



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.6.2003
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2002/0090 (COD)

Amended proposal for a

**REGULATION
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

creating a European enforcement order for uncontested claims

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

EXPLANATORY MEMORANDUM¹

1. BACKGROUND

On 18 April 2002 the Commission adopted a proposal for a Council Regulation creating a European enforcement order for uncontested claims². The proposal was transmitted to Parliament and the Council on 18 April 2002. At its December 2002 session, the European Economic and Social Committee issued its Opinion on the proposal³. The European Parliament, initially consulted under the consultation procedure, referred the proposal to its Legal Affairs and Internal Market Committee (responsible for the report) and its Committee on Public Liberties and Citizens' Rights (for opinion). Due to the entry into force of the Treaty of Nice the proposal was transferred to codecision procedure. The Committee on Public Liberties and Citizens' Rights decided, on 2 July 2002, not to deliver an opinion. The Legal Affairs and Internal Market Committee approved its report on 26 March 2003. At the plenary session on 8 April 2003, the European Parliament adopted its opinion approving the Commission proposition subject to a number of amendments.

2. THE AMENDED PROPOSAL

This amended proposal is adopted in response to amendments voted on by Parliament. The Commission can accept a number of Parliament's amendments.

List of the amendments accepted in whole or in part : 1, 2, 4, 5, 7, 9, 10, 11, 14, 15, 16

2.1. AMENDMENTS ACCEPTED IN WHOLE OR IN PART

Amendment 1 – New recital 3a

The proposal was adopted by the Commission before the entry into force of the Treaty of Nice. This Treaty brought about a significant change to Article 67 of the EC Treaty pursuant to whose paragraph 5 measures provided for in Article 65 are adopted in codecision procedure and not as previously by the Council after consultation of the European Parliament. Since the Treaty of Nice does not foresee any transitional rules for legislative procedures that were already pending at the time of its entry into force on 1 February 2003 the codecision procedure became immediately applicable on that date. The amendment by Parliament that simply takes account of this new situation in a recital can therefore be accepted.

Amendment 2 - Article 3 (4) (b)

Parliament proposes two modifications of the definition of one sub-category of the term "uncontested claims".

The first one aims at clarifying that, in order to constitute a valid opposition, the conduct must be in conformity with the procedural requirements of the Member State of origin (with the logical consequence of a claim being considered uncontested if an attempt to object to it did

¹ Amendments to the original Commission proposal are highlighted using "strikethrough" for deleted passages and "bold" and "underline" for new or amended passages.

² COM (2002) 159 final, 18.4.2002; OJ C 203 E, 27.08.2002, p. 86.

³ OJ C 85, 8.4.2003, p. 1.

not comply with these requirements). The Commission can accept this part of the amendment in principle as it fully subscribes to its intention but it favours a wording that would avoid the reference to a formal application (to dismiss the claim) as suggested by Parliament. This terminology may not be suitable for all Member States and all types of procedures and it does not cover all the scenarios that should be covered (e.g. that of a debtor who expressly applies for a dismissal himself although representation by a lawyer is mandatory). One should preferably refer, in more general terms, to “compliance with the relevant procedural requirements of the Member State of origin”.

The second modification would render inadmissible as a valid objection to a claim statements of opposition in pre-litigation proceedings if they automatically lead to court litigation proceedings. The Commission cannot accept this element of the amendment. As far as the pre-trial period is concerned the current wording already clearly sets out that the opposition has to be lodged “in the course of the court proceedings”. The amendment appears to primarily address, however, statements of opposition in summary order for payment proceedings (injonction de payer, Mahnverfahren) as only those can automatically lead to adversarial proceedings. For those proceedings the terminology “pre-litigation” is inappropriate because they already constitute court proceedings. Furthermore, the situation of initial opposition but subsequent abstention from participation is already specifically governed by the following sub-paragraph of the same Article and does not need to be dealt with twice. The Commission can thus accept amendment 2 (first part) in principle, albeit with a different wording.

Amendment 4 - Article 3 (6)

The provision establishes as a requirement of an ordinary appeal that the lodging of such appeal is bound to a period which starts to run by virtue of the judgment at issue. The running of time, even where tied to the judgment, is, however, triggered by different events in different Member States, either by the delivery of the judgment or by its service. The amendment adds to the precision of the definition by taking account of that situation. The Commission can accept amendment 4.

Amendment 5 – Article 4

Parliament proposes to rephrase the description of the legal effects of the certification of a judgment as a European Enforcement Order, the abolition of exequatur, by explicitly equating it with a “national enforcement order”. The Commission shares the goal of spelling out the legal significance of the European Enforcement Order certificate as clearly and unequivocally as possible. In the Commission’s opinion, however, this purpose could be better served by referring more directly to the practical consequences of certification. To that end the wording should be brought in line with the text that has been agreed upon by the Council in respect of the abolition of exequatur for some decisions on parental responsibility. It should thus be stated that a judgment certified as a European Enforcement Order “shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition”. The Commission can therefore accept amendment 5 in principle, albeit with a modified wording.

Amendments 6, 7, 8 and 16, relating to the introduction of an appeal against the European Enforcement Order certificate – Articles 7 (1), 7 (3a) (new), 8 and Annex I, point 13a (new).

Pursuant to Article 8 of the proposal no appeal lies against the decision on the application for a European Enforcement Order certificate. Parliament proposes to afford both the judgment creditor (in case the certificate is refused) and the judgment debtor (in case the certificate is delivered) a possibility of appeal to the extent the domestic law of the Member State of origin allows an appeal against a national enforcement order (amendment 8). As a corollary of this change the decision on the application for a European Enforcement Order would have to be served on the debtor (amendment 7) and the actual certificate could only be issued once the decision on the application has acquired the authority of a final decision (amendment 6). Compliance with the latter two requirements would have to be reflected in the standard form of the European Enforcement Order certificate (amendment 16).

The question of the availability of an appeal has to be analysed in the context of the purpose of this proposal to make headway with regard to the speed and efficiency of cross-border enforcement. If the proposal did not represent, in its practical application, a significant improvement over the streamlined exequatur procedure of Council Regulation (EC) No 44/2001 it would be superfluous and thus obsolete. The possibility of an appeal would cause considerable delays. The amendments by Parliament would entail a distinction between two different decisions. First, the court of origin decides that the requirements for issuing a certificate are met but without actually issuing it. Only after that first decision has been served on the debtor and become final the certificate itself can be delivered. If one takes into account that on top of that the judgment itself has to acquire the authority of a final decision the chain of events necessary to obtain the certificate becomes so long that this procedure will hardly be able to compete with the streamlined exequatur procedure of regulation no. 44/2001.

Furthermore, the possibility to appeal is not indispensable in order to safeguard the rights of the defence because here one is not dealing with the main proceedings that touch upon the justification of the substantive claim as such. The certification procedure only concerns the extension of enforceability of a judgment that has already been delivered beyond the territory of the Member State of origin. The debtor has thus already had every opportunity to defend the case in the main proceedings including the possibility to appeal against the judgment. Since the proposal is dealing with uncontested claims only it is a prerequisite that the debtor has consciously chosen not to defend the case. If the debtor has not made use of any of these opportunities to defend the case he does not really need or deserve the protection of a separate appeal against the European Enforcement Order certificate. If, in extraordinary cases the debtor was actually not in a position to exercise his rights without fault on his part the proposal, in its Article 20, provides sufficient protection by way of relief.

There is also no compelling need to provide a creditor who has been denied a European Enforcement Order certificate with an opportunity to appeal. In that event he is not prevented from enforcing a judgment in other Member States. He is simply obliged to apply for a declaration of enforceability in accordance with the recognition and enforcement regime of Council Regulation (EC) no. 44/2001.

Nevertheless, the Commission can subscribe to the intention of strengthening the rights of the defence in the certification procedure. To that end, the Commission can support a provision (a new Article 6a) pursuant to which not the decision on the application but the application for an European Enforcement Order certificate itself would have to be served on the debtor. This would afford the debtor the opportunity of bringing his point of view with regard to the fulfilment of the requirements for certification to the court of origin's attention before it decides on the application.

The Commission can therefore partially accept amendment 7 insofar as it relates to the service of the application for a European Enforcement Order but not of the decision on that application and amendment 16 insofar as it reflects the obligation to serve the application in Annex I and (to be coherent, although Parliament has not put forth an amendment to that effect) also in Annex II. It cannot accept, however, amendments 6 and 8.

Amendments 9 and 10 relating to the methods of service of the document instituting the proceedings – Article 11

In the context of the methods of personal service on the debtor Parliament proposes to equate the debtor's refusal to accept the document in question attested by the competent person effecting the service with successful personal service on the debtor. This amendment coincides with the intentions of the proposal but increases legal certainty by explicitly mentioning this scenario.

A further amendment introduces a reference back to national law as regards the admissibility of the service on documents on the debtor's legal representative instead of the debtor himself. The Commission is convinced of the merits of leaving the question when exactly a document can or must be served on a legal representative of the debtor to the domestic law of the Member State of origin (which includes, in the event of cross-border service, Council Regulation (EC) No 1348/2000 and the reference to the national law of the Member State in which service is effected stipulated therein). It is of the opinion, nonetheless, that in order to promote legal certainty, rather than adding the requirement of compliance with the relevant national law, one should stipulate that the whole question of the possibility or obligation to serve on such representatives is governed by that national law. For the sake of consistency this modification has to be extended to Article 12 (2) which reproduces the wording of Article 11 (2) with regard to methods of substitute service.

The Commission can accept amendment 9 fully and amendment 10 with a minor change in the wording, and proposes to align the wording of Article 12 (2) with the new text of Article 11 (2).

Amendment 11 - Article 12 (1) introduction

Parliament proposes to clarify that one single unsuccessful attempt at personal service on the debtor is sufficient to allow recourse to methods of substitute service. The Commission agrees to this change which adds precision and thus legal certainty. But the amendment also contains wording according to which substitute service "in particular" by one of the following methods shall be admissible. This drafting which is unrelated to the aforementioned objective would turn the subsequent list of substitute methods into a non-exhaustive one contrary to the intentions of the proposal. The Article would, in this form, no longer imply any limitations on the admissible methods of substitute service and therefore undermine the objective of setting up reliable minimum standards with regard to the service of documents. Hence, the Commission can accept amendment 11 only as far as its first part is concerned.

Amendment 14 - Article 16 (d)

Parliament intends to ensure that the very brief description of the justification of the claim at issue that is usually sufficient in summary debt collection procedures (*injonction de payer*, *Mahnverfahren*) also meets the requirements for certification as a European Enforcement Order. The Commission can fully agree to the rationale underpinning the amendment. Instead of adding additional legal terminology to the old one and rendering the provision rather less

easily comprehensible, it prefers, however, to simplify and broaden the wording in a way that would remove any possible doubt in that respect by referring to “a statement of the reason for the claim”. The Commission can thus accept amendment 14, albeit with a simplified wording.

Amendment 15 - Article 19 (2)

Parliament proposes to eliminate the possibility of certifying a judgment as a European Enforcement Order in spite of non-compliance with the minimum standards on service provided it is established that the debtor has received the document at issue personally and in sufficient time to arrange for his defence. Although the Commission perceives no obstacles to certification in cases where it is proven that the aforementioned conditions are fulfilled it can consent to this deletion in the light of the fact that, in practical terms, this situation will only occur under truly exceptional circumstances. The Commission can thus accept amendment 15.

3. AMENDMENTS NOT ACCEPTED

In addition to amendments 6 and 8 that have already been dealt with in the preceding section the Commission cannot accept the following amendments:

Amendment 3 - Article 3 (4) (c)

Parliament proposes to introduce the requirement of the debtor’s fault in order to consider his non-appearance in a court hearing a case of an uncontested claim. The Commission cannot agree to this change as such a requirement would, in almost all cases, prevent the delivery of a European Enforcement Order certificate. The court of origin is ordinarily only in a position to assess if the debtor was properly summoned to a hearing. Even if he was and he did not enter an appearance the court cannot rule out the possibility that he could not attend the hearing without any fault on his part (e.g. because of a traffic accident on the way to court) and consequently cannot verify the debtor’s fault. If, in extraordinary cases the debtor was actually not in a position to exercise his rights without fault on his part the proposal, in its Article 20, provides sufficient protection by way of relief.

Amendment 12 - Article 12 (3)

In the context of a provision whose original purposes was to spell out that methods of substitute service are inadmissible if they are fictitious because the debtor’s domicile is unknown, Parliament proposes to add the compliance with the domestic law of Member State of origin to the requirements for the admissibility of the use of all substitute method of service. The introduction of such a prerequisite would be new and alien to the proposal. The courts of the Member State of origin have to scrutinise the compliance with the rules on the service of documents in the main proceedings at any rate. Repeating the requirement of compliance with the law of the Member State of origin in the context of the certification would entail a duplication of work for the courts of the Member State of origin. It would also represent a step backward from Regulation No 44/2001 which, in its Article 34 (2), refrained from specifying non-compliance with domestic service legislation as a ground for the refusal of a declaration of enforceability as opposed to the 1968 Brussels Convention. This development should not be reversed in the current proposal.

Amendment 13 – Article 14a (new)

Parliament proposes to incorporate a new provision according to which every reference to a court hearing in the proposal shall be understood as a reference to the other procedure held in lieu of such hearing with the intention of duly taking into account those procedures that do not include a hearing. The Commission considers such a new Article unnecessary since the provisions referring to a court hearing simply become irrelevant and inapplicable if no hearing has taken place. In that event there is only a need for those procedural minimum standards that do not presuppose a hearing. It remains unclear what should replace the hearing as a point of reference and what purpose such a modified reference should serve in practice.

4. CONCLUSION

Having regard to Article 250 paragraph 2 of the EC Treaty, the Commission modifies its proposal as follows.

Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

creating a European enforcement order for uncontested claims

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61(c) thereof,

Having regard to the proposal from the Commission⁴,

~~Having regard to the opinion of the European Parliament⁵~~

Having regard to the opinion of the **European** Economic and Social Committee⁶,

Acting in accordance with the procedure laid down in Article 251 of the Treaty;

Whereas:

- (1) The Community 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. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.
- (2) On 3 December 1998, the Council adopted an Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (the Vienna Action Plan⁷).
- (3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area.

(3a) Pursuant to Articles 61 (c), 65 (a) and 67 (5), second indent, of the Treaty, the codecision procedure involving the European Parliament is applicable from 1 February 2003.

⁴ OJ C 203 E, 27.08.2002, p. 86.

⁵ ~~PJ C , , p. .~~

⁶ OJ C 85, 8.4.2003 , p. 1 .

⁷ OJ C 19, 23.1.1999, p. 1.

- (4) On 30 November 2000, the Council adopted a joint programme of the Commission and the Council of measures for the implementation of the principle of mutual recognition of decisions in civil and commercial matters⁸. This programme includes in its first stage the abolition of *exequatur*, that is to say the creation of a European Enforcement Order for uncontested claims.
- (5) The concept of ‘uncontested claims’ should cover all situations in which a creditor, given the verifiable absence of any dispute by the debtor over the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor’s express consent, be it a settlement approved by a court or an authentic instrument.
- (6) Access to enforcement in a Member State other than that in which the judgment has been given should be accelerated and simplified by dispensing with any intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. A judgment that has been certified as a European Enforcement Order by the court of origin should, for enforcement purposes, be treated as if it had been delivered in the Member State in which enforcement is sought.
- (7) Such a procedure should offer significant advantages as compared with the *exequatur* procedure provided for in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁹, in that there is no need for the involvement of the judiciary in a second Member State with the resulting delays and expenses. It should also generally dispense with the need for translation since multilingual standard forms are to be used for certification.
- (8) Where a court in a Member State has given judgment on an uncontested claim in the absence of participation of the debtor in the proceedings, the abolition of any checks in the Member State of enforcement is inextricably linked to and dependent upon the existence of a sufficient guarantee of the observance of the rights of the defence.
- (9) This Regulation respects the fundamental rights and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the right to a fair trial as recognized in Article 47 of the Charter.
- (10) Minimum standards should be established for the proceedings leading to the judgment in order to ensure that the debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim at stake and about the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence.
- (11) Due to considerable differences between the Member States as regards the rules of civil procedure and especially those governing the service of documents, it is necessary to be specific and detailed in an autonomous definition of these minimum standards. In particular, any method of service that is based on a legal fiction or on a presumption without proof as regards the fulfillment of these minimum standards

⁸ OJ C 12, 15.1.2001, p. 1.

⁹ OJ L 12, 16.1.2001, p. 1.

cannot be considered sufficient for the certification of a judgment as a European Enforcement Order.

- (12) The courts competent for the proceedings leading to the judgment should be entrusted with the task of scrutinizing full compliance with the minimum procedural standards before delivering a standardised European Enforcement Order certificate that makes this examination and its result transparent.
- (13) Mutual trust in the administration of justice in the Community justifies the assessment by the court of one Member State that all conditions for certification as a European Enforcement Order are fulfilled to enable the enforcement of a judgment in all other Member States without judicial review of the proper application of the procedural minimum standards in the Member State where the judgment is to be enforced.
- (14) This Regulation does not imply an obligation for the Member States to adapt their national legislation to the minimum procedural standards as set out therein. It provides an incentive to that end by making available a more efficient and rapid enforceability of judgments in other Member States only if these minimum standards are met.
- (15) The application for certification as a European Enforcement Order for uncontested claims should be optional for the creditor who may instead choose the system of recognition and enforcement under Regulation (EC) No 44/2001 or other Community instruments.
- (16) Since the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 those objectives..
- (17) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁰.
- (18) [The United Kingdom and Ireland, in accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, are not participating in the adoption of this Regulation, and are therefore not bound by it nor subject to its application.]/[The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.]
- (19) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application,

¹⁰ OJ L 184, 17.7.1999, p. 23.

~~HAS~~ HAVE ADOPTED THIS REGULATION:

CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1
Subject matter

The purpose of this Regulation is to create a European Enforcement Order for uncontested claims to permit the free circulation of judgments, court settlements and authentic instruments throughout all Member States by laying down minimum standards whose observance renders unnecessary any intermediate proceedings to be taken in the Member State of enforcement prior to recognition and enforcement.

Article 2
Scope

1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.
2. This Regulation shall not apply to:
 - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
 - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;
 - (d) arbitration.
3. In this Regulation, the term ‘Member State’ shall mean Member States with the exception of Denmark. *[United Kingdom, Ireland]*

Article 3
Definitions

For the purposes of this Regulation:

1. ‘judgment’ means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court;
2. in Sweden, in summary proceedings concerning orders to pay (*betalningsföreläggande*), the expression ‘court’ includes the ‘Swedish enforcement service’ (*kronofogdemyndighet*);

3. 'claim' means a pecuniary claim for a specific amount that has fallen due;
4. a claim is to be regarded as 'uncontested' if the debtor has:
 - (a) expressly agreed to it in the course of the court proceedings by admission or by concluding a settlement which has been approved by the court; or
 - (b) never objected to it **in compliance with the relevant procedural requirements of the Member State of origin** in the course of the court proceedings; a statement by the debtor exclusively based on factual difficulties to honour a debt cannot be regarded as an objection in this respect; or
 - (c) not appeared or been represented at a court hearing regarding that claim after having initially contested the claim in the course of the court proceedings; or
 - (d) expressly agreed to it in an authentic instrument;
5. a judgment has 'acquired the authority of a final decision' if:
 - (a) no ordinary appeal lies against the judgment; or
 - (b) the time limit for an ordinary appeal against the judgment has expired and no such appeal has been lodged;
6. 'ordinary appeal' means any appeal which may result in the annulment or the amendment of the judgment which is the subject-matter of the procedure of being certified as a European Enforcement Order the lodging of which is bound, in the Member State of origin, to a period which is laid down by the law and starts to run ~~by virtue of that same judgment,~~ **when the judgment is pronounced or when it is served;**
7. 'authentic instrument' means:
 - (a) a document which has been formally drawn up or registered as an authentic instrument, and whose authenticity:
 - (i) relates to the content of the instrument; and
 - (ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates; or
 - (b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them;
8. 'Member State of origin' means the Member State in which the judgment to be certified as a European Enforcement Order has been delivered;
9. 'Member State of enforcement' means the Member State in which enforcement of the judgment certified as a European Enforcement Order is sought;
10. 'court of origin' means the court that delivered the judgment to be certified as a European Enforcement Order.

CHAPTER II EUROPEAN ENFORCEMENT ORDER

Article 4 Abolition of exequatur

A judgment on an uncontested claim which has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without **the need for a declaration of enforceability and without any possibility of opposing its recognition** ~~any special procedure being required in the Member State of enforcement.~~

Article 5 Requirements for certification as a European Enforcement Order

Where a judgment on an uncontested claim has been delivered in a Member State, the court of origin shall, upon application by the creditor, certify it as a European Enforcement Order if:

- (a) the judgment is enforceable and has acquired the authority of a final decision in the Member State of origin; and
- (b) the judgment does not conflict with sections 3, 4 or 6 of Chapter II of Regulation (EC) No 44/2001; and
- (c) where a claim is uncontested within the meaning of Article 3(4)(b) or (c) of this Regulation, the court proceedings in the Member State of origin meet the procedural requirements as set out in Chapter III; and
- (d) where the service of documents required under Chapter III of this Regulation has to be effected in a Member State other than the Member State of origin, such service has taken place in conformity with Article 31.

Article 6 Partial European Enforcement Order

1. The court of origin shall issue a partial European Enforcement Order certificate for those parts of the judgment that meet the requirements of this Regulation where a judgment has been given:
 - (a) on several matters and not all of them concern pecuniary claims for a specific amount that have fallen due; or
 - (b) on a pecuniary claim for a specific amount that has fallen due and not all of it is uncontested or meets the requirements for certification as a European Enforcement Order.
2. An applicant may request certification as a European Enforcement Order limited to parts of a judgment.

Article 6a
Application for a European Enforcement Order certificate

The application for a European Enforcement Order certificate shall be served on the debtor.

Article 7
Content of the European Enforcement Order certificate

1. The court of origin shall issue the European Enforcement Order certificate using the standard form in Annex I.
2. The European Enforcement Order certificate shall be issued in the language of the judgment.
3. The number of authenticated copies of the European Enforcement Order certificate which shall be supplied to the creditor shall correspond to the number of authenticated copies of the judgment to be supplied to the creditor in accordance with the law of the Member State of origin.

Article 8
Appeal

No appeal shall lie against the decision on an application for a European Enforcement Order certificate.

Article 9
European Enforcement Order certificate for protective measures

1. Where a judgment on an uncontested claim has not acquired the authority of a final decision yet but all other conditions of Article 5 are fulfilled, the court of origin shall, upon application by the creditor, give a European Enforcement Order certificate for protective measures using the standard form in Annex II.
2. The European Enforcement Order certificate for protective measures carries with it the power to proceed to any protective measures against the property of the debtor in the Member State of enforcement.
3. Nothing shall prevent the creditor from availing himself of provisional, including protective, measures in accordance with the law of the Member State of enforcement without a European Enforcement Order certificate being required.

CHAPTER III MINIMUM STANDARDS FOR UNCONTESTED CLAIMS PROCEDURES

Article 10

Scope of application of minimum standards

A judgment on a claim that is uncontested within the meaning of Article 3(4)(b) or (c) because of the absence of objections or because of the default of appearance at a court hearing can be certified as a European Enforcement Order only if the court proceedings in the Member State of origin met the procedural requirements as set out in this Chapter.

Article 11

Methods of service of the document instituting the proceedings

1. The document instituting the proceedings or an equivalent document must have been served on the debtor by one of the following methods:
 - (a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the debtor; or
 - (b) personal service attested by a certificate by the competent official who effected the service that the debtor has received the document **or refused to receive it;** or
 - (c) postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor; or
 - (d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor.

2. For the purpose of paragraph 1, **law of the Member State of origin shall govern the possibility and obligation to serve on the debtor's statutory legal representative or on the debtor's authorised representative** ~~the document may have been served on the debtor's statutory legal representative or on the debtor's authorised representative.~~

Article 12

Substitute service

1. ~~If reasonable efforts to serve the document instituting the proceedings or an equivalent document on the debtor personally~~ **personal service** under Article 11(1)(a) or (b) ~~has~~ **been unsuccessfully attempted**, substitute service may have been effected by one of the following methods:
 - (a) personal service at the debtor's personal domicile on adults who are domiciled in the same household as the debtor or are employed in that household;

- (b) in the case of a self-employed debtor, a company or other legal person, personal service at the debtor's professional domicile on adults who are employed by the debtor;
 - (c) in the case of a self-employed debtor, a company or other legal person, deposit of the document in the debtor's mailbox at his domicile if the mailbox is suitable for the safe keeping of mail;
 - (d) in the case of a self-employed debtor, a company or other legal person, deposit of the document at a post office or with competent public authorities and written notification of that deposit in the debtor's mailbox at his domicile if the mailbox is suitable for the safe keeping of mail and the written notification clearly states the character of the document as a court document and the legal effect of the notification as effecting service and setting in motion the running of time for time limits.
2. For the purpose of paragraph 1, **law of the Member State of origin shall govern the possibility and obligation to serve on the debtor's statutory legal representative or on the debtor's authorised representative** ~~the document may have been served on the debtor's statutory legal representative or on the debtor's authorised representative.~~
3. For the purposes of this Regulation, substitute service under paragraph 1 is not admissible if the address of the debtor's domicile is not certain.

Article 13
Proof of service

Proof of service in compliance with Articles 11 and 12 shall be supplied to the court of origin. Such proof shall be established:

- (a) by an acknowledgement of receipt by the debtor under Article 11(1)(a), (c) and (d);
- (b) in all other cases by a document signed by the competent official who effected service which states:
 - (i) the time and place of service;
 - (ii) the method of service;
 - (iii) if the document has been served on a person other than the debtor, the name of that person and his relation to the debtor.

Article 14
Methods of service of the summons to a court hearing

In case of a judgment on a claim that is uncontested within the meaning of Article 3(4)(b) or (c) because the debtor has not appeared or been represented at a court hearing, if the summons to that hearing has not been served together with the document instituting the proceedings or an equivalent document it must have been served on the debtor:

- (a) in compliance with Articles 11, 12 and 13; or
- (b) orally in a previous court hearing on the same claim and proven by the minutes of that previous court hearing.

Article 15

Service in sufficient time to arrange for defence

1. The debtor must have been allowed a time period to arrange for his defence and react to the claim of at least 14 calendar days, or, if the debtor is domiciled in a Member State other than the Member State of origin, of at least 28 calendar days, starting from the date of service of the document which institutes the proceedings or of an equivalent document on him.
2. In case of a judgment on a claim that is uncontested within the meaning of Article 3(4)(b) or (c) because the debtor has not appeared or been represented at a court hearing, if the summons to that hearing has not been served together with the document instituting the proceedings or an equivalent document, the debtor must have been served with it at least 14 calendar days, or, if the debtor is domiciled in a Member State other than the Member State of origin, at least 28 calendar days before the court hearing to enable him to appear or to arrange for his representation.

Article 16

Due information of the debtor about the claim

In order to ensure due information of the debtor about the claim, the document instituting the proceedings or the equivalent document must have contained:

- (a) the names and the domiciles of the parties;
- (b) the amount of the claim;
- (c) if interest on the claim is demanded, the interest rate and the time period that interest is demanded for unless a statutory interest is added to the principal without demand under the law of the Member State of origin;
- (d) ~~the cause of action, including at least a brief description of the circumstances invoked as the basis of~~ **a statement of the reason for** the claim.

Article 17

Due information of the debtor about the procedural steps necessary to contest the claim

In order to ensure due information of the debtor about the procedural steps necessary to contest the claim, the following features must have been clearly stated in or together with the document instituting the proceedings or the equivalent document:

- (a) the time limit for contesting the claim and the address to which the statement of opposition was to be sent, as well as the formal requirements to contest including representation by a lawyer where that is mandatory;

- (b) the possibility of a judgment in favour of the creditor in case of non-compliance with the requirements to contest the claim;
- (c) the fact, in Member States where that is the case, that in the absence of opposition by the debtor a judgment in favour of the creditor can be handed down:
 - without an examination of the justification of the claim by the court; or
 - after a limited examination of the justification of the claim by the court;
- (d) the fact, in Member States where that is the case, that:
 - there is no ordinary appeal against such a judgment; or
 - that the scope of judicial review of an ordinary appeal is limited;
- (e) the possibility of certifying such judgment as a European Enforcement Order without a possibility to appeal such certification and the resulting possibility of enforcement in all other Member States without any intermediate measure in the Member State of enforcement.

Article 18

Due information of the debtor about the procedural steps necessary to avoid a judgment in default of appearance at a court hearing

In order to ensure due information of the debtor about the procedural steps necessary to avoid a judgment on a claim that is uncontested because of his default of appearance at a court hearing, the court must have clearly stated in or together with the summons:

- (a) when and where the hearing was to take place;
- (b) the possible consequences as listed in Article 17(b), (c), (d) and (e) in the case of his default of appearance.

Article 19

Cure of non-compliance with minimum standards

- 4. If the proceedings in the Member State of origin did not meet the procedural requirements as set out in Articles 11-18, this non-compliance is cured and a judgment can be certified as a European Enforcement Order if:
 - (a) the judgment has been served on the debtor in compliance with the requirements pursuant to Articles 11 to 14; and
 - (b) it was possible for the debtor to challenge the judgment by means of an ordinary appeal; and
 - (c) the time limit for lodging such an ordinary appeal is at least 14 calendar days or, if the debtor is resident in a Member State other than the Member State of origin, at least 28 calendar days from the date of service of the judgment; and

- (d) the debtor has been duly informed in or together with the judgment about:
 - (i) the possibility of an ordinary appeal; and
 - (ii) the time limit for such an ordinary appeal; and
 - (iii) where and how the ordinary appeal has to be lodged; and
- (e) the debtor has failed to lodge an ordinary appeal against the judgment within the time limit.

~~2. If the proceedings in the Member State of origin did not meet the procedural requirement as set out in Articles 11 to 14, this non-compliance is cured and a judgment can be certified as a European Enforcement Order if it is established that the debtor has personally received the document to be served in sufficient time to arrange for his defence pursuant to Article 15 and in compliance with Articles 16, 17 and 18.~~

Article 20

Minimum standards for relief from the effects of the expiration of time

1. If a judgment on a claim that is uncontested within the meaning of Article 3(4)(b) or (c) because of the absence of objections or because of the default of appearance at a court hearing has been certified as a European Enforcement Order, the debtor shall be entitled to be relieved from the effects of the expiration of the time for ordinary appeal against the judgment by the competent court of the Member State of origin upon application at least if the following conditions are fulfilled:
 - (a) the debtor, without any fault on his part:
 - (i) did not have knowledge of the judgment in sufficient time to lodge an ordinary appeal; or
 - (ii) did not have knowledge of the document instituting the proceedings or equivalent document in sufficient time to defend unless the conditions of Article 19(1) are fulfilled; or
 - (iii) did not have knowledge of the summons in sufficient time to appear at a court hearing unless the conditions of Article 19(1) are fulfilled; and
 - (b) the debtor has disclosed a prima facie defence to the action on the merits.
2. If a judgment under paragraph 1 is not open to full judicial review upon ordinary appeal in the Member State of origin, the debtor shall be entitled upon application to be relieved from the effects of the expiration of time for contesting the claim or from the effects of not having appeared at a court hearing at least if the conditions as set out in paragraph 1(a)(ii) or (iii) and (b) are fulfilled.
3. For the purposes of this Article, the debtor shall be allowed a time limit for the application for relief of at least 14 calendar days or, if the debtor is domiciled in a Member State other than the Member State of origin, of at least 28 calendar days after the debtor has knowledge of the judgment.

CHAPTER IV ENFORCEMENT

Article 21 Enforcement Procedure

1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement.
2. The creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with:
 - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
 - (b) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and
 - (c) where necessary, a translation, into the official language or one of the official languages of the Member State of enforcement or any other language that the Member State of enforcement has indicated it can accept, of those parts of the European Enforcement Order certificate that do not consist of names, addresses and numbers entered or boxes ticked. Each Member State shall indicate the official languages of the European Union other than its own which it can accept for the completion of the certificate. The translation shall be certified by a person qualified to do so in one of the Member States.
3. No additional fee, security, bond or deposit, however described, shall be required of a creditor who in one Member State applies for enforcement of a judgment certified as a European Enforcement Order in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.
4. The creditor shall not be required to provide a mailing address in the Member State of enforcement or to have an authorised representative for the enforcement of a judgment certified as a European Enforcement Order in another Member State.

Article 22 Access to justice during enforcement proceedings

1. The Member State of enforcement shall make judicial review available to the debtor if the judgment is irreconcilable with an earlier judgment given in any Member State or in a third country provided that:
 - (a) the earlier judgment involved the same cause of action and was between the same parties;
 - (b) the earlier judgment fulfils the conditions necessary for its recognition in the Member State of enforcement;

- (c) the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.
2. Under no circumstances may the judgment or its certification as a European Enforcement Order be reviewed as to their substance in the Member State of enforcement.

Article 23
Stay or limitation of enforcement

If the debtor has lodged an application for relief under Article 20 or for retrial or for the annulment of the judgment in the Member State of origin or for judicial review under Article 22(1) in the Member State of enforcement, the competent court or authority in the Member State of enforcement may, upon application by the debtor:

- (a) stay the enforcement proceedings; or
- (b) limit the enforcement proceedings to protective measures; or
- (c) make enforcement conditional on the provision of such security as it shall determine.

Article 24
Information on enforcement procedures

1. The Member States shall, in order to facilitate access to enforcement procedures in the Member State of enforcement for a creditor who has obtained a European Enforcement Order certificate, cooperate to provide the general public and professional circles with information on:
- (a) the methods and procedures of enforcement in the Member States; and
 - (b) the competent authorities for enforcement in the Member States.
2. This information shall be made available to the public in particular within the framework of the European Judicial Network in civil and commercial matters as established by Council Decision 2001/470/EC¹¹.

¹¹ OJ L 174, 27.6.2001, p. 25.

CHAPTER V
COURT SETTLEMENTS AND AUTHENTIC INSTRUMENTS

Article 25
Court settlements

1. A settlement concerning a claim which has been approved by a court in the course of proceedings and is enforceable in the Member State in which it was concluded shall, upon application by the creditor, be certified as a European Enforcement Order by the court that has approved it.
2. The court shall issue the European Enforcement Order certificate using the standard form in Annex III.
3. The provisions of Chapter II, with the exception of Article 5, and of Chapter IV, with the exception of Article 22(1), shall apply as appropriate.

Article 26
Authentic instrument

1. An authentic instrument concerning a claim which is enforceable in one Member State shall, upon application by the creditor, be certified as a European Enforcement Order by the authority which has given authenticity to the instrument.
2. The authority which has given authenticity to the instrument shall issue the European Enforcement Order certificate using the standard form in Annex IV.
3. An authentic instrument can be certified as a European Enforcement Order only if:
 - (a) the authority giving authenticity to that document duly informed the debtor, before he consented to the drawing up or registration of the document, of its direct enforceability throughout all Member States; and
 - (b) the fact that such information was provided is attested to by a clause in the document signed by the debtor.
4. The provisions of Chapter II, with the exception of Article 5, and of Chapter IV, with the exception of Article 22(1), shall apply as appropriate.

CHAPTER VI
GENERAL PROVISIONS

Article 27
Determination of domicile

1. In order to determine whether a debtor is domiciled in the Member State of origin, the court of origin shall apply its internal law.

2. If the debtor is not domiciled in the Member State of origin, then, in order to determine whether the debtor is domiciled in another Member State, the court of origin shall apply the law of that Member State.

Article 28

Domicile of a company or other legal person

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:
 - (a) statutory seat; or
 - (b) central administration; or
 - (c) principal place of business.
- [2. For the purposes of Ireland and the United Kingdom, ‘statutory seat’ means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.]
3. In order to determine whether a trust is domiciled in the Member State of origin, the court of origin shall apply its rules of private international law.

**CHAPTER VII
TRANSITIONAL PROVISION**

Article 29

Transitional provision

1. This Regulation shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after the entry into force thereof.
2. For the purposes of paragraph 1, legal proceedings shall be deemed to be instituted:
 - (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the creditor has not subsequently failed to take the steps he was required to take to have service effected on the debtor; or
 - (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the creditor has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

CHAPTER VIII

RELATIONSHIP WITH OTHER INSTRUMENTS

Article 30

Relationship with Regulation (EC) No 44/2001

1. Nothing shall prevent the creditor from seeking recognition and enforcement of:
 - (a) a judgment on an uncontested claim, a settlement approved by a court or an authentic instrument under Chapters III and IV of Regulation (EC) No 44/2001; or
 - (b) a judgment under the provisions governing the recognition and enforcement of judgments in specific matters which are contained in Community instruments or in national legislation harmonised pursuant to such instruments in accordance with Article 67 of Regulation (EC) No 44/2001; or
 - (c) a judgment under conventions to which the Member States are parties and which in relation to particular matters, govern the recognition and enforcement of judgments in accordance with Article 71 of Regulation (EC) No 44/2001.
2. If the creditor applies for certification of a judgment, authentic instrument or settlement approved by a court as a European Enforcement Order, for the purposes of the pertinent proceedings, this Regulation shall supersede Chapters III, IV and V of Regulation (EC) No 44/2001 as well as the provisions on the recognition and enforcement of judgments, authentic instruments and court settlements in the conventions and treaty as listed in Article 69 of Regulation (EC) No 44/2001.

Article 31

Relationship with Regulation (EC) No 1348/2000

1. Subject to paragraph 2, this Regulation shall not prejudice the application of Council Regulation (EC) No 1348/2000¹² of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters where in the proceedings in the Member State of origin a judicial document has to be transmitted from one Member State to another for service there.
2. A judgment given under Article 19(2) of Regulation (EC) No 1348/2000 cannot be certified as a European Enforcement Order.
3. If a document instituting the proceedings or an equivalent document, a summons to a court hearing or a judgment has to be transmitted from one Member State to another for service there, service under Regulation (EC) No 1348/2000 shall meet the requirements set out in Chapter III of this Regulation insofar as necessary to enable certification as a European Enforcement Order.

¹² OJ L 160, 30.6.2000, p. 37.

4. In a situation as covered by paragraph 3, the certificate of service under Article 10 of Regulation (EC) No 1348/2000 shall be replaced by the standard form in Annex V to this Regulation.

CHAPTER IX FINAL PROVISIONS

Article 32 Implementing rules

The standard forms set out in the Annexes shall be updated or amended in accordance with the procedure referred to in Article 33(2).

Article 33 Committee

1. The Commission shall be assisted by the committee provided for by Article 75 of Regulation (EC) No 44/2001.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

Article 34 Entry into force

This Regulation shall enter into force on 1 January 2004.

This Regulation is binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the European Parliament
The President

For the Council
The President