European Account Preservation Order

France

Article 50(1)(a) – Courts competent to issue the European Account Preservation Order

An enforcement judge (*juge de l'exécution*) at a Regional Court (*tribunal de grande instance*). When a creditor has obtained an authentic instrument, it is the enforcement judge at the Regional Court that has jurisdiction to issue a European Account Preservation Order.

Article 50(1)(b) – Authority designated as competent to obtain account information

A bailiff (*huissier de justice*).

Article 50(1)(c) – Methods of obtaining account information

A bailiff is authorised to consult a register, known as Ficoba, which centralises all the bank accounts held by an individual in France.

Article 14(5)(a) and (b) apply: upon request by the designated information authority, banks are under an obligation to disclose whether the debtor holds an account with them; the authority is entitled to access the relevant information where that information is held by public authorities or administrations in registers or otherwise.

French law allows such access to the debtor's account information once the creditor holds an enforceable title (Articles L. 152-1 and L. 152-2 of the Code of Civil Enforcement Procedures (*code des procédures civiles d'exécution* — CPCE).

The Ficoba register (the national register of bank and similar accounts, *Fichier national des comptes bancaires et assimilés*) was established in 1971 and is managed by the DirectorateGeneral for Public Finance (*Direction Générale des Finances Publiques*). It lists accounts of all kinds (accounts held with banks, the post office, savings banks, etc.) and provides authorised persons with information on the accounts held by an individual or company.

An entry is made in the register when an account is opened. The account holder is informed by the financial institution that the new account will be registered in Ficoba. Declarations that an account has been opened, closed or modified include the following information:

the name and address of the institution with which the account is held;

the number, type and characteristics of the account;

the date and nature of the reported transaction (account opened, closed or modification);

the name, date and place of birth and address of the account holder, and in the case of sole traders their Siret number (register of business premises identification system, *système d'identification du répertoire des établissements*);

in the case of a legal person, the name, legal form, Siret number and address.

The register does not provide any information on transactions effected on the account, or of the account balance.

On receipt of the report from the bank which opened, modified or closed the account, the entry in the register is made by the Directorate-General for Public Finance. Details of the civil status of individuals are certified by INSEE (the National Institute of statistics and Economic Studies, *Institut national de la statistique et des études économiques*); the details of legal persons are certified and updated by the Directorate-General for Public Finance, using the Sirene system (national system for the identification and registration of enterprises and their premises, *Système national d'identification et du répertoire des entreprises et de leurs établissements*).

Find a bailiff

Article 50(1)(d) – Courts with which an appeal against refusal to issue the European Account Preservation Order may be lodged

The Court of Appeal (*Cour d'appel*)

Article 50(1)(e) – Authorities designated as competent to receive, transmit and serve the European Account Preservation Order and other documents

The bailiff

Article 50(1)(f) – Authority competent to enforce the European Account Preservation Order

The bailiff

Article 50(1)(g) – Extent to which joint and nominee accounts can be preserved

Where the account preserved is a joint account, each account holder must be informed. If the bailiff is unaware of the identity and address of the joint account holders, he/she asks the bank to inform them of the preservation of the account and of the amounts claimed, so that where appropriate they can enforce their rights to the account and, in particular, obtain the release of their share of the joint estate.

Until such time as a holder of the joint account has been informed that the account is preserved, the period in which he/she may challenge the measure will not start to run.

Article R. 162-9 of the Code of Civil Enforcement Procedures states that where the income and salary of a spouse in a marriage where the property is held jointly (in *communauté des biens*) are paid into an account, which may be a joint account, and that account is preserved in order to secure a debt generated by the other spouse, an amount will immediately be made available to the spouse which is equal to the income and salary paid in the month prior to preservation or to the average monthly income and salary paid in the course of the twelve months prior to preservation, as he/she wishes.

It is for the distraining creditor to identify the income of the debtor on the account which he/she seeks to preserve. The account can, of course, be preserved in full if the income of the debtor accounts for all the funds paid into it, even if it is a joint account.

French law does not recognise the notion of nominee accounts as such.

The general principle of pledge (*principe du droit de gage général*) prohibits the preservation of funds which are held by the debtor on behalf of third parties and which do not belong to the debtor personally or which have been entrusted to him/her.

If funds have been entered in a special account held by an intermediary acting in a professional capacity, and it can be shown beyond doubt that they are the property of third parties, these funds may not be preserved by creditors, in spite of the fact that the intermediary is the account holder and the only person who can demand repayment of the funds. This applies to amounts deposited by a notary (*notaire*) on a special account with the Deposit and Consignments Office (*Caisse des dépôts et consignations*), or by an estate agent or building manager.

Article 50(1)(h) – Rules applicable to amounts exempt from seizure

Two mechanisms which serve the same purpose but operate in a different way co-exist in French law: the bank balance immune from seizure (*solde bancaire insaisissable*), which is exempt from preservation automatically, and the transfer of immunity (*report d'insaisissabilité*), which requires an application by the debtor and proof that the account is funded by sums immune from seizure.

1) Bank balance immune from seizure

Under Article L.162-2 of the Code of Civil Enforcement Procedures, where the debtor is a natural person the bank must make available to him or her, up to the limit of the credit balance of the account or accounts on the day of preservation, a sum in maintenance equal to the amount of the basic minimum income allowance (*RSA socle*), which is the flat-rate sum for a single beneficiary referred to in Article L. 262-2 of the Family and Social Action Code (*Code de l'action sociale et des familles*), set at €524.68 by Decree 2016-538 of 27 April 2016.

Pursuant to Article R. 162-2 of the Code, the debtor does not have to request implementation of this mechanism: the bank immediately informs the debtor that the amount exempt from seizure is being made available to him/her. Where there are several accounts, funds can be made available to the debtor from all credit balances, the amount being taken in the first place from current accounts. The bank also notifies the bailiff without delay of the funds made available to the debtor and of the account or accounts on which those funds are held. In the case of preservation of accounts opened with different banks, the bailiff identifies the third party/parties which must make the 'bank minimum income allowance' (*RSA bancaire*) available to the debtor, and determines the arrangements for doing so.

Pursuant to Article R. 162-3 of the Code, that amount is set aside for the debtor for a period of one month following preservation.

2) Transfer of immunity

A request by the debtor seeking transfer of immunity makes sense only if the sums otherwise immune from seizure exceed the amount of the bank balance immune from seizure.

Under Article L.112-4 of the Code of Civil Enforcement Procedures, sums immune from seizure the amount of which is credited to a bank account remain immune from seizure. Article R. 112-5 of the Code specifies that where an account is credited with an amount wholly or partially immune from seizure, immunity is transferred to the balance of the account up to that amount.

Article R. 162-4 of that Code states that 'where amounts immune from seizure are sums credited at regular intervals, such as wages, retirement pensions or amounts paid by way of family allowances or unemployment benefit, the account holder may, on proof of the origin of the funds, ask for them to be made available immediately, minus any amounts debited to the account after the last payment of an amount immune from seizure'. This concerns sums of two kinds: income fully immune from seizure, such as the basic minimum income allowance; and income that may be seized only within the limits and subject to the rules governing seizure of earnings laid down in the Labour Code (*Code du travail*). The Court of Cassation (*Cour de cassation*) has held that immunity covers all such sums accrued on the bank account, and not just the last payment made (Court of Cassation (Second Civil Division), 11 May 2000, No 98.11-696). From a practical viewpoint, this rule is difficult to implement when the account is also funded by payments that are wholly or partially open to seizure. When determining the amount covered by the transfer of immunity, pending transactions settled within 15 days after preservation are not taken into account (second paragraph of Article R. 162-4 of the Code of Civil Enforcement Procedures).

The debtor may at any time request that amounts immune from seizure be made available, even before the 15-day deadline for the settlement of pending transactions has expired; the amounts are transferred to him/her immediately. The creditor will not be informed that the funds have been made available unless and until he/she submits a payment demand: he/she will then have 15 days to challenge the amount made available to the debtor and the entry in the accounts (last sentence of Article R. 162-4 of the Code of Civil Enforcement Procedures).

With regard to amounts immune from seizure generated by sums credited on a one-off basis (*créances instantanées*), Article R. 162-5 of the Code of Civil Enforcement Procedures states that the debtor may, on proof of the origin of the funds, ask for them to be made available to him/her immediately, minus any amounts debited to the account since the day on which the credit was entered. Examples of the type of funds concerned are back-pay (*rappel de salaires*) or a death grant (*capital-décès*) (immune from seizure under Article L.361-5 of the Code of Social Security (*Code de la sécurité sociale*)). These amounts are not made available until the expiry of the 15-day deadline for the settlement of pending transactions laid down by Article L. 162-1 of the Code of Civil Enforcement Procedures. The debtor can always ask the enforcement judge to make the amounts withheld available early, subject to proof that they are immune from seizure. In such cases the creditor must be heard or summoned.

Article 50(1)(i) – Fees, if charged by the banks, for the implementation of equivalent national orders or for providing account information, and information on the party liable to pay those fees

French law does not have specific provisions on charges for the enforcement of preservation orders. However, the Monetary and Financial Code (*Code monétaire et financier*) states that garnishee fees (*frais par saisie-attribution*) charged to a debtor account holder must be indicated in the list of charges that banks have to must provide to their customers (article D. 312-1-1).

In addition, customers must be given prior information on these fees free of charge (article R. 312-1-2), in accordance with Article L. 312-1-5, which provides that the information is to be given in the account holder's bank statements and that a period of 14 days following the date of the statement must elapse before the amounts are debited. The fees that the banks charge to account holders under this heading appear to be set freely by each bank, and range from €80 to €150 approx.

Any fees for providing account information charged by the bank to the bailiff responsible for enforcing the measure will be included in the costs payable in principle by the debtor (see above).

The amount of the fees charged by French banks seems to vary between €78 and €111.

Article 50(1)(j) – The scale of fees or other set of rules setting out the applicable fees charged by any authority or other body involved in the processing or enforcement of the Preservation Order

Bailiffs charge fees for enforcing Preservation Orders based on the existing national scale. It can be summarised as follows: The total cost of the procedure (including converting the Preservation Order into a final garnishment order (*saisie-attribution*) varies between €166.19 and €397.88 depending on the amount of the claim in question.

In addition, preservation of claims is one of the steps mentioned in Article A 444-16 of the Commercial Code (*Code de commerce*) and it therefore entails an administrative fee (*droit d'engagement de poursuites*). The tariff for this fee is set out in Part A 444-15 of the Code. If the amount of the claim is less than or equal to €76, the fee is set at €4.29; above the €76 threshold, the fee is proportionate to the amount of the claim (subject to a ceiling of €268.13), in accordance with the following scale:

AMOUNT OF CLAIM	APPLICABLE RATE
From €0 to €304	5.64%
From €305 to €912	2.82%

From €913 to €3 040	1.41%
Above €3 040	0.28%

The administrative fee may be levied only once for recovery of the same claim.
It is to be paid by the debtor if the debtor is liable for the cost of the measure in connection with which it is charged, and by the creditor in all other cases.
It is due to the bailiff irrespective of the success or otherwise of the recovery proceedings.
Depending on whether the cost of the measure is borne by the debtor or the creditor, it is offset against the consideration laid down in Article A. 444-31 or Article A. 444-32 respectively.
All requests lodged under Articles L. 152-1 and L. 152-2 of the Code of Civil Enforcement Procedures are charged at €21.45 excluding tax (see Article A.444-43 of the Commercial Code (*Code de commerce*), measure No 151). These are requests for searches to be carried out by national, regional, departmental and municipal authorities, businesses licensed by or operating under the aegis of national, regional, departmental and municipal authorities, public bodies or bodies operating under the aegis of the administrative authority, or bodies authorised by law to hold deposit accounts. The same charge applies for consulting the Ficoba register.

Article 50(1)(k) – Ranking, if any, of equivalent national orders

Preservation does not bar competing claims, but the first distraining creditor acquires a preemptive right. The fact that the claim has been preserved does not prevent another creditor from initiating another enforcement measure, but that measure will take effect only if the first measure is not converted into a final enforcement measure.
Pursuant to Article L. 523-1 of the Code of Civil Enforcement Procedures, where the claim preserved is for a sum of money, the effect is that of a deposit of security as provided for in Article 2350 of the Civil Code, i.e. the money is earmarked and carries a pre-emptive right within the meaning of Article 2333 of the Civil Code, on pledges (*gages*). Preservation thus gives the distraining creditor the 'privilege' of a pledgee, i.e. the right to be paid in preference to other creditors. The distraining creditor need not fear the competing claims of unsecured creditors or junior creditors. But the distraining creditor can be overridden by creditors with a senior pre-emptive right, e.g. the 'super-privilege' of employees, the privilege for legal costs, or the general privileges of the Treasury.
If multiple preservations are ordered on the same day, the amounts preserved are distributed proportionately, and there is no need to take account of any privileges (Opinion of the Court of Cassation of 24 May 1996, No 09-60.004).

Article 50(1)(l) – Courts or enforcement authority competent to grant a remedy

The authority with power to revoke a Preservation Order, to limit or terminate the enforcement of a Preservation Order, or to decide that the enforcement of a Preservation Order would be contrary to public policy and must be terminated on those grounds, is the enforcement judge at the Regional Court.

Article 50(1)(m) – Courts with which an appeal is to be lodged and the time-limit, if any, for lodging the appeal

The court with jurisdiction to hear appeals against decisions taken pursuant to Articles 33, 34 or 35 is the Court of Appeal. The time limit for appeals is 15 days. Time begins to run on the day when the recipient signs the acknowledgement of receipt of the registered letter containing the decision of the enforcement judge, which is sent by the clerk of the court to the parties.
If the acknowledgement of receipt is unsigned, the decision of the enforcement judge must be served by a bailiff, at the request of a party, and time then begins to run on the date on which the decision is served.

Article 50(1)(n) – Court fees

There are no charges for submitting an application for a Preservation Order, or for lodging an appeal.
Article L. 512-2 of the Code of Civil Enforcement Procedures states that costs occasioned by the preservation order are to be borne by the debtor, unless the court decides otherwise at the close of proceedings. The court must approve a list of items to be included in the costs owed and determine liability for them.
The Article also stipulates that where the court orders release from the Preservation Order the creditor may be ordered to pay compensation for the damage caused by it. According to the case-law, this obligation to pay compensation can be enforced without any proof of fault (Court of Cassation (Second Civil Division), 29 January 2004, No 01-17.161 and 7 June 2006, No 05-18.038).

Article 50(1)(o) – Languages accepted for translations of the documents

Only documents in French will be accepted.

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