, Ireland) need between 3 and 7 days. Some others require more time. In the case of Luxembourg, the information authority stated that it needs about a month to gather information. This happens because banks have a 20-day deadline to respond to a request made by the information authority. In Spain, it also takes about one month.

54. Nonetheless, if the authorities are unfamiliar with the procedure or if the prior payment of a fee is required it could take more time. This was the situation experienced by a Luxembourgish judge who requested information from a bailiff in France.¹⁸⁰ The bailiff ignored the existence of the EAPO Regulation. Furthermore, the bailiff requested the payment of a fee before collecting the information on the bank accounts. The judge had to explain the EAPO Regulation and then she had to ask the creditor

¹⁷³ Ibid.

¹⁷⁴ European Account Preservation Order – Slovenia, Article 50(1)(c) - Methods of obtaining account information, available at: https://e-justice.europa.eu/content_european_account_preservation_order-379-si-en.do?member=1 (accessed on 4 December 2019).

¹⁷⁵ Cf. FORCADA MIRANDA (n 96).

¹⁷⁶ Answers given by the Belgian Information Authority in the standard questionnaire (13 June 2019).

¹⁷⁷ Ibid.

¹⁷⁸ There are 11 specific deadlines in the EAPO Regulation. See: Article 10(1); Article 14(8); Article 18; Article 21(2); Article 25(1) and (3); Article 27(2); Article 28(2) and (3); Article 36(4). Nonetheless, the EAPO Regulation does not establish a specific sanction when these deadlines are not respected. Article 45 establishes that “where, in exceptional circumstances, it is not possible for the court or the authority involved to respect the time frames (...) the court or authority shall take the steps required by those provisions as soon as possible”.

¹⁷⁹ Interview with a Judge from Luxembourg (4 February 2019) (notes on file with Author).

¹⁸⁰ Ibid.

to pay the fee to the bailiff. Only then did the bailiff search for the information on the bank accounts. This case shows that judges might be confronted with unexpected delays due to lack of knowledge of the instrument or the payment of fees.

E) Costs

55. It is also up to MSs to determine if their information authorities charge fees or not.¹⁸¹ MSs were not obliged to forward this information to the European Commission.¹⁸² Authorities in Spain, Germany, Luxembourg and Ireland do not charge any fees for their services. Conversely, in France, Belgium, Estonia and Poland, authorities request the prior payment of a fee for their services.

56. Apart from any fees charged by the information authorities, banks could also charge a fee. This might happen in those MSs which have opted for gathering information on bank accounts by requesting it from the banks.¹⁸³ This information is publicly available in the *ejustice* portal. So far, only Belgium¹⁸⁴ and Slovakia,¹⁸⁵ have explicitly stated that banks are entitled to charge. Another two MSs (Greece and Portugal) have not “excluded” this possibility, but without saying clearly if banks will charge fees or not.

F) “Information” gathered by the information authority

57. The EAPO Regulation does not mention specifically which information has to be gathered by the information authority. The Commission Proposal established that the information collected would be limited to “the defendant's address, the bank or banks holding the defendant's account or accounts, the defendant's account number or numbers”.¹⁸⁶ Several MSs advocated for a more restrictive approach.¹⁸⁷ The final text of the EAPO Regulation did not contain any reference to the information that shall be provided. Nevertheless, in terms of data protection, this information “shall be adequate, relevant and not excessive in relation to the purpose for which they were obtained, processed or transmitted, and shall be used only for that purpose”.¹⁸⁸ Attending to the wording of Article 14(1), read jointly, in principle, the BIC, the IBAN, the name and address of the bank or the bank account number, would be separately sufficient to identify a defendants’ bank account.

58. The lack of provision specifying which information shall be transmitted by the information authorities means that, in practice, information authorities in different MSs do not provide the same information to identify a debtors’ bank accounts. This was reflected in the answers given by the information authorities to the questionnaire. Belgium, Ireland, Estonia and Spain reported that they provide the IBAN, the BIC and the bank’s address. Luxembourg provides the IBAN and the bank’s address, whereas Poland only the bank’s address. Additionally, in Estonia, the information authority also provides the balance amount of the accounts. In Spain, the information authority also obtains the balance amount from the tax authorities, though it does not forward them to the judge of origin.

¹⁸¹ Article 44 EAPO Regulation.

¹⁸² Article 50 only requires MSs to provide information about court fees. Nothing is mentioned about fees charged by the information authorities.

¹⁸³ Article 14(5)(a) EAPO Regulation.

¹⁸⁴ Email from the Belgian National Chamber of Bailiffs (*Chambre nationale des huissiers de justice*) to Author (13 June 2019).

¹⁸⁵ Európsky príkaz na zablokovanie účtov – Slovensko <https://e-justice.europa.eu/content_european_account_preservation_order-379-sk-en.do?clang=sk> (accessed on 27 October 2019).

¹⁸⁶ Article 17(6) Commission Proposal.

¹⁸⁷ For instance, France specifically proposed “deleting the reference to the defendant's address” (Comments from the delegation of Austria, 13140/12 ADD 2, p. 15).

¹⁸⁸ Article 47(1) EAPO Regulation.

59. Another issue is the storage of data gathered by the information authority.¹⁸⁹ Article 47(2) establishes that information authorities can keep the data gathered for no longer than six months. Two MSs have addressed this matter in the implementing legislation of the EAPO Regulation. In Belgium, where a specific register was created for the EAPO Regulation information mechanism,¹⁹⁰ domestic law expressly states that the data contained in the register is kept for a maximum period of six months.¹⁹¹ Germany has introduced a stricter regime than the one of Article 47(2) and the information authority has to delete the data gathered immediately after it is transmitted to the court which made the request.¹⁹²

G) Results of the investigation

60. Once the search for bank accounts concludes, the information authority forwards the results to the court of origin. Even if the search is unsuccessful, the result must be forwarded to the court of origin.¹⁹³ Here again we are confronted with the same language, form and transmission issues that the court of origin confronts when applying for information on a bank account.¹⁹⁴ The information can only be transmitted to the court of origin and in no case to the creditor. Recital 22 of the Preamble expressly states that “the information obtained regarding the identification of the debtor’s bank account or accounts should not be provided to the creditor”. Again, this was the result of pressure from several MSs,¹⁹⁵ which insisted creditors should never receive information about the debtors’ bank accounts. This is also a way to avoid creditors from using the EAPO Regulation with the sole purpose of obtaining information on a defendants’ bank accounts.

H) Notification to the debtor about the disclosure of his personal data

61. Information authorities might be obliged inform debtors’ about the collection of the information on their bank accounts.¹⁹⁶ Nonetheless, the disclosure is deferred 30 days, in order to protect the surprise effect of the EAPO Regulation. This is the case of Germany. In occasion, the German information authority refused to provide information on the bank accounts because the Lithuanian court which made the request did not provide defendants’ address.¹⁹⁷ The German authority replied that without the address it could not inform the debtor about the disclosure of the personal data.

5. Eventual assistance to the banks

62. The involvement of the information authorities might not end with the discovery of a bank account. The EAPO Regulation establishes that when banks have to implement a preservation order, and they only have the name and other details of a debtor, but no information on the bank account (e.g. IBAN or BIC), they can request the assistance of the information authorities to identify the bank account.¹⁹⁸ We understand that this “assistance” might have been considered for those cases in which the bank does not participate in the collection of the information on the bank accounts. Consequently, for those cases in which the authority obtains the information directly from the banks,¹⁹⁹ the latter might not need help to identify the bank accounts.

¹⁸⁹ Cf. ANTÓN JUÁREZ (n 8), pp. 98 – 99.

¹⁹⁰ Articles 1391 Belgian Judicial Code (*Code Judiciaire*).

¹⁹¹ Article 1391(5) Belgian Judicial Code (*Code Judiciaire*).

¹⁹² Article 948(3) German Code of Civil Procedure (*Zivilprozessordnung*).

¹⁹³ Cf. SCHUMACHER (n 8), p. 171.

¹⁹⁴ *Supra*, pp. 12 – 13.

¹⁹⁵ See: Comments from the delegation of Czech Republic, 13140/12 ADD 1, p. 5; Comments from the Delegation of Finland, 13140/12 ADD 11, p. 6.

¹⁹⁶ Article 14(8) EAPO Regulation.

¹⁹⁷ Marijampolės apylinkės teismas (District court) E2SP-741-985 / 2018, 12/9/2018.

¹⁹⁸ Article 24(4)(a) EAPO Regulation.

¹⁹⁹ Article 14(5)(a) EAPO Regulation.

63. The questionnaire given to the information authorities asked if they received any request for assistance from banks.²⁰⁰ So far, none of the authorities that replied that question (Belgium, Luxembourg, Ireland, Estonia, and Poland), have received any request for assistance.

6. The information mechanism in numbers

64. The following data was directly provided by the information authorities. In the questionnaire submitted to them, information authorities were asked to give the number of requests received, specifying the number per year and the country of origin.²⁰¹ The EAPO Regulation requires MSs to supply the Commission with quantitative data on the application of this instrument.²⁰² Nonetheless, none of this data concerns Article 14.²⁰³ Notwithstanding this, in those MSs with a central information authority, the MS knows, for obvious reasons, all the information requests in that specific country. Therefore, in such countries, the number of information requests as discussed above is easily traceable. Conversely, in MSs in which there is no central authority, collecting such data could become a herculean task.

65. The authorities of Belgium, Estonia, Ireland, Germany, Luxembourg and Poland have kindly provided these numbers, which would otherwise not have been collected.

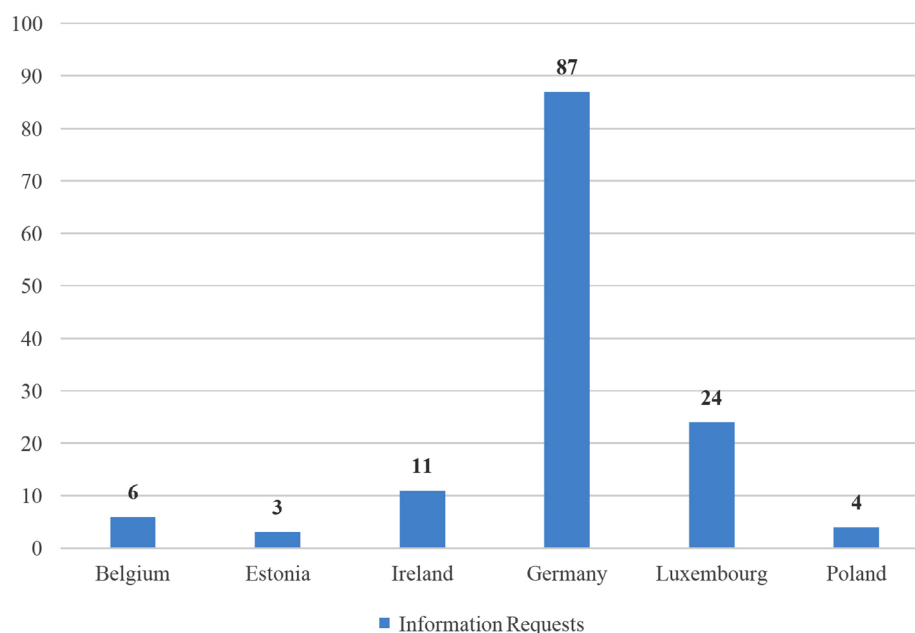


Figure 1. Number of information requests between January 2017 and June 2019

66. This first figure represents the total number of information requests between January 2017 and June 2019. In general, the numbers are low. Germany has been, by far, the country that has received the most information requests. Although it does not appear in the chart, the second was Spain. By October 2019, the Spanish authority reported having received between 50 and 60, without specifying the number.²⁰⁴

²⁰⁰ See Annex I, question 12.

²⁰¹ See Annex I.

²⁰² Article 50(2) EAPO Regulation.

²⁰³ According to Article 50(2) EAPO Regulation, MSs shall provide information about: (1) the number of applications for a Preservation Order and (2) the number of cases in which the Order was issued; (3) the number of applications for a remedy pursuant to Articles 33 and 34 and, if possible, (4) the number of cases in which the remedy was granted; and (5) the number of appeals lodged pursuant to Article 37 and, if possible, (6) the number of cases in which such an appeal was successful.

²⁰⁴ P. MONGÉ ROYO, "Circulation and enforcement of decisions: the role of international cooperation" (Workshop: Circulation and enforcement of foreign decisions involving pecuniary debts: the Spanish experience, University Complutense of Madrid, Spain, 10 October 2019).

The third country was Luxembourg. Proportionally to its size, Luxembourg has received a significant number of information requests. Nonetheless, its geographical location and its economic importance (one of the major financial centres) might explain this relatively high density of requests. The low number of information requests in Poland is also noteworthy, as the country is a relatively big economy in Europe.

67. To explain these numbers beyond the economic reality other factors should be taken into consideration, such as the existence of a more efficient tool to gather information on bank accounts at a domestic level. Other relevant aspects such as the general awareness about the existence of this instrument, or accessibility to the information authority might play an important role. Nonetheless, solely based on this data, any definite conclusions cannot be arrived at. A complete assessment of this issue necessarily involves interviewing creditors behind the information requests.

68. Besides these general data, some information authorities have provided further details concerning the number of applications per year and the origins of the information requests:

	Years		
	2017	2018	2019
Belgium	0	4	2
Estonia	1	1	1
Ireland	2	8	1
Luxembourg	7	11	6
Poland	0	3	1

Table 4. Number of information requests per year received by Belgium, Estonia, Ireland, Luxembourg and Poland. Numbers in 2019 are until June.

Data provided by each of these information authorities in their response to the standard questionnaire.

69. Except for Estonia, there is clearly an increase from 2017 to 2018: this is the case especially in Poland and Belgium, where there were no information requests during the first year. It would be interesting to have data for the whole of 2019 in order to see if this trend continues.

70. These authorities have also provided information about the origin of the requests:

		MSs of Enforcement				
		Belgium	Estonia	Ireland	Luxembourg	Poland
MSs of Origin	Belgium	2			3	
	Czech Republic			1		2
	Finland		1			
	France				7	1
	Germany				11	
	Greece	1			1	
	Latvia		1	1		
	Lithuania			9		
	Netherlands	1			2	
	Spain					1
	Sweden		1			
Unknown	2					

Table 5. Number of information requests per MS of origin received by Belgium, Estonia, Ireland, Luxembourg and Poland between January 2017 and June 2019.

Data provided by each of these information authorities in their response to the standard questionnaire.

71. Except for Ireland, and other isolated cases, these MSs have received information requests mostly from neighbouring MSs. Belgium is perhaps the most peculiar case. In two occasions, judges

in other MSs addressed the Belgian Ministry of Justice instead of the correct information authority, the Belgian national chamber of bailiffs (*Chambre nationale des huissiers de justice*). The Ministry of justice referred the information requests to the latter, but without indicating the origin of the requests. On another occasion, the information request came from Belgium itself. As has already been explained, this is possible when the bank account is located in the same MS of the court of origin and the creditor is domiciled in another MS.²⁰⁵ In that particular case, the creditor was domiciled in Germany. Therefore, the Belgian court which submitted the request was entitled to seek information on the bank accounts from the Belgium information authority.

7. Conclusions

72. The very first impression after this extensive overview on the information mechanism is that this tool is still in its infant stages. Despite the limited existing practice, the experiences gathered so far already provide some valuable insights into its functioning. Another very general (and noticeable) remark is the substantive differences existing from one MS to another on the functioning of the information mechanism. Whereas in Germany it is functioning efficiently in terms of cost and time, creditors seeking information on bank accounts in Belgium or Romania might still have to wait.

73. Now, focusing on potential improvements, I have divided them into two sets, from the easiest to achieve to those which would imply a recast of the current text of the regulation:

- **74. Under the current framework.** Firstly, there should be a general update of the *ejustice* portal. There are still pages of some MSs which have not been translated into English.²⁰⁶ Furthermore, more detailed information on the information authorities would be also welcome, such as the languages accepted by the information authorities, the allowed channels of communication, or if they charge a fee. It is urgent to introduce a standard form for the information request. This would save time and money (in necessary translation), since in the *ejustice* portal, once you have filled in the form, you can obtain it immediately in another official language. Apparently, the European Commission is already aware of this inconvenience and it has taken action in this respect. The sooner there is a standard form, the better. Although Article 50 does not oblige MSs to collect information on the application of the information mechanism, the European Commission should also consider doing so in order to assess properly the real utility that this tool has.
- **75. Looking forward to a potential recast.** This might happen sooner or later and it will depend mainly on how “successful” the current version on the EAPO Regulation is. Firstly, concerning creditors, it would be interesting to expand the regulation to all kinds of creditors, as contained in the EAPO Commission Proposal. In order to prevent potential abuses, creditors who do not have a title might be expected to provide some security before courts proceeded to request information on bank accounts. Authorities should also provide the bank balances. This will avoid the issuance of a preservation order against an empty bank account. From an institutional perspective, more “uniformity” would be welcome. In this sense, it would be interesting to require MSs to establish a central authority responsible for all information requests, as is already the case in the majority of countries where the EAPO Regulation applies. This would help in terms of accessibility and specialization (despite the reported problems with some central authorities). Regarding the mechanism to gather information on bank accounts, there is also too great a margin of manoeuvre left to MSs. It would be preferable to require all MSs to establish a central register with all bank accounts, to which the central authority might have direct access. In order to prevent abuses, it would

²⁰⁵ *Supra*, n 31.

²⁰⁶ This is the case of Belgium, Bulgaria, the Czech Republic, Latvia, Lithuania, Luxembourg, Hungary, the Netherlands, Poland, Romania, Slovakia, Finland and Sweden.

also be necessary to set up a general register of all national judicial authorities from which the information authority could easily verify that the person who forwarded the information request is indeed a legitimate judicial authority.

76. Albeit not free from setbacks and criticism, it has to be acknowledged that the information mechanism is the very first instrument to seriously tackle the issue with transparency of debtors' bank accounts at the European level. Hopefully, the information mechanism will become a useful tool for creditors, and not a mere "procedural" anecdote.

ANNEX I – STANDARD QUESTIONNAIRE

A. General questions

1. How many bank account information requests have you received since the entry into force of Regulation 655/2014 on January 18th 2017?

1.1. Could you specify how many requests you have received per year?

2017:

2018:

2019:

1.2. Could you specify from which countries you have received the information requests (number per country)?

Austria:

Belgium:

Bulgaria:

Croatia:

Cyprus:

Czech Republic:

Estonia:

Finland:

France:

Greece:

Hungary:

Ireland:

Italy:

Latvia:

Lithuania:

Luxembourg:

Malta:

Netherlands:

Poland:

Portugal:

Romania:

Slovakia:

Slovenia:

Spain:

Sweden:

2. Has there been any occasion in which you could not obtain information on the bank accounts?
 - 2.1. If yes, in how many occasions was gathering the information unsuccessful?
3. Have you received any particular training regarding the European Account Preservation Order (“EAPO”)?

B. Specific questions

4. The Regulation establishes that the transmission of documents regarding the information mechanism is made according to Article 29. That provision says the service could be made ‘by any appropriate means, provided that the content of the document received is true and faithful to that of the document transmitted and that all information contained in it is easily legible’ (Article 29.2). By which of the following means have you received the information requests?
 - Email.
 - Ordinary mail.
 - Fax.
 - Other (specify):
5. The Regulation does not make any mention to the language in which the information request has to be made. In which languages have you received the information requests?
 - 5.1. Have you experienced any issue in this respect? If the answer is yes, which kind of problems have you experienced?
 - 5.2. Do you accept information requests in languages other than German? If the answer is yes; in which languages?
 - 5.3. Have you requested the translation of the documents to the judicial authority of the member state of origin?
6. Commission Regulation (UE) 2016/1823 establishes the standard forms of the EAPO. Notwithstanding, there is no standard form to request information on the bank accounts. Would you be in favour of elaborating a standard form for the bank information request mechanism?
 - Strongly in favour.
 - In favour.
 - Indifferent.
 - Against.
 - Strongly against.
7. The Regulation only says that ‘all authorities involved in obtaining the information shall act expeditiously’ (Article 14.5). How much time do you need to obtain the information on the bank accounts?
 - 1 to 2 days.
 - 3 to 7 days.
 - 1 to 2 weeks.
 - 2 weeks to 1 month.
 - More than one month.
8. The Regulation allows information authorities to request the payment of their services (Article 44). In your Member State, do creditors have to pay a fee in order to obtain information on the bank accounts?

- Yes.
- No.

8.1. If yes, is it a fixed fee or is the fee determined on the basis of the amount of the EAPO?

- Fixed fee.
- Amount of the EAPO.

9. Only creditors who have a title (enforceable or not) can request information on the bank accounts (Article 14.1). Would you be in favour of extending this to creditors without a title?

- Strongly in favour
- In favour.
- Indifferent.
- Against.
- Strongly against.

10. The Regulation establishes that creditors can opt between indicating the BIC, the IBAN or the bank address (Article 8.2.d.). Which information do you provide?

- IBAN.
- BIC.
- Name and address of the bank.
- All of them.

11. Each Member State has freedom to choose the method to gather the bank account information (Article 14.5). Germany opted for allowing ‘access for the information authority to the relevant information where that information is held by public authorities or administrations in registers or otherwise’ (Article 14.5.b). Could you explain more specifically how you obtain information on the bank accounts?

11.1. Would you be in favour of employing any other method of those suggested by Article 14?

11.2. If yes, which of them would you opt for?

12. During the implementation of the EAPO, banks can request the assistance of the information authorities to identify the bank accounts (Article 24.4.a). Have you been contacted by any bank?

12.1. If yes, how many petitions from banks have you received?

C. Others

13. Besides the above questions, would you like to report any other issue/ problem that you might have confronted?

14. Do you have any suggestions that might help to improve the information mechanism?