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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**

{SEC(2011) 937}

{SEC(2011) 938}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1 General context

The 2009 Stockholm Programme to deliver justice, freedom and security to citizens¹ emphasizes that the European judicial area should serve to support economic activity in the Single Market and invites the Commission to bring forward appropriate proposals for i.a. improving the efficiency of enforcement of judgments in the EU regarding bank accounts and debtor's assets. The Commission Action Plan implementing the Stockholm Programme² confirms this political mandate by providing for a Regulation on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts.

The Commission already noted the difficulties of cross-border debt recovery in a 1998 Communication "Towards Greater Efficiency in Obtaining and Enforcing Judgments in the European Union"³, and emphasized the need to improve the enforcement of decisions and to establish protective measures against debtor's assets at EU level. This approach was endorsed by the Council in its 2000 Programme on Mutual Recognition⁴. Although much progress has been made towards the creation of a genuine European Area of Civil Justice since then, these issues have not yet been addressed by the European legislator. Existing instruments in the area of civil justice, e.g. Regulation (EC) No 44/2001 of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter "Regulation Brussels I")⁵ solely ensure that a judgment given in one Member State is recognised and *enforceable* in another Member State but they do not contain any provision on how a judgment is actually enforced. To date, the procedural modalities of enforcement of a judgment or other enforceable title are exclusively governed by national law. This approach does not change with the proposed revision of Regulation Brussels I⁶.

The need for improving cross-border debt recovery was most recently emphasized by the European Parliament which adopted in May 2011 an own-initiative report calling on the Commission to put forward a proposal on interim measures for the freezing and disclosure of debtor's assets in cross-border cases⁷.

1.2 Grounds and objectives of the proposal

At present, a creditor seeking to recover his debt in another Member State faces significant difficulties. In particular, it is more cumbersome, lengthy and costly for him to obtain provisional measures to preserve assets of his debtor located abroad. This is a problem because quick and easy access to such provisional measures is often crucial to ensure that the debtor has not removed or dissipated his assets by the time the creditor has obtained and

¹ Adopted at the meeting of the European Council of 10 and 11 December 2009.

² COM(2010) 171, 20.4.2010.

³ OJ C 33, 31.1.1998, p. 3.

⁴ OJ C 12, 15.1.2001, p. 1.

⁵ OJ L 12, 16.1.2001, p. 1.

⁶ Proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) - COM(2010) 748, 14.12.2010.

⁷ EP plenary of 10 May 2011. JURI document 2009/2169(INI) of 16.2.2011, Rapporteur Arlene McCarthy (*S-D/UK*).

enforced a judgment on the merits. This is particularly important with regard to assets in bank accounts. Currently, debtors can easily escape enforcement measures by swiftly moving their monies from a bank account in one Member State to another. A creditor, however, has little chance of blocking a debtor's bank accounts abroad to secure the payment of his claim. As a result, many creditors are either unable to successfully recover their claims abroad or do not consider it worthwhile pursuing them and write them off.

Essentially, four main shortcomings of the current situation can be identified:

- The conditions for issuing orders preserving assets in bank accounts under national law vary considerably throughout the EU. This makes it more difficult for creditors to obtain an account preservation order (or to obtain one without the prior hearing of the debtor) in some Member States than in others and encourages forum-shopping. As European law currently stands, an additional problem results from the fact that provisional measures issued without a prior hearing of the debtor are not recognized and enforced in another Member State under Regulation Brussels I according to the jurisprudence of the Court of Justice of the European Union⁸. This problem has, however, already been addressed by the Commission's proposal for revising Regulation Brussels I.
- A second problem relates to the fact that in many Member States it is difficult, if not impossible, for a creditor to obtain information about the whereabouts of his debtor's bank account without having recourse to the services of private investigation agencies. This lack of transparency will often prevent a creditor from having access to this type of provisional measure.
- Thirdly, the costs of obtaining and enforcing an account preservation order in a cross-border situation are generally higher than in domestic cases, which deters creditors from recovering their claims abroad with the help of the judicial system.
- Finally, the divergences in and length of national enforcement systems constitute a serious problem for creditors seeking to enforce a judicial decision. This jeopardizes the effectiveness of provisional measures like account preservation orders which by definition depends on a swift implementation.

A detailed analysis of the problems of the current system as well as the impacts of the different options considered for addressing them can be found in the Impact Assessment accompanying this proposal.

The overall objectives of this proposal are to contribute to the development of the EU's internal market as outlined in the Europe 2020 Strategy for Growth⁹ and to the creation of a genuine European area of civil justice in the area of enforcement. The general objectives of this proposal are to facilitate the recovery of cross-border claims for citizens and businesses, in particular SMEs and improve the efficiency of enforcement of judgments in civil and commercial matters concerning cross-border disputes, thereby reducing the risks involved in

⁸ Case 125/79 *Denilauler* of 21 May 1980.

⁹ At the European Council meeting on 26 March 2010, European Union leaders set out their plan for "Europe 2020", a strategy to enhance the competitiveness of the EU and to create more growth and jobs, http://ec.europa.eu/europe2020/index_en.htm

cross-border trade, increasing confidence of traders, improving payment behaviour of debtors in cross-border situations and encouraging more cross-border business activity.

More specifically, this proposal aims at

- enabling creditors to obtain account preservation orders on the basis of the same conditions irrespective of the country where the competent court is located;
- Allowing creditors to obtain information on the whereabouts of their debtors' bank accounts; and
- Reducing costs and delays for creditors seeking to obtain and enforce an account preservation order in cross-border situations.

2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENT

This proposal was preceded by an extensive consultation of the interested public, Member States, other institutions and experts on the existing problems of the current system and the possible solutions to it. On 24 October 2006, the Commission adopted a Green Paper on improving the efficiency of the enforcement of judgments in the EU: the attachment of bank accounts¹⁰ which suggested to create a European provisional measure for the preservation of bank accounts and on which a total of 68 responses were received. In elaborating these suggestions, the Commission took into account the results of a comparative legal study submitted by Prof Burkhard Hess of the University of Heidelberg in February 2004 (and covering the then 15 Member States)¹¹. Empirical data on the impact of the different options for this proposal was collected by a further external study finalised in January 2011¹² as well as a survey of European companies launched via the European Business Test Panel (EBTP) the results of which were published in August 2010¹³. A public hearing took place in June 2010. In order to assist the Commission in elaborating this proposal, a group of private experts was set up which met four times between February and April 2011. Member States' experts were consulted on a preliminary draft proposal at a meeting in March 2011.

It results from the consultation process that there is large support from both stakeholders and Member States for the creation of a self-standing European procedure for the preservation of bank accounts. The few stakeholders contesting the need for the initiative generally argue that their own national procedures work well. However, others acknowledge that while a new European procedure might not be needed to improve procedures in their own Member State, it would have added value for 'out-going' applications that are dealt with in other countries, some of which are seen as having very inefficient procedures for account preservation orders. Turning to the key features of the envisaged proposal, a large majority of stakeholders and the European Parliament support that the envisaged European order for the preservation of bank

¹⁰ COM(2006) 618.

¹¹ "Improving the enforcement of judicial decisions in the European Union: transparency of the debtor's assets, attachment of bank accounts; provisional enforcement and protective measures", http://ec.europa.eu/civiljustice/publications/docs/enforcement_judicial_decisions_180204_en.pdf

¹² "Study for an Impact Assessment on a draft legislative proposal on the attachment of bank accounts", CSES London, forthcoming.

¹³ Commercial disputes and cross-border debt recovery, available at http://ec.europa.eu/yourvoice/ebtp/consultations/2010/cross-border-debt-recovery/index_en.htm

accounts should be of a provisional nature only. There is also overwhelming support for allowing the order to be issued without a prior hearing of the debtor in order to preserve its "surprise effect". The most controversial aspects of the initiative relate to issues of debtor protection, notably which court should have jurisdiction for contesting the order, and the modalities of enforcing the order cross-border.

The Commission analysed the costs and benefits of the main aspects of the proposed reform in its Impact Assessment which accompanies this proposal.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The proposed Regulation will establish a new and self-standing European procedure for the preservation of bank accounts which will enable a creditor to prevent the transfer or withdrawal of his debtor's assets in any bank account located in the European Union. The European procedure will be available to citizens and companies as an alternative to procedures existing under national law. The proposed Regulation will regulate the procedure for issuing the European account preservation order as well as its implementation by the bank holding the account targeted. The European account preservation order would be of a protective nature only, i.e. it would only block the debtor's account but not allow money to be paid out to the creditor. In line with the legal traditions of the large majority of Member States, the European order will have an *in rem* effect, i.e. be directed against specific accounts and not at the debtor personally.

The main features of the proposal can be summarised as follows:

3.1.1. Scope (Articles 2, 3)

The proposed Regulation applies to civil and commercial matters. The exclusions from the scope largely correspond to those of Regulation Brussels I. As in Regulation Brussels I, insolvency and social security are excluded from the scope. Arbitration is equally excluded from the scope. Even though there might be a case for allowing parties to an arbitration to have recourse to the European procedure, the inclusion of arbitration would entail complex questions which have not yet been addressed by EU law, e.g. under which circumstances arbitral awards can be put on an equal footing with judgments and it did not seem appropriate to address them for the first time in this instrument.

In contrast to Regulation Brussels I, the proposed Regulation will apply to matters of matrimonial property regimes, of the consequences of registered partnerships and of successions as soon as the legal instruments proposed by the Commission in these two areas have been adopted and entered into application.

The instrument is limited to situations having cross-border implications. The approach to define these situations in a "negative" way has been inspired by Article 1 of the Hague Convention on Choice of Court Agreements.

3.1.2. Conditions and procedure of issue

- Availability (Article 5)

The proposal envisages that the European procedure is available in two different types of cases: before and after obtaining a title enforceable in the Member State where the account is located. In practical terms, this means that a creditor could apply for the order (1) prior to or during judicial proceedings on the merits or after having obtained in the Member State of origin an enforceable title which is not yet enforceable in the Member State of enforcement and (2) after obtaining a title enforceable in the Member State of enforcement. While the Commission expects the instrument to be most relevant in the first constellation, it can have an added value in the second constellation by maximising the effectiveness of enforcement. Given that in this constellation, the creditor already has an enforceable title, the conditions of issue are less stringent than in the first constellation.

- Jurisdiction for issuing the order (Articles 6, 14)

As a general rule, the courts of the Member State having jurisdiction on the substance as determined by European instruments or national law are competent for issuing a European account preservation order. Alternatively, the order can be issued by the courts of the Member State where the account is located. In this case, however, in order to avoid forum-shopping, the effect of the order is limited to the Member State where it was issued and it is not recognised and enforced in other Member States under the proposed Regulation. In cases where the creditor has already obtained an enforceable title, he can obtain the European Account Preservation Order either from the court having issued the enforceable title or from the enforcement authority of the Member State where the bank account is located.

The rules on jurisdiction of this Regulation do not prevent a claimant to seek protective measures under national law on the basis of Article 31 of Regulation Brussels I.

- Conditions of issue (Articles 7, 12)

In line with the general approach taken in the large majority of Member States the proposed Regulation requires the creditor to show that he has a good prospect of winning his case on the substance, i.e. that his claim is *prima facie* well-founded, and that there is the risk that the enforcement of a subsequent judgment would be frustrated if the measure is not granted because the debtor risks to remove or dissipate his assets. In addition, the court may request the creditor to provide security to ensure compensation for any damage suffered by the debtor if the order was subsequently set aside as unjustifiable, e.g. because the creditor had no valid claim on the substance.

- Aspects of the procedure (Articles 10, 11, 44)

The European account preservation order will be issued in an *ex parte* procedure, i.e. without the prior hearing of the debtor. This will allow the "surprise effect" of the measure to be preserved. In situations where the "surprise effect" is not necessary, e.g. because the account is currently pledged to another creditor, the claimant can, however, request that the procedure be *inter partes*. Since speed is of crucial importance in proceedings for provisional measures, the Regulation only allows the taking of oral evidence in exceptional circumstances. Courts are entitled to accept written statements of witnesses or experts as evidence. The Regulation also establishes specific time-limits for issuing and implementing the European order. Where

the court or enforcement authority is in exceptional circumstances not able to comply with these time limits it has to justify why an additional delay is needed.

- Obtaining information on the debtor's account(s) (Article 17)

Given the difficulties the creditor may have to obtain information about his debtor's account(s) the proposed Regulation obliges Member States to provide for a mechanism facilitating that task. The Regulation leaves Member States the choice between two different mechanisms: Member States can provide for an order of disclosure obliging all banks in their territory to disclose whether the debtor has an account with them. Alternatively, they can grant their enforcement authorities access to information held by public authorities in registers or otherwise. The latter mechanism also figures in Article 61 of the Maintenance Regulation. Considerations of data protection require that the personal information exchanged under this provision is limited to the information necessary for enforcing and implementing the order.

3.1.3. *Enforceability and enforcement of the order*

- Abolition of exequatur (Article 23)

In line with existing European procedures¹⁴, account preservation orders issued under the proposed procedure in one Member State will be automatically recognised and enforced in another Member State without any special procedure being required.

- Service of the order on the bank and the defendant (Articles 24, 25)

The provisions on the actual enforcement of the European order to be issued under the new procedure constitute the main novelty of the proposed Regulation. An account preservation order with *in rem* effect is enforced by serving it on the bank or banks holding the accounts targeted which are under an obligation to implement the order. The provisions for service on the bank of the proposed Regulation distinguish between two situations. If the court is situated in the same Member State as the bank, service is governed by national law. If service has to be effected across borders, this has to be done in accordance with Regulation (EC) No 1393/2007 with an important modification as to the method of service: The documents to be served are transmitted from the court of origin or the claimant directly to the competent authority in the Member State of enforcement which in turn serves them on the bank or the defendant. In comparison to other methods of service or a free choice between different methods, this method of service has the important advantage of involving the competent authorities of the Member State of enforcement. This will not only ensure that the banks will receive the order through channels with which they are familiar but also allow the competent authority to take into account *ex officio* amounts exempt from execution where that is possible under national law.

The debtor has to be notified immediately after the measure took effect in order to be able to prepare his defence. The proposed Regulation ensures that service is effected as quickly as possible after the order has been implemented.

¹⁴ The European Small Claims Procedure established by Regulation (EC) No 861/2007 and the European Order for Payment procedure established by Regulation (EC) No 1896/2006.

- Implementation by the bank and bank's declaration (Articles 26, 27)

The bank is obliged to implement the order immediately by blocking an amount corresponding to the amount of the order. Special provisions take into account the situation of accounts containing financial instruments and accounts in a different currency than that in which the order is issued. Within 8 days, the bank has to issue a declaration on whether the order has preserved sufficient funds. In order to ensure an adequate protection of the debtor's personal information, the account balance may not be communicated if it allows for the full satisfaction of the order.

- Preservation of several, joint and nominee accounts (Articles 28, 29)

Where the preservation of several accounts is ordered, the proposed Regulation limits the possibility of an over-seizure by the creditor by obliging the creditor to release any amount exceeding his claim as soon as he is informed about it. Given the wide divergence of national law on the conditions under which joint and nominee (trust) accounts can be preserved, the proposed Regulation leaves this question to the applicable national law.

- Amounts exempt from enforcement (Article 32)

When it comes to the amounts exempt from enforcement for ensuring the livelihood of the debtor and his family or for allowing a company to continue its ordinary course of business national law varies considerably within the EU. This concerns notably the question whether amounts are exempt *ex officio* or only upon request of the debtor. The proposed Regulation allows Member States to maintain their national system.

- Ranking of competing creditors (Article 33)

National law also differs widely in the EU when it comes to the effects of a provisional measure on the ranking of creditors. This question is very complex and intrinsically linked with national enforcement and insolvency law. In view of these differences, the proposed Regulation provides that the European order has the rank given to an equivalent measure under national law.

3.1.4. Remedies against the European Account Preservation Order (Articles 34, 35, 36)

The proposed Regulation gives the debtor the right to contest the preservation order both on substantive and on procedural grounds. As to the question which courts should have jurisdiction to decide on the debtor's application for a review, the proposed Regulation follows the approach taken in the revision of Regulation Brussels I. In principle, the defendant has to raise his objections against the order before the court having issued it (the court of origin). This approach ensures that it is in principle the same court that decides on the order and its review. By way of exception, objections relating to certain aspects of the enforcement procedure, in particular the amounts exempt from execution, have to be raised before the courts of the Member State of enforcement because it is that Member State which is in charge of the procedure. In order to facilitate the task of the debtor to apply for a review of the order before the courts of another Member State, the Regulation provides for standard forms which will be available in all Union languages, thereby reducing the costs of translation. A different jurisdiction rule applies to certain categories of debtors which are generally considered to be the "weaker party" in a dispute – consumers, employees and insured persons. These types of debtors are able to raise any objections against the order before the courts in their Member

State of domicile. This rule ensures that weaker parties can always contest a European order in their home jurisdiction, thereby adding a layer of protection to the protective rules on jurisdiction for such cases contained in Regulation Brussels I.

3.1.5. *Other provisions*

- Legal representation (Article 41)

In line with the legal situation in most Member States and in order to reduce the costs of proceedings, the proposed Regulation provides that legal representation is not mandatory in proceedings for obtaining a European account preservation order. This will allow a creditor to apply for a European order without having recourse to a lawyer at all or without having to involve a lawyer licensed to practice in the Member State where the court is situated. However, national law might require the parties to be represented by lawyers if the debtor contests the order. In order to facilitate the task of the creditor to apply for a European order, the proposed Regulation contains a standard application form with appropriate guidelines for filling it out. The form will be available in all Union languages, thereby reducing the need for translation to a few elements of free text.

- Costs issues (Articles 30, 31, 43)

Several provisions of the proposed Regulation deal with costs: Banks can only charge a fee for the implementation of a European account preservation order where they are entitled to do so when implementing equivalent measures under national law. In order to increase transparency, the Member States concerned have to determine a single fixed fee applicable in their territory. A single fixed fee also has to be determined for the costs occasioned by the recourse to a competent authority, such as a bailiff. Article 43 obliges the unsuccessful party to bear the costs of the European procedure. While Member States remain free to levy court fees for the European procedure, these must not be higher than those for obtaining an equivalent measure under national law, not be disproportionate to the amount of the claim and not excessively high to discourage use of the procedure.

3.2. **Legal Basis**

This proposal is based on Article 81 (2) TFEU which entitles the European Parliament and the Council, particularly when necessary for the proper functioning of the internal market, to adopt measures aiming at ensuring i.a. the mutual recognition and enforcement of judgments between Member States (lit a), effective access to justice (lit e) and the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of rules on civil procedure applicable in the Member States (lit f).

Title V of Part Three of the Treaty on the Functioning of the European Union is not applicable to Denmark by reason of the Protocol on the position of Denmark annexed to the Treaties. It is also not applicable to the United Kingdom and Ireland, unless those two countries decide otherwise in accordance with the relevant rules of the Protocol on their position on respect of the area of Freedom, Security and Justice.

3.3. **Subsidiarity and Proportionality**

This proposal complies with the requirements of subsidiarity and proportionality.

As to subsidiarity, the problems outlined above have a clear cross-border dimension and cannot be adequately attained by the Member States alone. Although theoretically possible, it is highly unlikely that Member States would undertake a concerted action to align their legislation on the preservation of bank accounts which would make EU action unnecessary. The issue of enforcement has never been the subject of international agreements or model laws put forward by international organisations and there is no indication that an international initiative would materialise in the foreseeable future. Moreover, even if this were the case, the differences of the current enforcement systems in the EU make it highly unlikely that agreement on a common approach be reached between Member States within a reasonable time, notably given that any agreement outside the European legislative process would require unanimity.

The Impact Assessment accompanying this proposal demonstrates that the benefits of the key elements of this proposal outweigh their costs and that the proposed measures are therefore proportionate.

3.4. Impact on Fundamental Rights

As set out in detail in the Impact Assessment accompanying this proposal and in accordance with the Union's Strategy for the effective implementation of the Charter of Fundamental Rights of the European Union¹⁵, all elements of the proposal respect the rights set out in the Charter of Fundamental Rights. By creating a swift and low cost European procedure for the preservation of bank accounts, the proposal improves the right of the creditor to an effective enforcement of his claims which forms part of the right to an effective remedy as laid down in Article 47 (1) of the Charter. At the same time, the proposal ensures that the rights of the debtor are safeguarded in full compliance with the requirements of the right to a fair trial (Article 47 (2) of the Charter) and the right to respect of human dignity and family life (Articles 1 and 7 of the Charter respectively). Protection of the debtor's rights is ensured in particular by the following elements of the proposal:

- the requirement to notify the debtor immediately after the order is implemented with all documents which the creditor submitted to the court;
- the possibility of the debtor to contest the order by applying for a review to the court of origin, the court of enforcement or - if the debtor is a consumer, employee or insured – to the court at his place of domicile;
- the fact that amounts necessary to ensure the livelihood of the debtor and his family will be exempt from execution.

¹⁵ Communication from the Commission - COM(2010) 573, 19.10.2010.

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a), (e) and (f) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹⁶,

Acting in accordance with the ordinary legislative procedure,

After consulting the European Data Protection Supervisor,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union should adopt amongst other things, the measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) In accordance with Article 81(2) of the Treaty on the Functioning of the European Union ("TFEU"), these measures must aim at ensuring, inter alia, the mutual recognition and enforcement of judgments between Member States, effective access to justice and the elimination of obstacles to the proper functioning of civil proceedings by promoting the compatibility of the rules on civil procedure applicable in the Member States. The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments as the cornerstone of judicial cooperation in civil matters, specifying that it should apply to, inter alia, protective orders enabling competent authorities to seize assets which are easily movable.

¹⁶ OJ C , , p. .

- (3) The programme of measures for implementing the principle of mutual recognition of decisions in civil and commercial matters, common to the Commission and the Council and adopted on 30 November 2000¹⁷, provides for establishing protective measures at European level as well as for improving attachment measures concerning banks, e.g. by establishing a European system for the attachment of bank accounts.
- (4) The Commission adopted a Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts on 24 October 2006¹⁸. The Green Paper launched a consultation on the need for and possible features of a uniform European procedure for the preservation of bank accounts.
- (5) The Stockholm programme of December 2009¹⁹, which sets justice, freedom and security priorities for 2010 to 2014, invited the Commission to bring forward appropriate proposals for improving the efficiency of enforcement of judgements in the Union regarding bank accounts and debtors' assets.
- (6) A creditor should be able to obtain a protective order preventing the withdrawal or transfer of funds held by his debtor in bank accounts located in the Union if he is facing the risk of the debtor dissipating his assets and this would make the subsequent enforcement of his judgment on the substance impossible or substantially more difficult.
- (7) National procedures for obtaining protective measures such as account preservation orders exist in all Member States but the conditions of issue of the measure and the efficiency of its implementation vary considerably. Moreover, recourse to national protective measures is cumbersome, lengthy and costly in cases having cross-border implications, in particular, when the creditor seeks to preserve several accounts located in different Member States. A European procedure allowing a creditor to preserve his debtor's bank accounts in cases having cross-border implications in a simple, speedy and inexpensive way should remedy the shortcomings of the existing situation.
- (8) The procedure established by this Regulation should constitute an optional means for the claimant to assert his rights which is available as an alternative to existing procedures for obtaining protective measures under national law.
- (9) The scope of this Regulation should cover all civil and commercial matters apart from certain well-defined matters. Notably, this Regulation should not apply in the context of arbitration or insolvency proceedings.
- (10) The procedure should be available to a claimant wishing to secure the enforcement of a later judgment on the substance prior to initiating proceedings on the substance and at any stage during the proceedings. It should also be available to a claimant having already obtained a judgement or other enforceable title on the substance. In the latter situation, the procedure can have added value where enforcement of the title is slow or where the creditor wishes to determine in which Member State the debtor has sufficient funds to justify launching the enforcement procedure.

¹⁷ OJ C 12, 15.1.2001, p. 1.

¹⁸ COM (2006) 618.

¹⁹ OJ C 115, 4.5.2010, p. 1.

- (11) In order to ensure the existence of a close link between the court and the protective measure, jurisdiction for issuing the order should lie with the courts having jurisdiction on the substance of the matter. In addition, the claimant should be able to apply for an account preservation order at the place where the account to be targeted is located. In this case, however, the effect of the order should be limited to the territory of the Member State where it was issued.
- (12) The conditions for issuing the account preservation order should strike an appropriate balance between the interests of the creditor to obtain an order when needed and the interests of the debtor to prevent abuse of the order. Consequently, prior to obtaining a judgment enforceable in the Member State where the account is located, the court would have to be satisfied that the creditor's claim against the debtor appears to be well founded and that without the order, the subsequent enforcement of his future judgment is likely to be frustrated or made substantially more difficult.
- (13) In order to ensure the surprise effect of the account preservation order, the debtor should not be informed about the application, be heard prior to its issue or notified of the order prior to its implementation by the bank. The debtor should, however, be able to contest the order immediately after it was implemented.
- (14) Neither party should be obliged to be represented by a lawyer or legal professional in proceedings under this Regulation.
- (15) This Regulation should provide sufficient safeguards against abuse of the order. In particular, unless the creditor already has a judgment enforceable in the Member State of enforcement, the court should be able to require the creditor to provide security to ensure compensation for any damage suffered by the debtor as a result of an unjustified order. The conditions under which the creditor will be liable to compensate the debtor for such damage should be governed by national law. Where the law of a Member State does not provide for a statutory liability of the claimant, this Regulation should not preclude the recourse to measures with equivalent effect, such as the obligation on the claimant to give an undertaking as to damages.
- (16) Given that creditors currently face practical difficulties in accessing information on debtors from public or private sources in a cross-border context, the Regulation should establish a mechanism enabling the competent authority in the Member State of enforcement to obtain information about the debtor's bank accounts, either by obliging the banks to disclose the whereabouts of the debtor's accounts located in that Member State or by granting access to information held in registers or otherwise by public authorities or administrations.
- (17) In order to ensure a swift enforcement of the account preservation order, the Regulation should provide that the transmission of the order from the issuing court to the bank is effected by means of direct service as set out in Regulation (EC) No 1393/2007 on the service of judicial and extrajudicial documents in the Member States²⁰. This Regulation should also provide appropriate rules for the implementation of the order by the bank and oblige the bank to declare whether the order has successfully caught any funds of the debtor.

²⁰ OJ L 324, 10.12.2007, p. 79.

- (18) The debtor's right to a fair trial should be safeguarded in the proceedings for the account preservation order. This notably requires that the order and all documents submitted by the claimant be served on the defendant promptly after its implementation and that the defendant can apply for a review of the order. Jurisdiction for the review should lie with the court having issued the order except if aspects of enforcement are contested. However, if the defendant is a consumer, employee or insured, he should be able to apply for a review of the order before the courts in the Member State of his domicile. The debtor should also have the right to release the funds in the account if he provides alternative security.
- (19) In order to ensure that the account preservation order is issued and enforced swiftly and without delay, the Regulation should establish maximum time limits within which the different steps in the procedure must be completed. Moreover, this Regulation should oblige Member States to treat the European procedure as fast as the procedure for obtaining an equivalent measure under national law. This means in particular that where national law establishes shorter time limits than those set in this Regulation for the issue of national measures, the shorter time limits should apply also to the European procedure. In calculating the periods and time limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits²¹ should apply.
- (20) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for human dignity and to promote the application of Articles 7, 8, 17 and 47 concerning, respectively, respect for private and family life, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.
- (21) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data²² applies to the processing of personal data within the framework of this Regulation.
- (22) In order to take into account technical progress, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments of the annexes of this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (23) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the TFEU, [the United Kingdom and Ireland have given notice of their wish to take part in the adoption and application of this Regulation]/[without prejudice to Article 4 of the Protocol, the United Kingdom and

²¹ OJ L 124, 8.6.1971, p. 1.

²² OJ L 281, 23.11.1995, p. 319.

Ireland will not participate in the adoption of this Regulation and will not be bound by it or be subject to its application].

- (24) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the TFEU, Denmark will not participate in the adoption of this Regulation and is not therefore bound by it or required to apply it,

HAVE ADOPTED THIS REGULATION:

CHAPTER 1 **SUBJECT MATTER, SCOPE AND DEFINITIONS**

Article 1 *Subject matter*

1. This Regulation establishes a European procedure for a protective measure which enables a creditor to obtain a European Account Preservation Order (hereinafter "EAPO") preventing the withdrawal or transfer of funds held by the debtor in a bank account within the Union.
2. The EAPO shall be available to the creditor as an alternative to existing protective measures in the Member States.

Article 2 *Scope*

1. This Regulation shall apply to pecuniary claims in civil and commercial matters having cross-border implications as defined in Article 3 whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.
2. This Regulation shall not apply to
 - (a) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, composition and analogous proceedings;
 - (b) social security;
 - (c) arbitration.
3. This Regulation shall not apply to bank accounts which, under the law governing immunity from enforcement of the Member State where the account is located, are exempt from seizure or to systems for the settlement of securities designated by

Member States in accordance with Article 10 of Directive 98/26/EC of the European Parliament and of the Council²³.

4. This Regulation shall apply to matters of matrimonial property, the property consequences of registered partnerships or successions where Union legislation relating to jurisdiction, applicable law and the recognition and enforcement of decisions in these matters is applied.

Article 3
Matters having cross-border implications

For the purposes of this Regulation, a matter is considered to have cross-border implications unless the court seised with the application for an EAPO, all bank accounts to be preserved by the order and the parties are located or domiciled in the same Member State.

Article 4
Definitions

For the purposes of this Regulation:

1. "bank account" means any account containing cash or financial instruments which is held with a bank in the name of the defendant or in the name of a third party on behalf of the defendant;
2. "bank" means an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;
3. "financial instruments" means a financial instrument within the meaning of point 17 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council²⁴;
4. "cash" means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;
5. "funds" means cash or financial instruments;
6. "Member State where the bank account is located" means;
 - (a) for a bank account containing cash, the Member State indicated in the account's IBAN;
 - (b) for a bank account containing financial instruments, the Member State where the bank holding the account has its habitual residence as determined by Article 19 of Regulation (EC) No 593/2008 of the European Parliament and of the Council²⁵;

²³ OJ L 166, 11.6.1998, p. 47.

²⁴ OJ L 145, 30.4.2004, p. 1.

²⁵ OJ L 177, 4.7.2008, p. 6.

7. "claim" means an existing claim for payment of a specific or determinable sum of money;
8. "judgment" means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including the determination of costs or expenses by an officer of the court;
9. "court" means a court or any authorities designated by a Member State as having jurisdiction in the matters falling within the scope of this Regulation;
10. "court settlement" means a settlement which has been approved by a court or concluded before a court in the course of proceedings;
11. "authentic instrument" means a document which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:
 - (a) relates to the signature and the content of the instrument, and
 - (b) has been established by a public authority or other authority empowered for that purpose;
12. "Member State of origin" means the Member State in which the EAPO has been issued;
13. "Member State of enforcement" means the Member State in which the bank account to be preserved is located;
14. "Competent authority" means the authority which the Member State of enforcement has designated as competent for the obtainment of necessary information on the defendant's account pursuant to Article 17, the service of the EAPO pursuant to Articles 24 to 28 and the determination of the amounts exempt from execution pursuant to Article 32;
15. "Domicile" means domicile as determined in accordance with Articles 59 and 60 of Council Regulation (EC) No 44/2001²⁶.

CHAPTER 2

PROCEDURE FOR OBTAINING AN EAPO

Article 5 *Availability*

1. Section 1 shall apply where
 - (a) the claimant applies for an EAPO prior to the initiation of judicial proceedings on the substance of the matter against the defendant or at any stage during such proceedings;

²⁶ OJ L 12, 16.1.2001, p. 1.

- (b) the claimant has obtained a judgment, court settlement or authentic instrument against the defendant which is enforceable in the Member State of origin but has not yet been declared enforceable in the Member State of enforcement where such a declaration is required.
2. Section 2 applies to situations where the claimant applies for an EAPO after having obtained a judgment, court settlement or authentic instrument against the defendant which is by operation of law enforceable in the Member State of enforcement or has been declared enforceable there.

SECTION 1
ISSUE OF THE EAPO PRIOR TO OBTAINING AN ENFORCEABLE TITLE

Article 6
Jurisdiction

1. The EAPO shall be issued by a court.
2. Jurisdiction for issuing the EAPO shall lie with the courts of the Member State where proceedings on the substance of the matter have to be brought in accordance with the applicable rules on jurisdiction. Where more than one court has jurisdiction for the substance of the matter, the court of the Member State where the claimant has brought proceedings on the substance or intends to bring proceedings on the substance shall have jurisdiction
3. Notwithstanding paragraph 2, the courts of the Member State where the bank account is located shall have jurisdiction to issue an EAPO which is to be enforced in that Member State.

Article 7
Conditions for issuing an EAPO

1. An EAPO shall be issued in the amount for which it is sought or a part thereof where the claimant submits relevant facts, reasonably corroborated by evidence, to satisfy the court of both of the following:
 - (a) that the claim against the defendant appears to be well founded;
 - (b) that without the issue of the order the subsequent enforcement of an existent or future title against the defendant is likely to be impeded or made substantially more difficult, including because there is the real risk that the defendant might remove, dispose of or conceal assets held in the bank account or accounts to be preserved.
2. Where the claimant has already obtained a judgment, court settlement or authentic instrument for the payment of a sum of money against the defendant which is enforceable in the Member State of origin and entitled to recognition in the Member State of enforcement under the applicable instruments of Union law, the condition set out in paragraph 1 (a) shall be deemed to be fulfilled.

Article 8
Application for a EAPO

1. Applications for an EAPO shall be made using the form set out in Annex I.
2. The application form shall include all of the following:
 - (a) the name and address of the claimant, and, where applicable, its representatives, and the name and address of the court to which the application is made;
 - (b) the name and address of the defendant and, where applicable, the defendant's representative;
 - (c) the information on the account(s) in accordance with Article 16 unless a request for obtaining account information is sought pursuant to Article 17;
 - (d) the amount of the claim as well as the amount of interest and fees to the extent such fees can be secured pursuant to Article 18,
 - (e) a description of all relevant circumstances invoked as the basis of the claim, and, where applicable, of the interest claimed;
 - (f) a description of all relevant circumstances justifying issue of the order as required by Article 7(1)(b);
 - (g) a description of all relevant elements supporting the jurisdiction of the court seised;
 - (h) a list of the evidence provided or offered to be provided by the claimant;
 - (i) where Article 7(2) applies, a copy of the judgment, court settlement or authentic instrument which satisfies the conditions necessary to establish its authenticity;
 - (j) a declaration whether other courts have been seised by the claimant with an application for an EAPO or an order with equivalent effect under national law as provided for in Article 19.
3. The application shall be accompanied by any relevant supporting documents.
4. The application may be submitted by any means of communication, including electronic.

Article 9
Examination of the application

1. The court seised of an application for an EAPO shall examine whether the requirements set out in Articles 2, 6, 7 and 8 are met.

2. Where the requirements set out in Article 8 are not met, the court shall give the claimant the opportunity to complete or rectify the application unless the claim is clearly unfounded or the application is inadmissible.

Article 10
Ex parte procedure

The defendant shall not be notified of the application or be heard prior to the issue of the EAPO, unless the claimant requests otherwise.

Article 11
Evidence

1. Where the competent court considers that it cannot issue the EAPO without additional evidence, it may admit such evidence in the form of written statements of witnesses or experts.
2. The court shall admit oral testimony only where the court deems it necessary. Where the claimant, a witness or an expert is not domiciled in the same place as the competent court, the court shall admit evidence in the form of video conference or other communication technology where such technology is available.

Article 12
Security to be provided by the claimant

Before issuing an EAPO, the court may require the provision of a security deposit or an equivalent assurance by the claimant to ensure compensation for any damage suffered by the defendant to the extent the claimant is liable to compensate such damage under national law.

Article 13
Initiation of proceedings on the substance

Where an application for an EAPO is made prior to the initiation of proceedings on the substance, the claimant shall initiate such proceedings within 30 days of the date of issue of the order or within any shorter time period set by the issuing court, failing which the order shall be revocable in accordance with point (b) of Article 34(1) or Article 35(2).

SECTION 2
ISSUE OF AN EAPO AFTER OBTAINING AN ENFORCEABLE TITLE

Article 14
Competence for issuing the EAPO

1. In cases referred to in Article 5(2), where the claimant has obtained a judgment or court settlement, that claimant may request that the court which issued the judgment or court settlement also issue an EAPO.

2. Where the claimant has obtained an authentic instrument, that claimant may request that the competent authority in the Member State where the authentic instrument has been drawn up and designated for this purpose by each Member State also issue an EAPO.
3. The claimant may address the application for an EAPO directly to the authority in the Member State of enforcement which that Member State has designated as competent for issuing the order and notified to the Commission in accordance with Article 48 (hereinafter "the issuing authority").
4. With regard to proceedings for issuing an EAPO as referred to in this Section, Article 10 shall apply.

Article 15
Application for an EAPO

1. Applications for an EAPO shall be made using the application form set out in Annex I.
2. The application form shall include all of the following:
 - (a) the name and address of the claimant, and, where applicable, the claimant's representatives, and of the court to which the application is made;
 - (b) the name and address of the defendant and, where applicable, the defendant's representative;
 - (c) the amount of the sum specified in the judgment, court settlement or authentic instrument as well as the amount of interests and fees to the extent these can be secured pursuant to Article 18;
 - (d) the information on the account(s) in accordance with Article 16, unless a request for obtaining account information is sought pursuant to Article 17;
 - (e) a copy of the judgment, court settlement or authentic instrument which satisfies the conditions necessary to establish its authenticity;
 - (f) a declaration that the judgment has not yet been complied with;
 - (g) where the judgment, court settlement or authentic instrument was issued in another Member State
 - (i) in case of a judgment, court settlement or authentic instruments for which no declaration of enforceability is required, the relevant certificate foreseen under the applicable instrument for purposes of enforcement in another Member State, accompanied, where necessary, by a transliteration or translation in accordance with Article 47; or
 - (ii) in case of a judgment, court settlement or authentic instrument for which a declaration of enforceability is required, the declaration of enforceability.

- (h) a declaration whether other courts have been seised by the claimant with an application for an EAPO or an order with equivalent effect under national law pursuant to Article 19.
3. The application may be submitted in any means of communication, including electronic.

SECTION 3 COMMON PROVISIONS

Article 16 Information on the account

Unless the claimant requests that the competent authority obtain account information pursuant to Article 17, that claimant shall provide all information with regard to the defendant and the defendant's bank account or accounts necessary to enable the bank or banks to identify that defendant and his/her account(s), including the following:

- (a) the full name of the defendant,
- (b) the name of the bank with which the defendant holds one or several accounts to be preserved as well as the address of the bank's headquarters in the Member State where the account is located, and
- (c) either
 - (i) the account number or numbers,
 - (ii) the defendant's full address,
 - (iii) where the defendant is a natural person, his date of birth or national identity or passport number, or
 - (iv) where the defendant is a legal person, the number of that legal person in the business register.

Article 17 Request for obtaining account information

1. Where the claimant does not dispose of all the account information required pursuant to Article 16, that claimant may request that the competent authority of the Member State of enforcement obtain the necessary information. Such request shall be made in the application for an EAPO.
2. The application shall include all information available to the claimant about the defendant and the defendant's bank accounts.
3. The court or issuing authority shall issue the EAPO pursuant to Article 21 and transmit it to the competent authority in accordance with Article 24.

4. The competent authority shall use all appropriate and reasonable means available in the Member State of enforcement to obtain the information referred to in paragraph 1. Once that information is obtained, the competent authority shall serve the EAPO on the bank in accordance with Article 24.
5. The methods of obtaining information under national law to be provided to the Commission pursuant to Article 48 shall be one of the following:
 - (a) the possibility to oblige all banks in their territory to disclose whether the defendant holds an account with them.
 - (b) access by the competent authority to the information referred to in paragraph 1 where that information is held by public authorities or administrations in registers or otherwise.
6. Information referred to in paragraph 4 shall be adequate for the purpose of identifying the defendant's account or accounts, relevant and not excessive and be limited to
 - (a) the defendant's address,
 - (b) the bank or banks holding the defendant's account or accounts,
 - (c) the defendant's account number or numbers.

Article 18
Amount of the EAPO

1. Where the EAPO was issued on the basis of a judgment, court settlement or authentic instrument enforceable in the Member State of origin, the claimant shall be able to secure the amount set out in the EAPO as well as any interest and costs specified therein.
2. In all other cases, the claimant shall be able to secure the amount of the claim as well as any interest which has accrued on the claim.

Article 19
Information about pending applications in other courts

1. When applying for an EAPO, the claimant shall disclose whether he or she has seized any other court with an application for an EAPO or an equivalent protective measure under national law against the same defendant and aimed at securing the same claim.
2. The claimant shall inform the court seised with the application for an EAPO about any other EAPO or protective measure under national law issued pursuant to the application referred to in paragraph 1. In this case, the court or issuing authority may refrain from issuing an additional order where it considers that the measures already granted sufficiently protect the claimant's interests.

Article 20
Communication and Cooperation between courts

1. Where the courts of a Member State are seised with an application for an EAPO and the courts of another Member State are seised with proceedings as to the substance, those courts concerned may cooperate in order to ensure proper coordination between the proceedings as to the substance and the proceedings relating to the EAPO.
2. The court seised with the application for an EAPO may seek information from the other court referred to in paragraph 1 on all relevant circumstances of the case or require the claimant to obtain such information, such as the risk of dissipation of assets by the defendant or any refusal of a similar measure by the court seised as to the substance. Such information may be sought directly or through the contact points of the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC²⁷.

Article 21
Issue, Effect and Duration of the EAPO

1. Where the requirements referred to in this Chapter are met, the court or issuing authority shall issue an EAPO.
2. Where the order has to be enforced in another Member State, it shall be issued in the form set out in Annex II.
3. In cases referred to in Article 5(1), the court shall issue the EAPO within 7 calendar days of the lodging of the application at the latest.
4. Where an oral hearing is deemed necessary due to exceptional circumstances, the court shall convene the hearing within a further 7 calendar days at the latest and shall issue the order within 7 calendar days after the hearing has taken place at the latest.
5. In cases referred to in Article 5(2), the issuing authority shall issue the EAPO within 3 calendar days of the lodging of the application at the latest.
6. Without prejudice to Article 32, the EAPO shall prevent that the amount specified therein is transferred, withdrawn or disposed of by the defendant or the defendant's creditors from the designated account or accounts.
7. The EAPO shall remain in force
 - (a) until it is set aside by a court pursuant to Articles 34, 35, 36 or 40 or,
 - (b) where the claimant obtained a judgment, authentic instrument or court settlement on the substance which is enforceable in the Member State of origin or in cases referred to in Article 5(2), until the effect of the EAPO is replaced by an equivalent effect of an enforcement measure under national law,

²⁷ OJ L 174, 27.06.2001, p. 25.

provided that in the former case the claimant has launched the enforcement proceedings within 30 days after the judgment, authentic instrument or court settlement has been notified or has become enforceable, whichever is the later.

Article 22

Appeal against refusal to issue the EAPO

1. The claimant may lodge an appeal against the decision of the court or issuing authority to refuse an application for an EAPO with the court to be notified to the Commission in accordance with Article 48.
2. An appeal is to be lodged within 30 days of notification of the decision referred to in paragraph 1.

CHAPTER 3

ENFORCEABILITY AND ENFORCEMENT OF THE EAPO

Article 23

Abolition of exequatur

An EAPO issued in one Member State pursuant to Article 6(2) and Article 14(1) shall be recognised and enforceable in other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

Article 24

Service of the EAPO on the bank

1. The EAPO shall be served on the bank or banks specified therein in accordance with this Article.
2. Where the EAPO was issued by a court or the issuing authority in the Member State of enforcement, service on the bank shall be effected in accordance with the law of that Member State.
3. Where the court issuing the EAPO is located in a Member State other than the Member State of enforcement, service shall be effected in accordance with Regulation (EC) No 1393/2007 of the European Parliament and of the Council²⁸.

With regard to the transmission of the EAPO, the following shall apply:

- (a) The person or authority responsible for service in the Member State of origin shall transmit the EAPO directly to the competent authority of the Member State of enforcement.
- (b) The following documents shall be transmitted:

²⁸ OJ L 324, 10.12.2007 p. 79.

- (i) a copy of the EAPO in the form set out in Annex II which satisfied the conditions necessary to establish its authenticity;
 - (ii) where necessary, a transliteration or translation of the form in accordance with Article 47;
 - (iii) the transmission form set out in Annex I of Regulation (EC) No 1393/2007 accompanied, where necessary, by a transliteration or translation of the form in accordance with Article 48.
- (c) The competent authority shall serve the EAPO on the bank or banks specified therein. The competent authority shall take all necessary steps to effect service of the order within 3 working days of receipt at the latest.
- (d) As soon as the order is served on the bank, the competent authority shall draw up a certificate of service in accordance with Article 10 of Regulation (EC) No 1393/2007 and transmit it to the person or authority having requested service.

Article 25
Service of the EAPO on the defendant

1. The defendant shall be served with the EAPO and all documents submitted to the court or competent authority with a view to obtaining the order without undue delay after service on the bank has been effected pursuant to Article 24 and the bank has issued the declaration pursuant to Article 27.
2. Where the defendant is domiciled in the Member State of origin, service shall be effected in accordance with the rules of national law of that Member State.
3. Where the defendant is domiciled in the Member State of enforcement, the competent authority of that Member State to which the EAPO has been transmitted pursuant to Article 24(3) shall serve the order and its accompanying documents on the defendant in accordance with Regulation (EC) No 1393/2007.
4. If the defendant is domiciled in another Member State than the Member State of origin or the Member State of enforcement, the competent authority of the Member State of enforcement to which the EAPO has been transmitted pursuant to Article 24(3) shall transmit it directly to the competent authority of the Member State of the defendant's domicile. That authority shall serve it on the defendant in accordance with the provisions of Regulation (EC) No 1393/2007.

Article 26
Implementation of the EAPO

1. A bank served with a EAPO shall implement it immediately upon receipt by ensuring that the amount specified therein is not transferred, disposed of or withdrawn from the account or accounts designated in the order or identified by the bank as being held by the defendant. Any funds exceeding the amount specified in the EAPO must remain at the disposal of the defendant.

2. Where the order is served outside business hours, it shall be implemented immediately after the beginning of the following business period.
3. Where the funds in the account designated in the EAPO pursuant to paragraph 1 consist of financial instruments, their value shall be determined by reference to the relevant market rate applicable on the day of implementation.
4. Where the currency of the funds held in the account is not the same as that in which the EAPO was issued, the bank shall convert the amount by reference to the official exchange rate of the day of implementation.
5. The bank's liability for any failure to comply with the obligations set out in this Article shall be governed by national law.

Article 27
Declaration by the bank

1. Within 3 working days following receipt of the EAPO, the bank shall inform the competent authority and the claimant using the form set out in Annex III, whether and to what extent funds in the defendant's account have been preserved. The competent authority shall transmit the declaration to the person or authority having requested the service pursuant to Article 24(3)(a) within 1 working day.
2. Where the account balance is sufficient to cover the amount specified in the EAPO, the bank shall not disclose the balance of the defendant's account.
3. The bank may transmit its declaration by secured electronic means of communication.
4. The liability of the bank for failure to comply with this obligation shall be governed by national law.

Article 28
Preservation of several accounts

1. Where the EAPO covers several accounts held by the defendant with one and the same bank, the bank shall implement it only up to the amount specified therein.
2. Where one or more EAPOs or equivalent protective orders under national law have been issued covering several accounts held by the defendant with different banks, whether in the same or in different Member States, the claimant shall have a duty to effect the release of any amount specified therein which exceeds the amount stipulated in the EAPO. Such release shall be effected within 48 hours following the receipt of the first bank's declaration pursuant to Article 27 showing such excess. The release shall be effected through the competent authority of the respective Member State of enforcement.

Article 29
Preservation of joint and nominee accounts

Accounts, which are not exclusively held by the defendant or accounts held by a third party on behalf of the defendant or accounts held by the defendant on behalf of a third party, according to the bank's records, may be preserved only to the extent they are able to be preserved under the rules of national law governing the account to be notified to the Commission in accordance with Article 48.

Article 30
Costs relating to the banks

1. A bank shall only be entitled to seek payment or reimbursement of the costs incurred by the implementation of the EAPO or of an order pursuant to Article 17(4)(a) where it is entitled to such payment or reimbursement in respect of orders with equivalent effect which are issued under national law.
2. Fees charged for the implementation of the EAPO or of an order pursuant to Article 17(4)(a) shall correspond to single fixed fees which are determined in advance by the Member State where the account is located and which respect the principles of proportionality and non-discrimination.
3. Member States shall communicate to the Commission in accordance with Article 48 whether banks are entitled to recover their costs and, if so, the amount of the fee pursuant to paragraph 2.

Article 31
Costs relating to competent authority

Any fees charged by a competent authority in the enforcement of the EAPO or the handling of a request for obtaining account information as referred to in Article 17(4) shall correspond to single fixed fees determined by the relevant Member State in advance which respects the principles of proportionality and non-discrimination and notified to the Commission in accordance with Article 48.

Article 32
Amounts exempt from enforcement

1. Where the law of the Member State of enforcement so provides, the amounts necessary, to ensure the livelihood of the defendant and his family, where the defendant is a natural person, or to ensure the possibility to pursue a normal course of business, where the defendant is a legal person, shall be exempt from the enforcement of the order.
2. Member States shall inform the Commission about the rules applicable under their national law in these situations, including which amounts or types of receivables held in a bank account are exempt.

3. To the extent that the amount referred to in paragraph 1 can be determined without the provision of additional information by the defendant, the competent authority of the Member State of enforcement shall determine that amount, upon receipt of the EAPO and inform the bank that that amount must be left at the disposal of the defendant following implementation of the order.
4. In determining the amount referred to in paragraph 1, the competent authority shall apply the law of the Member State by which it is designated, even if the defendant is domiciled in another Member State.

Article 33
Ranking of competing creditors

The EAPO confers the same rank as an instrument with equivalent effect under the law of the Member State where the bank account is located. Member States shall inform the Commission about the equivalent instruments and the rank conferred by those instruments in accordance with Article 48.

CHAPTER 4
REMEDIES AGAINST THE EAPO

Article 34
Remedies of the defendant in the Member State of origin

1. Where the EAPO was issued pursuant to Section 1 of Chapter 2, the defendant may apply for
 - (a) a review of the EAPO on the grounds that the requirements for its issue set out in Articles 2, 6 and 7 were not met ;
 - (b) a review of the EAPO on the grounds that the claimant has failed to initiate proceedings on the substance of the matter within the time limit referred to in Article 13;
2. With the exception of a review pursuant to paragraph 1(b), the application for a review shall be made promptly, in any event within 45 days from the day the defendant was effectively acquainted with the contents of the order and was able to react.
3. The application for a review shall be addressed to the court which issued the order. The application shall be submitted using the form set out in Annex IV and by any means of communication, including electronic.
4. The application shall be served on the claimant in accordance with the applicable rules on the service of documents.
5. Where the review is justified on one of the grounds laid down in paragraph 1, the court shall give its decision setting aside or modifying the EAPO accordingly, within 30 calendar days at the latest from the service of the application to the claimant.

6. The decision to set aside or modify the order shall be immediately enforceable notwithstanding any appeal under article 37, unless the court decides, in order to protect the claimant's interests, that its decision will only be enforceable after it has become final.
7. The decision will be immediately served on the bank or banks concerned which shall immediately upon receipt implement the decision by unblocking the amount preserved fully or partially. It will also be immediately served to the claimant in accordance with the applicable rules on the service of documents.

Article 35

Remedies of the defendant in the Member State of enforcement

1. Where the EAPO was issued pursuant to Sections 1 or 2 of Chapter 2, the defendant may request that
 - (a) enforcement of the order be limited on the grounds that certain amounts in the account are exempt from enforcement under the law of the Member State where the account is located and those amounts have not or not correctly been taken into account by the competent authority pursuant to Article 32;
 - (b) enforcement of the order be terminated on the grounds that
 - (i) a judgment has been given in the Member State of enforcement which dismisses the claim the enforcement of which the claimant is seeking to secure with the order; or
 - (ii) the bank account preserved is exempt from enforcement under the law governing immunity from enforcement of the Member State where the account is located.
2. Where the order was issued pursuant to Section 1 of Chapter 2, the defendant has the right to request the order be set aside on the grounds that the claimant has failed to initiate proceedings on the substance of the matter within the time limit referred to in Article 13.
3. Where the order was issued pursuant to Section 2 of Chapter 2, the defendant may request that
 - (i) the order be set aside on the grounds that the judgment, court settlement or authentic instrument has been set aside in the Member State of origin;
 - (ii) the enforcement of the order be suspended on the grounds that the enforceability of the judgment, court settlement or authentic instrument has been suspended in the Member State of origin.
4. With the exception of a review pursuant to paragraph 2, the application for a review shall be made promptly and in any event within 45 days from the day the defendant was effectively acquainted with the contents of the order and was able to react.

5. The application shall be addressed to the competent courts of the Member State of enforcement notified by the Member States pursuant to Article 48. The application shall be submitted in paper form or by any other means of communication, including electronic using the form set out in Annex IV.
6. The application shall be served on the claimant in accordance with the applicable rules on the service of documents.
7. If the application is justified, the court shall give its decision setting aside or modifying the EAPO accordingly, within 30 calendar days at the latest from the service of the application to the claimant.
8. The decision to set aside or modify the order shall be immediately enforceable notwithstanding any appeal under Article 37, unless the court decides, in order to protect the claimant's interests, that its decision will only be enforceable after it has become final.

Article 36
Remedies of the defendant in the Member State of his domicile

If the defendant is a consumer, employee or insured, he may also address the application for review under Articles 34 and 35 to the competent court in the Member State where he is domiciled to be notified to the Commission in accordance with Article 48.

Article 37
Right to appeal

Right to appeal against a decision issued pursuant to Articles 34, 35 or 36 shall be governed by national law.

Article 38
Right to provide alternative security

1. The competent authority of the Member State of enforcement shall terminate the enforcement of the EAPO if the defendant provides to that competent authority a security deposit of the amount specified in accordance with paragraph 2, or equivalent assurance, including bank guarantee, as an alternative means to safeguard the rights of the claimant.
2. The EAPO shall specify the amount of the security necessary to terminate enforcement of the order.

Article 39
Right of third parties

A third party has the right to raise objections against the EAPO before the courts of the Member State of origin or of enforcement insofar as the order or its enforcement prejudices their rights.

Article 40
Variation or revocation of the EAPO

Without prejudice to the rights of the defendant pursuant to Articles 34, 35 and 36, either party can apply at any time to the court of origin for a variation or revocation of the EAPO on the ground that the circumstances on which the order was issued have changed in the meantime, including that a judgment on the substance was given dismissing the claim the enforcement of which the order sought to ensure or that the defendant has paid the claim.

CHAPTER 5
GENERAL PROVISIONS

Article 41
Representation of parties

Representation by a lawyer or another legal professional shall not be mandatory in proceedings for issuing an EAPO under this Regulation.

Article 42
Costs to be borne by unsuccessful party

1. The unsuccessful party shall bear the costs of the proceedings. However, the court shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.
2. Where the EAPO was issued pursuant to Section 1 of Chapter 2, the costs of the proceedings shall be awarded by the court seized with the proceedings on the substance or by the court setting aside the order pursuant to point (b) of Article 34(1) or Article 35(2).
3. Where the order was issued pursuant to Section 2 of Chapter 2, the costs shall be determined by the competent authority enforcing the judgment, authentic instrument or court settlement on the basis of which the order has been issued.

Article 43
Court fees

1. The court fees for obtaining the EAPO shall not be higher than the fees for obtaining an equivalent measure under national law, disproportionate to the amount of the claim, and shall not discourage claimant from making use of the procedure.
2. The Member States shall inform the Commission of the applicable court fees in accordance with Article 49.

Article 44
Time limits

Where, in exceptional circumstances, it is not possible for the court, the issuing authority or the competent authority to respect the time limits provided for in Articles 21(3) and (4), point (c) of Article 24(3), Article 27(1), Article 34(5) and (7) and Article 35 (8), the court or authority shall take the steps required by those provisions as soon as possible. The court or authority shall justify the exceptional circumstances upon request by a party.

Article 45
Relationship with national procedural law

All procedural issues not specifically dealt with in this Regulation shall be governed by national law.

Article 46
Relationship with other instruments

1. Without prejudice to Articles 24, 25 and 27, this Regulation shall not prejudice the application of Regulation (EC) No 1393/2007.
2. This Regulation shall be without prejudice to Council Regulation (EC) No 44/2001²⁹.
3. This Regulation shall be without prejudice to the application of Directive 95/46/EC of the European Parliament and of the Council.

Article 47
Translation and transliteration requirements

1. When a transliteration or translation is required under this Regulation, such transliteration or translation shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place of enforcement, in accordance with the law of that Member State.
2. For the purposes of the forms referred to in Article 8(1), Article 15(1), Article 21(2), point (b) (ii) and (iii) and point (d) of Article 24(3), Article 27(1) and Article 34(3) or any other documents to be submitted by the parties pursuant to Article 8(2), Articles 34, 35 or 36, transliterations or translations may also be into any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept.
3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

²⁹ OJ L 12, 16.1.2001, p. 1.

Article 48
Information to be provided by Member States

1. By _____ [12 months after the entry into force of the Regulation] at the latest, the Member States shall communicate the following information to the Commission
 - (a) the authority competent for issuing an EAPO in accordance with Article 14 (2);
 - (b) the methods of obtaining information available under their national law pursuant to Article 17(4);
 - (c) the court with which an appeal against a decision not to issue an EAPO is to be lodged as referred to in Article 22;
 - (d) the authority competent for enforcing the EAPO in accordance with Chapter 3;
 - (e) the extent to which joint and nominee accounts can be preserved under its national law as referred to in Article 29;
 - (f) the rules applicable to amounts exempt from enforcement under national law as referred to in Article 32;
 - (g) the single fixed fees of the banks and the competent authority as referred to in Articles 30 and 31;
 - (h) the rank conferred to protective measures equivalent to an EAPO under national law as referred to in Article 33;
 - (i) the courts competent in the Member State of enforcement to which the application for a review may be submitted in accordance with Articles 34 (3) or 36;
 - (j) court fees for issuing the EAPO as referred to in Article 44;
 - (k) the languages accepted for translations of the documents referred to in Article 47.
2. Member States shall communicate any change in the information set out in paragraph 1 to the Commission without undue delay.
3. The Commission shall make the information communicated to it pursuant to this Article publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC.

Article 49
Amendment of the Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 50 concerning amendments to the Annexes.

Article 50
Delegated acts

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 50 shall be conferred on the Commission for an indeterminate period of time from the entry into force of this Regulation.
3. The delegation of power referred to in Article 50 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated act already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 50 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 51
Monitoring and Review

1. By [5 years after its date of application], the Commission shall present a report on the application of this Regulation to the European Parliament, the Council and the European Economic and Social Committee. That report shall contain an assessment of the operation of the procedure and the enforcement of EAPOs in the Member States.
2. The report shall be accompanied, if appropriate, by proposals for adaptation of this Regulation.
3. Member States shall collect and make available to the Commission information on
 - (a) the number of applications for an EAPO, the number of cases in which the order was granted and the amount covered by each order; and
 - (b) the number of applications for a review under Articles 34, 35 and 36 and the outcome of those procedures.

CHAPTER 6
FINAL PROVISIONS

Article 52
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

It shall apply from [24 months after its entry into force] with the exception of Article 48 which shall apply from [12 months after its entry into force]

Done at [...],

For the European Parliament
The President

For the Council
The President

ANNEX I

EUROPEAN ACCOUNT PRESERVATION ORDER APPLICATION FORM

(Article 8(1) and Article 15(1) of Regulation (EC) No XXX 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)

To be filled in by the court/tribunal

Case number:

Received by the court/tribunal on: ___/___/___

IMPORTANT INFORMATION

**PLEASE READ THE GUIDELINES AT THE BEGINNING OF EACH SECTION –
THEY WILL HELP YOU TO FILL IN THIS FORM**

Language

Fill in this form in the language of the court/tribunal to which you are sending your application. Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm. This may help you in filling in the form in the required language.

Supporting documents

Please note that the application form should be accompanied by any relevant supporting documents or evidence, such as a contract, invoices, correspondence between the parties etc.

A copy of the claim form and, where appropriate, of the supporting documents, will be served on the defendant after the European account preservation order has been implemented by the bank. The defendant will have an opportunity to apply for a review of the European order.

1. Court/tribunal

In this field you should identify the court/tribunal before which you are making your claim. An exhaustive list of possible grounds of jurisdiction is included in field 5.

1.1. Name:

1.2. Street and number/PO box:

1.3. City and postal code:

1.4. Member State:

Austria (AT) Belgium (BE) Bulgaria (BU) Cyprus (CY) Czech Republic (CZ)
Germany (DE) Estonia (EE) Greece (EL) Spain (ES) Finland (FI) France (FR)
Hungary (HU) Ireland (IE) Italy (IT) Lithuania (LT) Luxemburg (LU) Latvia (LV)
 Malta (MT) Netherlands (NL) Poland (PL) Portugal (PT) Romania (RO) Sweden (SE)
 Slovenia (SI) Slovakia (SK) United Kingdom (UK)

2. Claimant

This field must identify you as the claimant and your representative, if any. Please note that it is not mandatory to be represented by a lawyer or another legal professional. It may not be sufficient in some countries to give only a P.O. Box as the address and you should therefore include the street name and number with a postcode. Failure to do so may result in the document not being served.

"Other details" may contain information that helps to identify you, for example, your date of birth, personal ID code or the company registry code.

- | |
|---|
| <ol style="list-style-type: none">2.1. Surname, first name/name of company or organisation:2.2. Street and number/PO box:2.3. City and postal code:2.4. Country (if a Member State please specify the country code set out in section 1):2.5. Telephone³⁰:2.6. E-mail³¹2.7. Claimant's representative, if any, and contact details* :2.8. Other details* : |
|---|

3. Defendant

In this field you should identify the defendant and, if known, his representative. Please note that it is not mandatory for the defendant to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a P.O. Box as the address and therefore you should include the street name and number with a postcode. Failure to do so may result in the document not being served.

If you are not able to give all pieces of information which is not marked as optional (*), you are requested to give additional information in field 4.

- | |
|---|
| <ol style="list-style-type: none">3.1. Surname, first name, (any middle name*)/name of company or organisation:3.2. Street and number/PO box:3.3. City and postal code:3.4. Country (if a Member State please specify the country code set out in section 1):3.5. Telephone* :3.6. E-mail* :3.7. Defendant's representative, if known, and contact details* : |
|---|

4. Details of the defendant's bank account

It is important to give as much information as possible about the defendant's bank account to save time and costs. If you cannot give more information than the one referred in section 4.1., the competent authority in the Member State(s) where the account is located can try to obtain additional information from the banks or existing public registers. This procedure will, however, take some time and you might be charged a fee for the information.

³⁰ Optional
³¹ Optional.

If you want to preserve more than one account, please use additional sheets.

- 4.1. Member State where the account is located (please specify the country code set out in section 1)
- 4.2. The name of the bank
- 4.3. The address of the bank's headquarters: Street and number/PO box, city and postal code/country
- 4.4. The number of the account
- 4.5. Telephone/fax of the bank* :
- 4.6. Other details concerning the type of account* :

If you are not able to give other information of the bank account than the country where it is located (4.1.) and also do not know the full address of the defendant (above 3.2. and 3.3.), one of following additional pieces of information is needed:

- 4.7. If the defendant is a natural person,
- 4.7.1. Defendant's date of birth:
- 4.7.2. Defendant's national identity number:
- 4.7.3. Defendant's passport number:
- 4.8. If the defendant is a legal person, the number of that legal person in the business register :

5. Jurisdiction

Have you already obtained a judgment, authentic instrument or court settlement against the defendant?

Yes

No

If yes, pass to field 6.

If no, give the following information in this field and then pass to field 7.

Your application must be lodged with the court/tribunal that has jurisdiction to deal with it. Jurisdiction for issuing the European Account Preservation Order lie with the court which has jurisdiction for the substance of matter according with the rules of the respective instruments of European law. Information on the rules of jurisdiction can be found on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm. You can also apply for a European Account Preservation Order directly in the Member State where the account is located.

This section includes a non-exhaustive list of possible grounds for jurisdiction according above mentioned Regulation.

You can also look at http://ec.europa.eu/civiljustice/glossary/glossary_en.htm for an explanation of some of the legal terms employed.

5. On what ground do you consider the court/tribunal to have jurisdiction?

- 5.1. Domicile of the defendant
- 5.2. Place of performance of the contract
- 5.3. Place where the harmful event occurred
- 5.4. Choice of court/tribunal agreed by the parties
- 5.5. Place where the bank account to be preserved is located
- 5.6. Other (please specify)

6. Existing judgment, court settlement or authentic instrument

6.1. Name of the court/tribunal/other authority:

6.2. Date of the judgment:

6.3. Currency:

Euro (EUR) Bulgarian lev (BGN) Czech koruna (CZK) Hungarian forint (HUF) Lithuanian litas (LTL) Latvian lats (LVL) Polish zloty (PLN) Pound Sterling (GBP) Romanian leu (RON) Swedish krona (SEK) Other (please specify ISO code):

6.4. Amount which defendant has to pay to the claimant according to the judgment

6.4.1. Principal amount:

6.4.2. Interest awarded in judgment:

– Amount: _____, or

– rate ... %. The interest should run from ... (dd/mm/yyyy) to ... (dd/mm/yyyy).

Interest running as of the date of the judgment:

– rate ... %.

6.4.3. Costs to bear by defendant

No

Yes. Please, specify which costs and indicate the amount (claimed or incurred).

Court fees: ...

Lawyers' fees:

- Cost of service of documents: ...
- Other: ...

6.5. I confirm that the judgment, authentic instrument or court settlement has not yet been complied with Yes

6.6. Is the judgment, authentic instrument or court settlement by operation of law enforceable in the Member State of enforcement or has it been declared enforceable there?

No – please go to field 8.

Yes – please join

the certificate for purposes of enforcement issued by the court or competent authority under the applicable Union instrument, or

the declaration of enforceability

and go to field 9.

7. Amount and grounds of the claim *(not to be filled in if you filled in Section 6)*

A European Account Preservation Order can be granted, if you present relevant facts, reasonably corroborated by evidence, to satisfy the court that your claim against the defendant appears to be founded in the amount for which an order is sought.

7.1. Amount of the principal of the claim:

7.2. Amount of the interest:

7.2.1. Interest calculated up to application day:

7.2.2. Rate ...%

7.3. Grounds on which the claim against defendant is founded:

7.4. List of evidence (written evidence attached):

8. Reasons why the European Account Preservation order is needed *(not to be filled in if you answered 'yes' in section 6.5.):*

The European Account Preservation Order can be granted only if you present relevant facts that the enforcement of an existent or future title against the defendant is likely to be frustrated or made substantially more difficult, in particular because there is the risk that the defendant might remove, dispose of or conceal assets held in the bank account or accounts to be preserved.

8.1. Is there risk that the defendant might remove, dispose of or conceal assets held in bank account, if so give further information of the situation:

8.2. Is there other kind of risk mentioned in text above this field, if so, give further

information:

8.3. List of evidence (written evidence attached):

9. Other courts seized with application for protective measures

You have to disclose whether you have seized any other court a protective measure against the same defendant and aimed at securing the same rights and you must keep the court seized with the application for a European Account Preservation Order informed about any other European Account Preservation Order or protective measure under national law granted.

9.1. Applications for other European Account Preservation Order

9.1.1. Name of the court:

9.1.2. Address of the court

9.1.3. Reference number of the application:

9.1.4. Is the amount of claim the same here requested?

Yes. No If no, on the amount the other application is requested and the currency:

9.2. Applications for national protective measure

9.2.1. Name of the court:

9.2.2. Address of the court

9.2.3. Reference number of the application:

9.1.4. Is the amount of claim the same here requested?

Yes. No If no, on the amount the other application is requested and the currency:

10. Date and signature

Please make sure that you write your name clearly and sign and date your application at the end.

I hereby request that the court/tribunal issue a European Account Preservation Order against the defendant on the basis of my claim.

I declare that the information provided is true to the best of my knowledge and is given in good faith.

Done at:

Date: ___/___/_____

Name and signature:

List of documents attached to this application:

ANNEX II

EUROPEAN ACCOUNT PRESERVATION ORDER

(Article 21 of Regulation (EC) No XXX 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)

1. Court of origin

1.1 Name:

1.2 Address:

1.3 Street and number/PO box:

1.4 Place and postal code:

1.5 Member State

AT BE BU CY CZ DE EE EL ES FI FR HU IE IT LT LU
LV MT NL PL PT RO SE SI SK UK

1.6 Tel./fax/e-mail:

2. Claimant

2.1. Surname and given name(s)/name of company or organisation:

2.2. Address:

2.2.1. Street and number/PO box:

2.2.2. Place and postal code:

2.2.3. Country (if a Member State, please specify the country code set out in Section 1):

3. Defendant

3.1. Surname and given name(s)/name of company or organisation:

3.2. Address:

3.2.1. Street and number/PO box:

3.2.2. Place and postal code:

3.2.3. Country (if a Member State, please specify the country code set out in Section 1):

4. Date and reference of the European Account Preservation Order

4.1. Date

4.2. Reference number of the order

5. Bank accounts to be preserved

The court has ordered, that following bank account of the defendant has to be preserved up to amount noted in point 6.5:

5.1. Information on first bank account to be preserved

5.1.1. Member State where the account is located (please specify the country code set out in Section 1):

5.1.2. Name and address of the bank:

5.1.3. Number of the bank account:

5.2. Information on second bank account to be preserved:

5.2.1. Member State where the bank account is located:

5.2.2. Name and address of the bank:

5.2.3. Number of the bank account:

(please use a separate sheet for additional accounts)

When there is more than one bank account preserved, the claimant has a duty to effect the release of any amount preserved which exceeds the amount noted at point 6.5. (Article 28(2)).

NOTE: If the claimant was not able to give other information than the Member State where account is located, this order can be enforced only if the necessary information is obtained by the competent authority in the Member State of enforcement.

6. Preserved Amount

6.1. Currency

Euro (EUR) Bulgarian lev (BGN) Czech koruna (CZK) Estonian kroon (EEK) Hungarian forint (HUF) Lithuanian litas (LTL) Latvian lats (LVL) Polish zloty (PLN) Pound Sterling (GBP) Romanian leu (RON) Swedish krona (SEK) Other

(please specify ISO code):

6.2. Principal amount:

6.3. Interest:

6.4. Costs (awarded in the judgment):

6.5. Preserved amount in total:

7. Security

7.1. Does the claimant have to provide security?

No

Yes, in the amount of

Currency

Euro (EUR) Bulgarian lev (BGN) Czech koruna (CZK) Estonian kroon (EEK) Hungarian forint (HUF) Lithuanian litas (LTL) Latvian lats (LVL) Polish zloty (PLN) Pound Sterling (GBP) Romanian leu (RON) Swedish krona (SEK) Other (please specify ISO code):

7.2 The enforcement shall terminate if the defendant provides security in the amount of:

8. Costs

8.1. Currency

Euro (EUR) Bulgarian lev (BGN) Czech koruna (CZK) Estonian kroon (EEK) Hungarian forint (HUF) Lithuanian litas (LTL) Latvian lats (LVL) Polish zloty (PLN) Pound Sterling (GBP) Romanian leu (RON) Swedish krona (SEK) Other (please specify ISO code):

8.2. Does the defendant have to bear the costs of proceedings, fully or partially?

No

Yes. Please specify which costs and indicate the amount (claimed or incurred).

Court fees: ...

Lawyers' fees:

Cost of service of documents: ...

Other: ...

9. Duration of the order

The order will become revocable unless the claimant initiates proceedings on the substance until(date) [30 days from the date of issue of the order]³²

Done at Date

.....
Signature and/or stamp

³² Applies only if the order is issued prior to initiation of proceedings on the substance

ANNEX III

Declaration by the bank

Information to the competent authority and the claimant about funds preserved as a result of a European Account Preservation Order

(Art. 27 (1) of the Regulation (EC) No XXX 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)

This information is to be sent to the competent authority and the claimant in a secured electronic way or by post.

1. COURT OF ORIGIN

1.1. Name:

1.2. Address:

1.2.1. *Street and number/PO box:*

1.2.2. *Place and postal code:*

1.2.3. *Member State*

AT BE BU CY CZ DE EE EL ES FI FR HU IE IT LT LU
LV MT NL PL PT RO SE SI SK UK

2. European order granted by the court of origin

2.1. Reference number of the European order:

2.2. Total amount to be preserved:

3. Claimant

3.1. Surname and given name(s)/name of company or organisation:

3.2. Address:

3.2.1. *Street and number/PO box:*

3.2.2. *Place and postal code:*

3.2.3. *Country (if a Member State please specify the country code set out in Section 1):*

3.3. E-mail:

4. Defendant

- 4.1. Surname and given name(s)/name of company or organisation:
- 4.2. Address:
 - 4.2.1. Street and number/PO box:
 - 4.2.2. Place and postal code:
 - 4.2.3. Country (if a Member State please specify the country code set out in Section 1):
- 5. Preserved funds
 - 5.1. Name of the bank:
 - 5.2. Address of the bank:
 - 5.3. Member State (please specify the country code set out in Section 1)
 - 5.4. Tel./fax/e-mail of the bank:
 - 5.5. Amount of the money preserved:

Done at Date

.....
Signature and/or stamp

ANNEX IV

APPLICATION FOR A REVIEW

(Art. 34, 35 and 36 of the Regulation (EC) No XXX 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)

IMPORTANT INFORMATION

Language

Fill in this form in the language of the court/tribunal to which you are sending your application. Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm. This may help you in filling in the form in the required language.

1. APPLICANT

1.1. Surname and given name(s)/name of company or organisation:

1.2. Address:

1.2.1. *Street and number/PO box:*

1.2.2. *Place and postal code:*

1.2.3. *Country (if a Member State please specify the country code set out in Section 2):*

2. COURT OF ORIGIN (THE COURT WHICH HAS ISSUED THE EUROPEAN ACCOUNT PRESERVATION ORDER)

2.1. Name:

2.2. Address:

2.2.1. *Street and number/PO box:*

2.2.2. *Place and postal code:*

2.2.3. *Member State*

AT BE BU CY CZ DE EE EL ES FI FR HU IE IT LT LU
LV MT NL PL PT RO SE SI SK UK

3. EUROPEAN ACCOUNT PRESERVATION ORDER:

3.1. Date and reference number:

3.2. Total amount to be preserved:

4. MEMBER STATE OF ENFORCEMENT

Member state where the order has been enforced (please specify the country code set out in Section 2):

5. CLAIMANT

5.1. Surname and given name(s)/name of company or organisation:

5.2. Address:

5.2.1. *Street and number/PO box:*

5.2.2. *Place and postal code:*

5.2.3. *Country (if a Member State please specify the country code set out in Section 2):*

Request for a review

In most cases, the application for a review of the European Account Preservation Order has to be addressed to the court of origin. This is the case if you want to raise any objections listed in **Section 6** below, in particular objections against the existence or amount of the claim or against the risk of dissipation of assets.

If you want to raise any objection against the enforcement procedure listed in **Section 7** below, notably relating to the amounts exempt from execution, you have to address your application to the court in the Member State of enforcement.

If you have been sued in your capacity as a consumer, employee or insured person, you can address your application for a review to the competent court in the Member State where you have your habitual residence. In this case, please tick the objections which you want to raise in Section 6 and/or Section 7 and tick the box in Section 8.

6. REQUEST FOR A REVIEW IN THE COURT OF ORIGIN

N.B. If the European Account Preservation Order was issued on the basis of an existing judgment, court settlement or authentic instrument against you, you only have right to raise the objections listed in point 6.1.1, 6.1.2 and 6.2.

I hereby lodge application for the review of the European order because (*please tick the appropriate box*)

6.1. the conditions for issuing the European Account Preservation Order were not fulfilled; because

6.1.1. The regulation is not applicable to the claimant's claim/judgment (Art. 2)

6.1.2. The court of origin has no jurisdiction (Art. 6 or Art. 14 (1))

6.1.3. The claimant's claim is not founded (Art. 7 (1)), please give reasons:

6.1.4. There is no risk of removing, disposing or concealing funds held in the bank account (Art. 7(2)), please give reasons:

6.2. 6.3. The claimant should have been required to provide security or a higher security than the one ordered by the court (please give reasons):

6.4 The claimant has not initiated the proceedings on the substance of the matter within 30 days of the date of issue the order or in the shorter time period set by the issuing court.

7. REQUEST FOR REVIEW IN THE MEMBER STATE OF ENFORCEMENT

N.B. If the European Account Preservation Order was issued on the basis of an existing judgment, court settlement or authentic instrument against you, you do not have right to raise the objections listed in point 7.4.

I hereby lodge application for the review of the enforcement of the European order because *(please tick the appropriate box)*

7.1. The European order has been enforced against the law of Member State of enforcement because:

7.1.1. The defendant has the right to exempt certain amount of money and now there has been preserved that amount too or some part of it

7.1.2. The account of defendant is exempt from enforcement under the law governing immunity from enforcement

7.2. The European order is to be terminated because a judgment has been given in the Member State of enforcement which dismisses the claim of the claimant.

7.3. The European order is to be set aside on the ground that court settlement or authentic instrument has been set aside in the Member State of origin.

7.4. The claimant has not initiated the proceedings on the substance of the matter within 30 days of the date of issue the order or in the shorter time period set by the issuing court.

7.5. The European order has to be suspended on the grounds that the enforceability of the judgement, court settlement or authentic instrument has been suspended in the Member State of origin.

8. REQUEST FOR REVIEW IN THE MEMBER STATE OF THE DEFENDANT'S DOMICILE

The European Account Preservation Order has been issued against me in my capacity as a

consumer

employee

insured person.

Done at: ...

Date (dd/mm/yy):

Name of the applicant or authorised representative

I declare that the information provided is true to the best of my knowledge and is given in good faith.

Signature: