

Parliament of Romania
Chamber of Deputies

Ref.: 1/1759/RA

Date: 1 November 2011

OPINION

concerning the Proposal for a Regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters
COM (2011) 445

Having regard to the Treaty of Lisbon and in particular Articles 5 and 12 TEU and Protocols 1 and 2 annexed to the Treaty,

Having regard to the Constitution of Romania, republished, in particular Article 148 thereof,

Having regard to Decision No 11/2011 of the Chamber of Deputies,

Taking into account the point of view of the Romanian Government, presented in the letter sent to the Department of European Affairs,

Considering the proposals and remarks received from the Romanian Bank Association, presented at the meeting of the European Affairs Committee of 18 October 2011,

Taking into account the opinion of the Committee for Legal Affairs, Disciplinary Matters and Immunities, expressed at its meeting of 18 October 2011,

Having regard to the draft opinion adopted by the European Affairs Committee of the Chamber of Deputies at its meeting of 18 October 2011,

Having regard to the approval given by the Permanent Office of the Chamber of Deputies on 31 October 2011,

The Chamber of Deputies, acting in accordance with Article 40 of Decision No 11/2011 of the Chamber of Deputies of 27 April 2011, hereby adopts this Opinion:

1. The proposed Regulation supplements existing provisions on mutual recognition between Member States of judicial and extrajudicial decisions and enforcement thereof, and on cross-border financial discipline (recovery of claims/debts).
2. The Chamber of Deputies takes the view that Romania should be in favour of regulating this area, because this initiative of the European Parliament and of the Council is aimed at making the recovery of cross-border debts more efficient, which would encourage Romanian companies to enter into contractual relations with partners from other Member States and would increase the competitiveness of those companies on the single market.
3. The Chamber of Deputies has the following proposals and general remarks concerning this initiative:

- creating and enforcing the account preservation order would not be applicable to banking institutions in Romania unless the order were related to a national regulatory act governing all aspects of applying the regulation in question in conjunction with the current legislation on claim enforcement. In this respect, it will be necessary to clarify a number of aspects, including also, but not only, aspects relating to competing creditors and their claims (for example, where a creditor has obtained an account preservation order, pursuant to the proposed European regulation, in competition with a budgetary creditor or a creditor holding an enforcement order pursuant to the Code of Civil Procedure);
- as regards the blocked amounts, the proposed European Regulation provides that the only amounts exempt from enforcement of the account preservation order are those necessary to cover the defendant's subsistence expenses or, in the case of a legal person, the amounts required to continue to operate normally. In such situations, what will happen with the amounts referred to in the national legislation and exempt from enforcement (for example, amounts intended for special purposes provided for by the law, amounts representing non-reimbursable funding or financing from international institutions or organisations for certain programmes or projects, and amounts required for salaries)?
- as regards the amounts blocked on the basis of the account preservation order, the proposed Regulation provides that, where the currency of the funds held in the account is not the same as that in which the order was issued, the bank shall convert the amount by reference to the official exchange rate of the day of implementation. We consider that it is not appropriate to convert blocked amounts in the case of an account preservation order, given that the goal is to order only the transfer of the amounts and not to pay the enforced amounts to the creditor. Basically, through such conversion, when the execution of the account preservation order is terminated, the debtor could suffer a significant loss, arising from differences in the foreign exchange rate;
- the proposed Regulation should also regulate the priority level of a European account preservation order relative to other similar national orders that have the same objective but are for different creditors, especially where the creditor is the state, and the actions that a credit institution would take in the case of multiple attachment orders (temporary or execution orders);
- the same discussion also applies to a new element, i.e. the 'current account check' recently introduced by the New Civil Code, in respect of the first priority rights of a credit institution over accounts opened at that institution, without any other formalities. The European provision will prevail over the national provisions/attachments/blockings;
- which (enforcing) agents will have the right to notify credit institutions of the enforcement provisions and limits, considering that the proposed Regulation provides for blocking the account as one of the debtor's assets and does not say anything about a specific amount or certain blocking limits?
- will the national act on confidential information be expressly amended or applied as such, given that a European regulation like the proposed Regulation is directly applicable in EU countries? **We suggest amending that law expressly, in order to avoid lawsuits;**
- the European account preservation order is intended to be a specific European instrument for cross-border recovery of debts, with a view to consolidating a creditor's right to effectively enforce his claims. To that end, the creditor will have the possibility

of using an efficient and uniform European procedure under the same conditions in any of the Member States of the EU, in order to obtain information relating to the debtor's banking details. Under Romanian law, this implies amending Government Emergency Order No 99/2006 on credit institutions and capital adequacy accordingly.

4. The Chamber of Deputies has prepared and supports the following amendments to the text of the proposed Regulation:

- **Article 2(3)**: since enforcement exemptions refer to monetary amounts and not to accounts, we recommend amending that paragraph as follows: 'This Regulation shall not apply to **amounts held in bank accounts** which ...';

- **Article 16(c)**: for a correct understanding of the text, we propose replacing the word 'either' with 'either **any of the following**'. Furthermore, since the current databases and the banks' software systems use Personal Identification Numbers (CNP) and Company Identification Numbers (CUI), we propose eliminating sub-paragraph (ii) of paragraph (c) under that Article. In addition, given that EU citizens can also identify themselves by using other identity documents (such as residence permits), we recommend amending paragraph (c)(iii) as follows: '... or passport number **or any other supporting document valid in the Member State of enforcement**';

- **Article 18**: we recommend rewriting this Article, because in its current form it may be interpreted as suggesting that the claimant has to provide a guarantee amount equal to the amount for which he requests the account preservation order;

- under **Article 26(1)** of the proposal for a Regulation of the European Parliament and of the Council under consideration, a bank which has been notified of or served with an account preservation order 'shall implement it by ensuring that the amount specified therein is not transferred, disposed of or withdrawn from the account or accounts designated in the order or identified by the bank as being held by the defendant';

- **in this context, we take the view that the ranking of competing creditors, as provided for under Article 33 of the proposed Regulation, should give domestic creditors priority ranking, so that those creditors are not affected by the issuance of an account preservation order blocking the accounts;**

- this aspect is particularly important in the case of banks providing loans to their customers and receiving monthly payments from their customers' accounts. In accordance with Article 2.410(1) of the New Civil Code, the banks concerned have control over those accounts, and this gives them priority ranking in settling debts;

- **Article 27(1)**: we propose eliminating the bank's obligation to notify the claimant. Furthermore, for a correct understanding of paragraph (2) of the same Article, we recommend amending the text to read '... the bank shall not disclose any information relating to the balance of the defendant's account' instead of '... shall not disclose the balance of the defendant's account';

- we propose rectifying **Article 30(1) and (2)** of the proposed Regulation, by writing '... in accordance with Article 17(5)(a) ...' (we would point out that Article 17(4), referred to in Article 30, does not have a sub-paragraph (a), as indicated by error in the text of the proposed Regulation);

- in respect of **Article 30(2)**, it is not clear what is the payment procedure to be applied by the bank. In addition, we propose that the fee be established by each bank separately

and charged to the debtor. An additional argument is that the fee, even when paid by the claimant, will be borne by the debtor as an enforcement cost;

- **Article 34(7)**: we recommend mentioning who is going to serve the decision on the bank.

5. The Chamber of Deputies has concluded that the proposal complies with the principle of subsidiarity in respect of EU competences. From the point of view of the principle of proportionality, the proposed regulation does not affect any aspects of national substantive law and respects the national legal framework, specific to each Member State and developed according to its own legal, political and economic traditions. Therefore, the provisions of the proposed Regulation do not exceed the requirements and conditions imposed by the application of the national legal framework.

The proposed Regulation does not affect any aspects of national substantive law and respects the national legal framework.

This Opinion shall be sent to the Presidents of the European Parliament, the Council and the European Commission.

President,
Roberta Alma Anastase