



EUROPEAN COMMISSION

Brussels, 13.7.2012  
C(2012) 4728

final

Dear President,

*I would like to thank the Chamber of Deputies for its Opinion concerning the Commission 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 final}. We apologise for the late transmission of our reply.*

*As regards the main issues raised in your Opinion, the Commission would like to briefly provide the following clarifications:*

*The draft Regulation aims at creating a new European procedure which can be used by any creditor in the EU in cross-border situations as an alternative to existing national systems. As a Regulation, it will be directly applicable in all Member States, including Romania. However we understand that the Chamber of Deputies could consider possible draft amendments to the national legislation governing all aspects of applying the Regulation in conjunction with the current legislation on enforcement of claims, the new Civil Code, the national Act on confidential information as well as the Government Emergency Order No 99/2006 on credit institutions and capital adequacy where it is necessary to comply with the EU Regulation.*

*When it comes to the amounts exempt from enforcement, it is worth noting that national law varies considerably within the EU Member States. Therefore the draft Regulation allows Member States to maintain their national system, rules and thresholds. However Article 32 limits the exemption for the European procedure to the amounts necessary for ensuring the livelihood of the debtor and his family or for allowing a company to continue its ordinary activities. This would not include further national exemptions as mentioned in your Opinion.*

*National law also differs widely in the EU Member States when it comes to the effects of a preservation order on the ranking of creditors. Accordingly, Article 33 of the draft Regulation provides that the European order has the rank given to an equivalent measure under national law. Such provision will put European orders and national orders on an equal footing. However it would not be possible to go beyond and adopt the view of the Chamber of Deputies that "the ranking of competing creditors should give domestic creditors priority ranking, so that those creditors are not affected by the issuance of an account preservation order blocking the accounts". Such amendment or interpretation would contradict Article 18*

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*of the Treaty on the Functioning of the EU which prohibits any discrimination on grounds of nationality.*

*Furthermore, the Commission has taken note with interest of the suggestions of the Chamber of Deputies on the issues of conversion of currency of the amount to be preserved and the elements of the notification by the bank to the claimant.*

*I hope that these clarifications reply to the main questions raised in your Opinion and I look forward to continuing the political dialogue with the Romanian Chamber of Deputies.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*