

EPO and EAPO Regulations: A new reform of the Luxembourgish Code of Civil Procedure

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On 23 July 2021, a new legislative reform of the Luxembourgish Code of Civil Procedure (“NCPC”), entered into force amending, among other articles, those concerning Regulation No 1896/2006, establishing a European Payment Order (“EPO Regulation”) and Regulation No 655/2014, establishing a European Account Preservation Order (“EAPO Regulation”).

The EPO and the EAPO Regulations embody, respectively, the first and third European uniform civil procedures. While the EPO, as its name indicates, is a payment order, the EAPO is a provisional measure that allows temporary freezing of the funds in the debtor’s bank accounts. Although they are often referred to as uniform procedures, both leave numerous elements to the discretion of the Member States’ national laws.

With this strong reliance on the Member State’s national laws, it is not surprising that most Member States have enacted domestic legislation to embed these Regulations within their national civil procedural systems. Luxembourg is one of them. The EPO Regulation brought two amendments to the NCPC. The first one was introduced in 2009, four months after the EPO Regulation entered into force. In broad terms, the 2009 reform integrated the EPO procedure in the Luxembourgish civil judicial system, identifying the authorities involved in its application. The second legislative amendment stemmed from the 2015 reform of Regulation No 861/2007, establishing a European Small Claims Procedure (“ESCP Regulation”) and of the EPO Regulation. Among other changes, this reform introduced the possibility, once the debtor opposes the EPO, of continuing the procedure “in accordance with the rules of the European Small Claims Procedure” (Article 17(1)(a) EPO Regulation). The change brought to the NCPC

pursued the objective to facilitate the swift conversion from an EPO into an ESCP (Articles 49(5) and 49(8) NCPC).

Before the reform of 23 July 2021, the Luxembourgish legislator had already twice modified the NCPC to incorporate the EAPO Regulation. The first EAPO implementing act was approved in 2017 (Article 685(5) NCPC). It mainly served to identify the domestic authorities involved in the EAPO procedure: from the competent courts to issue the EAPO to the competent authority to search for information about the debtor's bank accounts (Article 14 EAPO Regulation). The second reform, introduced in 2018, aimed at facilitating the transition of the EAPO's temporary attachment of accounts into an enforcement measure (Article 718(1) NCPC). In brief, it allowed the transfer of the debtor's funds attached by the EAPO into the creditor's account.

The 2021 legislative reform of the NCPC was not introduced specifically bearing in mind the EPO and the EAPO Regulations: rather, it was meant as a general update of the Luxembourgish civil procedural system. Among the several changes it introduced, it increased the value of the claim that may be brought before the Justice of the Peace (*Justice de paix*). Before the reform, the Justice of the Peace could only be seized for EPOs and EAPOs in claims up to 10.000 euros, while District Courts (*Tribunal d'arrondissement*) were competent for any claims above that amount. As a result of the reform, the Luxembourgish Justice of the Peace will now be competent to issue EPOs and EAPOs for claims up to 15.000 euros in value.