

## Improving Debt Recovery – Publication of CSSF Circular 22/819



Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014 (the “Regulation”) establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters has entered into force on 18 January 2017. Luxembourg law has been amended in this respect through the law of 17 May 2017, as amended (the “Law”), which designates the financial sector regulator (the *Commission de Surveillance du Secteur Financier*, hereafter referred to as the “CSSF”) as the competent authority for the purposes of obtaining the necessary information on the debtor’s account or accounts, also referred to as information authority within the Regulation. The CSSF’s Circular 22/819 dated 1 August 2022 contains certain information in this regard which are of interest for banks under the supervision of the CSSF.

As a brief reminder, the procedure created by the Regulation allows a creditor holding an enforcement title (*titre exécutoire*) such as a judgement, a court settlement or an authentic instrument which requires the debtor to pay the creditor's claim, or which will initiate or is in legal proceedings to obtain such title, to apply for a Preservation Order (as defined in the Regulation).

Pursuant to article 14 of the Regulation, a creditor holding an enforcement title which has reason to believe that the debtor holds one or more accounts with a bank located in Luxembourg, but does not know the name and/or address of the bank, nor the IBAN, BIC or other bank number identifying the bank, may request the court processing its application for a Preservation Order to request, through its member's state information authority, information necessary to identify the bank(s) and account(s) of the debtor from the CSSF. This latter will forward such information request to all banks under its supervision, which shall provide the relevant data to the CSSF in case such debtor indeed holds an account within their books.

Such information request is also available to creditors which do not hold yet an enforcement title when there is an urgent need for account information because there is a risk that, without such information, the subsequent enforcement of the creditor's claim against the debtor is likely to be jeopardised which may consequently lead to a substantial deterioration of the creditor's financial situation.

As from September 1, 2022, all communication between the CSSF and the banks under its supervision will be made through the dedicated eDesk portal.

The banks providing information to the CSSF about a debtor and/or its accounts open within their books in response to an information request shall inform the debtor that his personal data have been communicated.

However, the CSSF takes this opportunity to recall to the banks that such information shall not be made within the first 30 days as from the personal data processing, to avoid that a debtor, informed that an application for a Preservation Order has been made, organises his insolvency before the Preservation Order has been issued and notified to the relevant account banks.

This communication procedure should have the advantage of simplifying and accelerating communication between banks and the regulator, and overall enhancing the effectiveness of the European Account Preservation Order procedure.



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