



JUDICIAL COOPERATION IN CIVIL AND COMMERCIAL MATTERS

(Training Materials)

Text 1

Regulation No 655/2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

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1. INTRODUCTION

The new regime of the Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast (Brussels I bis)) which abandoned the process of declaration of enforcement of judgements in the Member State of enforcement has greatly contributed to a faster circulation of judgements and authentic instruments. Due to large freedom of movement, a need for a swift and efficient instrument occurred in cases where the debtor might have accounts in various Member States and there is need for seizing these accounts in order to secure a fulfillment of the creditor's claim in the future. The creditor has already had a disposal of such instruments based on national law of the Member State of enforcement, but these instruments are limited to the jurisdiction of that Member State.

Introducing an instrument such as the European Account Preservation Order has given the creditor options to choose whether to use measures by the national law or to apply for the European Account Preservation Order, depending on the circumstances of the case and which instrument seems more appropriate to reach his goal – which is a complete fulfillment of his claim in a reasonable time period.

Therefore, by the authority in Article 81 of the Treaty on the Functioning of the European Union, a new Regulation No. 655/2014 was adopted on 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters.

The reasoning for need of such a measure was explained in the Preamble of the Regulation by preserving the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market and such measures may include measures aimed at ensuring the mutual recognition and enforcement of judgments between Member States, effective access to justice and the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

When assessing the need for such a measure as set in the Regulation on European Account Preservation Order it was found that national procedures for obtaining protective measures such as account preservation orders exist in all Member States, but the conditions for the grant of such measures and the efficiency of their implementation vary considerably. Moreover, recourse to national protective measures may prove cumbersome in cases having cross-border implications, in particular when the creditor seeks to preserve several accounts located in different Member States.

Therefore, it seemed necessary and appropriate to adopt a binding and directly applicable legal instrument of the Union which establishes a new Union procedure allowing, in cross-border cases, for the preservation, in an efficient and speedy way, of funds held in bank accounts.

The procedure established by the Regulation should serve as an additional and optional means for the creditor, who remains free to make use of any other procedure for obtaining an equivalent measure under national law.



The Regulation applies as of 18 January 2017, with the exception of Article 50, which applies from 18 July 2016¹. It is directly applicable in Member States except the United Kingdom and Denmark.

2. SUBJECT MATTER AND SCOPE

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

The Regulation applies to pecuniary claims in civil and commercial matters in cross-border cases, regardless of the nature of the court or tribunal concerned.

It does not extend to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority ('*acta iure imperii*').

The Regulation specifically does not apply to:

- (a) rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
- (b) wills and succession, including maintenance obligations arising by reason of death;
- (c) claims against a debtor in relation to whom bankruptcy proceedings, proceedings for the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions, or analogous proceedings have been opened;
- (d) social security;
- (e) arbitration.

The scope of application is rather similar to the scope of application of the Brussels I bis Regulation with the exception of maintenance obligations (not arising by reason of death) which are directly excluded from the scope of application of the Brussels I bis Regulation since there is a special Regulation No. 4/09 for maintenance obligations. However, these obligations, if not arising by reason of death, are not excluded in the Preservation Order regulation. Given the nature of maintenance obligations, especially in favor of minors which in most Member States are claims with the highest priority, it is understandable that the creditor of such claim should have a possibility to ensure his or her claim with such an efficient instrument as the European Preservation Order.

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

¹ Article 50 concerns obligations of Member States to provide information to the Commission about competent courts and authorities who will directly apply the Regulation.

² Point (a) of Article 2 of the Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems states:

"For the purpose of this Directive:

- (a) 'system' shall mean a formal arrangement:
 - between three or more participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, with common rules and standardised arrangements for the execution of transfer orders between the participants,



It also does not apply to bank accounts held by or with central banks when acting in their capacity as monetary authorities.

The Regulation defines in its Article 3 a cross-border case as one in which the bank account or accounts to be preserved by the Preservation Order are maintained in a Member State other than the Member State of the court seized of the application for the Preservation Order or the Member State in which the creditor is domiciled. The relevant moment for determining whether a case is a cross-border case is the date on which the application for the Preservation Order is lodged with the court having jurisdiction to issue the Preservation Order.

The Commission adopted an Implementing Regulation (EU) 2016/1823 of 10 October 2016 establishing the forms referred to in the Regulation. Dynamic forms which can be completed online are available on the www.e-justice.europa.eu portal.

3. PROCEDURE FOR OBTAINING A PRESERVATION ORDER

The provisions of the Regulation regarding the procedure for obtaining a Preservation Order regulate availability of the Preservation Order to the creditor, jurisdiction of the court, conditions for issuing the Preservation Order, necessary information and form of the application, court procedure before issuing a Preservation Order (taking of evidence, initiation of proceedings on the substance of the matter, *ex parte* procedure, security to be provided by the creditor, liability of the creditor, request for the obtaining of account information, interest and costs, parallel applications), the court decision on the application for the Preservation Order (time-limits for the decision on the application for a Preservation Order, form and content of the Preservation Order, duration of the preservation) and the creditor's appeal against a refusal to issue the Preservation Order.

The procedure is very formal – both the application and the court's decision must be made in already established forms, the procedure is *ex parte* – without any notification to the debtor and the main distinction throughout the proceedings is whether the creditor has already obtained a judgment, court settlement or authentic instrument which requires the debtor to pay the creditor's claim or not.

The distinction between these two situations is obvious throughout the Regulation, mostly in some additional conditions the creditor who has not yet obtained an enforcement title has to fulfill in order for his application for the Preservation Order to be granted. That is understandable because a creditor who has already obtained an enforcement title has a stronger claim than the one who has yet to start the procedure on the substance of the matter.

3.1. Availability

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- governed by the law of a Member State chosen by the participants; the participants may, however, only choose the law of a Member State in which at least one of them has its head office, and
 - designated, without prejudice to other more stringent conditions of general application laid down by national law, as a system and notified to the Commission by the Member State whose law is applicable, after that Member State is satisfied as to the adequacy of the rules of the system.

Subject to the conditions in the first subparagraph, a Member State may designate as a system such a formal arrangement whose business consists of the execution of transfer orders as defined in the second indent of (i) and which to a limited extent executes orders relating to other financial instruments, when that Member State considers that such a designation is warranted on grounds of systemic risk."

A Member State may also on a case-by-case basis designate as a system such a formal arrangement between two participants, without counting a possible settlement agent, a possible central counterparty, a possible clearing house or a possible indirect participant, when that Member State considers that such a designation is warranted on grounds of systemic risk;



As mentioned above, according to Article 5 the Preservation Order shall be available to the creditor in the following situations:

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

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

The idea is that the creditor can choose, depending on the circumstances of the case, whether to apply for issuing a Preservation Order before starting the procedure on the substance of the matter, during those proceedings or after obtaining a judgment, court settlement or authentic instrument. Whether or not his application will be accepted, depends on the strength of his arguments to convince the court that such a measure is needed.

3.2. Jurisdiction

According to Article 6 court jurisdiction for issuing a Preservation Order depends on the fact whether or not the creditor has already obtained a judgment, court settlement or authentic instrument:

a) if he has not - jurisdiction to issue a Preservation Order shall lie with the courts of the Member State which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of jurisdiction applicable.

However, this rule does not apply to the debtor who is a consumer and has concluded a contract with the creditor for a purpose which can be regarded as being outside the debtor's trade or profession. In this case, jurisdiction to issue a Preservation Order intended to secure a claim relating to that contract shall lie only with the courts of the Member State in which the debtor is domiciled.

b) in the case the creditor has obtained:

i. a judgement or court settlement - jurisdiction to issue a Preservation Order for the claim specified in the judgment or court settlement shall lie with the courts of the Member State in which the judgment was issued or the court settlement was approved or concluded

ii. an authentic instrument - jurisdiction to issue a Preservation Order for the claim specified in that instrument shall lie with the courts designated for that purpose in the Member State in which that instrument was drawn up.

3.3. Conditions for issuing a Preservation Order

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

Such a provision is common in most Member States when the creditor applies for a protective measure by the domestic law, e.g. Article 344 of the Croatian Enforcement Act³.

³ Croatian National Gazette Nr. 112/12, 25/13, 89/14, 55/16.



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

3.4. Application for a Preservation Order

Applications for a Preservation Order shall be lodged using the form in Annex I of the Implementing Regulation No. 2016/1823.

Article 8.2. of the Regulation also specifies necessary information that the application shall include, which is very meticulous and the creditor needs to obtain and supply the court with as much details as possible.

The list of necessary information is as following:

- (a) the name and address of the court with which the application is lodged;
- (b) details concerning the creditor: name and contact details and, where applicable, name and contact details of the creditor's representative, and:
 - (i) where the creditor is a natural person, his date of birth and, if applicable and available, his identification or passport number; or
 - (ii) where the creditor is a legal person or any other entity having legal capacity to sue or be sued under the law of a Member State, the State of its incorporation, formation or registration and its identification or registration number or, where no such number exists, the date and place of its incorporation, formation or registration;
- (c) details concerning the debtor: name and contact details and, where applicable, name and contact details of the debtor's representative and, if available:
 - (i) where the debtor is a natural person, his date of birth and identification or passport number; or
 - (ii) where the debtor is a legal person or any other entity having legal capacity to sue or be sued under the law of a Member State, the State of its incorporation, formation or registration and its identification or registration number or, where no such number exists, the date and place of its incorporation, formation or registration;
- (d) a number enabling the identification of the bank, such as the IBAN or BIC and/or the name and address of the bank, with which the debtor holds one or more accounts to be preserved;
- (e) if available, the number of the account or accounts to be preserved and, in such a case, an indication as to whether any other accounts held by the debtor with the same bank should be preserved;
- (f) where none of the information required under point (d) can be provided, a statement that a request is made for the obtaining of account information pursuant to Article 14, where such a request is possible, and a substantiation as to why the creditor believes that the debtor holds one or more accounts with a bank in a specific Member State;
- (g) the amount for which the Preservation Order is sought:
 - (i) where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the amount of the principal claim or part thereof and of any interest;
 - (ii) where the creditor has already obtained a judgment, court settlement or authentic instrument, the amount of the principal claim as specified in the judgment, court settlement or authentic instrument or part thereof and of any interest and costs;
- (h) where the creditor has not yet obtained a judgment, court settlement or authentic instrument:



- (i) a description of all relevant elements supporting the jurisdiction of the court with which the application for the Preservation Order is lodged;
- (ii) a description of all relevant circumstances invoked as the basis of the claim, and, where applicable, of the interest claimed;
- (iii) a statement indicating whether the creditor has already initiated proceedings against the debtor on the substance of the matter;
- (i) where the creditor has already obtained a judgment, court settlement or authentic instrument, a declaration that the judgment, court settlement or authentic instrument has not yet been complied with or, where it has been complied with in part, an indication of the extent of non-compliance;
- (j) a description of all relevant circumstances justifying the issuing of the Preservation Order;
- (k) where applicable, an indication of the reasons why the creditor believes he should be exempted from providing security;
- (l) a list of the evidence provided by the creditor;
- (m) a declaration as to whether the creditor has lodged with other courts or authorities an application for an equivalent national order or whether such an order has already been obtained or refused and, if obtained, the extent to which it has been implemented;
- (n) an optional indication of the creditor's bank account to be used for any voluntary payment of the claim by the debtor;
- (o) a declaration that the information provided by the creditor in the application is true and complete to the best of his knowledge and that the creditor is aware that any deliberately false or incomplete statements may lead to legal consequences under the law of the Member State in which the application is lodged or to liability pursuant to Article 13 of the Regulation.

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

It may be submitted by any means of communication, including electronic, which are accepted under the procedural rules of the Member State in which the application is lodged.

3.5. Court procedure before issuing a Preservation Order

3.5.1. Taking of evidence

The court shall take its decision by means of a written procedure on the basis of the information and evidence provided by the creditor in or with his application. If the court considers that the evidence provided is insufficient, it may, where national law so allows, request the creditor to provide additional documentary evidence.

The Regulation does not oblige the court to request additional documentary evidence, it merely states that if it is possible by the national law, the court may request it. That means that the court applies its national procedural rules and according to them, taking into account all facts of the case, decides whether or not to request additional evidence.

The court may in any case, provided that this does not delay the proceedings unduly, also use any other appropriate method of taking evidence available under its national law, such as an oral hearing of the creditor or of his witness(es) including through videoconference or other



communication technology. But since the procedure is *ex parte* according to Article 11, the debtor is not informed at this stage of the proceedings.

3.5.2. Initiation of proceedings on the substance of the matter

In the case where the creditor has applied for a Preservation Order before initiating proceedings on the substance of the matter, he shall initiate such proceedings and provide proof of such initiation to the court with which the application for the Preservation Order was lodged within 30 days of the date on which he lodged the application or within 14 days of the date of the issue of the Order, whichever date is the later.

The court may also, at the request of the debtor, extend that time period, for example in order to allow the parties to settle the claim, and shall inform the two parties accordingly.

The court issues the Preservation Order using the form in Annex II of the Implementing Regulation No. 2016/1823.

If the court has not received proof of the initiation of proceedings within the designated time period, the Preservation Order shall be revoked or terminated and the parties shall be informed accordingly.

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

Where the revocation or termination needs to be implemented in a Member State other than the Member State of origin, the court shall revoke the Preservation Order by using the revocation form in Annex III of the Implementing Regulation No. 2016/1823, and shall transmit the revocation form to the competent authority of the Member State of enforcement. That authority shall take the necessary steps to have the revocation or termination implemented.

Proceedings on the substance of the matter shall be deemed to have been initiated:

(a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the creditor has not subsequently failed to take the steps he was required to take to have service effected on the debtor; or

(b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the creditor has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

3.5.3. *Ex parte* procedure

As mentioned above, according to Article 11, the debtor shall not be notified of the application for a Preservation Order or be heard prior to the issuing of the Order, so the procedure before issuing a Preservation Order is *ex parte*.

Such a provision at this stage of the proceedings is understandable, because the whole purpose of the Preservation Order is to prevent to debtor of from withdrawing funds from his accounts and thus preventing the realization of the creditor's claim in the future. The aspect of surprise of the debtor is highly linked with the success of such a measure.



3.5.4. Security to be provided by the creditor

Again the Regulation has different provisions regarding security to be provided by the creditor before issuing a Preservation Order depending on whether or not he has obtained an enforcement title:

- a) in a case where the creditor has not yet obtained a judgment, court settlement or authentic instrument: the court shall require the creditor to provide security for an amount sufficient to prevent abuse of the procedure provided for by this Regulation and to ensure compensation for any damage suffered by the debtor as a result of the Order. The court may dispense with the requirement if it considers that the provision of security is inappropriate in the circumstances of the case.
- b) in the case the creditor has already obtained a judgment, court settlement or authentic instrument: the court may, before issuing the Order, require the creditor to provide security if it considers this necessary and appropriate in the circumstances of the case.

If the court requires security to be provided, it shall inform the creditor of the amount required and of the forms of security acceptable under the law of the Member State in which the court is located. It shall indicate to the creditor that it will issue the Preservation Order once security in accordance with those requirements has been provided.

3.5.5. Liability of the creditor

Liability of the creditor is regulated in Article 13 which states that the creditor shall be liable for any damage caused to the debtor by the Preservation Order due to fault on the creditor's part, but the burden of proof shall lie with the debtor.

There is a presumption of the fault of the creditor, unless he proves otherwise, in the following cases:

- (a) if the Order is revoked because the creditor has failed to initiate proceedings on the substance of the matter, unless that omission was a consequence of the debtor's payment of the claim or another form for settlement between the parties;
- (b) if the creditor has failed to request the release of over-preserved amounts as provided for in Article 27⁴;
- (c) if it is subsequently found that the issue of the Order was not appropriate or appropriate only in a lower amount due to a failure on the part of the creditor to comply with his obligations under Article 16⁵; or
- (d) if the Order is revoked or its enforcement terminated because the creditor has failed to comply with his obligations with regard to service or translation of documents or with regard to curing the lack of service or the lack of translation.

Member States may maintain or introduce in their national law other grounds or types of liability or rules on the burden of proof. All other aspects relating to the creditor's liability towards the debtor not specifically addressed in Article 13 shall be governed by national law and the law applicable to the liability of the creditor shall be the law of the Member State of enforcement.

⁴ Article 27 regulates the duty of the creditor to request the release of over-preserved amounts.

⁵ Article 16 regulates that the creditor may not submit parallel applications to several courts and his obligations if he has.



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

- (a) in which the debtor has his habitual residence as defined in Article 23 of Regulation No. 864/2007 (Rome II)⁶, or, failing that,
- (b) which has the closest connection with the case.

It is specifically stated that Article 13 does not deal with the question of possible liability of the creditor towards the bank or any third party.

3.5.6. Request for the obtaining of account information

When the creditor does not have information on the debtor's accounts, Article 14 enables him to ask the court to obtain account information.

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

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

This possibility is available only to the creditor who already has an enforcement title, or a title which is not enforceable yet with some additional conditions, but not to the creditor before or during the procedure on the substance of the matter.

The creditor shall make the request in the application for the Preservation Order. The creditor shall substantiate why he believes that the debtor holds one or more accounts with a bank in the specific Member State and shall provide all relevant information available to him about the debtor and the account or accounts to be preserved. If the court with which the application for a Preservation Order is lodged considers that the creditor's request is not sufficiently substantiated, it shall reject it.

When the court is satisfied that the creditor's request is well substantiated and that all the conditions and requirements for issuing the Preservation Order are met, and, where applicable, the

⁶ Article 23 of the Regulation No 864/2007 on the law applicable to non-contractual obligations (Rome II) states:

"1. For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration. Where the event giving rise to the damage occurs, or the damage arises, in the course of operation of a branch, agency or any other establishment, the place where the branch, agency or any other establishment is located shall be treated as the place of habitual residence.

2. For the purposes of this Regulation, the habitual residence of a natural person acting in the course of his or her business activity shall be his or her principal place of business."



security requirement pursuant to Article 12, the court shall transmit the request for information to the information authority of the Member State of enforcement.

To obtain requested information, the information authority in the Member State of enforcement shall use one of the methods available in that Member State, such as:

(a) an obligation on all banks in its territory to disclose, upon request by the information authority, whether the debtor holds an account with them;

(b) access for the information authority to the relevant information where that information is held by public authorities or administrations in registers or otherwise;

(c) the possibility for its courts to oblige the debtor to disclose with which bank or banks in its territory he holds one or more accounts where such an obligation is accompanied by an *in personam* order by the court prohibiting the withdrawal or transfer by him of funds held in his account or accounts up to the amount to be preserved by the Preservation Order; or

(d) any other methods which are effective and efficient for the purposes of obtaining the relevant information, provided that they are not disproportionately costly or time-consuming.

Irrespective of the method or methods made available by a Member State, all authorities involved in obtaining the information shall act expeditiously. As soon as the information authority of the Member State of enforcement has obtained the account information, it shall transmit it to the requesting court.

If the information authority is unable to obtain the information, it shall inform the requesting court accordingly. Where, as a result of the unavailability of account information, the application for a Preservation Order is rejected in full, the requesting court shall without delay release any security that the creditor may have provided.

Where the information authority is provided with information by a bank or is granted access to account information held by public authorities or administrations in registers, the notification of the debtor of the disclosure of his personal data shall be deferred for 30 days, in order to prevent an early notification from jeopardizing the effect of the Preservation Order.

3.5.7. Interest and costs

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

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

3.5.8. Parallel applications

The creditor may not submit to several courts at the same time parallel applications for a Preservation Order against the same debtor aimed at securing the same claim.



In his application for a Preservation Order, the creditor shall declare whether he has lodged with any other court or authority an application for an equivalent national order against the same debtor and aimed at securing the same claim or has already obtained such an order. He shall also indicate any applications for such an order which have been rejected as inadmissible or unfounded.

If the creditor obtains an equivalent national order against the same debtor and aimed at securing the same claim during the proceedings for the issuing of a Preservation Order, he shall without delay inform the court thereof and of any subsequent implementation of the national order granted. He shall also inform the court of any applications for an equivalent national order which have been rejected as inadmissible or unfounded.

Where the court is informed that the creditor has already obtained an equivalent national order, it shall consider, having regard to all the circumstances of the case, whether it is still appropriate to issue the Preservation Order, in full or in part.

3.6. Court decision on the application for the Preservation Order

The court seized of an application for a Preservation Order shall examine whether the conditions and requirements set out in the Regulation are met. It may accept the application fully, in part or reject it completely.

The court shall decide on the application without delay, but no later than by the expiry of the time-limits set out in Article 18.

Where the creditor has not provided all the information required by Article 8, the court may, unless the application is clearly inadmissible or unfounded, give the creditor the opportunity to complete or rectify the application within a period of time to be specified by the court. If the creditor fails to complete or rectify the application within that period, the application shall be rejected.

The Preservation Order shall be issued in the amount justified by the evidence and as determined by the law applicable to the underlying claim, and shall include, where appropriate, interest and/or costs.

The Order may not under any circumstances be issued in an amount exceeding the amount indicated by the creditor in his application.

The decision on the application shall be brought to the notice of the creditor in accordance with the procedure provided for by the law of the Member State of origin for equivalent national orders.

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

Article 18 of the Regulation sets some time-limits for the court's decision.

In the case the creditor has not yet obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the tenth working day after the creditor lodged or, where applicable, completed his application.



Where the creditor has already obtained a judgment, court settlement or authentic instrument, the court shall issue its decision by the end of the fifth working day after the creditor lodged or, where applicable, completed his application.

Where the court determines that an oral hearing of the creditor and, as the case may be, his witness(es) is necessary, the court shall hold the hearing without delay and shall issue its decision by the end of the fifth working day after the hearing has taken place.

In the situations where the court decides security should be provided by the creditor, the time-limits shall apply to the decision requiring the creditor to provide security. The court shall issue its decision on the application for a Preservation Order without delay once the creditor has provided the security required.

In situations when the creditor has requested obtaining account information, the court shall issue its decision without delay once it has received the information, provided that any security required has been provided by the creditor by that time.

3.6.2. Form and content of the Preservation Order

The Preservation Order shall be issued using the form using the form in Annex II of the Implementing Regulation No. 2016/1823 and shall bear a stamp, a signature and/or any other authentication of the court. The form consists of two parts:

(a) part A, containing the information to be provided to the bank, the creditor and the debtor; and

(b) part B, containing the information to be provided to the creditor and the debtor in addition to the information in part A.

Part A shall include the following information:

(a) the name and address of the court and the file number of the case;

(b) details of the creditor;

(c) details of the debtor;

(d) the name and address of the bank concerned by the Order;

(e) if the creditor has provided the account number of the debtor in the application, the number of the account or accounts to be preserved, and, where applicable, an indication as to whether any other accounts held by the debtor with the same bank also have to be preserved;

(f) where applicable, an indication that the number of any account to be preserved was obtained by means of a request and that the bank, where necessary, is to obtain the number or numbers concerned from the information authority of the Member State of enforcement;

(g) the amount to be preserved by the Order;

(h) an instruction to the bank to implement the Order;

(i) the date of issue of the Order;

(j) if the creditor has indicated an account in his application, an authorization to the bank to release and transfer, if so requested by the debtor and if allowed by the law of the Member State of enforcement, funds up to the amount specified in the Order from the preserved account to the account that the creditor has indicated in his application;

(k) information on where to find the electronic version of the form to be used for the declaration the bank has to fulfill.

Part B shall include the following information:

(a) a description of the subject matter of the case and the court's reasoning for issuing the Order;



- (b) the amount of the security provided by the creditor, if any;
- (c) where applicable, the time-limit for initiating the proceedings on the substance of the matter and for proving such initiation to the issuing court;
- (d) where applicable, an indication as to which documents must be translated;
- (e) where applicable, an indication that the creditor is responsible for initiating the enforcement of the Order and consequently, where applicable, an indication that the creditor is responsible for transmitting it to the competent authority of the Member State of enforcement; and
- (f) information about the remedies available to the debtor.

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

3.6.3. Duration of the preservation

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

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

3.7. Appeal against a refusal to issue the Preservation Order

The creditor shall have the right to appeal against any decision of the court rejecting, wholly or in part, his application for a Preservation Order.

Such an appeal shall be lodged within 30 days of the date on which the decision was brought to the notice of the creditor. It shall be lodged with the court which the Member State concerned has communicated to the Commission.

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

4. RECOGNITION, ENFORCEABILITY AND ENFORCEMENT OF THE PRESERVATION ORDER

4.1. Recognition and enforceability

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

4.2. Enforcement of the Preservation Order

The Preservation Order shall be enforced in accordance with the procedures applicable to the enforcement of equivalent national orders in the Member State of enforcement.



This means that the Preservation Order at this stage has the same status as a national order and it is enforced according to national law of that Member State. The enforcement has a few stages – implementation of the Preservation Order by the bank where the debtor has his account(s), the bank's declaration concerning the preservation of funds also concerning amounts exempt from preservation and the ranking of the Preservation Order.

All authorities involved in the enforcement of the Order shall act without delay.

Where the Preservation Order was issued in a Member State other than the Member State of enforcement, part A of the Order and a blank standard form for the declaration concerning the preservation of funds (Article 25) shall be transmitted to the competent authority of the Member State of enforcement.

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

The Order shall be accompanied, where necessary, by a translation or transliteration into the official language of the Member State of enforcement or, where there are several official languages in that Member State, the official language or one of the official languages of the place where the Order is to be implemented. Such translation or transliteration shall be provided by the issuing court by making use of the appropriate language version of the standard form.

The competent authority of the Member State of enforcement shall take the necessary steps to have the Order enforced in accordance with its national law.

Where the Preservation Order concerns more than one bank in the same Member State or in different Member States, a separate form for each bank shall be transmitted to the competent authority in the relevant Member State of enforcement.

4.2.1. Implementation of the Preservation Order

A bank to which a Preservation Order is addressed shall implement it without delay following receipt of the Order or, where the law of the Member State of enforcement so provides, of a corresponding instruction to implement the Order.

To implement the Preservation Order, the bank shall, except the amounts that are exempt for enforcement under the law of the Member State (as set in Article 31), preserve the amount specified in the Order either:

(a) by ensuring that that amount is not transferred or withdrawn from the account or accounts indicated in the Order or identified by the bank according to Article 24 paragraph 4 (when the creditor does not have information on the bank accounts of the creditor); or

(b) where national law so provides, by transferring that amount to an account dedicated for preservation purposes.

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



The bank shall be authorized, at the request of the debtor, to release funds preserved and to transfer those funds to the account of the creditor indicated in the Order for the purposes of paying the creditor's claim, if all the following conditions are met:

- (a) such authorization of the bank is specifically indicated in the Order;
- (b) the law of the Member State of enforcement allows for such release and transfer; and
- (c) there are no competing Orders with regard to the account concerned.

Where the Preservation Order does not specify the number or numbers of the account or accounts of the debtor but provides only the name and other details regarding the debtor, the bank or other entity responsible for enforcing the Order shall identify the account or accounts held by the debtor with the bank indicated in the Order.

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

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

Any funds held in the account or accounts which exceed the amount specified in the Preservation Order shall remain unaffected by the implementation of the Order.

Where, at the time of the implementation of the Preservation Order, the funds held in the account or accounts are insufficient to preserve the full amount specified in the Order, the Order shall be implemented only in the amount available in the account or accounts.

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

- (a) savings accounts in the sole name of the debtor;
- (b) current accounts in the sole name of the debtor;
- (c) savings accounts in joint names, limited to conditions set in Article 30⁷;
- (d) current accounts in joint names, limited to conditions set in Article 30.

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

4.2.2. Declaration concerning the preservation of funds

Article 25 of the Regulation regulates that by the end of the third working day following the implementation of the Preservation Order, the bank or other entity responsible for enforcing the

⁷ Article 30 of the Regulation states:

"Preservation of joint and nominee accounts

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



Order in the Member State of enforcement shall issue a declaration using the declaration form in Annex IV of the Implementing Regulation No. 2016/1823, indicating whether and to what extent funds in the debtor's account or accounts have been preserved and, if so, on which date the Order was implemented.

If, in exceptional circumstances, it is not possible for the bank or other entity to issue the declaration within three working days, it shall issue it as soon as possible but by no later than the end of the eighth working day following the implementation of the Order.

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

Where the Order was issued in a Member State other than the Member State of enforcement, the declaration shall be transmitted to the competent authority of the Member State of enforcement, unless it was issued by that same authority. By the end of the first working day following the receipt or issue of the declaration, that authority shall transmit the declaration to the issuing court and by registered post attested by an acknowledgment of receipt, or by equivalent electronic means, to the creditor.

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

4.2.3. Liability of the bank

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

4.2.4. Duty of the creditor to request the release of over-preserved amounts

The creditor shall be under a duty to take the necessary steps to ensure the release of any amount which, following the implementation of the Preservation Order, exceeds the amount specified in the Preservation Order:

(a) where the Order covers several accounts in the same Member State or in different Member States; or

(b) where the Order was issued after the implementation of one or more equivalent national orders against the same debtor and aimed at securing the same claim.

By the end of the third working day following receipt of any declaration showing such over-preservation, the creditor shall, by the swiftest possible means and using the form for requesting the release of over-preserved amounts, in Annex V of the Implementing Regulation No. 2016/1823, submit a request for the release to the competent authority of the Member State of enforcement in which the over-preservation has occurred.

That authority shall, upon receipt of the request, promptly instruct the bank concerned to effect the release of the over-preserved amounts.



Member States can provide in its national law that the release of over-preserved funds from any account maintained in its territory is to be initiated by the competent enforcement authority of that Member State of its own motion.

4.2.5. Service on the debtor

The Preservation Order, other documents and the declaration pursuant to Article 25 shall be served on the debtor in the following matter:

Where the debtor is domiciled in the Member State of origin, service shall be effected in accordance with the law of that Member State. Service shall be initiated by the issuing court or the creditor, depending on who is responsible for initiating service in the Member State of origin, by the end of the third working day following the day of receipt of the declaration showing that amounts have been preserved.

Where the debtor is domiciled in a Member State other than the Member State of origin, the issuing court or the creditor, depending on who is responsible for initiating service in the Member State of origin, shall, by the end of the third working day following the day of receipt of the declaration showing that amounts have been preserved, transmit the documents to the competent authority of the Member State in which the debtor is domiciled. That authority shall, without delay, take the necessary steps to have service effected on the debtor in accordance with the law of the Member State in which the debtor is domiciled.

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

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

Where the debtor is domiciled in a third State, service shall be effected in accordance with the rules on international service applicable in the Member State of origin.

The following documents shall be served on the debtor and shall, where necessary, be accompanied by a translation or transliteration:

- (a) the Preservation Order using parts A and B of the form;
- (b) the application for the Preservation Order submitted by the creditor to the court;
- (c) copies of all documents submitted by the creditor to the court in order to obtain the Order.

Where the Preservation Order concerns more than one bank, only the first declaration showing that amounts have been preserved shall be served on the debtor in accordance with this Article. Any subsequent declarations shall be brought to the notice of the debtor without delay.

4.2.6. Transmission of documents between the creditor, courts and competent authorities



Transmission of documents may be carried out by any appropriate means, provided that the content of the document received is true and faithful to that of the document transmitted and that all information contained in it is easily legible.

The court or authority that received documents shall, by the end of the working day following the day of receipt, send to the authority, creditor or bank that transmitted the documents an acknowledgment of receipt, employing the swiftest possible means of transmission and using the standard form in Annex VI of the Implementing Regulation No. 2016/1823.

4.2.7. Amounts exempt from preservation

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

There is a difference if those amounts are exempted from seizure under the law of the Member State of enforcement without any request from the debtor or at that request. In the first case the body responsible for exempting such amounts in that Member State shall, of its own motion, exempt the relevant amounts from preservation. In the latter case, such amounts shall be exempted from preservation upon application by the debtor.

4.2.8. Ranking of the Preservation Order

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

5. REMEDIES

After the issuing of the Preservation Order the debtor can challenge the Preservation Order and also the enforcement of the Preservation Order. Both the debtor and creditor may apply for a modification or a revocation of the Preservation Order. Both parties have a right to appeal against the decision of the court deciding on these remedies. The debtor may also apply to the court asking that he provides security instead of preservation of funds.

5.1. Remedies of the debtor against the Preservation Order

The debtor may challenge the Preservation Order, and it shall be revoked or modified, if possible, on the ground that:

- (a) the conditions or requirements set out in the Regulation were not met;
- (b) the Order, the declaration and/or the other documents were not served on the debtor within 14 days of the preservation of his account or accounts;
- (c) the documents served on the debtor did not meet the language requirements;
- (d) preserved amounts exceeding the amount of the Order were not released;
- (e) the claim the enforcement of which the creditor was seeking to secure by means of the Order has been paid in full or in part;
- (f) a judgment on the substance of the matter has dismissed the claim the enforcement of which the creditor was seeking to secure by means of the Order; or



(g) the judgment on the substance of the matter, or the court settlement or authentic instrument, the enforcement of which the creditor was seeking to secure by means of the Order has been set aside or, as the case may be, annulled.

The debtor may also challenge the court's decision to require security from the creditor on the ground that the conditions or requirements of Article 12 were not met. In that case, if the court requires the creditor to provide security or additional security, the court shall indicate that the Preservation Order will be revoked or modified if the (additional) security required is not provided by the time-limit specified by the court.

The remedy applied under grounds of lack of service shall be granted unless the lack of service is cured within 14 days of the creditor being informed of the debtor's application for a remedy. Unless the lack of service was already cured by other means, the lack of service shall, for the purposes of assessing whether or not the remedy is to be granted, be deemed to be cured if the creditor requests the body responsible for service under the law of the Member State of origin to serve the documents on the debtor; or where the debtor has indicated in his application for a remedy that he agrees to collect the documents at the court of the Member State of origin and where the creditor was responsible for providing translations, if the creditor transmits to that court any translations required. The body responsible for service under the law of the Member State of origin shall, at the request of the creditor, without delay serve the documents on the debtor by registered post attested by an acknowledgment of receipt at the address indicated by the debtor. Where the creditor was responsible for initiating the service of the documents, a lack of service may only be cured if the creditor demonstrates that he had taken all the steps he was required to take to have the initial service of the documents effected.

The remedy applied under grounds of lack of translation shall be granted unless the creditor provides to the debtor the translations within 14 days of the creditor being informed of the application by the debtor for a remedy.

In his application for both remedies of lack of delivery and lack of translation, the debtor shall indicate an address to which the documents and the translations can be sent or, alternatively, shall indicate that he agrees to collect those documents at the court of the Member State of origin.

5.2. Remedies of the debtor against enforcement of the Preservation Order

Upon application by the debtor to the competent court or, where national law so provides, to the competent enforcement authority in the Member State of enforcement, the enforcement of the Preservation Order in that Member State shall be:

(a) limited on the ground that certain amounts held in the account should be exempt from seizure, or that amounts exempt from seizure have not or not correctly been taken into account in the implementation of the Order; or

(b) terminated on the ground that:

(i) the account preserved is excluded from the scope of the Regulation;

(ii) enforcement of the judgment, court settlement or authentic instrument which the creditor was seeking to secure by means of the Order has been refused in the Member State of enforcement;

(iii) the enforceability of the judgment the enforcement of which the creditor was seeking to secure by means of the Order has been suspended in the Member State of origin; or

(iv) all reasons the debtor can challenge the Preservation Order (except that the conditions or requirements set out in the Regulation were not met).



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

5.3. Other remedies available to the debtor and the creditor

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

The court that issued the Preservation Order may also, where the law of the Member State of origin so permits, of its own motion modify or revoke the Order due to changed circumstances.

The debtor and the creditor may, on the ground that they have agreed to settle the claim, apply jointly to the court that issued the Preservation Order for revocation or modification of the Order or to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for termination or limitation of the enforcement of the Order.

The creditor may apply to the competent court of the Member State of enforcement or, where national law so provides, to the competent enforcement authority in that Member State, for modification of the enforcement of the Preservation Order, consisting of an adjustment to the exemption applied in that Member State, on the ground that other exemptions have already been applied in a sufficiently high amount in relation to one or several accounts maintained in one or more other Member States and that an adjustment is therefore appropriate.

5.4. Procedure for the remedies

The application for a remedy shall be made using the remedy form in Annex VII of the Implementing Regulation No. 2016/1823. The application may be made at any time and may be submitted by any means of communication, including electronic means, which are accepted under the procedural rules of the Member State in which the application is lodged.

The application shall be brought to the notice of the other party.

The decision on the application shall be issued after both parties have been given the opportunity to present their case, including by such appropriate means of communication technology as are available and accepted under the national law of each of the Member States involved. Exceptions to this rule are where the application was submitted by the debtor on the ground that certain amounts should be exempted from seizure or the creditor and the debtor applied jointly for modification or revocation of the Preservation Order.

The decision shall be issued without delay, but no later than 21 days after the court or, where national law so provides, the competent enforcement authority has received all the information necessary for its decision. The decision shall be brought to the notice of the parties.

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



Where the remedy was applied for in the Member State of origin, the court shall, transmit the decision on the remedy without delay to the competent authority of the Member State of enforcement, using the form in Annex VIII of the Implementing Regulation No. 2016/1823. That authority shall, immediately upon receipt, ensure that the decision on the remedy is implemented.

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

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

5.5. Right to appeal

Either party shall have the right to appeal against a decision on the remedy. Such an appeal shall be submitted using the appeal form in Annex IX of the Implementing Regulation No. 2016/1823.

5.6. Right to provide security in lieu of preservation

The debtor can apply both to the court that issued the Preservation Order or to the competent court of enforcement asking for a release of the preserved funds and providing security in the amount of the Order.

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

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

The provision of the security *in lieu* of preservation shall be brought to the notice of the creditor in accordance with national law.

5.7. Right of third parties

The right of a third party to contest a Preservation Order shall be governed by the law of the Member State of origin.

The right of a third party to contest the enforcement of a Preservation Order shall be governed by the law of the Member State of enforcement.

Jurisdiction in respect of any action brought by a third party to contest a Preservation Order shall lie with the courts of the Member State of origin, and to contest the enforcement of the Preservation



Order in the Member State of enforcement shall lie with the courts of the Member State of enforcement or, where the national law of that Member State so provides, with the competent enforcement authority.

6. GENERAL PROVISIONS CONCERNING THE PROCEDURE

The Regulation has some general provisions concerning both the procedure of obtaining the Preservation Order, the enforcement of it and the procedure concerning remedies against it. These general provisions concern legalization and legal representation, court fees, costs incurred by the banks, fees charged by authorities, time frames, relationship with national procedural law, data protection and languages.

6.1. Legalization and legal representation

No legalization or other similar formality shall be required in the context of the Regulation. Also, representation by a lawyer or other legal professional shall not be mandatory in proceedings to obtain a Preservation Order. In proceedings regarding remedies, representation by a lawyer or another legal professional shall not be mandatory unless, under the law of the Member State of the court or authority with which the application for a remedy is lodged, such representation is mandatory irrespective of the nationality or domicile of the parties.

6.2. Court fees

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

6.3. Costs incurred by the banks

A bank shall be entitled to seek payment or reimbursement from the creditor or the debtor of the costs incurred in implementing a Preservation Order only where, under the law of the Member State of enforcement, the bank is entitled to such payment or reimbursement in relation to equivalent national orders.

Fees charged by a bank to cover the costs shall be determined taking into account the complexity of the implementation of the Preservation Order, and may not be higher than the fees charged for the implementation of equivalent national orders.

Fees charged by a bank to cover the costs of providing account information may not be higher than the costs actually incurred and, where applicable, not higher than the fees charged for the provision of account information in the context of equivalent national orders.

6.4. Fees charged by authorities

Fees charged by any authority or other body in the Member State of enforcement which is involved in the processing or enforcement of a Preservation Order, or in providing account information, shall be determined on the basis of a scale of fees or other set of rules established in advance by each Member State and transparently setting out the applicable fees. In establishing that scale or other set of rules, a Member State may take into account the amount of the Order and the



complexity involved in processing it. Where applicable, the fees may not be higher than the fees charged in connection with equivalent national orders.

6.5. Time frames

Where, in exceptional circumstances, it is not possible for the court or the authority involved to respect the time frames⁸ set in the Regulation, the court or authority shall take the steps required by those provisions as soon as possible.

6.6. Relationship with national procedural law

All procedural issues not specifically dealt with in the Regulation shall be governed by the law of the Member State in which the procedure takes place.

The effects of the opening of insolvency proceedings on individual enforcement actions, such as the enforcement of a Preservation Order, shall be governed by the law of the Member State in which the insolvency proceedings have been opened.

6.7. Data protection

Personal data which are obtained, processed or transmitted shall be adequate, relevant and not excessive in relation to the purpose for which they were obtained, processed or transmitted, and shall be used only for that purpose. The competent authority, the information authority and any other entity responsible for enforcing the Preservation Order may not store the data beyond the period necessary for the purpose for which they were obtained, processed or transmitted, which in any event shall not be longer than six months after the proceedings have ended, and shall, during that period, ensure the appropriate protection of those data.

These rules do not apply to data processed or stored by courts in the exercise of their judicial functions.

6.8. Languages

When serving the debtor with the Preservation Order (parts A and B of the form) and the application for the Preservation Order submitted by the creditor to the court which are not in the official language of the Member State in which the debtor is domiciled or one of the official languages if there are several, or in another language which he understands, the documents shall be accompanied by a translation or transliteration into one of those languages.

Copies of all documents submitted by the creditor to the court in order to obtain the Order shall not be translated unless the court decides, exceptionally, that specific documents need to be translated or transliterated in order to enable the debtor to assert his rights.

Any documents to be addressed to a court or competent authority may also be in any other official language of the institutions of the Union, if the Member State concerned has indicated that it can accept such other language.

⁸ Time frames are set in Article 14(7), Article 18, Article 23(2), the second subparagraph of Article 25(3), Article 28(2), (3) and (6), Article 33(3) and Article 36(4) and (5).



7. RELATIONSHIP OF THE REGULATION ON PRESERVATION ORDER WITH OTHER INSTRUMENTS

It is directly stated in Article 48 that the Regulation on European Account Preservation Order is without prejudice to:

(a) Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) - with exceptions provided for in Article 10(2), Article 14(3) and (6), Article 17(5), Article 23(3) and (6), Article 25(2) and (3), Article 28(1), (3), (5) and (6), Article 29, Article 33(3), Article 36(2) and (4), and Article 49(1);

(b) Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast);

(c) Regulation No 1346/2000 on insolvency proceedings (but it should be noted that as June 26th, 2017 the new Regulation 2015/848 on insolvency proceedings (recast) applies);

(d) Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data - with exceptions in Articles 14(8) and 47;

(e) Regulation No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;

(f) Regulation No 864/2007 on the law applicable to non-contractual obligations (Rome II) – with exceptions in Article 13(4).

The special provisions of this Regulation apply only in exceptional cases as noted above.

8. FINAL REMARKS

The establishment of the European Account Preservation Order has given us a new instrument that should be effective and swift in cross-border cases.

It is on the creditor to choose whether or not he will use the Preservation Order or a national measure.

Since the Regulation applies for a very short time – since January 17th, 2017 there is no case law concerning this Regulation yet but it will be interesting to monitor in the following years if this instrument will be used and how often and that will show if this Regulation has fulfilled its purpose.