



STATUTORY INSTRUMENTS.

S.I. No. 645 of 2016



EUROPEAN UNION (EUROPEAN ACCOUNT PRESERVATION
ORDER) REGULATIONS 2016

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I, FRANCES FITZGERALD, Minister for Justice and Equality, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving full effect to Regulation (EU) No. 655/2014 of the European Parliament and the Council of 15 May 2014¹, hereby make the following Regulations:

Preliminary

Citation and commencement

1. (1) These Regulations may be cited as the European Union (European Account Preservation Order) Regulations 2016.

(2) These Regulations come into operation on 18 January 2017.

Interpretation

2. (1) In these Regulations—

“EAPO Regulation” means Regulation (EU) No. 655/2014 of the European Parliament and the Council of 15 May 2014¹;

“judgment” means a judgment to which the EAPO Regulation applies and includes an authentic instrument and a court settlement to which the EAPO Regulation applies;

“Member State” does not include Denmark or the United Kingdom;

“Preservation Order” means European Account Preservation Order.

(2) References in these Regulations to a numbered Chapter or Article without qualification is to a Chapter or Article so numbered of the EAPO Regulation.

(3) Unless otherwise indicated, a word or expression used in these Regulations and in the EAPO Regulation has the same meaning in these Regulations as it has in the EAPO Regulation.

Court provisions

Jurisdiction

3. (1) Where jurisdiction to rule on the substantive issue of the matter lies, or would lie, with either the Circuit Court or the District Court, either the

¹OJ No. L 189, 27.06.2014, p.59

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 3rd January, 2017.*

Circuit Court, or the District Court, as the case may be, shall have jurisdiction to issue a preservation order for the purposes of Article 6.

(2) Where, for the purposes of Article 6(2)—

- (a) the debtor is a consumer who has concluded a contract with the creditor for a purpose which can be regarded as being outside the debtor's trade or profession,
- (b) the debtor is domiciled in the State, and
- (c) unless the court seized with the substantive matter is a court of the State,

jurisdiction to issue a Preservation Order intended to secure a claim relating to that contract shall lie with the High Court which shall determine the application in accordance with the EAPO Regulation.

(3) For the purposes of Article 6(3), jurisdiction to issue a Preservation Order shall lie with the court which issued the judgment.

Taking of evidence

4. (1) A court which has jurisdiction in the matter may, if it considers that the evidence provided under Article 8(2) is insufficient for the Court to make a decision on the application for a Preservation Order, request the creditor concerned to provide additional documentary evidence in support of the application.

(2) Notwithstanding section 38 of the Courts of Justice Act 1936, an appeal by the creditor under Article 21(1) from a decision by the Circuit Court to reject, wholly or in part, an application for a Preservation Order shall, notwithstanding that an oral hearing may have taken place under Article 9(2), be made to the High Court sitting in Dublin and section 37 of that Act shall apply accordingly.

Decision on application for Preservation Order

5. The decision on the application for a Preservation Order and, where appropriate, the date by which any appeal may be made against the decision, shall be notified to the creditor concerned by the registrar or other proper officer of the court in accordance with procedures to be prescribed by rules of court.

Revocation or termination of Preservation Order in absence of proof of initiation of substantive proceedings

6. (1) Where the application for a Preservation Order is made prior to the initiation of proceedings on the substance of the matter and the court does not receive proof of the initiation of such proceedings within the time period laid down in Article 10, the Preservation Order shall, by operation of law, cease to have effect and such cesser shall be notified to the parties by the registrar or other proper officer of the court in accordance with procedures to be prescribed by rules of court.

(2) Where the Member State of enforcement is the State and where the court that issued the Preservation Order is also in the State the registrar or other proper officer shall also notify the competent authority in the State which shall take all necessary steps to have the revocation or termination implemented.

Applications for remedies

Amounts exempt from preservation

7. (1) Where a Preservation Order was issued in a Member State other than the State, and the State is the Member State of enforcement, the High Court shall have jurisdiction in relation to—

- (a) any application by a debtor that, having regard to the reasonable day to day expenses and legal expenses of the debtor, certain amounts should be exempt from preservation, and
- (b) any application by a creditor for an adjustment to the exemption applied pursuant to Article 31, 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.

(2) Where a Preservation Order was issued by a Court in the State and the State is the Member State of enforcement, the court which issued the Preservation Order shall have jurisdiction in relation to the matters set out in paragraph (1).

Applications — Article 33

8. An application by the debtor under Article 33 shall be made to the court which issued the Preservation Order in accordance with Article 6.

Applications — Article 34(1)(b) and (2) and 35(3)

9. (1) An application by a debtor under Articles 34(1)(b) or (2) for the termination of enforcement of a Preservation Order shall—

- (a) where the Preservation Order was issued by a court in the State and the State is the Member State of enforcement, be made to that court, or
- (b) where the Preservation Order was issued in a Member State other than the State, and the State is the Member State of enforcement, be made to the High Court.

(2) An application by the debtor and the creditor under Article 35(3) for termination or limitation of the enforcement of a Preservation Order shall, where the court which issued the Preservation Order is not in the State and the State is the Member State of enforcement, be made to the High Court.

Applications — Article 38(1)(b)

10. (1) An application by a debtor under Article 38(1)(b) for the termination of the enforcement of a Preservation Order shall—

- (a) where the Preservation Order was issued by a Court in the State and the State is the Member State of enforcement, be made to that Court, or
- (b) where the Preservation Order was issued in a Member State other than the State and the State is the Member State of enforcement, be made to the High Court.

(2) Where the alternative assurance provided in accordance with Article 38 takes the form of land the registrar or other proper officer of the court shall, in accordance with procedures to be prescribed by rules of court, send to the Property Registration Authority a notice of the provision of the assurance or, as appropriate, a notice of revocation, modification, or termination of the Preservation Order or an order varying or discharging the Preservation Order.

(3) On receipt of the documents referred to in paragraph (2) the Property Registration Authority shall—

- (a) if the land is registered land—
 - (i) cause an entry to be made in the register kept by it under the Registration of Deeds and Title Acts 1964 and 2006 inhibiting, until the order is discharged, any dealing with the land and any charge thereon, and
 - (ii) if the order is subsequently varied or discharged, cause the entry to be varied accordingly or cancelled, as the case may be, or
- (b) if the land is not registered, cause the notice of the making, variation or discharge of the order to be registered in the register of deeds maintained by it under section 35 of the Registration of Deeds and Title Act 2006 (No.12 of 2006).

(4) Where an alternative assurance affects an interest in a company (within the meaning of the Companies Act 2014 (No. 38 of 2014)) or its property or an order is made varying or discharging such an order, the registrar or other proper officer of the court shall, in accordance with procedures to be prescribed by rules of court, send to the Registrar of Companies a notice of the making of the order, together with a copy of the order.

Third party applications

11. A third party who is of the view that its legitimate interests are affected by—

- (a) the issuing of a Preservation Order by a court in the State in proceedings to which it is not a party may make an application under Article 39(3)(a) to that court to contest the Order, or

- (b) the enforcement of a Preservation Order may, where the Preservation Order was issued in another Member State and the State is the Member State of enforcement, make an application under Article 39(3)(b) to the High Court to contest the enforcement of that Order.

Enforcement

Notification of effect of remedies and duration of preservation

12. Where a remedy is granted to the debtor, and the State is the Member State of enforcement, the court granting the remedy shall make an order requiring the competent authority to notify the bank in which the funds are preserved of—

- (a) any modification, limitation or revocation of a Preservation Order,
- (b) any termination of its enforcement, or
- (c) the taking effect of any measure to enforce a judgment, court settlement or authentic instrument obtained by the creditor relating to the claim which the Preservation Order was aimed at securing.

Enforcement and implementation of Preservation Order

13. (1) On receipt of a Preservation Order the bank concerned shall act without delay to implement it.

- (2) For the purposes of Article 24, the bank concerned may—
 - (a) transfer the amount which is preserved by virtue of a Preservation Order to a bank account which has been specified for that purpose, or
 - (b) subject to Article 24(3), release the funds the subject of a Preservation Order and transfer those funds to the account of the creditor indicated in the Preservation Order.

Information authority and competent authority

Designation of information authority

14. (1) The Minister for Justice and Equality is designated as the information authority for the State for the purposes of Article 14.

- (2) The information authority may make its own rules of procedure.

Application of Article 14

15. Where, pursuant to Article 14(3), a request for information has been transmitted to the information authority by a court with which the application for a Preservation Order has been lodged, the information authority may request a bank in the State to disclose to it whether a debtor holds an account or accounts with that bank. The bank shall comply with any such request.

Designation of competent authority

16. (1) The Minister for Justice and Equality is designated as the competent authority for the purposes of receipt, transmission or service pursuant to the EAPO Regulation.

(2) The competent authority may make its own rules of procedure.

Miscellaneous provisions

Proof and admissibility of decisions and certain translations

17. (1) For the purposes of Articles 8(3) and 49 a document, duly authenticated, which purports to be a copy of a judgment given in another Member State shall without further proof be deemed to be a true copy of the decision, unless the contrary is shown.

(2) A document purporting, under paragraph (1), to be a copy of a judgment shall be regarded for those purposes as being duly authenticated if it—

(a) purports to bear the seal of the court or authority concerned, or

(b) purports to be certified by a judge or officer of the court or authority

to be a true copy of the decision.

(3) A document which—

(a) purports to be a transliteration or translation of—

(i) a judgment given by a court of another Member State,

(ii) an authentic instrument or a court settlement, or

(iii) a form mentioned in Article 51,

and

(b) is certified as correct by a person competent to do so,

shall be admissible as evidence of the document of which it purports to be a translation.

Application of Statutory Declarations Act 1938

18. Section 6 (inserted by section 6 of the Civil Law (Miscellaneous Provisions) Act 2008 (No. 14 of 2008)) of the Statutory Declarations Act 1938 (No. 37 of 1938) shall apply to a declaration made under Article 8(2)(o).

Actions for compensation

19. An action for damages under Article 13 shall, subject to paragraph (2) of that Article, be deemed for the purposes of every enactment or rule of law to be an action founded on tort.



GIVEN under my Official Seal,
20 December 2016.

FRANCES FITZGERALD,
Minister for Justice and Equality.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This Regulation makes provision for the administrative and procedural arrangements associated with the coming into operation on 18 January 2017 of Regulation (EU) No. 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

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