

# **A reform seeking to speed up the functioning of the EAPO information mechanism in Luxembourg**

*Carlos Santaló Goris, Research Fellow 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 the reform recently approved in Luxembourg concerning the functioning of the information mechanism of the Regulation No 655/2014, establishing a European Account Preservation Order (“EAPO Regulation”). The EAPO Regulation and other EU civil procedural instruments are the object of study in the ongoing EFFORTS project, with the financial support of the European Commission.*

The EAPO Regulation introduced the first European civil interim measure that permits, as its name indicates, the provisional attachment of the debtors’ bank accounts in cross-border civil and commercial claims. Besides the temporary attachment of debtors’ funds, it also contains a special tool to search for the bank accounts containing those funds. This information mechanism is perhaps one of the main appeals of the EAPO. It has even inspired some national legislatures, for instance, the French one, to improve their domestic mechanisms to trace debtors’ assets in civil proceedings. Nonetheless, access to the EAPO’s information mechanism is more limited than access to the EAPO itself. Whereas creditors without a title can apply for an EAPO, they cannot submit a request to search for debtors’ bank accounts. This option is limited to creditors with a title, whether the title is enforceable or not.

Article 14 of the EAPO Regulation sets up the basic structure of the information mechanism. Provided creditors satisfy the necessary prerequisites to ask for the investigation of the debtors’ bank accounts, the court which examines the EAPO application sends a request for information to the Member State where the bank accounts are located. There, an information authority would be in charge of searching for debtors’ bank accounts and giving an answer to the requesting court.

The EAPO Regulation gives the Member States broad discretion in implementing the mechanism to investigate the debtors' bank accounts. Article 14 only suggests three different methods that the Member States can choose to search the information about the debtors' bank accounts. The first one consists of asking all the banks in the territory of the requested Member State to disclose whether they have the debtors' bank accounts (Art. 14(5)(a) EAPO Regulation). According to the second method, the information about the debtors' bank accounts is retrieved from the registries held by public administrations (Art. 14(5)(b) EAPO Regulation). Finally, according to the third method, courts may "oblige the debtor to disclose with which bank or banks in its territory he holds one or more accounts" (Art. 14(5)(c) EAPO Regulation). The request to disclose the information is "accompanied by an *in personam* order by the court prohibiting the withdrawal or transfer" by the debtor "of funds held in his account or accounts up to the amount to be preserved by the Preservation Order" (Art. 14(5)(c) EAPO Regulation). This list of methods is not exhaustive, and the Member States are allowed to opt for any other method as long as it is "effective and efficient" and "not disproportionately costly or time-consuming" (Art. 14(5)(d) EAPO Regulation).

At the Luxembourgish domestic level, the EAPO information mechanism represented a major innovation. The Luxembourgish civil procedural system lacks an equivalent national tool to investigate debtors' bank accounts. Therefore, the EAPO's mechanism became (and still is) the only tool to trace debtors' bank accounts during a civil procedure in Luxembourg. When a creditor requests a national provisional attachment order (*saisie-arrêt*), but ignores in which bank the debtors' accounts are located, the attachment order must be sent to all the banks where those accounts may be held. The more banks the *saisie-arrêt* is sent to, the higher the chances of freezing the debtors' funds. Such "fishing expeditions" are costly. The *saisie-arrêt* is served to the banks through a bailiff (*huissier*). The more banks the *saisie-arrêt* is sent to, the higher the fee that the bailiff will charge.

Luxembourg appointed its national financial authority, the *Commission de Surveillance du Secteur Financier* ("CSSF"), as its national information authority for the EAPO information mechanism. In contrast to the costly "fishing expeditions" of the *saisie-arrêt*, the CSSF does not charge any fees for obtaining information about the debtors' bank accounts.

The CSSF searches for the bank accounts by requesting that all the banks or branches of foreign banks operating in Luxembourg disclose if they hold the debtors' accounts (Art. 14(5)(a) EAPO Regulation). Until September 2022, this request was sent by regular mail to all those entities. Banks were given 20 days to reply to the CSSF. Those 20 days, plus the time it takes to send the request by mail to the banks and receive their answers, explain why it takes at least one month until the CSSF can reply to the court which submitted the original information request.

However, from 1 September 2022, the request for information is sent through an online platform, the *Guichet numérique eDesk* (*Circulaire CSSF 22/819*). Banks operating in Luxembourg are required to join this platform. Thanks to this reform, the CSSF will be able to obtain information about the debtors' bank accounts faster. It also ensures better monitoring of the answers provided by the banks. Overall, this reform enhances the functioning of the EAPO's information mechanism at the Luxembourgish level and is in line with the EAPO Regulation, which favours the swift transmission of documents (Recital 24 Regulation).