

To the members of the scientific jury for the defence of the dissertation

## **ASSESSMENT**

by Dr. Boriana Bogdanova Musseva,

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such as:

member of the scientific jury for the public defence of the dissertation work of

### **RADOSTINA GEORGIEVA NIKODIMOVA**

on the topic:

European Account Preservation Order in Civil and Commercial Matters

for awarding the educational and scientific degree "doctor"

in the field of higher education 3 "Social, Economic and Legal Sciences",

professional direction 3.6. "Law"

at the Faculty of Law of the Plovdiv University "Paisii Hilendarski"

#### **I. Brief presentation of the doctoral student and his/her work**

Radostina Nikodimova holds a Master of Laws from the Paisii Hilendarski University of Plovdiv and a Master of Accounting and Control from the Agrarian University, Plovdiv.

After completing his higher education in economics, she held various positions as an economic and financial consultant, and after completing her master's degree in law, she worked as a lawyer. Since 2019, she has been a part-time assistant professor in private international law at the Faculty of Law of the Paisii Hilendarski University of Plovdiv. Since the same year, she has been a part-

time doctoral student in private international law with a scientific supervisor Assoc. Prof. Dr. Dimitar Milchev Dekov.

The dissertation "European Account Preservation Order in Civil and Commercial Matters" has 238 pages with included bibliography and case law. A total of 60 scientific works are cited (22 materials in Bulgarian and 38 in foreign languages), 10 handbooks, 46 decisions of the Court of Justice of the EU and other national courts, 30 acts of Bulgarian courts. The footnotes are 382 in total. Structurally, the dissertation is divided into an introduction, four chapters, and a conclusion. On the narrow topic of the dissertation, the doctoral student has 5 separate publications.

The abstract presents the dissertation work objectively and reflects its main scientific and applied scientific contributions.

## **II. Evaluation of the scientific and applied scientific results and contributions of the dissertation work**

The dissertation submitted for defence is **dedicated** to the legal framework of the European Account Preservation Order under Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters (Regulation (EU) No 655/2014). This regulatory framework builds on the previously existing mechanisms for the movement of precautionary measures between EU Member States and operates in connection and interaction with key instruments applied in the field of judicial cooperation in civil matters with cross-border implications - most notably - Regulation (EU) No 1215/2012.

**The title** corresponds to the content, which is structured around four key issues – prerequisites for issuing the European Account Preservation Order (EAPO), comparison with other EU law instruments applicable to cross-border debt collection, procedure for issuing an EAPO and presentation of some practical difficulties in the application of Regulation (EU) No 655/2014. Within the framework of the separate topics, their derivative elements are also examined, thus entering in a traceable and clear manner into separate theoretical aspects of the study. The inclusion of an analysis with a practical and applied focus emphasizes the affinity of the Mrs. Nikodimova to researching the real effect of the application of this source of EU law in Bulgaria.

The topic of the dissertation has theoretical and practical **significance**, because the free movement of people, goods, services and capital in combination with the growth of the volume of international trade has led to a significant increase in civil and commercial relations with an international element, respectively, disputes of this nature. In turn, when the subject of the dispute is related to monetary claims, the question of how a court from one Member State can impose an attachment on a bank account in another or other Member States is of key importance for their effective collection. Insofar as this is a relatively complex process, which very often requires parallel efforts and processes in different countries, the existence of a supranational uniform

procedure for issuing and circulating orders for preservation of bank accounts has significant added value. However, Regulation No. 655/2014 alone is not sufficient to achieve the objectives that the rapid and effective cross-border debt collection requires. It presupposes the existence of supporting national rules, good coordination with other instruments of EU law in the field of judicial cooperation in civil matters and good knowledge of its institutions, both by law enforcement authorities, procedural representatives of the parties and enforcement authorities, and by all other entities involved in the complex mechanism of its implementation (e.g. authorities that assist in establishing account information in another Member State). That is why I believe that the dissertation, which gives visibility to the topic and delves with varying degrees of depth into the individual aspects described, is of interest for theory and practice.

The doctoral student **argues** that Regulation No. 655/2014 creates the so-called " first generation norms " on the European law, which introduce direct collateral measures aimed at overcoming on cross-border indebtedness within of the EU. Regardless of whether it represents step in development on the private international law of the EU, according to the doctoral student it is necessary that have subsequent development in order to achieve more effectively the set goals. The highly limited scope of the regulation is criticized, and arguments are made in favor of increasing the possibilities for protecting creditors. The thesis advocated runs through the study, with chapter three presenting in detail the essence of the supranational European procedure for the attachment of bank accounts. Criticisms of the procedure itself and possible improvements are presented in other parts of the work, and they are not limited only to the limited scope of regulation and the protection of the creditor. In this regard, it can be said that the thesis is reflected and even upgraded within the framework of the study itself. Of course, it would be advisable to have full correspondence between the supported thesis and the work itself. Nevertheless, the choice of thesis and its consistent refraction through the recognized research proves the doctoral student's ability for logical and systematic thinking.

**The structure of the dissertation** chosen by Ms. Nikodimova allows for a logical, systematic and in-depth analysis. A certain imbalance is noted in the volume of the individual chapters, which emphasizes the importance of the main chapter three, which presents the procedure for issuing the EZZBS. Nevertheless, the doctoral student demonstrates good knowledge of the researched issues by presenting established views of Bulgarian and foreign scholars, comparative legal information and case law, presents and justifies his position by demonstrating that he can carry out independent scientific research.

**The introduction** contains all the necessary elements for such a type of essay. Here, the reason for choosing the topic, its significance, respectively the subject, the supported thesis, the goal and objectives of the work, the structure, as well as the methodology followed are justified. The relatively detailed presentation of the relevant regulatory acts is impressive, which, however, is imperative in view of the clear delineation of the boundaries of the study.

**Chapter One (46 pages)** from the dissertation is dedicated to the assumptions for creation on is European order for constipation on banking accounts and her general characteristics. It is structured in three sections. The first section follows the process on creation on this supranational procedure facilitating cross-border debt collection. The second section briefly presents the EAPO, both from the perspective of private international law and in view of its procedural dimensions and economic added value. The comparison with national law makes a good impression. Differences are drawn in the direction of a broader applicability of national provisions in view of the cases and the types of guarantees offered. The work would have benefited from including a more extensive analysis of the reasons for the more limited scope of the Regulation. In the third section, entitled "Subject matter on the regulation and scope on the European account preservation order", is being considered the material range on the regulation, the types deeds and accounts that fall or are excluded from its application, as well as personal, territorial and temporal scope of application. Regardless of the ultimately overlapping concepts of subject matter and scope of the regulation, this part of the first chapter is of the greatest importance for clarifying the prerequisites for access to this European procedure. The inclusion of national case law in relation to the exclusion of arbitration from the scope of the regulation, both in Bulgaria and in other EU Member States, is particularly positive. It is also worth noting the search and indication of specific types of bank accounts under Bulgarian law that are immune from preservation, as well as the considerations regarding preservation of digital currency and electronic money, including considering the existing institutions in our country that offer similar types of financial services. In relation to the definition of the personal scope, the work would have benefited from clarifying the concept of "residence" of natural and legal persons. In relation to the correlation with national law, the detailed listing of issues that remain subject to Bulgarian law should be noted. This is particularly imperative because the regulation inevitably applies in connection and interaction with the national legal order , which must support it, but not hinder or exclude its beneficial effect.

**Chapter Two (26 pages)**, titled " Comparison of the EAPO with existing legal institutes of the EU in the field by settlement on cross-border indebtedness ", compares the regulation in question with four other instruments of EU law, namely Regulation (EU) No 1215/2012, Regulation (EU) No 1896/2006 , Regulation (EC) No 861/2007 and Regulation (EU) No 805/2004. Each of them is commensurate in terms of its scope and the presence of identical or similar protective measures. In the end, each section contains separate conclusions regarding the advantages and disadvantages compared to the analyzed regulation. This research allows better understanding on place and role of the EAPO among the key instruments in the field of judicial cooperation in civil matters with cross-border implications. Despite its importance, this analysis does not deserve to be included in a separate chapter. This is evident from the volume itself, as well as from the fact that for the most part the comparison in terms of the scope of the different sources is unnecessary. The presence of institutes with similar effect and the pros and cons of using the different instruments are important. Including in this regard, however, it is clearly seen that in some regulations similar institutes are not even found, and the advantages and disadvantages are considered at a very general level. Also,

it is not particularly appropriate to include in this part an analysis of the concept of domicile within the meaning of the Brussels Ia Regulation (it would be better if it were in the first chapter). Moreover, with regard to natural persons, it is also incorrect. It is not true that in our country it is defined according to Art. 48, para. 7 of the Code of Civil Procedure. There is a legal definition of a completely different concept, namely habitual residence. I believe that the lack of a thorough and correct analysis of this concept is a significant omission, especially since there is also current case law of the Court of Justice of the EU on a Bulgarian preliminary reference (C -222/23, Toplofikatsiya AD).

**The third chapter (89 pages)** is the most voluminous and essential part of the dissertation work. It is entitled " Procedure for issuance of EAPO, competent authorities, protection on parties and responsibility for damages" and is accordingly divided into four sections. Within this chapter, the doctoral student enters an analysis of the procedure for issuing an EAPO, giving special importance to three of its aspects – the competent authorities, the means of protection and the liability for damages. First, access to the procedure from the point of view of the institution of the proceedings is presented. In this regard, a reference to the decision of the Court of Justice of the EU on the regulation – C - 555/18 KHK is adequately included. Then, the core of the regulation is examined, namely – the conditions for issuing an EAPO. The regulation of the relevant norms is presented, as well as the relevant considerations to them. The search and inclusion of case law from other countries, in which the assessment of the relevant requirements (separated into general and additional) is presented with specific examples, makes an excellent impression. The application for issuing of EAPO is presented with a slight delay, and then an analysis is made of the proof of the institution of the case on the merits. In this regard, the occurrence of pendency in the different legal systems and the importance for proving in the other country are discussed. Next is the issue of providing security in connection with the application for issuing of EAPO. In view of the establishment of a separate section on damages, it would be advisable to systematically include this issue in it. The study of the special procedure for obtaining information on a bank account is very valuable. The doctoral student distinguishes the various prerequisites very well and structures derivative prerequisites within them. This systematization allows for a better understanding of the issue, helps to delve into the essence and contributes to practical and applied orientation in view of the specific factual situations. Again, the presentation of examples from foreign case law enriches and deepens knowledge. The appeal of the refusal to issue an EAPO is presented schematically. Finally, this section discusses a thesis advocated by science regarding the temporal effect of the EAPO, incl. from the point of view of the receipt of the amounts in the respective bank account. The second part of this chapter examines the authorities involved in the procedure for issuing, imposing and enforcing the EAPO in the various countries. There is some repetition, insofar as the application for issuing the EAPO itself is presented again, but in a more detailed manner. In the case of the competent authorities for issuing the EAPO, the grounds for establishing international jurisdiction are briefly presented. This issue could have been addressed in chapter one and expanded. A certain imprecision is established regarding international

jurisdiction in contracts concluded with a consumer, for which, on the one hand, it is claimed that exclusive jurisdiction applies, and on the other hand, that under certain conditions, a choice of court is possible. The other authorities are also presented, including those responsible for providing account information. This part has added value, but it would have been better if the authorities had been discussed at the relevant systematic points in the development of the procedure itself or in chapter one in the general characteristics of the proceedings. The third chapter pays special attention to the remedies available to the parties in the procedure for issuing an EAPO. It is worth noting the differentiation of different types of defects that may serve as grounds for appeal, as they are presented not only schematically, but also in substance (e.g. regarding service or language requirements). Also, the analysis is oriented around the stages of development of the proceedings - the issuance and execution of the EAPO itself, the participants in the procedure, including the rights of third parties and the relationship with the rules on the establishment of the guarantee. Again, the inclusion of Bulgarian case law and the polemic with it has added value. Finally, the doctoral student devotes much and in-depth attention to the issue of liability for damages from the operation of the EAPO. The main characteristics are given from the point of view of the essence of the institute. The definition of the applicable law is presented. In this context, the criterion of "habitual residence" used in Art. 13 of the regulation, is interpreted in Bulgarian, and not autonomously. The most valuable is the analysis of the hypotheses of unlawful behavior that lead to causing damage to the debtor. The liability for damage to other entities is correctly presented for completeness. At the end of this part of the section and chapter, the issue of limitation is also addressed. Without reference to the text of the regulation and the analysis made, it incorrectly refers to the Code on PIL, and not to the universally applicable Rome II Regulation.

**The fourth chapter (25 pages)**, entitled "Practical aspects and guidelines for the application of the European Account Preservation Order", identifies two issues that the doctoral student believes are based on the conservative and difficult-to-access issuance of the EAPO. The first of these is related to proving the prerequisites for issuing the EAPO. In this regard, the conditions for issuance and the relevant practice of the Court of Justice of the EU are presented again. Second, Bulgarian case law is identified with a view to proving the already considered conditions for issuing the EAPO. In practice, other issues that are the subject of judgments by Bulgarian judges are also identified here. The doctoral student has collected and summarized case law of courts of all ranks in Bulgaria, with most of the analysis being devoted to judgments that establish a lack of sufficient evidence from which to derive the existence of an urgent need to issue the EAPO. The case study provides additional specificity to the study. However, it should be borne in mind that this practice is not uniform and is informative, but not necessarily binding. This chapter also includes case law on the collection of account information and the impossibility of issuing an EAPO in respect of an electronic money company account. Finally, some other aspects that have been the subject of court rulings are also included – the instance control, the use of the EAPO in parallel with Regulation 4/2009, the individualization of the debtor and the essence of the regulation. It is also worth noting

as a contribution the reference to the case law of the ECtHR on the admissibility of *ex parte proceedings* under certain conditions.

The conclusion summarizes the results of the research. The dissertation contains the contributions and proposals *de lege ferenda* determined by the doctoral student.

The doctoral student points out the following **contributions**:

- First complete scientific work in Bulgaria, dedicated on EAPO, which offers a structured comprehensive analysis
- Comparative analysis with four others legal the instrument of the EU
- Analysis on the practice on the Bulgarians courts by application on the regulation.
- Overview on the relevant practice on Court of Justice of the EU
- Research on the practice on foreign courts, showing differences in interpretations
- Practical guidelines for application on the tool.

There are also separate proposals *de lege ferenda*:

- Expansion on the scope for provision on other types property, except banking accounts.
- Expansion on the definition for "bank " in context of the EAPO.
- Inclusion of new forms on monetary means as cryptocurrencies and electronic money.
- Expansion of the temporal action on EAPO.
- Expansion on the mechanism for receiving information for the property on the debtor.
- Improvement on the procedure for notification on the debtor at disclosure on bank information.

These suggestions aim to increase the effectiveness and scope of the EAPO in the context on modern financial and technological realities.

**The contributions of scientific and practical significance** noted by Ms. Nikodimova are correct and justified. It is striking that those derived from her as a result of critical analysis are rather distinguished among the proposals *de lege ferenda*. However, it is undeniable that a comprehensive systematic study of the ECHR enriches science and supports practice, especially when it includes an analysis of Bulgarian and foreign case law and the practice of the Court of Justice of the EU, as well as the ECHR.

**In view of the above conclusions, I believe that the scientific and scientifically applied results** are available. The dissertation is developed on the basis of a sufficiently large volume of scientific works - Bulgarian and foreign, as well as judicial decisions of the Court of Justice of the EU, the ECHR, Bulgarian and foreign courts. It demonstrates the ability to process voluminous information, to extract relevant theses, to include them in the systematics and logic of the scientific work, to assess their validity and practical applicability, and when necessary - to debate them. The dissertation contributes to the clarification of key institutions and concepts for private international law, including by presenting their development in law enforcement and science. The comparison of Bulgarian judicial practice with that of other EU Member States contributes to the better understanding and practical application of the complex mechanism by which the issuance of the ECHR operates.

Radostina Nikodimova proves that **she has in-depth scientific knowledge and the ability to conduct independent scientific research**. The voluminous literature and practice, used in a meaningful and systematic unity, testify to entering and mastering the depths of the issue. The presentation of the complex relationship and interaction between the various procedural institutes at the level of EU law and national law prove that the doctoral student has mastered the key methodologies of work in a way that allows him to form, maintain and defend his own theses and concepts. I believe that Radostina Nikodimova's dissertation, after certain corrections and restructuring, has contributed to Bulgarian science and especially to Bulgarian law enforcement.

### **III. Critical remarks and recommendations**

As with any product of human labor, some notes and recommendations can be made to the presented dissertation, and here I allow myself to single out only the following:

1. I believe that the dissertation shows a certain lack of systematicity and repetition, as well as an uneven emphasis on different important elements of the essence and procedure for issuing the EAPO, which were noted above in the presentation of the work.
2. Some gross errors were made regarding the clarification of fundamental concepts such as "domicile" and "habitual residence", as well as in relation to determining the applicable law according to the Code of PIL, instead of the relevant applicable regulation.
3. The dissertation contains grammatical and technical errors, and it is worth noting, unfortunately, the still common ignorance in scientific literature in our country of how to spell "Member States" and "EU Member States;"
4. I consider it an unacceptable omission to lack analysis and reference to the first essay on the subject of Regulation (EU) No. 655/2014 of 2015 in Bulgaria, of which I am the author, namely the study entitled "A New Type of Collateral: European Account Preservation Order" Legal World Magazine", 2/2015, pp. 28-56.

The listed critical notes and recommendations do not change the overall positive impression of the dissertation work.

### **IV. Conclusion**

In conclusion, taking into account the considerations set out above, I express my positive assessment that the dissertation submitted for defence on the topic "European Account Preservation Order in Civil and Commercial Matters" by Radostina Nikodimova meets the requirements of Art. 6, para. 3 of the Act on the Development of Academic Staff in the Republic of Bulgaria (ADABRB) and Art. 27, para. 2 of the Regulations for the Implementation of the ADABRB for Obtaining the Educational and Scientific Degree "Doctor", therefore I propose that the educational and scientific degree "Doctor" be awarded to Radostina Nikodimova.

**Sofia, 11.02.2025**

**Member of the scientific jury : \_\_\_\_\_  
(Assoc. Prof. Dr. Boriana Musseva)**