

## **Enforcement on the basis of (promissory) notes vs. the general enforcement procedure**

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Although almost 100 years old, the Romanian Law No. 58/1934 on bills of exchange and promissory notes (Rom. *Legea asupra cambiei și biletului la ordin*) continues to be an attractive option for creditors in a hurry. In Romanian court practice, one finds it difficult to interpret the outdated wording in conjunction with subsequent laws – especially the meanwhile existing 5 consecutive versions of the Civil Procedure Code ("CPC").

### **Regulations on initiation, objection/ challenge and suspension**

As in the case of general enforcement proceedings, bill enforcement begins with an application by the creditor to the bailiff. The bailiff is initially required by law to apply to the competent court for authorization of enforcement in both cases.

After the execution has been approved by the court, the bailiff must send the debtor a notice of execution (Rom. *somațiunea de executare*) with mandatory contents. This informs the debtor of the proceedings and gives him 5 days to object to the execution by filing an objection (Rom. *opoziție la executare*).

The debtor may base his objection only on certain defenses which are prescribed by the law, namely (i) the defense of invalidity of the bill of exchange and (ii) personal defenses arising from the legal relations between the parties. The court's decision on the objection may be appealed within 15 days from the date of pronouncement.

The debtor may also apply for suspension of the execution in court. The grounds for such a request are also limited – only if the signature on the bill or the procuration (in case of a transferred bill) is disputed. Other grounds for suspension are not allowed according to the CPC.

Also, the deposit of security by the debtor is not a prerequisite for the suspension of such enforcement; such deposit would be necessary in the case of general enforcement under the CPC. However, the creditor may request the disposition of security measures (such as pledging or seizure of goods). Finally, it should be noted that provisional suspension (Rom. *suspendarea provizorie*) regulated by the CPC is likewise not permitted.

If the objection is rejected, the bailiff may initiate the enforcement measures according to the CPC. The debtor may then contest the enforcement measures on the basis of the CPC.

However, the challenge of the enforcement can only be based on a lack of legality of the respective enforcement measure. Reasons in connection with the bill itself or the legal relations between the parties can no longer be invoked at this stage of the proceedings. An application for suspension or for provisional suspension is admissible, but can likewise only be argued on grounds relating to the contested enforcement measure.

In practice, it happens that the objection to the bill enforcement and the challenge to the individual enforcement measures exist simultaneously. This is due to the fact that the period between the delivery of the notice of execution and the initiation of the specific enforcement measures is very short.

## **Practical issues**

Our experience shows that often after the enforcement is granted, the debtor receives a "hybrid" notice from the bailiff, which is a mixture between the enforcement notice according to the bill enforcement procedure and the notice according to the general enforcement procedure under the CPC. Usually, the debtor is also confused, and thus files a lawsuit containing elements of both an objection to the enforcement (according to the bill of exchange law) and those of a challenge to the enforcement (according to the CPC).

This leads to different and often contradictory approaches by Romanian courts, especially since there are significant differences between the procedures:

- The deadline for the submission of the objection/ challenge after delivery of the notice – 5 days in case of objection according to the law on bills of exchange vs. 15 days in case of challenge according to the CPC;
- Reasons or defenses admissible in the respective proceedings (see above);
- Conditions and reasons for the suspension or provisional suspension;
- Appeal deadline – 15 days from the date of pronouncement of the judgment in case of execution by bill of exchange, or 10 days from the date of delivery of the judgment in case of general execution according to the CPC.

## **Conclusion**

Bill enforcement is a special type of enforcement procedure that follows the special regulations of Law No. 58/ 1934. Although these regulations are to be supplemented with the CPC, the creditors must observe the special aspects in order to initiate the correct procedural steps and, if necessary, to avoid the loss of rights for formal reasons.

## **Contact and further information:**



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