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INFORMATION NOTE

from: General Secretariat of the Council
to: Permanent Representatives Committee/Council

Subject: 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
- Outcome of the European Parliament's first reading
(Strasbourg, 14 to 17 April 2014)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Mr Raffaele BALDASSARRE (EPP-IT) presented one compromise amendment (amendment 2) to the proposal for a Regulation, on behalf of the Committee on Legal Affairs. This amendment had been agreed during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 15 April 2014, the plenary adopted the compromise amendment (amendment 2) to the proposal for a Regulation. The Commission's proposal as thus amended and the legislative resolution constitute the Parliament's first reading position¹, it reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

¹ The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

European Account Preservation Order *I**

European Parliament legislative resolution of 15 April 2014 on the proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters (COM(2011)0445 – C7-0211/2011 – 2011/0204(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0445),
 - having regard to Article 294(2) and points (a), (e) and (f) of Article 81(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0211/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 26 April 2012¹,
 - having regard to the undertaking given by the Council representative by letter of 6 February 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Economic and Monetary Affairs (A7-0227/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 191, 29.6.2012, p. 57.

P7_TC1-COD(2011)0204

Position of the European Parliament adopted at first reading on 15 April 2014 with a view to the adoption of Regulation (EU) No .../2014 of the European Parliament and of the Council establishing a European Account Preservation Order procedure 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 Committee¹,

Acting in accordance with the ordinary legislative procedure²,

■

¹ OJ C 191, 29.6.2012, p. 57.

² Position of the European Parliament of 15 April 2014.

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 *is to* adopt ■ 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), *such* measures *may include measures aimed* 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, *if necessary* by promoting the compatibility of the rules on civil procedure applicable in the Member States. ■
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- (3) *On 24 October 2006, by way of the "Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts", the Commission* launched a consultation on the need for a uniform European procedure for the preservation of bank accounts *and the possible features of such a procedure*.

- (4) ***In the*** Stockholm Programme of December 2009¹, which sets freedom, security and justice priorities for 2010 to 2014, ***the European Council*** invited the Commission to ***assess the need for, and the feasibility of, providing for certain provisional, including protective, measures at Union level, to prevent for example the disappearance of assets before the enforcement of a claim, and to put*** forward appropriate proposals for improving the efficiency of enforcement of ***judgments*** in the Union regarding bank accounts and debtors' assets.

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

¹ OJ C 115, 4.5.2010, p. 1.

- (6) The procedure established by this Regulation should *serve as* an ***additional and*** optional means for the ***creditor, who remains free to make use of any other procedure for obtaining an equivalent measure under national law.***
- (7) ***A creditor should be able to obtain a protective measure in the form of a European Account Preservation Order ("Preservation Order" or "Order") preventing the transfer or withdrawal of funds held by his debtor in a bank account maintained in a Member State if there is a risk that, without such a measure, the subsequent enforcement of his claim against the debtor will be impeded or made substantially more difficult. The preservation of funds held in the debtor's account should have the effect of preventing not only the debtor himself, but also persons authorised by him to make payments through that account, for example by way of a standing order or through direct debit or the use of a credit card, from using the funds.***

- (8) The scope of this Regulation should cover all civil and commercial matters apart from certain well-defined matters. In particular, this Regulation should not apply *to claims against a debtor* in insolvency proceedings. *This should mean that no Preservation Order can be issued against the debtor once insolvency proceedings as defined in Council Regulation (EC) No 1346/2000¹ have been opened in relation to him. On the other hand, the exclusion should allow the Preservation Order to be used to secure the recovery of detrimental payments made by such a debtor to third parties.*
- (9) *This Regulation should apply to accounts held with credit institutions whose business is to take deposits or other repayable funds from the public and to grant credits for their own account.*

It should thus not apply to financial institutions which do not take such deposits, for instance institutions providing financing for export and investment projects or projects in developing countries or institutions providing financial market services. Furthermore, this Regulation should not apply to accounts held by or with central banks when acting in their capacity as monetary authorities, nor to accounts that cannot be preserved by national orders equivalent to a Preservation Order or which are otherwise immune from seizure under the law of the Member State where the account in question is maintained.

¹ *Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).*

- (10) *This Regulation should apply to cross-border cases only and should define what constitutes a cross-border case in this particular context. For the purposes of this Regulation, a cross-border case should be considered to exist when the court dealing with the application for the Preservation Order is located in one Member State and the bank account concerned by the Order is maintained in another Member State. A cross-border case should also be considered to exist when the creditor is domiciled in one Member State and the court and the bank account to be preserved are located in another Member State.*

This Regulation should not apply to the preservation of accounts maintained in the Member State of the court seised of the application for the Preservation Order if the creditor's domicile is also in that Member State, even if the creditor applies at the same time for a Preservation Order which concerns an account or accounts maintained in another Member State. In such a case, the creditor should make two separate applications, one for a Preservation Order and one for a national measure.

- (11) The procedure *for a Preservation Order* should be available to a *creditor* wishing to secure the enforcement of a later judgment on the substance *of the matter* prior to initiating proceedings on the substance *of the matter* and at any stage during *such* proceedings. It should also be available to a *creditor* who has already obtained a judgment, *court settlement or authentic instrument requiring the debtor to pay the creditor's claim.*

- (12) *The Preservation Order should be available for the purpose of securing claims that have already fallen due. It should also be available for claims that are not yet due as long as such claims arise from a transaction or an event that has already occurred and their amount can be determined, including claims relating to tort, delict or quasi-delict and civil claims for damages or restitution which are based on an act giving rise to criminal proceedings.*

A creditor should be able to request that the Preservation Order be issued in the amount of the principal claim or in a lower amount. The latter may be in his interest, for instance, where he has already obtained some other security for part of his claim.

- (13) In order to ensure ■ a close link between the *proceedings for the Preservation Order and the proceedings on the substance of the matter*, international jurisdiction to issue the *Order* should lie with the courts *of the Member State whose courts have* jurisdiction to rule on the substance of the matter. *For the purposes of this Regulation, the notion of proceedings on the substance of the matter should cover any proceedings aimed at obtaining an enforceable title on the underlying claim including, for instance, summary proceedings concerning orders to pay and proceedings such as the French "procédure de référé". If the debtor is a consumer domiciled in a Member State, jurisdiction to issue the Order should lie only with the courts of that Member State.*

- (14) The conditions for issuing the **Preservation Order** should strike an appropriate balance between the *interest* of the creditor in obtaining an **Order** and the *interest* of the debtor in preventing abuse of the Order.

Consequently, *when the creditor applies for a Preservation Order* prior to obtaining a judgment ■, the court *with which the application is lodged should have to be satisfied on the basis of the evidence submitted by the creditor that the creditor is likely to succeed on the substance of his* claim against the debtor ■.

Furthermore, the creditor should be required in all situations, including when he has already obtained a judgment, to demonstrate to the satisfaction of the court that his claim is in urgent need of judicial protection and that, without the Order, the enforcement of the existing or a future judgment may be impeded or made substantially more difficult because there is a real risk that, by the time the creditor is able to have the existing or a future judgment enforced, the debtor may have dissipated, concealed or destroyed his assets or have disposed of them under value, to an unusual extent or through unusual action.

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

- (15) *In order to ensure the surprise effect of the **Preservation Order**, and to ensure that it will be a useful tool for a creditor trying to recover debts from a debtor in cross-border cases, the debtor should not be informed about the creditor's application nor be heard prior to the issue of the Order or notified of the Order prior to its implementation. Where, on the basis of the evidence and information provided by the creditor or, if applicable, by his witness(es), the court is not satisfied that the preservation of the account or accounts in question is justified, it should not issue the Order.*

- (16) *In situations where the creditor applies for a Preservation Order before initiating proceedings on the substance of the matter before a court, this Regulation should oblige him to initiate such proceedings within a specified period of time and should also oblige him to provide proof of such initiation to the court with which he lodged his application for an Order. Should the creditor fail to comply with this obligation, the Order should be revoked by the court of its own motion or should terminate automatically.*
- (17) *In view of the absence of a prior hearing of the debtor, this Regulation should provide for specific safeguards in order to prevent abuse of the Order and to protect the debtor's rights.*
- (18) *One such important safeguard should be the possibility of requiring the creditor to provide security so as to ensure that the debtor can be compensated at a later stage for any damage caused to him by the Preservation Order. Depending on national law, such security could be provided in the form of a security deposit or an alternative assurance, such as a bank guarantee or a mortgage. The court should have discretion in determining the amount of security sufficient to prevent abuse of the Order and to ensure compensation to the debtor and it should be open to the court, in the absence of specific evidence as to the amount of the potential damage, to consider the amount in which the Order is to be issued as a guideline for determining the amount of the security.*

In cases where the creditor has not yet obtained a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor's claim, the provision of security should be the rule and the court should dispense with this requirement, or require the provision of security in a lower amount, only exceptionally if it considers that such security is inappropriate, superfluous or disproportionate in the circumstances of the case. Such circumstances could be, for instance, that the creditor has a particularly strong case but does not have sufficient means to provide security, that the claim relates to maintenance or to the payment of wages or that the size of the claim is such that the Order is unlikely to cause any damage to the debtor, for instance a small business debt.

In cases where the creditor has already obtained a judgment, court settlement or authentic instrument, the provision of security should be left to the discretion of the court. The provision of security may, for instance, be appropriate, except in the abovementioned exceptional circumstances, where the judgment the enforcement of which the Preservation Order intends to secure is not yet enforceable or only provisionally enforceable due to a pending appeal.

- (19) *Another important element for striking an appropriate balance between the creditor's and the debtor's interests should be a rule on the creditor's liability for any damage caused to the debtor by the Preservation Order. This Regulation should therefore, as a minimum standard, provide for the liability of the creditor where the damage caused to the debtor by the Preservation Order is due to fault on the creditor's part. In this context, the burden of proof should lie with the debtor. As regards the grounds for liability specified in this Regulation, provision should be made for a harmonised rule establishing a rebuttable presumption of fault on the part of the creditor.*

Furthermore, the Member States should be able to maintain or introduce in their national law grounds for liability other than those specified in this Regulation. For such other grounds of liability, the Member States should also be able to maintain or introduce other types of liability, such as strict liability.

This Regulation should also lay down a conflict-of-laws rule specifying that the law applicable to the creditor's liability should be the law of the Member State of enforcement. Where there are several Member States of enforcement, the law applicable should be the law of the Member State of enforcement in which the debtor is habitually resident. In a case in which the debtor is not habitually resident in any of the Member States of enforcement, the law applicable should be the law of the Member State of enforcement with which the case has the closest connection. In determining the closest connection, the size of the amount preserved in the different Member States of enforcement could be one of the factors to be taken into account by the court.

- (20) *In order to overcome existing practical difficulties in obtaining information about the whereabouts of the debtor's bank account in a cross-border context, this Regulation should set out a mechanism allowing the creditor to request that the information needed to identify the debtor's account be obtained by the court, before a Preservation Order is issued, from the designated information authority of the Member State in which the creditor believes that the debtor holds an account. Given the particular nature of such an intervention by public authorities and of such access to private data, access to account information should, as a rule, be given only in cases where the creditor has already obtained an enforceable judgment, court settlement or authentic instrument. However, by way of exception, it should be possible for the creditor to make a request for account information even though his judgment, court settlement or authentic instrument is not yet enforceable. Such a request should be possible where the amount to be preserved is substantial taking into account the relevant circumstances and the court is satisfied, on the basis of the evidence submitted by the creditor, that there is an urgent need for such account information because there is a risk that, without it, the subsequent enforcement of the creditor's claim against the debtor is likely to be jeopardised and that this could consequently lead to a substantial deterioration of the creditor's financial situation.*

To allow that mechanism to work, the Member States should make available in their national law one or more methods for obtaining such information which are effective and efficient and which are not disproportionately costly or time-consuming. The mechanism should apply only if all the conditions and requirements for issuing the Preservation Order are met and the creditor has duly substantiated in his request why there are reasons to believe that the debtor holds one or more accounts in a specific Member State, for instance because the debtor works or exercises a professional activity in that Member State or has property there.

- (21) *In order to ensure protection of the personal data of the debtor, the information obtained regarding the identification of the debtor's bank account or accounts should not be provided to the creditor. It should be provided only to the requesting court and, exceptionally, to the debtor's bank if the bank or other entity responsible for enforcing the Order in the Member State of enforcement is not able to identify an account of the debtor on the basis of the information provided in the Order, for instance where there are accounts held with the same bank by several persons having the same name and the same address. Where, in such a case, it is indicated in the Order that the number or numbers of the account(s) to be preserved was or were obtained through a request for information, the bank should request that information from the information authority of the Member State of enforcement and should be able to make such a request in an informal and simple manner.*

- (22) *This Regulation should grant the creditor the right to appeal against a refusal to issue the Preservation Order. That right should be without prejudice to the possibility for the creditor to make a new application for a Preservation Order on the basis of new facts or new evidence.*
- (23) *Enforcement structures for preserving bank accounts vary considerably in the Member States. In order to avoid duplication of those structures in the Member States and to respect national procedures to the extent possible, this Regulation should, as regards the enforcement and actual implementation of the Preservation Order, build on the methods and structures in place for the enforcement and implementation of equivalent national orders in the Member State in which the Order is to be enforced.*
- (24) *In order to ensure swift enforcement, this Regulation should provide for transmission of the Order from the Member State of origin to the competent authority of the Member State of enforcement by any appropriate means which ensure that the content of the documents transmitted is true and faithful and easily legible.*

- (25) *Upon receiving the Preservation Order, the competent authority of the Member State of enforcement should take the necessary steps to have the Order enforced in accordance with its national law, either by transmitting the Order received to the bank or other entity responsible for enforcing such orders in that Member State or, where national law so provides, by otherwise instructing the bank to implement the Order.*
- (26) *Depending on the method available under the law of the Member State of enforcement for equivalent national orders, the Preservation Order should be implemented by blocking the preserved amount in the debtor's account or, where national law so provides, by transferring that amount to an account dedicated for preservation purposes, which could be an account held by either the competent enforcement authority, the court, the bank with which the debtor holds his account or a bank designated as coordinating entity for the preservation in a given case.*
- (27) *This Regulation should not prevent the payment of fees for the enforcement of the Preservation Order from being requested in advance. This issue should be left to the national law of the Member State in which the Order is to be enforced.*

- (28) *A Preservation Order should have the same rank, if any, as an equivalent national order in the Member State of enforcement. If, under national law, certain enforcement measures have priority over preservation measures, the same priority should be given to them in relation to Preservation Orders under this Regulation. For the purposes of this Regulation, the in personam orders which exist in some national legal systems should be considered to be equivalent national orders.*
- (29) *This Regulation should provide for the imposition on the bank or other entity responsible for enforcing the Preservation Order in the Member State of enforcement of an obligation to declare whether and, if so, to what extent the Order has led to the preservation of any funds of the debtor, and of an obligation on the creditor to ensure the release of any funds preserved that exceed the amount specified in the Order.*
- (30) *This Regulation should safeguard the debtor's right to a fair trial and his right to an effective remedy and should therefore, having regard to the ex parte nature of the proceedings for the issue of the Preservation Order, enable him to contest the Order or its enforcement on the grounds provided for in this Regulation immediately after the implementation of the Order.*

- (31) *In this context, this Regulation should require that the Preservation Order, all documents submitted by the creditor to the court in the Member State of origin and the necessary translations be served on the debtor promptly after the implementation of the Order. The court should have discretionary powers to append any further documents on which it based its decision and which the debtor might need for his remedy action, such as verbatim transcripts of any oral hearing.*
- (32) *The debtor should be able to request a review of the Preservation Order, in particular if the conditions or requirements set out in this Regulation were not met or if the circumstances that led to the issuing of the Order have changed in such a way that the issuing of the Order would no longer be founded. For instance, a remedy should be available to the debtor if the case did not constitute a cross-border case as defined in this Regulation, if the jurisdiction rules set out in this Regulation were not respected, if the creditor did not initiate proceedings on the substance of the matter within the period of time provided for in this Regulation and the court did not, as a consequence, revoke the Order of its own motion or the Order did not terminate automatically, if the creditor's claim was not in need of urgent protection in the form of a Preservation Order because there was no risk that the subsequent enforcement of that claim would be impeded or made substantially more difficult, or if the provision of security was not in conformity with the requirements set out in this Regulation.*

A remedy should also be available to the debtor if the Order and the declaration on the preservation have not been served on him as provided for in this Regulation or if the documents served on him did not meet the language requirements provided for in this Regulation. However, such a remedy should not be granted if the lack of service or translation is cured within a given period of time. In order to cure the lack of service, the creditor should make a request to the body responsible for service in the Member State of origin to have the relevant documents served by registered post on the debtor or, where the debtor has agreed to collect the documents at the court, should provide the necessary translations of the documents to the court. Such a request should not be required if the lack of service has already been cured by other means, for instance if, in accordance with national law, the court initiated the service of its own motion.

- (33) The question as to who has to provide any translations required under this Regulation and who has to bear the costs for such translations is left to national law.*
- (34) Jurisdiction to grant the remedies against the issue of the Preservation Order should lie with the courts of the Member State in which the Order was issued. Jurisdiction to grant the remedies against the enforcement of the Order should lie with the courts or, where applicable, with the competent enforcement authorities in the Member State of enforcement.*
- (35) The debtor should have the right to apply for the release of the preserved funds if he provides appropriate alternative security. Such alternative security could be provided in the form of a security deposit or an alternative assurance, such as a bank guarantee or a mortgage.*

- (36) *This Regulation should ensure that the preservation of the debtor's account does not affect amounts which are exempt from seizure under the law of the Member State of enforcement, for example amounts necessary to ensure the livelihood of the debtor and his family. Depending on the procedural system applicable in that Member State, the relevant amount should either be exempted ex officio by the body responsible, which could be the court, the bank or the competent enforcement authority, before the Order is implemented, or be exempted at the request of the debtor after the implementation of the Order. Where accounts in several Member States are preserved and the exemption has been applied more than once, the creditor should be able to apply to the competent court of any of the Member States of enforcement or, where the national law of the Member State of enforcement concerned so provides, to the competent enforcement authority in that Member State, for an adjustment of the exemption applied in that Member State.*

- (37) In order to ensure that the **Preservation Order** is issued and enforced swiftly and without delay, **this** Regulation should establish **■** time-limits by which the different steps in the procedure must be completed. **Courts or authorities involved in the procedure should only be allowed to derogate from those time-limits in exceptional circumstances, for instance in cases which are legally or factually complex.**
- (38) **For the purposes of calculating the periods and time-limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council¹ should apply.**
- (39) **In order to facilitate the application of this Regulation, provision should be made for an obligation on the Member States to communicate certain information regarding their legislation and procedures relating to Preservation Orders and equivalent national orders to the Commission.**
- (40) **In order to facilitate the application of this Regulation in practice, standard forms should be established, in particular, for the application for an Order, for the Order itself, for the declaration concerning the preservation of funds and for the application for a remedy or appeal under this Regulation.**

¹ **Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).**

- (41) *To increase the efficiency of proceedings, this Regulation should allow for the greatest possible use of modern communication technologies accepted under the procedural rules of the Member States concerned, particularly for the purposes of filling in the standard forms provided for in this Regulation and of communication between the authorities involved in the proceedings. Furthermore, the methods for signing the Preservation Order and other documents under this Regulation should be technologically neutral in order to allow for the application of existing methods, such as digital certification or secure authentication, and for future technical developments in this field.*
- (42) *In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the standard forms provided for in this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.*
- (43) *The advisory procedure should be used for the adoption of implementing acts establishing and subsequently amending the standard forms provided for in this Regulation in accordance with Article 4 of Regulation (EU) No 182/2011.*

¹ *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).*

- (44) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, *it* seeks to ensure 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 *as established in Articles 7, 8, 17 and 47 thereof respectively*.
- (45) *In the context of access to personal data and the use and transmission of such data under this Regulation, the requirements of Directive 95/46/EC of the European Parliament and of the Council¹, as transposed into the national law of the Member States, should be complied with.*
- (46) *For the purposes of the application of this Regulation, it is however necessary to lay down certain specific conditions for access to personal data and for the use and transmission of such data. In this context, the opinion of the European Data Protection Supervisor² has been taken into account. Notification of the data subject should take place in accordance with national law. However, the notification of the debtor about the disclosure of information relating to his account or accounts should be deferred for 30 days, in order to prevent an early notification from jeopardising the effect of the Preservation Order.*

¹ *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 data (OJ L 281, 23.11.1995, p. 31).*

² *OJ C 373, 21.12.2011, p. 4.*

- (47) *Since the objective of this Regulation, namely to establish a Union procedure for a protective measure which enables a creditor to obtain a Preservation Order preventing the subsequent enforcement of the creditor's claim from being jeopardised through the transfer or withdrawal of funds held by the debtor in a bank account within the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.*
- (48) *This Regulation should apply only to those Member States which are bound by it in accordance with the Treaties. The procedure for obtaining a Preservation Order provided for in this Regulation should therefore be available only to creditors who are domiciled in a Member State bound by this Regulation and Orders issued under this Regulation should relate only to the preservation of bank accounts which are maintained in such a Member State.*

- (49) In accordance with **Article 3** of Protocol **No 21** on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the **TFEU**, Ireland **has** notified **its** wish to take part in the adoption and application of this Regulation █ .
- (50) ***In accordance with Articles 1 and 2 of Protocol No 21*** on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the **TFEU**, and without prejudice to Article 4 of that Protocol, ***the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.***
- (51) In accordance with Articles 1 and 2 of Protocol **No 22** on the position of Denmark, annexed to the TEU and to the **TFEU**, Denmark **is** not ***taking part*** in the adoption of this Regulation and is not █ bound by it or ***subject to its application,***

HAVE ADOPTED THIS REGULATION:

Chapter 1

Subject matter, scope and definitions

Article 1 *Subject matter*

1. This Regulation establishes a Union procedure *enabling* a creditor to obtain a European Account Preservation Order ("*Preservation Order*" or "*Order*") *which prevents the subsequent enforcement of the creditor's claim from being jeopardised through the transfer or withdrawal of funds up to the amount specified in the Order which are held by the debtor or on his behalf* in a bank account *maintained in a Member State*.
2. The *Preservation Order* shall be available to the creditor as an alternative to *preservation* measures *under national law*.

Article 2
Scope

1. This Regulation applies to pecuniary claims in civil and commercial matters **in** cross-border **cases** as defined in Article 3, whatever the nature of the court or tribunal concerned (the "court") . It does not extend, in particular, to revenue, customs or administrative matters ***or to the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii")***.
2. This Regulation does not apply to:
 - (a) ***rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;***
 - (b) ***wills and succession, including maintenance obligations arising by reason of death;***
 - (c) ***claims against a debtor in relation to whom* bankruptcy ***proceedings***, proceedings ***for*** the winding-up of insolvent companies or other legal persons, judicial arrangements, ***compositions, or*** analogous proceedings ***have been opened;*****
 - (d) social security;
 - (e) arbitration.

3. This Regulation does not apply to bank accounts which *are immune from seizure* under the law of the Member State *in which the account is maintained nor to accounts maintained in connection with the operation of any system as defined in point (a) of Article 2 of Directive 98/26/EC* of the European Parliament and of the Council¹.

4. *This Regulation does not apply to bank accounts held by or with central banks when acting in their capacity as monetary authorities.*

Article 3
Cross-border cases

1. For the purposes of this Regulation, a *cross-border case is one in which the bank account or accounts* to be preserved by the *Preservation Order are maintained in a Member State other than:*
- (a) *the Member State of the court seised of the application for the Preservation Order pursuant to Article 6; or*
 - (b) *the Member State in which the creditor is domiciled.*
2. *The relevant moment for determining whether a case is a cross-border case is the date on which the application for the Preservation Order is lodged with the court having jurisdiction to issue the Preservation Order.*

¹ *Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).*

Article 4
Definitions

For the purposes of this Regulation:

- (1) ***"bank account" or "account"*** means any account containing *assets* which is held with a bank in the name of the *debtor* or in the name of a third party on behalf of the *debtor*;
- (2) ***"bank"*** means a credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹, including branches, within the meaning of point (17) of Article 4(1) of that Regulation, of credit institutions having their head offices inside or, in accordance with Article 47 of Directive 2013/36/EU of the European Parliament and of the Council², outside the Union where such branches are located in the Union;

¹ ***Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).***

² ***Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).***

(3) "*funds*" means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;

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(4) "Member State *in which* the bank account is *maintained*" means:

(a) the Member State indicated in the account's IBAN (*International Bank Account Number*); or

(b) for a bank account *which does not have an IBAN*, the Member State *in which* the bank *with which the account is held has its head office or, where the account is held with a branch, the Member State in which the branch is located*;

(5) "claim" means *a claim for payment of a specific amount of money that has fallen due or a claim for payment of a determinable amount of money arising from a transaction or an event that has already occurred, provided that such a claim can be brought before a court*;

- (6) *"creditor" means a natural person domiciled in a Member State or a legal person domiciled in a Member State or any other entity domiciled in a Member State having legal capacity to sue or be sued under the law of a Member State, who or which applies for, or has already obtained, a Preservation Order relating to a claim ;*
- (7) *"debtor" means a natural person or a legal person or any other entity having legal capacity to sue or be sued under the law of a Member State, against whom or which the creditor seeks to obtain, or has already obtained, a Preservation Order relating to a claim;*
- (8) "judgment" means any judgment given by a court of *a Member State*, whatever the judgment may be called, including *a decision on* the determination of costs or expenses by an officer of the court;
- █
- (9) "court settlement" means a settlement which has been approved by a court *of a Member State* or concluded before a court *of a Member State* in the course of proceedings;
- (10) "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;
- (11) "Member State of origin" means the Member State in which the *Preservation Order* was issued;
- (12) "Member State of enforcement" means the Member State in which the bank account to be preserved is *maintained*;
- (13) "*information* authority" means the authority which a Member State has designated as competent for *the purposes of obtaining* the necessary information on the *debtor's* account or accounts pursuant to Article 14 ;
- (14) "*competent authority*" means the authority or authorities which a Member State has designated as competent for receipt, transmission or service pursuant to Article 10(2), Article 23(3), (5) and (6), Articles 25(3), 27(2) and 28(3) and the second subparagraph of Article 36(5);
- (15) "domicile" means domicile as determined in accordance with *Articles 62* and *63* of Regulation (EU) No *1215/2012* of the European Parliament and of the Council ¹.

¹ *Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).*

Chapter 2

Procedure for obtaining a *Preservation Order*

Article 5 Availability

The Preservation Order shall be available to the creditor in the following situations:

(a) *before the creditor initiates proceedings in a Member State against the debtor on the substance of the matter* ■, or at any stage during such proceedings *up until the issuing of the judgment or the approval or conclusion of a court settlement;*

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(b) *after the creditor has obtained in a Member State a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim.*

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Article 6
Jurisdiction

1. ***Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, jurisdiction to issue a Preservation Order shall lie with the courts of the Member State which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of jurisdiction applicable.***
2. ***Notwithstanding paragraph 1, where the debtor is a consumer who has concluded a contract with the creditor for a purpose which can be regarded as being outside the debtor's trade or profession, jurisdiction to issue a Preservation Order intended to secure a claim relating to that contract shall lie only with the courts of the Member State in which the debtor is domiciled.***
3. ***Where the creditor has already obtained a judgment or court settlement, jurisdiction to issue a Preservation Order for the claim specified in the judgment or court settlement shall lie with the courts of the Member State in which the judgment was issued or the court settlement was approved or concluded.***

4. ***Where the creditor has obtained an authentic instrument, jurisdiction to issue a Preservation Order for the claim specified in that instrument shall lie with the courts designated for that purpose in the Member State in which that instrument was drawn up.***

Article 7

Conditions for issuing a Preservation Order

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

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2. ***Where the creditor has not yet obtained in a Member State a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor's claim, the creditor shall also submit sufficient evidence to satisfy the court that he is likely to succeed on the substance of his claim against the debtor.***

Article 8
Application for a Preservation Order

1. Applications for *a Preservation Order* shall be *lodged* using the form *established in accordance with the advisory procedure referred to in Article 52(2)*.
2. The application ■ shall include ■ the following *information*:
 - (a) *the name and address of the court with which the application is lodged;*
 - (b) *details concerning the creditor: name and contact details and, where applicable, name and contact details of the creditor's representative, and:*
 - (i) *where the creditor is a natural person, his date of birth and, if applicable and available, his identification or passport number; or*
 - (ii) *where the creditor is a legal person or any other entity having legal capacity to sue or be sued under the law of a Member State, the State of its incorporation, formation or registration and its identification or registration number or, where no such number exists, the date and place of its incorporation, formation or registration;*

- (c) *details concerning the debtor: name and contact details and, where applicable, name and contact details of the debtor's representative and, if available:*
- (i) *where the debtor is a natural person, his date of birth and identification or passport number; or*
 - (ii) *where the debtor is a legal person or any other entity having legal capacity to sue or be sued under the law of a Member State, the State of its incorporation, formation or registration and its identification or registration number or, where no such number exists, the date and place of its incorporation, formation or registration;*
- (d) *a number enabling the identification of the bank, such as the IBAN or BIC and/or the name and address of the bank, with which the debtor holds one or more accounts to be preserved;*
- (e) *if available, the number of the account or accounts to be preserved and, in such a case, an indication as to whether any other accounts held by the debtor with the same bank should be preserved;*
- (f) *where none of the information required under point (d) can be provided, a statement that a request is made for the obtaining of account information pursuant to Article 14, where such a request is possible, and a substantiation as to why the creditor believes that the debtor holds one or more accounts with a bank in a specific Member State;*

- (g) *the amount for which the Preservation Order is sought:*

 - (i) *where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the amount of the principal claim or part thereof and of any interest recoverable pursuant to Article 15;*
 - (ii) *where the creditor has already obtained a judgment, court settlement or authentic instrument, the amount of the principal claim as specified in the judgment, court settlement or authentic instrument or part thereof and of any interest and costs recoverable pursuant to Article 15;*
- (h) *where the creditor has not yet obtained a judgment, court settlement or authentic instrument:*

 - (i) *a description of all relevant elements supporting the jurisdiction of the court with which the application for the Preservation Order is lodged;*
 - (ii) *a description of all relevant circumstances invoked as the basis of the claim, and, where applicable, of the interest claimed;*
 - (iii) *a statement indicating whether the creditor has already initiated proceedings against the debtor on the substance of the matter;*

(i) *where the creditor has already obtained a judgment, court settlement or authentic instrument, a declaration that the judgment, court settlement or authentic instrument has not yet been complied with or, where it has been complied with in part, an indication of the extent of non-compliance;*

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

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(k) *where applicable, an indication of the reasons why the creditor believes he should be exempted from providing security pursuant to Article 12;*

(l) a list of the evidence provided **■** by the *creditor*;

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- (m) *a declaration as provided for in Article 16 as to whether the creditor has lodged with other courts or authorities an application for an equivalent national order or whether such an order has already been obtained or refused and, if obtained, the extent to which it has been implemented;*
- (n) *an optional indication of the creditor's bank account to be used for any voluntary payment of the claim by the debtor;*
- (o) *a declaration that the information provided by the creditor in the application is true and complete to the best of his knowledge and that the creditor is aware that any deliberately false or incomplete statements may lead to legal consequences under the law of the Member State in which the application is lodged or to liability pursuant to Article 13.*

3. *The application shall be accompanied by all relevant supporting documents and, where the creditor has already obtained a judgment, court settlement or authentic instrument, by a copy of the judgment, court settlement or authentic instrument which satisfies the conditions necessary to establish its authenticity.*

4. The application *and supporting documents* may be submitted by any means of communication, including electronic, *which are accepted under the procedural rules of the Member State in which the application is lodged.*

Article 9
Taking of evidence

1. *The court shall take its decision by means of a written procedure on the basis of the information and evidence provided by the creditor in or with his application. If the court considers that **the evidence provided is insufficient**, it may, where national law so allows, request the creditor to provide additional documentary evidence.*
2. *Notwithstanding paragraph 1 and subject to Article 11, the court may, provided that this does not delay the proceedings unduly, also use any other appropriate method of taking evidence available under its national law, such as an oral hearing of the creditor or of his witness(es) including through videoconference or other communication technology.*

Article 10
Initiation of proceedings on the substance of the matter

1. Where *the creditor has applied for a Preservation Order before initiating* proceedings on the substance *of the matter, he* shall initiate such proceedings *and provide proof of such initiation to the court with which the application for the Preservation Order was lodged within* 30 days of the date *on which he lodged the application or within 14 days of the date of the issue of the Order, whichever date is the later. The court may also, at the request of the debtor, extend that time period, for example in order to allow the parties to settle the claim, and shall inform the two parties accordingly.*
2. *If the court has not received proof of the initiation of proceedings within the time period referred to in paragraph 1, the Preservation Order shall be revoked or shall terminate and the parties shall be informed accordingly.*

Where the court that issued the Order is located in the Member State of enforcement, the revocation or termination of the Order in that Member State shall be done in accordance with the law of that Member State.

Where the revocation or termination needs to be implemented in a Member State other than the Member State of origin, the court shall revoke the Preservation Order by using the revocation form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2), and shall transmit the revocation form in accordance with Article 29 to the competent authority of the Member State of enforcement. That authority shall take the necessary steps by applying Article 23 as appropriate to have the revocation or termination implemented.

3. For the purposes of paragraph 1, proceedings on the substance of the matter shall be deemed to have been initiated:

- (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the creditor has not subsequently failed to take the steps he was required to take to have service effected on the debtor; or*
- (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the creditor has not subsequently failed to take the steps he was required to take to have the document lodged with the court.*

The authority responsible for service referred to in point (b) of the first subparagraph shall be the first authority receiving the documents to be served.

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Article 11
Ex parte procedure

The debtor shall not be notified of the application for a Preservation Order or be heard prior to the issuing of the Order.

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Article 12
Security to be provided by the creditor

1. *Before issuing a Preservation Order in a case where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court shall require the creditor to provide security for an amount sufficient to prevent abuse of the procedure provided for by this Regulation and to ensure compensation for any damage suffered by the debtor as a result of the Order to the extent that the creditor is liable for such damage pursuant to Article 13.*

By way of exception, the court may dispense with the requirement set out in the first subparagraph if it considers that the provision of security referred to in that subparagraph is inappropriate in the circumstances of the case.

2. *Where the creditor has already obtained a judgment, court settlement or authentic instrument, the court may, before issuing the Order, require the creditor to provide security as referred to in the first subparagraph of paragraph 1 if it considers this necessary and appropriate in the circumstances of the case.*
3. *If the court requires security to be provided pursuant to this Article, it shall inform the creditor of the amount required and of the forms of security acceptable under the law of the Member State in which the court is located. It shall indicate to the creditor that it will issue the Preservation Order once security in accordance with those requirements has been provided.*

*Article 13
Liability of the creditor*

1. *The creditor shall be liable for any damage caused to the debtor by the Preservation Order due to fault on the creditor's part. The burden of proof shall lie with the debtor.*

2. *In the following cases, the fault of the creditor shall be presumed unless he proves otherwise:*
- (a) *if the Order is revoked because the creditor has failed to initiate proceedings on the substance of the matter, unless that omission was a consequence of the debtor's payment of the claim or another form for settlement between the parties;*
 - (b) *if the creditor has failed to request the release of over-preserved amounts as provided for in Article 27;*
 - (c) *if it is subsequently found that the issue of the Order was not appropriate or appropriate only in a lower amount due to a failure on the part of the creditor to comply with his obligations under Article 16; or*
 - (d) *if the Order is revoked or its enforcement terminated because the creditor has failed to comply with his obligations under this Regulation with regard to service or translation of documents or with regard to curing the lack of service or the lack of translation.*
3. *Notwithstanding paragraph 1, Member States may maintain or introduce in their national law other grounds or types of liability or rules on the burden of proof. All other aspects relating to the creditor's liability towards the debtor not specifically addressed in paragraph 1 or 2 shall be governed by national law.*

4. *The law applicable to the liability of the creditor shall be the law of the Member State of enforcement.*

If accounts are preserved in more than one Member State, the law applicable to the liability of the creditor shall be the law of the Member State of enforcement:

(a) *in which the debtor has his habitual residence as defined in Article 23 of Regulation (EC) No 864/2007 of the European Parliament and of the Council¹, or, failing that,*

(b) *which has the closest connection with the case.*

5. *This Article does not deal with the question of possible liability of the creditor towards the bank or any third party.*

¹ *Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (OJ L 199, 31.7.2007, p. 40).*

Article 14
Request for the obtaining of account information

1. *Where the creditor has obtained in a Member State an enforceable judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim and the creditor has reasons to believe that the debtor holds one or more accounts with a bank in a specific Member State, but knows neither the name and/or address of the bank nor the IBAN, BIC or another bank number allowing the bank to be identified, he may request the court with which the application for the Preservation Order is lodged to request that the information authority of the Member State of enforcement obtain the information necessary to allow the bank or banks and the debtor's account or accounts to be identified.*

Notwithstanding the first subparagraph, the creditor may make the request referred to in that subparagraph where the judgment, court settlement or authentic instrument obtained by the creditor is not yet enforceable and the amount to be preserved is substantial taking into account the relevant circumstances, and the creditor has submitted sufficient evidence to satisfy the court that there is an urgent need for account information because there is a risk that, without such information, the subsequent enforcement of the creditor's claim against the debtor is likely to be jeopardised and that this could consequently lead to a substantial deterioration of the creditor's financial situation.

2. ***The creditor shall make the request referred to in paragraph 1 in the application for the Preservation Order. The creditor shall substantiate why he believes that the debtor holds one or more accounts with a bank in the specific Member State and shall provide all relevant information available to him about the debtor and the account or accounts to be preserved. If the court with which the application for a Preservation Order is lodged considers that the creditor's request is not sufficiently substantiated, it shall reject it.***
3. ***When the court is satisfied that the creditor's request is well substantiated and that all the conditions and requirements for issuing the Preservation Order are met, except for the information requirement set out in point (d) of Article 8(2) and, where applicable, the security requirement pursuant to Article 12, the court shall transmit the request for information to the information authority of the Member State of enforcement in accordance with Article 29.***
4. ***To obtain the information referred to in paragraph 1, the information authority in the Member State of enforcement shall use one of the methods available in that Member State pursuant to paragraph 5.***
5. ***Each Member State shall make available in its national law at least one of the following methods of obtaining the information referred to in paragraph 1:***
 - (a) ***an obligation on all banks in its territory to disclose, upon request by the information authority, whether the debtor holds an account with them;***

- (b) access *for* the *information* authority to the *relevant* information ■ where that information is held by public authorities or administrations in registers or otherwise;
- (c) *the possibility for its courts to oblige the debtor to disclose with which bank or banks in its territory he holds one or more accounts where such an obligation is accompanied by an in personam order by the court prohibiting the withdrawal or transfer by him of funds held in his account or accounts up to the amount to be preserved by the Preservation Order; or*
- (d) *any other methods which are effective and efficient for the purposes of obtaining the relevant information, provided that they are not disproportionately costly or time-consuming.*

Irrespective of the method or methods made available by a Member State, all authorities involved in obtaining the information shall act expeditiously.

6. *As soon as the information authority of the Member State of enforcement has obtained the account information, it shall transmit it to the requesting court in accordance with Article 29.*

7. *If the information authority is unable to obtain the information referred to in paragraph 1, it shall inform the requesting court accordingly. Where, as a result of the unavailability of account information, the application for a Preservation Order is rejected in full, the requesting court shall without delay release any security that the creditor may have provided pursuant to Article 12.*
8. *Where under this Article the information authority is provided with information by a bank or is granted access to account information held by public authorities or administrations in registers, the notification of the debtor of the disclosure of his personal data shall be deferred for 30 days, in order to prevent an early notification from jeopardising the effect of the Preservation Order.*

Article 15
Interest and costs

1. *At the request of the creditor, the Preservation Order shall include any interest accrued under the law applicable to the claim up to the date when the Order is issued, provided that the amount or type of interest is not such that its inclusion constitutes a violation of overriding mandatory provisions in the law of the Member State of origin.*

2. *Where the creditor has already obtained a judgment, court settlement or authentic instrument, the Preservation Order shall, at the request of the creditor, also include the costs of obtaining such judgment, settlement or instrument, to the extent that a determination has been made that those costs must be borne by the debtor.*

Article 16
Parallel applications

1. *The creditor may not submit to several courts at the same time parallel applications for a Preservation Order against the same debtor aimed at securing the same claim.*
2. *In his application for a Preservation Order, the creditor shall declare whether he has lodged with any other court or authority an application for an equivalent national order against the same debtor and aimed at securing the same claim or has already obtained such an order. He shall also indicate any applications for such an order which have been rejected as inadmissible or unfounded.*

3. *If the creditor obtains an equivalent national order against the same debtor and aimed at securing the same claim during the proceedings for the issuing of a Preservation Order, he shall without delay inform the court thereof and of any subsequent implementation of the national order granted. He shall also inform the court of any applications for an equivalent national order which have been rejected as inadmissible or unfounded.*
4. *Where the court is informed that the creditor has already obtained an equivalent national order, it shall consider, having regard to all the circumstances of the case, whether it is still appropriate to issue the Preservation Order, in full or in part.*

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Article 17
Decision on the application for the Preservation Order

1. *The court seised of an application for a Preservation Order shall examine whether the conditions and requirements set out in this Regulation are met.*
2. *The court shall decide on the application without delay, but no later than by the expiry of the time-limits set out in Article 18.*

3. *Where the creditor has not provided all the information required by Article 8, the court may, unless the application is clearly inadmissible or unfounded, give the creditor the opportunity to complete or rectify the application within a period of time to be specified by the court. If the creditor fails to complete or rectify the application within that period, the application shall be rejected.*
4. *The Preservation Order shall be issued in the amount justified by the evidence referred to in Article 9 and as determined by the law applicable to the underlying claim, and shall include, where appropriate, interest and/or costs pursuant to Article 15.*
The Order may not under any circumstances be issued in an amount exceeding the amount indicated by the creditor in his application.
5. *The decision on the application shall be brought to the notice of the creditor in accordance with the procedure provided for by the law of the Member State of origin for equivalent national orders.*

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Article 18

Time-limits for the decision on the application for a Preservation Order

- 1. Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the tenth working day after the creditor lodged or, where applicable, completed his application.***
- 2. Where the creditor has already obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the fifth working day after the creditor lodged or, where applicable, completed his application.***
- 3. Where the court determines pursuant to Article 9(2) that an oral hearing of the creditor and, as the case may be, his witness(es) is necessary, the court shall hold the hearing without delay and shall issue its decision by the end of the fifth working day after the hearing has taken place.***
- 4. In the situations referred to in Article 12, the time-limits set out in paragraphs 1, 2 and 3 of this Article shall apply to the decision requiring the creditor to provide security. The court shall issue its decision on the application for a Preservation Order without delay once the creditor has provided the security required.***

5. *Notwithstanding paragraphs 1, 2 and 3 of this Article, in situations referred to in Article 14, the court shall issue its decision without delay once it has received the information referred to in Article 14(6) or (7), provided that any security required has been provided by the creditor by that time.*

Article 19

Form and content of the Preservation Order

1. *The Preservation Order shall be issued using the form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2) and shall bear a stamp, a signature and/or any other authentication of the court. The form shall consist of two parts:*
 - (a) *part A, containing the information set out in paragraph 2 to be provided to the bank, the creditor and the debtor; and*
 - (b) *part B, containing the information set out in paragraph 3 to be provided to the creditor and the debtor in addition to the information pursuant to paragraph 2.*
2. *Part A shall include the following information:*
 - (a) *the name and address of the court and the file number of the case;*

- (b) details of the creditor as indicated in point (b) of Article 8(2);*
- (c) details of the debtor as indicated in point (c) of Article 8(2);*
- (d) the name and address of the bank concerned by the Order;*
- (e) if the creditor has provided the account number of the debtor in the application, the number of the account or accounts to be preserved, and, where applicable, an indication as to whether any other accounts held by the debtor with the same bank also have to be preserved;*
- (f) where applicable, an indication that the number of any account to be preserved was obtained by means of a request pursuant to Article 14 and that the bank, where necessary pursuant to the second subparagraph of Article 24(4), is to obtain the number or numbers concerned from the information authority of the Member State of enforcement;*
- (g) the amount to be preserved by the Order;*
- (h) an instruction to the bank to implement the Order in accordance with Article 24;*
- (i) the date of issue of the Order;*

- (j) *if the creditor has indicated an account in his application pursuant to point (n) of Article 8(2), an authorisation to the bank pursuant to Article 24(3) to release and transfer, if so requested by the debtor and if allowed by the law of the Member State of enforcement, funds up to the amount specified in the Order from the preserved account to the account that the creditor has indicated in his application;*
- (k) *information on where to find the electronic version of the form to be used for the declaration pursuant to Article 25.*

3. *Part B shall include the following information:*

- (a) *a description of the subject matter of the case and the court's reasoning for issuing the Order;*
- (b) *the amount of the security provided by the creditor, if any;*
- (c) *where applicable, the time-limit for initiating the proceedings on the substance of the matter and for proving such initiation to the issuing court;*

- (d) *where applicable, an indication as to which documents must be translated pursuant to the second sentence of Article 49(1);*
- (e) *where applicable, an indication that the creditor is responsible for initiating the enforcement of the Order and consequently, where applicable, an indication that the creditor is responsible for transmitting it to the competent authority of the Member State of enforcement pursuant to Article 23(3) and for initiating service on the debtor pursuant to Article 28(2), (3) and (4); and*
- (f) *information about the remedies available to the debtor.*

4. *Where the Preservation Order concerns accounts in different banks, a separate form (part A pursuant to paragraph 2) shall be filled in for each bank. In such a case, the form provided to the creditor and the debtor (parts A and B pursuant to paragraphs 2 and 3 respectively) shall contain a list of all banks concerned.*

Article 20
Duration of the preservation

The funds preserved by the Preservation Order shall remain preserved as provided for in the Order or in any subsequent modification or limitation of that Order pursuant to Chapter 4:

- (a) until the Order is revoked;***
- (b) until the enforcement of the Order is terminated; or***
- (c) until a measure to enforce a judgment, court settlement or authentic instrument obtained by the creditor relating to the claim which the Preservation Order was aimed at securing has taken effect with respect to the funds preserved by the Order.***

Article 21
Appeal against a refusal to issue the Preservation Order

- 1. The creditor shall have the right to appeal against any decision of the court rejecting, wholly or in part, his application for a Preservation Order.***
- 2. Such an appeal shall be lodged within 30 days of the date on which the decision referred to in paragraph 1 was brought to the notice of the creditor. It shall be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (d) of Article 50(1).***

3. *Where the application for the Preservation Order was rejected in whole, the appeal shall be dealt with in ex parte proceedings as provided for in Article 11.*

Chapter 3

Recognition, enforceability and enforcement of the *Preservation Order*

Article 22

Recognition and enforceability

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

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Article 23

Enforcement of the Preservation Order

1. *Subject to the provisions of this Chapter, the Preservation Order shall be enforced in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State of enforcement.*

2. *All authorities involved in the enforcement of the Order shall act without delay.*
3. *Where the Preservation Order was issued in a Member State other than the Member State of enforcement, part A of the Order as indicated in Article 19(2) and a blank standard form for the declaration pursuant to Article 25 shall, for the purposes of paragraph 1 of this Article, be transmitted in accordance with Article 29 to the competent authority of the Member State of enforcement.*

The transmission shall be done by the issuing court or the creditor, depending on who is responsible under the law of the Member State of origin for initiating the enforcement procedure.

4. *The Order shall be accompanied, where necessary, by a translation or transliteration into the official language of the Member State of enforcement or, where there are several official languages in that Member State, the official language or one of the official languages of the place where the Order is to be implemented. Such translation or transliteration shall be provided by the issuing court by making use of the appropriate language version of the standard form referred to in Article 19.*
5. *The competent authority of the Member State of enforcement shall take the necessary steps to have the Order enforced in accordance with its national law.*

6. *Where the Preservation Order concerns more than one bank in the same Member State or in different Member States, a separate form for each bank as indicated in Article 19(2) and (4) shall be transmitted to the competent authority in the relevant Member State of enforcement.*



Article 24
Implementation of the Preservation Order

1. *A bank to which a Preservation Order is addressed shall implement it without delay following receipt of the Order or, where the law of the Member State of enforcement so provides, of a corresponding instruction to implement the Order.*
2. *To implement the Preservation Order, the bank shall, subject to the provisions of Article 31, preserve the amount specified in the Order either:*
 - (a) *by ensuring that that amount is not transferred or withdrawn from the account or accounts indicated in the Order or identified pursuant to paragraph 4; or*
 - (b) *where national law so provides, by transferring that amount to an account dedicated for preservation purposes.*

The final amount preserved may be subject to the settlement of transactions which are already pending at the moment when the Order or a corresponding instruction is received by the bank. However, such pending transactions may only be taken into account when they are settled before the bank issues the declaration pursuant to Article 25 by the time-limits set out in Article 25(1).

3. *Notwithstanding point (a) of paragraph 2, the bank shall be authorised, at the request of the debtor, to release funds preserved and to transfer those funds to the account of the creditor indicated in the Order for the purposes of paying the creditor's claim, if all the following conditions are met:*
 - (a) *such authorisation of the bank is specifically indicated in the Order in accordance with point (j) of Article 19(2);*
 - (b) *the law of the Member State of enforcement allows for such release and transfer; and*
 - (c) *there are no competing Orders with regard to the account concerned.*
4. *Where the Preservation Order does not specify the number or numbers of the account or accounts of the debtor but provides only the name and other details regarding the debtor, the bank or other entity responsible for enforcing the Order shall identify the account or accounts held by the debtor with the bank indicated in the Order.*

If, on the basis of the information provided in the Order, it is not possible for the bank or other entity to identify with certainty an account of the debtor, the bank shall:

- (a) where, in accordance with point (f) of Article 19(2), it is indicated in the Order that the number or numbers of the account or accounts to be preserved was or were obtained by means of a request pursuant to Article 14, obtain that number or those numbers from the information authority of the Member State of enforcement; and***
- (b) in all other cases, not implement the Order.***

5. *Any funds held in the account or accounts referred to in point (a) of paragraph 2 which exceed the amount specified in the Preservation Order shall remain unaffected by the implementation of the Order.*

6. *Where, at the time of the implementation of the Preservation Order, the funds held in the account or accounts referred to in point (a) of paragraph 2 are insufficient to preserve the full amount specified in the Order, the Order shall be implemented only in the amount available in the account or accounts.*

7. ***Where the Preservation Order covers several accounts held by the debtor with the same bank and those accounts contain funds that exceed the amount specified in the Order, the Order shall be implemented in the following order of priority:***

- (a) ***savings accounts in the sole name of the debtor;***
- (b) ***current accounts in the sole name of the debtor;***
- (c) ***savings accounts in joint names, subject to Article 30;***
- (d) ***current accounts in joint names, subject to Article 30.***

8. ***Where the currency of the funds held in the account or accounts referred to in point (a) of paragraph 2 is not the same as that in which the Preservation Order was issued, the bank shall convert the amount specified in the Order into the currency of the funds by reference to the foreign exchange reference rate of the European Central Bank or the exchange rate of the central bank of the Member State of enforcement for sale of that currency on the day and at the time of the implementation of the Order, and shall preserve the corresponding amount in the currency of the funds.***

Article 25

Declaration concerning the preservation of funds

1. ***By the end of the third working day following the implementation of the Preservation Order, the bank or other entity responsible for enforcing the Order in the Member State of enforcement shall issue a declaration using the declaration form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2), indicating whether and to what extent funds in the debtor's account or accounts have been preserved and, if so, on which date the Order was implemented. If, in exceptional circumstances, it is not possible for the bank or other entity to issue the declaration within three working days, it shall issue it as soon as possible but by no later than the end of the eighth working day following the implementation of the Order.***

The declaration shall be transmitted, without delay, in accordance with paragraphs 2 and 3.

2. ***Where the Order was issued in the Member State of enforcement, the bank or other entity responsible for enforcing the Order shall transmit the declaration in accordance with Article 29 to the issuing court and by registered post attested by an acknowledgment of receipt, or by equivalent electronic means, to the creditor.***

3. *Where the Order was issued in a Member State other than the Member State of enforcement, the declaration shall be transmitted in accordance with Article 29 to the competent authority of the Member State of enforcement, unless it was issued by that same authority.*

By the end of the first working day following the receipt or issue of the declaration, that authority shall transmit the declaration in accordance with Article 29 to the issuing court and by registered post attested by an acknowledgment of receipt, or by equivalent electronic means, to the creditor.

4. *The bank or other entity responsible for enforcing the Preservation Order shall, upon request by the debtor, disclose to the debtor the details of the Order. The bank or entity may also do so in the absence of such a request.*

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Article 26
Liability of the bank

Any liability of the bank for failure to comply with its obligations under this Regulation shall be governed by the law of the Member State of enforcement.

Article 27
Duty of the creditor to request the release of over-preserved amounts

- 1. The creditor shall be under a duty to take the necessary steps to ensure the release of any amount which, following the implementation of the Preservation Order, exceeds the amount specified in the Preservation Order:***
 - (a) where the Order covers several accounts in the same Member State or in different Member States; or***
 - (b) where the Order was issued after the implementation of one or more equivalent national orders against the same debtor and aimed at securing the same claim.***

2. *By the end of the third working day following receipt of any declaration pursuant to Article 25 showing such over-preservation, the creditor shall, by the swiftest possible means and using the form for requesting the release of over-preserved amounts, established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2), submit a request for the release to the competent authority of the Member State of enforcement in which the over-preservation has occurred.*

That authority shall, upon receipt of the request, promptly instruct the bank concerned to effect the release of the over-preserved amounts. Article 24(7) shall apply, as appropriate, in the reverse order of priority.

3. *This Article shall not preclude a Member State from providing in its national law that the release of over-preserved funds from any account maintained in its territory is to be initiated by the competent enforcement authority of that Member State of its own motion.*

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Article 28
Service on the debtor

1. *The Preservation Order, the other documents referred to in paragraph 5 of this Article and the declaration pursuant to Article 25 shall be served on the debtor in accordance with this Article.*
2. *Where the debtor is domiciled in the Member State of origin, service shall be effected in accordance with the law of that Member State. Service shall be initiated by the issuing court or the creditor, depending on who is responsible for initiating service in the Member State of origin, by the end of the third working day following the day of receipt of the declaration pursuant to Article 25 showing that amounts have been preserved.*
3. *Where the debtor is domiciled in a Member State other than the Member State of origin, the issuing court or the creditor, depending on who is responsible for initiating service in the Member State of origin, shall, by the end of the third working day following the day of receipt of the declaration pursuant to Article 25 showing that amounts have been preserved, transmit the documents referred to in paragraph 1 of this Article in accordance with Article 29 to the competent authority of the Member State in which the debtor is domiciled. That authority shall, without delay, take the necessary steps to have service effected on the debtor in accordance with the law of the Member State in which the debtor is domiciled.*

Where the Member State in which the debtor is domiciled is the only Member State of enforcement, the documents referred to in paragraph 5 of this Article shall be transmitted to the competent authority of that Member State at the time of transmission of the Order in accordance with Article 23(3). In such a case, that competent authority shall initiate the service of all documents referred to in paragraph 1 of this Article by the end of the third working day following the day of receipt or issue of the declaration pursuant to Article 25 showing that amounts have been preserved.

The competent authority shall inform the issuing court or the creditor, depending on who transmitted the documents to be served, of the result of the service on the debtor.

4. *Where the debtor is domiciled in a third State, service shall be effected in accordance with the rules on international service applicable in the Member State of origin.*
5. *The following documents shall be served on the debtor and shall, where necessary, be accompanied by a translation or transliteration as provided for in Article 49(1):*
 - (a) *the Preservation Order using parts A and B of the form referred to in Article 19(2) and (3);*

- (b) *the application for the Preservation Order submitted by the creditor to the court;*
 - (c) *copies of all documents submitted by the creditor to the court in order to obtain the Order.*
6. *Where the Preservation Order concerns more than one bank, only the first declaration pursuant to Article 25 showing that amounts have been preserved shall be served on the debtor in accordance with this Article. Any subsequent declarations pursuant to Article 25 shall be brought to the notice of the debtor without delay.*

Article 29
Transmission of documents

1. *Where this Regulation provides for transmission of documents in accordance with this Article, such transmission may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document transmitted and that all information contained in it is easily legible.*

2. *The court or authority that received documents in accordance with paragraph 1 of this Article shall, by the end of the working day following the day of receipt, send to the authority, creditor or bank that transmitted the documents an acknowledgment of receipt, employing the swiftest possible means of transmission and using the standard form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2).*

*Article 30
Preservation of joint and nominee accounts*

Funds held in accounts which, according to the bank's records, are not exclusively held by the debtor or are held by a third party on behalf of the debtor or by the debtor on behalf of a third party, may be preserved under this Regulation only to the extent to which they may be subject to preservation under the law of the Member State of enforcement.

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Article 31
Amounts exempt from preservation

1. Amounts *that are exempt from seizure under the law of the Member State of enforcement* shall be exempt from *preservation under this Regulation*.

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2. *Where, under the law of the Member State of enforcement, the amounts referred to in paragraph 1 are exempted from seizure without any request from the debtor, the body responsible for exempting such amounts in that Member State shall, of its own motion, exempt the relevant amounts from preservation.*
3. *Where, under the law of the Member State of enforcement, the amounts referred to in paragraph 1 of this Article are exempted from seizure at the request of the debtor, such amounts shall be exempted from preservation upon application by the debtor as provided for by point (a) of Article 34(1).*

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Article 32
Ranking of the Preservation Order

The *Preservation Order* shall have the same rank, if any, as an equivalent national order in the Member State of enforcement.

Chapter 4 **Remedies**

Article 33
Remedies of the debtor against the Preservation Order

1. *Upon application by the debtor to the competent court of the Member State of origin, the Preservation Order shall be revoked or, where applicable, modified on the ground that:*
 - (a) *the conditions or requirements set out in this Regulation were not met;*

- (b) *the Order, the declaration pursuant to Article 25 and/or the other documents referred to in Article 28(5) were not served on the debtor within 14 days of the preservation of his account or accounts ;*
- (c) *the documents served on the debtor in accordance with Article 28 did not meet the language requirements set out in Article 49(1);*
- (d) *preserved amounts exceeding the amount of the Order were not released in accordance with Article 27;*
- (e) *the claim the enforcement of which the creditor was seeking to secure by means of the Order has been paid in full or in part;*
- (f) *a judgment on the substance of the matter has dismissed the claim the enforcement of which the creditor was seeking to secure by means of the Order; or*
- (g) *the judgment on the substance of the matter, or the court settlement or authentic instrument, the enforcement of which the creditor was seeking to secure by means of the Order has been set aside or, as the case may be, annulled.*

2. *Upon application by the debtor to the competent court of the Member State of origin, the decision concerning the security pursuant to Article 12 shall be reviewed on the ground that the conditions or requirements of that Article were not met.*

Where, on the basis of such a remedy, the court requires the creditor to provide security or additional security, the first sentence of Article 12(3) shall apply as appropriate and the court shall indicate that the Preservation Order will be revoked or modified if the (additional) security required is not provided by the time-limit specified by the court.

3. *The remedy applied for under point (b) of paragraph 1 shall be granted unless the lack of service is cured within 14 days of the creditor being informed of the debtor's application for a remedy pursuant to point (b) of paragraph 1.*

Unless the lack of service was already cured by other means, the lack of service shall, for the purposes of assessing whether or not the remedy pursuant to point (b) of paragraph 1 is to be granted, be deemed to be cured:

- (a) *if the creditor requests the body responsible for service under the law of the Member State of origin to serve the documents on the debtor; or*

- (b) *where the debtor has indicated in his application for a remedy that he agrees to collect the documents at the court of the Member State of origin and where the creditor was responsible for providing translations, if the creditor transmits to that court any translations required pursuant to Article 49(1).*

The body responsible for service under the law of the Member State of origin shall, at the request of the creditor pursuant to point (a) of this paragraph, without delay serve the documents on the debtor by registered post attested by an acknowledgment of receipt at the address indicated by the debtor in accordance with paragraph 5 of this Article.

Where the creditor was responsible for initiating the service of the documents referred to in Article 28, a lack of service may only be cured if the creditor demonstrates that he had taken all the steps he was required to take to have the initial service of the documents effected.

4. *The remedy applied for under point (c) of paragraph 1 shall be granted unless the creditor provides to the debtor the translations required pursuant to this Regulation within 14 days of the creditor being informed of the application by the debtor for a remedy pursuant to point (c) of paragraph 1.*

The second and third subparagraphs of paragraph 3 shall apply as appropriate.

5. ***In his application for a remedy under points (b) and (c) of paragraph 1, the debtor shall indicate an address to which the documents and the translations referred to in Article 28 can be sent in accordance with paragraphs 3 and 4 of this Article or, alternatively, shall indicate that he agrees to collect those documents at the court of the Member State of origin.***

Article 34

Remedies of the debtor against enforcement of the Preservation Order

1. ***Notwithstanding Articles 33 and 35, upon application by the debtor to the competent court or, where national law so provides, to the competent enforcement authority in the Member State of enforcement, the enforcement of the Preservation Order in that Member State shall be:***
- (a) ***limited on the ground that certain amounts held in the account should be exempt from seizure in accordance with Article 31(3), or that amounts exempt from seizure have not or not correctly been taken into account in the implementation of the Order in accordance with Article 31(2); or***

(b) terminated on the *ground* that:

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- (i) the account preserved is *excluded* from *the scope of this Regulation pursuant to Article 2(3) and (4)*;
- (ii) *enforcement of the judgment, court settlement or authentic instrument which the creditor was seeking to secure by means of the Order has been refused in the Member State of enforcement*;
- (iii) *the enforceability of the judgment the enforcement of which the creditor was seeking to secure by means of the Order has been suspended in the Member State of origin*; or
- (iv) *point (b), (c), (d), (e), (f) or (g) of Article 33(1) applies. Article 33(3), (4) and (5) shall apply as appropriate.*

2. *Upon application by the debtor to the competent court in the Member State of enforcement, the enforcement of the Preservation Order in that Member State shall be terminated if it is manifestly contrary to the public policy (ordre public) of the Member State of enforcement.*

Article 35

Other remedies available to the debtor and the creditor

1. *The debtor or the creditor may apply to the court that issued the Preservation Order for a modification or a revocation of the Order on the ground that the circumstances on the basis of which the Order was issued have changed.*

2. *The court that issued the Preservation Order may also, where the law of the Member State of origin so permits, of its own motion modify or revoke the Order due to changed circumstances.*
3. *The debtor and the creditor may, on the ground that they have agreed to settle the claim, apply jointly to the court that issued the Preservation Order for revocation or modification of the Order or to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for termination or limitation of the enforcement of the Order.*
4. *The creditor may apply to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for modification of the enforcement of the Preservation Order, consisting of an adjustment to the exemption applied in that Member State pursuant to Article 31, on the ground that other exemptions have already been applied in a sufficiently high amount in relation to one or several accounts maintained in one or more other Member States and that an adjustment is therefore appropriate.*

Article 36
Procedure for the remedies pursuant to Articles 33, 34 and 35

- 1. *The application for a remedy pursuant to Article 33, 34 or 35 shall be made using the remedy form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2). The application may be made at any time and may be submitted by any means of communication, including electronic means, which are accepted under the procedural rules of the Member State in which the application is lodged.***
- 2. *The application shall be brought to the notice of the other party.***
- 3. *Except where the application was submitted by the debtor pursuant to point (a) of Article 34(1) or pursuant to Article 35(3), the decision on the application shall be issued after both parties have been given the opportunity to present their case, including by such appropriate means of communication technology as are available and accepted under the national law of each of the Member States involved.***
- 4. *The decision shall be issued without delay, but no later than 21 days after the court or, where national law so provides, the competent enforcement authority has received all the information necessary for its decision. The decision shall be brought to the notice of the parties.***

5. *The decision revoking or modifying the Preservation Order and the decision limiting or terminating the enforcement of the Preservation Order shall be enforceable immediately.*

Where the remedy was applied for in the Member State of origin, the court shall, in accordance with Article 29, transmit the decision on the remedy without delay to the competent authority of the Member State of enforcement, using the form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2). That authority shall, immediately upon receipt, ensure that the decision on the remedy is implemented.

Where the decision on the remedy relates to a bank account maintained in the Member State of origin, it shall be implemented with respect to that bank account in accordance with the law of the Member State of origin.

Where the remedy was applied for in the Member State of enforcement, the decision on the remedy shall be implemented in accordance with the law of the Member State of enforcement.

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Article 37
Right to appeal

Either party shall have the right to appeal against a decision issued pursuant to Article 33, 34 or 35. Such an appeal shall be submitted using the appeal form established by means of implementing acts adopted in accordance with the advisory procedure referred to in Article 52(2).

Article 38
Right to provide security in lieu of preservation

1. Upon application by the debtor:

- (a) the court that issued the Preservation Order may order the release of the funds preserved if the debtor provides to that court security in the amount of the Order, or an alternative assurance in a form acceptable under the law of the Member State in which the court is located and of a value at least equivalent to that amount.***

- (b) the competent court or, where national law so provides, the competent enforcement authority of the Member State of enforcement may terminate the enforcement of the Preservation Order in the Member State of enforcement if the debtor provides to that court or authority security in the amount preserved in that Member State, or an alternative assurance in a form acceptable under the law of the Member State in which the court is located and of a value at least equivalent to that amount.***

2. *Articles 23 and 24 shall apply as appropriate to the release of the funds preserved. The provision of the security in lieu of preservation shall be brought to the notice of the creditor in accordance with national law.*

*Article 39
Right of third parties*

1. *The right of a third party to contest a Preservation Order shall be governed by the law of the Member State of origin.*
2. *The right of a third party to contest the enforcement of a Preservation Order shall be governed by the law of the Member State of enforcement.*
3. *Without prejudice to other rules of jurisdiction laid down in Union law or national law, jurisdiction in respect of any action brought by a third party:*
 - (a) *to contest a Preservation Order shall lie with the courts of the Member State of origin, and*
 - (b) *to contest the enforcement of the Preservation Order in the Member State of enforcement shall lie with the courts of the Member State of enforcement or, where the national law of that Member State so provides, with the competent enforcement authority.*

Chapter 5 General provisions

Article 40

Legalisation or other similar formality

No legalisation or other similar formality shall be required in the context of this Regulation.

Article 41

Legal representation

Representation by a lawyer or other legal professional shall not be mandatory in proceedings *to obtain a Preservation Order. In proceedings pursuant to Chapter 4, representation by a lawyer or another legal professional shall not be mandatory unless, under the law of the Member State of the court or authority with which the application for a remedy is lodged, such representation is mandatory irrespective of the nationality or domicile of the parties.*

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Article 42
Court fees

The court fees *in proceedings to obtain a Preservation Order or a remedy against an Order* shall not be higher than the fees for obtaining an equivalent *national order or a remedy against such a national order*.

Article 43
Costs incurred by the banks

1. *A bank shall be entitled to seek payment or reimbursement from the creditor or the debtor of the costs incurred in implementing a Preservation Order only where, under the law of the Member State of enforcement, the bank is entitled to such payment or reimbursement in relation to equivalent national orders.*
2. *Fees charged by a bank to cover the costs referred to in paragraph 1 shall be determined taking into account the complexity of the implementation of the Preservation Order, and may not be higher than the fees charged for the implementation of equivalent national orders.*
3. *Fees charged by a bank to cover the costs of providing account information pursuant to Article 14 may not be higher than the costs actually incurred and, where applicable, not higher than the fees charged for the provision of account information in the context of equivalent national orders.*

Article 44
Fees charged by authorities

Fees charged by any authority or other body in the Member State of enforcement which is involved in the processing or enforcement of a Preservation Order, or in providing account information pursuant to Article 14, shall be determined on the basis of a scale of fees or other set of rules established in advance by each Member State and transparently setting out the applicable fees. In establishing that scale or other set of rules, a Member State may take into account the amount of the Order and the complexity involved in processing it. Where applicable, the fees may not be higher than the fees charged in connection with equivalent national orders.

Article 45
Time frames

Where, in exceptional circumstances, it is not possible for the court **■** or the **■** authority *involved* to respect the time *frames* provided for in **Article 14(7), Article 18, Article 23(2), the second subparagraph of Article 25(3), Article 28(2), (3) and (6), Article 33(3) and Article 36(4) and (5)**, the court or authority shall take the steps required by those provisions as soon as possible. **■**

Article 46
Relationship with national procedural law

1. All procedural issues not specifically dealt with in this Regulation shall be governed by *the law of the Member State in which the procedure takes place.*
2. *The effects of the opening of insolvency proceedings on individual enforcement actions, such as the enforcement of a Preservation Order, shall be governed by the law of the Member State in which the insolvency proceedings have been opened.*

Article 47
Data protection

1. *Personal data which are obtained, processed or transmitted under this Regulation shall be adequate, relevant and not excessive in relation to the purpose for which they were obtained, processed or transmitted, and shall be used only for that purpose.*
2. *The competent authority, the information authority and any other entity responsible for enforcing the Preservation Order may not store the data referred to in paragraph 1 beyond the period necessary for the purpose for which they were obtained, processed or transmitted, which in any event shall not be longer than six months after the proceedings have ended, and shall, during that period, ensure the appropriate protection of those data. This paragraph does not apply to data processed or stored by courts in the exercise of their judicial functions.*

Article 48
Relationship with other instruments

This Regulation is *without* prejudice to:

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- (a) ***Regulation (EC) No 1393/2007*** of the European Parliament and of the Council¹, ***except as provided for in Article 10(2), Article 14(3) and (6), Article 17(5), Article 23(3) and (6), Article 25(2) and (3), Article 28(1), (3), (5) and (6), Article 29, Article 33(3), Article 36(2) and (4), and Article 49(1) of this Regulation;***
 - (b) ***Regulation (EU) No 1215/2012;***

¹ ***Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79).***

- (c) **Regulation (EC) No 1346/2000;**
- (d) **Directive 95/46/EC, except as provided for in Articles 14(8) and 47 of this Regulation;**
- (e) **Regulation (EC) No 1206/2001** of the European Parliament and of the Council¹;
- (f) **Regulation (EC) No 864/2007, except as provided for in Article 13(4) of this Regulation.**

¹ **Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.06.2001, p. 1).**

Article 49
Languages

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1. *Any documents listed in points (a) and (b) of Article 28(5) to be served on the debtor which are not in the official language of the Member State in which the debtor is domiciled or, where there are several official languages in that Member State, the official language or one of the official languages of the place where the debtor is domiciled or another language which he understands, shall be accompanied by a translation or transliteration into one of those languages. Documents listed in point (c) of Article 28(5) shall not be translated unless the court decides, exceptionally, that specific documents need to be translated or transliterated in order to enable the debtor to assert his rights.*
2. *Any documents to be addressed under this Regulation to a court or competent authority may also be in any other official language ■ of the institutions of the Union ■, if the Member State concerned has indicated that it can accept **such other language**.*
3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

Article 50
Information to be provided by Member States

1. By ...^{*}, the Member States shall communicate the following information to the Commission:
 - (a) the *courts designated as* competent to issue *a Preservation Order* (Article 6(4));
 - (b) *the authority designated as competent to obtain account information* (Article 14);
 - (c) the methods of obtaining *account* information available under ■ their national law ■ (Article 14(5));
 - (d) the *courts* with which an appeal ■ is to be lodged ■ (Article 21);
 - (e) *the authority or authorities designated as competent to receive, transmit and serve the Preservation Order and other documents under this Regulation (point (14) of Article 4)*;

^{*} OJ: insert please the date: *24 months after the date of entry into force of this Regulation.*

- (f) the authority competent to enforce the *Preservation Order* in accordance with Chapter 3;
- (g) the extent to which joint and nominee accounts can be preserved under ■ their national law ■ (Article 30);
- (h) the rules applicable to amounts exempt from *seizure* under national law ■ (Article 31);
- (i) *whether, under their national law, banks are entitled to charge fees for the implementation of equivalent national orders or for providing account information and, if so, which party is liable, provisionally and finally, to pay those fees (Article 43);*

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- (j) *the scale of fees or other set of rules setting out the applicable fees charged by any authority or other body involved in the processing or enforcement of the Preservation Order (Article 44);*
- (k) *whether any ranking is conferred on equivalent national orders under national law* █ (Article 32);
- (l) *the courts or, where applicable, the enforcement authority, competent to grant a remedy (Article 33(1), Article 34(1) or (2));*
- (m) *the courts with which an appeal is to be lodged, the period of time, if prescribed, within which such an appeal must be lodged under national law and the event marking the start of that period (Article 37);*
- (n) *an indication of court fees* █ (Article 42); *and*
- (o) *the languages accepted for translations of the documents* █ (Article 49(2)).

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The Member States shall apprise the Commission of any subsequent changes to that information.

2. The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters .

Article 51

Establishment and subsequent amendment of the forms

The Commission shall adopt implementing acts establishing and subsequently amending the forms referred to in Articles 8(1), 10(2), 19(1), 25(1), 27(2), 29(2) and 36(1), the second and third subparagraphs of Article 36(5) and Article 37. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 52(2).

Article 52
Committee procedure

1. *The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*
2. *Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.*

Article 53
Monitoring and review

1. By ...^{*}, the Commission shall **submit** to the European Parliament, **to** the Council and **to** the European Economic and Social Committee **a report on the application of this Regulation, including an evaluation as to whether:**
 - (a) *financial instruments should be included in the scope of this Regulation, and*
 - (b) *amounts credited to the debtor's account after the implementation of the Preservation Order could be made subject to preservation under the Order.*

The report shall be accompanied, if appropriate, by **a proposal to amend** this Regulation **and an assessment of the impact of the amendments to be introduced.**

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^{*} OJ: insert please the date: **90 months after the date of entry into force of this Regulation.**

2. ***For the purposes of paragraph 1, the*** Member States shall collect and make available to the Commission ***upon request*** information on:
- (a) the number of applications for ***a Preservation Order and*** the number of cases in which the ***Order*** was issued **■** ;
 - (b) the number of applications for a ***remedy pursuant to*** Articles ***33 and*** 34 and, ***if possible, the number of cases in which the remedy was granted; and***
 - (c) ***the number of appeals lodged pursuant to Article 37 and, if possible, the number of cases in which such an appeal was successful.***

Chapter 6

Final provisions

Article 54 *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*.

It shall apply from ...^{*}, with the exception of Article 50, which shall apply from ...^{**}.

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

Done at

For the European Parliament
The President

For the Council
The President

■

* OJ: insert please the date: **30 months after the date of entry into force of this Regulation.**

** OJ: insert please the date: **24 months after the date of entry into force of this Regulation.**