

Proposal for a Council Regulation creating a European enforcement order for uncontested claims

(2002/C 203 E/14)

COM(2002) 159 final — 2002/0090(CNS)

(Submitted by the Commission on 18 April 2002)

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 Commission,

Having regard to the opinion of the European Parliament,

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

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 Plan ⁽¹⁾).
- (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 matters ⁽²⁾. This programme includes in its first stage the abolition of *exequatur*, that is to say the creation of a European Enforcement Order for uncontested claims.
- (5) The concept of 'uncontested claims' should cover all situations in which a creditor, given the verifiable absence of any dispute by the debtor over the nature or

extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a settlement approved by a court or an authentic instrument.

- (6) Access to enforcement in a Member State other than that in which the 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 matters ⁽³⁾, 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 recognised 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 recognised 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.

⁽¹⁾ OJ C 19, 23.1.1999, p. 1.

⁽²⁾ OJ C 12, 15.1.2001, p. 1.

⁽³⁾ OJ L 12, 16.1.2001, p. 1.

- (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 scrutinising full compliance with the minimum procedural standards before delivering a standardised European Enforcement Order certificate that makes this examination and its result transparent.
- (13) Mutual trust in the administration of justice in the Community justifies the assessment by the court of one Member State that all conditions for certification as a European Enforcement Order are fulfilled to enable the enforcement of a 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 Commission ⁽¹⁾.
- (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:

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;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- (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/EC ⁽¹⁾.

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.

⁽¹⁾ 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 1348/2000 ⁽¹⁾ 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.

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.

⁽¹⁾ OJ L 160, 30.6.2000, p. 37.

ANNEX I

EUROPEAN ENFORCEMENT ORDER CERTIFICATE — JUDGEMENT

1. Member State of origin: A B D E EL F FIN
 I [IRL] L NL P S [UK]
2. Issuing Court:
Address:
Tel./fax/e-mail
3. Judgement
- 3.1. Date:
- 3.2. Reference number:
- 3.3. The parties
- 3.3.1. Name and address of creditor(s):
- 3.3.2. Name and address of debtor(s):
4. Monetary claim as certified
- 4.1. Amount of Principal:
- 4.1.1. Currency Euro
 Swedish kronor
 [British pounds]
- 4.1.2. If the claim is a periodic payment
- 4.1.2.1. Principal of every instalment
- 4.1.2.2. Expiry date of first instalment
- 4.1.2.3. Expiry dates of following instalments
weekly monthly other (explain)
- 4.1.2.4. Life term of the claim
- 4.1.2.4.1. Indefinite
- 4.1.2.4.2. Expiry date of last instalment
- 4.1.3. The claim concerns a joint and several liability of the debtors
- 4.2. Interest
- 4.2.1. Interest rate
- 4.2.1.1. %
- 4.2.1.2. % above the base rate of the ECB
- 4.2.2. Interest to be collected as from:
- 4.3. Amount of reimbursable cost if specified in the judgement:
5. Judgement is enforceable in the Member State of origin.
Yes No
6. Judgement has acquired the authority of a final decision in accordance with Article 5(a)
Yes No
7. Judgement is on an uncontested claim under Article 3(4)
Yes No
8. Judgement is in compliance with Article 5(b)
Yes No

9. Where necessary, judgement is in compliance with Article 5(c)

Yes No Not necessary

10. Where necessary, judgement is in compliance with Article 5(d)

Yes No Not necessary

11. Service of the document instituting the proceedings under Chapter III where necessary

Yes No

11.1. Date and address of service:

11.1.1. Domicile of debtor unknown

11.2. The document was delivered by

11.2.1. Personal service on the debtor (including his representative) with acknowledgement of receipt

11.2.2. Personal, service on the debtor certified by the competent official

11.2.3. Postal service on the debtor with acknowledgement of receipt

11.2.4. Fax or e-mail with acknowledgement of receipt

11.3. Substitute service

11.3.1. Has personal service under 11.2.1 or 11.2.2 been unsuccessfully attempted

Yes No

11.3.2. If yes, document was

11.3.2.1. handed to an adult domiciled in the same household as the debtor

11.3.2.1.1. Name

11.3.2.1.2. Relation to debtor

11.3.2.1.2.1. Family

11.3.2.1.2.2. Employee in the household

11.3.2.1.2.3. Other (explain)

11.3.2.2. handed to an adult at debtor's professional domicile

11.3.2.2.1. Name

11.3.2.2.2. Employee of debtor Yes No

11.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12 (1)(c)

11.3.2.4. deposited with public authorities in accordance with Art. 12 (1)(d)

11.3.2.4.1. Name and address of public authority:

11.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d)

11.4. Proof of service

11.4.1. Has service been effected under 11.2.2 or 11.3 Yes No

11.4.2. If yes, has service been certified in compliance with Art. 13

Yes No

11.5. Cure of service under Art. 19(2) in case of non-compliance with 11.2-11.4

11.5.1. It is established that the debtor has personally received the document

Yes No

11.6. Service in due time

The time limit set for the debtor to react to the claim was in compliance with Art. 15(1)

Yes No

11.7. Due information

The debtor was informed in compliance with Art. 16 and 17

Yes No

12. Service of summons where necessary pursuant to Article 14

Yes No

12.1. Date and address of service:

12.1.1. Domicile of debtor unknown

12.2. The summons was delivered

12.2.1. By personal service on the debtor (including his representative) with acknowledgement of receipt

12.2.2. By personal service on the debtor certified by the competent official

12.2.3. By postal service on the debtor with acknowledgement of receipt

12.2.4. By Fax or e-mail with acknowledgement of receipt

12.2.5. Orally in a previous court hearing

12.3. Substitute service

12.3.1. Has personal service under 12.2.1 or 12.2.2 been unsuccessfully attempted

Yes No

12.3.2. If yes, summons was

12.3.2.1. handed to an adult domiciled in the same household as the debtor

12.3.2.1.1. Name

12.3.2.1.2. Relation to debtor

12.3.2.1.2.1. Family

12.3.2.1.2.2. Employee in the household

12.3.2.1.2.3. Other (explain)

12.3.2.2. handed to an adult at debtor's professional domicile

12.3.2.2.1. Name

12.3.2.2.2. Employee of debtor Yes No

12.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c)

12.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d)

12.3.2.4.1. Name and address of public authority:

12.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d)

12.4. Proof of service

12.4.1. Has service been effected under 12.2.2 or 12.3 Yes No

12.4.2. If yes, has service been certified in compliance with Art. 13

Yes No

12.5. Cure of service under Art. 19(2) in case of non-compliance with 12.2-12.4

12.5.1. It is established that the debtor has personally received the document

Yes No

12.6. Service in due time

The time period between the service of the summons and the court hearing was in compliance with Art. 15(2)

Yes No

12.7. Due information

Debtor was informed in compliance with Art. 18

Yes No

13. Cure of non-compliance with procedural minimum standards under Art. 19(1)
- 13.1. Date and address of service of judgement:
 Domicile of debtor unknown
- 13.2. The judgement was delivered by
- 13.2.1. Personal service on the debtor (including his representative) with acknowledgement of receipt
- 13.2.2. Personal, service on the debtor certified by a public official
- 13.2.3. Postal service on the debtor with acknowledgement of receipt
- 13.2.4. Fax or e-mail with acknowledgement of receipt
- 13.3. Substitute service
- 13.3.1. Has personal service under 13.2.1 or 13.2.2 been unsuccessfully attempted
 Yes No
- 13.3.2. If yes, judgement was
- 13.3.2.1. handed to an adult domiciled in the same household as the debtor
- 13.3.2.1.1. Name
- 13.3.2.1.2. Relation to debtor
- 13.3.2.1.2.1. Family
- 13.3.2.1.2.2. Employee in the household
- 13.3.2.1.2.3. Other (explain)
- 13.3.2.2. handed to an adult at debtor's professional domicile
- 13.3.2.2.1. Name
- 13.3.2.2.2. Employee of debtor Yes No
- 13.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c)
- 13.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d)
- 13.3.2.4.1. Name and address of public authority:
- 13.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d)
- 13.4. Proof of service
- 13.4.1. Has service been effected under 13.2.2 or 13.3 Yes No
- 13.4.2. If yes, has service been certified in compliance with Art. 13
 Yes No
- 13.5. Was it possible for debtor to challenge the judgement by ordinary appeal
 Yes No
- 13.6. Time limit for such a challenge in compliance with Art. 19(1)(c)
 Yes No
- 13.7. Due information of debtor about the possibility to challenge the judgement under Art. 19(1)(d)
 Yes No

Done at

date

Signature and/or stamp

ANNEX II

EUROPEAN ENFORCEMENT ORDER CERTIFICATE FOR PROTECTIVE MEASURES

1. Member State of origin: A B D E EL F FIN
 I [IRL] L NL P S [UK]
2. Issuing Court:
 Address:
 Tel./fax/e-mail
3. Judgement
 3.1. Date:
 3.2. Reference number:
 3.3. The parties
 3.3.1. Name and address of creditor(s):
 3.3.2. Name and address of debtor(s):
4. Monetary claim as certified
 4.1. Amount of Principal:
 4.1.1. Currency Euro
 Swedish kronor
 [British pounds]
 4.1.2. If the claim is a periodic payment
 4.1.2.1. Principal of every instalment
 4.1.2.2. Expiry date of first instalment
 4.1.2.3. Expiry dates of following instalments
 weekly monthly bimonthly other (explain)
 4.1.2.4. Life term of the claim
 4.1.2.4.1. Indefinite or
 4.1.2.4.2. Expiry date of last instalment
 4.1.3. The claim concerns a joint and several liability of the debtors
- 4.2. Interest
 4.2.1. Interest rate
 4.2.1.1. % or
 4.2.1.2. % above the base rate of the ECB
 4.2.2. Interest to be collected as from:
- 4.3. Amount of reimbursable cost if specified in the judgement
5. Judgement is enforceable in the Member State of origin.
 Yes No
6. The enforceability of the judgement is limited in time Yes No
 6.1. If yes, last day of enforceability
7. Judgement is on an uncontested claim under Article 3(4)
 Yes No
8. Judgement is in compliance with Article 5(b)
 Yes No

9. Where necessary, judgement is in compliance with Article 5(c)

Yes No Not necessary

10. Where necessary, judgement is in compliance with Article 5(d)

Yes No Not necessary

11. Service of the document instituting the proceedings under Chapter III where necessary

Yes No

11.1. Date and address of service:

11.1.1. Domicile of debtor unknown

11.2. The document was delivered by

11.2.1. Personal service on the debtor (including his representative) with acknowledgement of receipt

11.2.2. Personal service on the debtor certified by the competent official

11.2.3. Postal service on the debtor with acknowledgement of receipt

11.2.4. Fax or e-mail with acknowledgement of receipt

11.3. Substitute service

11.3.1. Has personal service under 11.2.1 or 11.2.2 been unsuccessfully attempted

Yes No

11.3.2. If yes, document was

11.3.2.1. handed to an adult domiciled in the same household as the debtor

11.3.2.1.1. Name

11.3.2.1.2. Relation to debtor

11.3.2.1.2.1. Family

11.3.2.1.2.2. Employee in the household

11.3.2.1.2.3. Other (explain)

11.3.2.2. handed to an adult at debtor's professional domicile

11.3.2.2.1. Name

11.3.2.2.2. Employee of debtor Yes No

11.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c)

11.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d)

11.3.2.4.1. Name and address of public authority:

11.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d)

11.4. Proof of service

11.4.1. Has service been effected under 11.2.2 or 11.3 Yes No

11.4.2. If yes, has service been certified in compliance with Art. 13

Yes No

11.5. Cure of service under Art. 19(2) in case of non-compliance with 11.2-11.4

11.5.1. It is established that the debtor has personally received the document

Yes No

11.6. Service in due time

The time limit set for the debtor to react to the claim was in compliance with Art. 15(1)

Yes No

11.7. Due information

The debtor was informed in compliance with Art. 16 and 17

Yes No

12. Service of summons where necessary pursuant to Article 14

Yes No

12.1. Date and address of service:

12.1.1. Domicile of debtor unknown

12.2. The summons was delivered

12.2.1. By personal service on the debtor (including his representative) with acknowledgement of receipt

12.2.2. By personal service on the debtor certified by the competent official

12.2.3. By postal service on the debtor with acknowledgement of receipt

12.2.4. By Fax or e-mail with acknowledgement of receipt

12.2.5. Orally in a previous court hearing

12.3. Substitute service

12.3.1. Has personal service under 12.2.1 or 12.2.2 been unsuccessfully attempted

Yes No

12.3.2. If yes, summons was

12.3.2.1. handed to an adult domiciled in the same household as the debtor

12.3.2.1.1. Name

12.3.2.1.2. Relation to debtor

12.3.2.1.2.1. Family

12.3.2.1.2.2. Employee in the household

12.3.2.1.2.3. Other (explain)

12.3.2.2. handed to an adult at debtor's professional domicile

12.3.2.2.1. Name

12.3.2.2.2. Employee of debtor Yes No

12.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c)

12.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d)

12.3.2.4.1. Name and address of public authority:

12.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d)

12.4. Proof of service

12.4.1. Has service been effected under 12.2.2 or 12.3 Yes No

12.4.2. If yes, has service been certified in compliance with Art. 13

Yes No

12.5. Cure of service under Art. 19(2) in case of non-compliance with 12.2-12.4

12.5.1. It is established that the debtor has personally received the document

Yes No

12.6. Service in due time

The time period between the service of the summons and the court hearing was in compliance with Art. 15(2)

Yes No

12.7. Due information

Debtor was informed in compliance with Art. 18

Yes No

13. Cure of non-compliance with procedural minimum standards under Art. 19(1)

13.1. Date and address of service of judgement:

Domicile of debtor unknown

13.2. The judgement was delivered by

13.2.1. Personal service on the debtor (including his representative) with acknowledgement of receipt

13.2.2. Personal service on the debtor certified by a public official

13.2.3. Postal service on the debtor with acknowledgement of receipt

13.2.4. Fax or e-mail with acknowledgement of receipt

13.3. Substitute service

13.3.1. Has personal service under 13.2.1 or 13.2.2 been unsuccessfully attempted

Yes No

13.3.2. If yes, judgement was

13.3.2.1. handed to an adult domiciled in the same household as the debtor

13.3.2.1.1. Name:

13.3.2.1.2. Relation to debtor

13.3.2.1.2.1. Family

13.3.2.1.2.2. Employee in the household

13.3.2.1.2.3. Other (explain)

13.3.2.2. handed to an adult at debtor's professional domicile

13.3.2.2.1. Name

13.3.2.2.2. Employee of debtor

Yes No

13.3.2.3. deposited in the debtor's mailbox in accordance with Art. 12(1)(c)

13.3.2.4. deposited with public authorities in accordance with Art. 12(1)(d)

13.3.2.4.1. Name and address of public authority:

13.3.2.4.2. Notification of the deposit in accordance with Art. 12(1)(d)

13.4. Proof of service

13.4.1. Has service been effected under 13.2.2 or 13.3

Yes No

13.4.2. If yes, has service been certified in compliance with Art. 13

Yes No

13.5. Was it possible for debtor to challenge the judgement by ordinary appeal

Yes No

13.6. Time limit for such a challenge in compliance with Art. 19(1)(c)

Yes No

13.7. Due information of debtor about the possibility to challenge the judgement under Art. 19(1)(d)

Yes No

Done at

date

Signature and/or stamp

ANNEX III

EUROPEAN ENFORCEMENT ORDER CERTIFICATE — COURT SETTLEMENT

1. Member State of origin: A B D E EL F FIN
 I [IRL] L NL P S [UK]
2. Issuing Court:
 Address:
 Tel./fax/e-mail
3. Court settlement
- 3.1. Date:
- 3.2. Reference number:
- 3.3. The parties
- 3.3.1. Name and address of creditor(s):
- 3.3.2. Name and address of debtor(s):
4. Monetary claim as certified
- 4.1. Amount of Principal:
- 4.1.1. Currency Euro
 Swedish kronor
 [British pounds]
- 4.1.2. If the claim is a periodic payment
- 4.1.2.1. Principal of every instalment
- 4.1.2.2. Expiry date of first instalment
- 4.1.2.3. Expiry dates of following instalments
 weekly monthly other (explain)
- 4.1.2.4. Life term of the claim
- 4.1.2.4.1. Indefinite
- 4.1.2.4.2. Expiry date of last instalment
- 4.1.3. The claim concerns a joint and several liability of the debtors
- 4.2. Interest
- 4.2.1. Interest rate
- 4.2.1.1. % or
- 4.2.1.2. % above the base rate of the ECB
- 4.2.2. Interest to be collected as from:
- 4.3. Amount of reimbursable cost if specified in the court settlement
5. The court settlement is enforceable in the Member State of origin
 Yes No

Done at

date

Signature and/or stamp

ANNEX IV

EUROPEAN ENFORCEMENT ORDER CERTIFICATE — AUTHENTIC INSTRUMENT

1. Member State of origin: A B D E EL F FIN
 I [IRL] L NL P S [UK]
2. Issuing Authority
- 2.1. Name:
- 2.2. Address:
- 2.3. Tel./fax/e-mail
- 2.4. Notary public
- 2.5. Administrative authority
- 2.6. Court
- 2.7. Other (explain)
3. Authentic instrument
- 3.1. Date:
- 3.2. Reference number:
- 3.3. The parties
- 3.3.1. Name and address of creditor(s):
- 3.3.2. Name and address of debtor(s):
4. Monetary claim as certified
- 4.1. Amount of Principal:
- 4.1.1. Currency Euro
 Swedish kronor
 [British pounds]
- 4.1.2. If the claim is a periodic payment
- 4.1.2.1. Principal of every instalment
- 4.1.2.2. Expiry date of first instalment
- 4.1.2.3. Expiry dates of following instalments
 weekly monthly other (explain)
- 4.1.2.4. Life term of the claim
- 4.1.2.4.1. Indefinite or
- 4.1.2.4.2. Expiry date of last instalment
- 4.1.3. The claim concerns a joint and several liability of the debtors
- 4.2. Interest
- 4.2.1. Interest rate
- 4.2.1.1. % or
- 4.2.1.2. % above the base rate of the ECB
- 4.2.2. Interest to be collected as from
- 4.3. Amount of reimbursable cost if specified in the authentic instrument
5. The debtor has been informed about the direct enforceability of the authentic instrument prior to his consent according to Art. 26(3) Yes No
6. The authentic instrument is enforceable in the Member State of origin
 Yes No

Done at

date

Signature and/or stamp

ANNEX V

CERTIFICATE OF SERVICE OR NON-SERVICE OF DOCUMENTS

(Article 10 of Council Regulation (EC) No 1348/2000)

12. COMPLETION OF SERVICE

12.1. Date and address of service:

12.2. The document was delivered by

12.2.1. Personal service on the addressee with the debtor's acknowledgement of receipt 12.2.2. Personal service on the addressee certified by a competent official 12.2.3. Postal service on the addressee with the enclosed acknowledgement of receipt 12.2.4. By other means of telecommunications with the enclosed acknowledgement of receipt 12.2.4.1. Fax 12.2.4.2. e-Mail 12.2.4.3. Other (explain)

12.3. Substitute service

12.3.1. Has personal service under 12.2.1 or 12.2.2 been unsuccessfully attempted

Yes No

12.3.2. If yes, document was

12.3.2.1. handed to an adult domiciled in the same household as the addressee

12.3.2.1.1. Name

12.3.2.1.2. Relation to addressee

12.3.2.1.2.1. Family 12.3.2.1.2.2. Employee in the household 12.3.2.1.2.3. Other (explain) 12.3.2.2. handed to an adult at addressee's professional domicile

12.3.2.2.1. Name

12.3.2.2.2. Employee of addressee Yes No 12.3.2.3. deposited in the addressee's mailbox 12.3.2.4. deposited with public authorities

12.3.2.4.1. Name and address of public authority:

12.3.2.4.2. Notification of the deposit in addressee's mailbox?

12.3.2.5. served by the following particular method (please say how)

12.4. The document was delivered by one of the methods mentioned in 12.2 or 12.3 (please mark the exact method there) not on the addressee but his representative Yes No

12.4.1. If yes, name and address of the representative

12.4.2. Status of the representative

12.4.2.1. Authorised representative, lawyer 12.4.2.2. Statutory legal representative of a legal person 12.4.2.3. Other (explain) 12.5. Has service been effected in compliance with the law of the Member State where it was effected Yes No 12.6. The addressee of the document was informed (orally) (in writing) that he or she may refuse to accept it if it was not in an official language of the place of service or in an official language of the State of transmission which he or she understands Yes No

13. INFORMATION IN ACCORDANCE WITH ARTICLE 7(2)

It was not possible to effect service within one month of receipt

14. REFUSAL OF DOCUMENT

The addressee refused to accept the document on account of the language used. The documents are annexed to this certificate

15. REASON FOR NON-SERVICE OF DOCUMENT

15.1. Address unknown

15.2. Addressee cannot be located

15.3. Document could not be served before the date or time limit stated in point 6.2

15.4. Others (please specify)

The documents are annexed to this certificate

Done at

Date

Signature and/or stamp
