

The EAPO Regulation: An unexpected interpretative tool of the French civil procedural system

Carlos Santaló Goris, Researcher at the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law and Ph.D. candidate at the University of Luxembourg, offers an analysis of some aspects of a judgment rendered by the Paris Court of Appeals.

Regulation No 655/2014, establishing a European Account Preservation Order (“EAPO Regulation”) introduced not only the first uniform provisional measure at the EU level but also the first European specific system to search for the debtors’ bank accounts. The so-called information mechanism is, though, less accessible than the EAPO itself. According to Article 5 of the EAPO Regulation, creditors can apply for an EAPO *ante demandam*, during the procedure on the substance of the matter; or when they have already a title (a judgment, a court settlement, or an authentic document). However, only creditors with a title can submit a request for information. Furthermore, in case the title is not yet enforceable, creditors are subject to specific additional prerequisites.

In broad terms, the information mechanism operates following a traditional scheme of cross-border cooperation in civil matters within the EU. A court in a Member State sends a request for information to an information authority in the same or other Member State. The information authority then searches for the bank accounts and informs the court of origin about the outcome of that search.

Member States have a wide margin of discretion in implementing the information mechanism. They can freely pick the national body appointed as information authority. They also have the freedom to choose whichever method they consider more appropriate to search for the debtors’ bank accounts as long as it is “effective and efficient” and “not disproportionately costly or time-consuming” (Article 14(5)(d) EAPO Regulation).

France assigned the role of information authority to its national enforcement authority, the bailiffs (“huissiers”). Information about the debtors’ bank accounts is obtained by filing an application with FICOBA (“Fichier national des comptes

bancaires et assimilés”). FICOBA is a national register held by the French tax authority containing data about all the bank accounts existing in France. Other Member States, such as Poland or Germany, have also relied on similar domestic registers.

This is where the paradox emerges. In France, creditors without an enforceable title who apply for a French domestic preservation order do not have access to FICOBA; conversely, creditors without an enforceable title who apply for an EAPO do. Article L151 A of the French Manual on Tax Procedures (“Livres des procédures fiscales”) expressly indicates that bailiffs can access FICOBA for the purpose of ensuring the execution of an enforceable title (“aux fins d’assurer l’exécution d’un titre exécutoire”). The only exception is found, precisely, when they have to search for information in an EAPO procedure. This situation generates an imbalance between creditors who can access the EAPO Regulation and those who cannot.

In a judgment rendered by the Paris Court of Appeal on 28 January 2021 (Cour d’appel de Paris, Pôle 1 - chambre 10, 28 janvier 2021, n° 19/21727), the court found that such a difference of treatment between creditors with and without access to the EAPO Regulation “constitutes an unjustified breach of equality and discrimination between creditors” (“cette différence de traitement constitue une rupture d’égalité injustifiée et une discrimination entre créanciers”). Relying on the principle of equality, the court decided to extend access to FICOBA, beyond the context of the EAPO Regulation, to those creditors without an enforceable title.

The relevance of this judgment lies in the French court’s use of the EAPO Regulation to interpret a national domestic procedure. The influence of the national civil procedures system on the European procedure is well known. Uniform European civil procedures, such as the EAPO Regulation, contain numerous references to the Member States’ national law. Furthermore, courts tend to read these instruments through the lens of the national civil procedural systems, even with regard to those aspects that should apply uniformly (here is an example concerning the EAPO Regulation kindly offered by Prof. Requejo Isidro). The Paris Court of Appeal shows us that the European civil procedures can also be a source of inspiration when it comes to interpreting domestic procedural law.

The irony behind this judgment is that, during the *travaux préparatoires* of the

EAPO Regulation, the French delegation expressly requested to restrain access to the information mechanism to those creditors who had “an enforceable title to support [their] application”. One of the reasons argued by the delegation was that “in French law, access to information is only given if the creditor possesses an enforceable title”. Ultimately, it is the French civil procedural system that is being influenced by the EAPO Regulation, and not the other way around.