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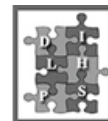
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EFFORTS Practice Guide for the European Account Preservation Order (Reg. (EU) No 655/2014) – Luxembourg

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I. Outgoing

When Luxembourg 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 Luxembourg, the alternative domestic attachment order to the EAPO is the *saisie-arrêt*.¹ The provisions about the *saisie-arrêt* can be found in Arts 693 to 718 of the

¹ In the government's proposal of the second Luxembourgish act on the EAPO Regulation, the *saisie-arrêt* was expressly acknowledged as the alternative domestic attachment order to the EAPO: *Projet de loi relative à la conversion de l'ordonnance européenne de saisie conservatoire*



Luxembourgish Code of Civil Procedure (hereinafter “NCPC”). The *saisie-arrêt* permits the temporary attachment of the debtors’ bank accounts as well as the subsequent garnishment of the funds from those accounts. It has two different phases: one provisional phase and one enforcement phase.² During the provisional phase, the funds in debtors’ bank accounts become, as the name of this phase indicates, provisionally attached. At the enforcement stage, creditors can garnish the attached funds from the bank accounts.

The conditions to obtain a *saisie-arrêt* vary depending on whether the creditor has or not an enforceable title by the time of the application. If the creditor does not already have an enforceable title, it would require that a court authorises the attachment of the debtors’ bank accounts (Art. 694 NCPC). The court would examine *prima facie* the existence of a claim (*une créance certaine*).³ If the court authorises the attachment, the *saisie-arrêt* would be served to the bank through a bailiff (*huissier*). In case creditors already have an enforceable title by the time of the application for the *saisie-arrêt*, they can directly request the bailiff (*huissier*) to send the attachment order to the bank. The debtor is only informed about the *saisie-arrêt* in the subsequent eight days after attachment of the accounts (*dénonciation de la saisie-arrêt*) (Art. 699 NCPC). The debtor is also given the opportunity to contest the *saisie-arrêt* during an adversarial procedure (*assigner en validité*). Upon hearing both parties, the court would either confirm or withdraw *saisie-arrêt*. If *saisie-arrêt* is confirmed (jugement de validation), the bank will have to disclose the funds attached by the *saisie-arrêt* in the debtors’ bank accounts (Art. 709 NCPC). Afterward, creditors can garnish the funds from the bank accounts provisionally attached by the *saisie-arrêt*.⁴

There are five major differences between the *saisie-arrêt* and the EAPO procedures:

des comptes bancaires (Règlement (UE) N° 655/2014) en mesure nationale d'exécution et portant modification du Nouveau Code de procédure civile, p. 3. For a detailed overview on the *saisie-arrêt*, see: F. Kremer and C. Mara-Marhuenda, “Le banquier face à la saisie-arrêt civile de droit commun (mise à jour) ” in ALJB, *Droit bancaire et financier au Luxembourg, volume II* (Larcier – Anthemis, 2014), 1147 – 1241.

² Kremer and Mara-Marhuenda (fn 1), 1152 – 1153.

³ T. Hoscheit and P. Kinsch, *Réponse des rapporteurs luxembourgeois au questionnaire sur la saisie sur comptes bancaires (Etude JAI A3/02/2002)* (2003), at 2, available at: <<http://www2.ipr.uni-heidelberg.de/studie/National%20Reports/Luxemburg/Report%20Luxemburg%20Saisie.pdf>> accessed on 1 September 2022.

⁴ Kremer and Mara-Marhuenda (fn 1), 1153.



- The prerequisites to obtaining a *saisie-arrêt* are more lenient than those to obtain an EAPO.⁵ Under the EAPO Regulation, all creditors are required to show that “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 not a prerequisite to access to the *saisie-arrêt*. Furthermore, in order to obtain an EAPO, creditors can be required to provide a security (Art. 12 EAPO Regulation). The security is neither a prerequisite of the *saisie-arrêt*.
- The *saisie-arrêt* lacks a specific mechanism to search for the debtors’ bank accounts.⁶ If creditors ignore which banks hold the accounts of the debtor, the *saisie-arrêt* would have to be sent to all the banks in which the debtor is suspected to have accounts.⁷ The more the banks the *saisie-arrêt* is sent to, the greater the chances of succeeding in finding the debtors’ accounts. In the EAPO Regulation, such a “fishing expedition” would not be necessary. Creditors who have already obtained a title, enforceable or not, can request the investigation of the debtors’ bank accounts (Art. 14(1) EAPO Regulation). There is a significant cost-efficiency different between the EAPO and the *saisie-arrêt* concerning the search for the debtors’ bank accounts. Creditors do not have to pay any fee for obtaining information about the debtors’ bank accounts through the EAPO procedure in Luxembourg. Conversely, the more banks the *saisie-arrêt* is served to, the higher the fee that the creditor would have to pay to the Luxembourgish bailiff (*huissier*) in charge of serving the *saisie-arrêt*.
- The *saisie-arrêt* attaches all the funds in the debtors’ bank accounts.⁸ Nonetheless, the debtor can request to limit the amount of the funds attached (*demande de cantonnement*) (Art. NCPC). In the EAPO, banks can freeze only up to the amount indicated in the EAPO (Art. 24(2) EAPO Regulation). If funds beyond that amount were attached, the creditor would have to request the release of those funds (Art. 25 EAPO Regulation). Otherwise, the creditor would be liable for the damages that the EAPO might cause to the debtor (Art. 13(2)(b) EAPO Regulation). The debtor can

⁵ Carlos Santaló Goris and Veerle Van Den Eeckhout, “Luxembourg” in Thalia Kruger and Jan von Hein (eds.), *Informed Choices in Cross-Border Enforcement* (Intersentia 2021), 295 – 296.

⁶ Santaló Goris and Van Den Eeckhout (fn 5), 296.

⁷ Santaló Goris and Van Den Eeckhout (fn 5), 296 – 297.

⁸ Kremer and Mara-Marhuenda (fn 5), 1175.



also request the release of those funds in the Member State of enforcement (Art. 34(1)(a) EAPO Regulation).

- In the EAPO, once bank freezes the funds in the debtors' accounts, it will issue a declaration indicating the amount of the funds that have been effectively attached (Art. 25 EAPO Regulation). Conversely, in the *saisie-arrêt* banks do not issue any declaration upon the attachment of the funds.⁹ The bank only discloses the information about the debtors' funds (Arts 704 to 709 NCPC), once the *saisie-arrêt* is validated by a court (Art 703 NCPC). Therefore, it could take a while between the attachment of the debtors' funds and the moment the creditor learns if any funds have been attached.
- The EAPO only allows the provisional attachment of the debtors' bank accounts, while the *saisie-arrêt* permits the provisional attachment and the garnishment of the funds attached. Nonetheless, it should be noted that the Luxembourgish legislator introduced a special proceeding that allows creditors who have an enforceable title to convert the EAPO into a garnishment order (*saisie exécutoire*) (Art. 718-1 NCPC).¹⁰

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:

- before s/he initiates proceedings against the debtor on the substance of the matter (Art. 5(a) EAPO Reg.);
- at any stage during such proceedings (Art. 5(a) EAPO Reg.); or

⁹ Santaló Goris and Van Den Eeckhout (fn 5), 297.

¹⁰ Act of 18 July 2018 supplementing the New Code of Civil Procedure with a view to the introduction of Title VIIbis relating to the conversion of the European Account Preservation Order issued on the basis of Regulation (EU) No. 655/2014 in enforceable seizure of bank accounts (*Loi du 18 juillet 2018 complétant le Nouveau Code de procédure civile en vue de l'introduction d'un titre VIIbis relatif à la conversion de l'ordonnance européenne de saisie conservatoire des comptes bancaires émise sur base du règlement (UE) N° 655/2014 en saisie exécutoire des comptes bancaires*). For a translation in English of Article 718-1 of the NCPC: V. Van Den Eeckhout, Luxembourgish report on national implementing rules (2021), 43 – 45, available at: <<https://efforts.unimi.it/wp-content/uploads/sites/8/2021/07/D2.8-Collection-of-Luxembourg-implementing-rules.pdf>> accessed on 1 September 2022.



- 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* ⁽¹¹⁾, an "enforceable title".

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.).

- Enforceability of a judgment

Under Luxembourgish civil procedure law, two conditions must be fulfilled so that a judgment becomes enforceable:¹² First, the judgment must include an enforcement clause according to Art. 677 NCPC. This requirement is also included in the constitution of Luxembourg. Art. 49 of the Luxembourgish Constitution stipulates that orders and judgments are executed in the name of the Grand Duke. The court clerk (*greffier*) of the jurisdiction in which the judgment was rendered issues the enforcement clause on application of the party.

Second, the judgment needs to be duly served or notified. Art. 155 et seq. stipulate the conditions which must be observed during the service. When respondent is

¹¹ 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 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.

¹² T. Hoscheit, *Le droit judiciaire privé* (Editions Paul Bauler 2019), para. 1513.



represented by a lawyer during the proceeding, Art. 255 NCPC stipulates that the judgment may only be enforced if it is served the lawyer before it is served the party.

- Enforceability of an authentic instrument

A notarial act is considered enforceable when it contains an enforcement clause.¹³

- Copy of a judgment

Chief court clerks (*greffiers en chef*) of the courts are responsible for making copies of the judgments.¹⁴

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.

Luxembourg does not have specific rules to establish the international jurisdiction of their courts. The general rules of the NCPC to determine which is the territorially competent court in Luxembourg serve also to determine international jurisdiction.¹⁵ These rules can be found in Arts 27 to 46 of the NCPC. Besides two provisions, the Luxembourgish Civil Code (Code Civil hereinafter “CC”) also contains two specific exorbitant forums which could also be employed to determine the jurisdiction of the EAPO.¹⁶ Art. 14 of the CC establishes that “a foreign national, even if not residing in Luxembourg, may be summoned before the Luxembourg courts for the performance

¹³ Art. 37 of the Act of 7 December 1976 concerning the organization of the notaries (*Loi du 9 décembre 1976 relative à l'organisation du notariat*).

¹⁴ Art. 79 of the Code of Judicial Organisation (*Code de l'organisation judiciaire*).

¹⁵ J. C. Wiwinius, *Le droit international privé au Grand-Duché de Luxembourg* (Editions Paul Bauler 2011), 234. In this sense: Tribunal d'arrondissement de Luxembourg, jugement n° 43456 du 23 janvier 1992.

¹⁶ Unlike in the Brussels I bis Regulation, exorbitant jurisdictional forums can be used to establish the jurisdiction to : G. Cuniberti and S. Migliorini, *The European Account Preservation Order: A Commentary* (Cambridge 2018), 99; D. Wiedemann, “Artikel 6 EU-KPVO Zuständigkeit” in T. Rauscher (ed.), *Europäisches Zivilprozess- und Kollisionsrecht* (Otto Schmidt 2022), para. 9.



of the obligations contracted by him/her in Luxembourg with a Luxembourgish national; he/she may be brought before the Luxembourg courts for the obligations contracted by him in a foreign country towards Luxembourgers”. Similarly, Art. 15 of the CC states that a Luxembourgish national “may be brought before a Luxembourg court for obligations contracted by him/her in a foreign country, even with a foreigner”.

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.

In Luxembourg, the EAPO can be issued by Justices of Peace (*Juges de paix*) or District Courts (*Tribunaux d'arrondissement*). For claims up to 15.000 euros, the EAPO application has to be submitted before a Justice of the Peace (*Juge de paix*) (Art. 685-5(2) NCPC). There are three Justices of the Peace (*Juges de paix*) in Luxembourg:

- Justice of the Peace of Diekirch (*Justice de paix de Diekirch*).¹⁷
- Justice of the Peace of Esch-sur-Alzette (*Justice de paix d'Esch-sur-Alzette*).¹⁸

¹⁷ Information about the Justice of the Peace of Diekirch (*Justice de paix de Diekirch*) can be found in the following site: <<https://annuaire.public.lu/index.php?idMin=210>> accessed on 1 September 2022.

¹⁸ Information about the Justice of the Peace of Esch-sur-Alzette (*Justice de paix d'Esch-sur-Alzette*) can be found in the following site: <<https://annuaire.public.lu/index.php?idMin=208>> accessed on 1 September 2022.



- Justice of the Peace of Luxembourg (*Justice de paix de Luxembourg*).¹⁹

District Courts (*Tribunaux d'arrondissement*) are competent to issue EAPOs in claims above 15.000 euros (Art. 685-5(2) NCPC). There are two District Courts (*Tribunaux d'arrondissement*) in Luxembourg:

- District Court of Diekirch (*Tribunal d'arrondissement de Diekirch*).²⁰
- District Court of Luxembourg (Tribunal d'arrondissement de Luxembourg).²¹

The territorially competent court is determined according to the general rules on territorial jurisdiction contained in Arts 27 to 46 of the NCPC (Art. 685-5(7) NCPC).

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 application can be filed before the court's registry or it could be sent by regular mail to the court.²² By August 2022, filing an online EAPO request was not yet possible.

¹⁹ Information about the Justice of the Peace of Luxembourg (*Justice de paix de Luxembourg*) can be found in the following site: <<https://annuaire.public.lu/index.php?idMin=207>> accessed on 1 September 2022.

²⁰ Information details about the District Court of Diekirch (*Tribunal d'arrondissement de Diekirch*) can be found on the following site: <https://guichet.public.lu/en/organismes/organismes_citoyens/tribunal-arrondissement.html> accessed on 1 September 2022.

²¹ Information details about the District Court of Luxembourg (*Tribunal d'arrondissement de Luxembourg*) can be found in the following site: <https://guichet.public.lu/en/organismes/organismes_citoyens/tribunal-arrondissement.html> accessed on 1 September 2022.

²² According to the e-justice portal, these methods are also accepted for the request of a ESCP: <https://e-justice.europa.eu/354/EN/small_claims?LUXEMBOURG&member=1> accessed on 1 September 2022.



- 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 Luxembourg, creditors do not have to pay any court fees when they apply for an EAPO.²³ Nonetheless, there are other kinds of costs that creditors might have to afford. Such costs are, for instance, the lawyers' fees;²⁴ the translation of the documents if necessary; or the service of documents.

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.).

The Luxembourgish implementing legislation of the EAPO Regulation does not address the creditors' hearing online.

- 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.).

²³ G. Cuniberti and S. Migliorini, *L'ordonnance européenne de saisie conservatoire des comptes bancaires* (Legitech 2021), 357. The section of the e-Justice portal about the application of the EAPO Regulation in Luxembourg does not contain any information regarding the court fees in the EAPO procedure: < https://e-justice.europa.eu/379/EN/european_account_preservation_order?LUXEMBOURG&clang=fr > accessed on 1 September 2022.

²⁴ Cuniberti and Migliorini (fn 24), 357.



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.). How does such taking of evidence occur and which is the applicable procedure?

In Luxembourg, the EAPO implementing legislation does not address which means of evidence creditors can use to prove the *periculum in mora* and the *fumus boni iuris* of Art. 7. In the absence of specific rules on the evidence, the general regime for the evidence in the civil procedure would apply instead (Arts 1314 to 1369 CC). This means that in Luxembourg, hearing witnesses or the creditor is among the means of evidence that can be employed as evidence.

- 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.).

Luxembourgish law does not prescribe any specific form in which Article 12's security has to be provided. If creditors want to provide the security in cash, they must make a deposit in the Luxembourgish *Caisse de consignation*.²⁵ The Preamble of the EAPO Regulation suggests that other security forms such as bank guarantees or mortgages could be used too (Recital 18 EAPO Regulation). Luxembourgish courts might also accept the security in these other forms. The creditor can appeal the decision on the security through the general appeal under the Luxembourgish civil procedural system (Art. 578 NCPC).²⁶

²⁵ The *Caisse de consignation* is set by the Act of 29 April 1999 on consignments with the State (*Loi du 29 avril 1999 sur les consignations auprès de l'Etat*).

²⁶ In this regard, it should be noted that there are some scholars who defend that Article 21's appeal can be used against the decision on the security: 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), marginal no. 19; D. Wiedemann, "Artikel 12 EU-KpfVO" in T. Rauscher (ed), *Europäisches Zivilprozess- und Kollisionsrecht, 5. Aufl* (Otto Schmidt 2021), para. 21. Others authors consider that this matter is not addressed by the EAPO



- 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.).

In Luxembourg, the courts' decision on the application for an EAPO should be notified to the creditor or his/her lawyer by the court clerk (*greffier*).

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 Luxembourg, for the purposes of the EAPO Regulation, the proceeding on the merits of merits of the claim would be deemed to have been initiated “at the time when it is received by the authority responsible for service, provided that the creditor has not subsequently failed to take the steps he was required to take to have the document lodged with the court” (Art. 10(3)(b) EAPO Regulation) (Art. 191 NCPC). The authority responsible for service to the defendant is the bailiff (*huissier*).

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

Regulation and thus, based on Ar. 46 of the EAPO Regulation, it depends on the national law of the Member States: K. Hilbig-Lugani, “Artikle 12 EuKoPfVO”, W. Kruger and T. Rauscher (eds), *Münchener Kommentar zur ZPO 6. Auf* (C.H. Beck 2022), marginal no. 10. F. Mohr, *Die vorläufige Kontenpfändung. EuKoPfVO* (LexisNexis 2014), parra. 200; M.L. Villamarín López, “La responsabilidad del acreedor en el Reglamento 655/2014, sobre la Orden Europea de retención de cuentas” (2020) 12 Cuadernos de Derecho Transnacional 1470, 1474.



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.).

According to Luxembourgish law, if the EAPO application is rejected by a Justice of the Peace (*Juge de Paix*), the appeal against that decision rejecting the EAPO would be decided by the President of the District Court (*Président du Tribunal d'arrondissement*) (Art. 685-5(3) NCPC). When the EAPO application is rejected by a District Court (*Tribunaux d'arrondissement*), then the competent court to decide on the appeal is the Luxembourgish Appeal Court (*Cour d'appel*) (Art. 685-5(3) NCPC). Luxembourgish law expressly prescribes that the appeal procedure shall always be conducted *inaudita altera parte*, even when the EAPO application was only partially rejected (Art. 685-5(3) NCPC).²⁷

- 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).

Luxembourgish law does not establish how creditors can make a new application for an EAPO based on new facts or evidence.

Obtaining account information

8. *Request for the obtaining of account information*

²⁷ The EAPO Regulation only states that the procedure of appeal shall be conducted *inaudita altera parte* when the EAPO is completely rejected. Therefore, if an EAPO is just partially rejected, the appeal procedure against that decision does not have to be conducted unilaterally (K. Hilbig-Lugani, "Artikle 21 EuKoPfVO", W. Kruger and T. Rauscher (eds), *Münchener Kommentar zur ZPO* 6. *Auf* (C.H. Beck 2022), marginal no. 8). It would depend on the national of the Member States whether it is conducted without the debtors' hearing or not (B. Köllensperger "Art. 12 EuKoPfVO" in H. Schumacher, B. Köllensperger and M. Trenker (eds), *Kommentar zur EU-Kontenpfändungsverordnung EuKoPfVO* (MANZ 2017), marginal no. 11). Luxembourgish law expressly stated that the appeal procedure is a "unilateral procedure" (*procédure unilatérale*), without drawing any distinction between a complete or partial rejection of the EAPO application. From that, it can be inferred that the Luxembourgish legislator decided that the appeal procedure against the decision partially rejecting an EAPO application must be conducted without the debtors' hearing.



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 Luxembourg, the information authority is the *Commission de Surveillance du Secteur Financier* (hereinafter "CSSF"), which is the Luxembourgish financial authority.²⁸ The CSSF gathers the data about the debtors' bank accounts by sending a request to all the banks operating in Luxembourg to disclose if they hold the debtors' bank accounts.²⁹ This system to obtain the information corresponds with the second of the methods listed in the EAPO Regulation as examples on how the Member States can retrieve information about the debtors' bank accounts (Art. 14(5)(a) EAPO Regulation). The CSSF sends the requests for information to the banks through an online platform (*Guichet numérique eDesk*).³⁰ Banks have a 20 days deadline to reply to the CSSF's request to report about the debtors' bank accounts.³¹

C. Means of communication: service and transmission of documents

²⁸ Art. 2(6) Act of 23 December 1998 creating a commission for the supervision of the financial sector (*Loi du 23 décembre 1998 portant création d'une commission de surveillance du secteur financier*).

²⁹ Art. 3 Act of 17 May 2017 on the implementation of Regulation (EU) No. 655/2014 of the European Parliament and of the Council of May 15, 2014 creating a European account preservation order procedure, intended to facilitate the cross-border recovery of claims in civil and commercial matters, amending the New Code of Civil Procedure and the amended law of 23 December 1998 establishing a commission for the supervision of the financial sector (Memorial A502) (*Loi du 17 mai 2017 relative à la mise en application du Règlement (UE) N° 655/2014 du Parlement européen et du Conseil du 15 mai 2014 portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontière de créances en matière civile et commerciale, modifiant le Nouveau Code de procédure civile et la loi modifiée du 23 décembre 1998 portant création d'une commission de surveillance du secteur financier (Mémorial A502)*).

³⁰ Circular CSSF 22/819 Requests to obtain information relating to accounts pursuant to Article 14 of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 creating an order procedure European Union for the Preservation of Bank Accounts, intended to facilitate the cross-border recovery of debts in civil and commercial matters (*Circulaire CSSF 22/819 Demandes visant à obtenir des informations relatives aux comptes en vertu de l'article 14 du Règlement (UE) N° 655/2014 du Parlement européen et du Conseil du 15 mai 2014 portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontière de créances en matière civile et commerciale*).

³¹ Santaló Goris and Van Den Eeckhout (2021), 279.



1. Service on the debtor

When Luxembourg is the Member State of origin and the debtor is domiciled in that Member State, service shall be effected in accordance with the law of that same Member State (cf. Art. 28(2) EAPO Reg.). Also, when Luxembourg 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.).

When both the court which issues the EAPO and the debtors' domicile are in Luxembourg, then, the EAPO would have to be served to debtor at the creditor's initiative by a Luxembourgish bailiff (*huissier*) (Art. 155 NCPC). The bailiff (*huissier*) would serve the documents personally to the debtor (Art. 155(1) NCPC). If the bailiff could not serve the documents personally, then a copy of the documents could be left at the debtors' domicile (Art. 155(5) NCPC).

If the debtor were domiciled in a third State, service would have to be done through a Luxembourgish bailiff (*huissier*). First, the bailiff (*huissier*) would have to check if there is an international convention or treaty that would apply to the service of documents in the State of the debtors' domicile (Art. 156(1) NCPC). One of these international conventions that applies in Luxembourg is the 1965 Hague Convention on Service of Documents.³² Nonetheless, in the absence of an international convention "the bailiff (*huissier*) sends a copy of the document by mail with acknowledgment of receipt to the domicile or residence of the addressee abroad. If the foreign State does not allow the transmission by post of judicial documents to persons domiciled on its territory, the bailiff (*huissier*) sends the copy of the document by mail with acknowledgment of receipt to the Luxembourgish Ministry of Foreign Affairs for the purposes of service of the document on the addressee by diplomatic channels" (Art. 156(1) NCPC).

Where the debtor is domiciled in a Member State other than Luxembourg, 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.). *On transmission of documents under Art. 29 see also the following paragraph (I)(C)(2).*

³² Convention of 15 November 1965 on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (The Hague, 15 November 1965, entry into force 10 November 1969). In Luxembourg, this Convention has been applicable since 9 September 1975: <<https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>> accessed on 1 September 2022.



When an EAPO is issued in Luxembourg and the debtor is domiciled in another Member State which is neither the Member State of enforcement, the creditor would be responsible for sending the documents listed in Article 28(2) of the EAPO Reg. to the debtor.³³ The documents would have to be served with the assistance of a bailiff (*huissier*) (Art. 156(1) NCPC).

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.

Luxembourgish law does not specify the means employed to transmit documents following Art. 29 of the EAPO Regulation. Luxembourgish courts and authorities generally accept the transmission of documents by regular mail with acknowledgment of receipt.

- 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.).

Luxembourgish law does not prescribe any means for transmitting the acknowledgment of receipt of a document under Art. 29 of the EAPO Regulation

D. Remedies

³³ Something that the District Court of Luxembourg (*Tribunal d'arrondissement de Luxembourg*) has expressly acknowledged in one of the few judgments rendered about the EAPO Regulation: Tribunal d'arrondissement de Luxembourg, 20 avril 2021, No. Rôle: 2020-TAL-ART19-0009.



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.).

Luxembourgish law does not clarify how the court which granted an *ante demandam* EAPO has to proceed if the creditor does not initiate the proceedings on the merits within the deadlines set by Art.10.

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.

If Luxembourg were the Member State where the EAPO is issued, the debtors' request to revoke the EAPO would have to be lodged before a Justice of the Peace (*Juge de paix*) or a District Court (*Tribunal d'arrondissement*). If the EAPO is issued for an amount up to 15.000 euros, the Justice of the Peace (*Juge de paix*) would be competent to decide on the request to revoke or modify the EAPO (Art. 685-5(4) NCPC). When the EAPO is issued for an amount over 15.000 euros, the District Courts (*Tribunaux d'arrondissement*) would be competent to decide on the request to revoke the EAPO (Art. 685-5(4) NCPC). To determine which is the territorially competent Justice of the Peace (*Juge de paix*) or District Court (*Tribunal d'arrondissement*), the general rules on the territorial jurisdiction of the NCPC (Arts 26 to 47 NCPC) have to be observed (Art. 685-5(7) NCPC). There are no court fees.³⁴ The representation of the parties by a lawyer is required only in proceedings before a District Court (*Tribunal d'arrondissement*) (Art. 196 NCPC).

The decision rendered by a Justice of the Peace (*Juge de paix*) on the request to revoke the EAPO can be appealed before the President of a District Court (*Président du Tribunal d'arrondissement*). If the decision is rendered by a District Court, it can be appealed before the Court of Appeals of Luxembourg (*Cour d'appel*) (Art. 685-5(6)

³⁴ See Section I.B.4.ii.



NCPC). There is 15 days deadline to lodge the appeal against the decision on the request or modify the revocation of the EAPO (Art. 685-5(6) NCPC).

- 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.).

Luxembourgish law does not clarify whether courts can modify an EAPO by their own motion.

- 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.).

Luxembourgish law does not treat separately the joint application for the revocation or modification of an EAPO from the debtors' individual request to revoke or modify an EAPO. Therefore, the procedure would be the same in both cases (Art. 685-5(4) NCPC). For the debtor's request to revoke or modify an EAPO, see: **Section I.D.2.i.**

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.).



Luxembourgish law does not address the procedure to request the modification of the security when the debtor requests so. The Luxembourgish rules to determine which is the competent court to modify the EAPO should apply by analogy to the debtors' request for the modification of the security (Art. 685-5(4) NCPC). In this regard, see **Section I.D.2.i.**

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 Luxembourg and of a value at least equivalent to that amount (Art. 38(1)(a) EAPO Reg.).

The Luxembourgish implementing legislation of the EAPO Regulation did not address the procedure to replace the funds attached by an EAPO with an alternative security in Luxembourg as the Member State where the EAPO was issued. The court which issued the EAPO would be competent to decide on the debtors' request for the alternative security.

Before the court accepts the alternative security, the creditor will be given the opportunity to be heard and comment on the debtors' request to replace the funds attached by the EAPO with an alternative security.³⁵

Luxembourgish law does not prescribe any specific form in which the alternative security can be provided. If creditors want to provide this security in cash, they would have to make a deposit before the Luxembourgish *Caisse de consignation*.³⁶ Besides the security in cash, the Preamble mentions bank guarantees and mortgages as examples of other security forms that might also be accepted (Recital 38 EAPO Regulation). Luxembourgish courts might also accept these forms.

³⁵ Some scholars understand that Article 38 prescribes that the procedure to replace the EAPO with an alternative security has to be conducted *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.

³⁶ This is the same solution that applies to the security that creditors have to provide to obtain an EAPO. See Section **I.B.5.iii.**



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.).

Luxembourgish law does not contain a specific procedure that allows third parties to contest an EAPO. Luxembourgish law acknowledges a special remedy for the third parties to contest a judicial decision that hinders their rights (*tierce opposition*). By analogy, third parties might be able to use this remedy against the enforcement the enforcement of an EAPO in Luxembourg (Art. 612 NCPC).



II. Incoming

When Luxembourg 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 Luxembourg, bailiffs (*huissiers*) are the authorities in charge of enforcing the EAPO.³⁷ Each bailiff (*huissier*) territorially circumscribed to the territory of a District Court (*Tribunal d'arrondissement*) area.³⁸ The territorially competent bailiff (*huissier*) to enforce an EAPO in Luxembourg would be the one in the District Court (*Tribunal d'arrondissement*) area where the bank or the branch of the bank which holds the accounts to be attached is located. Bailiffs (*huissiers*) would charge a fee for the enforcement of the EAPO.³⁹

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.).

³⁷

https://e-justice.europa.eu/379/EN/european_account_preservation_order?LUXEMBOURG&clang=fr accessed on 1 September 2022. Information about Luxembourgish bailiffs (*huissiers*) can be found here: <https://huissier.lu/members.php> accessed on 1 September 2022.

³⁸ Art. 2 Grand-Ducal Regulation of 25 September 2009 concerning the number and residence of judicial officers (*Règlement grand-ducal du 25 septembre 2009 concernant le nombre et la résidence des huissiers de justice*).

³⁹ Grand-Ducal Regulation of 24 January 1991 fixing the tariff for bailiffs (Consolidated version applicable on 02/10/2021) (*Règlement grand-ducal du 24 janvier 1991 portant fixation du tarif des huissiers de justice (Version consolidée applicable au 02/10/2021)*)



In Luxembourg, the bank would retain the funds attached by the EAPO in the accounts, preventing the debtor from retrieving them.⁴⁰

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.).

Luxembourg law does not foresee specific bank accounts which are immune from seizure.

- 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.).

Luxembourgish law permits the attachment of joint accounts.⁴¹ Nonetheless, the bank will attach funds without distinguishing between the funds that belong to the debtor-holder of the accounts and the funds that belong to the non-debtor holder of the accounts. The non-debtor holder of the account would have to request the liberation

⁴⁰ This is the same solution applied for the Luxembourgish national provisional attachment order, the *saisie-arrêt*. Kremer and Mara-Marhuenda (fn 1), 1175 – 1176.

⁴¹ Ordonnance européenne de saisie conservatoire des comptes bancaires. Luxembourg. Article 50, paragraphe 1, point g) – mesure dans laquelle les comptes joints et les comptes de mandataire peuvent faire l'objet d'une saisie conservatoire : <https://e-justice.europa.eu/379/EN/european_account_preservation_order?LUXEMBOURG&clang=fr> accessed on 1 September 2022.



of his/her funds that were attached by the EAPO.⁴² According to the information available in the e-Justice portal, the nominee accounts cannot be attached.⁴³

- 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.

According to Luxembourgish law, are not seizable “things declared unseizable by law; maintenance provisions awarded by the court; sums and available objects declared unseizable by the testator or donor; and sums and pensions for maintenance, even if the will or deed of gift does not declare them unseizable” (Art. 917 NCPC). There are also certain amounts of the monthly wage that cannot be attached. The first 722 euros of a monthly wage are completely exempted from attachment.⁴⁴ Above 722 euros up to 2.296 euros, there are just certain percentages that cannot be attached.⁴⁵ Neither Luxembourgish enforcement authorities, nor banks would guarantee that the EAPO does not attach in the bank accounts the amounts exempted from seizure. Banks will attach all the funds in the accounts up or the amount for which the EAPO is issued.⁴⁶ Only after the attachment of the account or accounts, can the debtor request the release of the funds attached by the EAPO (Arts 33(1)(d) and 34(1)(b)(iv) EAPO

⁴² Kremer and Mara-Marhuenda (fn 1), 1187.

⁴³ Ordonnance européenne de saisie conservatoire des comptes bancaires. Luxembourg. Article 50, paragraphe 1, point g) – mesure dans laquelle les comptes joints et les comptes de mandataire peuvent faire l’objet d’une saisie conservatoire : <https://e-justice.europa.eu/379/EN/european_account_preservation_order?LUXEMBOURG&clang=fr> accessed on 1 September 2022.

⁴⁴ Art. 1 Grand-Ducal Regulation of 27 September 2016 setting the rates of transferability and seizure of work remuneration, pensions and annuities (*Règlement grand-ducal du 27 septembre 2016 fixant les taux de cessibilité et de saisissabilité des rémunérations de travail, pensions et rentes*).

⁴⁵ Art. 4 Law of November 11, 1970 on assignments and attachments of work remuneration as well as pensions and annuities (*Loi du 11 novembre 1970 sur les cessions et saisies des rémunérations de travail ainsi que des pensions et rentes*).

⁴⁶ This is how it happens under Luxembourgish attachment order, the *saisie arrêt*: Hoscheit and Kinsch (fn 3), 19 – 20.



Regulation). Such request would have to be submitted before a territorially competent District Court, if the amount of the EAPO is above 15.000 euros (Art. 655-5(5) NCPC), or before the territorially competent Justice of the Peace (*Juge de Paix*), for the EAPOs up to 15.000 euros (Art. 655-5(5) NCPC).

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.).

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.).

Luxembourgish law does not clarify which is the rank of the EAPO.

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.



Banks can charge the costs of implementing a Luxembourgish provisional attachment order, the *saisie arrêt*, to the holder of the bank account to be attached.⁴⁷ Therefore, banks might also charge a fee to the debtor-holder of the account for the costs of implementing an EAPO (e.g. issuing the declaration for the attachment of the funds (Art. 25 EAPO Regulation); conversion of the currency if not in euros (Art. 24(8) EAPO Regulation).

B. Means of communication: service and transmission of documents

1. Service on the debtor

Where the debtor is domiciled in Luxembourg 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 accordance with the law of that Member State (Art. 28(3)) ⁽⁴⁸⁾. Also, where the debtor is domiciled in Luxembourg 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.

When Luxembourg is just the Member State of debtors' domicile, and the EAPO was rendered in another Member State, the documents listed in Art. 28(5) of the EAPO Regulation would be served to the debtor by a bailiff (*huissier*). The bailiff (*huissier*) would personally serve the documents to the debtor (Art. 155(2) NCPC). In case the documents could not be delivered in person, the bailiff (*huissier*) would deliver a copy of the documents at the debtor's domicile (Art. 155(5) NCPC).

If Luxembourg were the Member State of enforcement and the debtor is also domiciled in Luxembourg, the documents listed in Art. 28(5) of the EAPO Regulation would also be served to the debtor by a bailiff (*huissier*). The documents would also be served personally to the debtor (Art. 155(2) NCPC), and if that were not possible, a copy of the documents would be left in the debtor's domicile (Art. 155(5) NCPC).

⁴⁷ Kremer and Mara-Marhuenda (fn 1), 1223.

⁴⁸ Please consider that in this case the Member State in which the debtor is domiciled need not be the Member State of enforcement.



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.

See, **Section I.C.1.**

- 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.

See, **Section I.C.2.**

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.).



Luxembourgish law does not foresee a specific procedure for the court which issued the *ante demandam* EAPO to proceed in case the proceedings on the merits were not initiated within the deadlines set by Art. 10 of the EAPO Regulation.

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.).

Luxembourgish legislation does not address how debtors can request the release of the funds that the EAPO has attached in excess. The request to release the funds attached in excess is materially equivalent to the procedure to limit the enforcement of an EAPO (Art. 33(1)(a) EAPO Regulation). In both procedures, there is a partial release of the funds attached by an EAPO.

Therefore, the Luxembourgish rules on the procedure to limit the enforcement of an EAPO should apply by analogy to the debtors' request to release the amounts attached in excess by an EAPO. This means that when EAPO is issued for an amount up to 15.000 euros, the debtor shall submit the request to liberate the funds attached in excess before a Justice of the Peace (*Juge de paix*) (Art. 685-5(5) NCPC). When that amount is above 15.000 euros, a District Court (*Tribunal d'arrondissement*) would be competent to decide on the request to release those funds (Art. 685-5(5) NCPC).

- 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 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.).

Luxembourgish legislation does not address how creditors can request the release of the funds attached in excess by an EAPO. The request to release of the funds attached in excess is materially equivalent to the procedure to limit the enforcement of an EAPO. In both procedures, there is a partial release of the funds attached by an EAPO.

Therefore, the Luxembourgish rules on the procedure to limit the enforcement of an EAPO should apply by analogy to the creditors' request to release the amounts



attached in excess by an EAPO. This means that when EAPO is issued for an amount up to 15.000 euros, the creditor shall submit the request to liberate the funds attached in excess before a Justice of the Peace (*Juge de paix*) (Art. 685-5(5) NCPC). When that amount is above 15.000 euros, a District Court (*Tribunal d'arrondissement*) would be competent to decide on the request to release those funds (Art. 685-5(5) NCPC).

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.).

In Luxembourg, applications for the termination of EAPOs issued up to 15.000 euros have to be submitted before Justices of the Peace (*Juges de paix*) (Art. 685-5(5) NCPC). When that amount is above 15.000 euros, then District Courts (*Tribunaux d'arrondissement*) would be competent to decide on the request to limit or terminate the enforcement (Art. 685-5(5) NCPC).

Once the debtor applies for the termination of the EAPO, there is a public hearing in which both parties will be given the opportunity to present their allegations (Art. 63 NCPC). Legal representation of the parties is mandatory in the proceedings before District Courts (*Tribunaux d'arrondissement*) (Art. 192 NCPC).

If the decision on the request to limit or terminate the enforcement of an EAPO was rendered by a Justice of the Peace (*Juge de paix*), that decision could be appealed before the President of a District Court (*Tribunal d'arrondissement*) (Art. 685-5(6) NCPC). When those decisions are rendered by a District Court (*Tribunal d'arrondissement*), the appeal is lodged before the Luxembourgish Court of Appeals (*Cour d'appel*) (Art. 685-5(6) NCPC).

- 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.).

In Luxembourg, the joint application by a creditor and debtor for the limitation of an EAPO issued up to 15.000 euros has to be submitted before a Justice of the Peace (*Juge de paix*) (Art. 685-5(5) NCPC). When that amount of the EAPO is above 15.000 euros, District Courts (*Tribunaux d'arrondissement*) are competent to decide on the request to limit the enforcement (Art. 685-5(5) NCPC). Legal representation of the parties is mandatory in the procedures before District Courts (*Tribunaux d'arrondissement*) (Art. 192 NCPC).

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.).

In Luxembourg, there is not a specific procedure for creditors to request the release of the funds exempted from being attached. Applying by analogy the rules to limit the enforcement of an EAPO, then the creditors' request for a modification of the funds exempted from the attachment of an EAPO issued up to 15.000 euros have to be submitted before Justices of the Peace (*Juges de paix*) (Art. 685-5(5) NCPC). When that amount is above 15.000 euros, then District Courts (*Tribunaux d'arrondissement*) would be competent to decide on such request (Art. 685-5(5) NCPC).

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.).

The Luxembourgish implementing legislation of the EAPO Regulation does not address any aspect of the procedure to provide an alternative security in Luxembourg as the Member State of enforcement. The provision of an alternative security in the Member State of enforcement implies that the enforcement of the EAPO is terminated. Consequently, the rules to determine which competent courts can terminate or limit the enforcement of an EAPO should apply by analogy to the alternative security. This means that when the EAPO was issued for an amount equal to or less than 15.000 euros, then the request for an alternative security would have to be submitted before a Justice of Peace (*Juge de paix*) (Art. 685-5(5) NCPC). In EAPOs which were issued for amounts above 15.000 euros, then the alternative security would have to be requested before a District Court (*Tribunal d'arrondissement*) (Art. 685-5(5) NCPC). The rules on the territorial jurisdiction of the NCPC would apply to determine which is the territorially competent court (Articles 26 to 47 NCPC). The creditor will be allowed to comment on the debtor's request for the alternative before the court accepts this (Art. 63 NCPC).

Luxembourgish law does not prescribe any specific form in which the alternative security can be provided. If creditors want to provide this security in cash, they would have to make a deposit before the Luxembourgish *Caisse de consignation*.⁴⁹ Besides the security in cash, the Preamble mentions bank guarantees and mortgages as examples of other security forms that can also be employed (Recital 35 EAPO Regulation). Luxembourgish courts might also accept these other security forms.

- 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.)

⁴⁹ This is the same solution that applies for the security that creditors have to provide to obtain an EAPO. See **Section I.B.5.iii.**



If the competent Luxembourgish court accepts the security, it would issue an order to release the funds attached by the EAPO. This order would be served by a Luxembourgish bailiff (*huissier*) to the bank which holds to the accounts attached by the EAPO.

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.).

Luxembourgish law does not contain a specific procedure that allows third parties to contest an EAPO. Luxembourgish law acknowledges a special remedy for the third parties to contest a judicial decision that hinders their rights (*tierce opposition*). By analogy, third parties might be able to use this remedy against the enforcement the enforcement of an EAPO in Luxembourg (Art. 612 NCPC).