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**ЮРИДИЧЕСКИ ФАКУЛТЕТ**



# **A U T O R E F E R A T**

**on dissertation for awarding educational and scientific degree  
" DOCTOR "**

*With the topic of the dissertation:*

**European Bank Account Preservation Order  
in civil and commercial cases**

on

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## *Introduction*

The development of the European Union leads to dynamic changes in the relations between private legal entities within the framework of its membership and the need for continuous adaptation of the legal framework in order to ensure the basic principles laid down in the establishment of the Union - the free movement of people, capital, goods and services.

Private legal entities - individuals, commercial companies, multinational companies, states as equal entities <sup>1</sup>in private legal relations, today go beyond the borders of their own state and interact with each other, which requires continuous and dynamic improvement of the national and supranational legal framework in order to protect interests to each of its subjects <sup>2</sup>.

The existence of a significant volume of difficulties in settling cross-border relations and the collection of claims presupposes the need for legal regulation and efficiency in obtaining and executing court decisions within the European Union" <sup>3</sup>, improving the enforcement of decisions and the creation of EU-level security measures against property of the debtor. This essentials the adoption of Regulation (EU) No. 655/2014 of the European Parliament and of the Council on May 15 , 2014, establishing a procedure for a European order for the preservative of bank accounts in order to facilitate the cross-border collection of claims in civil and commercial affairs.

The European order for the preservative of bank accounts, regulated in Regulation (EU) 655/2014, represents the first generation of norms of European law introducing direct security measures aimed at overcoming cross-border indebtedness within the EU. Regulation (EU) No. 655/2014 creates a simplified, alternative, additional and optional means for creditors, who have the freedom and the possibility

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<sup>1</sup> Todorov, T. , International private law , Sofia , 2010, ISBN 978-954-730-677-6 - in detail about the state as a private legal entity, with .31

<sup>2</sup> Museva , B., Relationship and interaction between Bulgarian and European private international law, Legal World, 2007, issue 2, ISSN : 1311-3488 , pp. 11-26

<sup>3</sup>WHITE PAPER ON MODERNIZATION OF THE RULES IMPLEMENTING ARTICLES 85 AND 86 OF THE EC TREATY Commission Program No 99/027 (1999/C 132/01) (Text with EEA relevance), Official newspaper on European Union , issue C 33, 31.1.1998, p . 3. , ISSN 0378-6986 , Available on internet address on English language : <https://op.europa.eu/en/publication-detail/-/publication/a378767b-a84d-4086-b2b4-bc6a39ee40d1/language-en>

to use another procedure to obtain an equivalent measure of protection to the national one. The regulation is an act of the European Union, which is a binding, directly applicable and mandatory legal instrument in its entirety <sup>4</sup>, the effect of which is not associated with the need for transposition into our national law.

The purpose of the mechanism regulated in Regulation (EU) No. 655/2014 is the efficient and quick freezing of funds on the debtor's bank accounts. The European preservative of bank accounts is a regulated legal instrument by means of which the creditor's claim is secured and debt collection is facilitated. It aims to protect the creditor from illegal actions of the debtor, resulting in squandering or concealing the most liquid <sup>5</sup>property of the debtor - the cash available in bank accounts. The purpose of the garnishment is to secure the claim of the creditor <sup>6</sup>and subsequently to satisfy it by compulsory order.

The European preservation order regulated by Regulation (EU) 655/2014 has been adapted to the Bulgarian legislation with the adopted changes in the Civil Procedure Code - chapter fifty-six "a" <sup>7</sup>. In view of the detailed rules introduced in the regulation and its direct application, a minimum regulation is foreseen in the Bulgarian legislature. <sup>8</sup>It applies to all civil and commercial cases, with certain specifically defined matters excluded from its scope. <sup>9</sup>It is applicable within all member states, except for Denmark and the United Kingdom (then a member state),

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<sup>4</sup> Todorov, T. , International private law., Sibi , 2010, ISBN 978547306776 - see the Regulation as a source of private international law, compared with Directive and Decision, p.62-64.

<sup>5</sup>Liquid asset - ik . term – an asset on the balance sheet of commercial companies that is quickly realizable, characterized by quick salability and return.

<sup>6</sup>Creditor - claimant in enforcement proceedings.

<sup>7</sup> The Code of Civil Procedure (SG, No. 13 of 2017) Chapter fifty -six a "Establishment of a procedure for a European warrant for the preservative of bank accounts in order to facilitate the cross-border collection of claims in civil and commercial cases on the basis of R (EU ) No. 655/2014 of the European Parliament and of the Council of May 15, 2014. on the establishment of a procedure for a European order for the preservative of bank accounts in order to facilitate the cross-border collection of receivables in civil and commercial cases (OJ, L 189/59 of 27 June 2014 ) "

<sup>8</sup> Draft Law to supplement the Code of Civil Procedure to create chapter fifty-six "a" Establishing a procedure for a European Preservation Order on bank accounts in order to facilitate the cross-border collection of claims in civil and commercial cases based on R (EU) no. 655/2014 of the European Parliament and of the Council of May 15, 2014. on the establishment of a procedure for a European order for the preservative of bank accounts in order to facilitate the cross-border collection of claims in civil and commercial cases (OJ, L 189/59 of 27 June 2014 ) "

<sup>9</sup>Regulation (EU) No. 655/2014 Article 2, §2 , §3 and §4 - commercial bankruptcy cases, property rights from marital relations , wills and inheritance, incl. maintenance obligations arising in the event of death - cases that are subject to a special procedure, as well as those that originate from strictly personal claims, etc.

which refused to take part in its adoption and maintain the position that they are not bound by it and its application.

The regulation creates a proper European procedure, which is not a set of national procedures aimed at the same goal, but regulates its own mechanism for cross-border freezing of bank accounts, which is applied directly and in the same way in all EU member states.<sup>10</sup>

**Object of the study :**

The subject of the study is the European Preservation Order for bank accounts in cross-border debt collection in civil and commercial cases, which was introduced by Regulation (EC) 655/2014 . A relatively new strong cross-border legal mechanism to deal with a wrongful debtor in an international aspect, which, despite the innovative possibilities it offers, is not well known and enforced as a legal instrument and has its shortcomings, but nevertheless has significant legal implications and provides strong opportunities within of the Community.

**Thesis:**

The regulation is the first generation of norms of European law introducing direct security measures aimed at overcoming cross-border indebtedness within the EU.

Although the Regulation represents a step in the development of the private international law of the EU, a further development of the legal framework is necessary, through which the goals of the Regulation can be achieved even more effectively. The created mechanism is with very limited scope and does not provide for sufficient options for the protection of the creditor, analogous to the national

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<sup>10</sup>D'Alessandro , E , Inchausti Gascón, F . , T he European Preservation Order A commentary on Regulation ÈU No 655/2014, Edward Elgar Publishing Inc. , ISBN 9678 1 800880290, p 1

procedures (as in Bulgarian law in particular). In this regard, the procedure needs a critical analysis to suggest the way for further development of the system.

**Objective of the dissertation :**

The purpose of this dissertation can be divided into several aspects:

✓ To examine the existing legal framework in the field of available procedures for settling civil and commercial matters in cross-border cases within the EU.

✓ To examine and analyze the mechanism of the European Preservation order as an independent legal method to bring out the main characteristics and advantages, as well as to carry out an analysis of the practical and application and the way to ease and simplify the application of the procedure.

✓ To identify the problems and weaknesses in the implementation of the studied supranational procedure and to prepare a proposal for improving the legal framework within the precautionary measure of the EHSBS.

Apart from this, the study also has three additional tasks: **first** , accumulation of knowledge and practical experience as a goal set for myself; **second** , with the comprehensive study of the European mechanism to create a scientific work, which as a set of materials and examined problems could help to facilitate the understanding of the procedure and its practical application by specialists in the field; and **third** , a study that would serve as a means of establishing the need for improving the legal framework ( de law ferenda ) for future legislative reforms. The findings made in the dissertation are the result of the research and may be useful in understanding the method of securing debt in cross-border cases. This study also aims to clarify and compare the main features of equivalent mechanisms for cross-border debt collection in civil and commercial matters. In the course of this analysis, I will try to establish whether the current mechanism regulated by Regulation (EU) No 655/2014 is effective and if not, what measures should be taken to improve it.

### **Subject and tasks of the dissertation :**

The subject of this dissertation is a study of the application of Regulation (EU) No. 655/2014 on the creation of a procedure for issuing a European order for the preservative of bank accounts in order to facilitate the cross-border collection of claims as an instrument of the law of the European Union in the field of civil and commercial affairs.

In connection with the achievement of the goals set in this dissertation work, I considered it necessary to set the following tasks.

✓ To analyze in a comparative aspect the existing similar institutes in the legal framework of the European Union in the field of cross-border debt settlement

✓ To examine the general characteristics of the European Account Preservation Order, its legal nature, subject matter, scope and scope in the Regulation that governs it .

✓ To analyze all competent authorities in the procedure for obtaining a European Bank Account Preservation Order in cross-border civil and commercial cases.

✓ In the course of the overall development in the dissertation, the practice of the Court of the European Union should be brought out and its significance investigated for the correct application of the ECHR mechanism.

✓ To analyze the provisions of the regulation in the field of the means of protection of the debtor when exercising the rights of the creditor in proceedings for the issuance of a European order for the preservative of bank accounts, as well as the means of legal protection of third parties.

✓ To examine the liability for damages of the participants in the procedure for issuing a European Warrant for the preservative of bank accounts, the grounds for engaging such, as well as partly the applicable law.

✓ To analyze the evidence in the proceedings for the issuance of a European Warrant for the preservative of bank accounts as a basic prerequisite for granting the legal remedy.

✓ To bring out and analyze the practical and concrete specific aspects characteristic of the application of the European Arrest Warrant.

✓ To bring out and analyze the practice of the Bulgarian courts that is significant for the procedure.

✓ To identify and analyze some major problems and weaknesses

✓ To make proposals for the improvement and facilitation of work with the researched legal cross-border mechanism and to present proposals for improving the legal framework.

It should be noted that due to the chosen focus the dissertation does not cover determination of applicable law in its entirety, as well as despite the detail research, a partial analysis was carried out on the legal framework of the procedure for issuing a European warrant for the preservative of bank accounts. In the course of the development of the dissertation, the tool was partially studied , as it is applied in separate member states .

#### **Relevance of the issue:**

The free movement of goods, services, people and capital enables cross-border mobility and interaction, which is not limited territorially, but on the contrary within the EU is facilitated, stimulated and guaranteed. The dissertation aims to examine and analyze an extremely significant and necessary supranational legal method, in the field of European law, which was created as a procedure to easily deal with cross-border indebtedness of a civil and commercial nature. Its relevance is predicated by the need for easy, fast, effective and guaranteed measures related to the resolution of cross-border indebtedness, by the need to guarantee legal certainty in relations with the so-called "four freedoms" that the European market was able to create through its single market. It concerns a necessary legal cross-border mechanism in the coming and deepening economic crisis, as well as the risks that revealed Covid the pandemic.

#### **Methods used in the research of the present paper:**

The methods used in the current dissertation work are different related to different research and methodological approaches. The historical method was used, limited in the development and evolution of the creation of the research object and clarification of the significant historical moments. A logical-analytical and systematic approach was used comprehensively. A systematic analysis and a comparative legal method, as well as an inductive method of analysis were used in the analysis of judicial practice in the field. A practical and critical analysis is also included in the scientific work. Apart from that, a method of comparative analysis was also used, which was carried out by analyzing and comparing the legal instruments in the researched area with the conclusions reached. System-structural method was also used, which helped to determine the place and role of the considered legal institute in the modern legal system of the law of the European Union. In the course of the overall development, the name of document analysis was used - related to the analysis and synthesis of multiple document sources, such as normative acts, EU documents, decisions and advisory opinions, judicial practice, proposals, etc.

### **Scientific novelty of labor**

The dissertation covers research in the field of the application of the security order for preservative of bank accounts in cross-border civil and commercial cases. For some of the legal instruments in the field of application of the Regulations, the EU Commission has prepared and publicly available manuals. However, the researched mechanism is characterized by novelty, lack of familiarity and, therefore, less frequent application, which is why no comprehensive work has been published on the territory of our country, nor has it been published by the EU structures.

### **Sources used:**

At the end of the dissertation, the sources that were the subject of research and helped to write the scientific work are indicated. They are divided into nine areas as follows: *1)* Scientific literature by Bulgarian authors, containing monographs,



reports and articles by a total of 21 individual and collective authors; 2 ) Legal scientific literature by foreign authors, containing monographs, reports and articles by a total of 35 individual and collective authors; it is distinguished from them; 3 ) Legal scientific literature by foreign authors from the information database of the European Union in Bulgarian and English, which contains a total of 9 sources including practical manuals on individual regulations ; 4 ) European Union documents : including a total of 11 sources; 5 ) Regulatory framework, including both national, foreign and supranational, used by a total of 35 acts; 6 ) European judicial practice, as under this title I have summarized for the most part the practice of the Court of the European Union, the practice of foreign courts and the European Court of Human Rights is also included, with a total of 36 judicial acts used here; 7 ) National judicial practice with a total of 29 judicial acts examined, 8 ) Web sites containing information that contributed to the writing of the dissertation.

**Applications :** The dissertation contains a total of 1 number of annexes, objectified in figure 1, which is a visualization in brief of a comparative review of the main characteristics in the existing five legal instruments in the field of civil and commercial cross-border cases, compared to the regulation of the European Preservation Order on bank accounts.

**Territorial and time limitation of the dissertation:**

The research is limited in time to the period mainly from 2014 (the date of the adoption of the regulation), partly in historical terms from the moment of emergence of the ideas to settle the Community law with a similar institute until 2024. and territorially, partially within the member states of the territory of the European Union, which participate in the adoption and application of Regulation (EU) 655/2014.

**Scope, structure and content of the dissertation**

The dissertation is 238 pages long and consists of an Introduction, four chapters, each of which has subsections and points with presented conclusions, summary and bibliography and appendices.

The dissertation has 382 footnotes. A total of 135 sources are cited , among which 27 are monographs, textbooks, studies and articles by Bulgarian scientists, 48 legal and scientific literature by foreign authors, including available in the EU information database , 11 EU documents; 35 normative acts and documents of Bulgarian and European law were used and examined 76 cases of relevant case law , of which 46 were decided within the EU, used websites with relevant information from a total of 8 sources, apart from those listed above. A large part of the scientific literature is available on the Internet, in this regard I make a clarification that as of 16.08.2024 all links were active, accessed the specified source and were up to date.

**Chapter One** of the Dissertation is entitled *Prerequisites for the creation of a European Bank Account Preservation Order and general characteristics of the Preservation Order* and contains three sections, three sections in which the adoption of the legislation is systematically examined in historical terms, after which the general characteristics of the Regulation, which regulates the procedure for issuing a European arrest warrant, are expanded and summarized, and in the third subsection, its specifics in its subject, scope and action.

The first section is entitled *Historical notes* , it examines the process of creating the mechanism in the legislative system of the European Union . The establishment of the European Preservation Order as part of the legislative system of the European Union is not a quick, but a slow and challenging and apprehensive process on the part of the Member States . Back in 1998 The EC identifies loopholes in the cross-border legislation in civil and commercial matters and proposes to adopt a European approach and improve enforcement proceedings, proposing to start with the freezing of bank accounts. The lack of effective measures in the field of cross-border indebtedness leads to serious statistics that show high figures of bad debts and difficulties in settling them. Thus, after many studies and opinions , expert studies in

2014, the European Parliament and the Council of the European Union managed to introduce a single European procedure enabling the freezing of bank accounts within the Union and adopted Regulation (EU) 655/2014.

The second section is entitled *Legal Essence of the European Account Preservation Order*. It presents and examines the essence of the European Account Preservation Order, as a legal institution of EU private international law, aimed at securing the claims of a creditor, with a view to subsequent voluntary performance or compulsory satisfaction of the debt by the debtor and , through which the enforcement authority issues a prohibition on the disposal of amounts available in the debtor's bank accounts, both by him and by third parties who have active disposal<sup>11</sup>rights over the relevant bank account. The subject of the European Preservation Order is the credit balance held in the relevant account with the bank, where the debtor has opened it in his own name. The attachment is a precautionary measure imposed in order to prevent the debtor from thwarting or hindering the enforcement of the creditor's claim<sup>12</sup>.

The third section is entitled *Subject matter and scope of the European Preservation Order. on bank accounts* , such as in 6 points examine the main features of the regulation.

In *the first point, the subject* of the regulation is considered , as the subject scope of the regulation includes bank account garnishments with a security function, as well as bank account garnishments that aim to prepare itself execution of the claim , it regulates not only the procedure for obtaining a preservation preservative order , but also cancellation or amendment as a result of legal remedies available to the debtor and the creditor , the liability for damages of the parties, including the procedure for obtaining information for open bank accounts of the debtor and the banks where they are kept .

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<sup>11</sup>For example, a specimen on account

<sup>12</sup> Stalev, Zh., Mingova , A., Stamboliev , O., Popova, V., Ivanova, R. "Bulgarian Civil Procedure Law", Sofia , Siela , 2012, ISBN 978-954-28-1016-2 , see more about protective measures - types, imposition and their consequences, p. 1218 et seq.

In the second point, the material scope of the European Preservation order is examined . The four categories characterizing the material scope of the regulation are discussed in detail, such as *Types of cases to which it applies* **2.1. Types of cases to which the European Preservation Order is not applicable** (Article 2, §1); **2.2 Cases excluded from scope** of the European Bank Account Preservation Order (Article 2, §2), namely cases related to non-monetary claims, cases related to the exercise of public authority<sup>13</sup> - *Acta iure imperii* "<sup>14</sup>, cases related to property rights arising from marital relations or from relations which, according to the law applicable to them, have consequences similar to those arising from marriage; matters relating to wills and inheritance, including maintenance obligations arising in the event of death; claims against a debtor in respect of whom bankruptcy proceedings have been initiated; proceedings for the termination of the activity of an insolvent company or other legal entity ; under court agreements ; concordats and similar proceedings; Social security cases ; arbitration, citing cases where it could benefit from the protection of the European Preservation Order; **2.3 Accounts that cannot be affected by the European Bank Account Preservation Order** (Article 2, §3), where a distinction is made between *Bank Accounts* that, according to the law of the Member State where the account is held, are used *with immunity against lien* and b ) Bank accounts that are held in connection with the functioning of any of the systems ; **2.4 Money that cannot be affected by the European Preservation Order on bank accounts** , as the conclusions here are made in relation to amounts falling within the scope of non-sequestrability and financial means such as electronic money, digital currency, etc. financial instruments ; and **2.5 Banks in which the accounts held by them are not subject to attachment** (Article 2, §4).

In the third point, the personal effect of the European Preservation Order is examined , as the regulation provides enhanced protection only for creditors with residence on the territory of a member state, and in this section, the advantage that

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<sup>13</sup> Decision of 14 November 2002, Gemeente Steenberghe and Luc Baten , C-271/00ECLI:EU:C:2002:656

<sup>14</sup> Decision of 14 October 1976, LTU Lufttransportunternehmen GmbH & Co. KG v Eurocontrol , C-29/76, ECLI:EU:C:1976:137

enables the European Preservation Order to be imposed is reported here and where a third country is involved, outside the EU, in cases where the debtor is from a third country, but provided that the account subject to future attachment is held within the EU.

*The fourth point examines the territorial scope of the Regulation* , with Denmark alone not participating in the adoption and application of the Regulation. The concept characterizing the territorial scope of the Regulation, namely “cross-border case”, is also examined through the prism of the regulation of the mechanism and practice of the CJEU. Conclusions are also drawn here regarding hypotheses related to legal succession and assignment of the claim, which gives rise to the grounds for the imposition of the European Preservation Order.

*The fifth point examines the temporal effect of the European Account Preservation Order* , which is derived from several starting and ending dates, presupposing the adoption of the Regulation, the date from which it applies, as well as the time limit within which the Member States had the opportunity to fulfill their obligation to provide the necessary information under Article 50 of the Regulation.

In the *sixth point, the relationship between the legal framework of the European warrant for the preservative of bank accounts and the national law* is examined . In it, conclusions were drawn regarding a significantly richer scope of claims on which the precautionary measure can be ordered, as well as the types of collateral that are allowed along with the garnishment of a bank account. The identified issues which are not regulated by the regulation and remain within the discretion of the national law of the relevant courts are set out.

**Chapter two** is entitled *Comparison of the European Preservation Order with existing EU legal institutions in the field of cross -border debt settlement* .

Because cross-border indebtedness is one of the main problems facing the European Union and the resolution of which needs simplified community methods to regulate, guarantee and facilitate relations between countries within the Union, including outside it. This determines the need to create more than one legal method, more powerful and aggressive, which can quickly and efficiently settle civil and

commercial disputes. In this chapter, in a total of 4 sections, the relevant sources of law of the European Union are examined in a comparative plan, namely 1) R ( EU ) No. 1215/2012 on jurisdiction, recognition and enforcement of judgments in *civil and commercial cases (P Brussels I ( revised) )*; 2) R ( ES ) No. 1896/2006 to create a procedure for a *European payment order*; 3) European *Small Claims Procedure* and 4) R ( EU ) No. 805/2004 for the introduction of a *European enforcement basis* for undisputed claims.

The comparative review with the considered legal mechanisms is summarized in 6 points each, with conclusions made regarding 1. Their field of application; 2. Exclusions from Scope; 3. Territorial scope; 4. Action in time; 5. Identical or similar protective measures, the European order for the preservative of bank accounts and 6. Advantages and disadvantages in a comparative aspect of the considered methods.

At the end of each research on the indicated sources, the main conclusions are drawn, regarding the advantages, disadvantages and application, interaction, overlap and parallel action with the European Arrest Warrant. The main conclusions that have been drawn are that although in some regulations there is a regulated legal possibility to conduct collateral proceedings, only the (PRESERVATION ORDER) is a completely independent arrangement for freezing a bank account, regardless of whether the creditor has a judicial act or no. There is a wide range of cases in which it can be issued, and that there is no obstacle to taking the procedure in parallel with the considered legal methods, to the extent that the imposition of a precautionary measure could appear appropriate. Apart from that, the proceedings are distinguished by their one-sided nature until the attachment order is issued, without the participation of the debtor.

A brief comparative overview of the five legal instruments is visualized in *fig. 1, appendix* to the Dissertation.

Chapter Three is entitled *Procedure for Issuing the European Order for Preservative of Bank Accounts, Competent Authorities, Protection of the Parties, Liability for Damages*, and is structured in three sections.

*First section* entitled *Procedure for Issuing a European Warrant for Preservative of Bank Accounts* , paying special attention to the specifics and opportunities it provides in a total of 7 points.

The first point is entitled *Access to the European Bank Account Preservation Order* and it examines the specifics of *access to the procedure* , as well as the specifics and distinctions of grounds in the various stages of the legal proceedings, respectively *before the initiation of legal proceedings* against the debtor. essentially - ante causam, both *in the course of pending legal proceedings*, as well as *with ice as the creditor has received a court decision in a member state*.

The second point is entitled *Conditions for Issuing a European Warrant for the Preservative of Bank Accounts*, and it examines the requirements that the court places before the creditor and which he should evaluate, distinguishing them depending on whether the creditor initiated the procedure before and after procuring a court order. At first glance, the regulation is clear, but in fact the issues related to proving the urgent need or the risk of delay of the debtor, periculum in mora are among the most common grounds for refusal to issue the European Preservation Order, as they are subject to different regulation and precise judgment of the different courts in the individual member states <sup>15</sup>, for this reason it is also the subject of a more precise study in the following section of the dissertation.

In the third point, the formality of the procedure, objectified by the Form representing *an application for the issuance of a European Preservation Order*, is *partially examined. of bank accounts* , as set out in Annex I to Implementing Regulation (EU) No 2016/1823 of the Commission of 10 October 2016 establishing the forms referred to in Regulation (EU) No 655/2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters. It should be noted that the formality of the procedure is mandatory and the court may only

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<sup>15</sup> Inchausti , Fernando Gascon ; Hess , Burkhard , " The future of the European law of civil procedure: coordination or harmonization ?" " , Intersentia , Cambridge, 2020 , ISBN : 1780688598 , ISBN : 9781780688596, p. 111, 115

be seised with the form established for this purpose, which is even a prerequisite for a refusal if, after instructions from the court, the applicant does not submit his application in accordance with the requirements of the regulation.

*The fourth point is entitled Collection and Admission of Evidence. It has been reported which evidence is admissible in the proceedings and the specifics in proving that a case has been initiated on the merits, as well as information on the deadlines and their calculation within the EU.*

*Fifth point entitled security in procedure Ex Parte. It examines the given guidelines for the determination of the guarantee, which must be in accordance with the level of danger for the debtor of damage, and in order to ensure the compensation for possible damages from the unlawful imposition of the attachment order, it regulates in a different way two hypotheses in the issuance of a preservative order - before and after receiving a court decision. A distinction has been made between the establishment of bail before the receipt of the court decision and the establishment of bail after the receipt of the court decision, as well as the prerequisites for Exemption from the establishment of bail. The importance of the type of guarantee is noted, as it does not necessarily have to be in monetary terms, but also allows for another type of alternative security, regulated by the relevant national law of the issuing Member State, including a pledge, mortgage, issuance of a bank guarantee, etc., as long as it is regulated in the national law of the respective member state. Although this sounds quite flexible, in practice it will be more difficult to establish non-monetary security, especially when it comes to the jurisdiction of a court that is located in a different country from where the proposed security is located, for example, a mortgage, company shares, and so called The question of replacement/release of the established guarantee under the requested or issued European order for the preservative of bank accounts was also raised , and it was noted that the legal framework of the EBRD does not regulate the manner and the applicable law by which the creditor can request a replacement of the type or release of the established guarantee.*



In the *sixth* point, the tool for *accessing banking information*, regulated in Art. 14. One of the distinguishing features of the procedure is the possibility provided for in Regulation (EU) 655/2014 to disclose bank information about the opened bank accounts, in the name of the debtor in the respective member state, where the execution of the order for lien. This is a specific mechanism that allows the creditor, before issuing a garnishment order, to request from the court and receive information from the relevant information authority of the member state in which the garnishment of the bank account is intended, about the debtor's account<sup>16</sup>.

According to Art. 14 of Regulation (EU) 655/2014, however, access to the procedure is limited to only creditors who have already obtained a court decision, agreement or authentic act, and when these acts do not yet have enforceable force, the regulation sets additional requirements for access to her. The main prerequisites for access to the information mechanism are analyzed, as well as the additional ones that the legislator sets, in the event that the act decreed against the debtor has not yet entered into force.

The deficits of the procedure, which is only accessible to creditors who have already obtained a court decision, agreement or authentic act, are reported, and when these acts do not yet have enforceable force, the provision sets additional requirements, on which the grounds for issuing of (Preservation Order) should be responsible. They are distinguished *a) The main prerequisite for access to the information mechanism, namely for* the creditor to present to the court his arguments, on the basis of which he considers that the debtor has a connection with the member state in which he believes that he holds bank accounts, as well as practice of the courts regarding what arguments it would accept and *b) Additional prerequisites for access to the mechanism:* When the judgment, court settlement or authentic act issued against the debtor has not yet entered into force more. Here, the requirements are much stricter, with *the amount subject to preservative being significant and the existence of an urgent need for information about the account* and *a significant*

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<sup>16</sup>Recital 20 of Regulation (EU) 655/2014

deterioration in the creditor's financial condition. The practice of the regional courts, which grant or not access to the procedure, given the bad faith and familiarity, is also reported.

In addition, the need *to protect the disclosed personal data of the debtor* and the possible consequences of this for the proceedings have also been identified. The specifics related to the need to notify the debtor of his disclosed personal data in the proceedings under this mechanism for disclosing banking information and the unfavorable position in which this puts the creditor, respectively damaging the essence of the procedure to be carried out without the knowledge and participation, have also been established to the debtor, and a proposal was also made at which time it would be more appropriate for the debtor to be notified.

In *the seventh point, the proceedings on the Appeal against the refusal to issue a preservative order* are examined, which is actually implemented according to the national legislation of the member states. This legal option includes any court decision rejecting his application for a garnishment order in whole or in part. More specifically, such decisions can be: **1)** Decisions in which the court refuses to consider the application due to lack of competence or another reason <sup>17</sup>; **2)** Decision rejecting the application in whole or in part due to the receipt of an equivalent national mark; **3)** a decision partially rejecting the attachment order; **4)** Decision requiring the provision of a guarantee in accordance with Art. 12 of the Regulation, when he has indicated that he should be released or when security is requested in a form or amount other than that specified in section 11 of the application for the issuance of the European arrest warrant; **5)** Decision rejecting the request to obtain information about the debtor's bank accounts; etc. Here it should be borne in mind that the right of appeal is granted exclusively and only to the creditor or his legal successor, and only in the part in which the interest of the creditor is affected. The debtor does not have legal legitimacy to appeal the acts of the court in this order, thus preserving the nature of the proceedings *ex parte* .

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<sup>17</sup>Art. 6 of Regulation (EU) 655/2014

In *the eighth* point of the section, a conflict in the interpretation, according to the theory in the national law of the different member states, of the European preservation order concerning *the effect of the arrest itself is discussed*. In fact, the question of how the garnishment operates over time and whether it covers the amounts that have entered the garnished account of the debtor after its imposition and the issuance of the declaration by the bank, is not expressly regulated in the regulation. The provision turns out to be unclear when applied in different countries, as in some countries it will not have an effect in relation to the future receipts on the bank account, after its imposition up to the amount for which a lien has been imposed, as in Bulgaria. In this sense, in order to clarify the temporal effect of the attachment, an autonomous legal qualification must be made and this issue must be subject to interpretation in a preliminary question in the CJEU and in the event of a future amendment of the Regulation, the regulation should take effect as *de lege Ferenda*.

**The second section** of chapter three is entitled **Competent authorities in the procedure for issuing a European arrest warrant**. The Regulation regulates competence only in relation to but specifying the Member State whose authorities will be competent. The generic and local jurisdiction of the court is not regulated, they will be determined by the national law of the court seised. The criteria for this are presupposed by the existence of a close relationship with the respective member state, which guarantees legal certainty for the parties to the dispute.

The examined competent authorities in the procedure for applying the mechanism are distinguished in several directions, examined in separate points, namely: *1. Competent authorities for issuing the preservative order; 2. Competent enforcement bodies; 3. Courts or enforcement bodies competent to provide a remedy; 4 . Competent body for handling complaints; 5. Other competent authorities*. Specifically, in the study of the competent authorities for the issuance of the attachment order, a distinction was made in the various hypotheses, namely: 1) Competent authorities for issuing a European order for the imposition of attachment

on bank accounts *before consideration of the dispute on the merits* ; 2 ) Competent authorities in proceedings for the issuance of a European preservation order *after drawing up an authentic deed* <sup>18</sup>; 3 ) *Competent authorities for issuing a European preservation order in the course of the case on the merits* ; 4 ) *Exclusive competence* and the hypothesis of 5 ) *Prorogation of competence*. In the Section, information is displayed in more detail, indicating the specific relevant authorities in the various member states.

Third section from chapter three is entitled *Protection of the parties in the procedure for issuing an order for preservative of bank accounts*.

is paid to the problems that could arise when the rights of the parties participating in the procedure are violated. Already at the creation of the European Preservation Order, one of the important factors in assessing its impact is aimed at ensuring the fundamental rights of the parties. For this reason, the procedure is characterized not only by its ease and speed, but also by established obligations of the parties to preserve and protect their rights and interests, as well as by regulated legal options for correcting their illegal behavior and the resulting damages, as a result of this.

On the one hand, with the creation of a fast and cheap European procedure for the preservative of bank accounts, the creditor's right to effective enforcement of his claims is improved, which is part of the right to effective legal protection, as stated in Article 47 ( 1 ) of the Charter of the fundamental rights of the European Union. On the other hand, Regulation (EU) No. 655/2014 seeks to guarantee the protection of the debtor's rights in full compliance with the requirements of the right to a fair trial ( Article 47, § 2 of HOPES) and the right to respect for human dignity and family life (respectively articles 1 and 7 of HOPES). Such guarantees protecting the rights of the debtor are guaranteed in particular in some of the elements of the Regulation, such as 1) the requirement to notify the debtor immediately after

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<sup>18</sup>Regulation (EU) No. 655/2014, c Article 4 § 10 contains the definitions of court decision, court settlement and authentic instrument: "authentic instrument" means a document that has been officially drawn up or certified as an authentic instrument in a Member State and whose authenticity: *a)* is related to the signature and content of the deed; and *b)* is established by a public body or other body authorized for this purpose.

execution of the order with all the documents that the creditor has presented to the issuing court; 2) the possibility for the debtor to challenge the order by submitting a request for review to the court of origin, the court of execution or - if the debtor is a consumer, employee or insured - to the court of residence; 3) the fact that the sums necessary to ensure the livelihood of the debtor and his family will be exempted from enforcement, etc.

*The first point of section three is entitled With measures for legal protection of the debtor against the attachment order . It clarifies the possibilities for the debtor's defense in four groups of defenses: 1 ) Defense against the attachment order (Article 33). Here, the grounds for the protection of the debtor are distinguished as absolute and relative , depending on whether, after the implementation of the factual composition prescribed in the Regulation, the grounds for relief , the legal protection of the debtor will disappear; 2) Against the execution of the preservative order (Article 34), as the circumstances under which the preservative order can be terminated or limited are indicated here; 3) Protection available to both the debtor and the creditor (Article 35); and 4) Right to establish a guarantee as an alternative to attachment (Article 38) <sup>19</sup>. Relative grounds for canceling the preservative order, such as can be removed, have been presented, and the hypotheses for this have been generally examined in subsections, as follows **a ) Defects in service; b ) Non-observed language requirements and c ) Foreclosed amounts exceeding** the amount specified in the order*

*The absolute grounds are distinguished - those that cannot be removed to cancel the preservative order and examined in subsections, namely a) The conditions or requirements specified in the regulation have not been met **b ) The amount** of the claim , the fulfillment of which the creditor seeks to guarantee with the order, has been paid in full or in part; c) The claim brought by the plaintiff was rejected by decision and d ) The deed on which the preservative order is based is *revoked or invalidated* .*

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<sup>19</sup> Stalev, Zh., co-authored with Mingova , A., Stamboliev , O., Popova, V., Ivanova, R. , Bulgarian Civil Procedure Law, Sofia , 2012, ISBN 978-954-28-1016-2 , p. 1236

*Point two* of section three is entitled *Remedies for legal protection available to the debtor against the execution of the garnishment order*. The reasons that enable the achievement of two results 1) *limiting* and 2) *terminating* the effect of the preservative order are considered, with special attention paid to the institute of public order.

*Point three* of section three explores *Other means of legal protection available to the debtor and the creditor. The possibility of the court ex officio* ex officio, on its own initiative, to amend or cancel the order, without this being the subject of a request from any party, was also considered, as a prerequisite for this is that this approach is allowed and accordingly regulated by the law of the state member of origin.

In *point four* of section three, *the Right to establish a guarantee as an alternative to the protection of the debtor* is examined, which leads to two legal consequences: a) release of the seized funds and b) termination of the enforcement of the preservative order.

*Point five* of section three explores the possibilities for *protecting the rights of third parties, which the procedure in the Regulation regulates*.

Section Four of Chapter Three is entitled *Liability for damages of participants in the procedure for issuing a European Preservation Order on bank accounts*. The issuance of a Preservation Order directly affects the legal sphere of the parties involved in the proceedings, on the territory of different countries, creating a need to establish a balance in protecting the interests of both the creditor and the debtor, in order to prevent any abuse of the issued Preservation Order. In the event of an unlawfully imposed European Preservation Order, any damages may occur on various grounds, such as those related to the inability of the injured party to dispose of its available funds in accounts; to miss out on concluding profitable transactions for it; related to lost profits; losses incurred; with the accrual of additional interest and fees; with the occurrence of early repayment of a loan, if the non-payment on it is due to the preservative of the account on which it is serviced or the amounts provided for this were seized unlawfully, etc. On the other hand, these

damages can be both pecuniary and non-pecuniary , expressed in damaged commercial image, etc. The Regulation provides for an explicit legal possibility for compensation in the event of any damage.

In *the first point* of the section, *the basic characteristics of liability for damages in the procedure for issuing a European warrant are examined* for garnishment, with the main principles for engaging damages 1. *Balance between the interests of the parties* 2. *Minimum standards*, 3. *Existence of a rebuttable presumption of guilt* of the creditor in some specifically enumerated cases, discussed in detail , 4. *Establishing a harmonized rule for damages subject to reparation and* 5. *Providing the possibility for Member States to retain or introduce in their national law other grounds for liability*, in addition to the grounds specified in Regulation (EU) No. 655/2014, including strict liability. As here, it is important to note that in this way, European law not only regulates liability for damages, but also explicitly enables member states to retain and introduce new grounds for this. A convenient parallel order for European legal regulation is created, with which the direct regulation of European law enables the existence and development of parallel regulation in national law as well. This represents a valuable approach for a mixture of European and domestic legal regulation of international relations. This approach represents innovation as a method of parallel regulation of European law in compilation with the national law of the member states.

The *second point* of the section deals with *the Applicable Law in the event of the creditor being held liable for damages caused to the debtor*. Here, the various hypotheses are examined, respectively *the general rule for determining the applicable law* and *the applicable law in the presence of several countries of enforcement*. The method of determining the place of residence of the parties is also indicated, a basic criterion both in determining the competent court and relevant for determining the applicable law.

In *The third point* of the section examines *the liability of the creditor for damages*. Given the fact that the proceedings for issuing a European Preservation Order develop without the knowledge and participation of the creditor, the regulation

provides for measures to protect the debtor in certain cases by engaging the liability of the creditor for damages. Regulation (EU) No. 655/2014 regulates in Art. 13 specific cases in which the creditor is liable for damages that have been alleged. It is important to note here that the creditor is liable for any damages, pecuniary, non-pecuniary, lost profits, losses suffered, etc. The circumstances in which the creditor's fault is presumed are also indicated . The Regulation explicitly establishes *a rebuttable presumption of the creditor's fault* , by reversing the burden of proof and transferring it to the creditor in several key moments. These are hypotheses of a reversed presumption of fault, the implementation of which is directly related to the creditor's behavior and it depends on it whether the prerequisites for engaging his liability will arise. The prerequisites for the creditor's liability to the bank and third parties, as well as liability for damages under our national law , are also examined .

*The fourth point draws attention to the bank's liability for damages.* The bank may bear such responsibility in connection with damage to the debtor's personal data, and his right to protect them, in connection with non-execution or untimely execution of the attachment order, in connection with the leakage of information to the debtor about the upcoming attachment in relation to the creditor ; in relation to non-declaration of data or incorrect declaration of data, whether and to what extent the order led to the preservative of the debtor's funds, the latter being of significant importance in relation to the creditor's obligation to guarantee the release of all the debtor's funds that exceed the amount , specified in the order and are seized , non-fulfillment of obligations and under Art. 25, para. 4 of the Regulation on disclosure of order details, etc.

*In the fifth, liability of the enforcement body for damages.* It is noted here that the EPA does not expressly regulate responsibilities arising from the actions of the enforcement body, as the legality of its actions is assumed to follow from the court proceedings for the issuance of the attachment order. However, given the very limited function of the enforcement body, it would very rarely lead to illegal actions, respectively to prerequisites in general to the liability of the bailiff.



In the sixth point, the issues concerning the terms and the statute of limitations for the relief of a claim from the damages incurred as a result of the imposed European preservative of a bank account *are addressed* .

**Chapter Four** is devoted to research on the practical difficulties and guidelines for the application of the European preservation order procedure and bears a similar title. The chapter contains a total of three sections.

In *the first section*, special attention is paid to *the evidence in the proceedings for the issuance of a preservative order* . A distinction has been made between the prerequisites that should be proven 1. *After a judgment on the merits and 2. Before a judgment on the merits is rendered* . It is found that the legal framework of the ETS leads to a different interpretation in different Member States, which leads to a different approach in different countries. Accordingly, this approach is more liberal or more conservative in allowing the issuance of the European Preservation Order, which could presuppose an incentive to the forum shopping .

Despite the revolutionary step of building an accessible and simplified security procedure, in reality it is often a rather conservative mechanism. One of the reasons is the requirement for the creditor to prove, sometimes beyond its capabilities, the need to impose the cross-border precautionary measure. Often the creditor has no mechanism by which he can prove and convince the court that the debtor will abscond, that he is in danger of squandering his property to the detriment of the creditor, that there is an urgent need for a European Preservation Order. This it can be overcome if it was not in the Regulation in detail specified exactly which circumstances cannot be considered *periculum in mora* and urgent necessity in Recital 14 of Regulation (EU) No. 655/2014. In this regard, the courts are quite cautious in assessing these circumstances, and this caution is increased to a considerable extent by the fact that the instrument is not national, but cross-border and often has to be executed on the territory of another country. The manner of regulation, on the other hand, provides sufficient guarantees for the protection of the debtor's rights, in view of the manner in which the proceedings proceed, namely

without his participation.

In *the second section*, *the practice of the Bulgarian courts* is studied, paying attention to the main difficulties that are encountered when obtaining the preservative order in cases where the aim is to *prove and urgent necessity* and to establish an *urgent need* for the imposition of the preservative order. It is assigned as a burden to the creditor, who is obliged to present convincing evidence of this in the course of the court proceedings. I.e. the creditor should assure the court that there is such a danger, which, however, should also be real.<sup>20</sup> The Bulgarian court is sensitive to the proof of the urgent need and strictly monitors for any omission by the applicant of the European arrest warrant, as well as critically interprets the presented evidence and reasons for issuing it. The circumstances under which the Bulgarian court draws its conclusions to establish whether there is an urgent need to issue a garnishment order are divided into two categories, namely 1) circumstances related to *the behavior of the debtor* and 2) circumstances related to *the behavior of the creditor*. Attention is also paid to the practice of the courts, when initiating the specific procedure for accessing information on the debtor's open bank accounts, on bank accounts falling outside the scope of the Regulation, and in the last point of the section, the practical problems encountered are related to with the procedural rules for issuing the European Bank Account Preservation Order.

The dissertation ends with *a Conclusion*, which briefly summarizes the significant characteristic data of the legal instrument for regulating civil and commercial turnover within the EU. In this section, I have outlined and emphasized the main positive aspects that distinguish the legal mechanism under consideration, regulated in Regulation (EU) No. 655/2014, and I will systematize the more important conclusions that I have reached, some of which I believe should be included in the *from law ferenda*.

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<sup>20</sup> Resolution No. 337 of 18.04.2019 of the General Assembly - Varna under the Supreme Administrative Court No. 430/2019

## **Contributing moments**

1. The dissertation is the first scientific work in Bulgarian legal literature that attempts to examine in detail the European Account Preservation Order. To date, there has been no comprehensive scientific work on the territory of our country in this area. For the first time, an attempt has been made for a structured comprehensive analysis of the individual aspects of the mechanism and its arrangement in a logical sequence.

2. A contributing point is the comparative analysis of the European Preservation Order with the other four legal instruments of the EU, regarding civil and commercial cases, taking into account the main advantages and disadvantages and the possibilities for interaction between them.

3. A valuable point is the analysis of the relevant practice of the Bulgarian courts on the application of the European warrant for the preservative of bank accounts.

4. A contributing point is the cited relevant practice of the Court of the European Union on the interpretation of the regulation of the European order for the preservative of bank accounts.

5. A contributing point is the cited relevant practice of foreign courts, in which the nuances of the different interpretation of the provisions of the Regulation in different member states are established.

6. The conclusions drawn in the dissertation, as well as the dissertation as a whole, can serve as practical guidelines for the use of the European legal instrument.

### **legal framework are proposed lege ferenda :**

7. To expand the scope of the procedure by giving the possibility to establish not only preservative of bank accounts, but also foreclosures on immovable property, attachment of receivables, movable property, etc. or at least the corresponding safeguards that individual member states regulate in their national law

8. To expand the action of (PRESERVATION ORDER ) regarding the banks on whose accounts it can be levied, which action is currently limited to the term "bank" in the sense of art. 4, item 2 of the Regulation on (PRESERVATION ORDER ) <sup>21</sup>.

9. Given the speed of scientific and technical progress, technology, the tendency to change money as a means of payment is relevant to expand the scope of the regulation from to the type of money it can secure - cryptocurrency, electronic money, to consider financial instruments.

10. To extend the temporal effect of the European Preservation Order or to make the current legislation subject to autonomous interpretation by the Court of Justice of the EU.

11. To expand the scope of the mechanism for supplying information on bank accounts under Art. 14 of the Regulation, expanding its scope and allowing access to information about the debtor's property in general.

12. To arrange the notification of the debtor in the procedure under Art. 14 of the Regulation on disclosed bank accounts under Art. 25 at the same time as notifying him of the garnishment imposed or on the condition that it is refused, the notification should be made after receiving a message to the information authority that discloses the bank information that the initiated procedure for issuing a garnishment order has been refused, the creditor himself refused or was terminated on other grounds.

### **Publications on the topic of the scientific work:**

1. **Nikodimova, R.**, Protection of the debtor when exercising the rights of the creditor under Regulation 55/2014 in order to facilitate the cross-border collection of claims in civil and commercial cases, Collection of reports from the IX national conference of doctoral students in the field of legal sciences, Bulgarian

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<sup>21</sup> This is the example given with Paysera LT UAB.

Academy of the sciences, Institute of State and Law, 2020, ISSN 2603-3011, p. 201-212.

**2. Nikodimova, R.,** Evidence in the proceedings for the issuance of a European order for the preservative of bank accounts under Regulation (EU) 655/2014 in order to facilitate the cross-border collection of claims in civil and commercial cases, Collection of reports from a university scientific conference 28-29 May 2020 volume 2 scientific direction "Pedagogical and humanitarian sciences", Publishing complex of NVUY "Vasil Levski", 2020, ISSN 1314-1937, p.93-101

**3. Nikodimova, R.,** Scope and scope of Regulation (EU) 655/2014 in order to facilitate the cross-border collection of claims in civil and commercial cases, Collection of reports from a university scientific conference 28-29 May 2020. volume 2 scientific direction "Pedagogical and humanitarian sciences", Publishing complex of NVUY "Vasil Levski", 2020, ISSN 1314-1937, p.102-109

**4. Nikodimova, R.,** Liability for damages of the participants in the procedure for issuing a European warrant for the preservative of bank accounts", Collection "Spring legal days", volume 1, University Publishing House "Paisii Hilendarski" 2021, ISVN 978-619-202-723 , with 288-301.

**5. Nikodimova, R.,** Competent authorities in connection with the issuance of a European order for the preservative of bank accounts, Collection "SCIENTIFIC READINGS Dedicated to the 140th anniversary of the adoption of the Tarnovo Constitution", Ciela Norma AD, 2029, ISBN 978—954-28-3043-6, pp. 451-462.