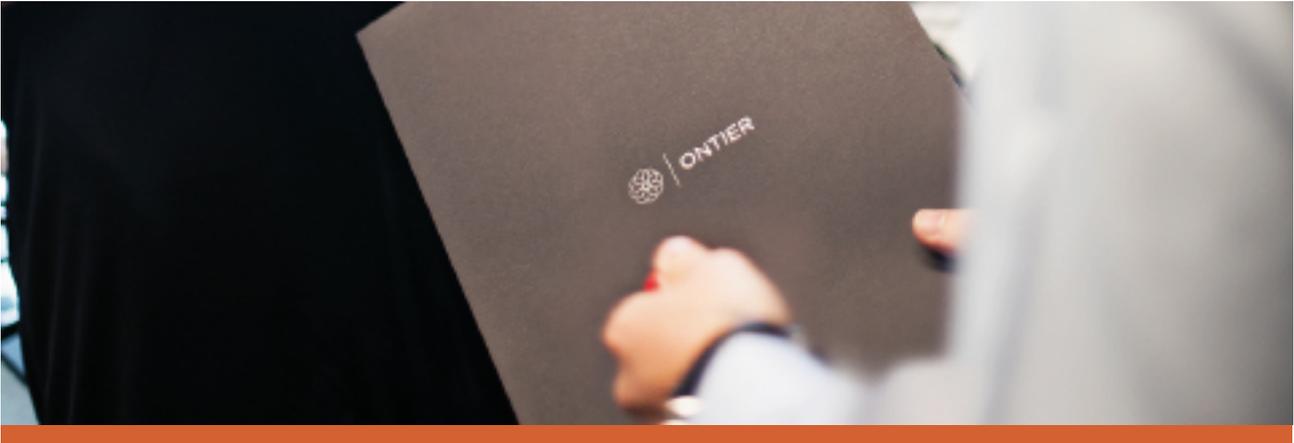


II

LITIGATION AND ARBITRATION



Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing an European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

January 2017

This Regulation came into force on the twentieth day following that of its publication in the Official Journal of the European Union, however it has not been applied until the 18 January 2017.

The Union set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union considered it necessary to adopt measures relating to judicial cooperation in civil matters having cross-border implications.

Among these measures, are include measures aimed at ensuring, among other things, the mutual recognition and enforcement of judgements between Member States, effective access to justice and the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

Within this framework, the establishment of certain provisional measures is necessary at Union level, to prevent, for example, the disappearance of assets before the enforcement of a claim, and to put forward appropriate proposals or improving the efficiency of enforcement of judgments in the Union regarding bank accounts and debtors assets.

Although it is true that in National procedures for obtaining protective measures, such as account preservation orders exist in all Member States, the conditions for granting of such measures and the efficiency of their implementation vary considerably. Moreover, recourse to national protective measures may prove cumbersome in cases having cross border implications, in particular when the creditor seeks to preserve

several accounts located in different Member States.

It, therefore, seems necessary and appropriate to adopt a binding and directly applicable legal instrument of the Union, which establishes a new Union procedure allowing, in cross-border cases, the preservation, in an efficient and speedy way, of funds held in bank accounts.

The procedure established by this Regulation should serve as an additional and optional means for the creditor, who remains free to make use of any other procedure for obtaining an equivalent measure under national law.

The preservation of funds held in the debtor's account should have the effect of preventing not only the debtor himself, but also persons authorized by him to make payments through that account, for example by way of a standing order or through direct debit or the use of a credit card, from using the funds.

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Subject matter

This Regulation applies to pecuniary claims in civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal concerned (the 'court'). It does not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority.

This Regulation does not apply to rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage; wills and succession, including maintenance obligations arising by reason of death; claims against a debtor in relation to whom bankruptcy proceedings, proceedings for the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions, or analogous proceedings have been opened; social security and arbitration, among other things.

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Cross-border cases

For the purposes of this Regulation, a cross-border case is one in which the bank account or accounts to be preserved by the Preservation Order are maintained in a Member State other than the Member State of the court that requests the application for the Preservation Order or the Member State in which the creditor is domiciled.

The relevant moment for determining whether a case is a cross-border case is the date on which the application for the Preservation Order is lodged with the court having jurisdiction to issue the Preservation Order.

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Procedure for obtaining a Preservation Order.

The Preservation Order shall be available to the creditor in the following situations: before the creditor initiates proceedings in a Member State against the debtor on the substance of the matter, or at any stage during such

proceedings up until the issuing of the judgement or the approval or conclusion of a court settlement; after the creditor has obtained in a Member State a judgement, court settlement or authentic instrument which requires the debtor to pay the creditor's claim.

Where the creditor has not yet obtained a judgement, court settlement or authentic instrument, jurisdiction to issue a Preservation Order shall lie with the courts of the Member State, which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of jurisdiction applicable.

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

The court shall issue the Preservation Order when the creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for a protective measure in the form of a Preservation Order because there is a real risk that, without such a measure, the subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult.

Where the creditor has applied for a Preservation Order before initiating proceedings, he shall initiate such proceedings and provide proof of such initiation to the court where the application for the Preservation Order was lodged within 30 days of the date on which he filed the application or within 14 days of the date of the issue of the Order, whichever date is the later. If the court has not received proof of the initiation of proceeding within the referred time period, the Preservation Order shall be revoked or shall terminate and the parties shall be informed accordingly.

In order to ensure the surprise effect of the Preservation Order, and to ensure that it will be a useful tool for a creditor trying to recover debts from a debtor in cross-border cases, the debtor should not be informed about the creditor's application nor be heard prior to the issue of the Order or notified of the Order prior to its implementation. Where, on the bases of the evidence and information provided by the creditor or, if applicable, by this witness (es), the court is not satisfied that the preservation of the account or accounts in question is justified, it should not issue the Order.

In view of the absence of a prior hearing of the debtor, this Regulation should provide for specific safeguards in order to prevent abuse of the Order and to protect the debtor's rights.

In this sense, in cases where the creditor has not yet obtained a judgement, court settlement or authentic instrument requiring the debtor to pay the creditor's claim will have to provide security so as to ensure that the debtor can be compensated at a later stage for any damage caused to him by the Preservation Order.

In order to overcome existing practical difficulties in obtaining information about the whereabouts of the debtor's bank account in a cross-border context, this Regulation should set out a mechanism allowing the creditor to request that the information needed to identify the debtor's account be obtained by the court, before a Preservation Order is issued, from the designated information authority of the Member State in which

the creditor believes that the debtor holds an account.

Recognition, enforceability and enforcement of the preservation order

A Preservation Order issued in a Member State in accordance with this Regulation shall be recognized in the other Member States without any special procedure being required and shall be enforceable in the other Member States without the need for a declaration of enforceability.

Regarding to a bank to where a Preservation Order is addressed, this shall be implemented immediately following receipt of the Order or, where the law of the Member State of enforcement so provides, of a corresponding instruction to implement the Order.

The responsibility of Banks for breach of its obligations by virtue of the mentioned Regulation will be ruled by the law of the Member State of enforcement.

Finally, we need to underline that the United Kingdom and Denmark are not taking part in the adoption of this Regulation.



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