THE ADAPTATION OF ROMANIAN COMMERCIAL LEGISLATION TO THE EXIGENCY IMPOSED BY THE EUROPEAN UNION

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Abstract: *Although Romania's relationship with the European Communities dates since the 60s, only after December 1989 the adoption of Romanian commercial legislation was introduced at European standards, being finalized in 1991 with the commerce and cooperation Agreement. The aquis in this domain covers legislative categories like: the right of commercial societies, the application of intellectual propriety rights while fighting against piracy and forgery. The politic in the area of competition regulates the elimination of agreements between firms to diminish competition and dominant position abuses, the monitoring of state aids through the interdiction state subvention act in order to maintain afloat unviable companies in order to have false national champions.*

Key words: *commercial, legislation, competition, European Union*

1. General concepts

Through its integration in the European Union, Romania became part of the most effective system of political and economical organization known in history, EU having today a series of characteristics which differentiates it from the classic international structures, bringing it closer to a federal one: one single currency, one single external border control, one single custom system, a budget derived mostly from its own resources, a decisional capacity on the territory of the member states in its arias of expertise, mixed or exclusive, common policies and a Legal system prevails in front of national judicial norms[210].

But how did this step influenced one of the most important domains in the Romanian Legal system, the Commercial Law? The answer to that question will be presented in the pages of this analysis. But, before that, one must make a few conceptual specifications, as well as, positioned in time, Romania's relationship with the Union, to be able to establish a solid base for the presentation in the following sections.

The denomination of Commercial Law suggests the idea that the Commercial Law is an assembly of judicial norms, which regulates commerce. This idea is in part correct. But, to fully understand the idea of Commercial Law it's necessary to understand the notion of commerce.[211]

Commerce is an occupation, which through its long and repeated practice gained the characteristics of a profession.[212] Etymologically speaking, the term of ,commerce,, is a juxtaposition of the words: cum = with, and merx = merchandise, therefore, comercium (operations linked to merchandise or an activity regarding merchandise).

The subject which exerts the commerce activity, is, usually the merchant (merx- mercator).

Starting with Roman Law and throughout the present, the word „ commercial „ suffered in its judicial acceptation, which differs from free speech, a semantic evolution: from the right to participate to judicial operations regarding the circulation and distribution of goods, to production and commerce in its own right.[213]

As the specialized doctrine shows, commercial Law is that specific branch in Private Law, which contains the unitary assembly of the judicial norms, which regulates social patrimonial relationships and personal, without any patrimonial value relationships from the sphere of commerce activities, relationships which are

[210] Ion Jinga, Uniunea Europeană în căutarea viitorului. Studii europene, Editura C.H. Beck, Bucureşti, 2008, p. 136
[211] Stanciu D.Cărpenaru, Drept comercial român, Editura All Beck, Bucureşti, 2000, p. 1.
[212] Smaranda Angheni, Magda Volonciu, camelia Stoica, Drept comercial, Editura All Beck, Bucureşti, 2004, p. 1.
[213] Elena Cârcei Drept comercial român, Curs pentru colegii universitare, Editura All Beck, Bucureşti, 2000, p.1.

born, usually, between persons who have the quality of merchant and who are on an equal judicial position. [214]

Even from the establishment of the European Economic Community, commercial politic was included in the ,, common politics ,, category, along side the common agricultural politic and the common transport politic.[215]

According to the Treaty of Rome, one of the Community objectives was the creation of custom union between the member states in order to stimulate commerce between the members, to promote better use of available economic resources, the reinsertion of Germany in the international system and to build commercial relationships strong enough to withstand against the Soviet pressures and the competition from the USA. The Custom Union, which proposed the progressive elimination of the barrier tariffs and the quantitative restrictions in commerce between member states, as well as the introduction of uniform commercial practices with intermediate states, was realized by the end of the 60s. [216]

With the Treaty of Maastricht, common commercial politic becomes the exclusive expertise of the Union. In virtue of this principle, the European Commission gains the status of unique negotiator in the relations with intermediate states or international organizations, according to the mandate given by European Union Council. Subsequently, the Treaty of Amsterdam created the possibility for the Council to further extend the negotiation expertise of the Commission into the services sector and that of intellectual propriety.

The treaty of Nice brought significant modifications, specifying that in the new 5th paragraph of art. 133 ETC that the 1st and 4th paragraphs are applied also to negotiations and the signing of agreements in the commerce and services domains and the aspects with commercial character of the intellectual propriety right, finally resorting to the majority qualified procedure in order for the Council to adopt decisions. [217]

In regard of our countries relationships with the European Communities, first of all, and then with the EU, one must say that they are quite old, existing from the 60s, when the first negotiations began between Romania and the European Economical Community (EEC) which beheld the closure of some technical and different economic sector arrangements.[218] In the 80s, even a commercial agreement was signed. Subsequently, the application of this agreement was suspended, the motive being the transgression of the freedoms and rights of the Romanian citizens, in the period of labor, socialist and then communist regime. The suspension lasted until1988. [219]

At 25 of June 1988, the common Declaration was given between the European Communities and COMECOM, which constituted the beginning of new economical and political relationships with the Central and Eastern European countries. Following that, commercial and cooperation agreements were closed between the period of October 1988 and March 1991, with the Eastern countries including Romania, with which the agreement was signed for three years. In 1992, Romania benefited of the removal of the quantitative restrictions, to enable an easier access in the Community market.

In 1991, the commerce and cooperation Agreement was signed and entered in use. In the same year, the application of the PHARE program was extended for Romania, program launched by the EU for economical and social reforms with non-reimbursable funds, in Central and Eastern Europe.

On the 30th of June 1995, the Additional Protocol to the European Agreement was signed, and went in to use, according to its stipulations at the 1st of August 1996.

Romania made its petition to adhere to the EU on the 22nd of June 1995. [220]

At the European Council from Helsinki, on December, 1999, Romania participated, being part of the second group, was decided the start of the adhering negotiations with Romania, and on the 15th of

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[214] Smaranda Angheni, Magda Volonciu, Camelia Stoica, op. cit.,p.2.
[215] Ion Jinga, Andrei Popescu, Integrarea Europeană. Dicționar de termeni comunitari, Editura Lumina Lex, Bucureşti, 2000, p. 143-144.
[216] Luciana-Alexandra Ghica(coord), Enciclopedia Uniunii Europene, Editura Meronia, Bucureşti, 2007, p. 114.
[217] Ovidiu Tinca , Drept comunitar material, Editura Lumina Lex, Bucureşti, 2003, p. 367.
[218] Cristina Arvatu , Daniela Ionescu ş.a. , România şi Uniunea Europeană, Editura Institutului de Ştiințe Politice şi Relații Internaționale, Bucureşti, 2004, p. 9.
[219] Gheorghe Iancu , Instituții de drept constituțional al Uniunii Europene, Editura Lumina Lex, Bucureşti, 2007, p. 315.
[220] Gilbert Gornig, Ioana Eleonora Rusu, Dreptul Uniunii Europene, Editura C.H.Beck, Bucureşti, 2006, p. 163.

February 2000, the negotiations regarding the adhering to the EU started, on the base of the recommendations made by the Commission in its rapport from October 1999.

Romania's adhering negotiations with the EU were complex and were officially over in the evening of the 8th of 2004, with the occasion of Romania's Adhering Conference to the EU from Bruxelles, were, together with Bulgaria, the editing process of the Common Treaty for adhering to the EU was launched, the closure of the adhering negotiations being decided as a cause of the temporarily closure of all the negotiation chapters. With occasion it was decided that the date of the adhering will be the 1st of January 2007.[221]

Romania's adhering treaty to the EU was signed at Luxembourg, on the 25th of April 2005 and contained rules for Romania's and Bulgaria's adhering to the EU

At the 1st of January 2007, Romania closed the long path to European integration, becoming a member of the EU.

2. The implications of Romania's adhering to the EU over Commercial Law

2.1. The Commercial Law of commercial societies

The aquis of this domain covers very different legislative domains: the Commercial Law of commercial societies in a strict sense, respectively the directives regarding the knowledge of the identity of those whom are in powered to represent a society, the financial situation of the society, the growth, the maintenance, and the diminution of the capital of action based societies, the law of accountancy, the intellectual and industry propriety rights protection, as well as the regulation that replaces the Bruxelles Convention over jurisdiction and the application of judicial decisions in cases of civil and commercial nature and the Rome Convention regarding the law of contractual obligation.

The main aspects used in this domain are [222]:

1. the industrial propriety protection rights for pharmaceutical products in the limits of the extended Union;
2. the application of intellectual propriety rights, with the purpose of fighting against piracy and counterfeiting
3. the common commercial brand- the Union proposed the automatic extension of existing common brands within the territory of the candidate countries.

Romania has accepted full heartedly the common aquis without requesting a transition period or derogation and engaged itself to apply it until the adhering date.

Regarding the Commercial Law of commercial societies, the national installment of the common aquis was finalized at the 31.12.2004, with the current measures: the transfer of the Register of Commerce to the Justice Department; the anticorruption legislative package; the laws regarding commercial societies, banking bankruptcy, the assurance companies and the their surveillance; the guaranties made in order to protect the interests of the associates and intermediates. [223]

International accountancy standards were introduced (for the realization of financial reports comparisons, a general balance presentation frame will be applied, also to the profit and loss account), the Chamber of Auditors of Romania was introduced, and the common financial audits legislation was taken and a professional training program was launched for 500 specialists.

The industrial and intellectual protection rights was composed of measures regarding: judicial protection for software programs, of cable and satellite transmissions and also the data bases; the Romanian Office for Author Rights was introduced-ROAR; measures to combat piracy were taken; the system of common brands was extended in Romania, the registration of patents, the medicine protection certificates, drawings, industrial models and integrated circuits systems. The assurance of these rights is effectuated also in the custom procedures.

Regarding the intellectual propriety right, the 3rd annex of the adhering treaty foresees the Regulation application regarding:

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[221] Gheorghe Iancu , op.cit., p.318.
[222] A se vedea informațiile publicate pe site-ul www.infoeuropa.ro.
[223] Ion Niță , Integrarea în Uniunea Europeană, Editura Lumina Lex, Bucureşti, 2005, p. 31-32.

- the common commerce adhering brand
- the creation of supplementary certificate for medicine protection (for those with a patent)
- the common industrial drawing and models (to have the same effect through out the community)

In the 5th annex it's foreseen that, the patents or a protection certificate owner may prevent their import from Romania if such a protection had not been obtained before the adhering ,,.

The Romanian legislation is compatible with the dispositions of the Rome Convention (1980) regarding the law applied to contracts; with those of the Bruxelles Convention (1968) regarding to jurisdictional competence, the acknowledgement and the execution of foreign judicial decisions in the civil and commercial matter and the bases of judicial competence were laid at the closure of the contracts with the consumers, and the labor and assurance contracts.

2.2. Politics in the competition domain

The aquis regarding competition it is based on the 31st article (state monopolies with commercial character) the 81st and 82nd articles (rules applied to firms), the 86th article [224] (state firms and firms with special or exclusive rights) and the 87th and the 88th articles (rules applied to healthcare) from the EC Treaty , as well as the 65th and the 66th articles of the CECO Treaty, which expired in 2002.The control of fusions is realized with the aid of the 4064/89 EC Regulation regarding fusions (amendments included) . In regard of healthcare, a part of the relevant aquis was discussed in the framework of the adhering negotiations and in other chapters of negotiations, respectively Transport, Agriculture and Fishing. [225]

The main aspects of the common aquis regard [226]:

- the elimination of agreements between firms, which have diminished competition; also, the abuses of dominant position (for example, establishing prices agreements, of production limitation or the sale by, preventing the plummeting of prices, of reallocation of markets or suppliers);
- the control over fusions and over the firm agreements, in order to prevent a market domination and competition distortion (for those who have business figure of over 200 000 euros or have over 5% of the common market must be notified to the EC). These regulations are also known as antitrust regulations;
- the opening of the public utilities market, as is the case of postal services, railway, electric and gas energy, telecommunications etc. If a country gives a national company the right of monopoly to officiate services of public interest, the EC must watch over, that these special rights will not exceed what is necessary to fulfill the current service (reasonable quality and convenient price)
- the monitoring of the state aids respectively the interdiction to give aids to maintain afloat unviable companies, in order to have false national champions or to create advantages for certain firms. Some types of public assistance including financially are considered compatible with the objectives of the Unique Market if some of the criteria's analyzed by the EC are satisfied from one case to another (encouraging the appearance of IMMs, the development of backward regions, the cooperation with other firms from the EU, the encouragement of research-development activities etc.);The state aids at the EU level are different regarding the country; between 0.5% and 1% of the IBP.
- As in other fields as well as in the one of the common aquis competition was gradually implemented, starting from 1951 when through the CECO the agreements that distortioned the competition in the domain of steel and coal were interdicted, and then after the creation of the EEC , firms were obligated to (in 1962) to notify the Commission the agreements which restricted competition and had influence over commerce inside the community; in 1978, 1983-1984 some types of contracts were regulated which had an influence over the competition etc.

[224] Augustin Fuerea, Drept comunitar al afacerilor, Editura Universul Juridic, Bucureşti, 2006, p. 184.
[225] www.infoeuropa.ro
[226] Ion Niță, op. cit.p.35-36

Romania opened the negotiations for this chapter in November 2000 and succeeded to finalize it four years later, in December 2004, being amongst the last to be finalized. The main issue was the problem of state subventions, knowing that many firms (sadly also private ones) accumulated huge debts to the state and through all kinds of redistributions are aided in order for them to stay afloat. Having the memory of an uncompetitive economy in which the majority of the active population worked, Romania couldn't conform itself in such a short period of time to the exigency's required by the common aquis without provoking large social convulsions (mass unemployment, caused by the closure of ineffective firms). The solution was the assimilation of this aquis alongside the restructuring of the economy, but until its adhering, Romania accepted it full heartedly and solicited a transition or a derogation period.

The law of competition and that of healthcare amended at the end of the year 2003 assures a harmony with European legislation in the treating and regulation mode of firm agreements, concerted practices, dominant position abuse and economic concentration control.

The Competition Council had a satisfactory activity in applying the antitrust law, the restrictive accords, the dominant position abuses and the control of fusions.

In the healthcare domain multi sector regulations were adopted, as well as referring to guaranties, risk capital, and the transparency of state firms, of the regional aid funds or those to support the IMMs, the restructuring and rehabilitation funds and those for environment protection and professional preparation. Also, it was regulated the sale of lands and buildings owned by the state.

Giving aid to sensitive areas of the economy and to backward regions is present, according to the EU regulations, even after adhering to the EU will cause Romania's level of development to be after many years (15-20) below common average and it will be appointed in the previews of the 87th article of the EU Treaty.

Regarding the politic evolving the competition area, the Treaty of adhering is composed by:

- at the 5th annex its mentioned the obligation to transmit the list of state aids to the Commission and other information its evaluation and in case they are not contested in a period of three months, they are considered compatible with the common aquis, and if not, the decision to investigate will be taken, the following effects taking place after the adhering (if the decision is negative, Romania will have to take all measures into consideration to get back the aid from the beneficiary, with the current interest.)
- in the 7th annex, regarding fiscal aids and the restructuring of the steel industry, its mentioned that:
- for backward regions, the state will continue to give profit tax exemption for the firms which received a permanent investor certificate until the 1st of July 2003; the exemption will be until the 31.12.2008 for three of the backward zones: Brad, Valea Jiului and Balan, until the 31.12.2009 for 22 backward zones and 31.12.2010 for other three: Cugir, Zimnicea, and Copsa Mica.
- The aids for regional investments cannot exceed 50% or 75% in case of the IMMs;
- One can give exemptions to the dues in case of free zones until the 31.12.2011to the firms whom signed the contract until the 1st of July 2002;
- The restructuring of the steel industry has in view: under no circumstances aids will be given to the firms whom entered the national restructuring program in 2005until the 31.12.2008(the end of the restructuring period); the net reduction of the production capacity for the period 1993-2008 is a minimum of 2.05mil.tones (in all the firms modernization measures are necessary , to increase quality, to reduce costs, to respect the environmental conditions etc.); the EU Commission and Council will monitor at close range the application of this program, in this case Romania being obligated to send half-yearly rapports and in the case of transgression, the reimbursement of these aids will solicited, even recurring to the safeguard clause previewed in the 37th ad 39th article.

2.3. Other domains

If the main aspects with an impact over the Romanian Commercial Law have been integrated in the two issues studied before, given the complexity and the ampleness f the phenomenon's that are linked to

Commercial Law, there are other domains in which the Romanian commercial legislation had to change or adapt to the EU regulations. These were negotiated by Romania with other chapters, like: the free circulation of goods, of services, of persons and capital, of transport, of taxing, regarding the EMU, energy, industrial politics, small and medium firms, telecommunications and information technology, audiovisual, environmental protection, the consumer, the custom Union etc. Synthesizing all the aspescts referring to these domains and their impact over the Romanian Commercial Law, one must show that in its majority, the common aquis was taken and the Romanian legislation has changed according to it, and the periods of transition obtained by our country were relatively few:

- 5 years, until the 1st of January 2012, for the installment of the nr.97/9/CE Directive regarding the schemes to compensate the investors. The minimum level of compensation will reach 20.000euros at the end of the transition period (if the investment exceeded that sum);
- 7 years for the acquisition of the agricultural terrain, forests and forest terrain by the UE and the EES citizens.
- Applying the tax exemptions in the backward zones were the investors have gained backward zones investor certificate before the 1st of July2003, will continue along the existence of the backward zones: for three of them until the 31.12.2008; for 22 zones until the 31.12.2009; for other three zones until the 31.12.2009;
- Until the 31.12.2011,due exemptions will be applied for free areas, for the firms whom have signed the commercial contracts with the Free Areas Administration before the 1st of June 2002;
- 4 years, respectively until 31.12.2010, to apply, in regard of Romanian vehicles which have strictly internal commercial activities, the minimum taxes previewed in the 1st annex of Directive nr. 1999/62;
- The integral application of previews regarding the maximum payload of Directive nr.96/53, which establishes the maximum dimensions in the national and international traffic and the maximum payload admitted in the international traffic for 7 years, until the 31,12.2013;
- 3 years, until the 31.12.2009, in order to reach the minimum taxation for cigarettes previewed in the new aquis the Council Directive nr.2002/10/EC regarding cigarettes.

3. Conclusions

The commercial politics promoted in the past 15 years by the EC was focused on three major components [227]:

- the integration and harmonization between member states, through the introduction of the Unique Intern Market, on January 1993;
- the rapid extension and the augmentation of the complexity of the preferential commercial relationships with other countries and regions(in which the signing of the European agreements with countries from Central or Eastern Europe);
- the active participation in the multilateral efforts to liberate international commerce, shown by the contribution given to the rounds of negotiations from GATT/OMC.

These coordinates have made the Union a first rank element in the economic relationships around the Globe, but also, to open up new horizons to the commercial activities inside the Union. In order for them to be successful, a legislative frame is needed, adequate to the ever changing reality. That's why, the common decision factors have continuously brought new legislative initiatives which enlarges or modifies the common aquis in the field of commerce. Knowing this, one might say like a conclusion to this analysis, that the Romanian Commercial Law suffered many transformations brought by our countries adhering to the Union, but also, that these changes will continue perhaps in an equally sustained rhythm, after the adhering, for the only purpose that profound transformations have occurred in the common legislation. In order to resolve the frequent changes in legislation, which especially in Commercial Law represents an impediment to the well functioning of things, the Romanian legislator must not wait for signals to come

[227] Mirela Diaconescu , Economie europeană, Editura Uranus, bucureşti, 2004, p. 61-62.

from Bruxelles, but to make its own analysis of the current trends and to create legislative frame harmonized with them.

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