Прегледни рад 347.91/.95(439)
347.734
doi:10.5937/zrpfns60-63852

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THE PLACE OF EUROPEAN PROTECTIVE MEASURES IN HUNGARIAN CIVIL PROCEDURAL LAW

Abstract: *The European protective measures created by the European Account Preservation Order is to enable creditors to prevent the subsequent enforcement of the creditor's claim from being jeopardised or delayed through the transfer or withdrawal of funds held by the debtor in a bank account within the Union. The aim of this paper is to detail the Hungarian rules facilitating the application of the European Account Preservation Order in light of the judicial practice of the last 8 years. To achieve this goal, the first part of this study will elaborate on the conditions for ordering European protective measures, during the examination of which the European and Hungarian regulations applicable to European Account Preservation Orders will be scrutinized in the context of non-contentious procedures. This will be followed by the examination of issues related to legal application in the Hungarian case-law. In summary, it can be concluded that there are significant differences between the conditions of ordering the Hungarian and the European protective measures. While the ordering of a Hungarian protective measure is grounded on presenting the likelihood of the risk of satisfaction, the European Account Preservation Order requires the creditor to prove that the claim enforcement requires urgent legal protection.*

Keywords*: European Account Preservation Order, European protective measures, European civil procedural law, Hungarian non-contentious procedures.*

1. INTRODUCTION

Regulation (EU) No 655/2014 of the European Parliament and of the Council[1] establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters is applicable in European Union Member States, thus in Hungary too, as of 18 January 2017. The aim of this paper is to detail the Hungarian rules facilitating the application of the European Account Preservation Order in light of the judicial practice of the last 8 years. To achieve this goal, the first part of this study will elaborate on the conditions for ordering European protective measures, during the examination of which the European and Hungarian regulations applicable to European Account Preservation Orders will be scrutinized in the context of non-contentious (enforcement-related) procedures through the methodology of doctrinal analysis. This will be followed by the examination of issues related to legal application in the Hungarian legal practice through case note.

Different national enforcement systems provide deterrents for litigants.[2] The objective of the *sui generis* legal institution of European protective measures created by the European Account Preservation Order is to enable creditors to prevent the subsequent enforcement of the creditor's claim from being jeopardised or delayed through the transfer or withdrawal of funds held by the debtor in a bank account within the Union. The scope of the European Account Preservation Order includes pecuniary claims in civil and commercial matters in cross-border cases regardless of value thresholds. It can be claimed that the European Account Preservation Order is an alternative protective measure for creditors, in addition to the protective measures of the Member States. The EAPO Regulation introduces a mechanism of automatic recognition and enforcement of a Preservation Order without any special procedure and without the need for a declaration of enforceability.[3]

A European Account Preservation Order may be issued for preserving pecuniary claims overarching Member States (containing a cross-border element), either already due or not, but arising from a transaction or event already occurred,

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[1] 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. Official Journal of the European Union | L 189/59, 27 June 2014

[2] Burkhard Hess, Comparative analysis of the national reports. In Mads Tønnesson Andenas, Burkhard Hess, Paul Oberhammer (eds.), *Enforcement Agency Practice in Europe*, London, British Institute of International and Comparative Law, 2005, 25–47. Mirela Župan, Cross-border recovery of maintenance taking account of the new European Account Preservation Order (EAPO). *ERA Forum,* 2015/16(2), 167.

[3] Marcin Walasik, Article 1: Subject matter, In Elena D'Alessandro, Fernando Gascón Inchausti (eds.), *The European Account Preservation Order. A Commentary on Regulation (EU) No 655/2014.* Cheltenham, UK; Northampton, Massachusetts, Edward Elgar Publishing Limited, 2022, 11.

with a specifiable amount[4]. Based on the Account Preservation Order, the court shall not summon the debtor for hearing to ensure the 'surprise effect'[5], a European Account Preservation Order may be issued at the creditor's unilateral request, during judicial enforcement in a non-contentious procedure. [6]

As derived from Article 7 of the Regulation on the European Account Preservation Order, creditors are entitled to initiate a procedure in two cases: a) before the creditor initiates proceedings in a Member State against the debtor on the substance of the matter, or at any stage during such proceedings up until the issuance of the judgment or the approval or conclusion of a court settlement; or b) after the creditor has obtained in a Member State a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim. So, it can be stipulated that having a previously enforceable decision or any other enforceable instrument is not a condition for the issuance of a European Account Preservation Order to. „The EAPO will be available before substantive proceedings on maintenance are initiated, during those proceedings or after a judgement is obtained; therefore a creditor may obtain an EAPO in the pre-judgement and post-judgement stage."[7]

I believe, that Articles 10, 12 and 13 of the Regulation are meant to ensure reasonable balance between creditor protection and debtor protection. Where the creditor has applied for a Preservation Order before initiating proceedings on the substance of the matter, they shall initiate such proceedings and provide proof of such initiation to the court with which the application for the Preservation Order was lodged within 30 days of the date on which they lodged the application or within 14 days of the date of the issue of the Order (Article 10). Secondly, 'in a case where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court shall require the creditor to provide security for an amount sufficient to prevent abuse of the procedure (...) and to ensure compensation for any damage suffered by the debtor as a result of the Order' (Article 12). Thirdly, 'the creditor shall be liable for any damage caused to the debtor by the Preservation Order due to fault on the creditor's part. The burden of proof shall lie with the debtor' (Article13).

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[4] Zsanett Schweighardt, Tagállamközi követelésbehajtás – ideiglenes számlazárolást elrendelő európai végzés (EAPO – European Account Preservation Order), *Európai Jog*, 2018/18(3), 2.

[5] Cf. Article 11 of the Regulation establishing a European Account Preservation Order procedure.

[6] „The ex parte nature also applies to appeals against an order rejecting an application for an account preservation order, so that the debtor cannot be heard or served with documents during the appeal." Róbert Muzsalyi, Az Európai Parlament és a Tanács 2014. május 15-i 655/2014/EU rendeletének magyarázata, In Dániel Gelencsér, Sándor Udvary (eds.), *A bírósági végrehajtásról szóló törvény és a kapcsolódó jogszabályok kommentárja,* Budapest, HVG-ORAC, 2021, 2961.

[7] Zuoan i.m. 171.; Burkhard Hess, Katharina Raffelsieper, Die Europäische Kontenpfändungsverordnung: Eine überfällige Reform zur Effektuierung grenzüberschreitender Vollstreckung im Europäischen Justizraum. *IPRax*, 2015/35(1), 47.

Furthermore, as *Pál Emil Mészáros* also points out, the aim of the Regulation is not to make the debtor's performance impossible. Therefore the Regulation enables the debtor to request the release of the preserved funds, provided appropriate alternative securities are ensured. The interpretation of the notion of appropriate alternative security shall be governed by the law of the Member State issuing the order.[8]

2. HUNGARIAN REGULATIONS FACILITATING THE APPLICATION OF THE REGULATION ON ACCOUNT PRESERVATION ORDERS

The Hungarian legislator inserted technical regulations facilitating the application of the Regulation on Account Preservation Orders among the rules of Act LIII of 1994 on judicial enforcement (hereinafter: 'Judicial Enforcement Act'). Only a few provisions of the Judicial Enforcement Act refer to the possibility of applying European protective measures. Among the provisions governing protective measures, Section 187(5) of the Act declares in a general manner that account preservation may be ordered as a protective measure, this way placing this European protective measure among protective enforcement measures as a potential form of pecuniary claims. While the legislator specifically names account preservation in a legislation, thus placing it among the protective enforcement measures, it fails to incorporate the European Account Preservation Order in the system of legal institutions, or, in other words, it is missing therefrom. In my view, examining the European Account Preservation Order from a broader perspective it is in any event a document basis for enforcement,[9] since it is a request addressed to the enforcement body to take a specific enforcement measure. Nevertheless, there are significant differences in the conditions of ordering the Hungarian porotective measures and the European ones. While the precondition for a Hungarian protective order is, on the one hand, that an enforceable instrument to satisfy the claim cannot yet be issued, and secondly the party seeking enforcement must deem likely that the subsequent satisfaction of the claim will be in jeopardy.[10] In contrast, pursuant to Preamble Section (14) of the Account Preservation Regulation, the creditor is required to demonstrate that their claim is in urgent need of judicial protection.

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[8] Pál Emil Mészáros, Ideiglenes intézkedések az európai polgári eljárásjogban és a „nem tagállami" ideiglenes számlazárolást elrendelő végzés, *Európai Jog*, 2018/18(3), 7.

[9] According to the doctrine of Hungarian enforcement law, enforcement is generally based on a document issued by a court, a notary public, or another authority (e.g., a tax authority). Most commonly, a final court decision, a final payment order issued by a notary public, or a notarial deed drawn up by a notary public serves as the basis for enforcement.

[10] Miklós Kengyel, Biztosítási intézkedések, In Miklós Kengyel, *Magyar polgári eljárásjog*, Budapest, Osiris Kiadó, 2008, 656.

Furthermore, with regard to the issuance of the order, Section 187(7) of the Judicial Enforcement Act must be mentioned in the Hungarian legislation promoting the application of the Regulation, which calls for a system of standard forms provided for by the Regulation. [11] In this scope the Act does not contain further provisions.

As an obligation pursuant to Article 50 of the Regulation, Section 7(6) of the Judicial Enforcement Act designated the Hungarian Association of Judicial Officers (hereinafter: Association) as the authority competent to obtain account information. In accordance with Section 7(5) of the Judicial Enforcement Act, during the enforcement proceedings the court and the enforcement authority may contact the tax authority to request information on the bank accounts reported to it, as well as the payment service providers to share the data (account number) necessary for the claim enforcement against the funds held there by the debtor. The approached bodies and authorities are obliged to fulfil the request of the Association within eight days and provide the required data [Section 47(3) of the Judicial Enforcement Act]. In connection with the application of Article 50, further responsibilities of the Association with regard to the registration and service of enforcement documents must also be referred to: the Association of Judicial Officers operates both the electronic case management system for enforcement proceedings and the electronic service of enforcement documents.[12]

Finally, the special provisions pertaining in my view to the order of enforcement must be highlighted among the Hungarian rules facilitating the application of the Regulation. [13] Section 24(7) of Regulation 655/2014/EU describes a special order of enforcement for multiple bank accounts held by the debtor at the same bank. This enforcement order is not in full harmony with the enforcement rules prescribed by the Judicial Enforcement Act for funds held at payment service providers, therefore during the application of Regulation 655/2014/EU, Section 79/B(5) of the Judicial Enforcement Act calls for the application of the provisions of the Regulation declaring the priority of Section 24(7) therein. [14]

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[11] The Account Preservation Regulation, similarly to all claim enforcement measures in EU non-contentious proceedures, provides for proceedings based on standard forms in which the content of both the application and the order is set out in a detailed manner.

[12] https://e-justice.europa.eu/topics/taking-legal-action/european-judicial-atlas-civil-matters/european-account-preservation-order/hu_hu [Downloaded: 01 August 2025]

[13] Article 24(7) of the Regulation refers to this order as an order of priority. In the context of the Hungarian doctrinal system of judicial enforcement the author defines this order as the order of enforcement, with reference to the terminology of protection-type enforcement.

[14] While pursuant to Article 24(7) of the Account Preservation Regulation in enforcement relating to several accounts held by the debtor, enforcement shall be executed first on the i.) savings accounts in the sole name of the debtor, then on the ii) current accounts in the sole name of the debtor, then on the iii) savings accounts in joint names, and finally on the iv) current accounts in joint names, pursuant to the joint reading of Sections 79/A and 79/B of the Judicial Enforcement

The Regulation rendered the definition of fees and costs related to the issuance of the European Account Preservation Order and its enforcement to the legal competence of the Member States.[15] In order for it to become a true alternative of the protective measures applicable in the Member States, Article 42 of the Regulation stipulates that the court fees in proceedings to obtain a Preservation Order shall not be higher than the fees for obtaining an equivalent national order. This rule is applicable to remedy proceedings as well. The court fee and other fees in Hungary depend on whether the Preservation Order is issued by a notary or a court. Pursuant to Section 55(1) of Act L of 2009 on orders for payment procedures the Hungarian Chamber of Civil Law Notaries shall charge a fee amounting to 1% of the fee base, but not less than HUF 5,000, and not exceeding HUF 30,000 for applications for protective measure orders. Pursuant to Section 42(1)d) of Act XCIII of 1990 on duties (hereinafter: Duty Act), the fee rate in enforcement procedures ordered by the court is 1% (but not less than HUF 5,000, and not exceeding HUF 30,000), if, however, the enforcement falls in the competence of the bailiff, it is 3% (but not less than HUF 8,000, and not more than HUF 15,000). [16] As derived from Section 47(3) of the Judicial Enforcement Act, payment service providers (credit institutions, banks) shall not request duty or fee payments for the execution of enforcement or for providing account information.

3. FIRST EXPERIENCES WITH EUROPEAN ACCOUNT PRESERVATION ORDERS IN HUNGARY

There are no statistical data regarding the number of European protective measures ordered and European Account Preservation orders issued in Hungary, therefore we can only rely on exploring and presenting the interpretational questions and potential difficulties in the judicial legal practice as regards the first experiences with this legal institution in Hungary. [17]

Act, enforcement shall be executed first on the primary payment account, then (following this) on any debit or savings account.

[15] „The *ex parte* EAPO proceedings are quick and have the same costs as domestic cases." Elena D'Alessandro, Fernando Gascon Inchausti, General Introduction. In Elena D'Alessandro, Fernando Gascón Inchausti (eds.), *The European Account Preservation Order. A Commentary on Regulation (EU) No 655/2014.* Cheltenham, UK; Northampton, Massachusetts, Edward Elgar Publishing Limited, 2022, 4.

[16] All procedure fees and duties related to the issuance of Account Preservation Orders in the Member States are available on the European Justice website. https://e-justice.europa.eu/content_european_account_preservation_order-379-de-hu.do?member=1 [Downloaded: 1 August 2025]

[17] In order to obtain statistical data for the study, the author contacted both the Hungarian Association of Judicial Officers and the National Office for the Judiciary. Both bodies provided the official information that neither the Association nor the Office for the Judiciary collects data or keeps statistics on the number of European Account Preservation Orders issued.

The legal interpretation elaborated in Decision No. 20.Gpkf.43.621/2019/2. of the Budapest Regional Court of Appeal is remarkable in two legal matters. In the referenced case the Regional Court, firstly, defined valuable corner points for establishing a fair balance between creditor protection and debtor protection to be ensured by the system of rules of the European Account Preservation Order, secondly, it declared and at the same time distinguished between the system of conditions of European and Hungarian protective measures.

The facts of the case can be summarized as follows: the creditor requested a European Account Preservation Order in France for the preservation of the bank account of the debtor held at Banque D. based in Paris in its application of 20 March 2019. The creditor stated that its former administrator, the debtor, caused them damages in the amount of USD 2,844,799 with bank transfers initiated from the creditor's account in France between May and September of 2016. The debtor caused damages to the company with the transfers launched from the creditor's Hungarian bank account mostly unjustified and without consideration counter to the interests of the creditor's company, in addition to acts related to goods management, such as appropriating goods. In its application submitted at the court of first instance, the creditor requested the obligation of the debtor as defendant to pay USD 2,844,799 plus late payment interests and court fees. The action is still ongoing.

The court of first instance rejected the creditor's application for a European Account Preservation Order against the debtor. During the proceedings, the first instance court examined the documents attached by the creditor as evidence. In this regard it found that the public prosecutor's office adopted a decision on 27 February 2019 based on the charges pressed by the creditor against an unknown perpetrator in which it was declared that, in accordance with the response granted at the request of the French authorities, the investigation was closed, the French authorities heard the debtor as a suspect of fraud committed against the creditor, EUR 1.7 million was preserved on the debtor's account by the French authority, and a luxury watch and car were confiscated from the debtor. In Hungary, the criminal proceedings is ongoing in line with the decision of the public prosecutor.

The court of first instance based its decision on the claim that the criminal proceedings against the debtor in France and in Hungary provided the creditor with adequate protection against the possible failure or significant difficulty of the subsequent enforcement of the creditor's claim against the debtor in the event of the creditor's success in the proceedings, with respect also to the fact that the French investigating authority preserved EUR 1.7 million funds on the debtor`s account. In addition, it also reflected on the investigation underway against the debtor in Hungary.

The creditor lodged an appeal against the decision, in which they primarily requested modification thereof in line with their request, secondly, they requested the issuance of a European Account Preservation Order for USD 940,799. According to their position described in the application, neither the Hungarian, nor the French criminal procedure, nor the preservation of funds ordered by the French investigation authority constitute substantial protection against the real risk for the creditor of the possible failure or significant difficulty of the subsequent enforcement of the creditor's claim against the debtor in the event of the creditor's success in the proceedings. Among others, it pointed out the fact that no preservation of funds, confiscation or any punitive coercive measure was carried out in the Hungarian criminal procedure to ensure the creditor's claim agains the debtor in the event of a successful contentious action. The criminal action in France and the preservation of funds by the French investigation authority cannot be considered sufficient protective measures precisely because the subject matter of the procedure and that of the Hungarian civil law procedure are independent of each other, and are based on different facts. According to the subject matter of the Hungarian civil law procedure, the debtor only caused damages with their unlawful conduct closely linked to goods management.

In its application for a European Account Preservation Order, the creditor highlighted, that the preservation of the EUR 1.7 million fund by the French investigation authority does not fulfill the creditor's capital and interest claim, in this regard, the creditor requested the preservation order for the difference of USD 940,799.

Pursuant to Preamble (14) of the Account Preservation Regulation, 'the conditions for issuing the Preservation Order should strike an appropriate balance between the interest of the creditor in obtaining an Order and the interest of the debtor in preventing any abuse in relation to the Order. Consequently, when the creditor applies for a Preservation Order prior to obtaining a judgment, the court with which the application is lodged should have to be convinced of the creditor's likely success in the substance of their claim against the debtor on the basis of the evidence submitted by the creditor. Furthermore, the creditor should be required in all situations, including when they have already obtained a judgment, to demonstrate to the satisfaction of the court that their claim is in urgent need of judicial protection and that, without the Order, the enforcement of the existing or a future judgment may be impeded or made substantially more difficult because there is a real risk that, by the time the creditor is able to have the existing or a future judgment enforced, the debtor may have dissipated, concealed or destroyed his assets or have disposed of them under value, to an unusual extent or through unusual action.'

In accordance, the creditor had to prove that the enforcement of their claim requires urgent legal protection, and that without special measures (ordering the preservation) the future judicial enforcement could be impeded or made substantially more difficult, and there is a real risk that the debtor may dissipate, conceal or destroy their funds.

In its decision, the court pointed out that as regards the content of the preservation set out in the Account Preservation Order, the preservation is a special protective measure which is only partially synonymous with the protective measure applied in Hungarian law (Judicial Enforcement Act.) because it deviates from that in certain points. The EU Regulation requires the proof of the conditions and of their joint existence, therefore it is not sufficient to consider the existence of conditions probable.

It can be stated that the conditions of ordering a European protective measure differ significantly from that of Hungarian protective measures. Pursuant to the Account Preservation Regulation, the creditor must submit to the court sufficient evidence that they have urgent need for a protective measure in the form of an Account Preservation Order, because of the real risk that the absence of such measure would impede or make it significantly more difficult to subsequently enforce the creditor's claim against the debtor. Section (2) states that 'where the creditor has not yet obtained a judgment, a court settlement or an authentic instrument requiring the debtor to pay the creditor's claim in a Member State, the creditor shall also submit sufficient evidence to convince the court that they are likely to succeed in the substance matter of the claim against the debtor.' In Hungary, on the other hand, the condition stipulated in Section 185 of the Judicial Enforcement Act requires the party requesting enforcement to make it likely that the subsequent fulfilment of the claim is in jeopardy.

The Budapest Regional Court of Appeal acting in the appeal case adopted the order of the court of first instance. In the reasoning of its decision it pointed out that in the given case the creditor initiated criminal proceedings against the debtor in France and in Hungary, while submitting a claim for damages in a civil law action opened at the court of first instance. The creditor's claim for damages is at this stage only a statement of facts, the merits of which will be assessed in the civil proceedings. This statement of facts does not sufficiently prove that the creditor is likely to receive a positive decision on its claim against the debtor. Furthermore, in accordance with the findings of the Regional Court of Appeal, the measure adopted in the criminal proceedings in France and the fact that a criminal procedure is underway in Hungary, the certificates and evidence available at the current phase of the case provide sufficient evidence for the creditor.

For finding a fair balance between creditor protection and debtor protection in the application of the European Account Preservation Order, the Regional Court of Appeal provided the following interpretation: 'The surprise nature of the order, the debtor's lack of information, namely that the issuance is done without the debtor's preliminary hearing, justify the need for the court to ascertain, on the basis of the evidence and information provided, that the preservation of the account is justified, in order to avoid and prevent any abuse. However, it is not enough from the creditor to indicate the likelihood of the risk and jeopardy to convince the court, but it must be proven.'

Thus, in its decision, the Budapest Regional Court of Appeal pointed out that the ongoing civil law procedure and the evidence submitted there and in the current proceedings do not meet the condition of evidence beyond proving likelihood as prescribed in the EU Regulation in connection with the success of the civil claim enforcement.

4. CONCLUSION

In this paper a summary of the regulatory environment facilitating the application of the European Account Preservation Order in Hungary was presented. An overview of the relevant provisions of the Judicial Enforcement Act was provided, and reference was made to the lack of a taxonomy for the European Account Preservation Order as a legal instrument. In this regard, the conclusion was drawn that there are significant differences between the conditions of ordering the Hungarian and the European protective measures. While the ordering of a Hungarian protective measure is grounded on *presenting the likelihood* of the risk of satisfaction, the European Account Preservation Order requires the creditor to *prove* that the claim enforcement requires urgent legal protection.

Summarising the experience of eight years of application of the Regulation, it can be concluded that the primary challenge for Hungarian courts in ordering *sui generis protective measures* is to strike the right balance between the creditor's interest in obtaining an order and the debtor's interest in avoiding abuse of the order.

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Место европских мера обезбеђења у мађарском грађанском поступку

Сажетак: *Европске мере обезбеђења успостављене Европском наредбом о очувању рачуна имају за циљ да омогуће повериоцима да спрече да се накнадна принудна наплата њихове потраживања доведе у питање или одложи преносом или повлачењем средстава која дужник држи на банкарском рачуну унутар Уније. Циљ овог рада је да детаљно изложи мађарска правила која олакшавају примену Европске наредбе о очувању рачуна у светлу судске праксе последњих осам година. Да би се постигла овај циљ, први део студије ће разрадити услове за издавање европских мера обезбеђења, при чему ће се током испитивања темељно испитати европске и мађарске прописе примењиве на Европске наредбе о очувању рачуна у контексту неспорних поступака. Након тога ће бити испитана питања везана за правну примену у мађарској судској пракси. Укратко, може се закључити да постоје значајне разлике између услова за наложење мађарских и европских мера обезбеђења. Док је наложење мађарске мере обезбеђења засновано на приказивању вероватноће ризика задовољења, европска наредба о очувању рачуна захтева од повериоца да докаже да спровођење потраживања захтева хитну правну заштиту.*

Кључне речи: *Европски налог за очување рачуна, Европске мере обезбеђења, Европско грађанско поступно право, Мађарски неспорни поступци.*

Датум пријема рада: 2. 1. 2026.
Датум достављања коначне верзије рада: 22. 3. 2026.
Датум прихватања рада: 24. 4. 2026.