

Montenegro's legislative implementation of the EAPO Regulation: setting the stage in civil judicial cooperation

Carlos Santaló Goris, Lecturer at the European Institute of Public Administration in Luxembourg, offers an analysis of an upcoming legislative reform in Montenegro concerning the European Account Preservation Order

In 2010, Montenegro formally became a candidate country to join the European Union. To reach that objective, Montenegro has been adopting several reforms to incorporate within its national legal system the *acquis communautaire*. These legislative reforms have also addressed civil judicial cooperation on civil matters within the EU. The Montenegrin Code of Civil Procedure (*Zakon o parničnom postupku*) now includes specific provisions on the 2007 Service Regulation, the 2001 Evidence Regulation, the European Payment Order ('EPO'), and the European Small Claims Procedure ('ESCP'). Furthermore, the Act on Enforcement and Securing of Claims (*Zakon o izvršenju i obezbeđenju*) also contains provisions on the EPO, the ESCP, and the European Enforcement Order ('EEO'). While none of the referred EU instruments require formal transposition into national law, the fact that it is now embedded within national legislation can facilitate its application and understanding in the context of the national civil procedural system.

Currently, the Montenegrin legislator is about to approve another amendment of the Act on Enforcement and Securing of Claims, this time concerning the European Account Preservation Order Regulation ('EAPO Regulation'). This instrument, which entered into force in 2017, allows the provisional attachment of debtors' bank accounts in cross-border civil and commercial claims. It also allows creditors with a title at the time of application to apply for an EAPO. According to the Montenegrin legislator, the purpose of this reform is to harmonize the national legislation with the EAPO, as well as creating 'the necessary conditions for its smooth application'.

In terms of substance, the specific provisions on the EAPO focus primarily on identifying the different authorities involved in the EAPO procedure from the moment it is granted to its enforcement. In broad terms, the content of the provisions corresponds to the information that Member States were required to provide to the Commission by 18 July 2016, and that can be found in Article 50. One provision establishes which are the competent courts to issue the EAPO and to decide on the appeal against a rejected EAPO application. Regarding the appeal procedure, it establishes that creditors have to submit their appeal within the five following days of the date the decision dismissing the EAPO application is rendered. Such a deadline contradicts the text of the EAPO Regulation, which sets a 30-day deadline to submit the appeal, which cannot be shortened by national legislation. This is an aspect that has been uniformly established by the EU legislator, thus it does not depend on national law (Article 46(1)).

Regarding the debtors' remedies to revoke, modify or terminate the enforcement of an EAPO contained Articles 33, 34 and 35, the reform contains a specific provision to determine which are the competent courts. Interestingly, it also establishes a 5-day deadline to appeal the decision resulting from the request for a remedy. In this case, the EAPO Regulation does not establish any deadline, giving Member States discretion to establish such deadline. The short deadline chosen contrasts with the 15 days established in Luxembourg (Article 685-5(6) *Nouveau Code de Procedure Civile*), the one-month deadline chosen by the German legislator (Section 956 *Zivilprozessordnung*).

Concerning the enforcement phase of the EAPO, it determines which are the authorities responsible for the enforcement. It also acknowledges that there are certain amounts exempted from attachment of an EAPO under Montenegrin law.

Last but not least, the reform also tackles the information mechanism to trace the debtors' bank accounts. The information authority will be Montenegro's Central Bank (*Centralna Banka*). The method that will be employed to trace the debtors' bank accounts consists of asking banks to disclose whether they hold the bank accounts. This method corresponds to the first of the methods listed in Article 14(5) that information authorities can use to trace the debtors' bank accounts.

The entry into force of these new EAPO provisions is postponed until Montenegro joins the EU. While these provisions might seem rather generic, they clearly reveal Montenegro's commitment to facilitate the application of the EAPO within

its legal system and make it more familiar for national judges and practitioners that will have to deal with it.