

THE EVOLUTION OF THE LEGISLATION OF THE PROMISSORY NOTE IN MOLDOVA, ROMANIA AND AT INTERNATIONAL LEVEL

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Abstract

In this article I present the evolution of the promissory legislation in Moldova, Romania and at an international level. Because of its use on a large scale and in the international commercial relationships, the promissory note has been the object of an unitary judicial regulation. In 1930 the Convention regarding the uniform law of the promissory note and of the bill of exchange was signed in Geneva. The main regulation of the promissory note in Moldova is the Law of the Promissory Note from Moldova nr. 1527-XII of 22.06.93, Monitor nr. 10 of 30.10.1993 and the Civil Code of 2003. In Romania the promissory note is regulated through Law on the promissory note and the bill of exchange nr. 58 of 1st May 1934. Although Moldova and Romania did not hew at this convention, most of the stipulations of the uniform law were taken into the Moldovan and Romanian law.

Keywords: *law, promissory note, legislation*

1. Introduction

The international commerce represents a social fact that has a major importance in our days. The interdependence and the complementarity that exists between the economies of different countries in the context of the diversification and the specialization without precedent of the production of goods and services is the fundament of the international economical exchanges. Independently from this argument, the international commerce is an important factor in promoting the collaboration between nations, an essential mean of developing a climate of trust, security and peace in the world [1]. The processes of enhancing the world economy in the past decades are profoundly marked by the phenomenon of internationalizing business. Thus we can notice the changes from the world economy that happen because of the intensification of commerce and of the growth of the investments, as a consequence of the elimination of barriers and the expansion of the interdependence between states, as an effect of the liberalization of commerce and free trade [2]. The freedom of commerce is not a right given to the businessmen to do whatever they want, this would mean his slavery. The principle gives expression to the objective need to dismiss the obstacles of an economical, customs, fiscal, administrative or political nature and it represents the condition for the assessing, developing and the consolidation of the market economy. The principle is established in the Moldovan Constitution of the 29th of July 1994 in art. 126 paragraph 2 letter b: “The state must ensure the freedom of commerce and of the enterprise activities, the protection of the loyal competition, the making of an auspicious frame in order to capitalize all the

production factors” and also in the Romanian Constitution revised in 2003 in art 135 paragraph 2 letter a: “The state must ensure the freedom of commerce, the protection of loyal competition, the creation of the auspicious frame in order to capitalize all the production factors.” At an interstate level there is a constant preoccupation to create organizational structures that are able to promote the freedom of commerce in more and more broad geographical areas [3].

In these conditions and taking into account the phenomenon of internationalization of the businesses the promissory note has become to have a very important role.

This promissory note is at a worldwide level one of the titles of credit with great usability and circulation in the international commercial activity [4].

The promissory note is defined as being a document through which a person, called drawer or issuer, gives disposition to another person, called drawee, to pay at tenour a sum of money to a third person, called beneficiary, or at his order [5].

2. The evolution of the promissory law

Because of its use on a large scale and in the international commercial relationships, the promissory note has been the object of an unitary judicial regulation. In 1930 the Convention referring to the uniform law of the promissory note and the bill of exchange was signed at Geneva [6].

After 1990 the promissory note has become once again one of the most used credit instruments in the commercial activity and on the internal market because in the external commercial relationships has been used continually [7].

The main stipulation of the promissory note in Moldova is represented by the Promissory Law of Moldova nr. 1527 – XII of 22.06.93, Monitor nr. 10 of 30.10.1993 and the Civil Code of 2003 with article 1279.

In Romania the promissory note is regulated through Law on the promissory note and the bill of exchange nr. 58 of the 1st of May 1934.

Although Romania and Moldova did not hold by this convention, most of the stipulations of the uniform law have been taken in the Romanian and Moldovan law. Of course that Law on the promissory note and the bill of exchange nr. 58 of the 1st of May 1934 [8] from Romania was used as a model and as well the Italian Law on the promissory note and the bill of exchange of the 14th of December 1933, that was based on the uniform law of the promissory note and the bill of exchange [9].

In the conditions of the making of the free enterprise in Romania and Moldova, some measures were taken regarding the use of the promissory note in the internal [6]. and international commercial relationships.

Thus through OG nr 11/1993 [10] in Romania modifications and completions have been made to Law on the promissory note and the bill of exchange nr. 58/1934 [11].

Then the National Bank of Romania and that of Moldova issued certain stipulations regarding the commerce made by the banking companies and the other institutions of credit with promissory notes, bills of exchange and cheques, as well as technical stipulations regarding the promissory note and the bill of exchange, according to the actual international practices [4].

Also the National Bank of Romania regulated an informational system [12] meant to reinforce the certainty of the credit of the promissory note, the bill of exchange and of the cheque, through the creation of the Centre of the Payment Incidence [13].

Law on the promissory note and the bill of exchange nr. 58/1934 from Romania has been modified and completed through O.U.G. nr. 39/2008 [14], approved with modifications and completions through Law nr. 163/2009 and Law nr. 76/2012 [6].

At an international level we can notice the making, in 1930 in Geneva, of the Convention regarding the uniform law of the promissory note and the bill of exchange [6] and then the Convention of the United Nations regarding the international promissory notes and bills of exchange, that is the result of the effort made in almost 20 years of works of the United Nations Commission for the international commercial law (Eng. U.N.C.I.T.R.A.L., Fr. C.N.U.D.C.I). It was adopted by the General Assembly of the United Nations, based on the recommendations of the 6th commission (judicial), on 9th December 1988 in New York [15].

The objective for U.N.C.I.T.R.A.L, New York, 1988, was the limitation to a minimum of the fund frictions that exist between the main promissory systems that exist: the Geneva one, on the one hand, and the Anglo-American one, on the other hand, keeping in mind the new requirements of the international commerce, the bank practices and the financial markets [15].

3. The current degree of investigation of the problem, the purpose of the research

The purpose is to make a thorough research of the promissory note legislation of Moldova and the European Union, including Romania, and to propose real measures in order to improve the using conditions of this payment instrument in Moldova, Romania and the European Union.

The main objectives of the research is to identify the most important regulations of the international promissory note and the changes that appear in real time regarding the promissory legislation and to propose improvements for it.

4. Methods and materials applied

The promissory note is a title of credit that represents a written claim, made according to the present law, that gives its possessor the certain and enforceable right to claim at tenour the payment from the debtor, and in case of failure to pay this demand he can ask other people that are bound through the promissory note to pay the indicated sum of money [16].

The appearance of the promissory note marks an important historical moment in the evolution of commerce and of the means of payment, alongside the fiduciary mint (the banknote) and the scriptural mint (of account) [17].

The comparative method is used in this research of the promissory note. Comparison is the operation through which we want to determine and to assess the identical or similar elements or the divergent elements between two or more phenomena. The comparison can be of two types:

1. Affirmative
2. Contrasting.

5. Results obtained and discussions

The promissory note is one of the oldest credit titles, but in its present form is the result of an evolution and of some long sedimentations. [18].

This appearance of the promissory note marks a very important historical moment in the evolution of the commerce and of the international payment instruments, alongside the fiduciary mint (the banknote) and the scriptural mint (of account) [17].

There are many publications referring to the promissory note in which it is presented in a succinct manner the evolution of this title of credit.

The origin, the place and the time when the promissory note appeared cannot be determined with precision. Several authors, especially French, claim that the ones that invented the promissory note are the Jewish traders, during the 1290s when they were driven out of France [19].

Other authors claim that there is a higher probability that the promissory note to come from Italy, during the reign of the Crusaders, a time in which the commerce was flourishing, in countries like Italy, France and Spain and then it was perfected continually during the next centuries, coming to the actual level of development. Thus the promissory note has become from a mean of replacement of the actual transport of coins, as it was in the beginning, a form of representing the credit, through which sums of money can be put into circulation. With all their hard work, the researchers and the historians did not succeed until now to determine with accuracy the exact date when the promissory note came into being in the international economical relationships [2, p. 16]

6. Conclusions

Because of its use on a large scale in the international commercial relationships, the promissory note has been the object of an unitary judicial regulation. In 1930 in Geneva it was signed the Convention regarding the unitary law of the promissory note and the bill of exchange.

The main regulation of the promissory note in Moldova is the Law of the Promissory Note of Moldova nr. 1527 – XII of 22.06.93, Monitor nr. 10 of 30.10.1993 and the Civil Code of 2003.

In Romania the promissory note is regulated through Law on the promissory note and the bill of exchange nr. 58 of the 1st of May 1934.

Although Romania and Moldova did not hold on this convention, most of the stipulations of the uniform law were taken in the Moldovan and Romanian law.

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19. There are other opinions that claim that the appearance of the promissory note was earlier, because the Jewish traders were driven away from France and England in 1290, while in 1236 in China they started using a payment instrument on paper. It is believed like this one, the promissory note was already known in England in 1307, as in that year King Edward I ordered for the collecting of a certain sum of money for the Pope and the sum was sent to him not in coins, but through a replacement. See for this Helen West Bradlee, A Student Course of Legal History, Boston, 1929, p. 5.

Rezumat

În acest articol prezint evoluția legislației cambiale în Republica Moldova, România și la nivel internațional. Din cauza utilizării ei pe scară largă și în raporturile comerciale internaționale, cambia a făcut obiectul unei reglementări juridice unitare. În anul 1930, s-a încheiat la Geneva Convenția referitoare la legea uniformă a cambiei și biletului la ordin. Principala reglementare a cambiei în Republica Moldova o reprezintă Legea cambiei din Republica Moldova Nr.1527-XII din 22.06.93, Monitorul oficial nr. 10 din 30.10.1993 și Codul Civil din 2003. În România cambia este reglementată prin Legea nr. 58 din 1 mai 1934 asupra cambiei și biletului la ordin. Cu toate că Republica Moldova și România nu au aderat la această convenție, cele mai multe prevederi ale legii uniforme au fost preluate în legea moldovenească și românească.

Cuvinte-cheie: lege, cambie, legislație

Аннотация

В данной статье описывается развитие вексельного законодательства в Республике Молдова, Румынии и на международном уровне. Из-за широкого использования векселя в международных торговых отношениях он был предметом унитарного правового регулирования. В 1930 году была заключена Женевская конвенция о унитарном законе по векселям. Основными регулирующими актами применения векселя в Республике Молдова являются Закон Республики Молдова о векселях № 1527-XII от 22.06.93 года, Официальный монитор № 10 от 30.10. 1993, и Гражданский кодекс (2003 года). В Румынии вексель регулируется Законом № 58 от 1 мая 1934 года о векселях. Несмотря на то, что Республика Молдова и Румыния не придерживались указанной конвенции, большинство положений единого закона были отражены в законодательстве Молдовы и Румынии.

Ключевые слова: закон, вексель, законодательство

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