

THE CROSS-BORDER DEBT RECOVERY IN CIVIL AND COMMERCIAL MATTERS: THE EUROPEAN ACCOUNT PRESERVATION ORDER

By way of Legislative Decree no. 152 of 26th October 2020 (the "**Decree**")¹ – entered into force on 1st December 2020 - the Government ordered the adjustment of national legislation to the provisions of Regulation (EU) no. 655/2014 (the "**Regulation**")², which introduced the **European Account Preservation Order** (the "**EAPO**").

The EAPO is a new legal instrument harmonised at European level, aimed at allowing and facilitating cross-border debt recovery in civil and commercial matters.

The Regulation provides a new uniform procedure for all Member States to enable a creditor domiciled in a Member State to freeze funds kept by its debtor in a bank account held in a different Member State **in an efficient and speedy way and without prior notice to the debtor**.

The EAPO serves as an additional and optional means for creditors, who remains free to make use of any other procedure providing for equivalent measures under national laws.

THE EAPO IN BRIEF

1)	Who can apply	Creditors resident or domiciled in a Member State, holding pecuniary claims in civil or commercial matters against a debtor, even not domiciled in a Member State, holding a bank account in a Member State
2)	For which claims	Pecuniary claims in civil and commercial matters in cross-border cases
3)	When you can apply	The application can be made by the creditor at any time, before or after having obtained a title supporting the pecuniary claim (<i>i.e.</i> , a judgment, Court settlement or authentic instrument which requires the debtor to pay the creditor's claim, " Title ")
4)	Competent Court	If the application is submitted <i>ante causam</i> or during the course of the proceedings, the Court of the Member State which have jurisdiction to rule on the substance of the matter under the law of that Member State; if the creditor has already obtained a Title, the Court of the Member State in which the Title was issued

¹ [Legislative Decree no. 152 of 26 October 2020](#).

² [Regulation 2014/655](#), which was followed by the related Enforcement Regulation (UE) no. 2016/1823 (the "**Enforcement Regulation**"; [Regulation 2016/1823](#)).

5)	Forms	Both the application and the EAPO shall be lodged using the form established by the Enforcement Regulation
6)	Procedure	<i>Inaudita altera parte</i> – surprised effect on the debtor who is informed only after the bank has implemented the EAPO
7)	Conditions for issuing the EAPO	<i>Fumus boni iuris</i> and <i>periculum in mora</i>
8)	Time limits for issuing the EAPO	By the end of the tenth working day after the creditor lodged his application if the procedure is initiated <i>ante causam</i> or during the course of the proceedings, or by the end of the fifth working day if the procedure is initiated in presence of a Title
9)	Time limits to initiate the proceedings on the substance of the matter in ante causam EAPO	Within 30 days of the date on which the creditor lodged the application, or within 14 days of the date of the issue of the EAPO, whichever date is later
10)	Gathering account information	The creditor who has no information on the debtor's bank accounts can obtain, through the Competent Court, the information necessary to identify the bank account to be seized
11)	Implementation of the EAPO by the bank	The bank implements the EAPO by preserving the funds available in the bank account and, by the end of the following third working day , issues a declaration indicating, <i>inter alia</i> , the amount of the funds seized
12)	Service of the EAPO on the debtor	By the end of the third working day following receipt of the bank's declaration of implementation
13)	Enforcement of the EAPO	In accordance with the procedures provided for by the State of enforcement (in Italy, seizure against third parties)
14)	Remedies	Appeal by the creditor against any decision rejecting the application for the EAPO, appeal by the debtor against the EAPO and/or its enforcement

1. SCOPE OF APPLICATION

The EAPO applies in relation to the recovery of **pecuniary claims, in civil or commercial matters**³, in "**cross-border cases**".

³ The following are excluded from the scope of application of the Regulation: (i) claims related to revenue, customs or administrative matters; (ii) the matter of the liability of the State for acts and omissions in the exercise of State authority; (iii) rights in property arising out of a matrimonial relationship or out of a relationship comparable to marriage; (iv) wills and succession, including maintenance obligations arising by reason of death; (v) claims against a debtor in relation to whom

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A **cross-border case** occurs when the bank account to be seized through the EAPO is held in a Member State **different from**

- (i) the Member State of the Court in which the application for the EAPO is made, or
- (ii) the Member State in which the creditor is domiciled.

Accounts located in the same Member State of the Court having jurisdiction to issue the EAPO can be seized through the EAPO solely by a creditor domiciled in a different Member State, even if the creditor applies at the same time for an EAPO which concerns an account or accounts maintained in another Member State.

The date relevant for determining whether a case is a cross-border case is that on which the application for the EAPO is filed with the Competent Court.

All bank accounts can be seized **except for (i)** bank accounts which are immune from seizure under the law of the Member State where the account is held; **(ii)** bank accounts held in connection with the operation of systems as defined under point (a) of Article 2 of Directive 98/26/EC on settlement finality in payment and securities settlement systems; **(iii)** bank accounts held by or with central banks when acting in their capacity as monetary authorities.

2. THE PROCEDURE

2.1 Filing and jurisdiction

The application for the EAPO can be filed by the creditor ante causam (i.e., prior to initiating proceedings on the substance of the claim) or during the course of such proceedings, or even by the creditor who has already obtained a Title (i.e., a judgment, Court settlement or authentic instrument which requires the debtor to pay the creditor's claim).

The jurisdiction varies depending on when the creditor lodges the application for the EAPO:

Time of application	Competent Court
a) Procedure initiated <i>ante causam</i> or during the course of the proceedings	The Court of the Member State which has jurisdiction to rule on the substance of the claim under the law of that Member State ⁴
b) Procedure initiated by the creditor holding a Title	The Court of the Member State in which the Title was issued

bankruptcy proceedings, compositions, or analogous proceedings have been opened; (vi) claims arising from social security relationships; (vii) claims for the assessment of which the parties have chosen a form of arbitration.

⁴ If the debtor is a **consumer** who has concluded a non-commercial contract with the creditor, the Courts of the Member State where the debtor is domiciled shall have jurisdiction.

2.2 EAPO: issuance conditions and time limits

In order for the EAPO to be granted, the application shall:

- a) have the formal contents required by Article 8 of the Regulation⁵;
- b) contain adequate proof of the existence of *fumus boni iuris* (in case of application *ante causam*) and *periculum in mora*⁶;
- c) be prepared, together with the relevant supporting documentation, in accordance with the forms set out in the Enforcement Regulation⁷.

In order to obtain an EAPO **it is not necessary to indicate the references of the bank account** to be seized, it being sufficient to (i) indicate the bank where the account is held, or (ii) file a request to obtain account information (see par. 2.3 below) and indicate the reasons why the creditor believes that the debtor holds an account in a Member State.

The Court decides on the application for an EAPO "**without delay**" (see Article 17 of the Regulation) **and in any event within the following time limits:**

- a) if the procedure is initiated *ante causam* or during the course of the proceedings , **within the tenth working day** following the application;
- b) if the procedure is initiated when a Title is already obtained, **within the fifth working day** following the application.

The EAPO is issued in the forms provided for in the Enforcement Regulation⁸.

2.3 Request to obtain account information

When the creditor has already obtained a Title⁹ but has no sufficient information to identify the debtor's bank accounts, the Regulation allows the creditor **to obtain the information necessary to identify the bank accounts held by the debtor in a Member State.**

By means of a specific request to be included in the EAPO application, the creditor may request the competent Court to obtain all the information on bank accounts held by the debtor through the information authority of the Member State of enforcement.

⁵ For the most part, these are formal requirements, such as the indication of the competent Court, details concerning the parties, the bank coordinates allowing to identify the bank where the account/s to be seized is/are held; if available, also the number of the account/s to be seized, etc.

⁶ I.e., the creditor shall provide sufficient evidence to satisfy the Court that he is likely to succeed on the substance of his claim against the debtor (*fumus boni iuris*), as well as demonstrate the urgent need to obtain a protective measure in view of the concrete risk that, in the absence of such a measure, the subsequent enforcement of the creditor's claim against the debtor will be jeopardized or made substantially more difficult (*periculum in mora*).

⁷ See [Regulation 2016/1823](#) to view the annexes.

⁸ See [Regulation 2016/1823](#) to view the annexes.

⁹ Even if the Title is not yet enforceable, but in this case the request will only be admitted if the amount to be seized is significant and the reasons for the urgency are proved.

The request shall be properly substantiated both in relation to the urgency in obtaining the account information and in relation to the reasons why the creditor believes that the debtor holds one or more accounts in a specific Member State¹⁰.

As far as accounts held in **Italy** are concerned, the information authority responsible for acquiring information on bank accounts maintained in Italy is the President of the Court of the place where the debtor has its residence, domicile, or registered office or, in case of foreign debtors, the President of the Court of Rome¹¹. The search for information shall be carried out by means of the electronic methods referred to in Article 492-bis, paragraph 2, first and second sentence of the Italian Code of Civil Procedure or, in the absence thereof, by means of an express request by the Court bailiff to the respective managers of such information¹².

2.4 Request for EAPO *ante causam* – Deadline to commence the proceedings on the substance of the matter

The creditor shall initiate the proceedings on the substance of the claim before the Competent Court within **30 days** of the date on which he lodged the application or no later than **14 days** from the date of the issue of EAPO, whichever date is later¹³.

The creditor's failure in providing evidence of the initiation of the proceedings within the above-mentioned time period triggers the revocation or termination of the EAPO's effects.

2.5 Ex parte procedure and balance of interests

The EAPO procedure is carried out **without the debtor being heard prior to the issuance of the EAPO**. The debtor must be notified of the application for the EAPO only once the order has been issued and implemented by the bank (see para. 4 below).

A balance between the creditor and the debtor's interests is nevertheless ensured through a number of measures provided for by the Regulation:

- a) the creditor shall provide **security** for an amount sufficient to safeguard the debtor's interests and to prevent any abuse of the procedure. Such security is mandatory when the application for the EAPO is submitted *ante causam* or during the course of the proceedings, while it is left to the discretion of the Court in the event that the creditor has already obtained a Title;
- b) the **creditor's liability** for the damages caused to the debtor as a result of the EAPO (the burden of proving which lies on the debtor);
- c) the provision of cases where the liability for fault of the creditor is **presumed**, unless proven otherwise¹⁴;

¹⁰ In particular, the request shall (i) be substantiated, (ii) provide the reasons why the creditor believes that the debtor holds one or more accounts with a bank in the specific Member State and (iii) provide all relevant information available to him about the debtor and the account or accounts to be preserved.

¹¹ See Article 3, para. 1 of the Decree.

¹² See Article 3, paras. 2 and 3 of the Decree.

¹³ The Court may also, at the debtor's request, extend such time period (for example in order to allow the parties to settle the dispute).

¹⁴ By way of example: (i) if the EAPO is revoked because of the creditor's failure to initiate the proceedings on the merits, unless such failure was caused by the debtor's payment of the debt or by other forms of settlement between the parties; (ii) if the creditor failed to apply for the release of the over-preserved amounts indicated by the EAPO; (iii) if it subsequently appears

d) the provision of multiple grounds for the debtor to challenge the EAPO and its enforcement (see para. 6 below).

3. THE EAPO IMPLEMENTATION BY THE BANK

The **implementation** is the procedure under which the bank holding the seized account implements the EAPO.

Once issued, the EAPO is delivered to the bank where the account to be seized is held, which promptly implements the seizure by taking the necessary measures to ensure that the amount seized is not transferred or withdrawn from the bank account as indicated in the EAPO.

By the end of the third working day following the implementation, the bank shall issue to the Competent Court and to the creditor a **declaration** indicating whether and to what extent the funds in the debtor's accounts have been seized and, if so, on which date¹⁵ ("**Declaration of Implementation**").

4. SERVICE ON THE DEBTOR

The service of the EAPO on the debtor shall take place **within the end of the third business day following the receipt of the Declaration of Implementation** indicating that the funds have been seized.

The modalities of service differ depending on whether the debtor is domiciled **(a)** in the Member State where the EAPO was issued, **(b)** in a Member State other than the Member State where the EAPO was issued, **(c)** in the Member State where the EAPO is to be enforced or **(d)** in a third State.

5. ENFORCEMENT

Following the service of the EAPO on the debtor, the EAPO is enforced in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State where enforcement is sought.

As far as **Italy** is concerned, the EAPO shall be enforced according to the rules governing **attachment against third parties**¹⁶.

6. REMEDIES

Remedies available to the creditor

6.1 Appeal against the decision of the Competent Court refusing to issue the EAPO

The creditor can appeal the decision of the Court rejecting the application for the EAPO within **30 days** of the date on which such decision is communicated to him.

that the issue of the EAPO was inappropriate, in whole or in part, due to the failure to comply with the information requirements resulting from the filing of parallel applications; etc.

¹⁵ In exceptional circumstances, such a declaration may be issued by the end of the eighth working day following the implementation of the order.

¹⁶ See Article 678 of the Italian Code of Civil Procedure.

As far as **Italy** is concerned, the appeal is to be lodged before the Court that issued the EAPO sitting as a panel, which shall not include the Judge who issued the challenged decision¹⁷.

Remedies available to the debtor

6.2 Appeal against the EAPO

The debtor may appeal the EAPO for the following grounds:

- a) the conditions or requirements for the issuance of the EAPO were not met;
- b) the EAPO, the Declaration of Implementation or the other documents to be served were not served on the debtor within 14 days of the implementation of the EAPO;
- c) the documents served on the debtor did not meet the language requirements;
- d) the seized funds exceeding the amount of the EAPO were not released;
- e) the creditor's claim was paid, in full or in part;
- f) a judgment on the substance of the matter has dismissed the creditor's claim ;
- g) the Title secured by means of the EAPO was set aside or annulled, as the case may be.

As far as **Italy** is concerned, the appeal is to be lodged before the Court that issued the EAPO¹⁸.

6.3 Appeal against the enforcement of the EAPO

Once enforcement of the EAPO is commenced, the debtor may also lodge an appeal against the enforcement before the Court of the place where the debtor is domiciled¹⁹.

Thereby, the enforcement of the EAPO can be

(a) limited, on the ground that the funds held on the seized account should be exempt from seizure in accordance with the law of the Member State of enforcement; or

(b) terminated, in a limited number of cases (e.g., on the ground that the account seized is excluded from the scope of the Regulation; the enforcement of the Title was refused or stayed in the Member State of enforcement; or, the EAPO, the Declaration of Implementation or the further documents provided by the Regulation were not served on the debtor within 14 days of the implementation of the EAPO; or, the enforcement of the EAPO is manifestly contrary to the public policy (*ordre public*) of the Member State of enforcement).

6.4 Further remedies

Both the debtor and the creditor are allowed to request the Competent Court that issued the EAPO to **revoke** or **modify** the order, due to a supervened **change in the circumstances**.

The debtor may also apply for **providing a security** in place of the enforcement of the EAPO²⁰.

¹⁷ See Article 4 of the Decree.

¹⁸ See Article 6 of the Decree.

¹⁹ See Article 7 of the Decree.

²⁰ See Article 38 of the Regulation which establishes that the debtor may provide for a security in the amount of the EAPO, or an alternative assurance in a form acceptable under the law of the Member State in which the Court issuing the EAPO is located and of a value at least equivalent to that amount. In this case, the Court may order the release of the funds preserved.

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The remedies available to the debtor, as well as the application for revocation/modification of the EAPO due to a supervened change in the circumstances, can be filed **at any time** and any decision thereof shall be issued only after both parties have been given the opportunity to present their case.

As far as **Italy** is concerned, all appeal proceedings concerning the EAPO are regulated by the provisions governing the challenge procedure against interim measures pursuant to Article 669-terdecies of the Italian Code of Civil Procedure²¹.

²¹ See Article 8 of the Decree.

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The Dispute Resolution Department of Legance is available to provide any clarifications, also in respect of any specific situation which may be of interest to you.

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