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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  
- General Approach

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Delegations will find in the Annex the text of the Articles and of some selected recitals of the above proposal proposed by the Presidency as a compromise with a view to the adoption of a general approach by the Council (Justice and Home Affairs) at its meeting on 5 and 6 December 2013.

Changes compared to the text of the Commission proposal are marked in **bold** or by (...) for deleted text.

# Chapter 1

## Subject matter, scope and definitions

### Article 1

#### Subject matter

1. This Regulation establishes a European procedure (...) **enabling** a creditor to obtain a European Account Preservation Order (hereinafter "**Preservation Order**" or "**Order**") **which will prevent** <sup>1</sup> **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 the national law of** the Member States.

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<sup>1</sup> Article 1 could be explained by way of recitals that could be worded along the following lines (based on recitals (6) and (8) of the Commission proposal):

*A creditor should be able to obtain a protective **measure in the form of a Preservation Order** preventing the transfer or withdrawal of funds held by his debtor in a bank account maintained in a Member State if he is facing the 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 entail that not only the debtor himself, but also persons authorised by him to make payments through this account, e.g. by way of a standing order or through direct debit or the use of a credit card, are prevented from using the funds.***

*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.***

## Article 2

### Scope

1. This Regulation shall apply 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. It shall 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 shall not apply to:
  - (aa) **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;**
  - (ab) **wills and succession, including maintenance obligations arising by reason of death;**
  - (a) **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**<sup>2</sup>;
  - (b) social security;
  - (c) arbitration.

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<sup>2</sup> Article 2(2) could be explained by way of recitals that could be worded along the following lines (based on recital (9) of the Commission proposal):

*The scope of this Regulation should cover all civil and commercial matters apart from certain well-defined matters. Notably, this Regulation should not apply (...) to **claims against a debtor in insolvency proceedings. This entails that no Preservation Order can be issued against the debtor once insolvency proceedings as defined in Regulation (EC) No 1346/2000 on insolvency proceedings have been opened in relation to him. On the other hand, the exclusion should allow an insolvency administrator seeking to recover detrimental payments made by the debtor to third parties to use the Preservation Order to secure such recovery.***

3. This Regulation shall not apply to bank accounts which **are immune**<sup>3</sup> 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 Article 2(a)** of Directive 98/26/EC<sup>4</sup>.
4. (...)
5. **This Regulation shall not apply to bank accounts held by and with Central Banks when acting in their capacity as monetary authorities.**

*Article 3*  
*(...) Cross-border cases*<sup>5</sup>

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 seized with the application for the Preservation Order pursuant to Article 6, or**
  - (b) **the Member State in which the creditor is domiciled.**

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<sup>3</sup> It could be clarified in the recitals that "accounts which are immune from seizure under the law of the Member State where the account is maintained" include accounts which cannot be preserved by an equivalent national order.

<sup>4</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1988 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

<sup>5</sup> Article 3 could be explained by way of recitals that could be worded along the following lines:

*This Regulation should apply to cross-border cases only and should define what constitutes a cross-border case in this particular context.*

*For example, 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 targeted by the Preservation Order is maintained in another Member State.*

*This Regulation should not apply to the preservation of accounts maintained in the Member State of the court seized with 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).*

2. **The relevant moment for determining whether there 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.**

*Article 4*

*Definitions*

For the purposes of this Regulation:

- (1) "bank account" or **“account”** means any account containing **funds** 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<sup>6, 7</sup>, 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<sup>8</sup>, outside the Union where such branches are located in the Union.**

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<sup>6</sup> 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, 27.06.2013, p. 1).

<sup>7</sup> For clarification purposes the recitals could indicate that credit institutions in the sense of this definition means undertakings the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account and thus does not include institutions which do not take deposits (e.g. institutions providing financing for export and investment projects or projects in developing countries or institutions providing financial market services).

<sup>8</sup> 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, 27.06.2013, p. 338).

- (3) (...)
- (4) (*integrated into point (5)*)
- (5) "funds" means **money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits**<sup>9</sup>;
- (6) "Member State **in which** the bank account is **maintained**" means:
- (a) the Member State indicated in the account's IBAN (**International Bank Account Number**);
- (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**<sup>10</sup>;
- (7) "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**; <sup>11</sup>

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<sup>9</sup> This definition corresponds to the definition of "cash" in point (d) of Article 2(1) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (OJ L 168, 27.6.2002, p. 43).

<sup>10</sup> This paragraph aims to integrate in the draft Regulation the philosophy of Article 19 of the Rome I Regulation (Regulation (EC) No 593/2008).

<sup>11</sup> Point (7) of Article 4 could be explained by way of recitals that could be worded along the following lines:

*The Preservation Order should be available for 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.* (The last part of this recital is modelled on Article 7(2) and (3) of Regulation Brussels I (Regulation (EU) No 1215/2012).

- (7a) "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<sup>12</sup> 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 as defined in point 7;
- (7b) "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 as defined in point 7;

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<sup>12</sup> The geographical scope of the proposed Regulation will be further clarified by way of recitals that could be worded along the following lines:

*This Regulation should apply only to the Members States which are bound by it in accordance with the Treaties. The procedure for obtaining a European Account 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 only relate to the preservation of bank accounts which are maintained in such a Member State.*

*In accordance with Article 3 of the 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 Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has given notice of its wish to take part in the adoption and application of this Regulation.*

*In accordance with Articles 1 and 2 of the abovementioned Protocol No 21, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. This is, however, without prejudice to the possibility for the United Kingdom of notifying its intention of accepting this Regulation after its adoption in accordance with Article 4 of the said Protocol.*

*In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.*

Furthermore, the geographical scope of the Regulation will become clear for the users also from the standard forms which, in the relevant points specifying the domicile of the creditor, the location of the bank account and the location of the court/authorities involved, will list only those Member States that are bound by the Regulation in accordance with the Treaties.

- (8) "judgment" means any judgment given by a court or tribunal of **the** Member States, whatever the judgment may be called, including **a decision on** the determination of costs or expenses by an officer of the court;
- (9) (...)
- (10) "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;
- (11) "authentic instrument" means a document which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:
- (a) relates to the signature and the content of the instrument, and
  - (b) has been established by a public authority or other authority empowered for that purpose;
- (12) "Member State of origin" means the Member State in which the **Preservation Order** was issued;
- (13) "Member State of enforcement" means the Member State in which the bank account to be preserved is **maintained**;
- (14) "**information** authority" means the authority which a Member State (...) has designated as competent for **obtaining the** necessary information on the **debtor's** account(s) pursuant to Article 17;



- (14a) **"competent authority"** means the authority or authorities which a Member State has designated as competent for the receipt, transmission or service pursuant to Article 13(2), Article 24(3), (5) and (6), Article 27(1b), Article 28(3), Article 28a(3) and point (a) of Article 35b(5);
- (15) "domicile" means domicile as determined in accordance with Article 62 and Article 63 of Regulation (EU) No 1215/2012<sup>13</sup>.

## **Chapter 2**

### **Procedure for obtaining a Preservation Order**

#### *Article 5*

#### *Availability*

1. **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;**
  - (b) (...)
  - (c) (...) 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.**
  
2. *(moved to paragraph (c) above)*

(...)

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<sup>13</sup> 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 (Recast) (OJ L 351, 20.12.2012, p. 1).

*Article 6*  
*Jurisdiction*

1. (...)
2. **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.**<sup>14</sup> (...)
3. (...)
4. **Notwithstanding paragraph 2, 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.**
- 5.<sup>15</sup> (...) 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.**
- 6.<sup>16</sup> Where the **creditor** has obtained an authentic instrument, (...) **jurisdiction to issue a Preservation Order for the claim specified in the authentic instrument shall lie with the courts designated for that purpose** in the Member State **in which** the authentic instrument **was** drawn up (...).

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<sup>14</sup> Article 6 could be explained by way of a recital that could be worded along the following lines (based on the first sentence of recital (11) of the Commission proposal):

*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 on the substance of the matter.***

<sup>15</sup> Article 14(1) of the Commission proposal.

<sup>16</sup> Article 14(2) of the Commission proposal.

Article 7  
Conditions for issuing a **Preservation Order** <sup>17</sup>

1. **Subject to paragraph 1a, 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 (...)**<sup>18</sup>.

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<sup>17</sup> Article 7 could be explained by way of recitals worded along the following lines (based on recital (12) of the Commission proposal):

*The conditions for issuing the **Preservation Order** should strike an appropriate balance between the interest of the creditor to obtain an Order (...) and the interest of the debtor to prevent 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 in all situations, also when having already obtained a judgment, 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 undertaken by the debtor with regard to his assets. In assessing the evidence, the court may consider that withdrawals from accounts and expenditures 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, in themselves, not 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 in deteriorating, in itself, constitute 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.*

<sup>18</sup> Corresponds to the previous point (b) of Article 7(1) and Article 14a.

- 1a. 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 (...).**<sup>19</sup>
2. (...)

#### *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 50(2)**.
2. The application (...) shall include (...) the following information:
  - (aa) **the name and address** of the court **with** which the application is **lodged**;
  - (a) **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, the date of birth and, if applicable and available**<sup>20</sup>, **the 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 incorporation/formation/registration and the identification or registration number or, where no such number exists, the date and place of incorporation/formation/registration (...);**

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<sup>19</sup> Takes over the previous point (a) of Article 7(1).

<sup>20</sup> Please note that the language was aligned to the wording used in the standard forms of the Regulation Brussels I (recast) and that this provision has to be read in context with Article 21(1a), according to which the court can invite the creditor to complete his application.

- (b) **details concerning the debtor:** name and **contact details** (...) and, where applicable, **name and contact details of the debtor's representative and, if available**<sup>21</sup>:
- (i) **where the debtor is a natural person, the 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 incorporation/formation/registration and the identification or registration number or, where no such number exists, the date and place of incorporation/formation/registration;**
- (c) **a number capable of identifying the bank, such as IBAN or BIC and/or the name and address of the bank, with which the debtor holds one or more accounts to be preserved;**
- (ca) **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;**
- (cb) **where none of the information required under paragraph (c) can be provided**<sup>22</sup>, **a statement that a request is made** for obtaining account information (...) pursuant to Article 17 **and a substantiation why the creditor believes that the debtor holds one or more account(s) with a bank in a specific Member State;**

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<sup>21</sup> See Article 26(1c) in this context. It could be indicated in the standard form that the creditor runs the risk that the Order cannot be implemented if he does not give all information.

<sup>22</sup> The structure of the standard form should make it clear that it is possible within one application to apply points (c) and (cb) in parallel when they concern accounts held at different banks (in the same or in different Member States). Thus, it will be possible for a creditor to specify one or more account(s)/bank(s) and to make an Article 17 request for other bank(s)/account(s) in the same application.

- (d) **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**<sup>23</sup> **and of any interest (...) recoverable** pursuant to Article 18;
  - (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 18;
- (e) **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**;
- (ea)<sup>24</sup> **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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<sup>23</sup> A recital could explain that the 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 another security for part of his claim or where part of the claim is uncontested.

<sup>24</sup> Point (f) of Article 15 of the Commission proposal.

- (f) a description of all relevant circumstances justifying **the issuing** of the **Preservation Order** as required by Article 7(1);
- (g) *(moved to point (e)(i) above)*
- (ga) **where applicable, an indication of the reasons why the creditor believes he should be exempted from providing security pursuant to Article 16a;**
- (h) a list of the evidence provided (...) by the **creditor**;
- (i) (...)
- (j) a declaration **as provided for in Article 19 as to whether the creditor has seised other courts or authorities (...)** with 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;**
- (k) **an optional indication of the creditor's bank account to be used for any voluntary payment of the claim by the debtor;**<sup>25</sup>
- (l) **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 16b.**

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<sup>25</sup> This paragraph has to be read in context with Article 26(1b) and point (h) of Article 21b(2).

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 by the procedural rules of the Member State in which the application is lodged.**

*Article 9*

*(moved to Article 21(1) and (1a))*

*Article 10*

*(moved to Article 15a)*

*Article 11*

***Taking of evidence***

1. **The court shall take its decision in a written procedure on the basis of the information and evidence provided by the creditor in or with his application. If the (...) court considers the evidence provided insufficient it may, where national law so allows, request the creditor to provide additional documentary evidence.**
2. **Notwithstanding paragraph 1 and subject to Article 15a, the court may 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, provided that this does not delay the proceedings unduly.**



*Article 12*  
*(moved to Article 16a)*

*Article 13*  
*Initiation of proceedings on the substance*

1. Where **the creditor has applied for a Preservation Order before initiating** proceedings on the substance **of the matter<sup>26</sup>**, he shall initiate such proceedings **and shall 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 latest.** The court may also, at the request of the debtor, extend the 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 terminated 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 processed in accordance with the law of that Member State.**

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<sup>26</sup> A recital could explain that proceedings on the substance of the matter will cover any proceedings aiming at obtaining an enforceable title on the underlying claim and would include, for instance, also proceedings such as the French “procédure de référé”.

**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 in accordance with the advisory procedure referred to in Article 50(2)<sup>27</sup> and shall transmit the revocation in accordance with Article XX to the competent authority of the Member State of enforcement. That authority shall process the revocation by applying Article 24 as appropriate.**

**3.<sup>28</sup> For the purpose 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) shall be the first authority receiving the documents to be served.**

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<sup>27</sup> It is suggested to provide for a separate form for the revocation of the Preservation Order in order to make the procedure of revoking the Order speedier.

<sup>28</sup> This paragraph is modelled on Article 32(1) of Regulation No 1215/2012 (the Brussels I recast).

*Article 14*

(...)

1. *(moved to Article 6(5))*
2. *(moved to Article 6(6))*
3. *(...)*
4. *(...)*

*Article 15*

*(integrated into Article 8)*

*Article 15a<sup>29</sup>*

*Ex parte procedure<sup>30</sup>*

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

*Article 16*

*(moved to point (c) of Article 8(2))*

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<sup>29</sup> Initially Article 10 of the Commission proposal.

<sup>30</sup> Article 15a could be explained by way of a recital worded along the following lines (based on recital (13) of the Commission proposal):

*In order to ensure the surprise effect of the **Preservation Order** and to ensure that the **Order 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 application **nor** be heard prior to **the issue of the Order** or notified of the Order prior to its implementation. **If, 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 is justified it should not issue the Order. In view of the absence of a prior hearing of the debtor this Regulation should provide for other safeguards in order to protect the debtor's rights.***

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 16b**.

By way of exception, the court may dispense with this requirement if it considers that such security is inappropriate in the circumstances of the case.

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<sup>31</sup> Initially Article 12 of the Commission proposal

<sup>32</sup> Article 16a could be explained by way of recitals worded along the following lines (based on the first sentence of recital (15) of the Commission proposal):

*This Regulation should provide sufficient safeguards against abuse of the Order. **One such important safeguard should be the possibility to require the creditor to provide security 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 Preservation Order and to ensure compensation to the debtor and may, in the absence of specific evidence as to the amount of the potential damage, 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 only exceptionally if it considers that such security is inappropriate 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 claim is of such a size 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 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.*

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 paragraph 1 if it considers this necessary and appropriate in the circumstances of the case.**
3. **If the court requires the provision of security 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 16b*

*Liability of the creditor*<sup>33</sup>

1. **The creditor shall be liable for any damage caused to the debtor by the Preservation Order due to a 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 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 failed to request the release of over-preserved amounts as provided for in Article 28;**

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<sup>33</sup> It will be clarified in the recitals that the Regulation should, as a minimum standard, provide for the liability of the creditor for any damage caused to the debtor by the Preservation Order due to a fault on the creditor's part and provide for a harmonised rule on the burden of proof as regards specific grounds for liability listed in the Regulation. Moreover, the recitals will clarify that in areas that are not covered by the specific grounds for liability listed in the Regulation the Member States will be able to maintain or introduce in their national law other grounds or types of liability, such as a strict liability, in order to ensure a higher level of protection for the debtor.

- (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 of the creditor to comply with his obligations under Article 19; or**
- (d) **if the Order is revoked or its enforcement terminated because the creditor failed to comply with his obligations with regard to service or translation of documents or with regard to curing the lack of service or the lack of translation under this Regulation.**

**3. Notwithstanding paragraph 1, Member States may maintain or introduce in their national law other grounds or types of liability or rules on burden of proof. All other aspects related 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 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<sup>34</sup>, or failing that,**
- (b) **which has otherwise the closest connection to the case<sup>35</sup>.**

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<sup>34</sup> 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).

<sup>35</sup> The recitals will indicate that the amount preserved in the different Member States of enforcement could be one of the aspects giving an indication for the closest connection.

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

*Article 17*

*Request for obtaining 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<sup>36</sup> 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 BIC, IBAN or another bank number capable of identifying the bank, 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 enable the identification of the bank or banks and of the debtor's account(s). (...)<sup>37</sup>**
2. **The creditor shall make his request 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 seised with the application for a Preservation Order 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 (c) of Article 8(2), and when, where applicable, the creditor has provided security pursuant to Article 16a (...) the court shall transmit the request for information to the information authority in the Member State of enforcement in accordance with Article XX.**

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<sup>36</sup> The recitals could give examples of situations which would give reasons to believe that a debtor holds an account in a specific Member State, e.g. that the debtor works or exercises a professional activity in that Member States or has property there.

<sup>37</sup> The last phrase of this paragraph has been integrated into paragraph 2.

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. (...).**<sup>38</sup>
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 obtaining the relevant information provided that they are not disproportionate with regard to costs or time.**

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

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<sup>38</sup> The second phrase of this paragraph has been moved to the new paragraph 5a.



- 5a. As soon as the information authority in the Member State of enforcement has obtained the account information, it shall transmit it to the requesting court in accordance with Article XX.**
- 5b. 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 such information the application for a Preservation Order is rejected in full the requesting court shall without delay release any security that the creditor has provided pursuant to Article 16a.**
- 6. (...) Where under paragraph 4, 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 that an early notification may jeopardise the effect of the Preservation Order.**

*Article 18*

*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 until the date the Order is issued provided that the amount or type of interest does not constitute 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 the title in question, to the extent that a determination has been made that these costs must be borne by the debtor.**

*Article 19*

*(...) Parallel applications (...)*

0. **The creditor may not submit parallel applications for a Preservation Order against the same debtor aimed at securing the same claim to several courts at a time.**
1. **In his application for a Preservation Order, the creditor shall declare whether he has seised any other court or authority with 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.**
2. **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 of this 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.**
3. **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 the issuing of the Preservation Order, in full or in part, is still appropriate (...).**

*Article 20*

*(deleted)*

*Article 21*

***Decision on the application for (...) the Preservation Order***

1. The court seised **with** an application for a **Preservation Order** shall examine whether the **conditions and** requirements set out in **this Regulation** are met.<sup>39</sup> (...)
- 1aa. It shall **make its decision (...)** without delay, but no later than by the expiry of the **time limits set out in Article 21a.**
- 1a. Where the **creditor did not provide all the information required** by Article 8, the court **seised with the application may**, unless the application is clearly inadmissible or unfounded, give the **creditor** the opportunity to complete or rectify the application **within a time limit to be specified by the court (...)**.<sup>40</sup> **If the creditor fails to complete or rectify the application within the specified time limit, the application shall be rejected.**
- 1b. **The Preservation Order shall be issued in the amount justified by the evidence referred to in Article 11 and the law applicable to the underlying claim and shall include, where appropriate, interest and/or costs pursuant to Article 18.**  
**The Order may under no circumstances be issued in an amount exceeding the amount indicated by the creditor in his application.**
- 1c. **The decision 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.**
2. *(moved to the new Article 21b)*
3. *(moved to the new Article 21a(1))*

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<sup>39</sup> This phrase corresponds to Article 9(1) of the Commission proposal.

<sup>40</sup> This phrase corresponds to Article 9(2) of the Commission proposal.

4. *(moved to the new Article 21a(2))*
5. *(moved to the new Article 21a(3))*
6. *(integrated into Article 26(1a))*
7. *(moved to the new Article 21c)*

### *Article 21a*

#### *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 11(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 16a, 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 or, as the case may be, its decision to request information pursuant to Article 17 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 17, the court shall issue its decision without delay once it has received the information referred to in Article 17(5a) or (5b).**

*Article 21b*

*Form and content of the Preservation Order*

1. (...) The **Preservation Order** shall be issued **using** the form **established in accordance with the advisory procedure referred to in Article 50(2) and shall bear a stamp, signature and/or another authentication<sup>41</sup> 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) **name, address of the court and the file number of the case;**
  - (b) **details of the creditor as indicated in point (a) of Article 8(2);**
  - (c) **details of the debtor as indicated in point (b) of Article 8(2);**
  - (d) **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 should be preserved;**

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<sup>41</sup> The recitals could clarify that the methods for signing the Preservation Order 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.

- (e1) where applicable, an indication that the number of the account or accounts to be preserved was/were obtained by a request pursuant to Article 17 and that the bank shall, where necessary pursuant to the second subparagraph of Article 26(1c), obtain this number/these numbers from the information authority of the Member State of enforcement;<sup>42</sup>**
- (f) the amount to be preserved by the Order;**
- (f1) an instruction to the bank to implement the Order in accordance with Article 26;**
- (g) the date of the issuing of the Order;**
- (h) if the creditor has indicated an account in his application pursuant to point (k) of Article 8(2), an authorisation to the bank pursuant to Article 26(1b) to release and transfer, if 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;**
- (i) information on where to find the electronic version of the form for the declaration pursuant to Article 27.**

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<sup>42</sup> See footnote 48 on point (a) of the second subparagraph of Article 26(1c).

- 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 third sentence of Article 47(1);**
  - (e) where applicable, an indication that the creditor is responsible for initiating the enforcement of the Order and consequently, where applicable, is responsible for transmitting it to the competent authority of the Member State of enforcement pursuant to Article 24(3) and for initiating service on the debtor pursuant to Article 28a(2), (3) and (4); and**
  - (f) information on 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. The form for the creditor and debtor (part A and B pursuant to paragraphs 2 and 3) shall, in such a case, contain in point (d) of paragraph 2 a list of all banks involved.**

*Article 21c*

*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 pursuant to Chapter 4:**

- (a) **until the Order is revoked;**
- (aa) **until the enforcement of the Order is terminated; or**
- (b) **(...) 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 22*

*Appeal against a refusal to issue the Preservation Order*

1. **The creditor shall have the right to appeal against the decision of the court by which his application for a Preservation Order was rejected (...) in whole or in part.**
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 pursuant to point (c) of Article 48(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 15a.**

43

## **Chapter 3**

### **Enforceability and enforcement of the Preservation Order**

#### *Article 23*

#### ***Recognition***

**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 another Member State without the need for a declaration of enforceability (...).**

#### *Article 24*

#### ***Enforcement of the Preservation Order***

1. **(...) Subject to the provisions of this Chapter, the enforcement of the Preservation Order shall be effected in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State in which the bank account is maintained (Member State of enforcement).**
2. **All authorities involved in the enforcement of the Order shall act without delay.**

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<sup>43</sup> A recital could clarify that the right of the creditor to appeal pursuant to this Article shall be without prejudice to the possibility of the creditor to make, on the basis of new facts or new evidence, a new application for a Preservation Order.

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 21b(2) and a blank standard form for the declaration pursuant to Article 27 shall, for the purposes of paragraph 1, be transmitted in accordance with Article XX 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 21b.**
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<sup>44</sup>.**
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 21b(2) and (4) shall be transmitted to the competent authority in the relevant Member State of enforcement.**

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<sup>44</sup> A recital could clarify that it would be for the national law of the Member State of enforcement to determine whether fees for the enforcement of the Preservation Order can be requested in advance.

*Article 25*  
(moved to Article 28a)

*Article 26*  
*Implementation of the Preservation Order*

1. A bank to which a **Preservation Order** is addressed shall implement it **without delay following the receipt of the Order or, where so provided for by the law of the Member State of enforcement, of a corresponding instruction to implement the Order. (...)**
- 1a. **To implement the Preservation Order the bank shall, subject to the provisions of Article 32, preserve the amount specified in the Order either<sup>45</sup>**
  - (a) by ensuring that **this amount (...)** is not transferred or withdrawn from the account or accounts **indicated in the Order or identified pursuant to paragraph 1c; 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 issuing the declaration pursuant to Article 27 in accordance with the time limits set out in Article 27(1).**

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<sup>45</sup> A recital could explain that, depending on the method available under the law of the Member State of enforcement, the implementation of the Preservation Order could be done by either blocking the preserved amount in the debtor's account or by transferring this amount to an account dedicated for preservation purposes, which could be an account held by the competent enforcement authority, the court or the primary bank.

**1b. Notwithstanding point (a) of paragraph 1a, 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 apply:**

- (a) this is specifically indicated in the Order, and**
- (b) the law of the Member State of enforcement so allows, and**
- (c) there are no competing Orders with regard to the account concerned.<sup>46</sup>**

**1c. Where the Preservation Order does not specify the number of the bank account or accounts of the debtor but provides only the name and other specifics regarding the debtor, the bank or other entity<sup>47</sup> 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) <sup>48</sup>where in accordance with Article 21b(2)(e1) it is indicated in the Order that the number or numbers of the account to be preserved was/were obtained by a request pursuant to Article 17, obtain the account number or numbers from the information authority of the Member State of enforcement; and**
- (b) in all other cases, not implement the Order.**

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<sup>46</sup> This paragraph has to be read in connection with point (k) of Article 8(2) and point (h) of Article 21b(2).

<sup>47</sup> Examples for such other entities can be given in the recitals.

<sup>48</sup> The recitals could clarify that this point would only apply in the rare situations where the bank cannot itself, on the basis of the information provided by the Order, identify the account or accounts to be preserved, for example where there are accounts of several persons having the same name and same address held in the same bank. The recitals could further clarify that this provision does not require the bank to make a formal request to the information authority, but that it rather enables the bank to get the account information (that was already obtained at an earlier stage) by swift, simple and informal means of information.

- 1d.** Any funds **held in the account or accounts referred to in point (a) of paragraph 1a** exceeding the amount specified in the **Preservation Order shall remain unaffected by the implementation of the Order.**
- 1e.** **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 1a 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.**
- 1f.** **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 accordance with 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 29;**
  - (d) current accounts in joint names, subject to Article 29.**
2. *(moved to paragraph 1)*
3. *(...)*
4. **Where the currency of the funds held in the account or accounts referred to in point (a) of paragraph 1a is not the same as that in which the Preservation Order was issued, the bank shall convert the amount specified in the Order to 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.**
5. *(moved to the new Article 27a)*

*Article 27*

*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 in accordance with the advisory procedure referred to in Article 50(2) indicating whether<sup>49</sup> 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 no later than by the end of the eighth working day following the implementation of the Order.**

**The declaration shall be transmitted, without delay, in accordance with paragraphs 1a and 1b.**

- 1a. **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 XX to the issuing court and by registered post attested by an acknowledgment of receipt, or by equivalent electronic means, to the creditor.**
- 1b. **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 XX 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 XX to the issuing court and by registered post attested by an acknowledgment of receipt, or by equivalent electronic means, to the creditor (...).**

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<sup>49</sup> It is suggested inserting in the form for the declaration concerning the preservation of funds the possibility to specify that no funds were preserved for instance because it was not possible to identify any account in accordance with Article 26(1c) or because the funds held in the account did not exceed the amount exempt from preservation pursuant to Article 32.

2. (...) **The bank or other entity responsible for enforcing the Preservation Order, shall upon request of the debtor, disclose to the debtor the details of the Order. The bank or entity may do so also without such a request.**
3. (...)
4. (*moved to the new Article 27a*)

#### *Article 27a*

##### *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 28*

##### *Duty of the creditor to request the release of over-preserved amounts*

1. (...)
2. The **creditor** shall have **the 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**,
  - (i) where the **Order** (...) covers several accounts (...) in the same Member State or in different Member States, or
  - (ii) 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.**

3. **By the end of the third working day** following the receipt of **any** declaration pursuant to Article 27 showing such **over-preservation the creditor shall, by the swiftest possible means and by using the form for requesting the release of over-preserved amounts, established in accordance with the advisory procedure referred to in Article 50(2)** <sup>50</sup>, **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, upon receipt of the request, shall promptly instruct the bank concerned to effect the release of the over-preserved amounts. Article 26(1f) shall apply in the reverse order.**

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

*Article 28a*<sup>51</sup>

*Service (...) on the debtor*

1. **The Preservation Order, the other documents referred to in paragraph 5 and the declaration pursuant to Article 27 shall be served on the debtor in accordance with the provisions of this Article (...).**

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<sup>50</sup> In order to standardise and speed up the procedures, it is suggested to insert an additional form for requesting the release of over-preserved amounts. It is suggested that this form is made an Annex to the declaration pursuant to Article 27, so that this form is transmitted to the creditor together with the information about the preservation of funds. This form should also contain an information point making the creditor aware of his obligations set out in Article 28.

<sup>51</sup> Initially Article 25 of the Commission proposal.



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 27 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 27 showing that amounts have been preserved, transmit the documents referred to in paragraph 1 in accordance with Article XX 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 its law.

Where the Member State in which the debtor is domiciled is the only Member State of enforcement, the documents referred to in paragraph 5 shall be transmitted to the competent authority of that Member State at the time of transmission of the Order in accordance with Article 24(3). In such a case, that competent authority shall initiate the service of all documents referred to in paragraph 1 by the end of the third working day following the day of receipt or issue of the declaration pursuant to Article 27 showing that amounts have been preserved.

The competent authority shall inform the issuing court and 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, where necessary, accompanied by a translation or transliteration as provided for in Article 47(1):**
- (i) the Preservation Order using parts A and B of the form referred to in paragraphs 2 and 3 of Article 21b;**
  - (ii) the application for the Preservation Order that was submitted by the creditor to the court;**
  - (iii) copies of all documents submitted by the creditor to the court in order to obtain the Order.<sup>52</sup>**
- 6. Where the Preservation Order concerns more than one bank, only the first declaration pursuant to Article 27 showing that amounts have been preserved shall be served on the debtor in accordance with this Article. Any subsequent declarations pursuant to Article 27 shall be brought to the notice of the debtor without delay.**

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<sup>52</sup> A recital could clarify that the court may attach any further documents on which the court based its decision, such as verbatim transcripts of any oral hearing.

*Article XX*

*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 in it is easily legible<sup>53</sup>.**
  
2. **The court or authority<sup>54</sup> that received documents in accordance with paragraph 1 shall, within one working day of receipt, send a receipt to the authority, creditor or bank that transmitted the documents by the swiftest possible means of transmission and by using the standard form<sup>55</sup> established in accordance with the advisory procedure referred to in Article 50(2).**

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<sup>53</sup> Article XX takes over the philosophy of Article 4(2) of Regulation (EC) No 1393/2007 (Service of documents Regulation).

<sup>54</sup> The issue of the acknowledgement of receipt of the bank's declaration by the creditor is provided for in Article 27(1a) and (1b), which require the bank's declaration to be sent to the creditor by registered post attested by an acknowledgment of receipt, or by equivalent electronic means.

<sup>55</sup> It is suggested to model the standard form for the acknowledgment of receipt on the one used under Regulation (EC) No 1393/2007 (Service of documents Regulation) - see OJ L 324, 10.12.2007, p. 90.

Article 29

*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** (...).

Article 30

*(moved to Article 43a)*

Article 31

*(moved to Article 43b)*

Article 32

*Amounts exempt from preservation*<sup>56</sup>

1. Where (...) **certain** amounts **are exempt from seizure under the law of the Member State of enforcement** (...), those amounts shall be exempt from **preservation under this Regulation**.
2. (...)

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<sup>56</sup> Article 32 and Articles 35(1)(a) and 35a(3), which have to be read in context with Article 32, could be explained by way of a recital worded along the following lines:

*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. 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.*

3. (...) **Where, under the law of the Member State of enforcement, the amounts referred to in paragraph 1 are exempted without any request<sup>57</sup> from the debtor, the body responsible for exempting the amounts in that Member State shall, of its own motion, exempt the relevant amounts from preservation.**
- 3a. **Where, under the law of the Member State of enforcement, the amounts referred to in paragraph 1 are exempted at the request of the debtor, the amounts shall be exempted from preservation upon application by the debtor as provided for by point (a) of Article 35(1).**
4. (*integrated into paragraph 3*)

*Article 33*

*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**.<sup>58 59</sup> (...)

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<sup>57</sup> The information on the different types of exemption systems applicable in the Member States should be given in the standard form by way of reference to the European Judicial Network where that information will be made available.

<sup>58</sup> A recital could clarify that this would also cover situations where, under national law, certain enforcement measures have priority over preservation measures.

<sup>59</sup> It could be clarified in a recital that for the purposes of this Regulation *in personam* orders as existing in some national legal systems can be considered "equivalent national orders", but that a distinction might need to be made as regards the costs for the implementation of such orders.

# Chapter 4

## Remedies against the Preservation Order

### Article 34

#### *Remedies of the debtor against the Preservation Order*

1. (...) Upon application of 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;<sup>60</sup>
  - (b)<sup>61</sup> the Order, the declaration pursuant to Article 27 and/or the other documents referred to in Article 28a(5) were not served on the debtor within 14 days of the preservation of his account(s);
  - (c) the documents served on the debtor in accordance with Article 28a did not meet the language requirements set out in Article 47(1);
  - (d) preserved amounts that exceed the amount of the Order were not released in accordance with Article 28;
  - (e) the claim, the enforcement of which the creditor is seeking to secure with the Order, has been paid in full or in part; or
  - (f) a judgment on the substance of the matter<sup>62</sup> has dismissed the claim the enforcement of which the creditor was seeking to secure with the Order; or the judgment has been set aside, or the court settlement or authentic instrument, the enforcement of which the creditor was seeking to secure with the Order, annulled.<sup>63</sup>

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<sup>60</sup> Examples of situations covered by this ground could be given in the recitals.

<sup>61</sup> Points (c), (d), (e) and (f) take over the points (a), (b), (c) and (d) of previous Article 35a (as was contained in doc 11713/13).

<sup>62</sup> See footnote 25 on Article 13(1).

<sup>63</sup> Previous point (i) of Article 35(1)(b) and point (i) of Article 35(3).

2. (...) Upon application of the debtor to the competent court of the Member State of origin the decision concerning the security pursuant to Article 16a shall be reviewed on the ground that the conditions or requirements of that Article were not met. If on the basis of such a remedy the court requires the creditor to provide a security or an additional security, the first sentence of Article 16a(3) shall apply as appropriate and the court shall indicate that the Preservation Order will be revoked or modified if the required (additional) security is not provided within the time limit specified by the court.

3. (...) <sup>64</sup>

4. <sup>65</sup> 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 application of the debtor 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 shall 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

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<sup>64</sup> Paragraph 3 of the initial text of the Commission proposal was partly integrated into paragraph 1 and partly moved to Article 35b. Paragraphs 4, 5, 6, and 7 were moved to Article 35b.

<sup>65</sup> This paragraph takes over the previous Article 35a(2) (as contained in document 11713/13).

This paragraph could be explained by way of a recital worded along the following lines:

*Where the debtor applies for the revocation of the Preservation Order on the ground that the Order and the bank's declaration have not been served on him as provided for in this Regulation he should not be granted the revocation if the lack of service is cured within a given time limit. For curing 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 agreed to collect the documents at the court, provide the necessary translations of the documents to the court.*

**(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 47(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), 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 6 of this Article.**

**Where the creditor was responsible for initiating the service of the documents referred to in Article 28a, 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.**

- 5. 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 subparagraph of paragraph 4 shall apply as appropriate.**

- 6. 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 28a can be sent in accordance with paragraphs 4 and 5 of this Article or, alternatively, indicate that he agrees to collect those documents at the court of the Member State of origin.**



Article 35

*Remedies of the debtor against the enforcement of the Preservation Order*

1. (...) **Notwithstanding Articles 34 and 35a, upon application of 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:**
  - (a) **be limited on the ground that certain amounts held in the account should be exempt from seizure in accordance with Article 32(3a), 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 32(3) ; or**
  - (b) **be terminated on the ground that:**
    - (i) **the bank account preserved is excluded from the scope of this Regulation pursuant to Article 2(3) and (5);**
    - (ii) **the enforcement of the judgment, the court settlement or the authentic instrument, the enforcement of which the creditor was seeking to secure with the Order, has been refused in the Member State of enforcement;<sup>66</sup>**
    - (iii) **(...) the enforceability of the judgment, the enforcement of which the creditor was seeking to secure with the Order, (...) has been suspended in the Member State of origin; or**
    - (iv) **any of the points (b), (c), (d), (e) or (f) of Article 34(1) apply. Paragraphs 4, 5 and 6 of Article 34 shall apply as appropriate.**

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<sup>66</sup> This point addresses the situations of refusal of enforcement covered by Articles 46, 58 and 59 of Regulation No 1215/2012 (the Brussels I recast).

2. (...)
3. (...)
4. (...) **Upon application of 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.**
5. (...) <sup>67</sup>

*Article 35a*

*Other remedies available to the debtor and the creditor*

1. <sup>68</sup> (...) **The debtor or the creditor may apply at any time 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 (...).**
  - 1a. **The court that issued the Preservation Order may also, where the law of the Member State of origin so permits, at any time of its own motion modify or revoke the Order due to changed circumstances.**
  2. **The debtor and the creditor may at any time on the ground that they have agreed to settle the claim apply jointly to the court that issued the Preservation Order for a revocation or modification of the Preservation 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 a termination or limitation of its enforcement.**

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<sup>67</sup> Paragraph 5 of the initial text of the Commission proposal was partly integrated into paragraphs 1 and 3 and partly moved to Article 35b, paragraphs 6, 7, 8, and 9 were moved to Article 35b.

<sup>68</sup> This paragraph takes over Article 40 of the Commission proposal.

3. **The creditor may apply at any time 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 a modification of the enforcement of the Preservation Order consisting of an adjustment to the exemption applied in that Member State pursuant to Article 32 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 35b*

*Procedure for the remedies pursuant to Articles 34, 35 and 35a*

- 1.<sup>69</sup> **The application for a remedy pursuant to Article 34, Article 35 or Article 35a shall be made using the remedy form established in accordance with the advisory procedure referred to in Article 50(2). The application may be submitted by any means of communication, including electronic, which are accepted by the procedural rules of the Member State in which the application is lodged.**
- 2.<sup>70</sup> **The application shall be brought to the notice of the other party.**
- 3.<sup>71</sup> **(...) Except where the application was submitted by the debtor pursuant to point (a) of Article 35(1) or pursuant to Article 35a(2), 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 under the national law of each of the Member States involved.**

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<sup>69</sup> This paragraph merges the last two sentences of Articles 34(3) and 35(5) respectively.

<sup>70</sup> This paragraph merges Article 34(4) and 35(6) amending subparagraphs (a), (b) and (c) of these provisions.

<sup>71</sup> This paragraph merges Article 34(5) and 35(7).

**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.<sup>72</sup> The decision to revoke or modify the Preservation Order and the decision to limit or terminate the enforcement of the Preservation Order shall be enforceable immediately (...).**

**(a)<sup>73</sup> Where the remedy was applied for in the Member State of origin, the court shall, in accordance with Article XX, transmit the decision on the remedy without delay to the competent authority of the Member State of enforcement using the form established in accordance with the advisory procedure referred to in Article 50(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, the implementation with respect to that bank account shall be effected in accordance with the law of the Member State of origin.**

**(b) Where the remedy was applied for in the Member State of enforcement the implementation of the decision on the remedy shall be effected in accordance with the law of that Member State.**

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<sup>72</sup> This paragraph merges Article 34(6) and Article 35(8).

<sup>73</sup> This paragraph takes over paragraph 7 of Article 34.

*Article 36*

(...)<sup>74</sup>

*Article 37*

*Right to appeal*

**Either party shall have a right to appeal against a decision issued pursuant to Article 34, Article 35 or Article 35a (...). Such an appeal shall be submitted using the appeal form established in accordance with the advisory procedure referred to in Article 50(2).**

*Article 38*

*Right to provide (...) security in lieu of preservation*

**Upon application of the debtor,**

- (i) **the court that issued the Preservation Order may order the release of the funds preserved if the debtor provides to that court a security in the amount of the Order, or an alternative assurance<sup>75</sup> 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 (...).**
- (ii) **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 a security of 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 (...).**

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<sup>74</sup> The protection of the weaker party (consumer) is now dealt with in the jurisdiction rule (Article 6(4)).

<sup>75</sup> As for the security under Article 16a, an alternative assurance for a security in lieu of preservation could cover for instance a bank guarantee or a mortgage.

(...) Articles 24 and 26 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 the 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 jurisdiction rules laid down in Union law or national law, jurisdiction for 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 national law of that Member State so provides, with the competent enforcement authority.**

*Article 40*  
(moved to Article 38b)

## **Chapter 5**

### **General provisions**

*Article 40a*

*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 another legal professional shall not be mandatory in proceedings for **obtaining 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 seised with the application for a remedy, such representation is mandatory irrespective of the nationality or the domicile of the parties<sup>76</sup>.**

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<sup>76</sup> The provision has been aligned with Article 41(3) of Regulation No 1215/2012 (the Brussels I recast).

*Article 42*

(...)

*Article 43*

*Court fees*

The court fees **in proceedings for obtaining 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 43a*<sup>77</sup>

*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 the bank, under the law of the Member State of enforcement, is entitled to such payment or reimbursement for 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**<sup>78</sup>.
3. (...) **Fees charged by a bank to cover the costs for providing account information pursuant to Article 17 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.**

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<sup>77</sup> Initial Article 30 of the Commission proposal.

<sup>78</sup> The Member States would have to communicate under Article 48 whether or not banks in their territory are entitled to charge fees for the implementation of equivalent national orders and if so, whether the fees are charged to the debtor or to the creditor.



*Article 43b*<sup>79</sup>

*Fees charged by authorities*

(...) Fees charged by **any authority or other body** in the **Member State of enforcement involved in the processing or enforcement of a Preservation Order or in providing account information pursuant to Article 17 (...)** 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 this scale or similar set of rules a Member State may take into account the amount of the Order and the complexity involved in its processing. Where applicable, the fees may not be higher than the fees charged in connection with equivalent national orders.

*Article 44*

*Time frames*

Where, in exceptional circumstances<sup>80</sup>, it is not possible for the court (...) or the authority **involved** to respect the time frames provided for in **Article 17(5b), Article 21a, Article 24(2), the second sentence of Article 27(1b), Article 28a(2), (3) and (6), Article 34(4) and Article 35b(4) and (5)**, the court or authority shall take the steps required by those provisions as soon as possible. (...)

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<sup>79</sup> Initial Article 31 of the Commission proposal.

<sup>80</sup> A recital could indicate that the legal or factual complexity of the case may be considered such an exceptional circumstance.

*Article 45*

*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.**<sup>81</sup>
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 45a*

*Data protection*

1. **Personal data, obtained, processed or transmitted under this Regulation shall be adequate, relevant and not excessive in relation to the purpose for which it was obtained, processed or transmitted and may 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 it was obtained, processed or transmitted, which in any event may not be longer than 6 months after the proceedings have ended, and shall, during this period, ensure the appropriate protection of the personal data. This provision does not apply to the data processed or stored by courts when exercising judicial functions.**

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<sup>81</sup> A recital could provide examples of procedural issues, which are governed by national law (e.g. the questions by whom any translations required under the draft Regulation are to be provided and who has to (preliminarily and finally) bear the costs for such translations).

*Article 46*  
*Relationship with other instruments*

(...) This Regulation shall **be without prejudice to** the application of:

- (a) Regulation (EC) No 1393/2007<sup>82</sup>, **except as provided for in this Regulation in Article 13 (2), Article 17(3), (5a), Article 21(1c), Article 24(3) and (6), Article 27(1a) and (1b), Article 28a(1), (3), (5) and (6), Article XX, Article 34(4), Article 35b(2) and (4), and Article 47(1);**
- (b) Regulation (EU) No 1215/2012<sup>83</sup>;
- (c) **Regulation (EC) No 1346/2000<sup>84</sup>;**
- (d) Directive 95/46/EC<sup>85</sup> (...) **except as provided for in this Regulation in Article 17(6) and in Article 45a;**
- (e) **Regulation (EC) No 1206/2001<sup>86</sup>**
- (f) **Regulation (EC) No 864/2007<sup>87</sup>, except as provided for in this Regulation in Article 16b(4).**

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<sup>82</sup> 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).

<sup>83</sup> 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).

<sup>84</sup> Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, p. 1).

<sup>85</sup> 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).

<sup>86</sup> 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).

<sup>87</sup> 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 47*  
*Languages*

1. **(...) Any documents listed in points (i) and (ii) of Article 28a(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 in another language which he understands shall be accompanied by a translation or transliteration into one of those languages.<sup>88</sup> Documents listed in point (iii) of Article 28a(5) need not be translated. However, the court may decide that specific documents, by way of exception, need to be translated or transliterated 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 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.

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<sup>88</sup> See footnote 81 on Article 45.

*Article 48*

*Information to be provided by Member States*

1. By ...<sup>89</sup> (...), the Member States shall communicate the following information to the Commission:
  - (a) the **courts designated as competent for issuing a Preservation Order** (Article 6(6));
  - (ab) the authority designated as competent for obtaining account information (Article 17);**
  - (b) the methods of obtaining **account** information available under (...) national law (Article 17(5));
  - (c) the courts with which an appeal (...) is to be lodged (Article 22);
  - (ca) the authority or authorities designated as competent for the receipt, transmission and service of the Preservation Order and other documents under this Regulation (point (14a) of Article 4);**
  - (d) the authority competent for enforcing **the Preservation Order in accordance with Chapter 3;**
  - (e) the extent to which joint and nominee accounts can be preserved under national law (Article 29);
  - (f) the rules applicable to amounts exempt from **seizure** under national law (Article 32);
  - (g) **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 to pay the fees preliminarily and finally** (Article 43a);

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<sup>89</sup> Six months before the date of application of this Regulation

- (ga) 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 43b);
  - (h) **whether any ranking is conferred on equivalent national orders** under national law (Article 33);
  - (i) the courts **or, where applicable, the enforcement authority** competent **for a remedy** (Article 34(1), **Article 35(1) or Article 35(4)**);
  - (ia) **the courts with which an appeal (...) is to be lodged, the time limit, if any, for lodging such an appeal under national law and the event that marks the start of the time period** (Article 37);
  - (j) **an indication of court fees (...)** (Article 43); **and**
  - (k) the languages accepted for translations of the documents (Article 47(2)).
- (...) The Member States shall **apprise the Commission of any subsequent changes to that information (...)**.
3. 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 49*

***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), 13(2), 17(2), 21b(1), 27(1), 28(3), XX(2), 35b(1), 35b(5)(a) and 37. Those implementing acts shall be adopted** in accordance with **the advisory procedure referred to in Article 50(2) (...).**

*Article 50*

***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 (...).**
3. (...)
4. (...)
5. (...)

*Article 51*

*Monitoring and review*

1. By ...<sup>90</sup>, 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,**
  - (b) **the possibility of making a request pursuant to Article 17 should be extended, and**
  - (c) **amounts credited to the debtor's account subsequently to 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.**
2. *(moved to paragraph 1)*
3. **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 granted (...);
  - (b) the number of applications for a **remedy pursuant to Articles 34 and 35 (...)** and, **if possible, the number of cases in which the remedy was granted; and**
  - (c) **the number of applications for an appeal pursuant to Article 37 and, if possible, the number of cases in which such an appeal was successful.**

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<sup>90</sup> 5 years after the date of application of this Regulation.



## Chapter 6

### Final provisions

#### *Article 52*

#### *Entry into force*

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

It shall apply from ...<sup>91</sup> with the exception of Article 48 which shall apply from ...<sup>92</sup>

**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*

*For the Council*

*The President*

*The President*

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<sup>91</sup> 30 months after the entry into force of this Regulation.

<sup>92</sup> Six months before the date of application of this Regulation.