

# **RECOGNITION AND ENFORCEMENT IN ROMANIA OF FOREIGN JUDGMENTS PASSED IN CIVIL AND COMMERCIAL MATTERS**

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## **Abstract**

*Regulation (EC) No. 44/2001 (Brussels I Regulation) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, attempts to facilitate the legal treatment applicable to judgments given in European Union member states, thus promoting the strict observance and accepting of effects and execution of said judgments, in any solicited member state, other than the state of origin of the judgment.*

*The conditions and procedures which have to be observed for the recognition and enforcement of foreign judgments in Romania, as well as the cases which entail the refusal of recognition, form the object of the present study. The proposed research emphasizes the manner in which judicial cooperation in civil and commercial matters is being instituted and accomplished in Europe, by member states authorities, with the scope of overcoming any obstacles deriving from the incompatibilities of different legal systems.*

**Keywords:** recognition, enforcement, foreign judgment, judicial cooperation.

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## **I. Introduction**

From a temporal perspective, the majority of international private law rules at a European level have gradually known a transfer from the national plane, of each state, to the community one, the prerogatives in regulating the international private law provisions being thus transferred from the Member States to the institutions of the European Community. Aiming to create a space governed by freedom, security and justice in civil and commercial matters, the European Union uses a considerable number of legal instruments, also including Regulation (EC) No. 44/2001 of December 22, 2000 (Brussels I Regulation) on jurisdiction and recognition and enforcement of judgments in civil and commercial matters, published in the Official Journal of the European Communities No. 12 of January 16, 2001.

Regulation (EC) No. 44/2001 aims to facilitate the legal treatment of judgments passed in the European Union Member States, in the sense of promoting uniform rules the purpose of which is regulating simple and rapid procedures in litigations with trans-boundary effects within the European Union.

Regulation (EC) No. 44/2001 aims to attain continuity in respect to enforcing the provisions of its predecessor, the Brussels Convention on jurisdiction and enforcement of judgments in civil and commercial matters in 1968 – Brussels I, published in Official Journal L 299 of December 31, 1972<sup>2</sup>. This continuity is ensured through the fact that the Court of Justice of the European Union already had jurisdiction in interpreting the Brussels Convention, preserving its jurisdiction in interpreting the Regulation as well. Since the Regulation modified the contents and substance of the Convention in a modest manner, one can conclude that most of the Court judgments based on the Convention provisions also remain applicable and valid in respect to the Regulation<sup>3</sup>.

The regulation is elaborated on the principle of mutual trust in the Union in the national legal systems and in the procedures conducted before the courts of the Member States, in the legality and fairness of the measures enforced and the judgments passed. This subsequently entails a reasonable expectation from all Member States, on the one hand, in the sense of strictly observing the community provisions on the recognition and enforcement of foreign judgments, and on the other hand, in the sense of enforcing the respective judgments, on the territory of any member state solicited, other than the state of origin for the judgment.

Even though Regulation (EC) No. 44/2001 presents a complex structure, examining both aspects of jurisdiction in civil and commercial matters, as well as issues pertaining to the effects produced by the judgments passed in Member States, in this paper I intend to mainly focus on the latter issue. Thus, the matter of the effects produced by foreign judgments in states other than the state of origin or, in order words, the required conditions and procedures for the recognition and enforcement thereof is the object of analysis of this paper.

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<sup>2</sup> See Ulrich Magnus, Peter Mankowski, Brussels I Regulation – European Commentaries on Private International Law, Ed. Sellier, 2007, p. 9.

<sup>3</sup> For a comparative look between the recognition and enforcement of foreign judgments according to Regulation (EC) No 44/2001 and the Brussels Convention, see Wendy A. Kennet - Enforcement of Judgments in Europe, Oxford, 2001, p. 214 and following

In the context of the objectives established at a community level in constituting and developing a space governed by freedom, security and justice, Regulation (EC) No. 44/2001 is one of the extremely useful instruments, used by the European Union Member States in view of consolidating legal cooperation in civil and commercial matters. In order to eliminate obstacles stemming from the incompatibilities among the legislations of Member States in respect to establishing the jurisdiction norms, as well as the manner provided for recognizing and enforcing the judgments passed in another state, the Regulation (EC) No. 44/2001 reunites a series of rules in these areas, rules meant for direct enforcement in the Member States.

The aim of harmonizing the national legislations by establishing uniform rules, alongside ways of simplifying the required formalities in view of recognizing and enforcing the foreign judgments passed in any other Member State, was taken into advisement upon the adoption of this Regulation. Regulation (EC) No. 44/2001 is one of the most important and useful legal instruments used in the area of legal cooperation in the European space<sup>4</sup>.

According to studies made in the European Union on the ways of enforcing the Regulation in Member States, there is consensus on the fact that the present Regulation is a balanced document, effectively acting in the area for which it was adopted. Even though, from a viewpoint of practical applicability, the statistics show that the Regulation is used in a relatively low number of cases, the objectives established through it, for the facilitation of trans-boundary litigations, are however reached through the complex set of rules it comprises, regarding the jurisdiction and the effects of foreign judgments.

## **II. Filed of Application**

According to provisions in Article 1 from Regulation (EC) No. 44/2001, it is applicable only in respect to litigations and judgments passed in civil and commercial matters, with the express exclusion of other fields.<sup>5</sup> The Regulation is directly and immediately applicable, generally binding both for states, as well as for private entities, and is obligatory in all Member States, except Denmark<sup>6</sup>.

In addition to the provisions comprised in Regulation (EC) No. 44/2001 on the establishment of uniform jurisdiction rules in the trying of certain litigations for all member states, an essential part of the Regulation are the provisions on the

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<sup>4</sup> See Roy Goode, Herbert Kronke, Ewan McKendrick, Jeffrey Wool, *Transnational Commercial Law*, Oxford University Press, 2007, p. 793: "the most successful instrument on international civil procedure of all times".

<sup>5</sup> According to Art. 1 para. 1 2<sup>nd</sup> sentence: The Regulation "shall not apply, in particular, to revenue, customs or administrative matters", while according to para. 2: "The Regulation shall not apply to: (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession; (b) bankruptcy, judicial arrangements or analogous proceedings; (c) social security; (d) arbitration".

<sup>6</sup> After the enforcement of the Council Regulation No. 44/2001, a parallel agreement was made between the European Community and Denmark, which came into force on July 1, 2007, by which the applicability of the provisions of Regulation (EC) No. 44/2001 is also extended on the latter.

recognition and enforcement of foreign judgments. These provisions aim the facilitation of free circulation of judgments on civil and commercial matters, in all Member States. Thus, a legal instrument which reunites all these aspects, eliminating the regulation differences among the legal systems of Member States, appears to be highly useful.

The Regulation (EC) No. 44/2001 has the credit of mitigating the difficulties in matters of recognizing a judgment passed in another Member State, by simplifying the formalities to be undergone in the state in which the judgment shall produce effects and by enumerating a full list of conditions which must be met in order for the respective judgment to be denied recognition.

According to the constant jurisprudence of the Court of Justice of the European Communities, the existing community regulations in matters of recognizing and enforcing foreign judgments prevail over the internal provisions and procedures of states, while any application of the national laws is exclusively permitted through an express referral in the contents of the present Regulation<sup>7</sup>. However, the Regulation does not provide in itself a full procedure of recognition and enforcement in respect to the stages to be followed and the formalities to undergo, but on numerous occasions it refers to the internal law of Member States. For instance, according to Art. 40 para. 1, the ways of submitting the petition for the enforcement of a judgment passed in a Member State are determined in accordance to the internal legislation of the Member State petitioned. Hence, the internal provisions of the states complete the existing community rules, only if the Regulation allows it.

In conclusion, by enforcing Regulation (EC) No. 44/2001 on the territory of Member States, at present the free circulation of judgments in civil and commercial matters<sup>8</sup> is at least *de facto* implemented in the European legal area, due to the absence in the petitioned Member State of substantial control of the title coming from another Member State.

### **III. Recognition of judgments passed in an EU Member State**

Recognition, as is provided in the Regulation, aims to enforce all the judgments passed by a court of any Member State, irrespective of the actual name of the respective document. Thus, the notion of “judgment”, in the context of Regulation (EC) No. 44/2001 must be interpreted in a highly broad sense, comprising both provisional measures, as well as conservative measures passed in a case which is part of the object of regulation of the Regulation.

Thus, according to the provisions of Article 33, a judgment passed in a Member State is recognized in the other Member State without requiring any

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<sup>7</sup> In this sense, see Decision No. C-267/97 from April 29, 1999 of the Court of Justice of the European Communities, case *Éric Coursier v. Fortis Bank SA and Martine Bellami*.

<sup>8</sup> In respect to the principle of free circulation of judgments in civil and commercial matters, see Jannetje Adriana Pontier, Edwige Burg, *EU principles on jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters according to the case law of the European Court of Justice*, T.M.C. Asser Press, Haga, 2004, p. 27 and following.

special procedures<sup>9</sup>. The principle of mutual recognition of the judgments is thus regulated at a European level among the European Union Member States. Unlike the existing rules on enforcement matters, which we will discuss next, no special procedures have been established in respect to recognition, procedures to be followed with the aim of the judgment in question gaining case law on the territory of a Member State other than the one of origin.

The means by which the recognition of a foreign judgment can be petitioned are the object of regulation of Art. 33 para. 2 and 3. In the event of a trial, more exactly when a party challenges or refuses to recognize a judgment, one can intervene either principally or incidentally in order to obtain recognition.

a) Firstly, the petition in respect to recognizing a judgment can be invoked **principally**, through an independent action, according to the regulations of Art. 33 para. 2, corroborated with Art. 53 para. 1. According to Art. 33 para. 2, in the case of a challenge, the party principally invoking the recognition of a judgment can petition, in accordance with the procedures provided by this Regulation, the recognition of the judgment in question. According to Regulation (EC) No. 44/2001, the petition can be submitted by any person interested in the respective case.

The recognition, as regulated by this Regulation, is subject to one condition which must be met: the copy of the foreign judgment must be presented to the competent authority in the petitioned state, where the recognition was petitioned. This condition stems from the provisions of Art. 53 para. 1, according to which the part invoking the recognition of a judgment must present a copy thereof, meeting all the requirements in view of establishing its authenticity.

The judgments passed in any state on the territory of which Regulation (EC) No. 44/2001 is enforced shall thus benefit of case law, without undergoing restrictive stages, but a mere formal procedure for recognition thereof.

b) The second possibility available for the party interested in the recognition of a foreign judgment is that of **incidentally** invoking recognition of the judgment in question, according to the provisions of Art. 33 para. 3. The petition thus submitted shall be tried by the court judging the principal claim, which gains jurisprudence, through the mere act of invoking the judgment during an ongoing trial. This is a situation of a prorogation in jurisprudence of the court in the petitioned state, gaining the right to rule over the recognition petition, although, under normal circumstances, the jurisdiction could have been granted by law to another authority.

Irrespective of the path chosen by the party interested in obtaining recognition of the judgment passed in a Member State, according to the rules instituted by Regulation (EC) No. 44/2001, the procedure which must be followed is single and obligatory for all states under the incidence of the Regulation. In order

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<sup>9</sup> In respect to recognizing foreign judgments, see also Moura Ramos, *The New EC Rules on Jurisdiction and the Recognition and Enforcement of Judgments*, in *Law and Justices in a Multistate World: Essays in Honor of Arthur T. von Mehren*, Transnational Publishers, New York, 2002, p. 199.

for the judgment to gain case law in a state other than the country of origin, the regulated procedure is thus characterized by simplicity and speediness<sup>10</sup>.

Nonetheless, the provisions referring to recognition provided in the Regulation have proven to have practical application difficulties, especially in respect to judgments passed in certain Member States, but not recognized in the state in which recognition is being petitioned<sup>11</sup>. The problem appears on account of the lack of unitary interpretation in the internal legislations of the Member States of the notion of “judgment”, the sphere of which is defined by Art. 32 of the Regulation. Although the conceptions of the states on this notion are undoubtedly different, which may hinder its application, it is however considered that the stand adopted through the Regulation on the notion of “judgment” is a balanced one: a unitary vision is thus regulated, following to be applied to a multitude of civil and commercial rulings from all Member States.

According to the provisions of Art. 36 of the Regulation, the foreign judgment cannot, under any circumstances, be the object of a substantive revision<sup>12</sup>. Thus, the authority in the petitioned Member State, vested with a petition of recognizing a foreign judgment, does not have the right to proceed to a substantive analysis of the judgment provisions. Only aspects pertaining to the existing mutual obligations among Member States on recognizing the judgments, as well as any other motives noticed in the case, with the potential of bringing the overruling of the recognition petition, shall be taken into consideration in the petitioned state.

The petitioned authority is not vested with the substantive examination of the judgment and does not act as a jurisdictional control body. The foreign judgment was passed as a result of a litigation by means of which all the incidental *de facto* and *de jure* elements were analyzed, resulting in an opportune and justified decision. Thus, any possibility of the petitioned authority of examining the judgment from a standpoint of fairness, of the underlying reasons *de facto* and *de jure*, is excluded, and subsequently, the modification of any aspects pertaining to the merits of the decision, is absolutely prohibited.

The only possibilities available for the authority of the petitioned state as a result of its vestment with the petition of recognizing the foreign judgment are either to allow or to reject it in its entirety, without the right to decide on other aspects.

In the process of examining the petition for recognizing a judgment passed in a Member State of the European Union, the authority vested with this petition has

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<sup>10</sup> Peter E. Herzog, Rules on the International Recognition of Judgments (and on International Jurisdiction) by Enactments of an International Organization: European Community Regulations 1347/2000 and 44/2001, in Law and Justices in a Multistate World: Essays in Honor of Arthur T. von Mehren, Transnational Publishers, New York, 2002, p. 83.

<sup>11</sup> Such difficulties in interpreting the notion of “judgment”, such as appear regulated by Art. 32 and, subsequently, in enforcing the provisions of Art. 33 in Regulation (EC) No. 44/2001 on the recognition of judgments, were mostly seen in Germany, Italy and Austria, in litigations referring to payment orders issued by courts from these states.

<sup>12</sup> On conditions of allowing recognition, see Luis de Lima Pinheiro, *Direito Internacional Privado*, vol. III, *Competencia internacional e reconhecimento de decisoes estrangeiras*, Almedina Publishing House, Lisbon 2002.

the possibility of *suspending* the procedure, thus postponing a ruling on either allowing it, or rejecting it. The reasons at the base of the decision to suspend the trial can be found among the provisions of Art. 37 of Regulation (EC) No. 44/2001.

According to these provisions, in the situation in which an ordinary appeal<sup>13</sup> is lodged in the Member State of origin against the judgment petitioned for recognition, the authority in the petitioned Member State with the attribution of examining the petition is entitled to decide the suspension of the case. This provision is not imperative, implying that the petitioned authority only has the possibility of suspending the ongoing procedures before it, and not an obligation in this sense.

Suspending the recognition procedure can however be an advisable measure, in the context in which the ordinary appeals start an analysis of the appealed judgment, both from a standpoint of *de facto* motives, as well as of the *de jure* motives at the base of the judgment in question, with the risk of modifying it. The ordinary appeal can be finalized through the substantial alteration of the appealed judgment, the dispositive possibly containing provisions contradicting the initial judgment. As a consequence of continuing the recognition procedures in the petitioned Member State, the invalidation of the judgment hence recognized is thus required, the formalities needed for recognizing and giving effect to the subsequent judgment being obviously hindered.

There is a special provision in respect to judgments coming from Ireland or the United Kingdom. According to provisions of Art. 37 para. 2 of Regulation (EC) No. 44/2001, should the enforcement of the judgment be suspended in the state of origin, as a result of an appeal, the authority in the petitioned Member State, vested with a petition of recognizing the judgment, shall be able to suspend the case. Unlike the previous provision of Art. 37 para. 1, in this case the authority in the petitioned Member State can suspend the case anytime the enforcement is also suspended in the state of origin of the judgment, as a result of introducing any type of appeal, be it ordinary or extraordinary.

A foreign judgment subject to recognition according to provisions of Regulation (EC) No. 44/2001, entitles the party filing the recognition petition to petition, until the time of awarding a solution to the claim, the enforcement of provisional or conservative measures. For instance, if the foreign judgment was passed in the sense of obligating the debtor in a commercial relation to the payment of a sum of money to the lender, the latter will have the interest of freezing the amounts of the debtor, in accounts constituted with Romanian banking institutions, until the recognition and subsequent enforcement effect of the judgment in question on Romanian territory. The measure of blocking any transactions which can be made in the respective accounts is an insurance means recognized for the lender, by

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<sup>13</sup> According to the Romanian legal system, in respect to the provisions regulating it, the appeal is the only ordinary way of attack. The reclaim days suspend *ipso jure* the enforcement of the judgment challenging it, and this effect extends from the filing of the appeal until the permanent ruling of the appeal. See, in this sense, Mihaela Tăbărcă, *Drept procesual civil*, vol. II, 2<sup>nd</sup> edition, revised and edited, Universul Juridic Publishing House, Bucharest, 2008, p. 7.

which he/she is protected against the decrease of the patrimonial actives of the debtor. The final purpose is to guarantee the actual means of enforcement.

Such provisional or conservative measures can only be made in accordance with the legislation of the petitioned Member State, their nature and actual way of enforcement being governed by *lex fori*.

In conclusion, the court faced with a recognition petition of a foreign judgment is obligated to observe the principle of mutual recognition of judgments among Member States instituted through the provisions of Art. 35 para. 1 of Regulation (EC) No. 44/2001 and of ruling on the claim without examining the merits of the judgment.



#### **IV. Overruling the recognition petition of a foreign judgment**

As an exception to the provisions of Art. 33 of Regulation (EC) No. 44/2001, providing the automatic recognition of judgments in Member States, in certain cases the overruling of the petition to recognize a judgment passed in another Member State is allowed. The production of effects on the territory of the petitioned state can only be overruled in the conditions fully provided in Art. 34-35.

Art. 34 contains four impediments in recognizing a foreign judgment, impediments aiming both procedural aspects, as well as merits issues. Thus, a petition of recognizing a judgment – in the sense established in Art. 32 – filed in a Member State other than the one of origin can be overruled only in the following cases:

##### **a) If such recognition is manifestly contrary to public policy in the Member State in which recognition is sought.**

This condition is met if the judgment petitioned for recognition contains provisions incompatible with the fundamental law principles of the petitioned state, applicable to judicial reports with extraneous elements<sup>14</sup>. According to the Romanian legal system, such a violation of the fundamental principles is usually established by the court, which appreciates whether a norm in the legal system of the notified court consecrates a fundamental legal principle, so that its infringements by the judgment passed abroad are a justification for the overruling of the recognition petition for the respective judgment.

It was thus believed that the notion of public order in private international law is, in principle, a synthetic expression of the judicial practice in that area.

From a procedural standpoint, in respect to the manner of invoking the infringement of public order of the petitioned state through the judgment passed by a foreign court, it shall be conducted through the exception of public order in private international law. The public order exception is a substantive exception which can be invoked by any interested party or even by the court ex officio, in any phase of the proceedings.

In the event in which the public order exception is allowed, the judgment passed by a court in another Member State shall not be recognized and, hence, shall be prevented from producing effects on the territory of the petitioned state. However, the judgment in question is not affected in itself, continuing to produce effects in its state of origin, as well as in any other Member State in which it is recognized according to the provisions of Regulation (EC) No. 44/2001, as long as its provisions do not infringe public order in this latter state.

As an example, a foreign judgment consecrating a discriminating legal regime between the parties to a certain commercial contract shall not be recognized on the territory of Romania, even though the judgment was validly passed under the incidence of the laws in the state of origin. Similarly, a judgment registering the obligatory payment of certain taxes or submitting a guarantee for ensuring access to

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<sup>14</sup> For a detailed analysis of the legal regime applicable to public order in Romanian private international law, see Dragoș - Alexandru Sitaru, *Drept internațional privat. Tratat*, Lumina Lex Publishing House, Bucharest, 2001, p. 108 and following

justice, in considering the capacity of foreign citizen of the litigant, shall not be recognized and, implicitly, enforced on the territory of Romania..

Although apparently the problems raised by the text of Art. 34 (1) seem to have been solved, at a European level there is however the intention of eliminating the public order exception from the motives which can be invoked for the overruling of the recognition petition for a foreign judgment. The reason is that the principles of mutual trust and mutual recognition of judgments among the European Union Member States were instituted in order to highlight and strengthen the fundamental guarantee of the free circulation of judgments, contradicting the existence of the public order exception. As long as there is the possibility of a certain decision not being recognized in another state due to the infringement of the fundamental principles of law of that state, the consequence will be the much more diminished application of the principle of mutual recognition of judgments.

According to the jurisprudence of the Court of Justice of the European Communities, the principle of mutual recognition of judgments entails that the motives for which recognition can be denied, especially the motive referring to violating public order, be interpreted as restrictively as possible<sup>15</sup>. This standpoint is currently supported by the wording of Art. 34. (1) of Regulation (EC) No. 44/2001 itself, according to which recognition shall only be denied if it is *manifestly* contrary to the public order of the petitioned Member State. The adverb “manifestly” is used in order to diminish the contradiction between the free circulation of judgments and the possibility of invoking public order.

The specialty legal literature<sup>16</sup> proposed a distinction between public order principles pertaining to legal proceedings and public order principles pertaining to substantive law.

From this perspective, the cases in which public order is successfully invoked for the overruling of recognition of judgments shall undoubtedly be less seldom when the motives invoked in supporting the violation of public law lies with the norms of substantive law. The explanation is that, in civil and commercial matters, fundamental differences between the legal systems of the European Union Member States, which can incur the applicability of the public order substantive provisions, cannot be considered<sup>17</sup>. Moreover, as expressly provided in Art. 36 and Art. 45 para. 2 of Regulation (EC) No. 44/2001, is if forbidden that the foreign judgment in question be the object of a substantive revision in the state in which its recognition or enforcement was petitioned. Thus, it seems difficult to claim that the

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<sup>15</sup> In this sense, see Decision C-78/95 of October 10, 1996 of the Court of Justice of the European Communities, case Bernardus Hendrikman und Maria Feyen v. Magenta Druck & Verlag GmbH.

<sup>16</sup> See Stéphanie Francq, în Ulrich Magnus, Peter Mankowski, op. cit., Art. 34, para. 13 and 19.

<sup>17</sup> In other areas, such as insolvency procedures or family relation matters, where the substantive law provisions considerably differ among the legal systems of Member States, the enforcement of the substantive law public order norms can intervene much more frequently.

judgment contains provisions contradictory to substantive norms on public order in private international law.

In respect to the principles of private order in private international law consisting of legal proceedings provisions, from a practical applicability standpoint, the situation is completely different. Much more often are the situations in which public order is invoked in regards to the infringement of legal proceedings provisions, which from the point of view of the petitioned state constitute fundamental principles governing the reports of extraneous elements. An example in this sense may be the passing of a judgment in a Member State, a judgment which afterwards is petitioned for recognition on the territory of another state, in the context in which the provisions on the exclusive jurisdiction of the courts were violated. In such a situation, the recognition petition for the judgment shall be overruled.

With the aim of observing the principle of free circulation of the judgments and the mutual recognition of them among the Member States of the European Union, in the specialty literature<sup>18</sup> it was believed that the primordial objective should not be that of overruling the recognition petition for a judgment, but addressing any possible measures of remedying the causes leading to the violation of public order. Especially in procedural fraud cases, the court in the petitioned state must raise the problems of a remedy possibility in the state of origin of the judgment, and not automatically resort to overruling recognition.

**b) If the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so.**

The reason for overruling the petition for recognizing the judgment passed in a Member State provided by Art. 34 (2) of Regulation (EC) No. 44/2001 stems from the infringement in the state of origin of the right to defence which the law grants to the defendant. In order words, when trying the case, the defendant had no possibility of invoking before the court of the state of origin the arguments on which his/her defence is based, thus being in the situation of putting up with the consequences of a judgment passed without having observed his procedural rights<sup>19</sup>.

The principle of observing the right of defence is a fundamental principle in civil matters, ensuring the fair nature of the trial. In civil matters, the parties have the legal possibility to actively take part in the trial, both through supporting and proving one's own rights, and well as through the right of fighting the allegations of the opposing side and to express one's stand on the measures which the court may decide.

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<sup>18</sup> See Stéphanie Francq, op. cit., Art. 34, para. 27, according to which, in case of adequate means in the Member State of origin for remedying the judgment petitioned for recognition, and in case such means have not been exercised yet, their recognition should not be denied.

<sup>19</sup> Judgment of September 6, 2006 of the High Court of Justice (England), case David Charles Orams and Linda Elizabeth Orams v. Meletios Apostolides.

These legal rights of the parties are also ensured by observing another fundamental principle of civil trials, the principle of contradictoriness. In order to ensure contradictoriness in a civil case, the court is obliged to place at the disposal of parties all the de facto and the de jure aspects based on which the litigation shall be ruled. Infringing this principle, implicitly ensuring the observance of the right of defence, is sanctioned by internal law with the nullity of the judgment<sup>20</sup>.

From the wording of Art. 34 (2) of Regulation (EC) No. 44/2001 one can gather that the infringement of the right of defence can be produced through the following means:

- Thus, on the one hand, the court omits the communication or notification to the defendant of the notice, leading to his/her failure to come in due time so as to efficiently and effectively defend his/her interests. In order to meet this condition provided for overruling the recognition petition of the foreign judgment, it is firstly required that the defendant have no possibility of coming before the court in the required interval of time so as to support his/her defence and, secondly, to be made incapable of devising a coherent defence due to the time restrictions he/she was subjected to<sup>21</sup>. Thus, the coming of the defendant before the court vested to try the litigation, does not lead, by itself, to covering the fault of the court of communicating the notice papers, as long as the interval granted for preparing a defence is not a reasonable one.

- On the other hand, the procedural rights of the defendant are infringed through the failure to communicate or notify the notice of the court or of any equivalent document, leading to his/her impossibility of coming before the court for the trial.

A further condition established by Regulation (EC) No. 44/2001 through Art. 34 (2) 2<sup>nd</sup> sentence for overruling the judgment recognition petition states that the defendant must not have filed a claim against that judgment, in the interval of time granted for it. Thus, on top of violating the right of defence guaranteed by law, it is necessary for the judgment not to have been challenged in the member state of origin, according to the internal regulations in force.

**c) If the judgment is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought.**

The condition provided by Art. 34 (3) for arguing the overruling of the petition for recognizing a judgment passed abroad is justified in the attempt of avoiding the passing of two different judgments in the same case, between the same

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<sup>20</sup> In respect to the obligation of the court in observing the principle of contradictoriness and of the principle of right of defence in civil matters, as well as the consequences of their infringement, see Decision No. 2508 from March 20, 2007 of the High Court of Cassation and Justice, Civil and Intellectual Property Section.

<sup>21</sup> Decision No. C-283/05 of September 14, 2006 of the Court of Justice of the European Communities, case ASML Netherlands BV v. Semiconductor Industry Services GmbH (SEMIS).

parties. We are thus in the presence of invoking the case law of the judgment passed by a court in the petitioned state.

The Romanian jurisprudence has also decided in this sense, by confirming the idea according to which “the principle of the case law power prevents not only the retrial of a completed case, with the same object, same case and tried between the same parties, but also the contradiction between two court judgments, namely the denial of the observations made in a permanent court judgment through another court judgment at a later date, in another case”<sup>22</sup>.

**d) When the judgment petitioned for recognition is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfills the conditions necessary for its recognition in the Member State addressed.**

The fourth circumstance regulated by Art. 34 of Regulation (EC) No. 44/2001, in which the recognition petition for a judgment passed in a Member State of the European Union is overruled, bears in mind the case law of a third state. Unlike the previous reason for overruling, in this case the judgment petitioned for recognition comes in contradiction with another judgment, previously passed by a court from either a third state to the Union, or another Member State, other than the one of origin for the judgment petitioned for recognition and than the petitioned state.

The underlying reason for the refusal to recognize is also one of invoking case law, which prevents the trial of the same litigation twice, the passing of a judgment having identity of parties, cause and object, as well as the production of effects by the judgment passed afterwards in such conditions.

On top of the four situations analyzed, regulated through the provisions of Art. 34, the recognition of a judgment passed in another Member State shall also be overruled should the conditions provided in Art. 35 of Regulation (EC) No. 44/2001 be met. Thus, according to Art. 35 para. 1, a judgment shall not be recognized in the petitioned state any time that the provisions of sections 3, 4 and 6 of Chapter II of Regulation (EC) No. 44/2001 are disregarded, as well as in any of the cases provided in Art. 72.

Any judgment passed by an authority pertaining to a Member State of the European Union, without observing the rules of jurisdiction, such as those provided in the Regulation, shall lead to the overruling of the petition to recognize the respective judgment in the petitioned Member State. As a result, the following circumstances are capable of drawing the refusal to recognize a judgment, according to Art. 35:

**a) Violating the provisions on jurisdiction in insurance matters.** Regulation (EC) No. 44/2001 establishes the competent courts for the awarding of a solution to litigation matters, through Art. 8-14 (Section 3). Thus it indicates the

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<sup>22</sup> See Decision No. 496/1975 of the Supreme Court, Civil Section, in the legal Repertory of Practice in civil matters of the Supreme Court and of other courts in 1969-1975, p. 386, no. 186.

authorities before which actions are filed against insurers, the competent courts in trying litigations filed by insurers against the insurance policy owner, insured party or beneficiary, as well as the derogation conditions from the rules provided in this section for the parties. Violating jurisdiction in insurance matters shall incur the refusal of recognizing the judgment thus passed.

**b) Violating jurisdiction in consumer contract matters.** The provisions of Art. 15-17 of Section 4 of Regulation (EC) No. 44/2001 have the role of determining the competent court to award solutions relative to contracts made by consumers, with aims considered to be outside the professional scope. Thus, it establishes the courts before which consumers may file cases deriving from contracts made by them, the other parties may act against consumers, as well as the derogation methods from the provisions of Section 4 on jurisdiction, through conventions made between consumer and the other contractual party. Similar to the rules relative to court jurisdiction in insurance matters, litigations regarding contracts made by consumers are subject to imperative jurisdiction rules, the violation of which is reason to overrule the recognition petition for the judgment passed in that matter.

**c) Violating the provisions on the exclusive jurisdiction of the courts,** such as it is regulated through Art. 22, Section 6 of Regulation (EC) No. 44/2001. Art. 22 determines the exclusive jurisdiction of the court for awarding solutions on litigations on real estate law matters, estate rental, valid constitution matters, on nullity or abolishment of the companies or legal persons based on the territory of a Member State or the validity of the decisions of their authorities, on registration in public records, on registration or validity of patents, trademarks, drawings and industrial models, as well as the exclusive jurisdiction in respect to enforcing the judgments.

**d) Failure to recognize judgments passed in the conditions mentioned through Art. 72 of Regulation (EC) 44/2001.** According to provisions of Art. 72, the Regulation shall be enforced so that it is not detrimental to the agreements made by Member States, by means of which they committed, prior to the coming into force of this Regulation, in accordance to Art. 59 of the Brussels Convention, to not recognizing any judgment passed, especially in another contracting state which is a party to that convention, against the defendant residing in a third country, if, in the cases provided in Art. 4 of the convention, the judgment court is only founded in the jurisdiction mentioned in Art. 3 of the second paragraph of the respective convention. The non-recognition agreements made by the Member States are prior to the coming into force of the Regulation and are an additional reason for overruling the petition for recognizing the judgments referred to in their contents.

## **V. Enforcement of judgments passed in an EU Member State**

The second effect which the judgments passed in a Member State of the European Union can produce according to Regulation (EC) No. 44/2001 consists of

the binding effect of the judgment<sup>23</sup>. In order for a judgment to be enforced in a state other than the one of origin, the special procedure instituted by the Regulation through Art. 38-52<sup>24</sup> must be covered.

Thus, according to provisions of Art. 38, a judgment passed in a Member State, enforceable in the state of origin, shall be enforced on the territory of another Member State when declared enforceable in the petitioned state, at the request formulated by any of the interested parties.

As a result, in order for the enforcement of the foreign judgment to take place in a Member State other than the one of origin, the following **conditions** must be met:

a) the judgment the enforcement of which is petitioned must be enforced in its state of origin;

b) an enforcement petition must be formulated, to be filed before the competent authority in the petitioned state;

In respect to the authority before which such a petition is to be formulated, Regulation (EC) No. 44/2001 confers material jurisdiction to the court or authority indicated according to the list comprised in Annex II of the Regulation. Thus, the petition to grant the enforcement shall be filed with the court which each Member State has the duty to indicate. According to COMMISSION Regulation (EC) No. 280/2009 of April 6, 2009 on modifying annexes I, II, III and IV of Council Regulation (EC) No. 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters<sup>25</sup>, the court established as having material jurisdiction for petitions on granting enforcement in Romania is the tribunal.

From a territorial jurisdiction standpoint, Art. 39 para. 2 corroborated with Annex II of the Regulation, modified, institutes an alternative jurisdiction of awarding solutions to the enforcement petition.

As a result, the plaintiff has the choice of several competent courts. The person interested in giving effect to the foreign judgment shall have the possibility of formulating the petition of granting enforcement either at the tribunal from the territorial range of his/her residence<sup>26</sup> / the headquarters of the party against whom

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<sup>23</sup> Referring to the enforcement of court judgments passed in European Union third countries, according to Law No. 105/1992, see Ion P. Filipescu, Andrei I. Filipescu, *Tratat de drept internațional privat*, Universul Juridic Publishing House, Bucharest, 2007, p. 451.

<sup>24</sup> In respect to enforcing the judgments passed in a Member State of the European Union, see Hélène Gaudemet-Tallon, *Compétence et exécution des jugements en Europe - Règlement no. 44/2001, Conventions de Bruxelles et de Lugano*, 3<sup>rd</sup> edition, Librairie Générale de Droit et de Jurisprudence, Paris, 2002.

<sup>25</sup> Commission Regulation (CE) No. 280/2009 of April 6, 2009 on modifying annexes I, II, III and IV of Council Regulation (CE) No. 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters was published in the Official Journal of the European Communities No. 93 of April 7, 2009.

<sup>26</sup> According to provisions of Art. 59 of the Regulation, “in order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law”. Therefore, the matter of qualifying the notion of domicile is subjected to the rules provided by *lex fori*.

enforcement is petitioned, or before the tribunal in the territorial range of the place of enforcement.

According to provisions of Art. 52 of the Regulation, the collection of taxes, rights or duties calculated on a pro-rated basis with the value of the litigation is not allowed for approving the petition on granting the enforcement of a foreign judgment. Such obligations have already been instituted in the Member State of origin that passed the judgment, the payment of which constituted a procedural condition. At the moment of enforcing the petition in front of the competent authorities of the petitioned state the substantive aspects of the litigation are already petitioned, the value of which is no longer relevant.

During the enforcement petition, the plaintiff must choose a home in the territorial range of the court and be further communicated in the procedural acts. According to Article 40 (2), if the legislation of the petitioned Member State does not regulate an obligation regarding the choice of the place of residence, the plaintiff can designate an *ad litem* proxy. The mandate given *ad litem* constitutes a proxy for the calling or having representation before a court<sup>27</sup>. In the absence of a home chosen in the territorial range of the court, all communication to the person introducing the enforced petition of foreign judgment shall be made by the proxy *ad litem*,

Regarding the actual way of designating the *ad litem* proxy, the Regulation does not impose the obligation of presenting the legalized designated act or following a similar formality.

In conclusion, the enforcement of a foreign law is based on the petition declaring it enforceable. The Regulation does not yet provide special provisions on actual ways of submitting the petition. A reference to the national legislation of the petitioned state is made in order to determine the conditions that need to be met for the effective submission. The reason is that the procedure is governed by the forum law. Moreover, there is no practical justification for the Regulation to substitute to the states in order to predict actual ways of submitting, as the Member States have own national rules on the grounds of which the parties must act. Thus, the aspects of procedural nature are governed by the law of the petitioned state. The purpose of the absence of a unitary Regulation on European level is not to burden or impede in any way the procedure of enforcing the judgment, by imposing unique formal rules for the Member States subject to the Regulation.

c) the petition regarding approval of foreign enforcement judgment to be formulated by any person showing an interest in the matter;

Regulation No. 44/2001 institutes the principle of equal treatment between persons who introduce a petition to enforce a foreign judgment, irrespective of their citizenship or place of residence. According to Article 51, no security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the ground

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<sup>27</sup> Regarding the forms of representation by non-lawyer proxy, see Viorel Mihai Ciobanu, Gabriel Boroi, Drept procesual civil. Curs selectiv. Teste grilă, 3<sup>rd</sup> edition, All Beck Publishing House, Bucharest, 2005, p. 96-97.



that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Regulation No. 44/2001 regards equality of treatment in offering legal assistance or exemption of costs and procedural payment. Thus, according to Article 50, an applicant who, in the Member State of origin has benefited from complete or partial legal aid or exemption from costs or expenses, shall be entitled, to benefit from the legal aid in the law of the Member State addressed. The Regulation imposes that the legal aid and exemption from costs to be at the most extensive level known by the legislation of the petitioned state.

d) the judgment shall be declared enforceable in the petitioned state. Thus, contrary to the principle of mutual recognition of judgments in the Member State of the European Union, the Regulation differs regarding the absence of meeting additional formalities in the purpose of enforcing the judgments. The enforcement of the judgment in the territory of the petitioned state is enforced by following the formalities of Art. 53-55 of the Regulation.

A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.

Moreover, a mandatory annex to the petition is a certificate released by the court or competent authority of a Member State where a judgment was given. The certificate must contain references to the Member State of origin of the judgment, the identification data of the court or authority of the certificate, as well as the court that passed the judgment. The essential elements of a judgment – date, number, elements of identifying the affected parties, date of notification or communication of the act tried by the court, if the judgment was passed in absence, and in particular the judgment text of the enforceable petition and the name, signature and stamp of issuer – shall also be part of the certificate.

Submitting the enforceable petition without the aforementioned certificate, shall justify the court or competent authority of the petitioned Member State to award a register date to the interested party. In the absence of this certificate, the petitioned authority can admit the submission of an equivalent to the document, and in exceptional cases, can suppress this formality on the whole.

Although Art. 53 (2) uses a strict terminology when stipulating the obligation of presenting the certificate or an equivalent document, the court or competent authority may exceptionally pass on the enforcement of the judgment in the absence of these. Only when there is sufficient data on passing an informed judgment may the prior mentioned annex be lacking.

The annexed documents of the petition regarding the enforcement of a foreign law shall not be subject to legalization or other similar formality, by virtue of Art. 56 of Regulation.

For gaining the enforcement effect of the foreign judgment, the petition can be submitted in **three proceeding steps**.

a) First of all, prior the submitting the enforcement petition, annexed with all the documents provided in the Regulation, the petitioned court or competent authority – the tribunal in Romania – shall proceed to formally verify the petition,

followed by declaring it enforceable. A substantive examination in the case of enforcing a judgment as well as the procedures for recognizing a foreign judgment is not admitted. The petition shall be strictly and formally examined, seeking the entire documentation– the petition, the copy of the judgment and the certificate – without considering the substantive aspects on the grounds of the judgment.

This first step of the enforcement procedure of the foreign judgment is the **step of substance**.

In this stage of the procedure, the right to form a defense for refusing the enforceable petition is not allowed for the party on which the petition is enforced. The petitioned authority shall pass a judgment on the enforcement, vesting the enforceable effect immediately after submitting the acts provided by the Regulation. The regulated reasons according to Art. 34 and 35, which can be the basis of refusing the recognition of the foreign judgment are not applicable by analog to refuse the enforceable effect.

The judgment is enforceable in the substantive phase when no defense is allowed in this procedural stage. The judgment on the enforcement petition shall be immediately notified, either in the sense of admission or rejection, to the person who formulated the petition, according to the law of the petitioned Member State. The way of communicating this judgment is governed by the rules provided in the forum law.

The enforcement judgment is also notified or communicated to the party against whom enforcement is sought if not already served on that party [Art. 42 (2) of Regulation]. By interpreting this provision of rejection it results that the decision of rejection of enforceability of foreign judgment is not subject to notification procedures. The reason for this may be in the absence of practical effects produced by rejection of enforcement in the petitioned Member State, as well as in the interest of rejecting the party against whom enforcement is sought. In the event of the admission of enforcement by a competent authority, then the party against whom enforcement is sought would show the interest of using the offensive methods of the Regulation. In this event, the affected party is not interested in contesting the rejection of the petition, thus there is no legal justification for serving the judgment.

b) the second stage for gaining effective enforcement is the **appeal stage**. According to Law No. 191/2007 for approving the Government emergency Ordinance No. 119/2006 regarding necessary measures for applying Community regulations on the date of accession of Romania to the European Union, the law passed in court can be appealed. According to Art. 43 (1) of Regulation, the decision on the application for a declaration of enforceability may be appealed against by either party. Thus, in the event of the admitted petition, the interested party in an appeal is the one against whom petition was made, and the rejection of the petition attracts the interest of the plaintiff to enforce the appeal.

The appeal is then brought before a competent court, according to the list of annex III of Regulation<sup>28</sup>. In the case of Romania, the competent court to solution

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<sup>28</sup> As it was modified by the Regulation (EC) No. 280/2009 of the Commission of April 6, 2009 of modification of annexes I, III and IV of the Regulation (EC) No. 44/2001 of the

the appeal brought forward by the interested party is the court of appeal. Evidently, the territorial competence belongs to the court in hierarchical order of the tribunal passing the petition. That is, the petition to appeal is submitted either to the court of appeal in the territorial range of the place of residence of the party against whom enforceability is sought or the court of appeal in the territorial range of the enforcement.

Regarding the period of time given by the Regulation to introduce the appeal against the enforcement judgment, Art. 43 para. 5 states that the action is to be lodged within one month from the date of service. This period of time is applicable when the party against whom enforceability is sought is domiciled in the territory of the petitioned Member State. Contrary, when its place of residence is in a state, other than the one the judgment is passed on, the period of time to introduce the appeal is two months, starting from the date of service, either on him in person or at his residence.

No extension of time may be granted on account of distance.

The procedure on the basis of which the appeal is solved, presents a contradictory nature as the judgment is passed by citing the affected parties. According to Art. 45 (2) second statement of Regulation, the court must shortly pass the introduced petition in appeal.

In the process stage of the appeal, the defendant has the right to formulate defense, aiming to attain the modification of the judgment that admitted the enforcement foreign petition. The plaintiff now has the possibility to invoke any rejection reasons, some of which can impede in the enforcement. These can be in Art. 34 and 35 of Regulation, however the listing is limited.

In order to impede destruction or alienation applying conservative measures may be authorized on the goods of the person against whom enforceability is sought. Such measures can be taken, according to Art. 47 (3) in any moment from passing an enforcement judgment to the expiration period of established by the Regulation for appealing as well as during the appeal and passing a judgment. According to Regulation, the conservative measures are the only protective measures applicable by the court to maintaining and guarantee further enforcement possibilities.

If the party against whom enforceability is sought does not come before a competent court served by the plaintiff either in the substantive or the appeal stage, the provisions of Art. 26 (2), (3) and (4) of regulation shall become applicable. Thus, on the grounds of not showing, the court will proceed to suspend this judgment until serving shall be proved. It must therefore be proved that the serving was handed in due time to prepare the defense against the enforcement petition or that all diligences necessary have been submitted.

In the event of sending the serving from one state to another<sup>29</sup> the absence of the person against whom enforceability is sought may lead to suspending the passing of the judgment until the determined date if:

- a. the act was notified or communicated according to the ways stipulated in the legislation of the detained Member State;
- b. the act was sent to the party by any other method provided in Regulation of the Council No. 1348/2000 regarding notification and communication of legal and extra legal acts in civil and commercial matters<sup>30</sup> in Member States;
- c. the notification, communication or remission were made in sufficient time for the destined party to prepare his defense.

However, according to Art 19 (2) of Regulation No. 1348/2000 even if an establishment certificate of the notification or communication was not received, meeting the prior mentioned conditions, the court will decide on the ending of the suspension, retaking the cause, as follows:

- a. sending the act was made on the grounds of Regulation No. 1348/2000;
- b. a period of at least 6 months has passed since the sending of the act;
- c. despite the proceedings followed in order to attain the certificate from the authorities of the destined Member State, it did not come to the court.

The action introduced before an appeal court can be suspended, in the conditions provided in Art. 46 of Regulation. Thus, suspending the action can intervene either in the event of foreign judgment whose solicitation to enforce is the object of an offensive plan in the Member State of origin or when the period of time for introducing a normal offence has not expired, according to the legislation of that state. The court of the petitioned state is notified with the reasons for the suspension by the petition introduced by the party against which enforceability is sought.

Regarding the passed judgments in Ireland or the U.K., on Art. 46 (2) of the Regulation, any remedy determined by the law of these states, irrespective of the actual title, has the status of an ordinary remedy and can be the grounds of suspension decision the appeal of which can be made by any petitioning Member State.

The stage of the appeal is final at the passing of a judgment, whether accepting or rejecting the offence formulated against the enforcement petition set in the substantive stage. In the case of accepting the appeal, the competent court of appeal shall revoke the judgment of the first court. Thus, there will be two consequences. On the one hand, if the first court admitted to the enforcement of the foreign judgment, then it will be denied; however on the other hand the substantive

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<sup>29</sup> In this situation, the provisions of Art. 19 of Regulation (EC) 1348/2000 of the Council of May 29, 2000 regarding serving between Member States of legal and extra judicial acts in civil or commercial matters become applicable, as published by the Official Journal of European Communities No. 160 of June 30, 2000.

<sup>30</sup> The Regulation of Council No. 1348/2000 regarding the notification and communication of judicial and extra judicial acts in civil and commercial matters in Member States was published in the Official Journal of the European Communities No. 160 of June 30, 2000.

judgment regarding the rejection of enforcement will be revoked with the consequence of vesting the foreign judgment with enforceability.

According to Art. 45 (1) of Regulation, the competent court of appeal cannot refuse or revoke the judgment of the substantive court, unless any of the provision of Art. 34 and 35 are met. Thus, enforcement can be refused for the same reasons of rejecting the recognizing petition in a Member State of a foreign judgment. Moreover, the court is given the possibility, according to Art. 46 (3) to condition the admission of enforcement of a foreign judgment, of depositing a guarantee by the party introducing the enforcement of the petition. The competent court shall set the number of the guarantees and appreciate it according to the cause.

The passed judgment in the appeal stage may be the object of a future offence, in the conditions further mentioned.

c) The third stage in the vesting procedure of enforcement of foreign judgment is triggered by formulating an action against the appeal, regarding the admission or refusal of enforcement. The action corresponding to the third level of jurisdiction is introduced according to annex IV of Regulation No. 44/2001 as it was modified by Council Regulation No. 280/2009.

Each Member State designated the offence by which the judgment may be appealed. According to the Regulation No. 280/2009, in the case of Romania, this way consists of formulating an **annulment contestation** or a **review** petition.

Similar to the stage in substance and appeal, the foreign judgment passed in another Member State of the European Union which shall be enforced in Romania, it cannot be the object of a substantive examination on the reasons of de facto and de jure which were the basis of the passing. The single aspect the court is vested in is the admission or rejection of the enforcement judgment, by the decision passed in appeal. Thus, a substantive review is, by all means, excluded.

In this sense Art. 49 of Regulation provides that the foreign judgment on penalty payment by the debtor on the date of realization of the main obligation, may be declared enforced by the petitioned Member State only when all the penalties have been definitely established by a court of the state of origin. The explanation lies in the fact that setting the number of the penalties represents a substantive aspect of the judgment which cannot be the subject to the free assessment of petitioned courts. The courts of the state where the enforcement petition is have no right of examining passing on substantive problems or interpreting according to the actual circumstances of the cause, what the level of applicable damage is.

After introducing the annulment of contestation, the competent court can decide on suspending the action, under Art. 46 of Regulation when the foreign judgment is subject to an offence in the Member State of origin, or the regulated period of time for introducing it has not expired. The legal regime applicable to the suspension decision of the action is identical to the one prior mentioned, in the matter of suspension of the appeal stage.

The annulment contestation or review petition of the court of appeal can only lead to the refusing or revoking of the enforcement of the foreign judgment in the event of the existence of the provisions in Art. 34 and 35 of Regulation, applicable to the recognizing petition.

This proceeding stage is concluded by the passing, on a short term, by a definite and irrevocable judgment, in the sense of recognizing the enforcement of the foreign judgment or by refusing it.

#### **VI. Applying the Regulation No. 44/2001 in Romania**

After the accession to the European Union of Romania, the Council Regulation No. 44/2001 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters becomes applicable to Romania in the relations with other Member States of the Union

Law No. 187/2003, applicable until the moment of accession to the European Union on jurisdiction and recognition and enforcement in Romania of judgments in civil and commercial matters set in the Member State of the Union was abrogated by the Government emergency Ordinance No. 119/2006 on necessary measures for applying Community regulations from the date of accession to the European Union.

Under the provisions of Law No. 191/2007 on approval of Government emergency Ordinance No. 119/2006 on necessary measures for applying some Community regulations at the date of the accession of Romania to the European Union, the competent authority to solution the petitions for recognition is the tribunal as well as for enforcement in Romania of foreign judgments in civil and commercial matters, passed by a Member State of the European Union. The judgment passed in the substantive stage can only be appealed. The appeal against the passed judgments of the first court is of the competence of the appeal courts.

Regarding the judgments passed in Romania for which recognition and enforcement in a different Member State of the European Union is petitioned, the competence of emitting the certificate under annex V belongs to the first court, according to Art. 54 of Regulation No. 44/2001.

Regulation No. 44/2001 was appreciated in the specialty doctrine as one of the most important and useful instruments used in the field of judicial cooperation in the European area, expressly contributing to underling and respecting the principle of free movement of judgments, as a principle of the conditions of the present regime of free movement of persons, goods, services and funds. By the regulations of Regulation No. 44/2001, of the principles of mutual recognition to be more precise, without the possibility of substantive review in judgments, as well as the principle of enforcement of foreign judgments, by respecting the formal conditions imposed by the Regulation, I consider that an essential regulation has been adopted in the matter of Community law, meant to ease and offer a judicial substance to the judgments passed by the Member States of the European Union, to which an equal force both in the territory of origin and in the entire Community space shall be recognized.

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