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CONSILIUL ECONOMIC SI SOCIAL
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AVIZ

referitor la proiectul de Ordonanţă privind transferurile transfrontaliere

CONSILIUL ECONOMIC ŞI SOCIAL

în temeiul art. 6 lit. (a) din Legea nr. 109/1997 avizează **FAVORABIL** prezentul proiect de act normativ.

PREŞEDINTE CES,

Ion GIURESCU

CONSILIUL ECONOMIC ŞI SOCIAL ROMÂNIA

Tabel concordanta Directiva 97/5/CE privind transferurile-credit transfrontaliere

Directive 97/5/EC	Proiect Ordonanta privind transferurile transfrontaliere	Observatii
Article 1 - Scope The provisions of this Directive shall apply to cross-border credit transfers in the currencies of the Member States and the ECU up to the equivalent of ECU 50 000 ordered by persons other than those referred to in Article 2 (a), (b) and (c) and executed by credit institutions or other institutions.	**Art.1 – Sfera de aplicare si interdictii** (1) Prezenta ordonanta se aplica transferurilor transfrontaliere, definite la art.2 alin.(1) lit.c) care indeplinesc cumulativ urmatoarele conditii: a) sunt realizate intre Romania si statele membre ale Uniunii Europene si celelalte state apartinand Spatiului Economic European, denumite in continuare *state membre*; b) sunt denominate in moneda nationala (leu), in moneda unui stat membru sau in euro; c) sunt ordonate de persoane fizice sau juridice altele decat cele prevazute la art.2 alin.(1) lit.a) si b); d) la executarea transferului participa o institutie, in intelesul prevazut la art.2 alin.(1) lit.a), situata in Romania; e) valoarea transferului nu este mai mare decat echivalentul a 50.000 euro.	
Article 2 - Definitions For the purposes of this Directive: (a) 'credit institutiona means an institution as defined in Article 1 of Council Directive 77/780/EEC (9), and includes branches, within the meaning of the third indent of that Article and located in the Community, of credit institutions which have their head offices outside the Community and which by	**Art.2 – Definitii** (1) In intelesul prezentei ordonante, expresiile utilizate au urmatorul inteles:	- definitia institutiei de credit se regaseste la art.1 din Legea nr.58/1998 privind activitatea bancara, asa cum a fost modificata

way of business execute cross-border credit transfers; (b) 'other institutiona means any natural or legal person, other than a credit institution, that by way of business executes cross-border credit transfers; (c) 'financial institutiona means an institution as defined in Article 4 (1) of Council Regulation (EC) No 3604/93 of 13 December 1993 specifying definitions for the application of the prohibition of privileged access referred to in Article 104a of the Treaty (10); (d) 'institutiona means a credit institution or other institution; for the purposes of Articles 6, 7 and 8, branches of one credit institution situated in different Member States which participate in the execution of a cross-border credit transfer shall be regarded as separate institutions;	**lit.a)** *institutie* – orice persoana juridica ce executa cu titlu profesional transferuri transfrontaliere in cadrul activitatii sale obisnuite, in special o institutie de credit sau o societate care presteaza servicii postale, inclusiv sucursalele acestora; **lit.b)** *institutie de natura financiara* - o societate de asigurare, inclusiv de asigurari viata, de reasigurare si o societate mutuala care desfasoara activitate de asigurare, un organism de plasament colectiv in valori mobiliare, inchis sau deschis, organizat ca societate comerciala sau ca fond fara personalitate juridica, o societate de servicii de investitii financiare si orice alta entitate a carei activitate este similara entitatilor prevazute sau a carei activitate principala o constituie achizitionarea de active financiare sau transformarea creantelor financiare; **lit.a)** *institutie* – orice persoana juridica, in special o institutie de credit sau o societate care presteaza servicii postale, inclusiv sucursalele acestora, care executa cu titlu profesional transferuri transfrontaliere in cadrul activitatii sale obisnuite; **(3)** In scopul prezentei ordonante, sucursalele unei institutii situate in state diferite, care participa la executarea unui ordin de transfer transfrontalier, vor fi considerate institutii separate. **lit.g)** *institutie intermediara* - o institutie, alta decat institutia	prin Legea nr.485/2003

(e) 'intermediary institutiona means an institution which is neither that of the originator nor that of the beneficiary and which participates in the execution of a cross-border credit transfer; (f) 'cross-border credit transfera means a transaction carried out on the initiative of an originator via an institution or its branch in one Member State, with a view to making available an amount of money to a beneficiary at an institution or its branch in another Member State; the originator and the beneficiary may be one and the same person; (g) 'cross-border credit transfer ordera means an unconditional instruction in any form, given directly by an originator to an institution to execute a cross-border credit transfer; (h) 'originatora means a natural or legal person that orders the making of a cross-border credit transfer to a beneficiary; (i) 'beneficiarya means the final recipient of a cross-border credit transfer for whom the corresponding funds are made available in an account to which he has access;	ordonatorului sau cea a beneficiarului, care participa la executarea unui transfer transfrontalier; **lit.c)** *transfer transfrontalier* – operatiunea realizata la initiativa unui ordonator prin intermediul unei institutii sau unei sucursale a unei institutii, situate intr-un stat, in scopul punerii la dispozitia beneficiarului a unei sume de bani, prin creditarea unui cont sau prin predarea sumei in numerar, la o institutie sau la o sucursala a unei institutii, situate in alt stat; **(2)** Ordonatorul si beneficiarul unui transfer transfrontalier pot fi una si aceeasi persoana. **lit.d)** *ordin de transfer transfrontalier* – instructiune neconditionata de executare a unui transfer transfrontalier, data direct de ordonator institutiei sale, in forma scrisa, orala sau electronica, cu conditia ca forma sa fie acceptata de institutie; **lit.e)** *ordonator* – persoana fizica sau juridica care ordona executarea unui transfer transfrontalier in favoarea unui beneficiar; **lit.f)** *beneficiar* – destinatarul final al unui transfer transfrontalier caruia ii sunt puse la dispozitie fondurile aferente transferului intr-un alt stat decat cel in care a fost emis ordinul, fie prin creditarea unui cont la care acesta are acces, fie prin predarea catre acesta a unei sume in numerar; **lit.h)** *client* – ordonator sau, dupa caz, beneficiar, in functie de context;	

(j) 'customera means the originator or the beneficiary, as the context may require; (k) 'reference interest ratea means an interest rate representing compensation and established in accordance with the rules laid down by the Member State in which the establishment which must pay the compensation to the customer is situated; (l) 'date of acceptancea means the date of fulfilment of all the conditions required by the institution as to the execution of the cross-border credit transfer order and relating to the availability of adequate financial cover and the information required to execute that order.	**lit.j)** *rata dobanzii de referinta* - rata dobanzii in functie de care se stabileste nivelul compensatiei, care reprezinta rata dobanzii legale pentru obligatiile banesti stabilita potrivit legii romane, daca nu se prevede altfel in contract; pentru transferurile denominate in moneda unui stat membru sau in euro, rata dobanzii legale va fi cea stabilita potrivit legii romane pentru relatiile economice internationale. **lit.i)** *data acceptarii* – data indeplinirii tuturor conditiilor cerute de o institutie pentru a executa un ordin de transfer transfrontalier, conditii incluzand printre altele existenta unor fonduri suficiente si disponibile si precizarea detaliilor necesare pentru executarea ordinului.	
Article 3 - Prior information on conditions for cross-border credit transfers The institutions shall make available to their actual and prospective customers in writing, including where appropriate by electronic means, and in a readily comprehensible form, information on conditions for cross-border credit transfers. This information shall include at least:	**Art.3 – Informatii prealabile** **(1)** Institutiile sunt obligate sa puna la dispozitia clientilor lor, actuali sau potentiali, informatii in scris cu privire la conditiile generale de realizare a transferurilor transfrontaliere, intr-o forma usor de inteles. Informatiile pot fi furnizate si prin intermediul mijloacelor electronice, daca institutia poate oferi servicii pe aceasta cale. **(2)** Informatiile prevazute la alin.(1) vor include cel putin urmatoarele:	

- indication of the time needed, when a cross-border credit transfer order given to the institution is executed, for the funds to be credited to the account of the beneficiary's institution; the start of that period must be clearly indicated, - indication of the time needed, upon receipt of a cross-border credit transfer, for the funds credited to the account of the institution to be credited to the beneficiary's account, - the manner of calculation of any commission fees and charges payable by the customer to the institution, including where appropriate the rates, - the value date, if any, applied by the institution, - details of the complaint and redress procedures available to the customer and arrangements for access to them, - indication of the reference exchange rates used.	**a)** termenul necesar pentru creditarea fondurilor in contul institutiei beneficiarului, atunci cand un ordin de transfer transfrontalier dat institutiei este executat, cu indicarea clara a momentului de la care acesta incepe sa curga; **b)** termenul necesar de la primirea unui transfer transfrontalier, pentru ca fondurile creditate in contul institutiei beneficiarului sa fie creditate in contul beneficiarului sau sa fie puse la dispozitia acestuia sub forma de numerar; **c)** modalitatea de calcul a comisioanelor si a altor costuri aferente care cad in sarcina clientului si sunt datorate institutiei, atat in cazul executarii unui transfer transfrontalier, cat si in cazul primirii unui astfel de transfer; **d)** data valutei utilizata de institutie, daca este cazul; **f)** indicarea procedurii de solutionare a diferendelor la care clientii pot apela si modalitatea de acces la aceasta. **e)** indicarea cursurilor de schimb utilizate;	
Article 4 - Information subsequent to a cross-border credit transfer The institutions shall supply their customers, unless the latter expressly forgo this, subsequent to the execution or receipt of a cross-border credit transfer, with clear information in writing, including where	**Art.4 – Informatii ulterioare** (1) Ulterior executarii sau primirii unui transfer transfrontalier, institutiile sunt obligate sa puna la dispozitia clientilor lor, cu exceptia cazului in care clientul a renuntat expres la aceast drept, informatii in scris, intr-o forma usor	

appropriate by electronic means, and in a readily comprehensible form. This information shall include at least: - a reference enabling the customer to identify the cross-border credit transfer, - the original amount of the cross-border credit transfer, - the amount of all charges and commission fees payable by the customer, - the value date, if any, applied by the institution. Where the originator has specified that the charges for the cross-border credit transfer are to be wholly or partly borne by the beneficiary, the latter shall be informed thereof by his own institution. Where any amount has been converted, the institution which converted it shall inform its customer of the exchange rate used.	de inteles, din care sa rezulte ca transferul a fost finalizat. Informatiile pot fi furnizate si prin intermediul mijloacelor electronice, daca institutia poate oferi servicii pe aceasta cale. **(2)** Informatiile prevazute la alin.(1) vor cuprinde cel putin urmatoarele: **a)** o referinta care sa permita clientului identificarea transferului transfrontalier; **b)** valoarea initiala a transferului transfrontalier; **c)** valoarea tuturor comisioanelor si a celorlalte costuri aferente, suportate de catre client; **d)** data valutei utilizate de institutie, daca este cazul; **(3)** In cazul in care ordonatorul a specificat faptul ca beneficiarul urmeaza sa suporte partial sau integral costurile legate de transferul transfrontalier, beneficiarul va fi informat cu privire la aceasta de catre institutia sa. **(4)** In cazul in care orice suma legata de transferul transfrontalier a facut obiectul unui schimb valutar, institutia care a realizat schimbul va informa clientul sau asupra cursului de schimb utilizat.	
Article 5 - Specific undertakings by the institution	**Art.5 – Angajamente specifice ale institutiei**	

Unless it does not wish to do business with that customer, an institution must at a customer's request, for a cross-border credit transfer with stated specifications, give an undertaking concerning the time needed for execution of the transfer and the commission fees and charges payable, apart from those relating to the exchange rate used.	**(1)** Cu exceptia cazului in care nu doresc sa realizeze operatiunea, institutiile sunt obligate sa puna la dispozitia clientilor lor, daca acestia solicita acest lucru, o oferta scrisa sau transmisa prin intermediul mijloacelor electronice, daca institutia poate oferi servicii pe aceasta cale, oferta care sa contina conditiile specifice aplicabile unui ordin de transfer a carui destinatie si valuta au fost precizate de catre client. Atunci cand aceste conditii sunt identice cu conditiile generale aplicabile transferurilor transfrontaliere, oferta poate fi inlocuita cu o copie de pe aceste conditii generale. **(2)** In conditiile specifice prevazute la alin.(1) trebuie sa se indice cel putin termenul limita pana la care sumele aferente transferului transfrontalier urmeaza sa fie creditate in contul institutiei beneficiarului si costurile aferente, mai putin cele legate de cursul de schimb care va fi utilizat.	
Article 6 - Obligations regarding time taken 1. The originator's institution shall execute the cross-border credit transfer in question within the time limit agreed with the originator. Where the agreed time limit in not complied with or, in the absence of any such time limit, where, at the end of the fifth banking business day following the date of acceptance of the cross-border credit transfer order, the funds have not been credited to the the account of the beneficiary's institution, the originator's institution shall compensate the originator.	**Art.6 – Obligatii referitoare la timpul necesar** **(1)** Institutia ordonatorului este obligata sa execute transferul transfrontalier in termenul limita agreat de comun acord cu ordonatorul. **(2)** In cazul in care fondurile nu au fost creditate in contul institutiei beneficiarului in termenul limita agreat sau, in absenta unui acord in acest sens, creditarea nu s-a realizat pana la sfarsitul celei de-a 5-a zi bancare lucratoare care urmeaza datei acceptarii ordinului de transfer transfrontalier, institutia ordonatorului va datora ordonatorului o compensatie.	

Compensation shall comprise the payment of interest calculated by applying the reference rate of interest to the amount of the cross-border credit transfer for the period from: - the end of the agreed time limit or, in the absence of any such time limit, the end of the fifth banking business day following the date of acceptance of the cross-border credit transfer order, to - the date on which the funds are credited to the account of the beneficiary's institution. Similarly, where non-execution of the cross-border credit transfer within the time limit agreed or, in the absence of any such time limit, before the end of the fifth banking business day following the date of acceptance of the cross-border credit transfer is attributable to an intermediary institution, that institution shall be required to compensate the originator's institution. 2. The beneficiary's institution shall make the funds resulting from the cross-border credit transfer available to the beneficiary within the time limit agreed with the beneficiary. Where the agreed time limit is not complied with or, in the absence of any such time limit, where, at the end of the banking business day following the day on which the funds were credited to the account of the beneficiary's institution, the funds have not been	(3) Compensatia va consta in plata unei dobanzi calculate prin aplicarea ratei dobanzii de referinta asupra sumei aferente transferului transfrontalier pe intervalul de timp de la sfarsitul termenului limita agreat sau, in absenta unui acord in acest sens, de la sfarsitul celei de-a 5-a zi bancare lucratoare care urmeaza datei acceptarii, pana la data la care fondurile sunt creditate in contul institutiei beneficiarului. (6) In cazul in care neexecutarea transferului transfrontalier in termenul limita agreat, sau in absenta unui acord in acest sens, pana la sfarsitul celei de-a 5-a zi bancare lucratoare care urmeaza datei acceptarii ordinului de transfer, este imputabila unei institutii intermediare, aceasta institutie va datora institutiei ordonatorului o compensatie, calculata potrivit prevederilor alin.(3). (8) Institutia beneficiarului este obligata sa puna la dispozitia clientului sau fondurile aferente transferului transfrontalier intr-un termen limita agreat cu acesta. (10) In cazul in care fondurile nu au fost creditate in contul beneficiarului sau puse la dispozitia acestuia sub forma de numerar in termenul limita agreat ori, in absenta unui acord in acest sens, pana la sfarsitul zilei bancare lucratoare care urmeaza datei la care s-a creditat contul institutiei beneficiarului, aceasta va datora beneficiarului o compensatie.	

credited to the beneficiary's account, the beneficiary's institution shall compensate the beneficiary. Compensation shall comprise the payment of interest calculated by applying the reference rate of interest to the amount of the cross-border credit transfer for the period from: - the end of the agreed time limit or, in the absence of any such time limit, the end of the banking business day following the day on which the funds were credited to the account of the beneficiary's institution, to - the date on which the funds are credited to the beneficiary's account. 3. No compensation shall be payable pursuant to paragraphs 1 and 2 where the originator's institution or, as the case may be, the beneficiary's institution can establish that the delay is attributable to the originator or, as the case may be, the beneficiary. 4. Paragraphs 1, 2 and 3 shall be entirely without prejudice to the other rights of customers and institutions that have participated in the execution of a cross-border credit transfer order.	(11) Compensatia va consta in plata unei dobanzi calculate prin aplicarea ratei dobanzii legale asupra sumei aferente transferului transfrontalier pe intervalul de timp de la sfarsitul termenului limita agreat sau, in absenta unui acord in acest sens, de la sfarsitul zilei bancare lucratoare care urmeaza datei la care s-a creditat contul institutiei beneficiarului, pana la data la care fondurile sunt creditate in contul beneficiarului sau puse la dispozitia sa sub forma de numerar. (12) Compensatiile prevazute in prezentul articol nu vor fi platite in situatia in care institutia ordonatorului sau, dupa caz, cea a beneficiarului, poate proba ca intarzierea este imputabila ordonatorului, respectiv beneficiarului. (13) Compensatiile datorate potrivit prezentului articol se vor plati independent de orice alte despagubiri care pot fi acordate clientilor si/sau institutiilor care au participat la executarea ordinului de transfer transfrontalier potrivit dreptului comun in materia raspunderii civile.	
Article 7 - Obligation to execute the cross-border transfer in accordance with instructions 1. The originator's institution, any intermediary	**Art.7 – Obligatia de executare a transferului transfrontalier in conformitate cu instructiunile** (1) De la data acceptarii unui ordin de transfer	

institution and the beneficiary's institution, after the date of acceptance of the cross-border credit transfer order, shall each be obliged to execute that credit transfer for the full amount thereof unless the originator has specified that the costs of the cross-border credit transfer are to be borne wholly or partly by the beneficiary.	transfrontalier, institutia ordonatorului, orice institutie intermediara si institutia beneficiarului vor fi obligate sa execute transferul pentru intreaga suma ordonata, cu exceptia cazului in care ordonatorul a specificat ca beneficiarul va suporta integral sau partial costurile legate de transfer. }n acest caz, institutia ordonatorului va trebui sa comunice aceste specificatii institutiei beneficiarului si institutiei intermediare, dupa caz.	
The first subparagraph shall be without prejudice to the possibility of the beneficiary's institution levying a charge on the beneficiary relating to the administration of his account, in accordance with the relevant rules and customs. However, such a charge may not be used by the institution to avoid the obligations imposed by the said subparagraph.	(2) Obligatia prevazuta la alin.(1) nu exclude posibilitatea ca institutia beneficiarului sa solicite beneficiarului comision de administrare a contului, daca un astfel de comision este uzual in conformitate cu reglementarile sau practica institutiei. Un astfel de comision nu va fi utilizat in nici un caz de catre institutia beneficiarului, pentru a evita respectarea obligatiei prevazute la alin.(1).	
2. Without prejudice to any other claim which may be made, where the originator's institution or an intermediary institution has made a deduction from the amount of the cross-border credit transfer in breach of paragraph 1, the originator's institution shall, at the originator's request, credit, free of all deductions and at its own cost, the amount deducted to the beneficiary unless the originator requests that the amount be credited to him.	(3) Independent de orice alte pretentii care pot fi ridicate potrivit dreptului comun, in cazul in care institutia ordonatorului sau o institutie intermediara a procedat la retinerea unei sume din valoarea totala a transferului transfrontalier cu incalcarea prevederilor alin.(1), la cererea ordonatorului, institutia acestuia, va fi obligata ca, pe cheltuiala proprie si fara deducerea altor sume, sa transfere suma astfel retinuta catre beneficiar sau, dupa caz, catre ordonator, dupa cum s-a solicitat de catre ordonator.	
Any intermediary institution which has made a	(4) Orice institutie intermediara, care a procedat la retinerea unor sume cu incalcarea prevederilor alin.(1), va fi obligata ca, pe cheltuiala proprie si fara deducerea altor sume, sa	

deduction in breach of paragraph 1 shall credit the amount deducted, free of all deductions and at its own cost, to the originator's institution or, if the originator's institution so requests, to the beneficiary of the cross-border credit transfer. 3. Where a breach of the duty to execute the cross-border credit transfer order in accordance with the originator's instructions has been caused by the beneficiary's institution, and without prejudice to any other claim which may be made, the beneficiary's institution shall be liable to credit to the beneficiary, at its own cost, any sum wrongly deducted.	transfere suma astfel retinuta catre institutia ordonatorului sau, la cererea acesteia, catre beneficiar. (5) In cazul in care institutia beneficiarului a incalcat obligatia de a executa ordinul de transfer transfrontalier in conformitate cu instructiunile ordonatorului potrivit dispozitiilor alin.(1), aceasta va fi obligata, independent de orice alte pretentii care pot fi ridicate potrivit dreptului comun, sa transfere catre beneficiar, pe cheltuiala proprie si fara deducerea altor sume, suma retinuta in mod nejustificat.	
Article 8 - Obligation upon institutions to refund in the event of non-execution of transfers 1. If, after a cross-border credit transfer order has been accepted by the originator's institution, the relevant amounts are not credited to the account of the beneficiary's institution, and without prejudice to any other claim which may be made, the originator's institution shall credit the originator, up to ECU 12 500, with the amount of the cross-border credit transfer plus: - interest calculated by applying the reference interest rate to the amount of the cross-border credit transfer for the period between the date of the cross-border credit transfer order and the date of the credit,	**Art.8 – Obligatia de restituire ce revine institutiilor in cazul neexecutarii transferurilor** (1) Daca fondurile aferente unui transfer transfrontalier nu au fost creditate in contul institutiei beneficiarului, dupa acceptarea de catre institutia ordonatorului a ordinului de transfer, independent de orice alte pretentii care pot fi ridicate potrivit dreptului comun, institutia ordonatorului va fi obligata la restituirea catre ordonator a sumei aferente transferului transfrontalier, la care se adauga: **a)** dobanda calculata prin aplicarea ratei dobanzii legale asupra sumei aferente transferului transfrontalier pe intervalul de timp intre data ordinului de transfer si data restituirii catre ordonator a sumei respective;	

and - the charges relating to the cross-border credit transfer paid by the originator. These amounts shall be made available to the originator within fourteen banking business days following the date of his request, unless the funds corresponding to the cross-border credit transfer have in the meantime been credited to the account of the beneficiary's institution. Such a request may not be made before expiry of the time limit agreed between the originator's institution and the originator for the execution of the cross-border credit transfer order or, in the absence of any such time limit, before expiry of the time limit laid down in the second subparagraph of Article 6 (1). Similarly, each intermediary institution which has accepted the cross-border credit transfer order owes an obligation to refund at its own cost the amount of the credit transfer, including the related costs and interest, to the institution which instructed it to carry out the order. If the cross-border credit transfer was not completed because of errors or omissions in the instructions given by that institution, the intermediary institution shall endeavour as far as possible to refund the amount of the transfer.	**b)** alte costuri legate de transferul transfrontalier suportate de ordonator. **(2)** Sumele prevazute la alin.(1) nu pot depasi echivalentul a 12.500 euro si vor fi puse la dispozitia ordonatorului in termen de maxim 14 zile bancare lucratoare de la data cererii ordonatorului, cu exceptia cazului in care, intre timp, fondurile aferente transferului transfrontalier au fost creditate in contul institutiei beneficiarului. **(3)** Cererea prevazuta la alin.(2) nu poate fi facuta de ordonator inainte de expirarea termenului limita agreat cu institutia sa pentru executarea ordinului de transfer transfrontalier ori, in absenta unui acord in acest sens, pana la expirarea a 5 zile bancare lucratoare care urmeaza datei acceptarii ordinului de transfer transfrontalier. **(4)** Fiecare institutie intermediara care a acceptat ordinul de transfer transfrontalier si a primit suma aferenta transferului respectiv este obligata sa restituie institutiei de la care a primit instructiuni pentru executarea acelui ordin, pe cheltuiala proprie, suma aferenta transferului transfrontalier, inclusiv costurile si dobanzile legate de acesta, cu aplicarea corespunzatoare a prevederilor lit.a) si b) de la alin.(1), daca fondurile aferente unui transfer transfrontalier nu au fost creditate in contul institutiei beneficiarului. Daca transferul transfrontalier nu a fost executat datorita unor erori sau omisiuni in instructiunile de realizare a transferului care au fost date institutiei intermediare, aceasta va intreprinde toate masurile pentru recuperarea si restituirea sumei transferului	

	in cel mai scurt timp.	
2. By way of derogation from paragraph 1, if the cross-border credit transfer was not completed because of its non-execution by an intermediary institution chosen by the beneficiary's institution, the latter institution shall be obliged to make the funds available to the beneficiary up to ECU 12 500.	**(5)** Prin exceptie de la prevederile alin.(1), daca transferul transfrontalier nu a fost realizat datorita neexecutarii acestuia de catre institutia intermediara aleasa de institutia beneficiarului, aceasta din urma va fi obligata sa puna la dispozitia beneficiarului suma aferenta transferului transfrontalier si sumele prevazute la lit.a) si b) de la alin.(1), dar nu mai mult de echivalentul a 12.500 euro.	
3. By way of derogation from paragraph 1, if the cross-border credit transfer was not completed because of an error or omission in the instructions given by the originator to his institution or because of non-execution of the cross-border credit transfer by an intermediary institution expressly chosen by the originator, the originator's institution and the other institutions involved shall endeavour as fas as possible to refund the amount of the transfer.	**(6)** Prin exceptie de la alin.(1) si (4), daca ordinul de transfer transfrontalier nu a fost realizat datorita unor omisiuni sau erori in instructiunilc date de ordonator institutiei sale sau datorita neexecutarii ordinului de catre o institutie intermediara aleasa in mod expres de catre ordonator, institutia ordonatorului si celelalte institutii participante la executarea transferului vor intreprinde masurile necesare pentru recuperarea si restituirea, in cel mai scurt timp, catre ordonator a sumei aferente transferului.	
Where the amount has been recovered by the originator's institution, it shall be obliged to credit it to the originator. The institutions, including the originator's institution, are not obliged in this case to refund the charges and interest accruing, and can deduct the costs arising from the recovery if specified.	**(7)** In cazul prevazut la alin.(6), daca suma a fost recuperata de catre institutia ordonatorului, aceasta va fi obligata sa o puna la dispozitia ordonatorului. }n acest caz, institutiile participante la executarea transferului, inclusiv institutia ordonatorului, nu sunt obligate sa restituie sumele reprezentand comisioanele percepute, nu datoreaza dobanzi si vor putea sa retina costurile ocazionate de recuperarea sumei, daca aceste costuri pot fi justificate si evidentiate distinct.	
Article 9 - Situation of force majeure	**Art.9 – Situatia de forta majora**	

Without prejudice to the provisions of Directive 91/308/EEC, institutions participating in the execution of a cross-border credit transfer order shall be released from the obligations laid down in this Directive where they can adduce reasons of force majeure, namely abnormal and unforeseeable circumstances beyond the control of the person pleading force majeure, the consequences of which would have been unavoidable despite all efforts to the contrary, which are relevant to its provisions.	**(1)** Institutiile care participa la executarea unui ordin de transfer transfrontalier vor fi exonerate de obligatiile prevazute in prezenta ordonanta daca invoca o situatie de forta majora, in masura in care aceasta prezinta relevanta pentru indeplinirea obligatiilor respective. **(2)** In sensul alin.(1) va fi considerata situatie de forta majora aparitia oricarei imprejurari de fapt imprevizibile si de neinlaturat, independente de vointa persoanei care invoca forta majora si ale carei consecinte ar fi fost imposibil de evitat in ciuda tuturor eforturilor intreprinse in acest sens. **(3)** Dispozitiile alin.(1) nu exonereaza institutiile de obligatiile care le revin potrivit legislatiei privind prevenirea si sanctionarea spalarii banilor.	
Article 10 - Settlement of disputes Member States shall ensure that there are adequate and effective complaints and redress procedures for the settlement of disputes between an originator and his institution or between a beneficiary and his institution, using existing procedures where appropriate.	**Art.10 – Solutionarea litigiilor – procedura alternativa de solutionare** **(1)** Fiecare institutie trebuie sa dispuna de proceduri corespunzatoare de rezolvare a plangerilor inaintate de clienti in legatura cu executarea unui transfer transfrontalier sau cu angajamentele asumate de institutie in legatura cu un transfer transfrontalier. **(2)** In situatia in care, in termen de cel mult 3 luni de la inregistrarea unei plangeri, institutia nu a intreprins nici un demers pentru solutionarea plangerii, nu a reusit solutionarea pe cale amiabila a acesteia sau nu a formulat un raspuns la plangerea inaintata de client, acesta poate apela la medierea diferendului de catre Banca Nationala a Romaniei, ca modalitate alternativa de solutionare a diferendelor sau se poate adresa instantelor judecatoresti competente.	

	(3) In aplicarea dispozitiilor alin.(2), in structura Bancii Nationale a Romaniei va fi creat un compartiment specializat, care va avea urmatoarele atributii principale: a) medierea diferendelor legate de transferurile transfrontaliere aparute intre clienti si institutiile din Romania implicate in executarea acestor transferuri; b) elaborarea reglementarilor necesare privind procedura specifica de acces la mediere; c) elaborarea de reglementari cuprinzand instructiuni in aplicarea legii, in special cu privire la obligatiile care incumba institutiilor din Romania implicate in executarea transferurilor transfrontaliere, in masura in care asemenea instructiuni sunt necesare pentru aplicarea unitara a dispozitiilor prezentei ordonante; d) emiterea unui punct de vedere cu caracter consultativ cu privire la diferendele care nu au facut obiectul medierii de catre Banca Nationala a Romaniei, daca un asemenea punct de vedere este solicitat de instantele judecatoresti sesizate cu judecarea cauzei; e) elaborarea raportului anual referitor la activitatea de mediere desfasurata in cadrul compartimentului. **(5)** Procedura de solutionare a diferendelor de catre Banca Nationala a Romaniei, prin intermediul compatimentului specializat, este gratuita. Compartimentul specializat va formula o solutie cu privire la aspectele semnalate, in maxim 30 de zile de la inregistrarea unei cereri de mediere; daca sunt necesare documente si/sau informatii suplimentare, un nou termen de 30 de zile va curge de la data prezentarii acestor documente sau informatii. **(6)** Solutia formulata de compartimentul specializat din	

	Banca Nationala a Romaniei nu are caracter obligatoriu pentru partile interesate si nu intra sub incidenta dispozitiilor art.83 din Legea nr.58/1998 privind activitatea bancara, cu modificarile si completarile ulterioare. }n situatia in care partea nemultumita se adreseaza instantelor judecatoresti pentru apararea drepturilor sale, solutia formulata de compartimentul specializat din Banca Nationala a Romaniei poate fi avuta in vedere, cu caracter consultativ, de instanta judecatoreasca competenta.	
Article 11 - Implementation 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 14 August 1999 at the latest. They shall forthwith inform the Commission thereof. When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States. 2. Member States shall communicate to the Commission the text of the main laws, regulations or administrative provisions which they adopt in the field governed by this Directive.		NA
Article 12 - Report to the European Parliament and the Council No later than two years after the date of		NA

implementation of this Directive, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, accompanied where appropriate by proposals for its revision. This report shall, in the light of the situation existing in each Member State and of the technical developments that have taken place, deal particularly with the question of the time limit set in Article 6 (1).		
Article 13 - Entry into force This Directive shall enter into force on the date of its publication in the Official Journal of the European Communities.		NA
Article 14 - Addressees This Directive is addressed to the Member States.		NA

Tabel concordanta Recomandare 90/109/EEC

Recomandare 90/109/EEC	Proiect Ordonanta privind transferurile transfrontaliere	
GENERAL 'Institutions concerned', hereafter referred to as 'institutions', means all legal persons, and in particular credit institutions and postal services, providing facilities for effecting or facilitating cross-border transfers. For the purposes of this recommendation, branches of institutions are deemed to be 'institutions'.	**Art.2 – Definitii** **(1)** In intelesul prezentei ordonante, expresiile utilizate au urmatorul inteles: **lit.a)** *institutie* – orice persoana juridica ce executa cu titlu profesional transferuri transfrontaliere in cadrul activitatii sale obisnuite, in special o institutie de credit sau o societate care presteaza servicii postale, inclusiv sucursalele acestora; **(3)** }n scopul prezentei ordonante, sucursalele unei institutii situate in state diferite, care participa la executarea unui ordin de transfer transfrontalier, vor fi considerate institutii separate.	
'Cross-border financial transactions' means transfers as defined below where the institutions of the transferor and the transferee are situated in two different Member States.	**lit.c)** *transfer transfrontalier* – operatiunea realizata la initiativa unui ordonator prin intermediul unei institutii sau unei sucursale a unei institutii, situate intr-un stat, in scopul punerii la dispozitia beneficiarului a unei sume de bani, prin creditarea unui cont sau prin predarea sumei in numerar, la o institutie sau la o sucursala a unei institutii, situate in alt stat;	
'Transfer' means the complete movement of funds denominated in ecus or in a currency that is legal tender in a Member State from a transferor to a transferee, regardless of whether the latter holds an account with an institution situated in another Member State.	**lit.c)** *transfer transfrontalier* – operatiunea realizata la initiativa unui ordonator prin intermediul unei institutii sau unei sucursale a unei institutii, situate intr-un stat, in scopul punerii la dispozitia beneficiarului a unei sume de bani, prin creditarea unui cont sau prin predarea sumei in numerar, la o institutie sau la o sucursala a unei institutii, situate in alt stat;	
'Transfer order' means the written, oral or electronic instruction given to an institution to credit to an account or to keep available for a given person a sum of money	**lit.d)** *ordin de transfer transfrontalier* – instructiune neconditionata de executare a unui transfer transfrontalier, data direct de ordonator institutiei sale, in forma scrisa, orala	

or to arrange for that instruction to be executed by another institution. 'Transferor' means the person who issues the first transfer order. 'Transferee' means the final recipient who is to receive the funds in a Member State other than that in which the first transfer order was issued either by way of an operation crediting his account or by way of a notification enabling him to obtain payment of the funds.	sau electronica, cu conditia ca forma sa fie acceptata de institutie; **lit.e** *ordonator* – persoana fizica sau juridica care ordona executarea unui transfer transfrontalier in favoarea unui beneficiar; **lit.f)** *beneficiar* – destinatarul final al unui transfer transfrontalier caruia ii sunt puse la dispozitie fondurile aferente transferului intr-un alt stat decat cel in care a fost emis ordinul, fie prin creditarea unui cont la care acesta are acces, fie prin predarea catre acesta a unei sume in numerar;	
FIRST PRINCIPLE Each institution should bring to the attention of its customers easily understandable and readily available information concerning cross-border financial transactions	**Art.3 - Informatii prealabile** **(1)** Institutiile sunt obligate sa puna la dispozitia clientilor, actuali sau potentiali, informatii in scris cu privire la conditiile generale de realizare a transferurilor transfrontaliere, intr-o forma usor de inteles. Informatiile pot fi furnizate si prin intermediul mijloacelor electronice, daca institutia poate oferi servicii pe aceasta cale. **Art.4 – Informatii ulterioare** **(1)** Ulterior executarii sau primirii unui transfer transfrontalier, institutiile sunt obligate sa puna la dispozitia clientilor lor, cu exceptia cazului in care clientul a renuntat expres la aceast drept, informatii in scris, intr-o forma usor de inteles, din care sa rezulte ca transferul a fost finalizat. Informatiile pot fi furnizate si prin intermediul mijloacelor electronice, daca institutia poate oferi servicii pe aceasta cale. **Art.10 – Solutionarea litigiilor – procedura alternativa de solutionare**	- recomandarea urmeaza sa fie

This principle could be applied in one of the following ways: - a notice or some other permanent form of information drawing attention to the cost of, and time needed for, all cross-border financial transactions and encouraging customers to seek further information, - standardized information (in the form of a notice, booklet, brochure or some other appropriate means of providing information) specifying the amount or, where appropriate, percentage of commission fees and charges applied by the institution in respect of each transaction that may be invoiced either to the transferor or the transferee when a cross-border financial transaction is undertaken, as well as, if necessary, the provisions relating to the value dates, - information of a more specific nature (in the form of a booklet, brochure or some other appropriate means of providing information) should also be given to the transferor, if he so requests, regarding the procedures applied by the institution in executing his orders, together with an estimate from intermediary banks of expected charges and time needed, having due regard to those various procedures.	**(3)** In aplicarea dispozitiilor alin.(2), in structura Bancii Nationale a Romaniei va fi creat un compartiment specializat, care va avea urmatoarele atributii principale: .... c) elaborarea de reglementari cuprinzand instructiuni in aplicarea ordonantei, in special cu privire la obligatiile care incumba institutiilor din Romania implicate in executarea transferurilor transfrontaliere, in masura in care asemenea instructiuni sunt necesare pentru aplicarea unitara a dispozitiilor prezentei ordonante;	implementata prin instructiunile care vor fi emise de catre compartimentul din BNR care va avea atributii pe linia implementarii prevederilor ordonantei, instructiuni avand ca scop aplicarea unitara a dispozitiilor acesteia
SECOND PRINCIPLE In the statement relating to a cross-border financial transaction, the institution should inform its customer in detail of the commission fees and charges it is invoicing and of the exchange rate it has applied This principle could be applied in the following way: The institution concerned could clearly specify in a statement or some other document sent or handed to its	**Art.3 - Informatii prealabile** **(2)** Informatiile prevazute la alin.(1) vor include cel putin urmatoarele: a) termenul necesar pentru creditarea fondurilor in contul institutiei beneficiarului, atunci cand un ordin de transfer transfrontalier dat institutiei este executat, cu indicarea clara a momentului de la care acesta incepe sa curga; b) termenul necesar de la primirea unui transfer transfrontalier, pentru ca fondurile creditate in contul institutiei beneficiarului sa fie creditate in contul acestuia sau disponibile	

customer, regardless of whether he is the transferor or the transferee: - the exchange rate applied in converting the amount of foreign currency, - the amount of the commission fee or fees applied or invoiced by the institution, - the list and amount of any taxes payable, - the nature and amount of the charges payable by the customer, - the nature and amount of any additional invoice.	in forma de numerar; c) modalitatea de calcul a comisioanelor si a altor costuri aferente care cad in sarcina clientului si sunt datorate institutiei, atat in cazul executarii unui transfer transfrontalier, cat si in cazul primirii unui astfel de transfer; d) data valutei utilizata de institutie, daca este cazul; e) indicarea cursurilor de schimb utilizate; f) indicarea procedurii de solutionare a diferendelor la care clientii pot apela si modalitatea de acces la aceasta. **Art.4 – Informatii ulterioare** **(2)** Informatiile prevazute la alin.(1) vor cuprinde cel putin urmatoarele: a) o referinta care sa permita clientului identificarea transferului transfrontalier; b) valoarea initiala a transferului transfrontalier; c) valoarea tuturor comisioanelor si a celorlalte costuri aferente, suportate de catre client; d) data valutei utilizate de institutie, daca este cazul;	
THIRD PRINCIPLE 1. Without prejudice to the possibility for the transferor to choose other ways of apportioning commission fees and charges, the transferor's institution should inform its customer when the latter gives his order: - that the commission fees and charges it imposes for transmitting the order may either remain payable by the transferor or be invoiced to the transferee, - that any commission fees and charges invoiced by the transferee's institution to its customer when it places the funds at his disposal may either remain payable by the latter or be invoiced to the transferor.	**Art.3 - Informatii prealabile** **(3)** In conditiile generale se va indica si faptul ca se prezuma ca ordonatorul va suporta costurile legate de transferul transfrontalier si vor fi prezentate posibilitatile pe care acesta le are de a dispune ca aceste costuri sa fie suportate partial sau total de catre beneficiar. **Art.4 – Informatii ulterioare** **(3)** In cazul in care ordonatorul a specificat faptul ca beneficiarul urmeaza sa suporte partial sau integral costurile legate de transferul transfrontalier, beneficiarul va fi informat cu privire la aceasta de catre institutia sa.	

2. Where the transferor has specifically instructed his institution to ensure that the transferee is credited with the exact amount shown on the transfer order, it is recommended that the institution apply a method of transfer which will make it possible to achieve this result and that, before undertaking the transfer operation, it inform the transferor of the additional amount which will be invoiced to him. However, this amount will represent only a non-binding estimate for the institution except where it applies a flat-rate calculation. This principle could be applied by making available to the transferor who wanted the transferee to be credited with an exact amount prior information based on a flat-rate calculation or an estimate that could take account of the average of the commission fees and charges applied by institutions in the country of the transferee where information permitting a more accurate calculation was not available. If the amount estimated were smaller than the amount of commission fees and charges actually payable, the difference could be invoiced only to be transferor.	**Art.10 – Solutionarea litigiilor – procedura alternativa de solutionare** **(3)** In aplicarea dispozitiilor alin.(2), in structura Bancii Nationale a Romaniei va fi creat un compartiment specializat, care va avea urmatoarele atributii principale: .... c) elaborarea de reglementari cuprinzand instructiuni in aplicarea ordonantei, in special cu privire la obligatiile care incumba institutiilor din Romania implicate in executarea transferurilor transfrontaliere, in masura in care asemenea instructiuni sunt necesare pentru aplicarea unitara a dispozitiilor prezentei ordonante;	- recomandarea urmeaza sa fie implementata prin instructiunile care vor fi emise de catre compartimentul din BNR care va avea atributii pe linia implementarii prevederilor ordonantei, instructiuni avand ca scop aplicarea unitara a dispozitiilor acesteia
FOURTH PRINCIPLE 1. In the absence of instructions to be contrary and except in cases of force majeure, each intermediary institution should deal with a transfer order within two working days of receipt of the funds specified in the order or should give notification of its refusal to execute the order or of any foreseeable delay to the institution issuing the order and, where different, to the transferor's institution. 2. The transferor should be able to obtain a refund of part of the costs of the transfer in the event of any delay	**Art.6 – Obligatii referitoare la timpul necesar** **(5)** Fiecare institutie intermediara este obligata sa execute ordinul de transfer transfrontalier in termen de cel mult 2 zile bancare lucratoare de la data primirii sumei aferente transferului ori sa notifice institutiei de la care a primit instructiunile refuzul de a executa ordinul sau orice intarziere preconizata, in termen de 2 zile bancare lucratoare de la data la care a primit ordinul de transfer, daca nu se prevede altfel in instructiunile primite. **(2)** In cazul in care fondurile nu au fost creditate in contul institutiei beneficiarului in termenul limita agreat sau, in	

in executing his order. This principle could be applied in the following way: On expiry of a period of two working days, the transferor's institution should pay the amount of the transfer order to the transferee's institution or to any intermediary institution unless the transferee's institution (or this intermediary institution) gives notification within two working days of receipt of the transfer order of its refusal to execute the order received. Where it is not the transferee's institution and where it has not given notification of its refusal to execute an order, the recipient institution should, within that same period of two working days from receipt of the funds specified in the transfer order, issue to the transferee's institution or to another intermediary institution a new transfer order containing the instructions necessary for the transfer to proceed in the appropriate fashion.	absenta unui acord in acest sens, creditarea nu s-a realizat pana la sfarsitul celei de-a 5-a zi bancare lucratoare care urmeaza datei acceptarii ordinului de transfer transfrontalier, institutia ordonatorului va datora acestuia o compensatie. **(4)** In termen de maxim 2 zile bancare lucratoare de la data primirii fondurilor, institutia ordonatorului este obligata sa transfere catre institutia beneficiarului sau, dupa caz, catre institutia intermediara suma aferenta transferului, cu exceptia cazului in care institutia beneficiarului ori institutia intermediara respectiva, notifica refuzul de executare a ordinului de transfer in termen de 2 zile bancare lucratoare de la data primirii acestuia. **(7)** Daca institutia care a primit fondurile aferente unui transfer transfrontalier nu este institutia beneficiarului sau aceasta nu a notificat refuzul de a executa ordinul de transfer transfrontalier, in termen de 2 zile bancare lucratoare de la primirea fondurilor specificate in ordinul de transfer, institutia respectiva este obligata sa emita un nou ordin de transfer catre institutia beneficiarului sau catre o alta institutie intermediara, care sa permita executarea transferului conform instructiunilor date de ordonator.	
FIFTH PRINCIPLE 1. The transferee's institution should fulfil its obligations arising from a transfer order not later than the working day following receipt of the funds specified in the order unless the said order stipulates a later date of execution.	**Art.6 – Obligatii referitoare la timpul necesar** **(8)** Institutia beneficiarului este obligata sa puna la dispozitia clientului sau fondurile aferente transferului transfrontalier intr-un termen limita agreat cu acesta. **(10)** In cazul in care fondurile nu au fost creditate in contul beneficiarului sau puse la dispozitia acestuia sub forma de numerar in termenul limita agreat ori, in absenta unui acord in acest sens, pana la sfarsitul zilei bancare lucratoare care urmeaza datei la care s-a creditat contul institutiei	

2. If the transferee's institution is unable to execute the order within the time indicated in paragraph 1, it should, as soon as possible, inform the institution issuing the order and, where different, the transferor's institution of the reasons for its failure to execute the order or for the delay in execution.	beneficiarului, aceasta va datora beneficiarului o compensatie. **(9)** Daca institutia beneficiarului nu este in masura sa execute ordinul de transfer transfrontalier in termenul prevazut la alin.(10), va informa, de indata, institutia de la care a primit ordinul si, dupa caz, institutia ordonatorului asupra motivelor care au determinat neexecutarea ordinului sau executarea cu intarziere a acestuia.	
SIXTH PRINCIPLE 1. Any institution participating in a cross-border financial transaction should be capable of dealing rapidly with complaints lodged by the transferor or the transferee in connection with the execution of the transaction or with the statement relating to it. 2. If no action is taken on a complaint or no answer received within three months, the complainants may refer the matter to one of the Member States' bodies competent to deal with complaints from users. The list and addresses of such national bodies should be available on request from any institution undertaking cross-border financial transactions. One way of applying this principle would be to entrust the task of dealing with complaints to bodies independent of the parties concerned and forming part of: - the public sector (ministerial department), - the central bank, - a specialist body such as the ombudsman's office, - a contact committee comprising bank representatives and users.	**Art.10 – Solutionarea litigiilor – procedura alternativa de solutionare** **(1)** Fiecare institutie trebuie sa dispuna de proceduri corespunzatoare de rezolvare a plangerilor inaintate de clienti in legatura cu executarea unui transfer transfrontalier sau cu angajamentele asumate de institutie in legatura cu un transfer transfrontalier. **(2)** In situatia in care, in termen de cel mult 3 luni de la inregistrarea unei plangeri, institutia nu a intreprins nici un demers pentru solutionarea plangerii, nu a reusit solutionarea pe cale amiabila a acesteia sau nu a formulat un raspuns la plangerea inaintata de client, acesta poate apela la medierea diferendului de catre Banca Nationala a Romaniei, ca modalitate alternativa de solutionare a diferendelor sau se poate adresa instantelor judecatoresti competente. **(3)** In aplicarea dispozitiilor alin.(2), in structura Bancii Nationale a Romaniei va fi creat un compartiment specializat, care va avea urmatoarele atributii principale: a) medierea diferendelor legate de transferurile transfrontaliere aparute intre clienti si institutiile din Romania implicate in executarea acestor transferuri; b) elaborarea reglementarilor necesare privind procedura specifica de acces la mediere; c) elaborarea de reglementari cuprinzand instructiuni in	

	aplicarea ordonantei, in special cu privire la obligatiile care incumba institutiilor din Romania implicate in executarea transferurilor transfrontaliere, in masura in care asemenea instructiuni sunt necesare pentru aplicarea unitara a dispozitiilor prezentei ordonante; d) emiterea unui punct de vedere cu caracter consultativ cu privire la diferendele care nu au facut obiectul medierii de catre Banca Nationala a Romaniei, daca un asemenea punct de vedere este solicitat de instantele judecatoresti sesizate cu judecarea cauzei; e) elaborarea raportului anual referitor la activitatea de mediere desfasurata in cadrul compartimentului. **(5)** Procedura de solutionare a diferendelor de catre Banca Nationala a Romaniei, prin intermediul compatimentului specializat, este gratuita. Compartimentul specializat va formula o solutie cu privire la aspectele semnalate, in maxim 30 de zile de la inregistrarea unei cereri de mediere; daca sunt necesare documente si/sau informatii suplimentare, un nou termen de 30 de zile va curge de la data prezentarii acestor documente sau informatii. **(6)** Solutia formulata de compartimentul specializat din Banca Nationala a Romaniei nu are caracter obligatoriu pentru partile interesate si nu intra sub incidenta dispozitiilor art.83 din Legea nr.58/1998 privind activitatea bancara, cu modificarile si completarile ulterioare. }n situatia in care partea nemultumita se adreseaza instantelor judecatoresti pentru apararea drepturilor sale, solutia formulata de compartimentul specializat din Banca Nationala a Romaniei poate fi avuta in vedere, cu caracter consultativ, de instanta judecatoreasca competenta.	