

# Newsletter Luxembourg

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## Corporate Finance & Insolvency Litigation

18 December 2017

- Introduction of bill n° 7203 relating to the conversion of the EAPO into a national enforcement measure and amending the New Code of civil procedure

On 6 November 2017, the Luxembourg Ministry of Justice submitted to the Luxembourg Parliament the new bill n° 7203 relating to the conversion of the European Account Preservation Order (the “EAPO”) into a national enforcement measure by introducing a new provision in the New Code of civil procedure, Article 791-1 of the New Code of civil procedure (the “Bill”).

Since 18 January 2017, the Regulation (EU) n° 655/2014 of the European Parliament and of the Council of 15 May 2014 has introduced the EAPO procedure, a uniform procedure across the participating Member States of the European Union to facilitate cross-border debt recovery in civil and commercial matters (the “Regulation”).

The purpose of the Regulation is to create a conservatory measure in favor of the creditor which prevents the subsequent enforcement of his claim from being jeopardised through the transfer or withdrawal of funds, as an alternative to preservation measures under national law.

In contrast, the Regulation does not regulate the recovery *per se* of the claim, namely the right of the creditor to obtain payment of his claim directly from the attached third party. The matter of enforcement as such is therefore governed by the national law of the Member State concerned.

The current Luxembourg law provisions governing the existing attachment proceedings (*saisie-arrêt*) do not, however, clearly distinguish between these two phases (conservatory phase and enforcement stage), and therefore can not be applicable to the enforcement stage of the EAPO.

The aim of the Bill is therefore to introduce into national law a specific enforcement procedure, which would solely be applicable to the EAPO introduced by the Regulation.

According to the Bill, the creditor, on the basis of its EAPO, would have the possibility to obtain directly payment of his claim from the attached third party via an act of conversion (*acte de conversion*) served on the attached third party and the debtor.

The debtor could challenge the act of conversion by seizing the President of the competent Luxembourg District Court on the following two limited grounds: (i) the inaccuracy of the amount due or (ii) the disappearance of the title (*disparition du titre*) having justified the EAPO.

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