



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

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

In partnership with:



Max Planck Institute
LUXEMBOURG
for Procedural Law



UNIVERSITÄT
HEIDELBERG
ZUKUNFT
SEIT 1386



VRIJE
UNIVERSITEIT
BRUSSEL

Dipartimento di Studi Internazionali, Giuridici e Storico - Politici
Via Conservatorio, n°7- CAP 20122 Milano, Italy
Tel +39-02-50321058– Fax +39-02-50321050
Sito web: <http://www.dilhps.unimi.it>



UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI,
GIURIDICI E STORICO-POLITICI



EFFORTS Practice Guide for the application in Italy of the European Account Preservation Order Regulation (Reg. (EU) No 655/2014)

Authors: Prof. Dr. Francesca Villata, Prof. Dr. Lidia Sandrini, Dr. Martino Zulberti, Dr. Michele Casi

(*) This document was circulated among: Prof. Dr. Ilaria Viarengo (Università degli Studi di Milano, *Director of the Department of International, Legal, Historical and Political Studies*) and Prof. Dr. Laura Baccaglini (Università di Trento), Judge Roberta Bardelle (Italian Ministry of Justice), Prof. Bruno Barel (Università di Padova), Prof. Dr. Stefania Bariatti (Università degli Studi di Milano), Avv. Cinzia Calabrese (Italian Association for Family Lawyers; Milan Bar Association), Prof. Dr. Elena D'Alessandro (Università degli Studi di Torino), Notary Prof. Domenico Damascelli (Università del Salento), Dr. Marco Farina, Judge Giuseppe Fiengo (Court of Naples), Judge Umberto Giacomelli (Court of Belluno), Dr. Valeria Giugliano, Avv. Giovanni Lombardi (Illimity Bank), Prof. Dr. Elena Merlin (Università degli Studi di Milano), Dr. Gabriele Molinaro, Notary Paolo Pasqualis, Avv. Carlo Portatadino (IBA Litigation Committee).



Summary

| | |
|---|-----------|
| I. OUTGOING | 3 |
| A. SUBJECT MATTER AND SCOPE | 4 |
| 1. <i>Alternative preservation measures under national law</i> | 4 |
| B. PROCEDURE FOR OBTAINING A PRESERVATION ORDER AND FOR THE OBTAINING OF ACCOUNT INFORMATION | 5 |
| 1. <i>Where the creditor has already obtained an enforceable title</i> | 6 |
| 2. <i>Jurisdiction</i> | 7 |
| 3. <i>Competent court</i> | 8 |
| 4. <i>Application for a Preservation Order</i> | 9 |
| 5. <i>Procedure for issuing a Preservation Order</i> | 10 |
| 6. <i>Initiation of proceedings on the substance of the matter</i> | 12 |
| 7. <i>Appeal against the refusal to issue the Preservation Order</i> | 13 |
| 8. <i>Request for the obtaining of account information</i> | 13 |
| C. MEANS OF COMMUNICATION: SERVICE AND TRANSMISSION OF DOCUMENTS | 14 |
| 1. <i>Service on the debtor</i> | 14 |
| 2. <i>Transmission of documents</i> | 15 |
| D. REMEDIES | 16 |
| 1. <i>Revocation or termination of the Preservation Order for lack of initiation of proceedings</i> | 16 |
| 2. <i>Revocation or modification of the Preservation Order</i> | 16 |
| 3. <i>Review of the decision concerning security</i> | 19 |
| 4. <i>Right to provide security in lieu of preservation</i> | 19 |
| 5. <i>Rights of third parties</i> | 20 |
| II. INCOMING | 22 |
| A. ENFORCEMENT OF THE PRESERVATION ORDER | 22 |
| 1. <i>Procedure for the enforcement and for the implementation of the Preservation Order</i> | 22 |
| 2. <i>Limitations on the preservation</i> | 23 |
| 3. <i>Ranking of the Preservation Order</i> | 26 |
| 4. <i>Costs incurred by the banks</i> | 26 |
| B. MEANS OF COMMUNICATION: SERVICE AND TRANSMISSION OF DOCUMENTS | 27 |
| 1. <i>Service on the debtor</i> | 27 |
| 2. <i>Transmission of documents</i> | 27 |
| C. REMEDIES | 28 |
| 1. <i>Revocation or termination of the Preservation Order for lack of initiation of proceedings</i> | 28 |
| 2. <i>Over-preservation of funds</i> | 28 |
| 3. <i>Limitation or termination of the enforcement of the Preservation Order</i> | 29 |
| 4. <i>Adjustment to the exemption of amounts</i> | 30 |
| 5. <i>Right to provide security in lieu of preservation</i> | 30 |
| 6. <i>Rights of third parties</i> | 31 |



Disclaimer. *This Practice guide is the result of a scientific research project elaborated for educational and general information purposes. It has not been tested in legal practice, and is neither intended to provide specific legal advice nor as a substitute for competent legal advice from a licensed attorney. The views, information, or opinions expressed herein are those of the authors and do not reflect the official opinion or position of the European Commission. The authors and the European Commission do not guarantee the accuracy, relevance, timeliness, completeness or the results from the use of the information herein. Any action taken upon the information in this document is strictly at the user's own risk. Both the Commission and the authors of this document disclaim any responsibility and/or liability for any use of the contents in legal practice.*

This Practice guide has been updated as of **15 September 2022**.

List of abbreviations

“It c.p.c.” – Italian Code of Civil Procedure

“It c.c.” – Italian Civil Code

“d.P.R.” – Regulatory Decree of the President of the Italian Republic

“d.l.” – Urgent or Extraordinary Law Decree (adopted by the Government)

“d.lgs.” – Delegate D.lgs. (adopted by the Government)

Laws and other legislative or regulatory acts, such as d.P.R., are cited “[act] no. [number]/[year of issuance]”.



I. Outgoing

When Italy 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.

The measure alternative to an EAPO in order to have the funds on the debtor's account preserved is to obtain a preservation seizure ("*sequestro conservativo*"). It is a precautionary measure that the court authorizes, upon creditor's request, if there are grounds to consider that a debtor might fraudulently dispose of her/his or her assets



against the creditor's right and if the creditor has provided a reasonable probability to later win the case on its merits.

At the phase of authorization, it is irrelevant to determine the goods that will be attached by the precautionary measure, as the seizure is authorized generally on the goods of the debtor.

Once the court has authorized the seizure by an order, the creditor has to enforce the measure within 30 days after the order has been issued. The aim of the measure is to secure the fruitful enforcement of an enforceable title. Once the creditor obtains an enforceable title, the seizure, if it has been enforced, automatically turns into attachment.

The court can grant by a decree the seizure before the debtor is informed of the request (see Art. 669-*sexies* of It. c.p.c.), but courts use such power very rarely and the measure is usually granted in an adversarial proceedings with the debtor. In case the request is granted *ex parte*, the court fixes a hearing within 15 days, in order to confirm, modify or revoke the decree.

Once the court has authorized the seizure, in case the creditor decides to freeze a bank account of the debtor, the enforcement procedure is the same applicable to the enforcement of an enforceable title. The creditor can ask the bailiff to attach all the funds or other credits the bank has towards the debtor (not only on the bank account) and after such moment any payment the bank does to the debtor is ineffective for the creditor. It is not necessary to know the details of the bank account.

The bank has ten (10) days to send a certified email to the creditor declaring if the debtor has funds on the account (or the debtor has other credits towards the bank, being the enforcement not limited to bank accounts).

In case the declaration of the bank is contested by the creditor, the creditor can start ordinary proceedings against the bank in order to have the competent court ascertain whether her/his debtor has credits towards at the bank.

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

As a general premise, under Italian procedural law, enforcement titles are divided in two categories: judicial and non-judicial.

Judgements or other orders of the court, as well court settlements (cf. Arts. 185 and 420 It c.p.c.) are provided as enforceable titles. Notwithstanding the foregoing, a judgment of the court is enforceable when it contains an order to perform an obligation (declaratory judgments, which contain the bare assessment of the rights and obligations of the parties, or constitutive judgments, which modify the substantive legal reality, do not in themselves pose this necessity).

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.



Among the non-judicial enforceable titles certain authentic instruments (notarial deeds) (cf. Art. 474, no. 3 It c.p.c.) can be relevant for the purposes of Art. 5(b) EAPO Reg.

There is no specific procedure to obtain the copy of a judgement, court settlement or authentic instrument. The request of an authentic copy can be asked, even orally, to the depositary public of the act, such as the registrar of the court for judgements or court settlements or the notary for the authentic instruments. For judgements or court settlements uploaded in the e-platform for civil proceedings, the downloaded copy can be certified as authentic also by the lawyer of one of the parties.

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.

When the jurisdiction is not regulated by EU Regulations, the general rule for international jurisdiction is contained in Art. 3 of the law no. 218/1995 on private international law, which provides that Italian courts have jurisdiction when the defendant has her/his residence, place of abode or domicile in Italy or even if the defendant has a representative authorized to appear before the courts in her/his behalf under Art. 77 It c.p.c.

The second paragraph of such Art. 3 l. 218/1995 refers to the Brussels Convention of 1968 for other criteria to determine jurisdiction: such reference could be interpreted as a reference also to the following legislative acts (i.e., the Brussels I Regulation and the BI bis Reg.); however, the parties should be aware that such interpretation could be disputed.

Other criteria of international jurisdiction worth mentioning include:



- Art. 5 l. 218/1995, stating that notwithstanding the residence, place of abode or domicile of the defendant, Italian courts do not have jurisdiction for claims *in rem* concerning immovable goods placed outside of its territory;
- Art. 4 l. 218/1995, stating that the parties may agree in writing that jurisdiction lies with the Italian courts or with foreign courts, the latter provided that the matter does not concern fundamental rights over which the owner does not have full availability ("*diritti indisponibili*"), which is applicable when EU Regulations or Hague Convention 2005 on Choice of Court Agreements do not apply.

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.

Under Italian law, competence to hear requests for provisional measures is as follows.

- (i) The *ante causam* competence (art. 669-ter It c.p.c.) is of the same *Tribunale* (district court) that would be competent for the merits of the case²; if such is the *Giudice di pace* (local court), the request must be filed before the *Tribunale* of the same district in which such *Giudice di pace* has its seat;
- (ii) pending the proceedings (art. 669-quarter It c.p.c.), the competence is of the *Tribunale* before which it is pending; if the proceedings is pending before the *Giudice*

² The general discipline on competence is regulated by Arts. 18 ff. It c.p.c. In relation to determined claims, the competence can have a specific regulation, such as, for example, for labours claims (Art. 413 It c.p.c.) or claims related to company litigation (Art. 3 d.lgs. no. 168/03) or IP or trademark claims (Art. 120 d.lgs. no. 30/05).



di pace, the request must be filed before the *Tribunale* of the same district in which such *Giudice di pace* has its seat;

(iii.a) after the judgement, the competence is of the *Tribunale* sitting in the district in which the judgement has been issued (art. 669-*quarter* It c.p.c.); if a judgement is challenged, the competence is to be determined as follows: a) in case of appeal, the request is to be filed before the court before which the appeal is pending; b) in case of recourse before the Court of cassation, the request is to be filed before the court which issued the challenged judgement;

(iii.b) after a court settlement, the competence is of the *Tribunale* in the district of which the court settlement was drawn up;

(iv) in case of authentic instruments, it is the court of the district in which it was drawn up (Art. 2 D.lgs. no. 152/2020).

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.).

As a general rule it is possible to lodge at the court registry an hard copy request or to file it in digital form, in accordance with the discipline of the digital civil proceedings. Until 31.12.2022 hard copy requests are not accepted. In order to lodge acts through the digital civil proceedings it is necessary to be represented by a lawyer, who has access to the digital system.

- 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 court fees for obtaining a preservation order vary depending on the value of the claim and the instance of the court proceedings according to when the preservation order was requested (see art. 13, comma 6-quinquies d.P.R. 115/2002). According Art. 10 d.lgs. 152/2020 court fees for the proceedings under Art. 8 are:

- for claims up to EUR 1 100: EUR 21.50
- for claims between EUR 1 100 and EUR 5 200: EUR 49



- for claims between EUR 5 200 and EUR 26 000: EUR 118.50
- for claims between EUR 26 000 and EUR 52 000: EUR 259
- for claims between EUR 52 000 and EUR 260 000: EUR 379.50
- for claims between EUR 260 000 and EUR 520 000: EUR 607
- for claims over EUR 520 000: EUR 843
- for claims of undetermined value the court fee is: EUR 259

In addition a tax stamp of 27.00 Euros tax stamp is always applicable.

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.).

Law no. 206/21 delegated the Government to pass a statute providing the possibility for the judge³, if there is no objection by the parties, to hold videoconference hearings in case it is not necessary the presence of subjects different from lawyers, parties and court officers. Technical aspects will be determined by the Ministry of Justice.

Until 31.12.2022 a similar possibility of online hearings is provided by pandemic emergency legislation and courts opted mainly for hearings through Microsoft Teams. The timeline to hold a hearing is not provided by national legislation and it is up to the discretion of the court.

- 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.).

³ The statute has to be approved within one year from the entrance in force of Law. No. 206/2021, namely within 24.12.2022. The Government passed the draft of the statute on 28 July 2022 (transmitted to the Chamber of Deputies on 2 August 2022 for opinion).



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.).

The procedure for requesting precautionary measures – applicable also to the EAPO (see Art. 1 d.lgs. no. 152/2020) – does not preclude to provide additional evidence after the filing of the request: the party should deposit further documentary evidence at the registry of the court.

The procedure for precautionary measures allows (see Art. 669-*sexies* It c.p.c.) the court to collect, even *ex officio*, “summary information” from the creditor or other witnesses, without the defendant to be present at the taking of 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.).

In general, the law does not grant the court with a general power to issue an order to provide security; rather, such orders may be issued in exceptional cases provided by the law. However, there are some general rules applicable to this matter that regulate the procedure and the contents of the order.

The relevant rules under national law are: *i)* Art. 119 It c.p.c., under which the judge indicates the type of security and how to give it; *ii)* Art. 86 of the implementation provisions of It. c.p.c., under which, if the court has not differently decided, security has to be provided in cash or in government bonds.

The forms of security usually acceptable are first demand bank or insurance guarantees.

There are no specific rules regarding the appeal of the decision on the security.

The evidence of the providing of the security is lodged in the proceedings.

- 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.).

The decision will be communicated to the creditor by the registrar under Art. 136 It c.p.c.

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).

The act instituting ordinary civil proceedings is the service of the writ of summons (“atto di citazione”) to the defendant. The plaintiff has then to lodge the writ of summons to the court within ten (10) days from said service.

In the alternative, the plaintiff can start the proceeding filing a recourse (art. 702-*bis* It c.p.c.), instituting the “summary proceedings”. Such alternative is possible when the claim does not need a complex taking of evidence and the claim is to be decided by a single judge (and not by a panel of three justices: Art. 50-*bis* It c.p.c.). It is to be noted that Law no. 206/2021 delegated the Government to pass a statute reforming such proceedings⁴.

In relation to claims on certain matters, such as labour claims, the recourse is the act instituting the proceedings. The recourse is lodged with the court, which fixes the hearing by decree and the recourse and the decree will be served on the defendant. A recourse is to be lodged in relation to claims in certain matters as well.

⁴ According to the draft of the statute approved by Government on 28 July 2022 (transmitted to the Chamber of Deputies on 2 August 2022 for opinion) such proceedings – that will be renamed “simplified proceedings” – will be applicable when “the fact are not disputed, the claim is based on documentary evidence or prompt solution evidence or it requires a non-complex taking of evidence”.



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.).

The appeal against the refusal to issue the EAPO shall be filed before the same court to which belongs the judge that issued the refusal. In such instance the court shall sit in a panel of three judges, which shall not include the judge that issued the appealed order (Art. 4 d.lgs. no. 152/2020 containing the implementation rules for the EAPO Reg.).

The deadline for appeal is of thirty (30) days from the communication of the order, as provided by Art. 21 Reg EAPO, and the challenging procedure will be *ex parte* ⁽⁵⁾. However, according to one opinion, when the request has been rejected only in part, the debtor has to be part of the challenging proceedings ⁽⁶⁾.

- 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 new application will be filed to the registry of the competent court, indicating the new facts and new evidence.

Obtaining account information

8. Request for the obtaining of account information

⁵ M. Stella, *Festina lente. L'adeguamento italiano al sequestro europeo di conto corrente*, in *Corriere giur.* 2021, 154.

⁶ A. Tedoldi, *L'ordinanza europea di sequestro conservativo sui conti bancari ai sensi del Regolamento (Ue) 655/2014*, in *Riv. dir. proc.* 2014, 602; F. Tedioli, *L'ordinanza di sequestro conservative transfrontaliero su conti bancari*, in *Studium iuris*, 2021, 594.



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.

According to Art. 3 d.lgs. no. 152/2020 containing the implementation rules for the EAPO Reg., the competent authority for the obtaining of the information under Art. 14 EAPO Reg. is the president of the *Tribunale* of the place where the debtor has her/his domicile, residence or office or, in case they are not in Italy, the president of the *Tribunale* of Rome. The president authorizes the bailiff to have telematic access to data bases of public authorities (such as tax registries) and of social security institutions which could include the information sought by the creditor.

The creditor has no right to be authorized to have access to such databases, being the research of the information conducted exclusively by the bailiff.

C. Means of communication: service and transmission of documents

1. **Service on the debtor**

When Italy 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 Italy 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.).

Service is performed by the bailiff on the plaintiff's request, according to Arts. 137 ff. It c.p.c. The service is done directly to the addressee if he/she is found by the bailiff within the territorial jurisdiction of the court for which she/he works or at the residence, domicile or workplace. The document can be served also to certain persons that the law indicates (such as relatives living with the addressee or persons working for her/him). The bailiff can also send the document to be served by post.

If the addressee is untraceable, the bailiff deposits the document at the city hall, leaving a notice on the door of the residence or workplace of the addressee and inform her/him by registered letter that the document can be collected at the city hall. The service of the document is considered perfected ten days after such a letter is sent,



even if the addressee does not collect the document. In case of service by post and the addressee is untraceable, the post officer proceeds in a similar way, depositing the document at the nearest post office, informing the addressee, by message in the mailbox and by registered letter as well, that the document can be collected starting from following day. The service is considered perfected ten days after such a letter is sent, even if the addressee does not collect the document.

The lawyer of the party in the proceedings has the power to proceed with the service in two ways: *i*) if authorized by the Bar Association, she/he can send the document by post within the territory of the State; *ii*) she/he can send a certified email to the addressee if the latter has an official certified email included in specific data bases (business register, for companies; general register of electronic emails and national index for certified emails, for companies and persons).

Where the debtor is domiciled in a Member State other than Italy, 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.).

There are not specific implementation rules on the subject who is responsible for initiating the service and on the way the documents have to be transmitted to the competent authority of the Member State where the debtor is domiciled.

Thus, creditors should be aware that they should take the necessary steps to proceed with such service, by transmitting the document her/himself when necessary or by checking with the offices of the clerk of the competent court when such transmission is made by the court.

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.



There is not for the moment any national specific provisions regulating such transmission.

- 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.).

There is no specific provision that regulates how the court will transmit the receipt of the documents.

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.).

According to the general rules of Italian procedural law, upon motion of the interested party, after the hearing of the parties, if there is no disagreement between them, the judge who issued the measure declares by an enforceable order that the measure has become ineffective and gives the necessary instructions to restore the previous situation. If there is a disagreement between the parties, the judicial office to which the judge who issued the provisional measure belongs decides by a provisionally enforceable judgement.

2. **Revocation or modification of the Preservation Order**

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



The competence for the proceedings under Art. 33 Reg. EAPO is of the same court which issued the PO, as provided by Art. 6 of d.lgs. no. 152/2020. In absence of a specific provision of national law, it is necessary to determine which is the procedure applicable and if the reference to the “court” is to be read as the same *Tribunale* or the same judge.

The procedure should be regulated by Art. 669-*sexies* It c.p.c.⁽⁷⁾. After the lodging of the application, the court fixes a hearing within 15 days, the application and the decree fixing a hearing will be served to the creditor upon debtor’s request and after having both parties granted the right to present the case, the judge may revoke or modify the PO.

An application under Art. 36(1) EAPO Reg. can be filed before the court through the telematic civil proceedings. As a general rule, until 31.12.2022 hard copy applications will be not accepted.

Art. 8 of d.lgs. no. 152/2020 provides that the decision given in a proceedings under Art. 33 Reg. EAPO is subject to an appeal (“reclamo”) under Art. 669-*terdecies* It c.p.c. In line with this provision, the communication under Art. 50(1)(m) of EAPO Reg. clarifies that the request shall be done through an appeal to the same *Tribunale*, sitting in bench and the time limit for such appeal is fifteen days and starts with the court’s issuing of the order, or the communication or serving thereof, if earlier. The *Tribunale* fixes an hearing so that both parties shall have the right to present the case and it decides the appeal by an order within 20 days from the lodging of the appeal.

Legal representation is always mandatory under Art. 9 of d.lgs. no. 152/2020.

According Art. 10 d.lgs. no. 152/2020 court fees are determined as follows:

A) proceedings under Art. 33 the applicable court fees (“contributo unificato”) vary on the value of the claim:

- for claims up to EUR 1 100: EUR 21.50
- for claims between EUR 1 100 and EUR 5 200: EUR 49
- for claims between EUR 5 200 and EUR 26 000: EUR 118.50
- for claims between EUR 26 000 and EUR 52 000: EUR 259
- for claims between EUR 52 000 and EUR 260 000: EUR 379.50

⁷ In this sense, E. D’Alessandro, *I mezzi di ricorso nel sistema del Regolamento n. 655/2014 sul sequestro conservativo di conti bancari*, in A. Briguglio, R. Martino, A. Panzarola, B. Sassani (eds), *Scritti in onore di Nicola Picardi*, I, Pisa, 2016, 740 ff.



- for claims between EUR 260 000 and EUR 520 000: EUR 607
- for claims over EUR 520 000: EUR 843.
- for claims of undetermined value the court fee is: EUR 259.

In addition to these costs, a flat-rate advance of EUR 27 for the costs of notification is payable for each procedure.

B) For proceedings under Art. 37 the court fee is EUR 98 before the *Tribunale* and EUR 147 for the challenging proceedings.

- 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.).

The relevant national rule is Art. 669-*decies* It c.p.c., that regulates the revocation and modification due to changed circumstances of precautionary orders, and it provides that the court proceeds upon request of one of the parties.

- 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.).

In case of settlement it is possible to have a precautionary order revoked.

The relevant rule is Art. 669-*decies* It c.p.c., which disciplines the revocation and modification of a precautionary measure in case of changed circumstances, being the settlement considered a “changed circumstance”.

The competent court proceeds in the way it thinks appropriate and it decides the request by an order.

Legal representation is always mandatory under Art. 9 of d.lgs. no. 152/2020.



The request to revoke or modify a precautionary order is subject under Art. 13, comma 6-quinquies, letter b), of the d.P.R. no. 115/2002, to the *halved* fixed registry fee (Art. 13 co. 3 d.P.R. 115/2002). The amount of the “full” registry fee is determined, under Art. 13 co. 1 d.P.R. 115/2002, according to the value of the claim (for example claims of the amount in between 5,200.00 Euros and 26,000.00 Euros, the full fixed registry fee is of 237.00 Euros, plus a 27.00 Euros tax stamp – the latter is always applicable).

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.).

See above §(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 Italy and of a value at least equivalent to that amount (Art. 38(1)(a) EAPO Reg.).

National legislation (Art. 684 It c.p.c.) provides the possibility to have the order authorizing the seizure revoked in case the debtor provides a security for the amount of the credit and expenses, in relation to the goods attached. National legislation should not be applicable in this last part (concerning expenses), providing Art. 38 Reg. EAPO that the security has to be given for the amount of the credit granted by PO⁸.

See also above §(I)(B)(5)(ii).

⁸ E. D'Alessandro, *Riconoscimento, esecutività ed esecuzione dell'ordinanza di sequestro conservativo in Italia*, in F.C. Villata (a cura di), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milano, 2021, 318 s.



The request has to be presented to the court which granted the PO or to the judge of the proceedings on the merits, if pending. The court will decide after having heard the parties in the way it thinks appropriate and will issue an order revoking the PO, in case the security has been given.

The decision on the request shall be communicated by the registrar of the court to the creditor by certified electronic email.

The possibility to challenge a decision under Art. 684 It c.p.c. is debated ⁽⁹⁾.

Legal representation is mandatory under Art. 9 of d.lgs. no. 152/2020.

The request is not subject to payment of court fees.

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.).

The way a third party can contest an order of seizure, in case she/he suffers a prejudice, is discussed. In particular, it is debated if s/he should file for opposition under Art. 669-*terdecies* It c.p.c. or under Art. 404 co. 1 It c.p.c.⁽¹⁰⁾. In the first case, the opposition should be filed within fifteen (15) days from the issuance of the measure, while in the second case the opposition may be filed without any limitation in time. Also, in the first case the opposition is filed by way of an appeal to the same court that issued the measure. Third parties that wish to contest a seizure should be aware that they would need to prove to have suffered a prejudice/harm as a consequence of the issuance or of the enforcement of the measure.

Legal representation is mandatory under Art. 9 of d.lgs. no. 152/2020.

⁹ For references on this issue, see D. Dalfino, *Il sequestro conservativo*, in A. Carratta (ed.), *Il procedimento cautelare*, 2013, 553 ff.

¹⁰ For references on this issue, see E. D'Alessandro, *I mezzi di ricorso nel sistema del Regolamento n. 655/2014 sul sequestro conservativo di conti bancari*, in A. Briguglio, R. Martino, A. Panzarola, B. Sassani (eds), *Scritti in onore di Nicola Picardi*, I, Pisa, 2016, 755 ff.



UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI,
GIURIDICI E STORICO-POLITICI



Given that Art. 13, comma 6-*quinquies* of the d.P.R. no. 115/2002 does not contain an explicit reference to the procedure under Art. 39 EAPO Reg., the general rules of Art. 13 d.P.R. no. 115/2002 should be applicable.



II. Incoming

When Italy 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.).

Art. 5(1) of d.lgs. no. 152/2020 provides that the proceedings of enforcement is regulated by Art. 678 It c.p.c. (which regulates the enforcement of national preservation orders) “after the service on the debtor pursuant to Article 28 of the Regulation” ⁽¹¹⁾.

According to the communication under Art. 50(1)(f) of EAPO Reg. the competent court is the one of residence of the third party under Art. 678 It c.p.c. In particular, in relation to a bank the notion of “residence” has been read as both the place of the registered office of the bank or place where it is located the branch of the bank where the account is held.

Under Art. 686 It c.p.c. the seizure is converted into an attachment at the moment in which the creditor obtains a final and favourable judgment on the merits. Under Art. 156 of implementation provisions It c.p.c., the creditor has to deposit the enforceable title at the registry of the enforcement court within 60 days the title is issued. If such deadline is not fulfilled the enforcement proceedings is terminated. Art. 5(3) d.lgs. no. 152/2020 provides that this rule does not apply if the EAPO is granted to creditors who have already obtained a judgment or a court settlement in a Member State. According to a doctrinal opinion ⁽¹²⁾, in this last case, the creditor shall ask the enforcement court the assignment of the credit and the seizure converts itself into attachment at the moment of this request.

¹¹ Unofficial editor’s translation.

¹² E. D’Alessandro, *Riconoscimento, esecutività ed esecuzione dell’ordinanza di sequestro conservativo in Italia*, in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milano, 2021, 327.



In relation to a domestic seizure in case the bank does not make the declaration, the creditor can ask the court to ascertain if the funds are present on the account and in case the answer is affirmative the seizure is considered enforced from the moment of the service to the bank, being any payment done by the bank to debtor after that moment ineffective to the creditor. It is questioned among legal writers if such possibility is given also in relation to a PO procedure, as Art. 28 Reg. EAPO provides the service of PO, with the declaration under Art. 25, to the debtor, without considering the scenario in which the bank does not make such declaration ⁽¹³⁾.

There are no specific implementation rules for the competent authorities to act without delay.

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.).

National does not provide any corresponding instruction. Thus, it should be concluded that the bank shall implement the order without delay following receipt of it.

Under national law, the bank does not transfer any amount.

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.).

Generally, bank accounts in Italy are not immune from seizure. However, under Art. 19-*bis* of the D.L. no. 132/2014, the foreign diplomatic and consular missions have the right to notify the Ministry of Foreign Affairs which bank accounts contain exclusively

¹³ M. Stella, *Festina lente. L'adeguamento italiano al sequestro europeo di conto corrente*, in *Corriere giur.* 2021, 159 ff.



sums dedicated to the fulfilment of the diplomatic and consular functions; such sums are immune from enforcement.

- 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 communication under Art. 50(1)(g) Reg. EAPO joint accounts and nominee accounts with more than one account-holder may be subject to a preservation order only in proportion to the share of the debtor. The shares of the account-holders are presumed to be equal, unless there is proof to the contrary.

- 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.

As indicated in the communication under Art. 50(1)(h) Reg. EAPO, exempts from seizure, which correspond to the exemptions from attachment, pursuant to the combined provisions of Articles 545 and 671 It c.p.c., are:

- (a) maintenance payments, unless for purposes of maintenance, but only with the authorisation of the president of the court or a judge delegated by them and only for a share to be determined by court order;
- (b) charitable or subsistence allowances to persons ranked as "poverty-stricken" and payments for maternity, sickness or funeral costs owed by insurance funds, social security bodies and charitable institutions;
- (c) the sums owed by private persons by way of wages, salaries or other payments related to the employment relationship, including those owed for redundancy, may be attached for maintenance payments to the extent authorised by the president of the court or by a judge delegated by them; up to a fifth of these sums may be attached;



simultaneous seizures resulting from a combination of the grounds cited previously may not account for more than half of these sums;

(d) an annuity, if constituted free of charge, where there is provision that it should not be subject to attachment or seizure beyond the limit of the essential needs of the creditor;

(e) the sums payable by an insurer to the policyholder or beneficiary of an insurance, subject, with respect to the premiums paid, to the provisions on the revision of acts detrimental to creditors and to the collation, charging and reduction of gifts;

(f) sums owed for pensions, allowances that serve as pensions or other retirement benefits, with the stipulation that of these sums no more than an amount corresponding to the maximum amount of the monthly social allowance, plus one half, may be attached and that the share in excess of that amount may be attached within the limits laid down in points (c) and (d);

(g) special funds for welfare and assistance set up by the entrepreneur, including without employee contributions, where these concern payments made by the entrepreneur's creditors or workers.

There is also provision that sums due by way of wages, salaries and other payments related to employment or work, including those for redundancy and for pensions, and allowances that serve as pensions or other retirement benefits, may, when credited to a bank or post office account in the name of the debtor, be subject to attachment for an amount in excess of three times the social allowance, where the crediting of the account takes place before the attachment.

The law provides when the exempt from seizure can be raised *ex officio* by the court. When nothing is provided by the law, according to case law, the court can raise it on its own motion, when the exempt is provided in the light of public interest¹⁴.

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

¹⁴ See, amongst others, Cass. 22.03.2011, no 6548 (in relation to the exempt from seizure of pensions).



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.).

There is no ranking of national orders, as indicated in the communication under Art. 50(1)(k) Reg. 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.

According to the communication under Art. 50(1)(i) EAPO Reg. as a general rule, the custodian of assets subject to a preservation order, i.e. a bank in the case of a bank account, is authorized to ask for compensation for safekeeping and conserving the assets; the compensation is established according to the rates in force or those usually applied, together with reimbursement of documented costs essential to the conservation of the assets.

These costs include the costs incurred in notifying the declaration referred to by Art. 25 of the EAPO Reg. The party responsible for payment (provisionally) is the applicant. It is for the court to identify the party ultimately responsible for payment.

However the parties should be aware that the issue of the applicable procedure is debated also in relation to equivalent national orders ⁽¹⁵⁾.

¹⁵ For references on this issue, see L. Durello, *Contributo alla tutela del terzo nel processo esecutivo*, Napoli, 2016, 206 f.



B. Means of communication: service and transmission of documents

1. Service on the debtor

Where the debtor is domiciled in Italy 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)) ⁽¹⁶⁾. Also, where the debtor is domiciled in Italy 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.

According to the communication under art. 50(1)(e), the receipt, transmission and notification or serving of documents is the responsibility of the registry of the court of the place where the debtor is domiciled.

The authority will proceed under Arts. 137 ss. It c.p.c. See above § (I)(c)(1).

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.

There are no specific provisions.

In relation to the transmission under Art. 25(3) Reg. EAPO it could be stated – however being only an hypothesis – that the way the bank makes the declaration under national law is applicable, namely by registered letter or certified electronic email.

- 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

¹⁶ Please consider that in this case the Member State in which the debtor is domiciled need not be the Member State of enforcement.



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.

There is no specific provision that regulates the transmission.

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.).

See above §(I)(D)(1).

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.).

The issue has not been addressed by legal writers, nor case law. It could be possible to sustain that the debtor can sue the bank to have it ordered to pay funds unaffected by the Preservation Order.

- 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.).

According to the communication under Art. 50(1)(e) Reg. EAPO the request for the release is to be filed at the registry of the court responsible for enforcement, which is the court of the place of the registered office or of the branch of the bank pursuant to Art. 678 It c.p.c. It is to be excluded that the court can proceed on its own motion.

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.).

Under Art. 7 of d.lgs. no. 152/2020, the competence is of the *Tribunale* where the third debtor, namely the bank, has the residence.

According to an opinion Art. 669-*duodecies* It c.p.c. shall apply and it is the court which issued the PO, that will decide the contestation of the debtor ⁽¹⁷⁾. This solution seems compatible with the means for challenging the decision indicated by the communication under Art. 50(1)(m) Reg. EAPO.

Legal representation is always mandatory under Art. 9 of d.lgs. no. 152/2020.

Court fees are regulated by Art. 13, comma 6-*quinquies*, of Decree of President of the Republic no. 115/2002.

- 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

¹⁷ E. D'Alessandro, *Riconoscimento, esecutività ed esecuzione dell'ordinanza di sequestro conservativo in Italia*, in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milano, 2021, 316.



competent enforcement authority in that Member State, for termination or limitation of the enforcement of the Order (Art. 35(3) EAPO Reg.).

It could be possible for the debtor to start an opposition to the enforcement under Art. 615 It c.p.c.

See above § (I)(D)(2)(iii).

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.).

The applicable procedure should be the opposition to enforcement regulated by artt. 615 ff. It c.p.c., which introduce an ordinary proceedings, that will be decided by a judgment.

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.).



See above § (I)(D)(4).

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

See above § (I)(D)(4).

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.).

Under national law the remedy given to a third party to contest the enforcement of a precautionary measure is discussed ⁽¹⁸⁾. Depending on which theory is followed, it could be sustained that the third party can file a motion under Art. 669-*duodecies* It c.p.c. to the court which issued the PO, which will decide by an order in an adversarial proceedings or that the third can file a “third party opposition to the enforcement” under Art. 619 It c.p.c., filing a motion before the judge competent for the enforcement ⁽¹⁹⁾.

¹⁸ For references on this issue, see P. Potoschnig, *L'esecuzione dei sequestri*, in G. Tarzia, A. Saletti (eds), *Il processo cautelare*, Milano, 2015, 625 ff.,

¹⁹ In this second sense, E. D'Alessandro, *Riconoscimento, esecutività ed esecuzione dell'ordinanza di sequestro conservativo in Italia*, in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milano, 2021, 325-326.