

WHEN BANKING LAW BECOMES A SHELL GAME

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Episode 1 - The confirmed superficiality of a parliamentary procedure

Earlier this year I had written another [opinion article](#) on what was then called among the bankers as "Antibanking Laws" or the "Zamfir Laws", commenting, in the context where complaints of unconstitutionality had already been formulated regarding those draft laws, criticisms regarding the superficiality of the explanatory memoranda. The draft laws were aimed at capping the interest rates (the effective annual interest rate) applied to consumer credit agreements (at various ceilings), limiting the amounts recoverable by collection agencies and the repayment amount at a maximum of double the assignment price, etc.

The unconstitutionality complaints include both extrinsic reasons (i.e. procedural aspects and legislative technique, including lack of clarity) but also intrinsic reasons (merits). I do not insist on these reasons, they are supported in the referral document itself, which can also be viewed in the section corresponding to the parliamentary debate in the Chamber of Representatives.

I must mention that in March this year the complaints were admitted by the Constitutional Court, indeed on reasons of form (extrinsic). Notable are the court's findings regarding *"the lack of motivation of the legislative solutions proposed and adopted, failure to request of the opinion of the Economic and Social Council, as well as [...] contradictory regulations, lacking coherence and clarity"*. The legislative process regarding the respective bills has ceased.

Episode 2 - Literary creativity effort

Although the Constitutional Court had admitted the above mentioned constitutionality complaints, in May 2019, ALDE Senator Daniel Zamfir, submitted to the Senate the Legislative Proposal regarding the protection of consumers against usury and other forms of abuse of economic power, no. B219 / L406 (https://senat.ro/legis/lista.aspx?nr_cls=L406&an_cls=2019).

We do not make the analysis of the consistency of the explanatory memoranda, but it is relevant that this time the opinion of the Economic and Social Council was requested, which issued a negative opinion on July 02, 2019, punctuating the following:

- *„The draft law is in fact a resumption of three other previous bills that have been declared unconstitutional by the RCC. Amongst the arguments regarding the unconstitutionality of the three projects, we found, apart from the lack of the CES opinion, the lack of an impact study. However, the new draft was also submitted to Parliament without an impact study”;*
- *„Although it claims that it will create benefits for consumers, the draft is likely to give rise to massive dysfunctions in the lending market, which will ultimately affect all consumers and the economy in general”.*

However, the negative opinion of the Legislative Council, issued on June 27, 2019, is also relevant. Among many other criticisms we mention those retained by the Legislative Council regarding the language used in the explanatory statement, as follows:

„As a whole, the Explanatory Statement does not use a language specific to the legislation style, but certain expressions improper for a presentation and motivation instrument, sometimes incorrect, of which we exemplify: "the feeling of irrelevance and social uselessness is aggravated by the lack of a social safety net.", "can inflate interest rates on public loans", "an endless loop of deceit and deception", "the purpose of excessive interest repression legislation", "parasitic money", "a guilty form of speculation of the debtor's state of need and vulnerability", "Exceptional profits that are drawn from this trading of people's misery", etc.

Moreover, the Legislative Council also criticizes that *"the legislative text must be formulated clearly, fluently and intelligibly, without syntactic difficulties and obscure or equivocal passages. Terms with an affective load should not be used. The form and aesthetics of the text should not prejudice the legal style, the precision and the clarity of the provisions"*, taking as a (negative) example notions and phrases such as *"interest interest", "legal act which is the creator of debt", "currency shock", "speculative assignment of claims", "the purpose of thwarting the assignee's speculation intent", "the social utility of the contract", etc.*

Episode 3 - The shell game begins

On September 18, 2019, Senator Daniel Zamfir, who recently joined the PSD party (affiliate member), withdrew the draft law described above. But the very next day, September 19, 2019, he submitted four new draft laws on consumer protection, aimed at the same issues, namely capping interest on loans, conversion to lei of loans in foreign currency, foreclosures and assignments of debts:

- (a) Draft law on consumer protection against excessive interest rates, no. B452/2019 (https://senat.ro/legis/lista.aspx?nr_cls=b452&an_cls=2019)
- (b) Draft law on consumer protection against speculative assignment of receivables, no. B453/2019 (https://senat.ro/legis/lista.aspx?nr_cls=b453&an_cls=2019)
- (c) Draft law on consumer protection against currency risk in loan agreements, no. B454/2019 (https://senat.ro/legis/lista.aspx?nr_cls=b454&an_cls=2019)
- (d) Draft law on consumer protection against abusive or unexpected foreclosures no. B455/2019 (https://senat.ro/legis/lista.aspx?nr_cls=b455&an_cls=2019)

These have the same themes as the draft laws for which the Constitutional Court admitted the complaints of unconstitutionality in March 2019.

From the requested opinions we find that the ones of the Economic and Social Council have been submitted, which, although they endorse favorably, they mention, in relation to all the drafts, that *"the application of such*

measures without carrying out studies that highlight solutions for the fair sharing of risk and benefits between the parties can lead to major imbalances that will negatively influence the economic processes".

The aforementioned drafts were withdrawn by the initiator on October 28, 2019. Why though ? To be continued in Episode 4.

Episode 4 - Full speed ahead

In slightly refined and supplemented forms, the legal initiatives of Senator Zamfir were taken over by a large group of PSD senators and representatives, on October 23, 2019, by submitting to the Senate for draft laws on the same topics and with the exact same names:

- (a) Draft law on consumer protection against excessive interest rates, no. L586/2019 (https://senat.ro/legis/lista.aspx?nr_cls=L586&an_cls=2019)
- (b) Draft law on consumer protection against speculative assignment of receivables, no. L583/2019 (https://senat.ro/legis/lista.aspx?nr_cls=L583&an_cls=2019)
- (c) Draft law on consumer protection against currency risk in loan agreements, no. L584/2019 (https://www.senat.ro/Legis/lista.aspx?nr_cls=L584&an_cls=2019)
- (d) Draft law on consumer protection against abusive or unexpected foreclosures no. L585/2019 (https://www.senat.ro/Legis/lista.aspx?nr_cls=L585&an_cls=2019)

Existing public information does not show the existence of impact studies in this procedure either.

In these circumstances, it is somewhat surprising to have quickly obtained favorable opinions, both from the Legislative Council, with comments, of form and expression, but also with the note that certain promoted solutions are already regulated and the amendment of those regulations would have been preferable - on November 05, 2019 - and from the Economic and Social Council - on November 12, 2019.

The legislative circuit in the Senate was closed very quickly by approving the draft laws in committees on December 04, 2019 (with amendments) and in the plenary session on December 11, 2019.

Next, the draft laws are sent for debate to the Chamber of Representatives.