

Cross-Border Debt Recovery: CJEU Rules on European Account Preservation Order Procedure



On 7 November 2019, the Court of Justice of the European Union (the **CJEU**) handed down [a judgment](#) in which it ruled that if a creditor wishes to rely on an order for payment in order to benefit from the European Account Preservation Order (**EAPO**) procedure against a debtor, this order for payment must be enforceable under the relevant domestic law.

Regulation 655/2014

Regulation 655/2014 of 15 May 2014 establishing an EAPO procedure to facilitate cross-border debt recovery in civil and commercial matters (**Regulation 655/2014**) entered into force on 18 January 2017 (see [here](#)).

Regulation 655/2014 allows a creditor, domiciled in one Member State, to request the courts of a Member State to issue an EAPO in order to preserve the funds held by a debtor in a bank account located in another Member State. The EAPO thus prevents a debtor from jeopardising the creditor's claim by

transferring or withdrawing those funds.

The application for an EAP0 should be made by a creditor through a standard multilingual form filed before, during or after the legal proceedings on the substance of the claim have taken place. The creditor must file his application before the courts of the Member State which either had jurisdiction to rule on the "*substance of the matter*" or which rendered the judgment, the court settlement or the "*authentic instrument*" which serve as the basis for the EAP0.

Facts

In its decision of 7 November 2019, the CJEU clarified the scope and content of the notions of "*authentic instrument*" and "*substance of the matter*" under Regulation 655/2014.

In the case at hand, a creditor had obtained a payment order (the ***Payment Order***) from a Bulgarian District Court (the ***District Court***) to recover certain debts against various debtors. Thereafter, the creditor requested an EAP0 from the same District Court in order to attach the funds held on the debtors' bank accounts in Sweden.

However, the District Court considered that the Payment Order did not constitute a valid "*authentic instrument*" pursuant to Regulation 655/2014 since it was unenforceable under Bulgarian law. The District Court therefore referred the matter back to the President of the District Court of Sofia (the ***President***) who, according to the District Court, had jurisdiction to rule on the "*substance of the matter*".

The President, however, disagreed and referred the matter back to the District Court, arguing that the Payment Order, albeit unenforceable, constituted an "*authentic instrument*" under Regulation 655/2014 and that the District Court was thus competent to issue the EAP0.

In order to settle this jurisdictional dispute, the District

Court referred three preliminary questions to the CJEU for interpretation of Regulation 655/2014.

CJEU's ruling

In its judgment, the CJEU found that a payment order can only be considered as an "*authentic instrument*" if it is enforceable under the relevant domestic law. In the case at hand, however, since the Payment Order was unenforceable under Bulgarian law, it did not constitute a valid "*authentic instrument*" and, therefore, the EAP0 could only be sought before the Bulgarian court that had jurisdiction to rule on the "*substance of the matter*".

The CJEU also ruled that the procedure to request a Payment Order before the District Court had to be considered as a procedure on the "*substance of the matter*" since the latter was defined by Recital (13) of Regulation 655/2014 as being "*any proceedings aimed at obtaining an enforceable title on the underlying claim including, for instance, summary proceedings concerning orders to pay and proceedings such as the French 'procédure de référé'*".

The CJEU therefore concluded that the District Court had jurisdiction to issue the EAP0.

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