



UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI,
GIURIDICI E STORICO-POLITICI



Towards more Effective
enFORceMENT of claimS in
civil and commercial matters
within the EU EFFORTS
Project JUST-JCOO-AG-
2019-881802

<https://efforts.unimi.it>

With financial support from
the Civil Justice Programme
of the European Union

In partnership with:



Max Planck Institute
LUXEMBOURG
for Procedural Law



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

I.	OUTGOING	2
A.	SUBJECT MATTER AND SCOPE	3
1.	<i>Alternative preservation measures under national law</i>	3
B.	PROCEDURE FOR OBTAINING A PRESERVATION ORDER AND FOR THE OBTAINING OF ACCOUNT INFORMATION	4
1.	<i>Where the creditor has already obtained an enforceable title</i>	4
2.	<i>Jurisdiction</i>	5
3.	<i>Competent court</i>	5
4.	<i>Application for a Preservation Order</i>	6
5.	<i>Procedure for issuing a Preservation Order</i>	7
6.	<i>Initiation of proceedings on the substance of the matter</i>	9
7.	<i>Appeal against the refusal to issue the Preservation Order</i>	9
8.	<i>Request for the obtaining of account information</i>	10
C.	MEANS OF COMMUNICATION: SERVICE AND TRANSMISSION OF DOCUMENTS	10
1.	<i>Service on the debtor</i>	10
2.	<i>Transmission of documents</i>	11
D.	REMEDIES	12
1.	<i>Revocation or termination of the Preservation Order for lack of initiation of proceedings</i>	12
2.	<i>Revocation or modification of the Preservation Order</i>	12
3.	<i>Review of the decision concerning security</i>	14
4.	<i>Right to provide security in lieu of preservation</i>	14
5.	<i>Rights of third parties</i>	15
II.	INCOMING	16
A.	ENFORCEMENT OF THE PRESERVATION ORDER	16
1.	<i>Procedure for the enforcement and for the implementation of the Preservation Order</i>	16
2.	<i>Limitations on the preservation</i>	17
3.	<i>Ranking of the Preservation Order</i>	18
4.	<i>Costs incurred by the banks</i>	19
B.	MEANS OF COMMUNICATION: SERVICE AND TRANSMISSION OF DOCUMENTS	19
1.	<i>Service on the debtor</i>	19
2.	<i>Transmission of documents</i>	19
C.	REMEDIES	20
1.	<i>Revocation or termination of the Preservation Order for lack of initiation of proceedings</i>	20
2.	<i>Over-preservation of funds</i>	20
3.	<i>Limitation or termination of the enforcement of the Preservation Order</i>	21
4.	<i>Adjustment to the exemption of amounts</i>	22

5. *Right to provide security in lieu of preservation* 22
6. *Rights of third parties* 23

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- Attached to the EFFORTS Practice guides, there will be an annex addressing general rules of enforcement of titles at a national level, for all the Regulations
- Please provide an answer to all the questions in underlined text: it is preferable to have a limited or doubtful answer than to have none
- Please provide an answer as complete as possible, imagining that the end-user (a qualified party, such as a foreign lawyer) needs as much and as clear information as possible
- **Please consider that some of the answers may partially overlap: bearing in mind the best interest of the end-user, please do not dismiss the overlapping issues but pursue a good balance between repetitions and clarity**
- In your answers, please provide the normative context as well as a brief explanation of the matters
- When you compile the EFFORTS PG, the reference [BE, DE, FR, HR, IT, LT, LU] should be intended as to be completed as the same for the entire document; i.e. the compilers from Italy will chose “IT” and write “Italy” in place of each of the square brackets of the document.

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I. Outgoing

When Germany 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.

Under German national law, interim orders (*einstweilige Verfügung*, § 935 Civil Procedure Code (*Zivilprozessordnung*), hereinafter: ZPO) serve similar means as an EAPO. However, their international enforceability is more complicated and they only serve the purpose of securing a claim before the issuance of the final judgement, while an EAPO also aims at securing the enforceability of a claim about which a court has already finally decided.

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* (¹), 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

¹ 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.

judgment, court settlement or authentic instrument which satisfies the conditions necessary to establish its authenticity (Art. 8(3) EAPO Reg.).

Besides judgements, all enforceable titles are enlisted in § 794 ZPO. They especially include enforceable deeds drafted by a German notary.

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 court competent for the main action under national civil procedure law is also the one competent to issue the EAPO (§§ 946 (1), 943 ZPO). This can either be the court of first instance (usually the respective local court (*Amtsgericht*) or regional court (*Landgericht*) or the respective appellate court or court of appeal with which the main proceedings are currently pending (§§ 946 (1), 943 (1) ZPO).

In case the main proceedings are not yet pending, the court is competent which would also have jurisdiction for the (hypothetical) main proceedings. In case the Brussels I bis-Regulation also provides for local jurisdiction, its rules are applicable. However, in most cases the competent court has to be determined according to national German law. Generally, this is either the local court (*Amtsgericht*) or district court (*Landgericht*) at the debtor's place of residence (§ 12, 13 ZPO). However, in many cases other courts may be competent as well, depending on the claim in question. If these rules lead to more than one competent court, the debtor may choose freely between the competent courts (§ 35 ZPO).

Note that there is no concentration of jurisdiction at a designated courts for the issuance of an EAPO in Germany yet. However, this may become the case in the future.

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.

See above.

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.).

When filing an application for an EAPO, service can be carried out by regular mail, fax or email (Art. 29 EAPOR).

- 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.).

The costs for proceedings to obtain an EAPO at first instance courts amount to factor 1,5 of the fee assessed for the value of the claim (§ 34 law on costs for court proceedings (*Gerichtskostengesetz*), hereinafter: GKG) if the EAPO is issued before or during the main proceedings (No. 1410 KV GKG). However, the court costs are reduced to the exact amount of the fee assessed for the value of the claim, if the proceedings end without the court delivering a substantive decision (No. 1411 KV

GKG). If the court, on the other hand, does indeed hand down a substantive decision, the court costs are raised to factor 3,0 of this fee (No. 1412 KV GKG). The court costs for proceedings to obtain an EAPO, therefore, correlate with the fee for national proceedings to obtain interim measures.

The costs for proceedings to obtain an EAPO at second instance, however, amount to factor 4,0 of the fee assessed for the value of the claim (§ 34 GKG), if the EAPO is issued before or during the main proceedings (No. 1420 KV GKG). Also in the appeal stage, similar rules apply depending on whether the court rules on the substance of the matter.

If the EAPO is issued after the main proceedings have come to an end, the costs for the proceedings to obtain an EAPO are EUR 22 (No. 2111 KV GKG). Thus, again, the German legislator aims for a synchronization of costs for the proceedings to obtain an EAPO with the costs for national execution proceedings. If the application for the obtainment of account information is filed, the amount of EUR 37 is charged in addition to the aforementioned costs of the proceedings (No. 2112 KV GKG).

The court costs for proceedings to decide on applications for termination, refusal, stay or limitation of enforcement are EUR 33 (No. 2119 KV GKG).

Separate rules apply to the costs for proceedings in labour law and family law matters.

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 court may conduct such hearing as it deems appropriate, including a hearing via telephone. However, specific implementation rules do not exist.

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

Once the application is filed with the competent court pursuant to the EAPOR, the creditor may use every means of evidence and the affirmation in lieu of an oath, provided that the taking of evidence can be conducted immediately (§ 947 (1) ZPO). Therefore, evidence admissible for seizure pursuant to national law is also admissible to the proceedings pursuant to the EAPOR.

- 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.).

In case the creditor has to provide security in order to obtain an EAPO pursuant to Art. 12 EAPOR, the court may at its discretion determine the nature of such security and the amount in which it is to be provided (§ 108 (1) ZPO). Unless the court has made provisions in this regard, and unless the parties have not agreed otherwise, security has to be provided in the form of an unconditional, irrevocable, and temporally unlimited bank guarantee, issued in writing by a financial institution authorised in Germany, by lodging cash or by lodging various other securities, such a negotiable instruments, bonds, etc. (cf. § 234 (1), (3) Civil Code (*Bürgerliches Gesetzbuch*), hereinafter: BGB).

- 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 case the EAPO is granted, it will be served to the debtor *ex officio* in accordance with the rules of the European Service Regulation (if applicable) and the national laws on service.

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).

According to German national law, the initiation of proceedings requires the lodging of the document to the court (§ 253 ZPO) and their subsequent service to the debtor, which will be done by the court immediately and *ex officio*. Proceedings are considered pending (*rechtshängig*) once the debtor has been served by the court (§ 261 ZPO).

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.).

If the court rejects the creditor's application for an EAPO (Art. 21 (1) EAPOR), the creditor can file a complaint subject to a time limit (*sofortige Beschwerde*) (§ 567 (1) No. 1 ZPO) within a time period of 30 days (§ 953 (1) ZPO), which commences when the rejecting decision is served to the creditor (§ 953 (2) ZPO). The complaint procedure does not involve the debtor at all.

- 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).

The creditor can simply file a new application with the competent court which clearly indicates his new facts and 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 case the creditor has obtained an enforceable judgement and wants to receive further information about a bank account in Germany pursuant to Art. 14 EAPO, he has to apply to the Federal Office of Justice (*Bundesamt für Justiz*) (§ 948 (1) ZPO), which is the central authority for receiving information in this field.

In order to obtain account information, the Federal Office of Justice (*Bundesamt für Justiz*) can in turn request the Federal Central Tax Office (*Bundeszentralamt für Steuern*) to retrieve data from financial institutions (§ 948 (2) ZPO). Such data includes in particular contact details, bank account numbers, etc. The Federal Office of Justice (*Bundesamt für Justiz*) is required to maintain various protocols on the collection and deleting of the account information (§ 948 (3) ZPO).

C. Means of communication: service and transmission of documents

1. Service on the debtor

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

Documents will be served according to the general German rules on service. Service within the EU is governed by the EU Service Regulation. In domestic cases, service per mail against return confirmation of receipt is common. Under German law, electronic communication at least to a lawyer is permitted by using the special electronic lawyer's mailbox (*elektronisches Anwaltspostfach*).

Where the debtor is domiciled in a Member State other than Germany, 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 (1)(C)(2).*

The service to the debtor is initiated by the court that has issued the EAPO (§ 951 (2) ZPO).

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.

Service can be carried out by regular mail, fax or email, for example.

- 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.).

The receipt will be served according to the general German rules of service *ex officio*. Service by mail against return confirmation of receipt is common.

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.).

If the creditor has failed to prove the initiation of the main proceedings and the EAPO is revoked (Art. 10 (2) EAPOR), the creditor can accordingly file a complaint subject to a time limit (*sofortige Beschwerde*) (§ 567 (1) No. 1 ZPO). The time limit for this remedy is one month starting with the creditor being served the revoking decision (§ 953 (1), (3) ZPO).

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 the debtor applies for modification or revocation of an EAPO issued in Germany in accordance with the grounds presented in Art. 33 (1) or (2) EAPOR, the court that has issued the EAPO is competent (§ 954 (1) ZPO). The court decides on the application without an oral hearing (§ 954 (1) ZPO).

The application form necessary for applying for modification or revocation of an EAPO can be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

In case the court denies an application for a remedy pursuant to Art. 33 EAPOR, the debtor may file a complaint against this very decision with the deciding court. The complaint has to be submitted within a time period of two weeks. The time period begins as soon as the court decision is served (§ 956 ZPO). However, the court decision on the complaint itself cannot be appealed (§ 957 ZPO).

The application form necessary for a complaint can be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

- 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.).

If the debtor applies for modification or revocation of an EAPO issued in Germany in accordance with the grounds presented in Art. 35 EAPO Reg., the court that has issued the EAPO is competent (§ 954 (1) ZPO). The court decides on the creditor's or debtor's application without an oral hearing (§ 954 (3) ZPO).

The application form necessary for applying for modification or revocation of an EAPO can be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

- 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.).

For joint applications of the creditor and debtor for revocation and modification (Art. 35 (3) EAPO Reg.) as well as for the creditor's application for modification (Art. 35 (4) EAPO Reg.), the local court (Amtsgericht) is competent (§ 954 (3) ZPO). The court decides without an oral hearing (§ 954 (3) ZPO). In the event of a revocation or modification, the local court (Amtsgericht) is also the competent authority to inform the bank by forwarding its decision (§ 954 (4) ZPO, cf. Art. 36 (5) EAPO Reg.).

The application form necessary for applying for modification or revocation of an EAPO can be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

In case the court denies an application for a remedy pursuant to Art. 35 EAPOR, the debtor may file a complaint against this very decision with the deciding court. The complaint has to be submitted within a time period of two weeks. The time period begins as soon as the court decision is served (§ 956 ZPO). However, the court decision on the complaint itself cannot be appealed (§ 957 ZPO).

The application form necessary for a complaint can be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

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. 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 same rules for revocation and modification as under Art. 33 (1) EAPOR apply. Therefore, see above.

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

In the case of the debtor providing security pursuant to Art. 38 (1) (b) EAPOR, the debtor has to file his application for termination of the enforcement to the local court (*Amtsgericht*) at the place of enforcement (§ 955 in conjunction with § 764 (2) ZPO). The local court decides without an oral hearing (§ 955 ZPO).

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.).

Under German law, third parties may file for a reminder (§ 766 ZPO). This German remedy provides parties the possibility to appeal against procedural errors which may have occurred during the course of the proceeding. It does not provide for an oral hearing.

II. Incoming

When Germany 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.).

The national procedural provisions regulating the execution proceedings also apply to the execution of the EAPO (§ 950 ZPO). Therefore, the EAPO is executed in the same way as a national enforcement order. The charge vested through the execution of the EAPO has the same rank as a charge by virtue of a national enforcement order (§ 950 in conjunction with § 930 (1) ZPO).

When enforcing an EAPO issued in another Member State, the local court (*Amtsgericht*) at the place of enforcement is competent to receive the EAPO and other documents (Art. 23 (3) (6) EAPOR), to actually enforce the EAPO (Art. 23 (5) EAPOR), to receive the bank's declaration (Art. 25 (3) EAPOR), and to receive the creditor's request to release the over-preserved amounts (Art. 27 (2) EAPOR) (§ 952 (1) No. 1 ZPO). The local court (*Amtsgericht*) has to initiate both the service of the EAPO as well as the debtor's request to release the over-preserved amounts to the bank (§ 952 (2) ZPO).

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.).

Although there are no implementation rules concerning the bank's duties in the described case, German academic literature views the bank as obligated to block the bank account immediately following the receipt of the order.

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.).

Only accounts immune under the international public law doctrine of state sovereignty (such as accounts belonging to foreign embassies) are exempted from the EAPO Reg. under German law.

- 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 applicable, general rules of German law, joint bank accounts can be subject to enforcement and therefore also to preservation orders under the special conditions laid down in § 850I ZPO. The same is true for nominee accounts, however, the beneficiary may initiate third party proceedings and prevent enforcement (§ 771 ZPO).

- 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.

Only amounts placed in garnishment protection accounts are exempted from preservation. Every natural person can request their bank to keep such an account (§§ 950, 850k ZPO). If the debtor has a garnishment protection account, he or she no longer has to apply for garnishment protection, but the bank "automatically" leaves a monthly base allowance in the amount of the garnishment allowance (§ 850c ZPO) free of garnishment. The monthly exemption amount can be increased by further amounts if the debtor proves the requirements to the enforcement court.

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.).

In case of enforcement in Germany, the European attachment order has the rank of an attachment lien (§§ 950, 930 (1), 804 (3) ZPO). With regard to the account claim, the lien created by the European attachment takes precedence over the lien created by a later attachment. The ranking becomes important in distribution proceedings (§ 872 ff. ZPO) between several creditors. However, due to the provisional nature of the attachment (Art. 1 (1) EU EAPOR), the amount due to the attachment creditor in the distribution proceedings is not to be disbursed, but deposited pursuant to § 930 (2) ZPO.

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.

Under German law, the bank is not entitled to seek payment or reimbursement.

B. Means of communication: service and transmission of documents

1. Service on the debtor

Where the debtor is domiciled in Germany 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 Germany (Art. 28(3)) ⁽²⁾. Also, where the debtor is domiciled in Germany 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.

In Germany, the court transmits the order to the local court (*Amtsgericht*) in whose district the debtor is domiciled (§ 952 (1) ZPO). The court then immediately takes the measures necessary under German law to effect service on the debtor without any further involvement of the applicant.

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.

² Please consider that in this case the Member State in which the debtor is domiciled need not be the Member State of enforcement.

The general German rules on service apply, see above.

- 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.

The general German rules on service apply, see above.

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.).

This has already been described above.

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 case the preserved funds mistakenly exceed the amount defined in the order, the debtor may file for a reminder (§ 766 ZPO).

- 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.).

Pursuant to Art. 27 EAPOR, the creditor has a duty to take the necessary steps to ensure the release of any funds exceeding the amount in dispute which may have become available due to the enforcement of the EAPO. In Germany, he has to file an application for release of these amounts with the local court (*Amtsgericht*) at the place of enforcement (§ 952 (1) No. 1 ZPO). The local court (*Amtsgericht*) has to initiate the service of the debtor's request to release the over-preserved amounts to the bank (§ 952 (2) ZPO).

The application form for a request to release over-preserved amounts can be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

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 a debtor wants to resist enforcement on the grounds provided in Art. 34 EAPOR, he has to file his objection at the local court (*Amtsgericht*) at the place of enforcement (§954 (2) in conjunction with § 764 (2) ZPO). The court may declare an exemption from attachment for some of the debtor's assets (§ 954 (2) in conjunction with §§ 850k (4), 850l ZPO).

The application form for resisting enforcement of an EAPO pursuant to Art. 34 EAPOR can be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

- 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.).

For joint applications of the creditor and debtor for revocation and modification (Art. 35 (3) EAPOR) as well as for the creditor's application for modification (Art. 35 (4) EAPOR), the local court (*Amtsgericht*) is competent (§ 954 (3) ZPO). The court decides without an oral hearing (§ 954 (3) ZPO). In the event of a revocation of modification, the local court (*Amtsgericht*) is also the competent authority to inform the bank by forwarding its decision (§ 954 (4) ZPO, cf. Art. 36 (5) EAPOR).

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.).

For the creditor's application for modification (Art. 35 (4) EAPOR), the local court (*Amtsgericht*) is competent (§ 954 (3) ZPO). The court decides without an oral hearing (§ 954 (3) ZPO). In the event of a revocation of modification, the local court (*Amtsgericht*) is also the competent authority to inform the bank by forwarding its decision (§ 954 (4) ZPO, cf. Art. 36 (5) EAPOR).

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.).

In the case of the debtor providing security pursuant to Art. 38 (1) (b) EAPOR, the debtor has to file his application for termination of the enforcement to the local court (Amtsgericht) at the place of enforcement (§ 955 in conjunction with § 764 (2) ZPO). The local court decides without an oral hearing (§ 955 ZPO).

The court may at its discretion determine the nature of such security and the amount in which it is to be provided (§ 108 (1) ZPO). Unless the court has made provisions in this regard, and unless the parties have not agreed otherwise, security has to be provided in the form of an unconditional, irrevocable, and temporally unlimited bank guarantee, issued in writing by a financial institution authorised in Germany, by lodging cash or by lodging various other securities, such a negotiable instruments, bonds, etc. (cf. § 234 (1), (3) BGB).

- 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.)

The deposited security will be transferred back to the debtor.

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.).

German law provides for the possibility to file for a third-party proceeding at the competent court of enforcement (§ 771 ZPO).