



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

creating a European enforcement order for uncontested claims

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION AND BACKGROUND

The entry into force of the Treaty of Amsterdam entailed the transfer of judicial cooperation in civil matters from the third pillar (Article K.1(6) TEU) to the first pillar. According to Articles 61(c) and 65 of the Treaty establishing the European Community, the Community adopts measures in the field of judicial cooperation in civil matters having cross-border implications and insofar as necessary for the proper functioning of the internal market. These measures include improving and simplifying the recognition and enforcement of decisions in civil and commercial cases.

The Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition of judgements in civil and commercial matters¹ that enters into force on 1 March 2002 represents a significant progress in streamlining the procedure for obtaining a declaration of enforceability (*exequatur*) as compared to the 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters which it will replace. Under that Regulation, the declaration of enforceability is to be granted on completion of certain formalities and can only be contested upon appeal by the other party. In spite of these changes and simplifications, it does not remove all the obstacles to the unhindered movement of judgements within the European Union and leaves intermediate measures that are still too restrictive.

The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judgements and other decisions of judicial authorities as the cornerstone of judicial cooperation to be established within the Union. In civil matters the European Council called for a further reduction of the intermediate measures required to enable the recognition and enforcement in one Member State of a judgement delivered in another Member State. It suggested as a first step to introduce the automatic recognition without any intermediate proceedings or grounds for refusal of enforcement for certain specific types of claims, possibly accompanied by the setting of minimum standards on specific aspects of procedural law. The European Council asked the Council and the Commission to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition including the commencement of work on a European Enforcement Order and on those aspects of procedural law on which common minimum standards are considered necessary to facilitate the application of the principle of mutual recognition.

The 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 matters² adopted by the Council on 30 November 2000 singled out the abolition of *exequatur* for uncontested claims as one of the Community's priorities. Pointing to a contradiction in terms in the delay of enforcement of judgements concerning claims that have not been challenged by the debtor caused by an *exequatur* procedure, the programme designated this area as the first one in which *exequatur* should be abolished as rapid recovery of outstanding debts is an absolute necessity for business and a constant concern for the economic sectors whose interest lies in the proper operation of the internal market.

¹ OJ L 12, 16.1.2001, p. 1.

² OJ C 12, 15.1.2001, p. 1.

At the informal meeting of the Ministers of Justice in Stockholm on 8-9 February 2001 the European Enforcement Order for uncontested claims was confirmed as the pilot project for the abolition of *exequatur*. During the Swedish presidency, the Council Committee on Civil Law Matters discussed the general approach to be taken and made significant headway, in particular with regard to the scope of application of the legislative instrument to be drafted³.

2. GENERAL OBJECTIVE

In accordance with the programme of measures for the implementation of the principle of mutual recognition and the priorities as set out therein and in line with the preparatory work carried out in the Council Committee on Civil Law Matters, the Commission is hereby proposing a Council Regulation on a European Enforcement Order for uncontested pecuniary claims that eliminates all checks on judgements handed down in one Member State as a prerequisite for enforcement in another Member State.

The Commission is aware of the frequent use that has been made of the term 'European Enforcement Order' with reference to a uniform procedure for obtaining a decision which would then be eligible for enforcement without *exequatur* throughout the Member States. The Commission communication to the Council and the European Parliament – 'Towards greater efficiency in obtaining and enforcing judgements in the European Union'⁴ already took note of this connotation. At the same time, it emphasised, however, that establishing a uniform procedure and abolishing the *exequatur* procedure are two distinct questions, the solution to one not being an indispensable precondition for the solution to the other. The programme of measures for the implementation of the principle of mutual recognition addresses both these questions and keeps the distinction between them as it states that in some areas the abolition of *exequatur* might coincide with the establishment of a specific, uniform or harmonised procedure laid down within the Community.

In the area of uncontested claims, the Commission actively pursues both objectives, albeit not simultaneously in one legislative instrument.

- The present Proposal aims at the elimination of intermediate measures as a prerequisite for enforcement in another Member State of all decisions that have been attained in the verifiable absence of any dispute by the debtor over the nature or extent of the debt. In line with the deliberations in the Council Committee on Civil Law Matters its scope is not restricted to enforcement orders which result from specific speedy procedures for the recovery of debts that are expected to remain uncontested. This approach is intended to provide a tangible benefit for creditors who gain access to speedy and efficient enforcement abroad without the involvement of the judiciary of the Member State where enforcement is sought and the ensuing delays and expenses;
- At the same time, the Commission is preparing a Green Paper on the creation of a uniform or harmonised procedure for a European order for payment (*'injonction de payer'*) whose presentation is envisaged for 2002⁵. Such proper harmonisation which might affect not only the *'injonction de payer'* procedure itself but also the rules concerning the service of

³ A summary of the work carried out during the Swedish presidency is to be found in Council document 10480/01, JUSTCIV 88 (29.6.2001).

⁴ COM(1997) 609 final, OJ C 33, 31.1.1998, p. 3, paragraph 9.

⁵ The same Green Paper will also address the simplification and acceleration of litigation on small claims through the establishment of common rules of procedure or minimum standards.

judicial documents in general calls for profound research and wide consultations prior to a legislative proposal. The separation of the abolition of *exequatur* from procedural harmonisation allows rapid progress in the former area whilst enabling the careful preparation of the steps to be taken in the latter.

In order to strengthen the mutual trust between the Member States' legal systems that constitutes a precondition for the abolition of *exequatur* and to ensure the strict observation of the requirements for a fair trial in keeping with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as Article 47 of the Charter of Fundamental Rights of the European Union, the Commission considers it essential to lay down some common minimum procedural standards. The characteristic feature of the overwhelming majority of decisions on uncontested claims is that they are delivered in default of participation of the debtor in the court proceedings. It is assumed that this passivity follows from a conscious decision in the light of his assessment of the justification of the claim at stake or from a deliberate disregard for the court action. The lack of an explicit reaction by the debtor leaves the correct and timely service of the documents informing about the claim at stake, his procedural rights and obligations and the consequence of non-participation as the only proof that the debtor has been put in a position enabling him to make the conscious choice to abstain from the court proceedings.

It needs to be recalled that the delivery of a judgement by default in spite of the lack of proper service of the document instituting the proceedings in sufficient time and in such a way as to enable the defendant to arrange for his defence makes up the vast majority of cases in which recognition and enforcement has been refused under the 1968 Brussels Convention. Furthermore, the programme for the implementation of the principle of mutual recognition identifies the certainty, efficiency and rapidity of service of legal documents as one of the foundations of mutual trust between national legal systems and envisages giving consideration to the harmonisation of the applicable rules or to the establishment of minimum standards.

Therefore, this proposal contains minimum standards with regard to the service of documents covering the admissible methods of service, the time of service enabling the preparation of a defence and the proper information of the debtor. Only the compliance with these minimum standards justifies the abolition of a control of the observation of the rights of the defence in the Member State where the judgement is to be enforced.

It is the inevitable corollary of the abolition of *exequatur* that the responsibility for the control of compliance with the requirements of this proposal, in particular with regard to its minimum standards, is vested in the courts of the Member State where the judgement was given. The European Enforcement Order as devised in this proposal is a comprehensive and transparent certificate of the fulfillment of all the conditions for enforcement throughout the Community without intermediate measures.

It is the purpose of this Proposal to offer an additional option of facilitated enforcement both to the Member States and to the creditors without obliging them to utilise it. It is up to the Member States to decide whether or not to adjust their national legislation to the minimum standards of Chapter III in order to ensure the eligibility of the largest possible number of decisions on uncontested claims for certification as a European Enforcement Order. And it is at the creditor's discretion to choose the procedural path towards rendering a judgement enforceable in another Member State by applying either for certification as a European Enforcement Order or for a declaration of enforceability under Council Regulation (EC) No 44/2001.

3. ARTICLES

Article 1 – Subject matter

This Article briefly summarises the general objective of the Proposal as outlined above.

Article 2 - Scope

The general scope of application coincides with that of Council Regulation (EC) No 44/2001.

Article 3 – Definitions

Paragraphs (1) and (2) reproduce Article 32 and Article 62 (as far as orders to pay are concerned) of Council Regulation (EC) No 44/2001.

Claim

In line with a consensus that emerged during the preparatory works, the applicability of the instrument is limited to pecuniary claims for a specific amount irrespective of the amount at issue.

Uncontested claims

The different situations that lead to the assessment of a claim as being uncontested can be grouped into two categories. The first category comprises those cases where the debtor has actively participated in judicial or (for authentic instruments) in extra-judicial proceedings and expressly agreed that the claim is justified. This consent may take the form of an admission of the claim in court followed by a judgement based on that admission, the form of the conclusion of a settlement approved by the court or of a document that is drawn up as an authentic instrument. The paragraphs 4(a) and (d) cover all of these scenarios.

The second category is characterised by the fact that the debtor has ignored a court order to react to the claim and can thus be assumed to have no objections. Paragraph (b) requires the complete absence of any opposition to the claim throughout the proceedings, be it in the context of a purely written procedure or of a procedure including a court hearing where the debtor has not appeared or has appeared but not contested the claim. The mere statement of the debtor that he has difficulties to pay and his application for postponed payment or payment by instalments without invoking entitlement to such payment cannot be considered an objection because it does not call into question the justification of a claim by any means. It refers exclusively to a factual inability to pay or, in other words, to the likelihood of successful enforcement. Paragraph (c), on the other hand, deals with the specific situation of the debtor not appearing at a court hearing that he has been summoned to in case of an earlier opposition expressed by the debtor. Such absence at the hearing can justifiably be interpreted as the result of his decision not to contest the claim any longer. Paragraphs (b) and (c) encompass both judgements by default and payment orders obtained in specific speedy procedures that require the lack of objections by the debtor such as the French '*injonction de payer*' or the Austrian or German '*Mahnverfahren*'.

Authority of a final decision

The authority of a final decision that is necessary for its certification as a European Enforcement Order under Article 5(a) is acquired under the autonomous definition in paragraph (5) either if no ordinary appeal against this judgement is available from the outset

or if the debtor has not made use of the possibility of lodging such an appeal within the time limits for doing so.

Ordinary appeal

Paragraph (6) essentially reproduces the definition of this term which was given by the European Court of Justice with regard to Articles 30 and 38 of the 1968 Brussels Convention⁶ and appears to be adequate for the purposes of this Proposal as well.

Authentic instrument

Unlike the 1968 Brussels Convention and Council Regulation (EC) No 44/2001 that do not define an authentic instrument, this Proposal integrates the requirements as set up by the European Court of Justice⁷ into the text in paragraph 7(a) and, for the sake of completeness and coherence, adds the maintenance arrangements specifically recognised as authentic documents in Article 57(2) of Council Regulation (EC) No 44/2001 in paragraph 7(b).

*Article 4 – Abolition of *exequatur**

This Article sets out the concept and the significance of the European Enforcement Order. The *exequatur* procedure as necessary under the 1968 Brussels Convention and under Council Regulation (EC) No 44/2001 before enforcement in another Member State is rendered obsolete by the certification of the judgement as a European Enforcement Order (EEO). The EEO certificate enables the creditor to proceed to enforcement measures in all other Member States without any intermediate steps to be taken in the State of enforcement. Instead of the courts in the Member State of enforcement that have to examine in the *exequatur* procedure if the requirements for a declaration of enforceability are met, it is now the courts of the Member State of origin that are responsible for deciding whether or not a judgement fulfils the conditions for being certified as a European Enforcement Order.

Article 5 – Requirements for certification as a European Enforcement Order

An enforceable judgement on an uncontested claim must be certified as a European Enforcement Order upon application by the creditor if the requirements as listed in Article 5 are met. This Regulation contains no limitations as to when the creditor may apply for certification. It is one of the prime advantages of this Proposal as compared to the *exequatur* procedure according to Council Regulation (EC) No 44/2001 that certification as a European Enforcement Order is done by the court of origin familiar with the case at issue and the procedural rules that have been applied and that no judicial or other authorities of the Member State of enforcement need to be involved. The attribution of competence for issuing the European Enforcement Order certificate within the court of origin is not regulated in this Proposal and thus left to the legislation of the Member States.

- According to Article 5(a) the judgement must have acquired the authority of a final decision. At first sight, this threshold appears to be higher than that of Article 38(1) of Council Regulation (EC) No 44/2001 which only demands the enforceability in the Member State of origin that is conceivable before the judgement has become final (e.g. if the court has allowed provisional enforcement). It needs to be borne in mind, however, that the declaration of enforceability itself can be appealed until one

⁶ Industrial Diamond Supplies v. Luigi Riva, 22.11.1975, ECR 1977, p. 2175.

⁷ Unibank A/S v. Flemming G. Christensen, 17.6.1999, ECR 1999, p. 3715.

month after service thereof – or two months if the defendant is domiciled outside the Member State of enforcement – under Article 43(5) of the said Regulation. Pursuant to Article 47(3), during the time specified for such appeal no measures of enforcement may be taken other than protective measures. This obligatory “waiting period” for enforcement measures other than protective measures does not exist in the context of this Proposal. Moreover, in the case of a judgement that is provisionally enforceable but not yet final within the meaning of Article 5(a), the creditor can obtain a European Enforcement Order for protective measures under Article 9.

- Article 5 (b) requires compliance with the rules of Council Regulation (EC) No 44/2001 on jurisdiction in matters relating to insurance, on jurisdiction over consumer contracts and on exclusive jurisdiction. A lack of conformity with these jurisdictional provisions which constitutes a reason for the refusal of the declaration of enforceability under Articles 35 and 45 of that Regulation bars certification as a European Enforcement Order under this Proposal.
- Article 5(c) ensures the protection of the rights of the defence in all cases where the assessment of a claim as being uncontested is based on the lack of participation of the debtor in the court proceedings. In these situations, it has to be guaranteed that the debtor has been properly informed about the proceedings, about the requirements for contesting the claim and the consequences of failing to observe them. Pursuant to Articles 34(2), 41 and 45 of Council Regulation (EC) No 44/2001, the service of the document initiating the proceedings in such a way as not to enable the preparation of the debtor’s defence constitutes a ground for refusal of the declaration of enforceability of a judgement given in default of appearance, if only upon appeal by the debtor. The abolition of this control mechanism in the *exequatur* procedure and the lack of uniformity of the Member States’ legislation on the areas of law relevant in this respect – particularly the service of documents - entail the need for an institutionalised check of the minimum standards as established in Chapter III to be performed by the court in the Member State of origin.
- Article 5 (d) also concerns the service of documents but applies only if the debtor is domiciled in a Member State other than the Member State of origin. Whenever that is the case all judicial documents have to be served in compliance with Council Regulation (EC) No 1348/2000. Article 5(d) makes conformity with that Regulation a condition for certification as a European Enforcement Order.

Article 6 – Partial European Enforcement Order

This Article reiterates the substance of Article 48 of Council Regulation (EC) 44/2001 adapted to the characteristics of this Proposal and describing in more detail in which situations only parts of a judgement qualify for certification as a European Enforcement Order.

Article 7 – Content of the European Enforcement Order certificate

The European Enforcement Order certificate is to contain both:

- a transparent and standardised summary of all the facts that characterise and individualise the content of the judgement and that are indispensable for enforcement; and

- comprehensive information on the compliance with the requirements for the eligibility for certification as a European Enforcement Order.

The rather detailed nature of the standard form to be filled in serves as a guarantee that the court of origin is confronted with all aspects of examination and thus reinforces the mutual trust between the Member States as regards the scrutiny applied before permitting enforcement in all other Member States without any intermediate measures.

The standard form attached in Annex I is multilingual and thus allows the court of origin to complete it in its official language. Since all the information indispensable for enforcement is provided by filling in names and numbers or ticking boxes, a translation of the certificate is unnecessary save in those truly exceptional cases where the court of origin has to give additional explanations in writing.

Paragraph (3), to be read together with Article 21(2), provides a clear rule on the number of authenticated copies of the certificate to be issued that protects the debtor against multiple simultaneous enforcement measures throughout the Member States in the same way as in the Member State of origin. If the national legislation lays down that more than one enforceable copy of the judgement is supplied to the creditor (e.g. in case of a joint liability of several debtors), the same rule will apply for the European Enforcement Order certificate.

Article 8 – Appeal

The efficiency of enforcement in another Member State by means of a European Enforcement Order certificate is enhanced by the fact that unlike in the case of a declaration of enforceability under Council Regulation (EC) No 44/2001 an appeal against the certificate itself is excluded. If the debtor wants to prevent a European Enforcement Order certificate from coming into existence he has to contest the claim and to thereby exclude it from the scope of application of this Regulation. If the claim remains uncontested, upon application by the creditor it is up to the court of origin to examine the fulfilment of the requirements for certification without a possibility to appeal against the resulting decision.

In that respect, it needs to be borne in mind that Article 34(2) of Council Regulation (EC) No 44/2001 just as Article 27(2) of the 1968 Brussels Convention set up a specific and independent legal standard regarding the rights of the defence not to be equated with observance of national rules and thus raising specific legal issues. As a result, it is conceivable that the court of origin has applied its national procedural law faultlessly and that the declaration of enforceability still has to be refused because of a difference between national law and the necessary protection of the rights of the defence under Article 34(2) or 27(2), respectively, as interpreted by the European Court of Justice⁸.

Nevertheless, under Articles 34(2) and 41 of Council Regulation (EC) No 44/2001 the court in charge of the *exequatur* procedure is expressly prohibited from any review of compliance with the rules laid down in Articles 34 and 35. Even in case of a blatant violation of Article 34(2) it is obliged to deliver a declaration of enforceability if the purely formal requirements under Article 41 are met. Only in case of an appeal by the defendant can the court engage in an examination of the compliance with the rights of the defence. But even then the court is precluded from refusing or revoking *exequatur* in spite of a violation of these rights as defined in Article 34(2) if the defendant has not made use of an existing opportunity

⁸ Debaecker v. Bouwman, 11.6.1985, ECR 1985, p. 779 on the relationship between Article 27(2) of the 1968 Brussels Convention and national rules of service of the Member States.

to challenge the judgement in the Member State of origin. In other words, the obligation is placed on the defendant to make use of a right to challenge a judgement by default (or, in the terminology of this Proposal, to contest the claim) in order to be entitled to judicial review regarding the observance of Community rules on the rights of defence. An isolated appeal only against the declaration of enforceability while leaving the claim at issue uncontested cannot be successful.

This Proposal applies a similar logic. There may be differences between the standard of the protection of the debtor's rights under the national systems of the Member States and the rules established by Chapter III. Nevertheless, in the light of

- the thorough control of compliance with the requirements for certification as a European Enforcement Order as imposed by Chapter III and made transparent in the certificate in accordance with Article 7,
- the mutual trust between the Member States as to the careful administration of justice, and
- the guarantee to be relieved from the effects of the expiration of time if the debtor has not been in a position to actually contest the claim under Article 20,

it is justified to exclude a specific appeal against certification as a European Enforcement Order itself, limited to the requirements laid down in this Proposal. It can be expected from the debtor to use all means at his disposal to contest the claim including an ordinary appeal against the judgement and an application for relief under Article 20.

Article 9 – European Enforcement Order certificate for protective measures

Before a judgement has acquired the authority of a final decision enforcement is possible only as provisional enforcement whose effects have to be reversed if the judgement is overruled upon appeal. The system of granting provisional enforceability of judgements always strikes a delicate balance between the interest of the creditor in swift enforcement and the interest of the debtor in avoiding potentially irreparable damage if the loss incurred due to provisional enforcement cannot be recovered. The Member States have found widely different solutions in that respect. It must also be taken into account that the granting of provisional enforceability under certain conditions is inextricably linked to the possibility of the debtor to stop or suspend such enforcement under certain conditions or to make it conditional on the provision of security.

These complexities would entail intricate problems if provisional enforceability in the Member State of origin was considered to be sufficient to permit unlimited enforcement leading to the satisfaction of the claim in the Member State of enforcement. The law of the Member State of enforcement that governs the enforcement procedure under Article 21(1) on the suspension of enforcement may not be suitable for the type of provisional enforceability as envisaged in the Member State of origin and produce the undesired result of making a judgement more easily enforceable abroad than in the Member State of origin.

Therefore, this Proposal suggests a clear-cut solution avoiding the aforementioned difficulties. Full enforcement can only take place after the judgement has acquired the authority of a final decision. If the judgement is provisionally enforceable in the Member State of origin, however, the creditor can safeguard successful enforcement by taking protective measures based on a European Enforcement Order certificate until the judgement has become final.

This certificate itself provides full justification for the protective measures available in the Member State of enforcement. If the involvement of the courts of that Member State is necessary to take such measures the requirements for them have to be considered fulfilled upon the presentation of the certificate. No fulfilment of additional conditions (e.g. a concrete danger that the debtor alienates his property) can be required even if it constitutes a prerequisite of protective measures under the law of the Member State of enforcement.

Article 10 – Scope of application of minimum standards

This Article introduces Chapter III which establishes the minimum standards regarding the rights of the defence that have to be observed to render a judgement eligible for certification as a European Enforcement Order. The proper service of the most relevant documents at such a time and in such a manner as to enable the debtor to defend himself if he wishes to do so is at the heart of this Chapter. The pertaining requirements are applicable only if the debtor has not participated in the proceedings or not appeared at a court hearing. In the other cases of uncontested claims as defined by Article 3 (4) the debtor has explicitly agreed to the claim and thus actively demonstrated his decision not to defend the case.

By allowing the certification of a judgement as a European Enforcement Order only upon compliance with the conditions of Chapter III, this Proposal leaves it to the discretion of the Member States whether or not they want to adapt their national legislation to these minimum standards if considered necessary or desirable. It does not aim at the harmonisation of the rules governing uncontested claims or the rules on the service of documents.

Articles 11, 12, 13 and 14 – Methods of service of the document instituting the proceedings and the summons to a court hearing

These Articles contain the focal point of requirements with regard to the rules on service. It distinguishes between

- principal methods of service where there is direct proof that the document instituting the proceedings has reached the debtor himself, and
- substitute methods of service where there is proof that the document has reached not the debtor himself but the sphere of the debtor where it is his responsibility to take care that he obtains access to this document.

Substitute service is allowed under Article 12 only if reasonable efforts of personal service have been unsuccessful. If postal service or service by electronic means under Article 11 has not produced the desired result, an attempt of personal service has to be made before resorting to substitute service.

Articles 11(2) and 12(2) cover the two different following situations:

- the debtor cannot represent himself in court (e.g. as a minor or as a legal person) and a natural person to represent him in all legal matters is determined by law (e.g. the parents or the director of a company). The term ‘statutory legal representative’ refers to this situation;
- the debtor has chosen a lawyer or a lay representative to represent him in the concrete court proceedings. The term ‘authorised representative’ refers to this situation.

A competent official under Article 11(1)(b) and Article 13 may be a public official or anybody else who has been empowered to effect and to certify service by the Member State where service takes place.

Article 12(3) underscores that all methods of service that resort to a legal fiction of the document reaching the debtor's sphere for want of a known current address where service can be effected are not recognised for the purposes of this Proposal.

Article 14 is of practical relevance only for the summons to a hearing that is served on the debtor not with the document instituting the proceedings but at a later time. Article 14(b) has been added for the particular scenario of a debtor who has appeared in one hearing and contested the claim but then chooses not to oppose any longer and does not attend a second hearing he was summoned to orally in the first one.

Article 15 – Service in sufficient time to arrange for defence

This Article provides a concrete and clear threshold as to which period of time is to be considered sufficient to arrange for one's defence. It imposes a longer minimum period to respond to the claim if the debtor is domiciled in a Member State other than that where the court proceedings take place, taking into account the more complex nature of cross-border litigation. The same minimum time limits apply to appearance or representation in court in case of a summons to a hearing that is not served together with the document instituting the proceedings.

Articles 16, 17, and 18 – Due information of the debtor

It goes without saying that the debtor is only in a position to arrange for his defence if he knows the claim against him, the requirements for his participation in the court proceedings and the consequences of his non-compliance with those requirements. Most of the mandatory aspects of the debtor's information are self-explanatory.

Article 17(c) takes account of the differences between the Member States' rules on the extent to which a court has to examine whether or not a claim is well-founded or at least prima facie well-founded before entering a judgement in favour of the creditor even in the absence of an objection. If such an examination does not take place at all or is only limited and consequently the debtor cannot rely on an assessment of the claim as unfounded by the court, the debtor needs to be informed about this. The same need arises if a judgement is subject to no ordinary appeal at all or to limited judicial review only; Article 17(d) refers to such situations.

Finally, the possibility of certification of a judgement given in the absence of an objection or in default of appearance as a European Enforcement Order that cannot be appealed independently warrants drawing the debtor's attention to these specific circumstances as prescribed in paragraph Article 17(e). He needs to be made aware of the necessity to put forth objections to the claim in order to avoid these consequences.

Article 19 – Cure of non-compliance with minimum standards

Pursuant to Article 34(2) of Council Regulation (EC) No 44/2001, the declaration of enforceability cannot be refused for a judgement given in default of appearance even though the defendant was not served with the document which instituted the proceedings in sufficient time and in such a way as to enable him to arrange for his defence if the defendant failed to commence proceedings to challenge the judgement when it was possible for him to do so.

Thus, an obligation is placed on the defendant to participate in the proceedings to make an effort to prevent a judgement in favour of the plaintiff or to appeal against it. If the defendant has become aware of the proceedings against him he cannot simply rely on a procedural defect at the beginning of these proceedings and on its automatic effect on enforceability abroad.

This Article extends the same reasoning to this Proposal and ensures coherence with Council Regulation (EC) No 44/2001 in that respect. Chapter III as a whole translates the general principle of the rights of the defence as enshrined in Art. 34(2) of Council Regulation (EC) No 44/2001 into more specific rules. Consequently, a rule governing the cure of non-compliance with procedural minimum standards must take account of this situation and respond to such non-compliance in a more detailed fashion.

Paragraph (1) refers to all the requirements laid down in Articles 11-18 whose non-observance is cured if the judgement itself which is subject to ordinary appeal has been served on the debtor by an admissible method and accompanied by the information necessary to lodge an ordinary appeal but the debtor has not made use of this possibility to challenge the judgement.

Paragraph (2) enables cure solely with regard to the method of service applied. Even though that method is not in conformity with Articles 11-14, there is no need to exclude certification as a European Enforcement Order if it is established beyond doubt that the debtor has personally received the documents in question and if the requirements of Articles 15, 16, 17 and 18 are met.

Article 20 – Minimum standards for relief from the effects of the expiration of time

Even if all the requirements as set out in Chapter III, especially concerning the methods of service, have been meticulously observed, it is inevitable that under certain exceptional circumstances such as *force majeure* the debtor may not have obtained knowledge of the documents to be served on him without any fault on his part. This Article entitles the debtor to relief in such situations by providing an extraordinary remedy. If the debtor did not receive the judgement in time, he is granted the possibility of appeal even beyond the time limits for such appeal. If the situation that precludes the debtor from participating in the court proceedings occurs at an earlier point in time, i.e. he has not obtained knowledge of the document instituting the proceedings or of the summons to a hearing, he is only entitled to such relief unless the conditions of Article 19(1) are fulfilled, that is to say unless he omitted to make use of a possibility to challenge the judgement by means of an ordinary appeal.

Paragraph (2) is to make clear that in a situation as defined under paragraph (1) the debtor has the right to full relief. Therefore, in Member States where the judgement at issue cannot be appealed at all or such appeal is restricted and does not allow a full consideration of questions of fact and law relief has to be granted in another form than that of appeal, be it a reopening of the proceedings or an extraordinary appeal permitting full judicial review.

Paragraph (3) sets a minimum standard with regard to a time limit for an application for relief starting when the debtor has become aware of the court proceedings against him.

As this Article lays down minimum standards only, it does not preclude the Member States from granting relief more generously.

Article 21 – Enforcement Procedure

Paragraph (2) lists the documents that have to be submitted to the enforcement authorities in the Member State of enforcement, including a certified translation of those parts of the multilingual section of the certificate that might require translation in exceptional circumstances as explained with respect to Article 7.

Closely resembling Articles 51 and 52 of Council Regulation (EC) No 44/2001 but taking into account the fact that a procedure for the issuing of a declaration of enforceability in the Member State of enforcement is no longer necessary, paragraph (3) prohibits all obstacles to the access to enforcement for judgements handed down or creditors domiciled in a State other than the Member State of enforcement by demanding additional fees or securities from such creditors.

Paragraph (4) addresses other requirements potentially deterring from enforcement creditors domiciled outside the Member State where such enforcement is to take place.

Article 22 – Access to justice during enforcement proceedings

Article 22 (1) is closely related to the grounds for refusal of *exequatur* under Article 34(3) and (4) of Council Regulation (EC) No 44/2001 but modifies the conditions under which the existence of an irreconcilable judgement can bar enforcement. This paragraph eliminates the distinction between irreconcilable judgements handed down either in the Member State of enforcement or in another Member State or a third State. Judgements given in the Member State of enforcement are not automatically awarded priority as under Article 34(3) of Council Regulation (EC) No 44/2001. Rather, the same standard applies to all irreconcilable judgements no matter where they originate. As to the content of that standard, an additional condition is added as compared to Article 34(4) of Council Regulation (EC) No 44/2001. It is reasonable to impose on the debtor an obligation to raise the existence of an irreconcilable judgement in another State as early as possible by enabling him to put forth such a submission at the stage of enforcement only if he has not been able to do so during the original proceedings leading to the enforceable decision without any fault on his part.

Paragraph (2) prohibits any review of the judgement including its certification as a European Enforcement Order as to its substance in the Member State of enforcement. This proscription includes the examination of reasons for refusal or revocation of *exequatur* under Articles 34 and 35 of Council Regulation (EC) No 44/2001. The compliance with the pertinent requirements - as far as these are considered appropriate and necessary in the context of this Proposal - is ensured by the conditions for certification.

Paragraph (2) does not concern legal action brought against enforcement itself that does not involve a review of the judgement as to its substance. Such litigation is governed by the national legislation of the Member State of origin under Article 21(1).

Article 23– Stay or limitation of enforcement

If the debtor applies for relief under Article 20 or for judicial review under Article 22(1), the final outcome of the pertinent proceedings will determine whether or not the European Enforcement Order will remain enforceable. For the period of uncertainty between such an application and a final decision the enforceability of the European Enforcement Order is not automatically suspended. This Article leaves it at the discretion of the court or competent authority in the Member State of enforcement to stay or limit enforcement upon application

by the debtor by one of the means mentioned. The assessment of the prospects for success of the action taken by the debtor under Articles 20 or 22 as well as the likelihood of irreparable damage caused by unconditional enforcement should be among the guiding considerations. The same rule applies if the debtor applies for retrial or annulment of the judgement in the Member State of origin.

Article 24- Information on enforcement procedures

The elimination of *exequatur* facilitates the enforceability of a judgement in another Member State but it does not overcome the obstacle to access to enforcement that consists in the considerable differences in the Member States' legislation on the enforcement procedure itself. While not making an attempt to harmonise that procedure, this proposal aims at alleviating the problems implied by the diversity of national rules by institutionalising a system of information on the Member States' systems of enforcement via the European Judicial network as established by Council decision 2001/470/EC.

Article 25 – Court settlements

Court settlements on pecuniary claims for a specific amount are eligible for certification as a European Enforcement Order. The applicability of Chapter II as appropriate refers to the procedure of giving the European Enforcement Order certificate but not to the requirements as set out in Article 5. As regards Chapter IV, the exclusion of the applicability of Article 22(1) is consistent with Articles 57 and 58 of Council Regulation (EC) No 44/2001 in that the existence of an irreconcilable judgement is not a possible obstacle to enforcement.

Article 26- Authentic instruments

The remarks on Article 25 are equally valid for this Article.

Paragraph (1) attributes the competence for the certification as a European Enforcement Order not to a court but to the authority that has given authenticity to the document, for example to the notary public who has drawn up the document. Since contrary to all other enforceable titles covered by this Proposal a court has never been involved in the authentic instrument's coming into existence, this measure avoids the participation of an additional institution and the resulting danger of delays. It is justified by the mutual trust between the Member States that is already reflected in Article 57(1) of Council Regulation (EC) No 44/2001.

Paragraph (3) establishes a specific minimum standard for authentic instruments with regard to the information of the debtor about the immediate enforceability that is not as self-evident as for a court settlement.

Article 27 and Article 28 – Determination of the domicile of the debtor

These two Articles essentially reproduce Articles 59 and 60 of Council Regulation (EC) No 44/2001.

Article 29 – Transitional provision

For the purposes of simplicity and coherence, this Article establishes a uniform and straightforward rule rendering this Regulation applicable only for court proceedings instituted or authentic documents drawn up after its entry into force. Paragraph (2) essentially reproduces Article 30 of Council Regulation (EC) No 44/2001.

Article 30 – Relationship with Council Regulation (EC) No 44/2001

This Proposal is offering the creditor an efficient way to render a judgement or an instrument under Chapter V enforceable in another Member State without any intermediate measures in that State. It does not oblige the creditor to choose this path. It is entirely at the creditor's discretion to opt either for the European Enforcement Order certificate or for a declaration of enforceability under Council Regulation (EC) No 44/2001. The procedures governing recognition and enforcement contained in other Community instruments on specific matters or in conventions as referred to in Articles 67 and 71 of Council Regulation (EC) No 44/2001 respectively also remain available. If certification as a European Enforcement Order has been refused the creditor may still apply for recognition and enforcement under the other instruments.

Nevertheless, the proceedings following an application for certification as a European Enforcement Order are exclusively governed by this Proposal which in that context supersedes the rules on recognition and enforcement in Council Regulation (EC) No 44/2001.

Article 31– Relationship with Council Regulation (EC) No 1348/2000

This Article makes clear that if the court proceedings that have led to a judgement on an uncontested claim involve cross-border service of documents both the minimum standards of Chapter III of this Proposal concerning the methods of service and Council Regulation (EC) No 1348/2000 apply simultaneously. In principle, there is no potential conflict between these two instruments that needs to be resolved as Regulation No 1348/2000 does not deal with specific methods of service in the context of guaranteeing that the rights of the defence are properly observed.

There is one exception to this rule, however, since Article 19 (2) of Council Regulation (EC) No 1348/2000 allows, under certain conditions, to give a judgement in default of appearance of the defendant although the court has no knowledge let alone proof that the document instituting the proceedings has been served on the defendant in sufficient time and in such a way as to enable him to arrange for his defence. Such a judgement must be based on the legal fiction or presumption of the observance of the rights of the defence. Therefore, it collides with the minimum standards established in this Proposal and cannot be eligible for certification as a European Enforcement Order.

Articles 32 and 33 – Implementing rules and committee

Article 33 refers to the Advisory Committee provided for by Regulation (EC) No 44/2001 that will assist the Commission in the implementation as necessary under Article 32, namely the updating of the standard forms in the Annex or the making of technical amendments thereto. The Committee will be convened only if and when the need for such amendments arises.

Proposal for a

COUNCIL REGULATION

creating a European enforcement order for uncontested claims

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 Commission⁹,

Having regard to the opinion of the European Parliament¹⁰,

Having regard to the opinion of the Economic and Social Committee¹¹,

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 Plan¹²).
- (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.
- (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 matters¹³. 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.

⁹ OJ C , , p. .

¹⁰ OJ C , , p. .

¹¹ OJ C , , p. .

¹² OJ C 19, 23.1.1999, p. 1.

¹³ OJ C 12, 15.1.2001, p. 1.

- (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 judgement 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 judgement 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 judgements in civil and commercial matters¹⁴, 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 judgement 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 judgement 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 cannot be considered sufficient for the certification of a judgement as a European Enforcement Order.
- (12) The courts competent for the proceedings leading to the judgement 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.

¹⁴ OJ L 12, 16.1.2001, p. 1.

- (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 judgement in all other Member States without judicial review of the proper application of the procedural minimum standards in the Member State where the judgement 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 judgements 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 Commission¹⁵.
- (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,

HAS ADOPTED THIS REGULATION:

¹⁵ OJ L 184, 17.7.1999, p. 23.

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 judgements, 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. 'judgement' means any judgement given by a court or tribunal of a Member State, whatever the judgement 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 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 judgement has ‘acquired the authority of a final decision’ if:
 - (a) no ordinary appeal lies against the judgement; or
 - (b) the time limit for an ordinary appeal against the judgement 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 judgement 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 judgement;
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 judgement 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 judgement certified as a European Enforcement Order is sought;
10. ‘court of origin’ means the court that delivered the judgement to be certified as a European Enforcement Order.

CHAPTER II EUROPEAN ENFORCEMENT ORDER

Article 4 Abolition of exequatur

A judgement 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 any special procedure being required in the Member State of enforcement.

Article 5 Requirements for certification as a European Enforcement Order

Where a judgement 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 judgement is enforceable and has acquired the authority of a final decision in the Member State of origin; and
- (b) the judgement 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 judgement that meet the requirements of this Regulation where a judgement 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 judgement.

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 judgement.
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 judgement 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 judgement 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 judgement 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
 - (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, 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 under Article 11(1)(a) or (b) have been unsuccessful, 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, 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 judgement 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 judgement 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 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 judgement 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 judgement 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 judgement; or
 - that the scope of judicial review of an ordinary appeal is limited;
- (e) the possibility of certifying such judgement 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 judgement 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 judgement 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

1. 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 judgement can be certified as a European Enforcement Order if:
 - (a) the judgement 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 judgement 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 judgement; and
 - (d) the debtor has been duly informed in or together with the judgement 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 judgement within the time limit.
2. If the proceedings in the Member State of origin did not meet the procedural requirements as set out in Articles 11 to 14 , this non-compliance is cured and a judgement 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 judgement 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 judgement 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 judgement 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 judgement 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 judgement.

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 judgement 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 judgement 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 judgement 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 judgement is irreconcilable with an earlier judgement given in any Member State or in a third country provided that:
- (a) the earlier judgement involved the same cause of action and was between the same parties;
 - (b) the earlier judgement 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 judgement 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 judgement 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/EC¹⁶.

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.

¹⁶ OJ L 174, 27.6.2001, p. 25.

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 judgement 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 judgement under the provisions governing the recognition and enforcement of judgements 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 judgement under conventions to which the Member States are parties and which in relation to particular matters, govern the recognition and enforcement of judgements in accordance with Article 71 of Regulation (EC) No 44/2001.
2. If the creditor applies for certification of a judgement, 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 judgements, 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 1348/2000¹⁷ 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 judgement 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 judgement 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.
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.

¹⁷ OJ L 160, 30.6.2000, p. 37.

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 Council
The President