

European Account Preservation Orders: potential costs for banks

Introduction

On 18 January 2017 EU Regulation 655/2014 establishing a European Account Preservation Order (“**EAPO**”) procedure (the “**Regulation**”)¹ became directly applicable in all EU member states, except the UK and Denmark which opted out of the Regulation.

The Regulation makes it easier for creditors to recover cross-border debt in the EU as the new procedure allows for a single order to be made in the courts of one EU member state which would be capable of “freezing” any bank account of a debtor in another EU member state. A cross-border situation also exists where the creditor is domiciled in one member state and the court and the bank account to be preserved are located in another member state.

Since the Regulation does not apply in the UK or Denmark, creditors domiciled in the UK or Denmark cannot apply for EAPOs nor can the UK or Danish Courts award EAPOs. Neither is it possible for EAPOs to apply to UK or Danish bank accounts.

However, UK and Danish entities and banks are affected to the extent that they hold accounts or operate branches or subsidiaries elsewhere in the EU subject to the Regulation.

Background

As long ago as October 2006 the European Commission launched a consultation on the need for a uniform European procedure for the preservation of bank accounts². This led eventually to adopting the Regulation in May 2014 as it was considered that the conditions for the grant of protective measures and the efficiency of their implementation varied considerably across EU member states.

Prior to adopting the Regulation, an impact assessment was carried out for the European Commission which considered, among other things, the potential effects on banks of a European bank attachment order.

In the final report, it was noted that banks tended to be the “most sceptical about the merits”³ of creating a European order. More generally, there was concern about the effects that such an instrument would have on banks as they would be bearing most of the (potential) costs – both in terms of the financial cost and intangible reputation costs if the use of a new European instrument proved to be problematic and exposed them to litigation.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0655>

² 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

³ Study for an Impact Assessment on a Draft Legislative Proposal on the Attachment of Bank Accounts

Banks' obligations and potential costs

Banks are affected in several ways by the Regulation becoming directly applicable on 18 January 2017:

1. a bank must preserve funds "without delay" following receipt of a EAPO;
2. by the end of the third working following the implementation of the EAPO a bank must issue a declaration indicating whether and to what extent funds in the debtor's account(s) have been preserved. The prescribed form of the declaration is be found in Annex IV of the EU Implementing Regulation 2016/1823⁴; and
3. a bank may be required to search for and provide information about a debtor's accounts.

The costs incurred by a bank in complying with EAPOs are only recoverable to the extent that the law of the member state of enforcement permits such recovery in relation to equivalent national orders. Further, a bank may be found liable for failure to comply with its obligations under the Regulation, such liability to be governed by the law of the member state of enforcement.

The extent of EAPO use remains to be seen, and in many cases, creditors may choose to apply for relief under existing national laws, where that is speedier or offers other procedural advantages. Nevertheless, the Regulation does impose significant obligations on banks holding debtors' accounts and may result in additional costs for banks.

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⁴ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1823>