

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.

European Commission Plan for 2010-2014

The European Commission has published yesterday its plan to deliver justice, freedom and security to citizens in the next four years.

Here are 3 of the 10 concrete actions included in the plan which will be of interest for readers of this blog:

4. More legal certainty for international marriages

Following an EU proposal to allow international couples to choose which country's law applies to their divorce (IP/10/347, MEMO/10/100), the Commission will make a similar proposal this year on which law will apply when it comes to the division of couples' property during these proceedings (legislative proposal, 2010).

5. Less administrative burdens for citizens

Europeans who want to get married, adopt a child or change their civil status should not face additional administrative burdens if they are outside their home country. For example, a Finnish woman who falls in love with a man from the UK would have to submit a certificate of no impediment from the UK to get married. The UK does not provide such documents. To avoid these kinds of situations, the Commission will propose a law for the mutual recognition of certain civil status documents (legislative proposal, 2013).

6. Helping businesses to operate cross-border

If companies are to invest and operate cross-border, they need to have trust in Europe's Single Market – especially in today's economic context. At present, companies only recover 37% of cross-border debts while more than 60% of cross-border debts cannot be enforced. To address this problem and stimulate the incentive to do business cross-border, the Commission will propose legislation on a European "attachment" of bank accounts. This measure will ensure that money that is owed does not disappear (legislative proposal, 2010).

Legal certainty is crucial for motivating businesses to do commerce across borders. If you know the rules of the country where you would like to do business, you will be much more willing to offer your services/goods rather than studying different 27 regimes. These 27 contractual regimes will remain. The Commission is preparing an additional and optional contract law instrument – something similar to the US Uniform Commercial Code. Companies could then choose to apply this instrument to their contractual relations – no matter in which EU country they have their business (Communication, 2010).

The full text of the Communication of the Commission can be found [here](#).

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