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**A7-0227/2013**

19.6.2013

**\*\*\*I**  
**REPORT**

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

Committee on Legal Affairs

Rapporteur: Raffaele Baldassarre

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**EN**

*United in diversity*

**EN**

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

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

## Amendment 1

### AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

Creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national *parliaments*,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union should adopt, amongst other things, **■** measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (2) In accordance with Article 81(2) of the Treaty on the Functioning of the European Union

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\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

<sup>1</sup> OJ C 191, 29.6.2012, p. 57.

("TFEU"), *those* measures must aim at ensuring, inter alia, the mutual recognition and enforcement of judgments between Member States, effective access to justice and the elimination of obstacles to the proper functioning of civil proceedings by promoting the compatibility of the rules on civil procedure applicable in the Member States. The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgments as the cornerstone of judicial cooperation in civil matters, specifying that it should apply to, inter alia, protective orders enabling competent authorities to seize assets which are easily movable.

- (3) The *draft* programme of measures for *implementation of* the principle of mutual recognition of decisions in civil and commercial matters, common to the Commission and the Council and adopted on 30 November 2000<sup>1</sup>, provides for *the establishment of* protective measures at European level as well as for *improvements to* attachment measures concerning banks, e.g. by establishing a European system for the attachment of bank accounts.
- (4) On 24 October 2006 the Commission adopted a Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts ■. The Green Paper launched a consultation on the need for, and possible features of, a uniform European procedure for the preservation of bank accounts.
- (5) The Stockholm Programme of December 2009<sup>1</sup>, which sets justice, freedom and security priorities for 2010 to 2014, invited the Commission to *put* forward appropriate proposals for improving the efficiency of enforcement of judgements in the Union regarding bank accounts and debtors' assets.
- (6) A creditor should be able to obtain a protective order preventing the withdrawal or transfer of funds held by his debtor in bank accounts located in the Union if he is facing the risk of the debtor dissipating his assets and this would make the subsequent enforcement of his judgment on the substance impossible or substantially more difficult.
- (7) National procedures for obtaining protective measures such as account preservation orders exist in all Member States but the conditions of issue of the measure and the efficiency of

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<sup>1</sup> OJ C 12, 15.1.2001, p. 1.

its implementation vary considerably. Moreover, recourse to national protective measures is cumbersome, lengthy and costly in cases having cross-border implications, in particular, when the creditor seeks to preserve several accounts located in different Member States. A European procedure allowing a creditor to preserve his debtor's bank accounts in cases having cross-border implications in a simple, speedy and inexpensive way should remedy the shortcomings of the existing situation.

- (8) The procedure established by this Regulation should constitute an optional means for the claimant to assert his rights which is available as an alternative to existing procedures for obtaining protective measures under national law.
- (9) The scope of this Regulation should cover all civil and commercial matters apart from certain well-defined matters. *In particular*, this Regulation should not apply in the context of arbitration or insolvency proceedings.
- (10) The procedure should be available to a claimant wishing to secure the enforcement of a later judgment on the substance prior to initiating proceedings on the substance and at any stage during the proceedings. It should also be available to a claimant *who has* already obtained a *judgment* or other enforceable title on the substance. In the latter situation, the procedure can have added value where enforcement of the title is slow or where the creditor wishes to determine in which Member State the debtor has sufficient funds to justify launching the enforcement procedure.
- (11) In order to ensure the existence of a close link between the court and the protective measure, jurisdiction *to issue* the order should lie with the courts having jurisdiction on the substance of the matter. In addition, the claimant should be able to apply for an account preservation order at the place where the account to be targeted is located. *However, in such a case* the effect of the order should be limited to the territory of the Member State where it was issued.
- (12) The conditions for issuing the account preservation order should strike an appropriate balance between the *interest* of the creditor *in obtaining* an order when needed and the *interest* of the debtor *in preventing* abuse of the order. Consequently, prior to *delivery of a*

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<sup>1</sup> OJ C 115, 4.5.2010, p. 1.



judgment enforceable in the Member State where the account is located, the court would have to be satisfied that the creditor's claim ■ appears to be *legitimate* and that *there is a real and ongoing risk that*, without the order, *the creditor's claim may be impaired, even if only in part, and* the subsequent enforcement of his future judgment *may* be frustrated or made substantially more difficult. *To that end, the creditor should provide sufficient evidence, corroborated by relevant facts.*

- (13) In order to ensure the surprise effect of the account preservation order, the debtor should not, *as a general rule*, be informed about the application, *and should not* be heard, prior to its issue or notified of the order prior to its implementation by the bank. *However, for the purpose of providing greater legal certainty, the court to which application is made for an account preservation order should be able to take a reasoned decision to hear the debtor in exceptional cases where this is essential in order to reach a final decision and insufficient information and evidence is available for that purpose. Such hearings should take place only if they do not increase the likelihood of enforcement of the claim being frustrated or made substantially more difficult as a result.* The debtor should ■ be able to contest the order immediately after *its implementation*.
- (14) Neither party should be obliged to be represented by a lawyer or legal professional in proceedings under this Regulation.
- (15) This Regulation should provide sufficient safeguards against abuse of the order. In particular, unless the creditor already has a judgment enforceable in the Member State of enforcement, the court should ■ require the creditor to provide security to ensure compensation for any damage suffered by the debtor as a result of an unjustified order ■ *or any failure to release, within the appointed time limit, sums over and above the amount specified in the order.*
- (15a) *This Regulation should provide for statutory liability on the part of the claimant for any damage caused to the defendant by an order that is subsequently found to be unjustified. The compensation for such damage should cover, as a minimum requirement, any loss of earnings and the costs incurred during the proceedings. In addition, the claimant should also be liable for any damage caused to the defendant as a result of failure to effect the prompt release of sums over and above the amount specified in the order.*

- (16) Given that creditors currently face practical difficulties in accessing information on debtors from public or private sources in a cross-border context, *this* Regulation should establish a mechanism enabling the competent authority in the Member State of enforcement to obtain *the* information ***required in order to identify*** the debtor's bank accounts **█**. ***That mechanism should be provided for by Member States under their national law and may involve*** obliging the banks to ***inform the competent authority about*** the whereabouts of the debtor's accounts located in that Member State or granting access to information held in registers or otherwise by public authorities or administrations.
- (17) In order to ensure **█** swift enforcement of the account preservation order, *this* Regulation should provide *for* transmission of the order from the issuing court to the bank *to be* effected by means of direct service as set out in 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*<sup>1</sup>. This Regulation should also *lay down* appropriate rules for **█** implementation of the order by the bank, ***including rules on the order in which accounts should be preserved in the event that the debtor holds more than one account with one and the same bank,*** and *should* oblige the bank to declare whether the order has successfully caught any funds of the debtor.
- (18) The debtor's right to a fair trial should be safeguarded in the proceedings for the account preservation order. This **█** requires, *in particular*, that the order and all documents submitted by the claimant be served on the defendant promptly after its implementation and that the defendant can apply for a review of the order. Jurisdiction *to carry out* the review should lie with the court *which* issued the order except if aspects of enforcement are contested. However, if the defendant is a consumer, employee or insured *person, or a microenterprise*, he should be able to apply for a review of the order before the courts in the Member State of his domicile ***or establishment***. The debtor should also have the right to *call for* release of the funds in the account *if* he provides alternative security.
- (19) In order to ensure that the account preservation order is issued and enforced swiftly and without delay, *this* Regulation should establish maximum time limits within which the

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<sup>1</sup> OJ L 324, 10.12.2007, p. 79.

different steps in the procedure must be completed. Moreover, this Regulation should oblige Member States to *provide for the Union procedure to be carried out as expeditiously as the procedure for obtaining an equivalent measure under national law*. This means in particular that, where national law *lays down* shorter time limits than those *prescribed* in this Regulation for the issue of national measures, the shorter time limits should apply also to the *Union procedure*. *For the purposes of calculating the periods and time-limits provided for in this Regulation, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits<sup>1</sup> should apply.*

- (20) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, this Regulation seeks to ensure full respect for human dignity and to promote the application of Articles 7, 8, 17 and 47 concerning, respectively, respect for private and family life, the protection of personal data, the right to property and the right to an effective remedy and to a fair trial.
- (21) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such *data*<sup>2</sup> applies to the processing of personal data within the framework of this Regulation.
- (22) In order to take into account technical progress, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments of the annexes *to* this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (22a) *Since the objective of this Regulation, namely to establish a Union procedure for a protective measure which enables a creditor to obtain a European account preservation order preventing the withdrawal or transfer of funds held by the debtor in a bank account*

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<sup>1</sup> OJ L 124, 8.6.1971, p. 1.

<sup>2</sup> OJ L 281, 23.11.1995, p. 319.

*within the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that article, this Regulation does not go beyond what is necessary in order to achieve that objective.*

(23) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the *TEU* and to the *TFEU*, and without prejudice to Article 4 of the Protocol, the United Kingdom *is not taking part* in the adoption of this Regulation and *is not* bound by it or subject to its application .

***(23a) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, Ireland has notified (, by letter of ...) its wish to take part in the adoption and application of this Regulation.***

(24) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the *TEU* and to the *TFEU*, Denmark *is not taking part* in the adoption of this Regulation and *is not* bound by it or *subject to its application*,

***(24a) The European Data Protection Supervisor delivered an opinion on 13 October 2011<sup>1</sup>, based on Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>2</sup>,***

HAVE ADOPTED THIS REGULATION:

## Chapter 1

### Subject matter, scope and definitions

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<sup>1</sup> *OJ C 373, 21.12.2011, p. 4.*

<sup>2</sup> *OJ L 8, 12.1.2001, p. 1.*

## Article 1

### Subject matter

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

## Article 2

### Scope

1. This Regulation shall apply to ■ claims in civil and commercial matters having cross-border implications as defined in Article 3, whatever the nature of the court or tribunal *seised*. It shall not extend, in particular, to revenue, customs or administrative matters.
2. This Regulation shall not apply to
  - (a) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, composition and analogous proceedings;
  - (b) social security;
  - (c) arbitration;

*(ca) testamentary and inheritance law;*

*(cb) property claims arising out of a matrimonial relationship or a relationship deemed by the law applicable to such relationship to have comparable effects to marriage.*
3. This Regulation shall not apply to bank accounts which, under the law governing immunity from enforcement of the Member State where the account is located, are exempt from seizure or to systems for the settlement of securities designated by Member States in accordance with Article 10 of Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement

systems<sup>1</sup>.

■

### Article 3

#### Matters having cross-border implications

1. For the purposes of this Regulation, a **case has** cross-border implications **if the bank account, or at least one of the bank accounts, to be preserved by the EAPO is held in a Member State other than:**
  - (a) **the Member State of the court seised of the application for the EAPO pursuant to Article 6(2),**
  - (b) **the Member State in which the creditor has obtained, against the debtor, a judgment, court settlement or authentic instrument relating to the claim which is subject of the application for the EAPO,**
  - (c) **the Member State in which the creditor is domiciled or located ■ , or**
  - (d) **the Member State in which the debtor is domiciled or located.**
2. **The relevant point in time for determining whether a case has cross-border implications shall be the date on which the application for the EAPO is received by the court having jurisdiction to issue the EAPO.**

### Article 4

#### Definitions

For the purposes of this Regulation:

1. “bank account” means any account containing cash ■ which is held with a bank in the name of the defendant or in the name of a third party on behalf of the defendant;
2. "bank" means ■ :
  - (a) **a credit institution within the meaning of Article 4(1) of Directive 2006/48/EC of**

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<sup>1</sup> OJ L 166, 11.6.1998, p. 45.

*the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)<sup>1</sup>;*

*(b) an electronic money institution within the meaning of Article 2(1) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions<sup>2</sup>.*

■

4. "cash" means money credited to an account in any currency, or similar claims for the repayment of money, such as money market deposits;

5. "funds" means cash ■ ;

6. "Member State where the bank account is located" means ■ the Member State indicated in the account's IBAN;

■

7. "claim" means an existing *due* claim for payment of a specific or determinable sum of money;

8. "judgment" means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including the determination of costs or expenses by an officer of the court;

9. "court or issuing authority" means a court or any authorities designated by a Member State as having jurisdiction in the matters falling within the scope of this Regulation;

10. "court settlement" means a settlement which has been approved by a court or concluded before a court in the course of proceedings;

11. "authentic instrument" means a document which has been formally drawn up or registered as an authentic instrument in a Member State and the authenticity of which:

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<sup>1</sup> *OJ L 177, 30.6.2006, p. 1.*

<sup>2</sup> *OJ L 267, 10.10.2009, p. 7.*

- (a) relates to the signature and the content of the instrument, and
  - (b) has been established by a public authority or other authority empowered for that purpose;
12. "Member State of origin" means the Member State in which the EAPO has been issued;
13. "Member State of enforcement" means the Member State in which the bank account to be preserved is located;
14. "*competent* authority" means the authority which the Member State of enforcement has designated as competent for the obtainment of necessary information on the defendant's account pursuant to Article 17, the service of the EAPO pursuant to Articles 24 to 28 and the determination of the amounts exempt from execution pursuant to Article 32;
15. "*domicile*" means domicile as determined in accordance with Articles 59 and 60 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>1</sup>.

## Chapter 2

### Procedure for obtaining an EAPO

#### Article 5

#### Availability

1. Section 1 shall apply where
- (a) the claimant applies for an EAPO prior to the initiation of judicial proceedings on the substance of the matter against the defendant or at any stage during such proceedings;
  - (b) the claimant has obtained a judgment, court settlement or authentic instrument against the defendant which is enforceable in the Member State of origin but has not yet been declared enforceable in the Member State of enforcement where such a declaration is required.

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<sup>1</sup> OJ L 12, 16.1.2001, p. 1.



2. Section 2 *shall apply* to situations where the claimant applies for an EAPO after having obtained a judgment, court settlement or authentic instrument against the defendant which is by operation of law enforceable in the Member State of enforcement or has been declared enforceable there.

## Section 1

### Issue of the EAPO prior to obtaining an enforceable title

#### Article 6

##### Jurisdiction

1. The EAPO shall be issued by a court.
2. Jurisdiction *to issue* the EAPO shall lie with the courts of the Member State where proceedings on the substance of the matter have to be brought in accordance with the applicable rules on jurisdiction. Where more than one court has jurisdiction *over* the substance of the matter, the court of the Member State where the claimant has brought proceedings on the substance or intends to bring proceedings on the substance shall have jurisdiction.
3. Notwithstanding paragraph 2, the courts of the Member State where the bank account is located shall have jurisdiction to issue an EAPO which is to be enforced in that Member State.
4. ***Notwithstanding paragraphs 2 and 3, in respect of claims stemming from a contractual obligation entered into by the debtor as a consumer, for non-commercial purposes that have no bearing on his gainful activities, jurisdiction to issue an EAPO shall lie with the courts of the debtor's Member State of residence.***

#### Article 7

##### Conditions for issuing an EAPO

1. An EAPO shall be issued in the amount for which it is sought or a part thereof where the claimant submits ***sufficient and*** relevant facts, reasonably corroborated by evidence, ***which make a prima facie case and which*** satisfy the court **█** :
  - (a) that the claim against the defendant appears to be well founded; *and*
  - (b) that without the issue of the order ***there is a real risk that*** the subsequent

enforcement of an *existing* or future title against the defendant is likely to be impeded or made substantially more difficult, including because there is an *ongoing* risk that the defendant might remove, dispose of or conceal assets held in the bank account or accounts to be preserved.

***With a view to making a prima facie case, the applicant may use all forms of evidence admissible in the Member State concerned, including an affirmation in lieu of an oath.***

2. Where the claimant has already obtained a judgment, court settlement or authentic instrument for the payment of a sum of money against the defendant which is enforceable in the Member State of origin and *eligible for* recognition in the Member State of enforcement under the applicable instruments of Union law, the condition set out in *point (a) of paragraph 1* shall be deemed to be fulfilled.

#### Article 8

##### Application for *an* EAPO

1. Applications for an EAPO shall be made using the form set out in Annex I.
2. The application form shall include all of the following:
  - (a) the name and address of the claimant, and, where applicable, *the claimant's* representatives, and ■ of the court to which the application is made;
  - (b) the name, address ***and, where known, date of birth and national identity or passport number*** of the defendant and, where applicable, the defendant's representative;
  - (c) the information on the account(s) in accordance with Article 16 unless a request for *the obtaining of* account information is *made* pursuant to Article 17;
  - (d) the amount of the claim as well as the amount of interest and fees, to the extent *that* such fees can be secured pursuant to Article 18;
  - (e) a description of all relevant circumstances invoked as the basis of the claim, and, where applicable, of the interest claimed;
  - (f) a description of all relevant circumstances justifying *the* issue of the order as required

by *point (b) of the first subparagraph of Article 7(1)*;

- (g) a description of all relevant elements supporting the jurisdiction of the court seised;
  - (h) a list of the ***supporting documents and*** evidence provided or offered to be provided by the claimant ***and/or an affirmation in lieu of an oath***;
  - (i) where Article 7(2) applies, a copy of the judgment, court settlement or authentic instrument which satisfies the conditions *for the establishment of* its authenticity;
  - (j) a declaration whether other courts have been seised by the claimant *of* an application for an EAPO or an order with equivalent effect under national law as provided for in Article 19;
  - (k) ***a declaration to the effect that the information supplied by the claimant in the application for an EAPO is true and complete and that the claimant is aware of the penalties to which anyone knowingly making false and incomplete declarations is liable under the law of the Member State in which the application is made.***
3. The application shall be accompanied by any relevant supporting documents.
  4. The application ***and any supporting documentation*** may be submitted *by* any means of communication, including electronic.

## Article 9

### Examination of the application

1. The court seised of an application for an EAPO shall examine whether the requirements set out in Articles 2, 6, 7 and 8 are met.
2. Where the requirements set out in Article 8 are not met, the court shall give the claimant the opportunity to complete or rectify the application unless the claim is clearly unfounded or the application is inadmissible.

Article 10

Ex parte procedure

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

***In exceptional cases, the court to which the application for an EAPO is made may take a reasoned decision to hear the defendant if this is necessary in order to reach a final decision and if such hearing does not increase the risk to the claimant that the enforcement of his claim will be impeded or made substantially more difficult.***

Article 11

Evidence

1. Where the competent court considers that it cannot issue the EAPO without additional evidence, it ***shall use the most suitable method of taking evidence provided for under the national law of the Member State concerned.***
2. The court shall admit oral testimony only where the court deems it necessary ***and may, to that end, make use*** of video conference or other communication technology where such technology is available.

Article 12

Security to be provided by the claimant

Before issuing an EAPO, the court ***shall*** require the provision of a security deposit or an ***assurance*** by the claimant ***that will*** ensure compensation for any damage suffered by the defendant to the extent the claimant is liable to compensate such damage under ***Article 12a***.

***The court may require the provision of a reduced security deposit or equivalent assurance and, in exceptional cases, exempt the claimant from this requirement if it considers it to be superfluous or disproportionate, in particular on account of the claimant's financial situation.***

***Article 12a***

### *Liability of the claimant*

1. *Where an EAPO is set aside or modified, or its enforcement is suspended, or in the event that the claim is deemed to be unfounded during proceedings on the substance of the matter, the claimant shall be liable for any damage caused to the defendant as a result of the issue of the EAPO. The claimant shall also be liable for any damage caused to the defendant as a result of failure to comply with Article 28(2).*
2. *The courts of the Member State in which the EAPO was set aside, modified or suspended or the claim was deemed to be unfounded during proceedings on the substance of the matter shall establish the extent of the damage referred to in paragraph 1.*

### Article 13

#### Initiation of proceedings on the substance

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

### Section 2

#### Issue of an EAPO after obtaining an enforceable title

### Article 14

#### Competence *to issue* the EAPO

1. In cases referred to in Article 5(2), **jurisdiction to issue an EAPO shall lie with** the court which issued the judgment or court settlement **.**
2. Where the claimant has obtained an authentic instrument, **the competent authority in the Member State where the authentic instrument has been drawn up shall be competent to issue** an EAPO *in respect of the debt specified in that instrument.*
3. The claimant may address the application for an EAPO directly to the authority in the Member State of enforcement which that Member State has designated as competent *to issue* the EAPO and *which it has notified to the Commission in accordance with Article 48*

( "the issuing authority").

4. With regard to proceedings for *the issue of* an EAPO as referred to in this Section, Article 10 shall apply.

#### Article 15

##### Application for an EAPO

1. Applications for an EAPO shall be made using the application form set out in Annex I.
2. The application form shall include all of the following:
  - (a) the name and address of the claimant, and, where applicable, the claimant's representatives, and of the court to which the application is made;
  - (b) the name, address ***and, where known, date of birth and national identity or passport number*** of the defendant and, where applicable, the defendant's representative;
  - (c) the amount of the sum specified in the judgment, court settlement or authentic instrument as well as the amount of *interest* and fees, to the extent *that* these can be secured pursuant to Article 18;
  - (d) the information on the account(s) in accordance with Article 16, ***including the name and address of the bank with which the debtor holds one or more accounts***, unless a request for *the* obtaining of account information is *made* pursuant to Article 17;
  - (e) a copy of the judgment, court settlement or authentic instrument which satisfies the conditions *for the establishment of* its authenticity;
  - (f) a declaration that the judgment has not yet been *satisfied*;
  - (g) where the judgment, court settlement or authentic instrument was issued in another Member State:
    - (i) in *the* case of a judgment, court settlement or authentic *instrument* for which no declaration of enforceability is required, the relevant certificate *provided for* under the applicable instrument for *the* purposes of enforcement in another

Member State, accompanied, where necessary, by a transliteration or translation in accordance with Article 47; or

- (ii) in *the* case of a judgment, court settlement or authentic instrument for which a declaration of enforceability is required, the declaration of enforceability;
  - (h) a declaration whether other courts have been seised by the claimant with an application for an EAPO or an order with equivalent effect under national law pursuant to Article 19;
  - (i) ***a declaration to the effect that the information supplied by the claimant in the application for an EAPO is true and complete and that the claimant is aware of the penalties to which anyone knowingly making false and incomplete declarations is liable under the law of the Member State in which the application is made.***
3. The application ***and any supporting documentation*** may be submitted *by* any means of communication, including electronic.

### Section 3

#### Common provisions

#### Article 16

##### Information on the account

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

- (a) the full name of the defendant,
- (b) the name of the bank with which the defendant holds one or *more* accounts to be preserved as well as the address of the bank's headquarters in the Member State where the account is located, and
- (c) either



(i) the account number or numbers, *or*

■

(iii) where the defendant is a natural person, his date of birth or national identity or passport number, or

(iv) where the defendant is a legal person, the number of that legal person in the business register.

## Article 17

### Request for *the* obtaining of account information

1. Where the claimant does not *possess or have access to* all the account information required pursuant to Article 16, that claimant may request that the competent authority of the Member State of enforcement obtain the ■ information ***required in order to identify the debtor's bank account(s)***. Such request shall be made in the application for an EAPO.
2. The ***claimant shall duly substantiate the*** application, ***which*** shall include all information ***referred to in Article 16*** about the defendant and the defendant's bank accounts ***which is available to the claimant and at least the following:***
  - (a) ***the full name of the defendant,***
  - (b) ***the defendant's full address, and***
  - (c) ***the Member State in which the defendant holds the bank account(s) in respect of which the EAPO is being applied for.***
3. The court or issuing authority shall issue the EAPO pursuant to Article 21 and transmit it to the competent authority in accordance with Article 24.
4. The competent authority shall use all appropriate and reasonable means available in the Member State of enforcement to obtain the information referred to in paragraph 1. Once that information is obtained, the competent authority shall serve the EAPO on the bank in accordance with Article 24.

5. **Member States shall make provision under their national law for one of the following means of obtaining the information required in order to identify the creditor's bank account(s):**
- (a) **an obligation on** all banks in their territory to **inform the competent authority** whether the defendant holds an account with them;
  - (b) access by the competent authority to the information referred to in paragraph 1 where that information is held by public authorities or administrations in registers or otherwise.
6. Information referred to in paragraph 1 shall be adequate for the purpose of identifying the defendant's account or accounts, relevant and not excessive and **limited to:**
- (a) the defendant's address,
  - (b) the bank or banks holding the defendant's account or accounts,
  - (c) the defendant's account number or numbers.

#### Article 18

##### Amount of the EAPO

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

#### Article 19

##### Information about pending applications in other courts

1. When applying for an EAPO, the claimant shall disclose whether he or she has *seised* any other court of an application for an EAPO or an equivalent protective measure under national law against the same defendant and aimed at securing the same claim. ***The claimant shall provide details of any earlier applications for an EAPO that were rejected.***

2. The claimant shall inform the court seized *of* the application for an EAPO about any other EAPO or protective measure under national law issued pursuant to the application referred to in paragraph 1. In *such cases*, the court or issuing authority may refrain from issuing an additional order where it considers that the measures already granted sufficiently protect the claimant's interests. ***The claimant shall inform the court or issuing authority of any earlier applications for an EAPO that were rejected.***

## Article 20

### Communication and *cooperation* between courts

1. Where the courts of a Member State are seized *of* an application for an EAPO and the courts of another Member State are seized *of* proceedings as to the substance *of the case*, those courts concerned ***shall*** cooperate in order to ensure proper coordination between the proceedings as to the substance and the proceedings relating to the EAPO.
2. The court seized *of* the application for an EAPO may seek information from the other court referred to in paragraph 1 on all relevant circumstances of the case **■**, such as the risk of dissipation of assets by the defendant or any refusal of a similar measure by the court seized as to the substance, *or require the claimant to obtain such information*. Such information may be sought directly or through the contact points of the European Judicial Network in civil and commercial matters established by *Council Decision 2001/470/EC of 28 May 2001*<sup>1</sup>.

## Article 21

### Issue, *effect* and *duration* of the EAPO

1. Where the requirements referred to in this Chapter are met, the court or, ***in accordance with Article 14(2) and (3), the*** issuing authority shall issue an EAPO.
2. Where the *EAPO* has to be enforced in another Member State, it shall be issued in the form set out in Annex II.
3. In cases referred to in Article 5(1), the court shall issue the EAPO ***without undue delay, and no later than 14*** calendar days ***after*** the lodging of the application **■**.

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<sup>1</sup> OJ L 174, 27.06.2001, p. 25.

4. Where an oral hearing is deemed necessary due to exceptional circumstances, the court shall convene the hearing *as soon as possible and no later than 7 calendar days after the lodging of the application*, and shall issue the *EAPO no later than seven* calendar days after the hearing has taken place ■ .
5. In cases referred to in Article 5(2), the issuing authority shall issue the *EAPO without undue delay and no later than seven* calendar days *after* the lodging of the application ■ .
6. Without prejudice to Article 32, the *EAPO* shall prevent ■ the amount specified therein *from being* transferred, withdrawn or disposed of by the defendant or the defendant's creditors from the designated account or accounts.
7. The *EAPO* shall remain in force:
  - (a) until it is set aside by a court pursuant to Articles 34, 35, 36 or 40 or,
  - (b) where the claimant obtained a judgment, authentic instrument or court settlement on the substance which is enforceable in the Member State of origin or in cases referred to in Article 5(2), until the effect of the *EAPO* is replaced by an equivalent effect of an enforcement measure under national law, provided that in the former case the claimant has *initiated* the enforcement proceedings within 30 *calendar* days after *the* judgment, authentic instrument or court settlement has been notified or has become enforceable, whichever is the later.

## Article 22

### Appeal against refusal to issue the *EAPO*

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

## Chapter 3

### Enforceability and enforcement of the *EAPO*

Article 23  
Abolition of exequatur

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

Article 24  
Service of the EAPO on the bank

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

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

- (a) The person or authority responsible for service in the Member State of origin shall transmit the EAPO directly to the competent authority of the Member State of enforcement.
- (b) The following documents shall be transmitted:
  - (i) a copy of the EAPO in the form set out in Annex II which *satisfies* the conditions *for the establishment of* its authenticity;
  - (ii) where necessary, a transliteration or translation of the form in accordance with Article 47;
  - (iii) the **■** form of request for service set out in Annex I *to* Regulation (EC) No 1393/2007 accompanied, where necessary, by a transliteration or translation of

*that* form in accordance with Article 47.

- (c) The competent authority shall serve the EAPO on the bank or banks specified therein. The competent authority shall take all necessary steps to effect service of the *EAPO* within *three* working days of receipt at the latest.
- (d) As soon as the *EAPO* is served on the bank, the competent authority shall draw up a certificate of service in accordance with Article 10 of Regulation (EC) No 1393/2007 and transmit it to the person or authority *that* requested service.

#### Article 25

##### Service of the EAPO on the defendant

1. ***No more than one working day*** after service on the bank has been effected pursuant to Article 24 and the bank has issued the declaration pursuant to Article 27, ***the defendant shall be served with the EAPO and with all documents submitted to the court or competent authority with a view to obtaining the EAPO.***
2. Where the defendant is domiciled in the Member State of origin, service shall be effected in accordance with the rules of national law of that Member State.
3. Where the defendant is domiciled in the Member State of enforcement, the competent authority of that Member State to which the EAPO has been transmitted pursuant to Article 24(3) shall serve the *EAPO* and its accompanying documents on the defendant in accordance with Regulation (EC) No 1393/2007.
4. *Where* the defendant is domiciled in a Member State *other* than the Member State of origin or the Member State of enforcement, the competent authority of the Member State of enforcement to which the EAPO has been transmitted pursuant to Article 24(3) shall transmit it directly to the competent authority of the Member State of the defendant's domicile. That authority shall serve it on the defendant in accordance with the provisions of Regulation (EC) No 1393/2007.

#### Article 26

##### Implementation of the EAPO

1. A bank served with *an* EAPO shall implement it immediately upon receipt by ensuring that the amount specified therein is not transferred, disposed of or withdrawn from the account or accounts designated in the *EAPO* or identified by the bank as being held by the defendant. Any funds exceeding the amount specified in the EAPO must remain at the disposal of the defendant.
2. Where the *EAPO* is served outside business hours, it shall be implemented immediately after the beginning of the following business period.

■

4. Where the currency of the funds held in the account is not the same as that in which the EAPO was *denominated*, the bank shall convert the amount by reference to the official exchange rate *applying on* the day of implementation *in the Member State in which the account is located*.
5. The bank's liability for any failure to comply with the obligations set out in this Article shall be governed by national law.

#### Article 27

##### Declaration by the bank

1. Within *three* working days following receipt of the EAPO, the bank, *using the form set out in Annex III*, shall inform the competent authority and the claimant ■ whether and to what extent funds in the defendant's account have been preserved. The competent authority shall *within one working day* transmit the declaration to the person or authority *that* requested the service pursuant to *point (a) of the second subparagraph of Article 24(3)* ■ .
2. Where the account balance is sufficient to cover the amount specified in the EAPO, the bank shall not disclose the balance of the defendant's account.
3. The bank may transmit its declaration by ■ electronic means of communication, *provided that they are secure within the meaning of Articles 16 and 17 of Directive 95/46/EC*.
4. The liability of the bank for failure to comply with this obligation shall be governed by national law.

## Article 28

### Preservation of several accounts

1. ***The bank shall implement the EAPO only up to the amount specified therein. Where the defendant holds several accounts with one and the same bank, the EAPO shall be implemented up to the amount contained therein, in the following order:***
  - (a) ***accounts exclusively held by the defendant which are not payment accounts within the meaning of point 14 of Article 4 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market<sup>1</sup>, with the deposits with the longest cancellation period being taken first;***
  - (b) ***payment accounts within the meaning of point 14 of Article 4 of Directive 2007/64/EC which are exclusively held by the defendant;***
  - (c) ***where possible, accounts which are not exclusively held by the defendant in accordance with Article 29, in the same order as under points (a) and (b) above, mutatis mutandis.***
  
2. Where one or more EAPOs or equivalent protective orders under national law have been issued covering several accounts held by the defendant with different banks, whether in the same or in different Member States, the claimant shall have a duty to effect the release of any amount specified therein which exceeds the amount stipulated in the EAPO. Such release shall be effected within 48 hours following receipt of the first bank's declaration pursuant to Article 27 showing such excess. The release shall be effected through the competent authority of the respective Member State of enforcement.

***In the event of failure to fulfil this requirement, any liability on the claimant's part beyond liability to provide compensation for damage suffered by the defendant in accordance with Article 12a shall be governed by national law.***

## Article 29

### Preservation of joint and nominee accounts

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<sup>1</sup> *OJ L 319, 5.12.2007, p. 1.*



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

#### Article 30

##### Costs relating to the banks

1. A bank shall ■ be entitled to seek payment or reimbursement *only* of the costs incurred by *it in implementing* the EAPO or ■ an order pursuant to Article 17(5)(a) ■ .
2. Fees charged for the implementation of the EAPO or of an order pursuant to Article 17(5)(a) shall correspond to single fixed fees which are determined in advance by the Member State where the account is located, which respect the principles of proportionality and non-discrimination ***and which are not higher than the costs actually incurred.***
3. Member States shall communicate to the Commission, in accordance with Article 48, ■ the amount of the fee pursuant to paragraph 2.

#### Article 31

##### Costs relating to competent *authorities*

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

#### Article 32

##### Amounts exempt from enforcement

1. ■ ***The*** amounts necessary to ensure the livelihood of the defendant and his family, where the defendant is a natural person, or to ensure the possibility of *pursuing* a normal course of business, where the defendant is a legal person, shall be exempt from the enforcement of the *EAPO*.

2. Member States shall inform the Commission about the *specific* rules applicable in such situations, including which amounts or types of receivables held in a bank account are exempt.
3. To the extent that the amount referred to in paragraph 1 can be determined without the provision of additional information by the defendant, the competent authority of the Member State of enforcement shall determine that amount upon receipt of the EAPO and shall inform the bank that that amount must be left at the disposal of the defendant following implementation of the EAPO.
4. In determining the amount referred to in paragraph 1, the competent authority shall apply the law of the Member State by which it is designated, even if the defendant is domiciled in another Member State.

#### Article 33

##### Ranking of competing creditors

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

#### Chapter 4

##### Remedies against the EAPO

#### Article 34

##### Remedies of the defendant in the Member State of origin

1. Where the EAPO was issued pursuant to Section 1 of Chapter 2, the defendant may apply for:
  - (a) a review of the EAPO on the grounds that the *criteria* for its issue, as set out in Articles 2, 6 and 7, were not met;
  - (b) a review of the EAPO on the grounds that the claimant has failed to initiate proceedings on the substance of the matter within the time limit referred to

in Article 13.

2. *Save in the case* of a review pursuant to *point (b)* of paragraph 1, the application for a review shall be made promptly, **and** in any event within 45 **calendar** days from the day *on which* the defendant was effectively acquainted with the contents of the *EAPO* and was able to react.
3. The application for a review shall be addressed to the court which issued the *EAPO*. The application shall be submitted using the form set out in Annex IV and by any means of communication, including electronic.
4. The application shall be served on the claimant **by the court** in accordance with the applicable rules on the service of documents.
5. Where the review is justified on one of the grounds laid down in paragraph 1, the court shall give its decision setting aside or modifying the *EAPO* accordingly, **without undue delay and no later than 14** calendar days ■ from ■ service of the application *on* the claimant.
6. A decision *setting aside* or *modifying* the *EAPO* shall be immediately enforceable notwithstanding any appeal under *Article 37*, unless the court decides, in order to protect the claimant's interests, that its decision will only be enforceable after it has become final.
7. The decision *shall* be immediately served **by the court** on the bank or banks concerned, which shall *implement it* immediately upon receipt ■ by unblocking the amount preserved fully or partially. It *shall* also be immediately served **by the court** *on* the claimant in accordance with the applicable rules on the service of documents.

#### Article 35

##### Remedies of the defendant in the Member State of enforcement

1. Where the *EAPO* was issued pursuant to Sections 1 or 2 of Chapter 2, the defendant may request that:
  - (a) enforcement of the *EAPO* be limited on the grounds that certain amounts in the account are exempt from enforcement under the law of the Member

State where the account is located and *that* those amounts have not or not correctly been taken into account by the competent authority *in accordance with* Article 32;

- (b) enforcement of the *EAPO* be terminated on the grounds that:
  - (i) a judgment has been given in the Member State of enforcement which dismisses the claim the enforcement of which the claimant is seeking to secure *by means of* the *EAPO*; or
  - (ii) the bank account preserved is exempt from enforcement under the law governing immunity from enforcement of the Member State where the account is located.
- 2. Where the *EAPO* was issued pursuant to Section 1 of Chapter 2, the defendant *may* request *that it* be set aside on the grounds that the claimant has failed to initiate proceedings on the substance of the matter within the time limit referred to in Article 13.
- 3. Where the *EAPO* was issued pursuant to Section 2 of Chapter 2, the defendant may request that:
  - (i) *it* be set aside on the grounds that the judgment, court settlement or authentic instrument has been set aside in the Member State of origin;
  - (ii) enforcement of the *EAPO* be suspended on the grounds that the enforceability of the judgment, court settlement or authentic instrument has been suspended in the Member State of origin.
- 4. *Save in the case* of a review pursuant to paragraph 2, the application for a review shall be made promptly, and in any event within 45 days from the day *on which* the defendant was effectively acquainted with the contents of the *EAPO* and was able to react.
- 5. The application shall be addressed to the competent courts of the Member State of enforcement *as* notified by the Member States pursuant to Article 48. The application shall be submitted in paper form or by any other means of communication, including electronic, using the form set out in Annex IV.

6. The application shall be served on the claimant in accordance with the applicable rules on the service of documents.
7. If the application is justified, the court shall give its decision setting aside or modifying the EAPO accordingly, ***without undue delay and no later than 14*** calendar days ■ from ■ service of the application *on* the claimant.
8. *A decision setting aside or modifying the EAPO shall be immediately enforceable notwithstanding any appeal under Article 37, unless the court decides, in order to protect the claimant's interests, that its decision will only be enforceable after it has become final.*

#### Article 36

##### Remedies of the defendant in the Member State of his domicile

If the defendant is a consumer, employee or insured *person, or a microenterprise within the meaning of Commission Recommendation 2003/61/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises*<sup>1</sup>, he may also address the application for review under Articles 34 and 35 to the competent court in the Member State where he is domiciled *or established, as notified to the Commission in accordance with Article 48.*

#### Article 37

##### Right to appeal

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

#### Article 38

##### Right to provide alternative security

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

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<sup>1</sup> *OJ L 124, 20.5.2003, p. 36.*

2. The EAPO shall specify the amount of the security necessary to terminate enforcement of the order.
- 2a. ***A decision terminating the enforcement of the EAPO shall be immediately served on the bank or banks concerned, which shall immediately upon receipt implement the decision by unblocking the amount preserved. It will also be immediately served on the claimant in accordance with the applicable rules on the service of documents.***

#### Article 39

##### Right of third parties

A third party *shall have* the right to raise objections against the EAPO before the courts ***in accordance with the national law*** of the Member State of origin **■** .

***A third party shall have the right to raise objections against the enforcement of an EAPO before the courts in accordance with the national law of the Member State of enforcement.***

#### Article 40

##### Variation or revocation of the EAPO

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

#### Chapter 5

##### General provisions

#### Article 41

##### Representation of parties

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

#### Article 42

##### Costs to be borne by unsuccessful party

1. The unsuccessful party shall bear the costs of the proceedings. However, the court shall not award ■ to the successful party *any costs* that ■ were unnecessarily incurred or *that* are disproportionate to the claim.

***The unsuccessful party shall bear the costs referred to in Article 30.***

2. Where the EAPO was issued pursuant to Section 1 of Chapter 2, the costs of the proceedings shall be awarded by the court seised *of* the proceedings on the substance or by the court setting aside the *EAPO* pursuant to point (b) of Article 34(1) or Article 35(2).
3. Where the *EAPO* was issued pursuant to Section 2 of Chapter 2, the costs shall be determined by the competent authority enforcing the judgment, authentic instrument or court settlement on the basis of which the *EAPO* has been issued.

#### Article 43

##### Court fees

1. The court fees for obtaining the EAPO shall not be higher than the fees for obtaining an equivalent measure under national law. *They shall not be* disproportionate to the amount of the claim, and shall not discourage *claimants* from making use of the procedure.
2. The Member States shall inform the Commission of the applicable court fees in accordance with Article 48.

#### Article 44

##### Time limits

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

#### Article 45

##### Relationship with national procedural law

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

law.

#### Article 46

##### Relationship with other instruments

1. Without prejudice to Articles 24, 25 and 27, this Regulation shall not prejudice the application of Regulation (EC) No 1393/2007.
2. This Regulation shall be without prejudice to Regulation (EC) No 44/2001 .
3. This Regulation shall be without prejudice to the application of Directive 95/46/EC .

#### Article 47

##### Translation and transliteration requirements

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

#### Article 48

##### Information to be provided by Member States

1. By [12 months after the entry into force of *this* Regulation] at the latest, the Member States shall communicate the following information to the Commission
  - (a) the authority competent for issuing an EAPO in accordance with Article 14(2) *and*



- (3);
- (b) the methods of obtaining information available under their national law pursuant to Article 17(4);
  - (c) the court with which an appeal against a decision not to issue an EAPO is to be lodged as referred to in Article 22;
  - (d) the authority competent for enforcing the EAPO in accordance with Chapter 3;
  - (e) the extent to which joint and nominee accounts can be preserved under *the national law of the Member State concerned* as referred to in Article 29;
  - (f) the rules applicable to amounts exempt from enforcement under national law as referred to in Article 32;
  - (g) the single fixed fees of the banks and the competent authority as referred to in Articles 30 and 31;
  - (h) the rank conferred *on* protective measures equivalent to an EAPO under national law as referred to in Article 33;
  - (i) the courts competent in the Member State of enforcement to which *an* application for a review may be submitted in accordance with Articles 34(3) or 36;
  - (j) court fees for issuing the EAPO as referred to in Article 43;
  - (k) the languages accepted for translations of the documents *as* referred to in Article 47.
2. Member States shall communicate any change in the information set out in paragraph 1 to the Commission without undue delay.
3. The Commission shall make the information communicated to it pursuant to this Article publicly available through any appropriate means, in particular through the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC.

#### Article 49

## Amendment of the Annexes

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

### Article 50

#### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The *power to adopt delegated acts* referred to in Article 49 shall be conferred on the Commission for an indeterminate period of time from the entry into force of this Regulation.
3. The *power to adopt delegated acts* referred to in Article 49 may be revoked at any time by the European Parliament or by the Council. A decision *to revoke* shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later *date* specified therein. It shall not affect the validity of any delegated act already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 49 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of *two* months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by *two* months at the initiative of the European Parliament or the Council.

### Article 51

#### Monitoring and Review

1. By [*five* years after its date of application], the Commission shall present a report on the application of this Regulation to the European Parliament, the Council and the European

Economic and Social Committee. That report shall contain an assessment of the operation of the procedure and the enforcement of EAPOs in the Member States.

2. The report shall be accompanied, if appropriate, by proposals for adaptation of this Regulation.
3. Member States shall collect and make available to the Commission information on:
  - (a) the number of applications for an EAPO, the number of cases in which the *EAPO* was granted and the amount covered by each *EAPO*; and
  - (b) the number of applications for a review under Articles 34, 35 and 36 and the outcome of those procedures.

## Chapter 6

### Final provisions

#### Article 52

##### Entry into force

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

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

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

Done at

*For the European Parliament*

*For the Council*

*The President*

*The President*

## ANNEX I

### EUROPEAN ACCOUNT PRESERVATION ORDER

#### APPLICATION FORM

(Article 8(1) and Article 15(1) of Regulation (EC) No XXX of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters)

*To be filled in by the court/tribunal*

**Case number:**

**Received by the court/tribunal on:** \_\_\_/\_\_\_/\_\_\_

#### IMPORTANT INFORMATION

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

#### Language

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

#### Supporting documents

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

A copy of the *application* form and, where appropriate, of the supporting documents  will be served on the defendant after the *European Account Preservation Order* has been implemented by the bank. The defendant will have an opportunity to apply for a review of the *European Account Preservation Order*.

#### 1. Court/tribunal

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

1.1. Name:

1.2. Street and number/*P.O.* box:

1.3. City and postal code:

1.4. Member State:

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

## 2. Claimant

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

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

- |  |
|--|
| <ol style="list-style-type: none"><li>2.1. Surname, first name/name of company or organisation:</li><li>2.2. Street and number/P.O. box:</li><li>2.3. City and postal code:</li><li>2.4. Country (if a Member State, please specify the country code set out in section 1):</li><li>2.5. Telephone<sup>1</sup>:</li><li>2.6. E-mail<sup>2</sup></li><li>2.7. Claimant's representative, if any, and contact details*:</li><li>2.8. Other details*:</li></ol> |
|--|

## 3. Defendant

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

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

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

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

## 4. Details of the defendant's bank account

It is important to give as much information as possible about the defendant's bank account, *in order* to save time and costs. If you cannot give more information than *that* referred in section 4.1., the competent authority in the Member State(s) where the account is located can try to

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<sup>1</sup> Optional

<sup>2</sup> Optional.

obtain additional information from the banks or existing public registers. This procedure will, however, take some time and you *may* be charged a fee for the information.

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

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

4.2. The name of the bank:

4.3. The address of the bank's headquarters (*street* and number/*P.O.* box, city and postal code/country):

4.4. The number of the account:

4.5. Telephone/fax of the bank\*:

4.6. Other details concerning the type of account\*:

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

4.7. If the defendant is a natural person,

4.7.1. Defendant's date of birth:

4.7.2. Defendant's national identity number:

4.7.3. Defendant's passport number:

4.8. If the defendant is a legal person, the number of that legal person in the business register:

## 5. Jurisdiction

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

Yes

No

If yes, pass to field 6.

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

Your application must be lodged with the court/tribunal that has jurisdiction to deal with it. Jurisdiction for issuing the European Account Preservation Order *lies* with the court which has jurisdiction *over* the substance of matter *in accordance* with the rules of the respective instruments of European *Union* law. Information on the rules of jurisdiction can be found on the website of the European Judicial Atlas at [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm). You can also apply for a European Account Preservation Order directly in the Member State where the account is

located.

This section includes a non-exhaustive list of possible grounds for jurisdiction *in accordance with the* above-mentioned Regulation.

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

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

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

## 6. Existing judgment, court settlement or authentic instrument

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

6.2. Date of the judgment:

6.3. Currency:

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

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

6.4.1. Principal amount:

6.4.2. Interest awarded in *the* judgment:

– Amount: \_\_\_\_\_, or

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

Interest running as of the date of the judgment:

– rate ... %.

6.4.3. Costs to *be borne* by *the* defendant

- No
- Yes. Please **■** specify which costs and indicate the amount (claimed or incurred).
- Court fees: ...
- Lawyers' fees: ....
- Cost of service of documents: ...
- Other: ...

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

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

No – please go to field 8.

Yes – please *attach*:

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

the declaration of enforceability

and go to field 9.

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

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

- 7.1. Amount of the principal of the claim:
- 7.2. Amount of the interest:
- 7.2.1. Interest calculated up to *the date of the application* **■** :
- 7.2.2. Rate ...%
- 7.3. Grounds on which the claim against defendant is founded:
- 7.4. List of evidence (written evidence attached):

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



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

- 8.1. Is there *a* risk that the defendant *may* remove, dispose of or conceal assets held in *a* bank account? *If* so, give further information *concerning* the situation:  
8.2. Is there *any* other kind of risk *as* mentioned in text above this field? *If* so, give further information:  
8.3. List of evidence (written evidence attached):

## 9. Other courts *seised* of an application for protective measures

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

- 9.1. Applications for *another* European Account Preservation Order  
9.1.1. Name of the court:  
9.1.2. Address of the court:  
9.1.3. Reference number of the application:  
9.1.4. Is the amount *claimed* the same *as that involved* here ■ ?  
 Yes.  No *If no, state the amount involved in the other application* ■ *and the currency in which it is denominated:*  
9.2. Applications for national protective *measures*  
9.2.1. Name of the court:  
9.2.2. Address of the court:  
9.2.3. Reference number of the application:  
9.1.4. Is the amount *claimed* the same *as that involved* here ■ ?  
 Yes.  No *If no, state the amount involved in the other application* ■ *and the currency in which it is denominated:*

## 10. Date and signature

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

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

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

Done at:

Date: \_\_\_/\_\_\_/\_\_\_

Name and signature:

**List of documents attached to this application:**

## ANNEX II

### EUROPEAN ACCOUNT PRESERVATION ORDER

(Article 21 of Regulation (EC) No XXX of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters)

#### 1. Court of origin

1.1 Name:

1.2 Address:

1.3 Street and number/*P.O.* box:

1.4 *City* and postal code:

1.5 Member State

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

1.6 Tel./fax/e-mail:

#### 2. Claimant

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

2.2. Address:

2.2.1. Street and number/*P.O.* box:

2.2.2. *City* and postal code:

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

#### 3. Defendant

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

3.2. Address:

3.2.1. Street and number/*P.O.* box:

3.2.2. *City* and postal code:

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

#### 4. Date and reference *number* of the European Account Preservation Order

4.1. Date

4.2. Reference number of the order:

## 5. Bank accounts to be preserved

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

5.1. Information on *the* first bank account to be preserved

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

5.1.2. Name and address of the bank:

5.1.3. Number of the bank account:

5.2. Information on *the* second bank account to be preserved:

5.2.1. Member State where the bank account is located:

5.2.2. Name and address of the bank:

5.2.3. Number of the bank account:

(please use a separate sheet for additional accounts)

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

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

## 6. Preserved amount

6.1. Currency:

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

(please specify ISO code):

6.2. Principal amount:

6.3. Interest:

6.4. Costs (awarded in the judgment):

6.5. *Total preserved amount* ■ :

## 7. Security

7.1. Does the claimant have to provide security?

No

Yes, in the amount of:

Currency:

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

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

## 8. Costs

8.1. Currency:

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

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

No

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

Court fees: ...

Lawyers' fees: ....

Cost of service of documents: ...

Other: ...

## 9. Duration of the order

The order will become revocable unless the claimant initiates proceedings on the substance by .....(date) [*two weeks* from the date of issue of the order]<sup>1</sup>

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<sup>1</sup> Applies only if the order is issued prior to initiation of proceedings on the substance.

Done at ..... Date .....

.....  
Signature and/or stamp

## ANNEX III

### Declaration by the bank

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

(Article 27 (1) of Regulation (EC) No XXX of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters)

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

1. Court of origin

1.1. Name:

1.2. Address:

1.2.1. *Street and number/P.O. box:*

1.2.2. *City and postal code:*

1.2.3. *Member State*

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

2. European Account Preservation Order granted by the court of origin

2.1. Reference number of the European Account Preservation Order:

2.2. Total amount to be preserved:

3. Claimant

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

3.2. Address:

3.2.1. *Street and number/P.O. box:*

3.2.2. *City and postal code:*

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

3.3. E-mail:

4. Defendant

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

Done at ..... Date .....

.....  
Signature and/or stamp



## ANNEX IV

### APPLICATION FOR A REVIEW

(Articles 34, 35 and 36 of Regulation (EC) No XXX of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters)

### IMPORTANT INFORMATION

#### Language

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

#### 1. APPLICANT

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

1.2. Address:

1.2.1. *Street and number/P.O. box:*

1.2.2. *City and postal code:*

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

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

2.1. Name:

2.2. Address:

2.2.1. *Street and number/P.O. box:*

2.2.2. *City and postal code:*

2.2.3. *Member State*

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

#### 3. EUROPEAN ACCOUNT PRESERVATION ORDER:

3.1. Date and reference number:

3.2. Total amount to be preserved:

#### 4. MEMBER STATE OF ENFORCEMENT

Member *State* where the order has been enforced (please specify the country code set out in *section 2*):

#### 5. CLAIMANT

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

5.2. Address:

5.2.1. *Street and number/P.O. box:*

5.2.2. *City and postal code:*

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

#### **Request for a review**

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

If you want to raise any objection against the enforcement procedure listed in **section 7** below, *in particular concerning* the amounts exempt from execution, you *must* address your application to the court in the Member State of enforcement.

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

#### 6. REQUEST FOR A REVIEW IN THE COURT OF ORIGIN

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

I hereby *apply* for a review of the *European Account Preservation Order* because (please tick the appropriate box)

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

6.1.1.  The *Regulation* is not applicable to the claimant's claim/judgment (*Article 2*)

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

6.1.3.  The claimant's claim is not *well* founded (*Article 7(1)*), *for the following* reasons:

6.1.4.  There is no risk of *any removal, disposal or concealment* of funds held in the bank account (**point (b) of Article 7(1)**), for the following reasons:

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

6.4  The claimant has not initiated the proceedings on the substance of the matter within **two weeks** of the date of issue the *European Account Preservation Order* or *within* the shorter *deadline* set by the issuing court.

## 7. REQUEST FOR REVIEW IN THE MEMBER STATE OF ENFORCEMENT

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

I hereby *apply* for the review of the enforcement of the *European Account Preservation Order* because (please tick the appropriate box)

7.1. The *European Account Preservation Order* has been enforced *in a manner contrary to* the law of *the* Member State of enforcement because:

7.1.1.  The defendant has the right to exempt *a certain amount of money from the scope of the European Account Preservation Order* and *that amount or some part of it* has been preserved .

7.1.2.  The *defendant's* account  is exempt from enforcement under the law governing immunity from enforcement.

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

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

7.4.  The claimant has not initiated the proceedings on the substance of the matter within 30 days of the date of issue *of the European Account Preservation Order* or *within* the shorter *deadline* set by the issuing court.

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

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

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

consumer

employee

insured person.

Done at: ...

Date (dd/mm/yy):

Name of the applicant or authorised representative:

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

Signature:

# EXPLANATORY STATEMENT

## 1. Introduction

At present there are a number of EU instruments that are designed to facilitate the recovery of unpaid debts. They include the European Small Claims Procedure, the European Order for Payment procedure and the European enforcement order for uncontested claims. Even though these instruments make it easier for judgments on cross-border debt recovery to be recognised, much remains to be done as regards transitional measures.

It is estimated that, each year, some 2.6% of the annual turnover of EU companies is lost in unpaid debts. This is because the fragmentation of national rules on debt recovery enables debtors to transfer or move their money easily from a bank account in one Member State to another.

As evidenced by the Commission report<sup>1</sup>, four main shortcomings of the current situation can be identified:

- the conditions for issuing orders preserving assets in bank accounts under national law vary considerably between Member States<sup>2</sup>;
- it is impossible, in many Member States, for a creditor to obtain information about the whereabouts of his debtor's bank account;
- the costs of obtaining and enforcing an account preservation order in a cross-border situation are generally higher than in domestic cases;
- the differences between, and duration of, national enforcement procedures constitute a serious problem for debtors.

In order to address these issues, the proposal for a regulation under consideration introduces a new legal instrument of a protective nature called a European Account Preservation Order (EAPO), which a creditor may use as an alternative to national procedures. According to estimates by the Commission, by using the proposed measure, companies will be able to recover up to EUR 600 million in unpaid debts<sup>3</sup>.

## 2. Committee position

### 2.1. Scope.

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<sup>1</sup> See: Report on the proposal for a regulation (COM(2011)445, p.3).

<sup>2</sup> Writs of attachment are not a 'universal' concept in the legal system of the Union. On the contrary, there are several transitional measures in the various legal systems, ranging from general instruments, such as injunctions (Ireland) or orders (Denmark), to special instruments such as the Garnishment Order (Malta). In this regard, see the comparative analysis of national procedures for obtaining an order of attachment, by the CSES in a study commissioned by the European Commission and published in 2011: 'Study for an Impact Assessment on a Draft Legislative Proposal on the Attachment of Bank Accounts' (pages 70-85).

<sup>3</sup> See Commission's impact assessment on the proposal for a regulation (p. 35), available through the following link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2011:0937:FIN:EN:PDF>.

The Committee welcomes the legal uniformity applied by the Commission in the exclusions from the scope of the proposal, which largely correspond to those of the Brussels I Regulation, such as family law, social law and arbitration.

However, it proposes excluding matrimonial property regimes and successions from the scope of the proposal. In the Committee's view, such a broad extension of the scope would require a specific impact assessment. Moreover, these areas do not appear to fall within the main objectives of the proposal, which, as the Commission points out, seeks to facilitate *'the recovery of cross-border claims for citizens and businesses (...)* and improve the efficiency of enforcement of judgments in civil and commercial matters concerning cross-border disputes'<sup>1</sup>

## **2.2. Definitions.**

To define the scope of the regulation, the Committee considers it necessary to clarify and simplify the proposed text with regard to the definition of 'matters having cross-border implications'. It is, in fact, essential to provide a suitable definition of the concept of 'cross-border dispute'. To that end, the Committee proposes that the criteria which define the cross-border dimension of the matter be tightened up by reversing the presumption. Accordingly, a matter will be considered to have cross-border implications only if the debtors are domiciled and/or the bank accounts to be preserved by the order are located in a Member State other than that of the court seised for the issuing of the EAPO.

The Committee does not think it is advisable to include 'financial instruments', as defined in Article 4(1)(17) of Directive 2004/39/EC in the definition of 'bank account'. These instruments would include, amongst others, cash and marketable securities, money market instruments, units in an undertaking for collective investment, options and financial derivatives for the transfer of credit risk. In the Committee's view, the precautionary freezing of financial instruments poses risks that are different from the freezing of 'traditional' bank deposit accounts. Indeed, the value of financial instruments is subject to change due to fluctuations in market rates. Therefore, including financial instruments in the scope of the EAPO could have negative repercussions on both debtors and creditors.

The Committee is of the opinion that the definition of 'claim' given in Article 4, point 7, of the proposal should be expanded in order to specify its nature. To that end, a reference to liquidity and collectability requirements will help to determine whether the claim is well-founded and would avoid discrepancies in the interpretation of the nature of the claim for which the court is required to issue the EAPO.

Lastly, with the aim of increasing the legal certainty of the text, the Committee considers it appropriate to clarify the definition of 'bank', making a distinction between credit institutions and electronic money institutions.

## **2.3. Procedure for obtaining an EAPO**

### *· Ex parte procedure*

In order to ensure that the measure is as effective as possible, the proposal provides for a

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<sup>1</sup> Explanatory Memorandum of the Commission proposal COM(2011)445, p. 4.

'surprise effect' at the implementation stage of the EAPO. The aim is to prevent debtors from withdrawing or transferring amounts held in other bank accounts in a state different from that of the procedure. To that end, the EU procedure is available even before an enforcement order has been obtained in the Member State where the debtor is located<sup>1</sup> and the EAPO can be issued in an *ex parte* procedure, i.e. without having first heard the debtor<sup>2</sup>.

Although it is vital that the surprise effect be safeguarded by the use of the *ex parte* procedure for the issuance of an EAPO, the Committee takes the view that the wording of the provision should be revised in order to strike a fair balance between the rights of the creditor and those of the debtor. The proposal, in fact, appears to be overly biased in favour of the claimant and does not offer the necessary safeguards to mitigate the potentially draconian nature of the EAPO.

In view of the above analysis, the Committee would welcome the introduction of a provision whereby, in exceptional and duly justified cases, the court seised would have the right to summon the defendant in order to obtain further information<sup>3</sup>, to enable a more accurate assessment to be made of the merits of the application.

- ***Conditions for granting the order***

In order to balance the rights of debtors and those of creditors, the Committee is of the view that the conditions for granting the EAPO need to be tightened up and be more specific<sup>4</sup>. Accordingly, the amendment to letter (b) of the first paragraph of Article 7 provides a broader definition of a condition for applying for an EAPO. According to the relevant changes, a creditor whose claim is at risk of being impaired, either wholly or in part, may apply for an EAPO. At the same time, the wording has been tightened up by the use of the criterion of 'sufficiency' with regard to the necessary supporting evidence for claims and 'ongoing risk' in the case of impairment.

- ***Application for an EAPO***

The Committee proposes increasing the information that debtors have to supply when filling in an application form for an EAPO and making that information more specific. Along the same lines, a subsequent change introduces the requirement for creditors to accompany the EAPO application with a declaration certifying that the information provided in the application is true and complete and that they are aware of the penalties to which anyone knowingly making false and incomplete declarations is liable under the law of the Member State in which the application is made.

- ***Evidence***

The Committee takes the view that the criteria governing the evidence that may be admitted in the procedure should be tightened up and be more specific. It does not consider it appropriate

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<sup>1</sup> Article 5 (Availability)

<sup>2</sup> Article 10 (Ex parte procedure)

<sup>3</sup> The adversarial principle is one of the fundamental principles of the legal systems of the Member States.

<sup>4</sup> See Article 7 of the proposal.

to use written statements of witnesses or experts. National provisions governing the definition of 'expert' differ in individual national legal systems; this raises the serious risk of fraudulent evidence being given. For that reason, the Committee proposes regulating the methods for gathering evidence under national law and deleting from the text the option of using expert witness statements.

- ***Creditor liability***

In order to encourage a 'responsible' use of the procedure, the Committee is of the view that creditors should be held liable for any damage caused to defendants as a result of the revocation or amendment of an EAPO, the suspension of the enforcement of an EAPO or the claim being deemed unfounded during proceedings on the substance of the matter. Likewise, the Committee proposes making it compulsory for creditors to provide a security deposit or a sufficient guarantee to compensate for any damage suffered by debtors further to the enforcement of an EAPO that is subsequently revoked.

#### **2.4. Information on bank accounts and costs relating to the procedure**

The Committee is of the view that the information referred to in points (iii) and (iv) of Article 16, point c, of the proposal, namely the date of birth, national identity or passport number or number of the legal person in the business register, should always, if known, be communicated in order to raise the level of information necessary for the identification of the debtor's account, thus increasing the level of protection of the latter's rights. Such a provision may also enable the debtor's account to be identified more quickly and reliably.

As regards the provisions of Article 17 of the proposal, in keeping with the opinion expressed by the European Data Protection Supervisor<sup>1</sup>, and in order to avoid disclosing information that is not relevant, such as the disclosure of bank secrets, the Committee proposes to limit the request for, and obtaining of, information on the defendant's bank account to that which is genuinely necessary for the purpose of identifying the defendant and his or her accounts and to make the information requested more specific. At the same time, among the means the competent authority has of obtaining information, the Committee takes the view that the defendant should be required to state where the account is held and be prohibited from carrying out any transactions, including withdrawals and transfers, against the account that would cause the amount held therein to fall below the amount due, as specified on the EAPO.

The Commission proposal stipulates that the payment or reimbursement of costs incurred by the banks in implementing the EAPO is to be governed by national law (Article 30(1)). In the light of the differences in individual national legal systems, a provision of this kind is likely to discriminate against those banks for which there is no provision for such reimbursement. Indeed, it is undeniable that the proposed procedure will involve the use of human and economic resources, the burden of which cannot be ignored given that a private, rather than public, interest is being pursued here. For that reason the Committee considers it appropriate for Article 30 to lay down explicit, harmonised provisions for the payment of the costs incurred by banks at the enforcement stage of the EAPO.

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<sup>1</sup> See Opinion of the European Data Protection Supervisor, Official Journal of the European Union, C 373/4 (21/12/2011).



1.3.2012

## **OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS**

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters

(COM(2011)0445 – C7-0211/2011 – 2011/0204(COD))

Rapporteur: Elena Băsescu

### **SHORT JUSTIFICATION**

The rapporteur takes the view that more effective cross-border debt recovery will boost competitiveness on the single market. The complexity of these arrangements is having an adverse economic impact, primarily on undertakings trading or supplying services in other Member States. A central premise for a level playing field within the single market has to be functional and affordable access to cross-border debt recovery procedures. Since clarity is of the essence in defining cross-border implications, the rapporteur is seeking to define what they are rather than what they are not.

European account preservation proceedings are an alternative to internal legal proceedings designed to achieve similar ends. While the issuing of account preservation orders without notifying debtors undoubtedly ensures that they can be effectively enforced, it is at the same time necessary to strike the correct balance between the rights of creditors to recover amounts outstanding and adequate protection for debtors. The rapporteur acknowledges the need to require creditors to provide security, the amount to be set by the relevant court, and to clarify concepts such as the merits of claims. At the same time legal proceedings should, as a matter of principle, be expedited by establishing short and specific deadlines for the issuing and enforcement of account preservation orders.

The rapporteur is of the opinion that asset disclosure should be limited to the amounts necessary to meet the actual claims, while amounts necessary to cover debtors' basic living costs should be exempted from account preservation proceedings. At the same, it is necessary to cover banking costs arising from the implementation of preservation orders while ensuring that settlements accurately reflect the real costs to banks of providing these services, thereby respecting the principles of proportionality and impartiality.

## AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

### Amendment 1

#### Proposal for a regulation

##### Recital 15

###### *Text proposed by the Commission*

(15) This Regulation should provide sufficient safeguards against abuse of the order. In particular, unless the creditor already has a judgment enforceable in the Member State of enforcement, the court should ***be able to*** require the creditor to provide security to ensure compensation for any damage suffered by the debtor as a result of an unjustified order. The conditions under which the creditor will be liable to compensate the debtor for such damage should be governed by national law. ***Where the law of a Member State does not provide for a statutory liability of the claimant, this Regulation should not preclude the recourse to measures with equivalent effect, such as the obligation on the claimant to give an undertaking as to damages.***

###### *Amendment*

(15) This Regulation should provide sufficient safeguards against abuse of the order. In particular, unless the creditor already has a judgment enforceable in the Member State of enforcement, the court should require the creditor to provide security to ensure compensation for any damage suffered by the debtor as a result of an unjustified order, ***the amount of such security being set by the relevant court and being dependent on the amount of the debt.*** The ***detailed*** conditions under which the creditor will be liable to compensate the debtor for such damage should be governed by national law ***but Member States should ensure that provisions are in place to compensate victims of an abuse of the order.***

###### *Justification*

*Given the insufficiently stringent conditions for the issuing of account preservation orders, it is necessary to require creditors to provide security, the amount to be determined by the relevant court.*

### Amendment 2

#### Proposal for a regulation

##### Recital 17

###### *Text proposed by the Commission*

(17) In order to ensure a swift enforcement

###### *Amendment*

(17) In ***the event that a claimant has***

of the account preservation order, *the* Regulation should provide that the transmission of the order from the issuing court to the bank is effected by means of direct service as set out in Regulation (EC) No 1393/2007 on the service of judicial and extrajudicial documents in the Member States. This Regulation should also provide appropriate rules for the implementation of the order by the bank and oblige the bank to declare whether the order has successfully caught any funds of the debtor.

***already obtained a judgment or other enforceable title on the substance, and in*** order to ensure a swift enforcement of the account preservation order, *this* Regulation should provide that the transmission of the order from the issuing court to the bank is effected by means of direct service as set out in Regulation (EC) No 1393/2007 on the service of judicial and extrajudicial documents in the Member States. This Regulation should also provide appropriate rules for the implementation of the order by the bank and oblige the bank to declare whether the order has successfully caught any funds of the debtor.

#### *Justification*

*In line with the Commission proposal there should be no exequatur requirements where a substantive judgment has already awarded a sum to the creditor, as the account preservation order is only giving effect to someone seeking possession of their lawful property.*

### **Amendment 3**

#### **Proposal for a regulation Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17a) In the event that a claimant has not yet obtained a judgment or other enforceable title on the substance, the account preservation order may be made the subject of minimal proportionate proceedings by the courts in the Member States where the accounts are held. Such court proceedings must be limited to that which is necessary in order to ensure adequate protection of the debtor. The debtor must not be informed of such proceedings prior to the order being implemented.***

#### *Justification*

*In order to enable Member States to guarantee the protection of their citizens from malicious*

*misuse of the account preservation order exequatur procedures, they should be able to apply exequatur requirements to the application of an order in their Member State. Such proceedings should not be able to second guess the decision of the originating court regarding the merits of the claimants case for an order, but should be able to decide if sufficient protections are in place.*

#### **Amendment 4**

##### **Proposal for a regulation**

##### **Recital 18**

###### *Text proposed by the Commission*

(18) The debtor's right to a fair trial should be safeguarded in the proceedings for the account preservation order. This notably requires that the order and all documents submitted by the claimant be served on the defendant promptly after its implementation and that the defendant can apply for a review of the order. Jurisdiction for the review should lie with the court having issued the order except if aspects of enforcement are contested. However, **if** the defendant **is a consumer, employee or insured, he** should be able to apply for a review of the order before the courts in **the** Member State **of his domicile**. The debtor should also have the right to release the funds in the account **is** he provides alternative security.

###### *Amendment*

(18) The debtor's right to a fair trial should be safeguarded in the proceedings for the account preservation order. This notably requires that the order and all documents submitted by the claimant be served on the defendant promptly after its implementation and that the defendant can apply for a review of the order. Jurisdiction for the review **of the order itself** should lie with the court having issued the order except if aspects of enforcement are contested. However, the defendant should be able to apply for a review of the order before the courts in **a** Member State **where he holds accounts as regards enforcement of the order in that Member State**. The debtor should also have the right to release the funds in the account **if** he provides alternative security.

###### *Justification*

*To challenge an account preservation order as it applies across the EU the debtor should have to seek a review from the court which issued the order, but to ensure protection of individuals, who may live and hold accounts in more than one Member State, they should be able to challenge the implementation of an order in the courts of any Member State where they hold accounts as regards the orders implementation in that Member State.*

## Amendment 5

### Proposal for a regulation

#### Article 2 – paragraph 1

*Text proposed by the Commission*

1. This Regulation shall apply to **pecuniary** claims in civil and commercial matters having cross-border implications as defined in Article 3 whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

*Amendment*

1. This Regulation shall apply to claims in civil and commercial matters having cross-border implications as defined in Article 3 whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

*Justification*

*Under Article 4(7), 'claim' is already defined as meaning an existing claim for payment of a specific or determinable sum of money.*

## Amendment 6

### Proposal for a regulation

#### Article 2 – paragraph 3

*Text proposed by the Commission*

3. This Regulation shall not apply to bank accounts which, under the law governing immunity from enforcement of the Member State where the account is located, are exempt from seizure or to systems for the settlement of securities designated by Member States in accordance with Article 10 of Directive 98/26/EC of the European Parliament and of the Council.

*Amendment*

3. This Regulation shall not apply to bank accounts which, under the law governing immunity from enforcement of the Member State where the account is located, are exempt from seizure or to **accounts opened for the setting-up of payment systems and** systems for the settlement of securities designated by Member States in accordance with Article 10 of Directive 98/26/EC of the European Parliament and of the Council.

*Justification*

*Exemptions from the scope of the regulation should apply to all accounts opened for the purpose of setting up the systems referred to in Directive 98/26/EC (financial settlement instruments and payment systems) and not only securities settlement systems.*

## Amendment 7

### Proposal for a regulation Article 3

#### *Text proposed by the Commission*

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

#### *Amendment*

For the purposes of this Regulation a matter **has** cross-border implications **if any of the following:**

- the court seized with the application for an EAPO,
- **any of the** bank accounts to be preserved by the order, **or**
- **any of** the parties  
are **not** domiciled in the same Member State.

#### *Justification*

*For the sake of greater clarity, it is necessary to define cross-border implications in terms of what they are rather than what they are not (see for example the definitions contained in Regulation (EC) No 1896/2006 creating a European order for payment procedure or Regulation (EC) No 861/2007 establishing a European Small Claims Procedure).*

## Amendment 8

### Proposal for a regulation Article 3 – paragraph 1 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***The date to be taken as the basis for determining whether a case has a cross-border dimension shall be that on which the account preservation claim form is filed with the relevant court.***

#### *Justification*

*It is necessary to specify the date on which the elements determining the cross-border*

dimension of a case are assessed (see for example Regulation (EC) No 1896/2006 on the European order for payment procedure or Regulation (EC) No 861/2007 establishing a European Small Claims Procedure).

## Amendment 9

### Proposal for a regulation Article 4 – point 2

*Text proposed by the Commission*

2. ‘bank’ means **an undertaking** the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;

*Amendment*

2. ‘bank’ means **a credit institution** the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account;

#### *Justification*

*The term ‘credit institution’ should be used in defining banks, as established under Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions.*

## Amendment 10

### Proposal for a regulation Article 4 – point 11 – point a

*Text proposed by the Commission*

(a) relates to the signature and **the** content of the instrument, and

*Amendment*

(a) relates to the signature and content of the instrument, **determination of the identity of the parties and endorsement by the latter of the content and date of the instrument**, and

#### *Justification*

*The authenticity of a document is established with reference to determination of the identity of the parties and their endorsement of the content and date of the document in question.*

## Amendment 11

### Proposal for a regulation Article 5 – paragraph 1 – point a

*Text proposed by the Commission*

(a) the **claimant** applies for an EAPO prior

*Amendment*

(a) the **creditor** applies for an EAPO prior

to the initiation of judicial proceedings on the substance of the matter against the **defendant** or at any stage during such proceedings;

to the initiation of judicial proceedings on the substance of the matter against the **debtor** or at any stage during such proceedings;

*Justification*

*Prior to the commencement of legal proceedings it is inappropriate to refer to claimants or defendants, more suitable terms being creditors or debtors.*

**Amendment 12**

**Proposal for a regulation**

**Article 5 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the **claimant** has obtained a judgment, court settlement or authentic instrument against the **defendant** which is enforceable in the Member State of origin but has not yet been declared enforceable in the Member State of enforcement where such a declaration is required.

*Amendment*

(b) the **creditor** has obtained a judgment, court settlement or authentic instrument against the **debtor** which is enforceable in the Member State of origin but has not yet been declared enforceable in the Member State of enforcement where such a declaration is required.

*Justification*

*Prior to the commencement of legal proceedings it is inappropriate to refer to claimants or defendants, more suitable terms being creditors or debtors.*

**Amendment 13**

**Proposal for a regulation**

**Article 5 – paragraph 2**

*Text proposed by the Commission*

2. Section 2 applies to situations where the **claimant** applies for an EAPO after having obtained a judgment, court settlement or authentic instrument against the **defendant** which is by operation of law enforceable in the Member State of enforcement or has been declared enforceable there.

*Amendment*

2. Section 2 applies to situations where the **creditor** applies for an EAPO after having obtained a judgment, court settlement or authentic instrument against the **debtor** which is by operation of law enforceable in the Member State of enforcement or has been declared enforceable there.



*Justification*

*Prior to the commencement of legal proceedings it is inappropriate to refer to claimants or defendants, more suitable terms being creditors or debtors.*

**Amendment 14**

**Proposal for a regulation  
Article 6 – paragraph 2**

*Text proposed by the Commission*

2. Jurisdiction for issuing the EAPO shall lie with the courts of the Member State where proceedings on the substance of the matter have to be brought in accordance with the applicable rules on jurisdiction. Where more than one court has jurisdiction for the substance of the matter, the court of the Member State where the claimant has brought proceedings on the substance *or intends to bring proceedings on the substance* shall have jurisdiction

*Amendment*

2. Jurisdiction for issuing the EAPO shall lie with the courts of the Member State where proceedings on the substance of the matter have to be brought in accordance with the applicable rules on jurisdiction. Where more than one court has jurisdiction for the substance of the matter, the court of the Member State where the claimant has brought proceedings on the substance shall have jurisdiction.

*Justification*

*Deletion of the words ‘or intends to bring proceedings on the substance’ will minimise any ambiguity for the purpose of establishing the courts with which jurisdiction lies.*

**Amendment 15**

**Proposal for a regulation  
Article 7 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) that the claim against the defendant *appears to be* well founded;

*Amendment*

(a) that the claim against the defendant *is* well founded;

*Justification*

*In order to establish the correct balance between the rights of defendants and claimants, claims against defendants must actually be well founded.*

## Amendment 16

### Proposal for a regulation

#### Article 7 – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***The claim shall be considered well founded for the purposes of point (a) above where it is established that, inter alia:***

- the claim exists,***
- the claim is payable,***
- legal proceedings have been initiated on the merits of the claim.***

*Justification*

*In order to strike the correct balance between the rights of defendants and claimants, the text of the regulation should contain criteria for determining the merits of claims against debtors.*

## Amendment 17

### Proposal for a regulation

#### Article 7 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Where the claimant has already obtained a judgment, court settlement or authentic instrument ***for the payment of a sum of money against the defendant which is enforceable in the Member State of origin and entitled to recognition in the Member State of enforcement under the applicable instruments of Union law, the condition set out in paragraph 1 (a) shall be deemed to be fulfilled.***

***2. The condition set out in point (a) of the first subparagraph of paragraph 1 shall be deemed to be fulfilled*** where the claimant has already obtained a judgment, court settlement or authentic instrument enforceable in the Member State of origin and entitled to recognition in the Member State of enforcement under the applicable instruments of Union law ***under which it is established or where it is ascertained that the claim relates to a payment which is being sought through an application for an account preservation order.***

*Justification*

*It is necessary to reword the text to make it clearer and strike the correct balance between the rights of defendants and claimants.*

## Amendment 18

### Proposal for a regulation Article 12

#### *Text proposed by the Commission*

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

#### *Amendment*

Before issuing an EAPO, the court *shall* require the provision of a security deposit or an equivalent assurance by the claimant to ensure compensation for any damage suffered by the defendant. *The claimant shall be* liable to compensate such damage *should the court which issued the EAPO decide, upon review, that the claimant wrongfully applied for an EAPO*.

## Amendment 19

### Proposal for a regulation Article 13

#### *Text proposed by the Commission*

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

#### *Amendment*

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

#### *Justification*

*It is necessary to specify 30 calendar days.*

## Amendment 20

### Proposal for a regulation Article 16 – point c – introductory wording

*Text proposed by the Commission*

*Amendment*

(c) *either*

(c) *any of the following:*

## Amendment 21

### Proposal for a regulation Article 17 – paragraph 5 – point a

*Text proposed by the Commission*

*Amendment*

(a) the possibility to oblige all banks in their territory to *disclose* whether the defendant holds an account with them.

(a) the possibility to oblige all banks in their territory to *inform the competent authorities* whether the defendant holds an account with them.

#### *Justification*

*It is necessary to specify that the competent authorities must be informed.*

## Amendment 22

### Proposal for a regulation Article 21 – paragraph 7 – point b

*Text proposed by the Commission*

*Amendment*

(b) where the claimant obtained a judgment, authentic instrument or court settlement on the substance which is enforceable in the Member State of origin or in cases referred to in Article 5(2), until the effect of the EAPO is replaced by an equivalent effect of an enforcement measure under national law, provided that in the former case the claimant has launched the enforcement proceedings within 30 days after the judgment, authentic instrument or court settlement has been notified or has become enforceable, whichever is the later.

(b) where the claimant obtained a judgment, authentic instrument or court settlement on the substance which is enforceable in the Member State of origin or in cases referred to in Article 5(2), until the effect of the EAPO is replaced by an equivalent effect of an enforcement measure under national law, provided that in the former case the claimant has launched the enforcement proceedings within 30 *calendar* days after the judgment, authentic instrument or court settlement has been notified or has become enforceable, whichever is the later.

*Justification*

*It is necessary to specify 30 calendar days.*

**Amendment 23**

**Proposal for a regulation**  
**Article 22 – paragraph 2**

*Text proposed by the Commission*

2. An appeal is to be lodged within 30 days of notification of the decision referred to in paragraph 1.

*Amendment*

2. An appeal is to be lodged within 30 **calendar** days of notification of the decision referred to in paragraph 1.

*Justification*

*It is necessary to specify 30 calendar days.*

**Amendment 24**

**Proposal for a regulation**  
**Article 23**

*Text proposed by the Commission*

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

*Amendment*

An EAPO issued in one Member State **in circumstances as referred to in Article 5(2)** and Article 14(1) shall be recognised and enforceable in other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

*Justification*

*It should be clear that exequatur is only abolished where the claimant has received a substantive judgement as set out in Article 5(2).*

## Amendment 25

### Proposal for a regulation Article 25 – paragraph 1

*Text proposed by the Commission*

1. ***The defendant shall be served with the EAPO and all documents submitted to the court or competent authority with a view to obtaining the order without undue delay*** after service on the bank has been effected pursuant to Article 24 and the bank has issued the declaration pursuant to Article 27.

*Amendment*

1. ***No more than one working day*** after service on the bank has been effected pursuant to Article 24 and the bank has issued the declaration pursuant to Article 27, ***the defendant shall be served with the EAPO and with all documents submitted to the court or competent authority with a view to obtaining the EAPO.***

*Justification*

*It is necessary to specify precisely the deadline within which the defendant must be served with the EAPO and all documents submitted to the court or competent authority with a view to obtaining the order.*

## Amendment 26

### Proposal for a regulation Article 26 – paragraph 3

*Text proposed by the Commission*

3. Where the funds in the account designated in the EAPO pursuant to paragraph 1 consist of financial instruments, their value shall be determined by reference to the relevant market rate applicable on the day of implementation.

*Amendment*

3. Where the funds in the account designated in the EAPO pursuant to paragraph 1 consist of financial instruments, their value shall be determined by reference to the relevant market rate applicable on the day of implementation. ***Where the funds in the account exceed the amounts specified in the EAPO, the bank shall determine the financial instruments to which the EAPO is to apply. In the event that the debtor disagrees with the bank's decision, the debtor may apply for a review of that decision by the relevant court of the Member State where the account is held.***

*Justification*

*Where the account contains different financial instruments it is necessary to specify which of them are affected.*

**Amendment 27**

**Proposal for a regulation  
Article 26 – paragraph 4**

*Text proposed by the Commission*

4. Where the currency of the funds held in the account is not the same as that in which the EAPO was issued, the bank shall convert the amount by reference to the official exchange rate of the day of implementation.

*Amendment*

4. Where the currency of the funds held in the account is not the same as that in which the EAPO was issued, the bank shall convert the amount by reference to the official exchange rate of the day of implementation ***in the Member State in which the account is located.***

*Justification*

*The official exchange rate used by the bank to convert the amount in question should be specified.*

**Amendment 28**

**Proposal for a regulation  
Article 34 – title**

*Text proposed by the Commission*

***Remedies*** of the defendant ***in the Member State of origin***

*Amendment*

***Right*** of the defendant ***to a review of the EAPO***

**Amendment 29**

**Proposal for a regulation  
Article 34 – paragraph 2**

*Text proposed by the Commission*

2. With the exception of a review pursuant to paragraph 1(b), the application for a review shall be made promptly, in any event within 45 days from the day the

*Amendment*

2. With the exception of a review pursuant to paragraph 1(b), the application for a review shall be made promptly, ***and*** in any event within 45 ***calendar*** days from the

defendant was effectively acquainted with the contents of the order and was able to react.

day the defendant was effectively acquainted with the contents of the order and was able to react *thereto*.

*Justification*

*It is necessary to specify 45 calendar days.*

**Amendment 30**

**Proposal for a regulation  
Article 34 – paragraph 3**

*Text proposed by the Commission*

3. The application for a review shall be addressed to the court which issued the order. The application shall be submitted using the form set out in Annex IV and by any means of communication, including electronic.

*Amendment*

3. The application for a review *of the EAPO as it applies across the Union* shall be addressed to the court which issued the order. The application shall be submitted using the form set out in Annex IV and by any means of communication, including electronic.

*Justification*

*To challenge an account preservation order as it applies across the EU the debtor should have to seek a review from the court which issued the order, but to ensure protection of individuals, who may live and hold accounts in more than one Member State, they should be able to challenge the implementation of an order in the courts of any Member State where they hold accounts as regards the order's implementation in that Member State.*

**Amendment 31**

**Proposal for a regulation  
Article 34 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Without prejudice to the rights of the defendant under Article 35, a defendant may also address an application for a review of the EAPO to a court in another Member State. Any decision by a court to set aside or modify the EAPO taken under this paragraph shall be applicable only in the Member State in which that court is***



*located.*

*Justification*

*To challenge an account preservation order as it applies across the EU the debtor should have to seek a review from the court which issued the order, but to ensure protection of individuals, who may live and hold accounts in more than one Member State, they should be able to challenge the implementation of an order in the courts of any Member State where they hold accounts as regards the order's implementation in that Member State.*

**Amendment 32**

**Proposal for a regulation**

**Article 34 – paragraph 4**

*Text proposed by the Commission*

4. The application shall be served on the claimant in accordance with the applicable rules on the service of documents.

*Amendment*

4. The application shall be served on the claimant **by the court** in accordance with the applicable rules on the service of documents.

*Justification*

*It is necessary to specify that the application will be served by the court.*

**Amendment 33**

**Proposal for a regulation**

**Article 34 – paragraph 7**

*Text proposed by the Commission*

7. The decision will be immediately served on the bank or banks concerned which shall immediately upon receipt implement the decision by unblocking the amount preserved fully or partially. It will also be immediately served to the claimant in accordance with the applicable rules on the service of documents.

*Amendment*

7. The decision will be immediately served **by the court** on the bank or banks concerned which shall immediately upon receipt implement the decision by unblocking the amount preserved fully or partially. It will also be immediately served **by the court** to the claimant in accordance with the applicable rules on the service of documents.

*Justification*

*It is necessary to specify that the decision will be served by the court.*

## **Amendment 34**

### **Proposal for a regulation Article 36**

*Text proposed by the Commission*

*Amendment*

#### *Article 36*

*deleted*

#### ***Remedies of the defendant in the Member State of his domicile***

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

#### *Justification*

*To challenge an account preservation order as it applies across the EU the debtor should have to seek a review from the court which issued the order, but to ensure protection of individuals, who may live and hold accounts in more than one Member State, they should be able to challenge the implementation of an order in the courts of any Member State where they hold accounts as regards the order's implementation in that Member State.*

## PROCEDURE

<b>Title</b>	European account preservation order
<b>References</b>	COM(2011)0445 – C7-0211/2011 – 2011/0204(COD)
<b>Committee responsible</b> Date announced in plenary	JURI 13.9.2011
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ECON 13.9.2011
<b>Rapporteur(s)</b> Date appointed	Elena Băsescu 13.9.2011
<b>Discussed in committee</b>	20.12.2011      6.2.2012
<b>Date adopted</b>	29.2.2012
<b>Result of final vote</b>	+:                    34 -:                    0 0:                    0
<b>Members present for the final vote</b>	Burkhard Balz, Udo Bullmann, Pascal Canfin, George Sabin Cutaş, Leonardo Domenici, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Syed Kamall, Philippe Lamberts, Astrid Lulling, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Skinner, Theodor Dumitru Stolojan, Sampo Terho, Corien Wortmann-Kool, Pablo Zalba Bidegain
<b>Substitute(s) present for the final vote</b>	Elena Băsescu, Philippe De Backer, Herbert Dorfmann, Sari Essayah, Enrique Guerrero Salom, Thomas Händel, Danuta Jazłowiecka, Olle Ludvigsson, Thomas Mann, Sirpa Pietikäinen, Godelieve Quisthoudt-Rowohl, Theodoros Skylakakis



## PROCEDURE

<b>Title</b>	European account preservation order			
<b>References</b>	COM(2011)0445 – C7-0211/2011 – 2011/0204(COD)			
<b>Date submitted to Parliament</b>	25.7.2011			
<b>Committee responsible</b> Date announced in plenary	JURI 13.9.2011			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	ECON 13.9.2011			
<b>Rapporteur(s)</b> Date appointed	Raffaele Baldassarre 21.11.2011			
<b>Discussed in committee</b>	20.12.2011	6.11.2012	27.11.2012	21.2.2013
	19.3.2013			
<b>Date adopted</b>	30.5.2013			
<b>Result of final vote</b>	+: -: 0:	22 0 0		
<b>Members present for the final vote</b>	Raffaele Baldassarre, Luigi Berlinguer, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Sajjad Karim, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka			
<b>Substitute(s) present for the final vote</b>	Mary Honeyball, Eva Lichtenberger, József Szájer, Axel Voss			
<b>Date tabled</b>	20.6.2013			