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EFFORTS Practice Guide for the European Account Preservation Order (Reg. (EU) No 655/2014)

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I. Outgoing

When France is the Member State of origin

A. Subject matter, scope and main features

1. Alternative preservation measures under national law

The European Account Preservation Order (EAPO) shall be available to the creditor as an alternative to preservation measures under national law, but does not replace them (Art. 1(2) EAPO Reg.).

Given that:

- The EAPO lets a court in one EU country freeze funds in the bank account of a debtor in another EU country;
- It applies to financial claims in civil and commercial matters, excluding the following matters (Art. 2 EAPO Reg.):
 - o revenue, customs or administrative matters and social security;
 - o rights in property arising out of marriage or equivalent relationship, and wills and succession;
 - o claims against a debtor who is the object of bankruptcy or insolvency proceedings, judicial arrangements, compositions or other similar proceedings.;
- The procedure may be used in cross-border cases only, whereby the court carrying out the procedure or the country of domicile of the creditor must be in a different Member State than the one in which the debtor's account is maintained (European Judicial Atlas, Art. 2 EAPO Reg.).;
- The preservation of funds held in the debtor's account should prevent the risk that, without such a measure, the subsequent enforcement of a claim against the debtor will be impeded or made substantially more difficult (Whereas 7).;
- The EAPO shall be available to the creditor: (i) before s/he initiates proceedings against the debtor on the substance of the matter; (ii) at any stage during such proceedings; or (iii) after s/he has obtained in a Member State an enforceable title.;
- Because the EAPO procedure is ex parte, debtors will not be informed of creditors' applications, or be notified prior to the issue of the EAPO or its implementation.

In France, the equivalent procedure to the EAPO is the *saisie conservatoire* (Articles L523-1 to L523-2 French Code of Civil Enforcement Proceedings (from now on "CCEP")). In general terms, both provisional attachment orders resemble very much.¹

¹ C. Santaló Goris and V. Van Den Eeckhout, "France" in J. von Hein and T. Kruger (eds.), *Informed Choices in Cross-Border Enforcement* (Intersentia 2021), 205-206.



There are though some differences between both instruments that need to be addressed.

The EAPO has to be always authorised by a court.² The *saisie conservatoire* can be requested before a court (Art. L511-1 CCEP). Nonetheless, when creditors have an enforceable title or a judgments that has not become enforceable yet, they can request the provisional attachment of the debtors' bank accounts directly before the bailiff (*commissaire de justice* – formerly *huissier de justice*) (Art. L.511-2 CCEP).

There are also some subtle differences between the prerequisites to obtain an EAPO and a *saisie conservatoire*. Any creditor who applies for an EAPO have to prove that there is “an urgent need for a protective measure in the form of a Preservation Order because there is a real risk that, without such a measure, the subsequent enforcement of the creditor’s claim against the debtor will be impeded or made substantially more difficult” (Art. 7(1) EAPO Regulation). The so-called *periculum in mora* is also a prerequisite to obtain a *saisie conservatoire* (L.511-1 CCEP). Creditors are require to show that without the *saisie conservatoire* there would be “circumstances likely to threaten recovery” (*circonstances susceptibles d'en menacer le recouvrement*) (Art. L.511-1 CCEP). However, if creditors have already a title, and they directly ask the bailiff for the *saisie conservatoire*, they would not have to justify *ab initio* the existence of the *periculum in mora*. Only if the debtor contested the *saisie conservatoire*, the court would examine the *periculum in mora*.

When the EAPO is requested by creditors without an enforceable title, creditors are ought to “submit sufficient evidence to satisfy the court that he is likely to succeed on the substance of his claim against the debtor” (Art. 7(2) EAPO Regulation). In the *saisie conservatoire*, the court will also check that the claim exists *prima facie* (*la créance paraît fondée en son principe*) (Art. L.551-1 CCEP).³ The prerequisite to provide a security is different though. Under the EAPO Regulation, courts can require the provision of the security as a condition to grant the EAPO. In the *saisie conservatoire*, the court generally requires the creditor to provide a security only if the debtor requests it so upon the enforcement of the attachment order (Art. L512-1 CCEP).

² D. Wiedemann, “Artikel 6 EU-KpfVO” in T. Rauscher, *Europäisches Zivilprozess- und Kollisionsrecht*, 5. Aufl (OttoSmith 2022), para. 2. The EAPO Commission Proposal left the door open for enforcement authorities to grant EAPOs in the Member State of enforcement: Art. 14(3) COM/2011/0445 final.

³ The prerequisite that the claim is *prima facie* founded (*la créance paraît fondée en son principe*) can be also identified with the *fumus boni iuris*: S. Piédelièvre, “Saisies et mesures conservatoires”, in Répertoire de procédure civile (Dalloz 2018), para. 17. Some authors have een traced a parallism between the EAPO's *fumus boni iuris* prerequisite and the *saisie conservatoire*'s *prima facie* existence of the claim: G. Cuniberti and S. Migliorini, *L'ordonnance européenne de saisie conservatoire des comptes bancaires* (Legitech 2021), 126.



Both the EAPO and *saisie conservatoire* allow creditors to obtain information about the debtors' bank accounts. However, access to information through the EAPO is more limited than in the *saisie conservatoire*.⁴ In the EAPO, only creditors who have obtained a title, enforceable or not, can apply for information about the debtors' bank accounts (Art. 14(1) EAPO Regulation). Furthermore, creditors with a non-enforceable title are subject to stricter conditions than creditors with an enforceable title (Art. 14(1) EAPO Regulation).⁵ Conversely, creditors without a title to whom a French court has granted a *saisie conservatoire*, can access to information about the debtors' bank accounts (Art. L151A Tax Procedures Handbook (*Livre des procédures fiscales*)).

B. Procedure for obtaining a European Account Preservation Order and for the obtaining of account information

Obtaining a Preservation Order

The EAPO shall be available to the creditor:

- i. before s/he initiates proceedings against the debtor on the substance of the matter (Art. 5(a) EAPO Reg.);
- ii. at any stage during such proceedings (Art. 5(a) EAPO Reg.); or
- iii. after s/he has obtained in a Member State a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim (Art. 5(b) EAPO Reg.).

1. Notion of enforceable title, and procedure to obtain a copy of it which satisfies the conditions necessary to establish its authenticity

The conditions for issuing the EAPO vary depending on the moment in which the application is lodged, making it easier for the creditor to obtain one where s/he has already obtained a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim (Art. 5(b) EAPO Reg.), that is, as clarified by the Court of Justice in Case C-555/18, *K.H.K. v B.A.C., E.E.K* ⁽⁶⁾, an "enforceable title".

⁴ C. Santaló Goris, "A Reform of French Law Inspired by an Inaccurate Interpretation of the EAPO Regulation?" (2021), available at: <<https://conflictoflaws.net/2022/a-reform-of-french-law-inspired-by-an-inaccurate-interpretation-of-the-eapo-regulation/>> accessed on 1 September 2022.

⁵ The 'amount to be preserved' has to be 'substantial taking into account the relevant circumstances' and the creditor has to submit 'sufficient evidence to satisfy the court that there is an urgent need for account information because there is a risk that, without such information, the subsequent enforcement of the creditor's claim against the debtor is likely to be jeopardised and that this could consequently lead to a substantial deterioration of the creditor's financial situation' (Art. 14(1) EAPO Regulation).

⁶ Relevance is given to the following passage of the decision: "As the Advocate General observed in points 68 and 69 of his Opinion, an interpretation of Article 4(8) to (10) of Regulation



In such cases (the creditor has already obtained an enforceable title), the application shall be accompanied by all relevant supporting documents and, where the creditor has already obtained a judgment, court settlement or authentic instrument, by a copy of the judgment, court settlement or authentic instrument which satisfies the conditions necessary to establish its authenticity (Art. 8(3) EAPO Reg.).

I. Types of titles and their enforceability

According to Article 5(b) of the EAPO Regulation, there are three kinds of enforceable titles that can be used to apply for an EAPO: judgments; court settlements; and authentic instruments.

• Enforceability of the judgments under French law

Following Art. 501 French Code of Civil Procedure (hereinafter “CCP”), a judgment becomes enforceable from the moment it acquires the force of *res judicata*, unless the debtor benefits from a delay in payment (*délai de grâce*, see Arts 510-513 CCP) or the creditor from provisional execution.

Arts 500 and 501 CCP provide that judgments acquire the force of *res judicata* once they are not subject to any suspensive appeal or after the time limit for the appeal has expired. In the latter case, the creditor may proceed to enforcement after obtaining a certificate demonstrating that no timely appeal has been filed or by proving that the defendant acquiesced to the decision (Arts 504-505 CCP).

Furthermore, first instance decisions are provisionally enforceable unless the law or the decision itself provides otherwise (Art. 514 CCP).

Enforcement itself is subject to the procedural requirements laid out in Arts 502-508 CCP. In particular, the creditor must obtain a copy of the judgment including the enforcement formula (Art. 502 CCP) and must serve the judgment on the defendant and on any other person against whom enforcement is sought prior to the first enforcement measure (Art. 503 CCP). Service must in principle be carried out by a bailiff in accordance with Arts 675-682 CCP and must in particular indicate in a very visible manner the applicable time limits for opposition, appeal or appeal in cassation (where applicable), as well as the manner in which these remedies may be exercised (Art. 682 CCP).

No 655/2014 to the effect that an instrument obtained by a creditor *which is not enforceable* in the Member State of origin constitutes a ‘judgment’, ‘court settlement’ or ‘authentic instrument’ within the meaning of that provision would be liable to undermine the balance referred to in the previous paragraph. (...) In the light of the foregoing, the answer to the first question is that Article 4(10) of Regulation No 655/2014 must be interpreted as meaning that an order for payment, such as that at issue in the main proceedings, which is not enforceable, does not constitute an ‘authentic instrument’ within the meaning of that provision.”, §§41-45.



From a substantive point of view, judgments and other enforceable titles may only give rise to enforcement measures if they contain an obligation capable of being enforced, i.e. an enforceable title containing a liquid and payable claim (Art. L111-2 CCEP).

- **Types of authentic instruments and its enforceability under French law**

Art. 4(10) EAPO Regulation defines an “authentic instrument” as “a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose”.

In France, this definition covers authentic instruments drawn up by notaries that include an enforcement formula (Art. L111-3 4° CCEP) but does not extend to other kinds of instruments such as enforceable titles issued by bailiffs (Art. L111-3 5° CCEP) or out-of-court settlements and mediation agreements approved by the parties’ lawyers (Art. L111-3 7° CCEP).

Additionally, under French enforcement law, an enforceable authentic instrument may only give rise to enforcement measures if it contains an obligation capable of being enforced (Art. L111-2 CCEP).

An enforceable copy of the title is delivered to the parties directly by the notary who drew up the instrument (Art. 1435 CCP). If a party needs a second copy of the instrument, it must first file an *ex parte* request before the President of the Regional Court (Président du tribunal judiciaire)(Art. 1439 CCP).

In France, there is no specific procedure to suspend the enforceability of an authentic instrument. However, the party who wishes to avoid enforcement may challenge the validity of the authentic instrument before the court competent to rule on the merits or before the enforcement judge if the creditor has already started enforcement proceedings based on the authentic instrument.

- **Court settlements and its enforceability under French law**

Art. 4(9) EAPO Reg. defines a “court settlement” as a “settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings”. Furthermore, a court settlement must be enforceable in the Member State of origin to be eligible to apply for an EAPO.

In France, this definition covers out-of-court settlement agreements that have later been declared enforceable by a court (Art. L111-3 1° CCEP) and agreements resulting from in-court conciliation and signed by the judge and the parties (Art. L111-3 3° CCEP). These court settlements may give rise to enforcement measures if they contain an obligation capable of being enforced (Art. L111-2 CCEP).

Out-of-court settlements, including settlements resulting from alternative dispute resolution mechanisms other than arbitration, are declared enforceable following the rules set out in Arts 1565 to 1567 CCP (homologation). The application may be filed by one of the parties, and the judge shall decide on it without a hearing of the parties



unless it deems it necessary. If the application is granted, any interested party may then file for reconsideration before the same judge.

The judge's verification does not extend to the validity of the settlement but only to its compliance with public policy.

An appeal may be lodged against a decision refusing to approve the agreement. This appeal is lodged by declaration at the registry of the court of appeal. It is decided according to the procedure applicable to non-contentious matters.

In France, there are no specific procedures to suspend the enforceability of an enforceable settlement. However, the party wishing to avoid enforcement may either file an application for reconsideration against the decision homologating the settlement or challenge the validity of the settlement agreement itself before the court competent to rule on the merits or before the enforcement judge, if the creditor has already initiated enforcement proceedings based on the settlement.

II. Procedure to obtain a copy of judgments and authentic instruments

• Judgments

In France, Art. R123-5 of the Code of Judicial Organisation (hereinafter, "**CJO**") grants the authority to deliver authentic copies to the chief clerk (*directeur de greffe*) of the court that issued the judgment. Nevertheless, the chief clerk may delegate this authority to a director of the registry services of the same court (*directeur des services de greffe*) in accordance with Art. R. 123-7 CJO.

According to Art. 1435 of the Code of Civil Procedure (hereinafter, "**CCP**"), these officers are obliged to deliver, without fees, a copy of the documents to the parties themselves, their heirs or assignees. In case of enforceable decisions, each party has also the right to obtain a copy of the judgment bearing the execution formula (Art. 465(1) CCP).

The request can be submitted using a standard form accessible online⁷. The form can then be transmitted by post to the competent authority.

When the request concerns a judgment bearing the execution formula, a second copy can be delivered provided the applicant shows a legitimate reason for the request. If the application for a second copy is granted, this information must appear on the copy itself. Before commercial courts, the issuance of the second enforceable copy may be subject to a small fee (generally under 10 euros), which is collected by the court registry.

If the request for a second enforceable copy is denied, Art. 465(2) CCP provides for an *ex parte* remedy before the president of the court that issued the decision. The

⁷ See *Formulaire Cerfa No 11808*06*, available at <https://www.service-public.fr/simulateur/calcul/11808>. Use of the form is not mandatory.



procedure to be followed in this case is governed by Arts 493 to 498 CCP, as well as the special rules applicable to each court⁸.

Finally, it should also be mentioned that when a party has been assisted by a lawyer, a copy of the decision is systematically given to the lawyer and can be requested by the client.

- **Authentic instruments**

An enforceable copy of the title is delivered to the parties directly by the notary who drew up the instrument (Art. 1435 CCP). If a party needs a second copy of the instrument, it must first file an *ex parte* request before the President of the Regional Court (*Président du tribunal judiciaire*) (Art. 1439 CCP).

2. Jurisdiction to issue the EAPO *ante causam* or pending proceedings on the substance

Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, jurisdiction to issue a Preservation Order shall lie with the courts of the Member State which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of jurisdiction applicable (Art. 6(1) EAPO Reg.). Often such rules will be those set out in EU Regulations, thus domestic ones apply residually.

The French domestic rules on international jurisdiction are those contained in Arts 42 ff of the CCP. Subsidiarily, it would be possible to rely on Arts 14 and 15 of the French Civil Code, which contains two exorbitant fora in favor of French courts.⁹

⁸ See eg Arts. 812 ff (Regional Court – *tribunal judiciaire*); Arts. 874 ff (Commercial Court – *tribunal de commerce*); Arts. 958 ff (Court of Appeal – *cour d’appel*).

⁹ Exorbitant fora can be used to determine the jurisdiction to grant an EAPO: G. Cuniberti and S. Migliorini, *The European Account Preservation Order: A Commentary* (Cambridge 2018), 99; Denise Wiedemann, “Artikel 6 EU-KPVO Zuständigkeit” in Thomas Rauscher (ed.), *Europäisches Zivilprozess- und Kollisionsrecht* (Otto Schmidt 2022), para. 9.



3. Internal competence

Within the jurisdiction of the Member State as defined by Art. 6 EAPO Reg., *i.e.*:

- i. Ante causam > the Member State which have jurisdiction to rule on the substance of the matter
- ii. Pending proceedings on the substance > the Member State which have jurisdiction to rule on the substance of the matter
- iii. Where the creditor has already obtained a judgment or court settlement > the Member State in which the judgment was issued or the court settlement was approved or concluded
- iv. Where the creditor has already obtained an authentic instrument > the Member State in which that instrument was drawn up,

the internal competence shall be located according to national rules; such rules form part of the information to be provided by Member States under Art. 50 EAPO Reg.

The French legislator did not introduce a special provision to determine which is the competent judicial authority to grant the EAPO. In the absence of a specific provision, following Article L.213-6 of the French Code of Judicial Organisation (“CJO”) and L.511-3 CCEP, the competent authority that can issue EAPO is the enforcement judge (*juge de l’exécution*). The e-Justice portal specifies that it has to be the enforcement judge (*juge de l’exécution*) of the Regional Court (*Tribunal judiciaire*). Additionally, where the measure is requested before the initiation of the proceedings on the substance of the matter and aims at the preservation of a claim falling within the jurisdiction of the commercial court, the application may also be filed before the President of a Commercial Court (*président du Tribunal de Commerce*).

4. Application for a Preservation Order

- i. **Lodging.** The application and supporting documents may be submitted by any means of communication, including electronic, which are accepted under the procedural rules of the Member State in which the application is lodged (Art. 8(4) EAPO Reg.).

The EAPO request would be submitted by post or directly to the court clerks’ office of the competent court (Art. 756 CCP).

- ii. **Court fees.** The court fees in proceedings to obtain a EAPO shall not be higher than the fees for obtaining an equivalent national order or a remedy against such a national order (Art. 42 EAPO Reg.).



In France, creditors would not have to pay any fee when they apply for an EAPO before an enforcement judge. Commercial courts may charge small administrative fees. The fee table is published and regularly updated on the court's website.

5. Procedure for issuing a Preservation Order

- i. **Hearing of the creditor.** Where the court determines that, provided that this does not delay the proceedings unduly, an oral hearing of the creditor and, as the case may be, her/his witness(es) is necessary, the court shall hold the hearing without delay, also using videoconference or other communication technology, and shall issue its decision by the end of the fifth working day after the hearing has taken place (cf. Arts. 9(2) and 18(3) EAPO Reg.).

French legislation does not foresee whether creditors or witnesses can be heard in the context of an application for an EAPO.

- ii. **Taking of evidence.** The court shall take its decision by means of a written procedure on the basis of the information and evidence provided by the creditor in or with her/his application. If the court considers that the evidence provided is insufficient, it may, where national law so allows, request the creditor to provide additional documentary evidence (Art. 9(1) EAPO Reg.).

The court may, provided that this does not delay the proceedings unduly, also use any other appropriate method of taking evidence available under its national law (cf. Art. 9(2) EAPO Reg.).

According to Art. 494 CCP, the creditor should include a precise indication of the documents relied upon in their petition. Given the absence of any specific provision, the admissibility of such evidence is subject to the general principles laid out in Arts 9-11 and 132 ff of the CCP.

If the creditor wishes to obtain evidence that is not already in their custody before filing an application for an EAPO, he/she could do so by relying on the procedure set out in Art. 145 CCP, which provides that: "If there is a legitimate reason to preserve or establish, before any proceeding, the proof of facts on which the solution of a dispute may depend, legally admissible investigative measures may be ordered at the request of any interested party, by unilateral application or in the course of summary proceedings".



- iii. **Security to be provided by the creditor.** If the court requires security to be provided pursuant to Art. 12 EAPO Reg., it shall inform the creditor of the amount required and of the forms of security acceptable under the law of the Member State in which the court is located. It shall indicate to the creditor that it will issue the PO once security in accordance with those requirements has been provided (Art. 12(3) EAPO Reg.).

French law does not prescribe any particular form in which the security has to be provided. Besides a cash deposit, other forms might be accepted as bank guarantees or mortgages (Recital 18 EAPO Regulation). The rule on security applicable to provisional enforceable judgments might apply by analogy (Art. 514-5 CPC) French law does neither clarify whether it is possible or not to appeal the decision on the security. It should be noted that there is widespread opinion among scholars that the appeal under Article 21 of the EAPO can be used to contest the decision on the security.¹⁰

- iv. **Communication of the decision.** The decision on the application shall be brought to the notice of the creditor in accordance with the procedure provided for by the law of the Member State of origin for equivalent national orders (Art. 17(5) EAPO Reg.).

French law does not prescribe any particular form in the decision on the EAPO application is communicated to the creditor.

¹⁰ P. Peiteado Mariscal, "Article 12: Security to be provided to the creditor" in E. D'Alessandro and F. Gascón Inchausti (eds), *The European Account Preservation Order. A Commentary on Regulation (EU) No 655/2014* (Edward Elgar 2022), para. 12.21; C.F. Nordmeier and J. Schichmann, "Der Europäische Beschluss zur vorläufigen Kontenpfändung" (2017) RIW 407, 412; M. Trenker "Art. 12 EuKoPfVO" in H. Schumacher, B. Köllensperger and M. Trenker (eds), *Kommentar zur EU-Kontenpfändungsverordnung EuKoPfVO* (MANZ 2017), margin no. 19; D. Wiedemann, "Artikel 12 EU-KpfVO" in T. Rauscher (ed), *Europäisches Zivilprozess- und Kollisionsrecht, 5. Aufl* (Otto Schmidt 2021), para. 21



6. Initiation of proceedings on the substance of the matter

Where the creditor has applied for a EAPO before initiating proceedings on the substance of the matter, s/he shall initiate such proceedings and provide proof of such initiation to the court with which the application for the Preservation Order was lodged within 30 days of the date on which he lodged the application or within 14 days of the date of the issue of the Order, whichever date is the later (Art. 10(1) EAPO Reg.; see also Art. 10(3) for the definition of the initiation of proceedings).

In France, the proceedings on the merits would be considered initiated at the documents instituting the proceedings on the merits are received by bailiff (*commissaire de justice*) who would serve the documents to the debtor (*assignation*) (Arts 55 and 56 CPC)

7. Appeal against the refusal to issue the Preservation Order

- i. **Appeal.** The creditor shall have the right to appeal against any decision of the court rejecting, wholly or in part, her/his application for a PO. Such an appeal shall be lodged within 30 days of the date on which the decision was brought to the notice of the creditor. It shall be lodged with the court which the Member State concerned has communicated to the Commission. Where the application for the PO was rejected in whole, the appeal shall be dealt with in *ex parte* proceedings as provided for in Article 11 (Art. 21 EAPO Reg.).

In France, the appeal of the decision rejecting totally or partially an EAPO application would be decided by a Court of Appeals (*Cour d'Appels*) (Art. 496 CCP).¹¹

- ii. **New application.** The right to appeal against a refusal to issue the EAPO should be without prejudice to the possibility for the creditor to make a new application for a EAPO on the basis of new facts or new evidence (Whereas 22).

¹¹

https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1
accessed on 1 September 2022.



French law does not foresee a specific solution for creditors to make a new application for a EAPO on the basis of new facts or new evidence.

Obtaining account information

8. Request for the obtaining of account information

In the application for the EAPO, the creditor may request that the information authority of the Member State of enforcement obtain the information necessary to allow the bank or banks and the debtor's account or accounts to be identified. The conditions for the creditor's request are detailed under Art. 14 EAPO Reg.

In France, bailiffs (*commissaires de justice*) are the information authority.¹² Any bailiff in France can handle a request for information. Bailiffs obtain information about the debtors' bank accounts from the national registry on bank accounts, the FICOBA (*Fichier national des comptes bancaires et assimilés*) (Art. L151 A French Tax Procedures Handbook (*Livre des procédures fiscales*)).¹³ The use of the EAPO information mechanism in France requires the payment of a fee to the bailiff (Art. A444-43(151) Commercial Code (*Code de Commerce*)).

C. Means of communication: service and transmission of documents

1. Service on the debtor

When France is the Member State of origin and the debtor is domiciled in France, service shall be effected in accordance with the law of that same Member State (cf. Art. 28(2) EAPO Reg.). Also, when France is the Member State of origin and the debtor is domiciled in a third State, service shall be effected in accordance with the rules on international service applicable in the same Member State of origin (cf. Art. 28(2) and (4) EAPO Reg.).

Suppose France were both the Member State where the EAPO is granted and the Member State of the debtors' domicile. In such scenario, the EAPO's documents

¹² https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1 accessed on 1 September 2022.

¹³ On the FICOBA: <https://www.service-public.fr/particuliers/vosdroits/F2233> accessed on 1 September 2022.



would be served to the debtor by a bailiff (*commissaire de justice*). The creditor has to reach the bailiff; and request him/her to serve the documents to the debtor. It would have to be a territorially competent bailiff in the area of the debtors' domicile.¹⁴ The bailiff would serve the documents personally to the debtor (*signification*) (Art. 654 CCP). If the service in person were not possible in person, the documents could be delivered in the debtors' domicile (Art. 655 CCP).

When debtors are domiciled in a third State, in principle, it would be the Public Prosecutor's Office (Parquet) the authority responsible for sending the documents to the State of the debtors' domicile (Art. 684 CPC).

This rule is however set aside, "in those cases where an EU regulation or an international treaty authorizes the bailiff (*commissaire de justice*) or the registry to send this document directly to its addressee or to a competent authority of the State of destination" (Art. 684 CPC). One of this instruments is the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.¹⁵ In case the debtor were domiciled in Denmark, the documents would be served via the Service Regulation (Regulation No 2020/1784).¹⁶

Where the debtor is domiciled in a Member State other than France, the issuing court or the creditor, depending on who is responsible for initiating service in that Member State, shall, by the end of the third working day following the day of receipt of the declaration showing that amounts have been preserved, transmit the EAPO and the accompanying documents in accordance with Art. 29 EAPO Reg. to the competent authority of the Member State in which the debtor is domiciled (cf. Art. 28(2) EAPO Reg.).

In France, the service of the EAPO documents to a debtor domiciled in another Member State which is not the Member State of enforcement, would be done at the initiative of the creditor. The documents would be transmitted by a bailiff (*commissaire de justice*) (Art. 651 CPC).

¹⁴ See art 1(1) Decree No 2021-1625 of 10 December 2021.

¹⁵ According to the

¹⁶ Denmark decided to opt-out from EAPO Regulation (Recital 51 EAPO Regulation) but the Services Regulation is still applicable: Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, PUB/2021/28, OJ L 19, 21.1.2021, p. 1–1.



2. Transmission of documents

- i.* **Transmission.** Where the EAPO Reg. provides for transmission of documents in accordance with Art. 29(1), such transmission may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document transmitted and that all information contained in it is easily legible.

French law does not foresee a specific solution for the transmission of documents under Article 29 of the EAPO Regulation.

- ii.* **Receipt.** The court or authority that received documents in accordance with paragraph 1 of Art. 29 shall, by the end of the working day following the day of receipt, send to the authority, creditor or bank that transmitted the documents an acknowledgment of receipt, employing the swiftest possible means of transmission and using the standard forms (Art. 29(2) EAPO Reg.).

French law does not foresee a specific solution for the transmission of the acknowledgment of receipt under Article 29 of the EAPO Regulation.

D. Remedies

1. Revocation or termination of the Preservation Order for lack of initiation of proceedings

If the court has not received proof of the initiation of proceedings within the time period referred to in paragraph 1 of Art. 10 EAPO Reg., the EAPO shall be revoked or shall terminate and the parties shall be informed accordingly (Art. 10(2) EAPO Reg.).

French law does not provide a specific solution concerning the ex officio revocation by courts of *ante demadam* EAPO in cases where the proceedings on the merits are not initiated within the deadlines set by Article 10 of the EAPO Regulation. In practice, French courts could monitor the initiation of those proceedings within the deadlines. In case the proceedings on the merits were not initiated, and upon asking the creditor, the French court which grants the EAPO would proceed to the revocation of the EAPO. If the EAPO were not revoked ex officio by the court, debtors could apply for



withdrawal the EAPO before the enforcement judge (*juge de l'exécution*), which granted the EAPO after they were notified about the EAPO (Art. 33(1) EAPO Regulation).¹⁷

2. Revocation or modification of the Preservation Order

- i. **Application of the debtor.** Upon application by the debtor to the competent court of the Member State of origin, the Preservation Order shall be revoked or, where applicable, modified on the grounds listed in Art. 33(1) EAPO Reg.

The debtors' request to revoke the EAPO would be submitted before the enforcement judge (*juge de l'exécution*) (Art. R512-3 CCEP).¹⁸

- ii. **Court decision on its own motion.** The court that issued the EAPO may also, where the law of the Member State of origin so permits, of its own motion modify or revoke the Order due to changed circumstances (Art. 35(2) EAPO Reg.).

French law does not clarify whether the court which granted the EAPO can revoke by its own motion the EAPO.

- iii. **Joint application.** The debtor or the creditor may apply to the court that issued the EAPO for a modification or a revocation of the Order on the ground that the circumstances on the basis of which the Order was issued have changed (Art. 35(1) EAPO Reg.). The debtor and the creditor may also, on the ground that they have agreed to settle the claim, apply jointly to the court that issued the EAPO for revocation or modification of the Order (Art. 35(3) EAPO Reg.).

¹⁷ In this case, claimants could request the revocation of the EAP It would fit on the ground that states that "the conditions or requirements set out in this Regulation were not met" to grant the EAPO (Article 33(1)(a) EAPO Regulation). In this sense: M. Trenker "Art. 10 EuKoPfVO" in H. Schumacher, B. Köllensperger and M. Trenker (eds), *Kommentar zur EU-Kontenpfändungsverordnung EuKoPfVO* (MANZ 2017), margin no. 20.

¹⁸ <https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1> accessed on 1 September 2022.



The joint application by the creditor and the debtor for the revocation or modification of the EAPO shall be filed before the enforcement judge (*juge de l'exécution*) which granted the EAPO (Art. R512-3 CCEP).¹⁹

3. Review of the decision concerning security

Upon application by the debtor to the competent court of the Member State of origin, the decision concerning the security pursuant to Art. 12 EAPO Reg. (*see §(I)(B)(5)(iii) above*) shall be reviewed on the ground that the conditions or requirements of that Article were not met. The court may require the creditor to provide security or additional security, under penalty of revocation or modification of the EAPO (cf. Art. 33(2) EAPO Reg.).

The request to review the decision on the security would be submitted before the enforcement judge (*juge de l'exécution*) who granted the EAPO (Art. R512-3 CCEP). The procedure before the enforcement judge (*juge de l'exécution*) would be carried out adversarially following the ordinary rules set out in Arts L121-1 ff and R121-1 ff CCEP. The representation of the parties by a lawyer is mandatory any time the dispute exceeds 10.000 euros in value (Arts L121-4 and R121-6 CCEP).

4. Right to provide security in lieu of preservation

Upon application by the debtor the court that issued the EAPO may order the release of the funds preserved if the debtor provides to that court security in the amount of the Order, or an alternative assurance in a form acceptable under the law of France and of a value at least equivalent to that amount (Art. 38(1)(a) EAPO Reg.).

If France were the Member State of origin of the EAPO, the debtor could apply for the alternative security before the enforcement judge (*juge de l'exécution*) which granted the EAPO (Art. L512-1 CPCE). French law does not prescribe any specific form in which the alternative security has to be provided. A deposit in cash would be accepted by the court. Other security forms, such as bank guarantees (Art. L512-1(3) CCEP);

¹⁹

https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1
accessed on 1 September 2022.



or mortgages (Recital 18 EAPO Regulation), might be accepted too. The creditor would be heard before the alternative security is accepted.²⁰

5. Rights of third parties

The right of a third party *to contest a EAPO* shall be governed by the law of the Member State of origin (Art. 39(1) EAPO Reg.).

Third parties could contest the EAPO before the enforcement judge (*juge de l'exécution*) which granted the EAPO (Art. R512-3 CCEP). The procedure before the enforcement judge (*juge de l'exécution*) would be carried out adversarially following the ordinary rules set out in Arts L121-1 ff and R121-1 ff CCEP.

²⁰ It should be noted that there are some authors who consider that the procedure to provide the alternative security shall take place *inaudita altera parte*: F. Mohr, *Die vorläufige Kontenpfändung. EuKoPfVO* (LexisNexis 2014), margin no. 443, M. Mann-Kommenda, "Artikle 38 EuKoPfVO" in A. Geroldinger and M. Neumayr (eds.), *IZVR. Praxiskommentar Internationales Zivilverfahrensrecht* (2021), margin no. 7; C. Senés Motilla, *La orden europea de retención de cuentas: aplicación en derecho español del Reglamento (UE) Núm. 655/2014, de 15 de mayo de 2014* (Aranzadi 2015), 253.



II. Incoming

When France is the Member State of enforcement

A. Enforcement of the Preservation Order

1. Procedure for the enforcement and for the implementation of the Preservation Order

As a general rule, the EAPO shall be enforced in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State of enforcement (Art. 23(1) EAPO Reg.).

In the France the EAPOs are enforced by bailiffs (*commissaires de justice*). Art. 1(1) of Decree No 2021-1625 of 10 December 2021 relating to the competences of judicial commissioners henceforth sets out the rule of the territorial competence of French judicial commissioners in the following terms: “Judicial commissioners may perform the acts provided for in 1°, 2°, 3°, 5°, 6°, 7°, 8° and 9° of I of Article 1 of the aforementioned Ordinance of June 2, 2016 [among which are protective and enforcement measures] within the jurisdiction of the court of appeal of the seat of their office and, where applicable, of the annexed office(s) attached to the office.”

According to the EAPO Reg., a bank to which a Preservation Order is addressed shall implement it without delay following receipt of the Order or, where the law of the Member State of enforcement so provides, of a corresponding instruction to implement the Order (Art. 24(1) EAPO Reg.).

In France, the bank transfers the attached funds by the EAPO to a special account held by the bank for accounting reasons.²¹ This account is intended to isolate the attached funds while allowing the debtor to access the remaining of their deposit.

²¹ G. Malfre, “Les règles spécifiques à chaque saisie conservatoire” in S. Guinchard, T. Moussa; N. Cayrol; E. De Leiris (eds.) *Droit et pratique des voies d'exécution 2022/23* (Daloz 2022), no 0621.44.



2. Limitations on the preservation

- i. **Accounts immune from seizure.** The EAPO Reg. does not apply to bank accounts which are immune from seizure under the law of the Member State in which the account is maintained (Art. 2(3) EAPO Reg.).

Under French law, bank accounts immune from seizure are those accounts “used or intended to be used in the exercise of the functions of the diplomatic mission of foreign States or their consular posts, their special missions or their missions to international organizations only in the event of an express and special waiver by the States concerned” (Art L111-1-3 CCEP). Bank accounts held by foreign central banks are neither seizable (Art L153-1 CCEP).²²

- ii. **Preservation of joint and nominee accounts.** Funds held in accounts which, according to the bank’s records, are not exclusively held by the debtor or are held by a third party on behalf of the debtor or by the debtor on behalf of a third party, may be preserved under the EAPO Reg. only to the extent to which they may be subject to preservation under the law of the Member State of enforcement (Art. 30 EAPO Reg.).

According to the information available in the e-Justice portal, under French law, joint-bank accounts can be attached.²³ All the holders of the accounts have to be informed about the attachment.²⁴ The notion of nominee accounts is unknown under French law.²⁵ If the debtor held on behalf of a third party a bank account, based on the general principle of pledge (*principe du droit de gage général*) the funds in those accounts

²² In this regard it should be noted that the EAPO Regulation already excludes the use of the EAPO against “bank accounts held by or with central banks when acting in their capacity as monetary authorities” (Art. 2(4) EAPO Regulation).

²³ https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1 accessed on 1 September 2022.

²⁴ https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1 accessed on 1 September 2022.

²⁵ https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1 accessed on 1 September 2022.



which do not belong to the debtor personally or which have been entrusted to him/her could not be attached.²⁶

- iii. **Amounts exempt from preservation.** Amounts that are exempt from seizure under the law of the Member State of enforcement shall be exempt from preservation under the EAPO Reg. Where, under the law of the Member State of enforcement, the amounts referred to in paragraph 1 of Art. 31 EAPO Reg. are exempted from seizure without any request from the debtor, the body responsible for exempting such amounts in that Member State shall, of its own motion, exempt the relevant amounts from preservation.

Following Art. L.162-2 CCEP, if the EAPO were granted against a natural person, the bank would have to leave unseized, “an amount equivalent to the basic minimum income allowance (*RSA socle*), which is the flat-rate sum for a single beneficiary referred to in Article L. 262-2 of the Family and Social Action Code (*Code de l’action sociale et des familles*)”.²⁷

Request of the debtor. Where, under the law of the Member State of enforcement, the amounts referred to in paragraph 1 of Art. 31 EAPO Reg. are exempted from seizure at the request of the debtor, such amounts shall be exempted from preservation upon application by the debtor as provided for by point (a) of Art. 34(1) EAPO Reg.

Request of the creditor. The creditor may apply to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for modification of the enforcement of the PO, consisting of an adjustment to the exemption applied in that Member State pursuant to Art. 31 EAPO Reg., on the ground that other exemptions have already been applied in a sufficiently high amount in relation to one or several accounts maintained in one or more other Member States and that an adjustment is therefore appropriate (Art. 35(4) EAPO Reg.).

²⁶

https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1
accessed on 1 September 2022.

²⁷

https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1
accessed on 1 September 2022.



3. Ranking of the Preservation Order

The EAPO shall have the same rank, if any, as an equivalent national order in the Member State of enforcement (Art. 32 EAPO Reg.).

The EAPO would have priority over other preservation orders which are enforced after the EAPO. In the same manner, preservation orders that precede the EAPO would have priority over the EAPO. The EAPO were enforced on the same day along with other attachment orders, “the amounts to be preserved would be distributed proportionally” (Cour de Cassation, Cour de cassation saisie pour avis, du 24 mai 1996, 09-60.004).²⁸ The EAPO would give creditors a pre-emptive right over other creditors without an attachment order (Art. L523-1 CCEP).

4. Costs incurred by the banks

A bank shall be entitled to seek payment or reimbursement from the creditor or the debtor of the costs incurred in implementing a EAPO only where, under the law of the Member State of enforcement, the bank is entitled to such payment or reimbursement in relation to equivalent national orders.

French law does not expressly address whether banks can charge fees for the EAPO.²⁹ Nonetheless, following Art. D312-1-1 of the French Monetary and Financial Code (*Code monétaire et financier*), banks can charge fees for implementing garnishment orders. Banks have to inform their customers about these fees (Art. D312-1-2 French Monetary and Financial Code (*Code monétaire et financier*)). There is no fixed-amount fee.

B. Means of communication: service and transmission of documents

1. Service on the debtor

Where the debtor is domiciled in France that is not the Member State of origin, the competent authority that received the EAPO and the accompanying documents shall, without delay, take the necessary steps to have service effected on the debtor in

²⁸ <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0655>> accessed on 1 September 2022.

²⁹ <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0655>> accessed on 1 September 2022.



accordance with the law of France (Art. 28(3)) ⁽³⁰⁾. Also, where the debtor is domiciled in France and it is the only Member State of enforcement, the competent authority that received the EAPO and the accompanying documents shall initiate the service of such documents by the end of the third working day following the day of receipt or issue of the declaration showing that amounts have been preserved.

If France were just the Member State of the enforcement, and the debtor's domicile were also in France, the EAPO would be served to the debtor by a French bailiff (*commissaire de justice*) (Art. 651 CCP). This is also how the domestic attachment order (*saisie conservatoire*) is served to the debtors (Art. R523-3 CCEP).

2. Transmission of documents

- i. **Transmission.** Where the EAPO Reg. provides for transmission of documents in accordance with Art. 29 EAPO Reg., such transmission may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document transmitted and that all information contained in it is easily legible.

French legislation does not foresee any specific means for transmitting documents under Article 29 of the EAPO Regulation.

- ii. **Receipt.** The court or authority that received documents in accordance with paragraph 1 of Art. 29 EAPO Reg. shall, by the end of the working day following the day of receipt, send to the authority, creditor or bank that transmitted the documents an acknowledgment of receipt, employing the swiftest possible means of transmission and using the standard forms.

French legislation does not establish any specific means for transmitting the acknowledgment of receipt of the documents by French authorities under Article 29(1) of the EAPO Regulation.

³⁰ Please consider that in this case the Member State in which the debtor is domiciled need not be the Member State of enforcement.



C. Remedies

1. Revocation or termination of the Preservation Order for lack of initiation of proceedings

If the court has not received proof of the initiation of proceedings within the time period referred to in paragraph 1 of Art. 10 EAPO Reg., the PO shall be revoked or shall terminate and the parties shall be informed accordingly (Art. 10(2) EAPO Reg.). Where the court that issued the Order is located in the Member State of enforcement, the revocation or termination of the Order in that Member State shall be done in accordance with the law of that Member State (Art. 10(2) second indent EAPO Reg.).

French law does not provide a specific solution concerning the *ex officio* revocation by courts of *ante demadam* EAPO in cases where the proceedings on the merits are not initiated within the deadlines set by Article 10 of the EAPO Regulation. In practice, French courts could monitor the initiation of those proceedings within the deadlines. In case the proceedings on the merits were not initiated, and upon asking the creditor, the French court which grants the EAPO would proceed to the revocation of the EAPO. Alternatively, the debtor would have to apply for the lifting of the EAPO before the enforcement judge after they receive the notification of the EAPO.³¹ In this case, Articles R512-1 and R512-1 CCEP would apply by analogy.

2. Over-preservation of funds

- i. **Debtor.** Any funds held in the account or accounts indicated in the Order or held by the debtor with the bank indicated in the Order which exceed the amount specified in the Preservation Order shall remain unaffected by the implementation of the Order (cf. Art. 24(5) EAPO Reg.).

In France, the debtor would request the release of the funds attached in excess before enforcement judge (*juge de l'exécution*) of the place where the measure was enforced (Art. R512-3 CCEP).

- ii. **Creditor.** By the end of the third working day following receipt of any declaration pursuant to Art. 25 EAPO Reg. showing over-preservation of

³¹ It should be noted this could be considered a ground to request the revocation of the EAPO under Article 33(1)(a): M. Trenker "Art. 10 EuKoPfVO" in H. Schumacher, B. Köllensperger and M. Trenker (eds), *Kommentar zur EU-Kontenpfändungsverordnung EuKoPfVO* (MANZ 2017), margin no. 20.



funds, the creditor shall submit a request for the release to the competent authority of the Member State of enforcement in which the over-preservation has occurred (Art. 27(2) EAPO Reg.).

According to the e-Justice portal, the competent authority to order the release of the funds attached in excess is the bailiff (*commissaire de justice*).³² In case bailiffs had any difficulty in the course of their operations, they could request the assistance from an enforcement judge (*juge de l'exécution*) (Art. R151-1 CCEP).

3. Limitation or termination of the enforcement of the Preservation Order

- i.* **Application of the debtor.** Upon application by the debtor to the competent court or, where national law so provides, to the competent enforcement authority in the Member State of enforcement, the enforcement of the EAPO in that Member State shall be limited or terminated on the grounds listed in Art. 34(1) EAPO Reg. or terminated if it is manifestly contrary to the public policy (*ordre public*) of the Member State of enforcement (Art. 34(2) EAPO Reg.).

If France were the Member State of enforcement, the debtor could request the termination or limitation of the EAPO before enforcement judge (*juge de l'exécution*) of the Regional Court (*Tribunal judiciaire*).³³

- ii.* **Joint application.** The debtor and the creditor may, on the ground that they have agreed to settle the claim, apply jointly to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for termination or limitation of the enforcement of the Order (Art. 35(3) EAPO Reg.).

³²

https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1
accessed on 1 September 2021.

³³

https://e-justice.europa.eu/379/EN/european_account_preservation_order?FRANCE&member=1
accessed on 1 September 2021.



In France, the creditor and the debtor can jointly apply for the termination or limitation of the enforcement before enforcement judge (*juge de l'exécution*) of the place where the measure was enforced (Art. R512-3 CCEP).

4. Adjustment to the exemption of amounts

The creditor may apply to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for modification of the enforcement of the EAPO, consisting of an adjustment to the exemption applied in that Member State pursuant to Art. 31 EAPO Reg., on the ground that other exemptions have already been applied in a sufficiently high amount in relation to one or several accounts maintained in one or more other Member States and that an adjustment is therefore appropriate (Art. 35(4) EAPO Reg.).

If France were the Member State of enforcement, the creditors' request to adjust the funds attached by the EAPO would have to be requested before enforcement judge (*juge de l'exécution*) of the place where the measure was enforced (Art. R512-3 CCEP).

5. Right to provide security in lieu of preservation

Termination of enforcement ordered in the Member State addressed.

Upon application by the debtor the competent court or, where national law so provides, the competent enforcement authority of the Member State of enforcement may terminate the enforcement of the EAPO in the Member State of enforcement if the debtor provides to that court or authority security in the amount preserved in that Member State, or an alternative assurance in a form acceptable under the law of the Member State in which the court is located and of a value at least equivalent to that amount (Art. 38(1)(b) EAPO Reg.). The provision of the security in lieu of preservation shall be brought to the notice of the creditor in accordance with national law (Art. 38(2) EAPO Reg.).

If France were the Member State of enforcement, the request to provide an alternative security would be submitted before the enforcement judge (*juge de l'exécution*) competent in the area where the EAPO was enforced. French law does not prescribe any specific form in which the alternative security has to be provided. It can be provided in the form of a cash deposit (Recital 18 EAPO Regulation. Other forms of



securities, such as bank guarantees (Art. L512-1(3) CCEP); and mortgages might be also accepted (Recital 18 EAPO Regulation).

The creditor would be heard before the alternative security is accepted.³⁴

- i. **Release of funds ordered in the Member State of origin.** In the event that the court that issued the EAPO ordered the release of the funds preserved upon security provided by the debtor (Art. 38(1)(a) EAPO Reg.) (see §(I)(D)(4) supra)

France does not foresee any specific procedure to transfer to the bank the order to release the funds. According to Art. 38 of the EAPO Regulation, the release of the funds has to be adjusted to Arts 23 and 24 of the EAPO Regulation. Art. 23 establish the procedure of enforcement. Since in France, the bailiff (*commissaire de justice*), is in charge of enforcing the EAPO and transmitting the EAPO to the bank, then it would also be the bailiff the responsible authority for serving the order of release of the funds to the bank. It would be up to the debtor to reach the bailiff, who would send the order to release the funds to the bank.

6. Rights of third parties

The right of a third party *to contest the enforcement of a EAPO* shall be governed by the law of the Member State of enforcement (Art. 39(2) EAPO Reg.).

Based on Article R512-3 CCEP, third parties could challenge the enforcement of the EAPO in France before the territorially competent enforcement judge (*juge de l'exécution*) of the Regional Court (*Tribunal judiciaire*) where the EAPO was enforced.

The procedure before the enforcement judge would be carried out adversarially following the ordinary rules set out in Articles L121-1 ff and R121-1 ff CCEP.

³⁴ See footnote no. 23.