

JUDGMENT OF THE COURT (Fourth Chamber)

21 May 2026 (*)

(Reference for a preliminary ruling – Cooperation in civil and commercial matters – Regulation (EU) No 655/2014 – European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters – Conditions for issuing – Article 7(1) – Urgency – Real risk that, without such a measure, the subsequent enforcement of the claim will be impeded or made substantially more difficult – Nature of that risk – Circumstances which may demonstrate the existence of that risk – Past actions of the debtor – Obstacles to enforcement in the Member State in which that debtor is domiciled – Legislation of a Member State which provides for the inadmissibility of any legal action concerning the lawfulness of providing gambling services from that Member State, which is authorised by the legislation of that Member State, and the obligation on the courts of that Member State to refuse to recognise or enforce any foreign judicial decision delivered following such an action)

In Case C-198/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesgericht für Zivilrechtssachen Wien (Regional Court for Civil Matters, Vienna, Austria), made by decision of 8 March 2024, received at the Court on 12 March 2024, in the proceedings

TQ

v

Mr Green Limited,

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, F. Biltgen, President of the First Chamber, acting as a Judge of the Fourth Chamber, N. Jääskinen (Rapporteur), R. Frendo and M. Bošnjak, acting as a Judge of the Fourth Chamber, Judges,

Advocate General: N. Emiliou,

Registrar: E. Sartori, Administrator,

having regard to the written procedure and further to the hearing on 19 June 2025,

after considering the observations submitted on behalf of:

- TQ, by S.R. Thorstensen, Rechtsanwalt,
- Mr Green Limited, by C. Leitgeb, Rechtsanwalt,
- the Belgian Government, by M. Jacobs and M. Van Regemorter, acting as Agents and by R. Verbeke and Ph. Vlaemminck, advocaten,
- the Maltese Government, by A. Buhagiar, acting as Agent, and by D. Sarmiento Ramírez-Escudero, abogado, D. Inguanez and K. Sammut, avukati,
- the European Commission, by S. Noë and L. Wildpanner, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 October 2025,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 7(1) of 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 (OJ 2014 L 189, p. 59).
- 2 The request has been made in proceedings between TQ, a natural person residing in Austria, and Mr Green Limited, an operator of online games of chance established in Malta, concerning an application for a European Account Preservation Order in respect of that operator.

Legal context

- 3 Recitals 5, 11 and 14 of Regulation No 655/2014 state:

‘(5) National procedures for obtaining protective measures such as account preservation orders exist in all Member States, but the conditions for the grant of such measures and the efficiency of their implementation vary considerably. Moreover, recourse to national protective measures may prove cumbersome in cases having cross-border implications, in particular when the creditor seeks to preserve several accounts located in different Member States. It therefore seems necessary and appropriate to adopt a binding and directly applicable legal instrument of the Union which establishes a new [European] Union procedure allowing, in cross-border cases, for the preservation, in an efficient and speedy way, of funds held in bank accounts.

...

- (11) The procedure for a Preservation Order should be available to a creditor wishing to secure the enforcement of a later judgment on the substance of the matter prior to initiating proceedings on the substance of the matter and at any stage during such proceedings. It should

also be available to a creditor who has already obtained a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor's claim.

...

- (14) 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 abuse of the Order.

...

Furthermore, the creditor should be required in all situations, including when he has already obtained a judgment, to demonstrate to the satisfaction of the court that his 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.

The court should assess the evidence submitted by the creditor to support the existence of such a risk. This could relate, for instance, to the debtor's conduct in respect of the creditor's claim or in a previous dispute between the parties, to the debtor's credit history, to the nature of the debtor's assets and to any recent action taken by the debtor with regard to his assets. In assessing the evidence, the court may consider that withdrawals from accounts and instances of expenditure by the debtor to sustain the normal course of his business or recurrent family expenses are not, in themselves, unusual. The mere non-payment or contesting of the claim or the mere fact that the debtor has more than one creditor should not, in themselves, be considered sufficient evidence to justify the issuing of an Order. Nor should the mere fact that the financial circumstances of the debtor are poor or deteriorating, in itself, constitute a sufficient ground for the issuing of an Order. However, the court may take these factors into account in the overall assessment of the existence of the risk.'

- 4 Article 1 of that regulation, 'Subject matter', provides, in paragraph 1 thereof:

'This Regulation establishes a Union procedure enabling a creditor to obtain a European Account Preservation Order ('Preservation Order' or 'Order') which prevents the subsequent enforcement of the creditor's claim from being jeopardised through the transfer or withdrawal of funds up to the amount specified in the Order which are held by the debtor or on his behalf in a bank account maintained in a Member State.'

- 5 Article 7 of that regulation, entitled 'Conditions for issuing a Preservation Order', provides, in paragraph 1 thereof:

'The court shall issue the Preservation Order when the creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for a protective measure in the form of a Preservation Order because there is a real risk that, without such a measure, the subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult.'

- 6 Article 8 of that regulation, entitled 'Application for a Preservation Order' states:

'1. Applications for a Preservation Order shall be lodged using the form established in accordance with the advisory procedure referred to in Article 52(2).

2. The application shall include the following information:

...

(j) a description of all relevant circumstances justifying the issuing of the Preservation Order as required by Article 7(1)'.

7 Article 17 of Regulation No 655/2014, entitled 'Decision on the application for a Preservation Order', provides in paragraph 1 thereof:

'The court seised of an application for a Preservation Order shall examine whether the conditions and requirements set out in this Regulation are met.'

8 Under Article 22 of that regulation, entitled 'Recognition and enforceability':

'A Preservation Order issued in a Member State in accordance with this Regulation shall be recognised in the other Member States without any special procedure being required and shall be enforceable in the other Member States without the need for a declaration of enforceability.'

The dispute in the main proceedings and the question referred for a preliminary ruling

9 TQ, who resides in Austria, has, from the territory of that Member State, gambled online in games offered by Mr Green, a company established in Malta which holds a Maltese licence for online gambling, but not the corresponding Austrian licence under the Bundesgesetz zur Regelung des Glücksspielwesens (Glücksspielgesetz – GSpG) (Federal Law on the regulation of games of chance (Law on games of chance – GSpG)) of 28 November 1989 (BGBl. I No 620/1989. During the period from 3 January 2017 to 25 April 2019, he suffered losses totalling EUR 62 878.

10 TQ brought an action before the Landesgericht für Zivilrechtssachen Wien (Regional Court for Civil Matters, Vienna, Austria), which is the referring court, against Mr Green seeking reimbursement of the losses referred to above, maintaining that, since Mr Green did not hold a licence under that federal law on games of chance, the underlying gambling contract was null and void, which required that company to refund him the stakes he had lost. By judgment of 2 December 2021, that court upheld TQ's claim and ordered Mr Green to refund him a total amount of EUR 62 878, plus interest, costs and incidental expenses.

11 Mr Green brought an appeal against that judgment before the Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria), which dismissed that appeal by judgment of 21 February 2022. That judgment and the initial judgment became final and enforceable on 13 April 2022.

12 Since the amounts referred to above had not been refunded to him, on 13 February 2024 TQ applied to the Bezirksgericht Innere Stadt Wien (District Court, Inner City of Vienna, Austria) for a European Account Preservation Order ('the Preservation Order'), pursuant to Regulation No 655/2014, in respect of the claim upheld by the judgment of 2 December 2021 and the judgment of 21 February 2022, targeting bank accounts held by Mr Green in Ireland, Luxembourg, Malta and Sweden.

13 Before that court, TQ argued that, in essence, for the purposes of adopting that order, it was necessary to take account of the fact that, after the delivery by the Austrian courts around January 2021 of a number of judgments authorising enforcement in proceedings similar to those which gave rise to the judgment of 2 December 2021 of the Landesgericht für Zivilrechtssachen Wien (Regional Court for Civil Matters, Vienna), brought against Mr Green by other players residing in Austria, Mr Green had terminated its contract with Dimoco Europe GmbH ('Dimoco'), an

Austrian payment service provider with which Mr Green had a credit balance and which, until the beginning of February 2021, paid claims on its behalf, acting as a third-party debtor. According to TQ, there was therefore a risk that Mr Green would act in the same way in the Member States referred to in the preceding paragraph of the present judgment in order to shield its assets from its creditors by transferring them to Malta where, since June 2023, a law prohibits the enforcement of foreign judgments against gambling operators holding a Maltese licence.

- 14 By judgment of 15 February 2024, the Bezirksgericht Innere Stadt Wien (District Court, Inner City of Vienna) dismissed TQ's application for a Preservation Order on the ground that (i) the events which occurred in 2021 did not lead to the conclusion that enforcement of TQ's claim was made impossible or substantially more difficult in 2024 and (ii) that there did not appear to be any urgency, since TQ had not lodged that application until three years after he had obtained the instrument requiring Mr Green to pay the claim concerned. In addition, that court held, concerning TQ's arguments regarding Maltese legislation, that, while it was correct that the Maltese first instance courts refused to enforce Austrian judgments, it had not been established that the higher courts of that Member State also ruled in the same way.
- 15 TQ brought an appeal before the referring court against that judgment, seeking to have that judgment altered so as to grant its application for a Preservation Order in respect of Mr Green's relevant bank accounts.
- 16 In that regard, the referring court states, first of all, that, under its interpretation of Article 7(1) of Regulation No 655/2014, two conditions must be satisfied in order for the Preservation Order to be adopted, namely (i) that the seizure is urgent and (ii) that there is a risk that, without that seizure, the enforcement of the claims concerned will be impeded or made substantially more difficult. According to that court, in accordance with recital 14 of that regulation, the existence of such a risk must be proved by an act of the debtor which occurs shortly before the application for the preservation of the accounts concerned is lodged. Even though, following termination of the contract between Mr Green and Dimoco, enforcement proceedings initiated in Austria against Mr Green were unsuccessful, since Mr Green refused to make payments on the basis of Austrian judgments ordering the reimbursement of the claims concerned, that termination is not a 'recent action' within the meaning of recital 14, since TQ lodged his application for a Preservation Order slightly more than three years after that termination and did not rely, in order to justify why such an order was necessary, on other actions by Mr Green. In addition, according to the referring court, the non-payment of the claim concerned also cannot constitute a 'recent action', which could be taken into account for the purposes of recital 14. Accordingly, the referring court is of the view that, where there is no urgency, it is not appropriate to authorise the preservation of the debtor's bank accounts on the basis of actions of the debtor which date back three years or more.
- 17 The referring court is uncertain, next, as to the relevance, when assessing the conditions laid down in Article 7(1) of Regulation No 655/2014, of the amendment dated 12 June 2023 to the Maltese Gaming Act ('the amendment to the Maltese Gaming Act'), which introduced an Article 56A ('Article 56A'), under which any action against gambling operators holding a Maltese licence is prohibited as being contrary to public policy and the courts of Malta must refuse to recognise and/or enforce in that Member State a foreign judgment and/or a foreign judgment made subsequent to such an action.
- 18 In that context, the referring court is of the view that (i) in the light of its wording, Article 7(1) of Regulation No 655/2014 could be understood as meaning that the 'real risk' that, without such seizure, the enforcement of claims would be impeded or made substantially more difficult would not depend solely on the debtor's actions, but could also stem from the conduct of third parties. Accordingly, the amendment to the Maltese Gaming Act could have an effect in the case in the main proceedings since it contravenes, by its wording, Article 22 of Regulation No 655/2014 and ought, therefore, to be taken into account as an obstacle to the enforcement of TQ's claim in Malta.

- 19 Second, recital 14 of Regulation No 655/2014 recognises the decisive importance of balancing the interests of the creditor against those of the debtor and refers, for the purposes of the risk concerned, to conduct attributable to the debtor, while the actions of third parties are not mentioned. Accordingly, since neither the creditor nor the debtor had an influence on the adoption of the amendment to the Maltese Gaming Act, the referring court expresses doubts as to whether it is possible to take account of the conduct of the Maltese legislature in the dispute in the main proceedings.
- 20 Lastly, according to the referring court, Austrian claimants have, in comparable situations, sought to enforce judgments in their favour in Malta in cases concerning games of chance and the Prim'Awla tal-Qorti Ċivili (First Hall of the Civil Court, Malta) has refused to make a reference to the Court of Justice for a preliminary ruling on whether the amendment to the Maltese Gaming Act was contrary to EU law. Nevertheless, the referring court states that it is impossible to establish whether those judgments have become *res judicata* or whether the enforcement of Austrian judgments in cases concerning games of chance was refused in Malta by judgments which have become *res judicata*.
- 21 In those circumstances, the Landesgericht für Zivilrechtssachen Wien (Regional Court for Civil Matters, Vienna) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:
- 'Is Article 7(1) of Regulation [No 655/2014] to be interpreted as meaning that action taken by the debtor three years or more previously and/or obstacles to enforcement of the judgment in the Member State of the debtor are not to be taken into account?'

The request that the oral part of the procedure be reopened

- 22 By documents lodged at the Registry of the Court of Justice on 21 and 24 November 2025, respectively, the Maltese Government and Mr Green requested the Court to order the reopening of the oral part of the procedure, pursuant to Article 83 of the Rules of Procedure of the Court of Justice.
- 23 In support of its application, Mr Green submits, in essence, that the Advocate General, in point 66 of his Opinion, incorrectly presented that company's position regarding its alleged intention to rely on Article 56A in order to oppose the enforcement of the judgments concerned in Malta.
- 24 The Maltese Government, for its part, in support of its request, submits that the Advocate General's Opinion contains a number of inaccuracies as regards the application by the Maltese courts of Article 56A and the fact that that provision makes it possible to 'conceal' the debtor's funds from the creditor.
- 25 In that regard, it should, first, be noted that, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his or her involvement. The Court is not bound either by the Advocate General's opinion or by the reasoning on which it is based (see, to that effect, judgments of 18 December 2025, *Storstockholms Lokaltrafik*, C-422/24, EU:C:2025:980, paragraph 21, and of 29 January 2026, *Keladis I and Keladis II*, C-72/24 and C-73/24, EU:C:2026:51, paragraph 63 and the case-law cited).
- 26 Second, the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the parties or the interested persons referred to in Article 23 of that statute to submit observations in response to the Advocate General's Opinion. Therefore, the fact that a party or an interested person disagrees with the Advocate General's Opinion, irrespective of the questions examined in the Opinion, cannot in

itself constitute grounds justifying the reopening of the oral procedure (see, to that effect, judgments of 18 December 2025, *Storstockholms Lokaltrafik*, C-422/24, EU:C:2025:980, paragraph 22, and of 29 January 2026, *Keladis I and Keladis II*, C-72/24 and C-73/24, EU:C:2026:51, paragraph 64 and the case-law cited).

27 It follows that, in so far as, by their respective requests to reopen the oral part of the procedure, the Maltese Government and Mr Green are seeking to respond to the Advocate General's position in his Opinion and to clarify certain factual matters, those requests must be rejected.

28 It is true that, pursuant to Article 83 of the Rules of Procedure, the Court may, at any time after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

29 However, in the present case, the Court considers that it has, following the written part of the procedure and the hearing held before it, all the information necessary to rule on the request for a preliminary ruling. In addition, the information put forward by the Maltese Government and by Mr Green in support of their respective requests to reopen the oral part of the procedure do not constitute new facts which are of such a nature as to be a decisive factor for the decision which the Court is called upon to provide in the present case.

30 So far as concerns, more specifically, the factual information found in paragraphs 23 and 24 of the present judgment, it should be borne in mind that the Court does not have the task of establishing the alleged facts but solely that of interpreting the relevant provisions of EU law. According to settled case-law, questions on the interpretation of EU law are referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine (see to that effect, judgment of 4 October 2024, *Bezirkshauptmannschaft Landeck (Attempt to access personal data stored on a mobile telephone)*, C-548/21, EU:C:2024:830, paragraph 41 and the case-law cited).

31 In those circumstances, the Court considers, after hearing the Advocate General, that there is no need to order that the oral part of the procedure be reopened.

Consideration of the question referred

32 By its single question, the referring court is, in essence, asking the Court whether Article 7(1) of Regulation No 655/2014 must be interpreted as meaning that a national court hearing an application for a Preservation Order may take into account, in order to determine whether there is an urgent need to adopt that order, first, conduct on the part of the debtor which took place a number of years before that application was lodged and, second, the fact that there is, in the Member State in which the debtor is established, a law capable of hindering the enforcement of the claim concerned.

33 By Article 1 thereof, Regulation No 655/2014 establishes at EU level a procedure enabling a creditor to obtain an Account Preservation Order, which prevents the subsequent enforcement of the creditor's claim from being jeopardised by the transfer or withdrawal of funds up to the amount specified in that order which are held by the debtor or on his or her behalf in a bank account opened in a Member State. That Preservation Order is to be available to the creditor as an alternative to preservation measures under national law.

- 34 Article 17(1) of Regulation No 655/2014 provides that the court seised of an application for a Preservation Order must examine whether the conditions and requirements set out in that regulation are met.
- 35 The conditions for issuing a Preservation Order are set out in Article 7 of Regulation No 655/2014.
- 36 Article 7(1) of Regulation No 655/2014 provides that the court is to issue the Preservation Order when the creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for a protective measure in the form of a Preservation Order because there is a real risk that, without such a measure, the subsequent enforcement of the creditor's claim against the debtor will be impeded or made substantially more difficult.
- 37 As the Court has held, Article 7(1) of Regulation No 655/2014 provides that, in order to have a Preservation Order issued pursuant to that provision, the creditor is required to establish only that that measure is needed as a matter of urgency on account of imminent risk regarding the subsequent enforcement of his claim (see, to that effect, judgments of 7 November 2019, *K.H.K. (Account preservation)*, C-555/18, EU:C:2019:937, paragraph 40, and of 20 April 2023, *Starkininvest*, C-291/21, EU:C:2023:299, paragraph 50).
- 38 As the Advocate General also pointed out in point 49 of his Opinion, it is clear from the wording of Article 7(1) that it lays down an obligation for the creditor to demonstrate that there is an 'urgent need' to adopt a Preservation Order, such urgency being established by the existence of a 'real risk' that, absent such a measure, the subsequent enforcement of the claim would be impeded or made substantially more difficult. Whether there is an urgent need to issue such an order and the 'real risk' therefore constitute two inseparable aspects of one and the same condition and not two separate conditions.
- 39 Therefore, Article 7(1) of Regulation No 655/2014 must be interpreted as meaning that there is an urgent need to issue a Preservation Order where there is a real risk that, without such an order, enforcement of the claim by the time when the creditor is able to have an existing or future judgment enforced will be impeded or made substantially more difficult.
- 40 It follows from the foregoing that the relevance of the circumstances noted by the referring court in the question it referred for a preliminary ruling must be assessed in the light of the condition of urgency as to the need to adopt a Preservation Order, established by there being such a real risk. It is necessary, in that regard, to determine the concept of 'real risk' referred to in Article 7(1) of Regulation No 655/2014 and to examine, specifically, the circumstances which may be taken into account by the court before which the application for a Preservation Order is brought, in order to determine whether that condition is satisfied.
- 41 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider both its wording, the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12; of 18 December 2025, *E. (Set-off of claims)*, C-481/24, EU:C:2025:996, paragraph 29; and of 22 January 2026, *NOVIS*, C-18/24, EU:C:2026:33, paragraph 49).
- 42 In that regard, concerning, in the first place, the concept of 'real risk' within the meaning of Article 7(1) of Regulation No 655/2014 and, in particular, the wording of that provision, it must be stated that it is clear from that wording and, in particular, from the use of the qualifying adjective 'real' that that concept must be interpreted as referring to a risk which is specific and current at the time when the application for a Preservation Order is lodged, and therefore not solely a potential or possible risk.

- 43 As regards the context of Article 7(1), it should be noted that recital 14 of Regulation No 655/2014 provides clarification as to the scope of that concept.
- 44 In that regard, it is apparent, in essence, from the third paragraph of recital 14 that, in order to convince the court before which the creditor's action is brought that that creditor's claim is in urgent need of judicial protection, the creditor must demonstrate that there is a real risk that, by the time the creditor is able to have the 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. The fourth paragraph of that recital 14 adds that the mere fact that the debtor has more than one creditor or that his financial situation is poor or deteriorating should not be regarded, of itself, as sufficient evidence to justify the issuing of a Preservation Order.
- 45 On the basis of a combined reading of the third and fourth paragraphs of that recital 14, the 'real risk', within the meaning of Article 7(1) of Regulation No 655/2014, must be understood as being a risk which has its origin in an intentional action by the debtor and, in particular, in the fact of the debtor taking measures, such as the dissipation, concealment or destruction of assets or their disposal under value, which are intended to evade payment of that creditor's debt and not in any other threat to the enforcement of the debt concerned, which does not stem from such an action by the debtor.
- 46 That interpretation is supported by the travaux préparatoires for Regulation No 655/2014 and, in particular, by the Proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters (COM(2011) 445 final). It is apparent from those travaux préparatoires that the EU legislature did not adopt the broader wording of the so-called '*periculum in mora*' condition concerning the risk of difficulties in enforcing the debt concerned, which covers all situations where there is a risk of a simple reduction in the debtor's assets.
- 47 The interpretation of Article 7(1) of Regulation No 655/2014 found in paragraph 45 of the present judgment is also supported by the objectives of that regulation, which aims not only to establish an EU-level procedure, which is available to the creditor as an alternative to preservation measures under national law, allowing, via binding and directly applicable provisions, for the efficient and speedy preservation of funds held in bank accounts concerned, but also seeks to strike an appropriate balance between the interests of the creditor and those of the debtor (see, to that effect, judgments of 7 November 2019, *K.H. K. (Account preservation)*, C-555/18, EU:C:2019:937, paragraphs 31 and 32, and of 20 April 2023, *Starkinvest*, C-291/21, EU:C:2023:299, paragraphs 49 and 50).
- 48 In view of the potentially negative impact of a Preservation Order on the debtor's assets and, in particular, on his freedom to dispose of them, an interpretation of Article 7(1) of Regulation No 655/2014 whereby any threat to the enforcement of the claim would constitute a 'real risk', within the meaning of that provision, would be liable to undermine the balance referred to in the preceding paragraph of the present judgment.
- 49 As regards the circumstances capable of demonstrating that there is a 'real risk', as defined in paragraphs 42 and 45 of the present judgment, it should be recalled, first of all, that Article 8 of Regulation No 655/2014, which governs the application for a Preservation Order, provides in paragraph 2, subparagraph (j) thereof that it is for the creditor to provide the court before which the application is brought with a description of all relevant circumstances justifying the issuing of such an order.
- 50 In that regard, the fourth subparagraph of recital 14 of Regulation No 655/2014 contains a list of circumstances on which the creditor may rely in order to justify the issuing of the Preservation Order and which may be taken into account by the court before which the application is brought when it assesses whether there is a 'real risk', within the meaning of Article 7(1) of that regulation.

- 51 That list includes the debtor's conduct in respect of the creditor's claim or in a previous dispute between the parties, the debtor's credit history, the nature of the debtor's assets and any recent action taken by the debtor with regard to those assets. A number of other circumstances are found in recital 14 which may also be taken into account by the court before which the application is brought, even though they are not, of themselves, to be regarded as sufficient to justify the issuing of a Preservation Order.
- 52 In addition, having regard to the objectives pursued by Regulation No 655/2014, as recalled in paragraph 47 of the present judgment, it should be observed that, first, in order to ensure that an appropriate balance is struck between the interests of the creditor and those of the debtor, and to ensure the practical effect of Article 7(1) of that regulation, the level of proof required cannot be understood as being so high that the creditor would be required to provide evidence that the debtor intends to avoid payment of the claim, since such a requirement would, in practice, often be difficult to meet.
- 53 Second, the creditor's application to have such an order issued must be based on specific evidence capable of proving that it is probable that, if that order is not adopted, the debtor might have dissipated, concealed or destroyed his assets or have disposed of them under value by the time any enforcement measures are taken.
- 54 It is therefore apparent both from the wording of Article 7(1) of Regulation No 655/2014, from the context of that provision and from the objective pursued by that regulation that the court before which an application for a Preservation Order is brought may carry out an overall assessment of the circumstances relied on by the creditor, including, as the case may be, the factors referred to in paragraph 51 of the present judgment, in order to determine whether, on the basis of those circumstances, there is a 'real risk' that, without a Preservation Order, the debtor might take measures, such as the dissipation, concealment or destruction of assets or their disposal under value, which, by the time the creditor is able to have an existing or future judicial decision enforced, would impede, or at least make substantially more difficult, the enforcement of the claim.
- 55 In the light of the foregoing, it is for the referring court, which alone has jurisdiction to rule on the facts, to carry out an overall assessment of the circumstances relied on by TQ in support of its application for a Preservation Order and to determine whether those circumstances constitute sufficient evidence that such a 'real risk' exists.
- 56 In the present case, that court is unsure regarding the relevance of actions by the debtor which occurred a number of years before the application for a Preservation Order was lodged and, in particular, the termination by that debtor of its commercial relationship with a payment service provider which acted on its behalf as a third-party debtor in the Member State in which the creditor is domiciled, as well as regarding the amendment of a law of the Member State in which the debtor is established which could impede the enforcement of the debt.
- 57 As regards the first of those circumstances, it must be stated that, first, as is apparent from paragraphs 51 and 54 of the present judgment, the court before which the application is brought may take account of the past conduct of the debtor when carrying out the overall assessment which it would find necessary in order to assess whether there is an urgent need for a Preservation Order to be issued. In addition, there is nothing in Regulation No 655/2014 to indicate that the relevance of that conduct is necessarily dependent on the time when it took place. Moreover, as the Advocate General pointed out in point 70 of his Opinion, Regulation No 655/2014 does not impose an obligation on a creditor to make its application at the very moment that the alleged risk to the enforcement of its claim arises, in order to have such an order issued. It is relevant, for that purpose, whether that risk persists when that application is lodged.

- 58 Second, as the Advocate General observed in point 68 of his Opinion, for companies operating online, with limited or no physical assets outside the Member State in which they are established, a credit balance which they hold with a payment operator may be one of the few assets over which the creditor could enforce its claim. Therefore, the termination of the contract with such an operator may constitute evidence of a broader strategy by the debtor concerned consisting in avoiding payment of its debts in the Member State concerned or, at least, of making enforcement of those debts more difficult.
- 59 As regards, second, the amendment to the Maltese Gaming Act which could, according to the creditor, be capable of hindering the enforcement of its claim, in particular in so far as it requires the courts of the Member State in which the debtor is established to refuse to recognise the enforceability, in the territory of that State, of foreign judicial decisions, such as a decision requiring the debtor to pay the debt concerned, it should be recalled that, as is apparent from paragraph 45 of the present judgment, Article 7(1) of Regulation No 655/2014 does not refer to there being some sort of threat to the enforcement of a debt, but to there being a real risk concerning the debtor's intent to avoid payment of that debt. In any event, that risk must be specific and current when the application for a Preservation Order is lodged.
- 60 It follows, as the Advocate General in essence observes in point 65 of his Opinion, that the fact of the creditor simply relying on national legislation such as that described in the preceding paragraph of the present judgment cannot be sufficient to prove that there is a 'real risk' within the meaning of Article 7(1). That finding applies, a fortiori, as regards the assessment of the need to issue a Preservation Order in relation to bank accounts held by the debtor in Member States other than the Member State which established that legislation.
- 61 However, a court before which an application for a Preservation Order under Article 7(1) of Regulation No 655/2014 is brought, when carrying out an overall assessment of the relevant circumstances relied on by the creditor, may take into account national legislation, such as that referred to in paragraph 59 of the present judgment, as a contextual element making it possible to assess the scope of the debtor's actions in order to determine whether he intends to avoid payment of the claim concerned.
- 62 It follows from all of the foregoing that Article 7(1) of Regulation No 655/2014 must be interpreted as meaning that a national court before which an application for a European Account Preservation Order is brought may take into account, in order to establish whether there is an urgent need to adopt that order, first, conduct of the debtor which occurred a number of years before that application was lodged and, second, the existence, in the Member State in which the debtor is established, of a law capable of impeding the enforcement of the claim concerned.

Costs

- 63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 7(1) of 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

must be interpreted as meaning that a national court before which an application for a European Account Preservation Order is brought may take into account, in order to establish whether there is an urgent need to adopt that order, first, conduct of the debtor

which occurred a number of years before that application was lodged and, second, the existence, in the Member State where the debtor is established, of a law capable of impeding the enforcement of the claim concerned.

[Signatures]

* Language of the case: German.