

N E W S

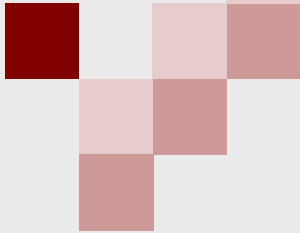
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

L E T T E R

# The Romanian Digest™

Volume 12, Issue 6 - June 2007

## INSIDE:



After EU Accession: Recognition and Enforcement of Foreign Judgments in Romania ..... **1**

## AFTER EU ACCESSION: RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN ROMANIA



**The Romanian Digest™**  
Central and Eastern European  
Practice Group

Published by

Herzfeld & Rubin, P.C.  
40 Wall Street  
New York, New York 10005  
(212) 471-8500  
Fax: (212) 344-3333  
E-Mail:  
mmeyer@herzfeld-rubin.com

-and-

Rubin Meyer Doru & Trandafir  
lawyers professional corporation, affiliated with  
Herzfeld & Rubin, P.C.  
7, Putul cu Plopi  
Bucharest 1, Romania  
(40) (21) 311 14 60  
Fax: (40) (21) 311 14 65  
E-Mail: office@hr.ro

Visit our Web Site at:  
<http://www.hr.ro>

### Introduction

Since Romania's accession to the European Union on January 1, 2007, the recognition and enforcement of foreign judgments are attained based on whether they have been rendered in the EU or outside the EU. The former such judgments fall under the directly applicable relevant EU regulations: *Regulation no. 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters* (herein bellow referred to as "*Regulation 44*") and *Regulation no. 805/2004 creating an European*

*enforcement order for uncontested claims* (herein bellow referred to as "*Regulation 805*"). And the latter fall under Law no. 105/1992 regarding Private International Law (herein bellow referred to as "*Law 105*"). The herein article purports to create an overview of the changes brought by the newly applicable EU legislation with regard to the system previously enforced upon all foreign judgments by Law 105.

The regulations implement a simpler procedure for the recognition and enforcement of foreign judgments within the

EU, eliminating the obstacles arising from having to contend with different legal systems at the EU level. Indeed, the free movement of judgments is already considered "the fifth freedom" within the EU, alongside the free movement of goods, persons, services and capital, and is essential to the development of the European Communities' internal market.

All of the relevant legislation, at the national and the EU level make the proper distinction between the recognition of a judgment that is considered final and binding by Romanian courts, and its enforcement,

(Continued on page 2)

*(Continued from page 1)*

i.e., the ability to actually implement it under Romanian jurisdiction along with the writ upon which such enforcement can take place.

Romania's accession to the European Union on January 1, 2007, the recognition and enforcement of foreign judgments are attained based on whether they have been rendered in the EU or outside the EU. The former such judgments fall under the directly applicable relevant EU regulations: Regulation no. 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters (herein bellow referred to as "Regulation 44") and Regulation no. 805/2004 creating an

European enforcement order for uncontested claims (herein bellow referred to as "Regulation 805"). And the latter fall under Law no. 105/1992 regarding Private International Law (herein bellow referred to as "Law 105"). The herein article purports to create an overview of the changes brought by the newly applicable EU legislation with regard to the system previously enforced upon all foreign judgments by Law 105.

The regulations implement a simpler procedure for the recognition and enforcement of foreign judgments within the EU, eliminating the obstacles arising from having to contend with different legal

systems at the EU level. Indeed, the free movement of judgments is already considered "the fifth freedom" within the EU, alongside the free movement of goods, persons, services and capital, and is essential to the development of the European Communities' internal market.

All of the relevant legislation, at the national and the EU level make the proper distinction between the recognition of a judgment that is considered final and binding by Romanian courts, and its enforcement, i.e., the ability to actually implement it under Romanian jurisdiction along with the writ upon which such enforcement can take place.

## Legislation applicable to EU judgments

Because of the unfortunate consequences to the economic stability of the EU that would be caused by an inability to enforce a judgment rendered in one Member State in another Member State, the EU created a common system regarding the recognition and enforcement of such judgments. It is known as Regulation 44 and it is directly applicable in all EU Member States, except for Denmark.

### *What's Covered*

Due to the fact that civil and commercial relations represent the core of a highly functional market, Regulation 44 covers judgments rendered in civil and commercial matters, except for matters relating to the status or legal capacity of natural persons; property rights arising out of a matrimonial relationship; wills and succession; bankruptcy; proceedings relating to the winding-up of insolvent companies or other legal persons; judicial arrangements, compositions and analogous proceedings; social security; and arbitration.

The Regulation applies to any judgment rendered by a court or a tribunal in civil or commercial matters which may include a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court, and also applies to authentic acts and settlements, which must be enforceable according to the laws applicable in the Member State where they have been rendered.

The Romanian court that has jurisdiction to either recognize or enforce a foreign judgment is any municipal court that is competent within the site of the domicile of the person against whom enforcement is sought or within the place of enforcement. Also, the application regarding the enforcement of an authentic act may be submitted to notaries, as competent authorities.

According to Romanian law, the issue of recognition may be sought by way of a separate claim, as well as raised as an incidental question within another trial, and the court competent to solve the principal claim will have jurisdiction over that particular question.

### *Procedure*

The person seeking the recognition or enforcement of a foreign judgment must submit a copy of it to the Romanian competent court or authority, together with a certificate, which must be completed by the competent court or authority that has issued the judgment, authentic act or settlement. In order to provide a unitary procedure in all EU Member States, the Regulation settles in its annexes the model for such certificate. However, the Romanian courts have the power to decide on more flexible rules regarding the provision of such certificate, and to either postpone the date of its submission, or to not require it at all, as the case may be. They also have the power to decide on

whether or not to request legalized translations for such documents.

The Romanian competent courts or authorities have the power to decline an application for recognition or enforcement of a foreign judgment, but only for specific reasons set forth in the Regulation, such as: if the recognition would be manifestly contrary to public policy in Romania; if there are procedural faults regarding the position of the defendant within the trial pursued in the Member State where the judgment has been rendered; and if the judgment 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 fulfils the conditions necessary for its recognition in Romania. As far as authentic acts are concerned, a refusal of enforcement may be granted only if the execution of that specific act is manifestly contrary to public policy.

If the formal conditions for enforcement are fulfilled, the Romanian court must enforce the judgment, with no need for further verification and, in any case, under no circumstances may a foreign judgment be reviewed as to its substance. According to Regulation 44, a judgment may be partially enforced if it is not fully enforceable in all the matters covered by it, and also at the applicant's request to do so.

*(Continued on page 3)*

(Continued from page 2)

Judgments on enforceability may be appealed to the appropriate Romanian appellate courts by any interested party, and the details regarding terms, further measures on appeal or on communication procedures are governed by the provisions of Regulation 44. No guarantee is required from the applicant solely based upon the fact that such person is a foreign citizen or has his domicile or headquarters abroad. Also, there are no fees or taxes charged based upon the amount of the judgment.

**Regulation 805** represents one of the great innovations of recent years, as it ensures the free movement of judgments, court settlements and authentic instruments in civil and commercial matters, throughout all Member States, with no need to use the *exequatur* procedure. In order to enforce a judgment under Regulation 805, no declaration of enforceability is required; on the contrary, the Romanian competent courts or authorities are legally bound by the enforcement order rendered in any EU Member State – referred to as the European Enforcement Order – according to the model set forth in the annexes to the Regulation 805 and in the language in which the judgment has been rendered. In the same manner, the simplified procedure of enforcement certainly avoids delays and unnecessary costs, especially because the Romanian competent courts or authorities do not have any power of approval over such situations of refusal of the declaration of enforceability, such as control over public policy.



Road in the Carpathians by Adrian Stokes

The object of Regulation 805 is represented by the “uncontested claims”, i.e., requests for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument.

One should not be misled, though, by this simplified procedure and consider that the EU disregards the fundamental rights ensured by the Chart of Fundamental Rights in the EU, like the right of access to an impartial tribunal, as the creditor always has the option to choose between

the two types of proceedings, either the simplified one set forth in Regulation 805 or the one incorporated into Regulation 44. The enforcement of the foreign judgment will be performed according to Romanian law as if it was for the enforcement of a judgment rendered under the Romanian jurisdiction. Similar to Regulation 44, Regulation 805 also emphasizes the interdiction imposed on the Romanian competent courts or authorities to review the foreign judgment, for which enforcement is sought, as to its substance.

## Legislation applicable to non-EU judgments

As previously noted, Law 105 applies to the recognition and enforcement of judgments in Romania rendered in non-EU countries. This is possible only under certain conditions, which include the following: the judgment must be final and enforceable in the country in which it has been rendered; it must have been issued by a court that had the jurisdictional competence to do so; there must be reciprocity regarding recognition and enforcement between Romania and the country where the judgment has been

rendered; the judgment must not have been obtained fraudulently; it must not violate the principles of public order applicable in accordance with Romanian law; a Romanian court has not rendered a decision in the matter prior to the date of the foreign judgment; and, the three-year term regarding enforcement has been upheld, unless otherwise provided. Law 105 is applicable only if the international conventions to which Romania is party do not provide otherwise. Finally, Law 105 provides that under no circumstances may

Romanian courts or competent authorities review a foreign judgment as to its substance.

For a more detailed look into the provisions of Law 105 please see in The Romanian Digest Archive ([http://www.hr.ro/digest\\_archive.htm](http://www.hr.ro/digest_archive.htm)), articles “Enforcement of Foreign Arbitral Awards” from May 2005 and “Enforcement of Foreign Money Judgments in Romania” from March 2004.

## Conclusion

The simplified and uniform procedure set forth in Regulation 44 or, even better, the almost costless procedure set forth in Regulation 805 demonstrate the resolve of the EU to develop internal mechanisms within the community market that are accessible to all EU citizens and residents and efficient for the achievement of the goals established by the EU constitutive treaties.

As noted, the procedure set forth by Regulation 805 avoids or even eliminates the arbitrariness brought by courts or authorities in appreciating if a judgment may be enforced or not under the jurisdiction of a Member State, as provided by Regulation 44. That means that the courts and competent authorities are truly “serving” the needs of EU member State citizens. Therefore, someone seeking recognition and enforcement of a foreign judgment in Romania will make use of the provisions of Law 105 only for non-EU judgments and of the provisions of one of the two regulations – 44 or 805 – as the case may be, for EU-judgments, benefiting from the simplified procedures introduced by them.



### **Rubin Meyer Doru & Trandafir**

Str. Putul cu Plopi, Nr. 7, Sectorul 1,  
Bucharest, Romania

**Phone:** +40 21 311-1460

**Fax:** +40 21-311-1465

**Visit our Web Site at**  
**[Http://www.hr.ro](http://www.hr.ro)**

### **New York Office - Main Headquarters**

Herzfeld & Rubin, P.C.  
40 Wall Street, New York, New York, 10005

**Phone:** (212) 471-8500

**Fax:** (212) 344-3333

**Web:** [www.herzfeld-rubin.com](http://www.herzfeld-rubin.com)

**E-mail:** [info@herzfeld-rubin.com](mailto:info@herzfeld-rubin.com)

### **California Office**

Herzfeld & Rubin, LLP  
1925 Century Park East,  
Los Angeles, California 90076

**Phone:** (310) 553-0451

**Fax:** (310) 553-0648

### **New Jersey Office**

Chase Kurshan Herzfeld & Rubin  
354 Eisenhower Parkway, Suite 1100  
Livingston, New Jersey 07039-1022

**Phone:** (973) 535-8840

**Fax:** (973) 535-8841

### **Israeli Affiliated Law Firm**

**Balter Guth Aloni & Co.**  
96 Yigal Alon Street,  
Tel Aviv, 67891, Israel

**Tel:** +972-3-511-1111

**Fax:** +972-3-624-6000



*Editors Note: It is our policy not to mention our clients by name in The Romanian Digest™ or discuss their business unless it is a matter of public record and our clients approve. The information herein is correct to the best of our knowledge and belief at press time. Specific advice should be sought from us, however, before investment or other decisions are made.*

*Copyright 2007 Rubin Meyer Doru & Trandafir, societate civila de avocati. All rights reserved. No part of The Romanian Digest™ may be reproduced, reused or*