Some theoretical and practical aspects of the banking credit contract exercise in the republic of Moldova and the Russian Federation

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Abstract: The article presents the main aspects of the banking credit contract exercise in Moldova and Russia. Author highlights the importance of the regulation of credit law, including the regulation of bank lending, drawing on the experience of countries that have incorporated such legal structures into national legislation, doctrinal findings and challenges and expectations of modern economic processes. Keywords: banking credit, credit contract, Moldova, Russia, mean of identifications.

1 Introduction

In the current context, the limited attention paid to the banking credit agreement by public authorities and scholars may become the basis for an irrational legal framework in the area of bank lending.

The relevance of a bank loan agreement as an independent contractual arrangement in modern civil law demonstrates the synthesis of scientific views, approaches and conclusions for the purpose of comprehensive and applied involvement of a bank loan agreement in the economy and legal processes of market-oriented States.

In the area of research on credit relations, bank lending and credit contracts, a large number of scientific works have been carried out, both in the Republic of Moldova and in the Russian Federation, which demonstrates not only the scientific interest of scientists in this area of research, but also the sensitivity of the categories listed to the expectations of the existing objective reality.

We would like to point out that the questions of establishing independent status in the national civil law of the Republic of Moldova and the Russian Federation are not sufficiently studied.

At the same time, the issue of the autonomy of the banking credit contract cannot be separated from the problems of revealing the evolution, substance, of the concept of bank lending as one of the fundamental foundations of the credit system; analysing the regulation of bank credit, defining its place and role in the system of State-legal regulation and its capacity for self-regulation; issues affecting the principles of bank lending, including highlighting the sectoral features of the terms of the bank credit contract; analysis of the

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concept, nature and legal nature of a bank loan contract, identification of its forms and conditions, and classification of bank loans by type; The legal characteristics of the interim measure and the justification of the relevance of the modern security mechanism for the proper enforcement of a bank loan contract.

We note that the Moldovan and Russian banking systems have not been able in a short period of time to drop the elements of the planned economy and to base their legal regulation on the norms inherent in market relations. At the same time, it seems reasonable to support the developments in recent history that have affected the transformation of the banking system and its sources of legal regulation and, in general, to positively characterize this transition period.

2 Materials and methods

The author used of scientific research methods such as analysis, synthesis, and comparative and dialectical methods seems to be appropriate in order to elucidate the topic of this paper.

Soviet scholars have created excellent grounds for the development of scientific thought about the legal regulation of bank lending, and modern scholars of doctrine have wisely used these works and have formed an adequate system of banking law relations, and its associated institutions.


In the context of the integration of the Moldovan legal system into the legal framework of the European Union and its direct dependence on the Romanian legislative process, it seems necessary to emphasize scientific research as Moldovan; and Romanian legal scholars.

Such researchers, in our opinion, should be included Andrei Guștiuc, Victor Burac, Liliana Chihtoacă, Veronica Roșca, Mariana Prodan, Vasile Zavatin, Radomir Gărlea, Florenta Ghita, Tigianian A., Tureu Action, Lucian C.Actionescu, Victor Stoica, Petre Condeau, Aurel Avian Berea, Emilia Cornelia Stoica et al.

Let us dwell on the work of these theorists and practitioners.

3 Results

Victor Burac, in his work on banking law, drew attention in 2001 to the fact that the domestic legislation of the Republic of Moldova does not contain a definition of a bank loan contract, and thus attempted to isolate the definitional structure of this institution of civil law by a consistent analogy with the normative extracts found their place in the legislation on financial institutions. A Moldovan scholar saw a bank loan agreement by a voluntary act whereby a natural or legal person, called a lender, offers for the time being to a natural or legal person, called a debtor, on terms of repayment, urgency and payment; Extends the repayment period; gives the debtor a guarantee of its obligations; acquires assets, including property rights, for the debtor [1, p. 511].

The ideas expressed are defined by V. Burac as a reflection of the multifaceted nature of bank credit and, in addition to the main purpose of providing money in debt, on generally accepted conditions of repayment, urgency and payment, prescribes the possibility of
deferment of payment, which is characteristic of a commodity loan, while the acquisition of property in favour of the debtor may be closely intertwined with a lease.

The process of regulation of the area of a bank loan contract is saturated with external factors of development and fully integrates into the domestic legal system fixed periods that are not merely the beginning, the duration, and the end of specific forms of interaction, but they form, during the existence of credit, the behavior in this market of services.

Increased attention is being paid to the specific composition of bank lending.

Thus, a group of Moldovan and Romanian scholars has carried out studies on the role of the main regulator of the State’s banking system. Andrei Guștiuc, Radomir Gârllea and Mariana Prodan believe that credit facilities operated by central banks exist and are aimed at financing balance-of-payments deficits within the currency market [3, p.18]. Credit is then provided through three time-sensitive mechanisms:

– Central banks provide reciprocal short-term revolving loans (45 days) by setting up non-consecutive credit lines;
– short-term cash support (up to 3 months, twice-renewable) through another form of credit from central banks;
– call for tenders for long-term financial credits of different types, each for a period of 2-5 years [6, p.76].

Central banks (National Bank of Moldova, Central Bank of the Russian Federation) are undoubtedly the main administrators of bank lending. The administrative and regulatory functions assigned by the State to the country’s main bank are designed to respond adequately to the changing of global, including national, economic challenges. The arsenal of normative competence of the National Bank of Moldova, the Central Bank of the Russian Federation, discovers itself daily and fundamentally influences the banking life of these states.

The concentration of the financial instruments of the central bank and their use in the lending process is a defining element in the construction of the national economy.

In general, the central bank acts as the State institution for the creation and coordination of monetary policy in the economy. The central bank plays an important role in maintaining currency stability and public confidence in banks [4, 71].

Thus, State-legal regulation in the area of bank lending, including its component - a bank credit contract - leads to the systematization of this sector and to a consistency in the decision-making of its constituent entities.

Is such a system of supervision of bank lending justified, or is there an excessive approach to regulating the categories of civil law that are detected?

Restricting freedom of choice is not the best example of democracy in building civil society. But as soon as we distance ourselves from the problem with which the banking sector is sufficiently absorbed, and especially with its indispensable satellite, contractual lending, there is bound to be a financial loss comparable in destructive force to natural disasters. Therefore, the challenge for each market state is to find the optimal common ground leading from unnecessary and unwarranted administrative pressure to the theory of compromise. Their absence leads to an imbalance in society’s legal consciousness and a claim-based approach to the steps taken by the banking regulator.

Regulation in the area of bank credit contracts is often imposed, which naturally generates a lot of resentment on the part of consumers (borrowers). It would seem that Romania’s accession to the European Union might lead to legal controversy. And yet, in practice, such cases are known. In this context, it is very clear that there are disputes surrounding bank lending in that neighbouring State.

incorporated into the national legislation of Romania as an EU Member State and promulgated accordingly in the territory of that country, through a regulation by the national authority [5].

The Regulation came into force on 21 June 2010 and set a 90-day deadline for banks to notify borrowers of the need to appear in order to sign supplements to existing loan agreements. Most banks, in implementing the pre-notification process, used mail, including, in some cases, the provision of paper-based supplement projects.

Some credit institutions, guided by the general terms and conditions of service of clients, have chosen to notify e-mail or SMS. Many banks did not take these measures and did not explain to customers that there is a need to come to the bank’s office and sign supplements, emphasizing that supplements are universal and are to be signed by all borrowers without exception during the next visit.

Most customers considered such behaviour by the banks as a violation and resented the approach and mode of communication chosen, and expressed the need for direct prior involvement in the negotiation of existing credit terms, as provided for in the above-mentioned regulation.

From the point of view of consumer protection, a unilateral decision by the banks seems to be contradictory, despite the fact that the current legal framework of the EU, as well as that of Romania, a member of the union, has been a driving factor in the conflicts.

The Romanian legislator, in implementing the relevant EU Directives, should be guided by the fact that European Directives are not directly applicable to EU Member States and should be adapted to the national legislation of each country through the adoption of a specific regulation. But as we see in the above example, European Parliament and Commission directives are often transposed into national law without transposition.

Let’s go back to theoretical thinking about regulation in the area of bank credit contracts.

Social relations arising in the context of contractual bank lending, depending on their nature, which requires the application of an appropriate method of legal regulation, are governed by the rules of various branches of Russian law, principally by the rules of administrative law, financial and civil law. Therefore, bank lending in the legal aspect is the subject of study of various academic disciplines («Financial law», «Civil law», «Business law»). A new special course «Banking Law» has been developed in the conditions of market formation in Russia.

In the context of Russian banking law, civil-law dogma has taken its rightful place as the main theoretical regulator.

The Civil Code of the Russian Federation lays down the legal institutions of the credit contract and the commodity credit contract.

The views of modern researchers on the legal nature of a credit agreement are polarized:

- Some believe that the credit contract is a type of (variation) loan agreement - Vitrian V.B. Credit contract: concept, procedure of conclusion and performance. Moscow: Statute, 2005. c. 57; Karimulin R.I. Rights and obligations of the parties to the credit contract under Russian and German law. Moscow: TC Welby, 2001. c. 12.;


It seems that the legal nature of a credit agreement in Russia becomes evident already when considering the legislative definitions of that agreement.

According to the logic of the Civil Code of the Russian Federation, a loan contract is considered as a separate type of loan contract. This is evidenced by the possibility of a subsidiary application of the Civil Code’s rules on loans to the legal relations arising from
the credit contract, and by the fact that these legal structures are combined by the legislator in one chapter of the Civil Code of the Russian Federation.

Ruzakova O. A. highlights the features of the loan contract:
1) Only money, not things, may be the subject of a credit contract;
2) The credit contract must be in writing. Failure to comply with the written form renders the contract null and void;
3) The loan contract is a refundable contract;
4) The credit agreement is considered to be a consensual agreement, etc. [8, c.304].

The classification referred to in para. 1) is questionable, given that almost the majority of bank credit relationships involve non-cash claims.

A number of researchers base their work on what they consider to be one distinguishing feature - the consensuality and validity of loan and credit contracts. The view of scholars is that these institutions of civil law are homogeneous in the distribution of legal characteristics. The position noted is not entirely correct.

The rules of the Russian Federation’s civil legislation governing the area of a credit contract place a clear emphasis on the debate on the direct and indirect dependence of a given legal structure on a loan agreement. In the course of analysis, we see the dependence of a credit agreement on a loan agreement, but this dependence does not make comprehensive sense. This leads to the conclusion that the loan agreement, while rooted in the loan agreement provisions, deserves to be studied independently, due to the specific nature of the legal relations of the credit sphere.

Thus, the dismemberment of the mother’s idea of borrowing on subsidiary contracts (credit contract, bank credit contract, commodity credit, etc.) is justified and serves the purpose of analysis. Nevertheless, in the synthesis, these legal constructs also produce legal effects by being absorbed in the context of specific legal relationships that accompany, inter alia, the banking sector of the economy. For example, the fundamentals of a loan, in the context of bank lending, are endowed with the characteristics of a credit contract, which in turn does not offer any conditions unique to it, Draws the legal regulation from the general provisions of the civil law on loans. However, when a bank loan agreement with a purely institutional basis and a system of self-regulation is established, the relationship between the agreement and the general loan provisions is reduced to negation.

The peculiarities of the credit transaction were highlighted by S.Y. Witte, who characterized it with two main features. A party to a transaction that has given value without obtaining equivalence but retains only the right to claim equivalence at a known interval is referred to as a creditor and another that has given an obligation of return as a debtor [7].

We believe that the categorical approach adopted by S.Y. Witte has nothing to do with commercial lending, let alone banking. The latter is endowed with the characteristics of payment, and a party to the overdraft contract may not become a debtor if it does not take advantage of the right of credit and bears only the burden of payment of the service.

Prior to the global legal reform, the results of which were implemented in the current Moldovan legislation, including the Civil Code RM [2], in 2019, the lender side in the bank loan contract was exclusively banks. An analysis of the now-defunct article 1236 of the Civil Code shows that the provisions of the loan agreement were applied to the bank loan agreement to the extent that the provisions of chapter XXIV of the Civil Code did not stipulate otherwise or that the substance of the bank loan agreement did not imply otherwise. However, the GC PM rules make it clear that there is no indication of what kind of proprietary right the debtor has under a bank credit contract. The legislator thus gave the parties the option of choosing a right in rem in a banking credit contract.

The current version of article 1763 of the Civil Code of the Kyrgyz Republic contains a provision according to which, under a credit contract, a creditor undertakes to lend money
to another person (debtor) subject to repayment, payment of interest on its use and other related payments, or assumes any other obligation to acquire a claim or make a payment, to extend the term of payment or to make any guarantee.

Here we already see the obvious departure of the Moldovan legislator from the autonomy of the banking creditor’s contract and its reasoned autonomy. The official explanation of this legal structure calls for the adaptation of Moldovan civil legislation to the norms of the European Union and international law in general.

Thus, in the Republic of Moldova for several years there was a legal structure such as a bank loan contract (Art.1236 GC RM). At the same time, the Civil Code of the Republic of Moldova, prior to the reform of 2019, also provided for:

The Consumer Credit Contract (Consumer Credit Contract) under the Consumer Credit Contracts Act 202 of 12 July 2013 (Articles 1241, 1245 of the Civil Code);

The credit line in which the credit may have been extended by making available to the debtor a sum of money to be used in instalments depending on the needs of the debtor (articles 1239 and 1289 of the Civil Code);

Credit contract (Articles 114510, 1241-1243 of the Civil Code).

The Parliament of the Republic of Moldova decided to exclude the banking loan contract from the Civil Code of the country.

However, the question arises as to whether a bank loan contract could coexist with those contractual structures that found their place in a codified civil law after 2019, and specifically with a loan agreement.

Without denying the role of the credit contract as a broader civil-law contract, we are distinguishing the special specificity of the bank credit contract, which is determined by the characteristics of the constituent units, the characteristics of the legal relationship, the specific subject matter, the legal regulation, self-regulation. That is, by partially agreeing to the implementation of the rules on the credit contract in the current GC FM, we deny the necessity and arguability of excluding from its structure rules on the bank credit contract.

According to article 1763 of the Civil Code of the Republic of Belarus, in the current version, a contract of assignment of a right of claim may be considered as a credit contract, which in our opinion does not correspond to the specificity of bank lending, much less the subject matter of a credit contract, Like a bank loan agreement, there can be no loan (the reverse withdrawal is stated in article 1763, paragraph 4, of the Civil Code).

The dialectic inference resulting from the synthesis of two opposing theses generated by the RM legislator and the author of the present paper, Harmonious simultaneous coexistence of a credit contract and a bank loan agreement in the normative structure of the Civil Code of Moldova could become.

The Civil Code of the Russian Federation, in our opinion, needs the same dialectic unity.

4 Conclusions

This demonstrates the interest of Moldovan, Romanian and Russian scholars in the theoretical understanding of the banking loan contract and its elements, and leads to the following conclusions:

1. Moldovan and Russian science is involved in teaching about bank lending, bank credit contract and its elements.

2. The banking credit contract deserves an independent place in the codified civil law of the Republic of Moldova and the Russian Federation, due to its subjective nature, peculiarities of the subject, legal regulation and self-regulation, social significance, and a number of other conceptual peculiarities.
3. There is a correlation between a bank loan agreement and other civil contracts, which does not indicate a direct dependence on them. The evidence of the accessibility (subsidiarity) of a bank loan contract is the omission of civil law to allow the contractual structure to be made equitable.

4. The credit contract is mainly considered as science, while the banking loan contract is narrow in the study.

5. The Republic of Moldova reformed the civil code on credit, but wrongly declared the approach of not committing itself to a banking credit contract as a separate codified institution of civil law.

6. The Civil Code of the Russian Federation should strive to avoid a conservative approach in shaping its legal content, with regard to the regulation of credit law relations, including those regulating bank lending, Drawing on the experience of countries that have implemented such legal frameworks in national legislation, the conclusions of the doctrine and the challenges and expectations of modern economic processes.

The above testifies to the interest shown by Moldovan, Romanian and Russian scholars in the issues connected with the theoretical understanding of the bank loan agreement, its elements, and also allows to propose a scheme of basic loan relations and make a number of conclusions.

Table 1. Conclusions.

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<th>№</th>
<th>Conclusions</th>
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<tr>
<td>1</td>
<td>The doctrine on bank lending, bank loan agreement and its elements is cultivated by Moldovan and Russian science</td>
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<td>The connection of a bank loan agreement with other civil contracts exists, which does not indicate its direct dependence on them. The signs of accessory (subsidiarity) of a bank loan agreement are an omission of the civil law, which prevents this contractual structure from being elevated to a fair status.</td>
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