European Account Preservation Order

Bulgaria

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FINDING COMPETENT COURTS/AUTHORITIES

The search tool below will help you to identify court(s)/authority(ies) competent for a specific European legal instrument. Please note that although every effort has been made to ascertain the accuracy of the results, there may be some exceptional cases concerning the determination of competence that are not necessarily covered.

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

A European Account Preservation Order may be issued after the competent court of first instance (*първоинстанцион съд*) has drawn up the authentic instrument within the meaning of Article 4(10) of Regulation (EU) No 655/2014 (Article 618a(2) of the Code of Civil Procedure (*Граждански процесуален кодекс – ГПК*)).

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

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

The Ministry of Justice obtains the information referred to in Article 14(1) following the method laid down in Article 14(5)(b).

Bulgaria has an electronic information system, created and maintained by the Bulgarian National Bank (Българска народна банка), containing bank account numbers and the names of account holders and nominees. Under Article 56a(3)(8) of the Credit Institutions Act (*Закон за кредитните институции*), the Minister for Justice has access to this information system for the implementation of Regulation (EU) No 655/2014.

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

A court decision rejecting, wholly or in part, an application for a European Account Preservation Order may be challenged in a private appeal (*частна жалба*), following the procedure laid down in Chapter 21 of the Code of Civil Procedure.

The general rule is that appeals are to be lodged with the next highest court.

Where the decision rejecting an application is issued by a court of appeal (*въззивна инстанция*), it can be further appealed before the Supreme Court of Cassation (*Върховни касационен съд*) (Article 618b of the Code of Civil Procedure).

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

The authority competent to receive, transmit and serve the preservation order and other documents under Regulation (EU) No 655/2014 is the bailiff (Article 618c(1) of the Code of Civil Procedure).

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

The authority competent to enforce the preservation order in accordance with Chapter 3 of Regulation (EU) No 655/2014 is the bailiff (Article 618d(1) of the Code of Civil Procedure).

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

Where joint accounts are preserved, the general rules on passive solidarity apply, in so far as the bank, as a liable third party, is not obliged to examine the size of the shares of each bank account holder or the descriptions of transfers received or sent.

It is possible to specify in a joint account agreement that each of the payment service users can fully dispose of all the receivables under the account, so that in the event that the account is preserved as a result of debts of one of the payment service users, the full available amount in the account may be used for the enforcement of the preservation order. There are no legal obstacles to the preservation of a joint bank account, and in such cases the bank will enforce the preservation order in respect of the full amount available in the account.

Under Bulgarian law, and specifically under the Code of Civil Procedure, there is no possibility to preserve nominee accounts. Preservation orders are to be applied only in respect of assets and receivables owned by the judgment debtor.

Some accounts are exempt from preservation by law because they contain assets which are owned not by the payment service user but by third parties.

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

Income exempt from seizure under the Code of Civil Procedure

Article 446. (1) If the enforcement applies to a salary or any other remuneration for work, or to a pension that exceeds the minimum wage, only the following shall be deducted:

1. if the monthly remuneration of the person found liable is between the minimum wage and twice the minimum wage: one third if they have no children, or one quarter if they have dependent children;

2. if the monthly remuneration of the person found liable is between twice the minimum wage and four times the minimum wage: one half if they have no children, or one third if they have dependent children;

3. if the monthly remuneration of the person found liable is over four times the minimum wage: the surplus over twice the minimum wage if they have no children, or the surplus over two and a half times the minimum wage if they have dependent children.

(2) The amount of the monthly remuneration under paragraph 1 shall be determined by subtracting the taxes and mandatory social security deductions due on the amount.

(3) The restrictions under paragraph 1 do not apply to maintenance obligations. In such cases the full amount of the maintenance obligation is deducted, while the deductions under paragraph 1 to cover the rest of the debts of the person found liable and any retroactive maintenance due are made from the remainder of their total income.

(4) Maintenance payments received are exempt from enforcement orders. Enforcement orders may be implemented in respect of scholarships only for the enforcement of maintenance obligations.

Income received in a bank account that is exempt from seizure

Article 446a. (1) The exemption from seizure of the income referred to in Article 446, as well as of benefits and allowances under any other legal instrument, shall also be maintained if they have been credited to a bank account, but no earlier than one month before the preservation order is imposed.

(2) The preservation order shall not have any effect in respect of the benefits and allowances referred to in paragraph 1, or with regard to pensions up to the amount of the minimum wage, except in the case of maintenance obligations.

(3) Where it is apparent from the transfer description of bank account receipts that they constitute remuneration for work, the bank shall not enforce the preservation order up to the minimum wage, except in the case of maintenance obligations.

(4) The bank shall transfer the sums due to the bailiff's account and notify the bailiff, within the time limit and according to the procedure laid down in Article 508(1), of any reasons for not enforcing the preservation order, i.e. that pension income or remuneration for work is being paid into the debtor's preserved account.

(5) Within one week of receipt of the notification referred to in paragraph 4 or of the debtor's objection based on the existence of non-seizable income, the bailiff shall notify the bank of the share to be transferred in accordance with Article 446.

Enforcement against government institutions under the Code of Civil Procedure

Article 519. (1) Enforcement of pecuniary claims against government institutions shall not be permitted.

(2) Pecuniary claims against government institutions shall be paid out of the funds provided for that purpose in their budget. To this end, the enforcement order shall be submitted to the financial authority of the relevant institution. If no funds are available, the relevant senior manager in charge of the budget shall take the necessary measures to include provision for such funds in the budget for the next cycle at the latest.

Enforcement of claims against municipalities and establishments subsidised by the budget according to the Code of Civil Procedure

Article 520. (1) Enforcement shall not be permitted in respect of funds in the bank accounts of municipalities and other establishments subsidised by the budget that have accrued as a subsidy, transfer or temporary interest-free loan from the central government budget, including via municipal or other budgets.

(2) Enforcement shall not be permitted in respect of EU funds and funds under other international programmes, municipal contracts and national co-financing related thereto, or in respect of funds from advance financing when they are provided from the national budget, including via accounts for EU funds.

(3) Enforcement of pecuniary claims in respect of other assets privately owned by the debtors under paragraph 1 shall follow the rules set out in this section.

Deductions from cash benefits, allowances and pensions under the Social Security Code (*Кодекс за социално осигуряване*)

Article 114a. (New in State Gazette (SG) No 100/2010, in force as of 1.1.2011) (1) (Supplemented in SG No 106/2013, in force as of 1.1.2014; amended in SG No 98/2016, in force as of 1.1.2017) Cash benefits and allowances paid under this Code may not be subject to preservation under the Code of Civil Procedure or the Tax and Social-Insurance Procedure Code (*Данъчно-осигурителния процесуален кодекс*), nor may any deductions be made, other than deductions related to obligations for public social insurance or maintenance obligations, or in the case of offsetting in accordance with the procedure under Article 114(5).

(2) When determining the income from pensions subject to preservation under the Code of Civil Procedure or the Tax and Social-Insurance Procedure Code, or when making deductions related to claims due for public social insurance, as well as in the case of offsetting in accordance with the procedure under Article 114(5), pension supplements shall also be taken into account, excluding the care allowance.

(3) (New in SG No 98/2016, in force as of 1.1.2017) Deductions from pensions for the recovery of unduly paid amounts for social security payments shall be as follows:

1. where the pensioner receives up to BGN 300.00 per month: one seventh;

2. where the pensioner receives between BGN 300.01 and BGN 400.00 per month: one sixth;

3. where the pensioner receives between BGN 400.01 and BGN 500.00 per month: one fifth;

4. where the pensioner receives between BGN 500.01 and BGN 700.00 per month: one third;

5. where the pensioner receives over BGN 700.01 per month: one half.

(4) Deductions shall be collected in the following order: maintenance obligations, social security payments unduly paid, other public debts and private debts.

Provisions under the Social Assistance Act (*Закон за социалното подпомагане*)

Article 14. (3) No deductions may be made from cash social benefits except for:

1. social assistance benefits unduly paid as a result of a technical accounting error;

2. amounts preserved for child maintenance obligations;

3. social assistance benefits established by a final act to have been obtained in bad faith.

* The official exchange rate between the Bulgarian lev and the euro is EUR 1 = BGN 1.95583. Under the Act on the introduction of the euro in the Republic of Bulgaria, in accordance with Articles 6 to 9 of Regulation (EC) No 974/98, the values indicated in Bulgarian lev in existing legal instruments are considered as values in euro by applying the official exchange rate and the relevant rules on conversion and/or rounding.

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

Fees connected to enforcement are owed to and collected by the respective enforcement authorities. The bank is a liable third party, and as such is required to submit information and implement the orders of the enforcement authorities.

As regards the types and rates of applicable fees, under the Payment Services and Payment Systems Act (ZPUPS) (*Закон за платежните услуги и платежните системи – ЗПУПС*), the principle of freedom of contract applies, with banks strictly prohibited from collecting fees only for specific actions; while in another, similarly limited, number of situations, it is explicitly stipulated that the fees must equal the actual costs.

Under current legislation there is no specific limit on the fee charged for the processing of a preservation order or for the administration of an account preservation order as part of the enforcement process. The preservation order processing fees, as well as the other fees charged by the banks, are contractual in nature and are collected from the payment service user (the bank account holder) in accordance with the framework agreement concluded by the parties and the applicable general conditions and tariffs set by the bank.

Under Article 49 ZPUPS, the bank account holder cannot be charged fees for the provision of account-related information required under Chapter 3 ZPUPS.

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

1. Fee scale No 1 annexed to the State Fees Act (*Закон за държавните такси*) in respect of fees charged by courts, prosecutors, investigating authorities and the Ministry of Justice, sub-section D ‘Taxes collected by the Ministry of Justice’, point 62b:

Provision of information necessary for the identification of the bank(s) and account(s) of the debtor in accordance with Article 14 of Regulation (EU) No 655/2014 – BGN 50.

2. Scale of state fees charged by courts under the Code of Civil Procedure:

- A fee of EUR 25.56 shall be charged by the court for the application of protective measures where a European Union law has such a provision (Article 22(3)).

3. For the purposes of judicial enforcement, fees are collected in the amounts set out in Section II ‘Judicial enforcement fees collected by state bailiffs’ of the scale of state fees charged by courts under the Code of Civil Procedure and those under the scale of fees and expenses annexed to the Private Bailiffs Act (*Закон за частните съдебни изпълнители*) http://www.bcpea.org/english/viewpage.php?page_id=3.

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

The procedural laws on enforcement do not contain any provisions on the ‘ranking’ of preservation and enforcement orders. Different enforcement proceedings have their own procedures based on privileges and order of priority for the implementation of creditors’ claims, and where no such procedures exist, the general rules on legal procedure apply: the order of priority of preservation orders follows the general principle ‘first in time, greater in right’.

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

If any of the grounds set out in Article 33(1) or Article 35(1) of Regulation (EU) No 655/2014 exist, the debtor or the creditor may apply to the competent court of first instance for revocation or modification of a European Account Preservation Order.

If any of the grounds set out in Article 34(1) of Regulation (EU) No 655/2014 exist, the debtor may apply to the court that issued the European Account Preservation Order for limitation or termination of enforcement of the order.

If the grounds set out in Article 35(3) of Regulation (EU) No 655/2014 exist, the debtor and the creditor may apply for limitation or termination of enforcement of the European Account Preservation Order by the bailiff. The bailiff must notify the court that issued the order of the actions taken.

On the basis of Article 35(4) of Regulation (EU) No 655/2014, the creditor may ask for modification of enforcement of the European Account Preservation Order by the bailiff.

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

The decision issued in respect of the application may be challenged in a private appeal. Where the decision is issued by an appeal court, it may be appealed before the Supreme Court of Cassation (Article 618b, in conjunction with Article 618e(1) of the Code of Civil Procedure).

Private appeals must be lodged within one week of the announcement of the court’s decision (Article 275(1) of the Code of Civil Procedure).

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

Bulgaria will not accept any other language except Bulgarian.

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