European Account Preservation Order

Portugali

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

In accordance with the courts' jurisdiction based on the subject matter and value, as determined by the Law on the Organisation of the Judicial System (Law No 62/2013 of 26 August 2013), the courts with competence in European Account Preservation Order procedures are as follows in cases that relate to the courts' respective area of jurisdiction:

- Central civil divisions (*Juízos Centrais Cíveis*);
- Local civil divisions (*Juízos Locais Cíveis*) and divisions with general jurisdiction (*Juízos de competência genérica*);
- Family and minors divisions (*Juízos de família e menores*);
- Labour divisions (*Juízos do Trabalho*);
- Commercial divisions (*Juízos de Comércio*);
- Enforcement divisions (*Juízos de Execução*);
- Intellectual Property Court (*Tribunal da Propriedade Intelectual*);
- Court of Competition, Regulation and Supervision (*Tribunal da Concorrência, Regulação e Supervisão*);
- Maritime Court (*Tribunal Marítimo*).

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

The Order of Solicitors and Enforcement Agents (*A Ordem dos Solicitadores e Agentes de Execução (OSAE)*).
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Article 50(1)(c) – Methods of obtaining account information

The following methods are provided for under national law:
All banks in Portugal are obliged to disclose if the debtor holds an account with them (Article 14(5)(a));
The information authority may access any relevant information held by public authorities or administrations in registers or otherwise (Article 14(5)(b)).
These methods are enshrined in Article 749 of the Code of Civil Procedure and regulated by Article 17 of Ministerial Implementing Order No 282/2013 of 29 August 2013, as last amended.
In order for the competent authority (the Order of Solicitors and Enforcement Agents, OSAE) to access information on the existence of accounts in Portugal, a request is sent to the Bank of Portugal. In Portugal, these information requests can only be made using the debtor's tax identification number (NIF) or legal person identification number (NIPC). So for requests to be processed quickly, it is recommended that they include the following information:

- the debtor's tax identification number (NIF) or,
- the legal person identification number (NIPC) if the debtor is an undertaking,
- the debtor's address.

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

The appeal courts have jurisdiction to hear appeals.
However, in accordance with national law, the appeal must be lodged with the court that issued the contested decision.

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

- The Courts, specifically court officials;
- The Order of Solicitors and Enforcement Agents (OSAE), specifically enforcement agents.

Generally speaking, enforcement agents are empowered to carry out the necessary notifications.
In accordance with Portuguese procedural law, court officials intervene only in the following situations:

• Enforcements where the State is the creditor.
• Enforcements where the Public Prosecutor's Office (*Ministério Público*) is representing the creditor.
• Where there is no 'enforcement agent' in the district in which the enforcement proceedings are pending and the use of an 'enforcement agent' from another district would entail disproportionate costs. This intervention is decided by a judge, at the request of the creditor.
• If the necessary procedural steps would entail disproportionate travel costs and there is no 'enforcement agent' in the area where these procedural steps are considered to take place. This intervention is decided by a judge, at the request of the 'enforcement agent'.
• Enforcements with a value of €10 000 or less, if the creditors are individuals and the request does not relate to a commercial or industrial activity, provided that the intervention is requested in the enforcement application and the relevant procedural costs are paid.
• Enforcements with a value of €30 000 or less, if the request is employment-related and the party seeking enforcement requests the intervention in the enforcement application and pays the relevant procedural costs.

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

The Order of Solicitors and Enforcement Agents (OSAE).

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

Under Portuguese law, it is presumed that the parties have an equal share in the credit, such that, unless there is evidence to the contrary, it is assumed that each depositor owns half of the funds deposited in the account (Articles 513 and 516 of the Civil Code). Therefore, the preservation order relates to the debtor's share in the joint account, it being presumed that the shares are equal (Article 780(5) of the Code of Civil Procedure - CPC).

This presumption can be overridden by producing evidence to the contrary; it must be proven that the funds deposited in the bank account belong to only one account holder or to one of the account holders, or that they hold different shares in the account, or even that the funds belong to a third party.
If the preservation order is brought against only one of the spouses, but an account held jointly by the spouses is seized, as the debtor is not thought to have sufficient assets, the spouse of the person against whom the preservation order is brought must be summoned to request the separation of property or to declare that they accept that the debt is shared; this will be done at the request of the spouse against whom the preservation order is brought. If the preservation order was brought against only one of the spouses and against an account that is held in their name only, that spouse can claim that the debt is shared, in which case a preservation order may then be issued against the spouses' joint account, if they have one (Article 740(1), Article 741(1) and Article 742(1) of the CPC).
If the account holder is also the debtor, but the funds in the account supposedly belong to a third party, the third party may raise objections (Article 342(1) CPC). If it appears that the debtor is the owner of funds deposited in an account held by a third party, the third party may appeal against the preservation order or raise objections, putting forward factual evidence or furnishing proof that was not taken into account by the court and which could undermine the grounds for the preservation order (Article 372(1) CPC). In the first instance, the third party will attempt to prevent the funds from being seized, while in the second instance, it will be the debtor.

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

In accordance with Article 391(2) of the Code of Civil Procedure (CPC), the provisions applicable to seizure, adapted as necessary, apply to preservation orders.
Seizure must be limited to the assets needed to pay the enforceable debt and the expected costs of enforcement (Article 735(3) CPC).
In accordance with Article 738 CPC, the following are exempt from seizure: two thirds of the net income, salaries, periodic amounts received as retirement pension or any other social benefit, insurance, accident indemnity or annuity, or any other payments of a similar nature which ensure the livelihood of the debtor. For the purposes of calculating the liquid part of the abovementioned payments, only contributions which are legally required are considered. The maximum amount that is exempt from seizure is equivalent to three national minimum wages at the time of each seizure; if the debtor has no other income, the minimum amount exempt is the equivalent of one national minimum wage.
In the specific case of the attachment of bank accounts, the total amount corresponding to the national minimum wage is exempt from seizure.
In view of the amount, the type of outstanding debt, the needs of the person against whom enforcement is sought and their family circumstances, at the request of the person against whom enforcement is sought, the judge may exceptionally reduce the seizable amount of income, for as long as he considers reasonable (but for no longer than one year) and may even exempt it from seizure.
Lastly, bank deposits are exempt from seizure if they result from the payment of a loan that is itself exempt from seizure, in accordance with Article 739 CPC.

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

Banks only have the right to be remunerated for the services they provide **in cases where the creditor is a commercial undertaking that, in the previous year, has lodged 200 or more applications for interim relief at a court, registry or contact point** (Articles 780(12) of the CPC).
Implementing Order No 202/2011 of 20 May 2011, as last amended, lays down the level, the methods of payment and recovery, and the distribution of amounts relating to this remuneration.
This remuneration relates to costs incurred in the case which are the creditor's sole responsibility and does not include the fees and expenses of the enforcement agent or the costs of enforcement; nor can it be claimed as costs of the parties (Article 1(2) of Implementing Order No 202/2011 of 20 May 2011).
In the event of the attachment of funds in a bank account in the name of the person against whom enforcement is sought, one fifth (1/5) of a unit of account is due, which amounts to €20.40.
If attachment is not possible (when there are no bank accounts or bank funds in the name of the person against whom enforcement is sought), one tenth (1/10) of a unit of account is due, which amounts to €10.20.

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

In Portugal, information on bank accounts is provided by the banks in accordance with the conditions, and in the amounts, referred to in Article 50(1)(i).
The following charges are payable for processing or enforcing the Preservation Order:
- €25 if the debtor is domiciled in the Member State of origin;
- €51 if the debtor is domiciled in a Member State that is not the Member State of origin.

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

Not applicable.

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

Appeals **against a preservation order** under Article 33(1):
- The court with jurisdiction to hear and rule on an appeal is the court of first instance that handed down the preservation order.

Appeals **against the enforcement of a preservation order** under Article 34:
- Central civil divisions in enforcements with a value of more than €50 000*
- Local civil divisions or, if they do not exist, divisions with general jurisdiction in enforcements with a value of €50 000 or less.

* This amount includes capital and interest/penalties calculated up to the date when the preservation order was presented.

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

Appeals must be lodged with the court which issued the order being appealed against (Article 637(1) of the Code of Civil Procedure). After being lodged, appeals are referred for consideration by the Court of Appeal (*Tribunal da Relação*).
The time limit for lodging an appeal is 15 days from notification of the order (Articles 638(1) and 363(1) CPC).

Article 50(1)(n) – Court fees

- In the context of an interim measure, the requesting party must pay procedural costs of €306.
- In the case of an appeal against an order, the requesting party may pay between €306 and €612 in procedural costs.

In accordance with Article 145(1) CPC, the procedural costs must be paid at the beginning of the respective proceedings.
Tables II and III, referred to in Article 7(1), (4), (5) and (7) of the Regulation on Procedural Costs (Decree-Law No 34/2008 of 26 February 2008), can be found here: http://data.dre.pt/eli/dec-lei/34/2008/p/cons/20161228/pt/html

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

Not applicable.

Last update: 26/02/2024

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