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CONTENTS

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Republic of Moldova: First-Wave Reform of Security Interests Legal Framework

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Abstract

Stakeholders ought to conduct secured transactions under the auspices of an effective and foreseeable law. The legal rhetoric of the new amendments to the security interests laws capture this underlying endeavour by demystifying a number of legal concepts, notably that of pledge over funds in bank accounts. The amendments also further the legal regime of the pledge over receivables, proceeds of disposition, subsequent pledge, and introduce new self-help enforcement measures. This piece analyses the reasons that propelled the legislative swooping in, amongst which fall, notably, the paucity of the movable pledge use in securing debtor's obligations, the lack of a cogent rationale for having numerous Registers in force for pledge registration and the readily obtainable annulment of enforcement procedures.

Keywords:

Republic of Moldova, collateral, international best practice, financial sector, law-making, World Bank, goods, enforcement, self-help, deposit, bankruptcy, Charge Registry, business sector, reform

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1. INTRODUCTION

A 2010 World Bank Report[1], issued after the consultation of government authorities, private sector stakeholders and market participants, found that "[w]hile the secured transactions framework in Republic of Moldova is generally sound, significant loopholes and weaknesses remain."[2] Concurrently, 39 per cent of firms identified access to finance as a major constraint, and many of them suffered from little or no access to external financing.[3] Consequently, the great bulk of firms relied upon retained earnings to compensate some of their inability to gain access to affordable credit to finance their activities and growth.[4]

Novel and innovative approaches to legal issues could single-handedly reshuffle financial institutions' outlook on movable collateral, which in consequence would influence corporate sector's growth. For a glimpse into the role of the movable collateral in the financial sector in Republic of Moldova, consider that, in 2010, it was composed of 15 active banks with total assets of around 39.3 billion Lei,[5] out of which 19 billion Lei in loans.[6] As of December 31, 2013 total assets value increased to 76 billion Lei, 31.0% more as compared to the end of 2012, and indicated a persistent trend of banking-activity expansion.[7] As a result of the recent turmoil in the Moldovan banking system and of the bankruptcy of 3 banks, in 2017, the total assets of the banks constitute 75 billion Lei with 34.2 billion Lei (45.6 per cent of the total assets) in loans.[8]

A banking sector survey conducted prior to the passing of the legal reform amendments concluded that the immovable collateral spanned 51 per cent (in land, commercial and residential assets) of the total collateral;[9] by contrast, only 18 per cent of the total collateral constituted movable pledge.[10] This chasm pointed to a number of social inequities best explained by the tenet according to which most laws influence, to a greater or lesser degree, human lives;[11] this holds perhaps truer in the case of loan related regulations. The hegemony of immovable over movable collateral translated into the fact that those who did not own immovable properties were virtually thwarted from substantive lending,[12] which made their business-growing endeavours slippery at best. Thus, the stance of the Moldovan lawmaker was bound to flit erstwhile dogmas and resurrect economic equity. As a matter of modern socio-economic policy, one need not necessarily own immovable properties to secure affordable financing. An opposite calculus would carry the ungainly consequence that wealthiness equals, is brought by or relates to immovable property.

In Republic of Moldova, the transformation has gained momentum in 2014 when lawmakers enacted the Law on Amending and Supplementing Certain Legislative Acts No. 173 dated 25.07.2014 (A173), which substantively altered the Law on Pledge No. 449-XV of 30.07.2001 (P449) and a number of related laws, notably Tax Code No. 1163 of

24.04.1997 (T1163), Enforcement Code No. 443 of 24.12.2004 (E443) and Law on Capital Market No. 171 of 11.07.2012 (C171).

A173 tackled a panoply of legal issues, among which reducing the costs of creating security, avoiding the duplication of registrations in different Registries (e.g. vehicles), introducing effective self-help measures, expediting enforcement procedure and imposing penalties for abuse or misuse of collateral etc. A173 introduced new kinds of pledges with the objective to bolster stakeholder's reliance on movable pledge and fit new demands. Internationally, Germany and Japan are good examples of jurisdictions to allow more extension on the kinds of security that can be created and on the manner in which it can be enforced.[13] On the other side, France, Italy, Spain, and a number of Latin American countries have been less permissible.[14] Lastly, policymakers consequentially debated the bipolar paradigms for the moment of creation of pledge; here, as we develop in the respective Section, lawmakers departed from international best practices.

The research question of this piece concerns the way in which A173 influenced the financial and the business sector. This question subdivides in a set of post-amendment reflections: what was the intent of the amendments? Did the amendments provide effective answers to key concerns? Is there congruity between legislative intent and practice? Section I of this piece provides a brief background necessary for a better understanding of the context of this topic. The remainder of this piece will discuss overarching issues and will untangle a number of questions related to the practicalities of each of them.

2. BACKGROUND

In contrast to other jurisdictions,[15] the possessory and non-possessory pledge dichotomy has pervaded the Moldovan legal system since the institution's outset; any movable or immovable, tangible or intangible goods can be object of the pledge.[16] For illustration, stocks of goods, equipment, installations, agricultural machinery, a deposit certificate, warrant or bill of lading can be object of a pledge.[17]

As Professor Lévy explains, the pledge is a double-facet institution. That is, if the debt is outstanding, the secured goods guarantee repayment, whereas, if the debt has been repaid, the creditor has a restitution obligation.[18] In the beginning, the guarantee key feature of the pledge was only conferred by the *ius possidendi* right of the creditor.[19] The possessory pledge – in many jurisdictions known as pawn – was acclaimed for its inherent constraining factor; the possessing creditor was barred from using, disposing or enjoying the fruits of the pledged goods.[20] In some cases, creditors and debtors would negotiate a clause that enabled the creditor to enjoy the fruits in exchange for an interest-duty exemption.[21]

Over time, creditors have become cognizant of the positive economic impact entailed in permitting debtors to preserve possession of the encumbered assets. As it is in the interest of the creditors too that their debtors be economically prosperous, notably to enable a timely loan repay, a non-possessory pledge has taken the reins of modern arrangements.

Remarkably, the "pledge" term that P449 operates with substantially differs from the "ordinary pledge."[22] Most commonly, foreign jurisdictions that have enacted similar laws to that of P449 use the "pledge" term to refer to security rights arising from possessory movable assets, by dispossessing the debtor of the encumbered asset.[23] For illustration, in English law a "mortgage" transfers the property to the creditor, a "pledge" security right confers the possession of the secured assets, and a "charge" gives the creditor the right to seek indemnification in court, in the case of debtors' default.[24] In our legal system, the "pledge" is twofold. On the one hand, the "pledge" is probably situated somewhere in between the English "pledge" and "charge." That is, a pledge can be either non-possessory (most commonly) or possessory, the former permitting the debtor to continue enjoying the possession of the secured assets. In case of default, upon receipt of the enforcement notice, the debtor shall convey to the creditor the possession of the secured assets, subject to several legal solutions available to the creditor.[25] On the other hand, the term "pledge" has a rather generic meaning, employed to refer to all types of securities, including the possessory and non-possessory movable pledge and the immovable pledge (mortgage).[26] Notoriously, regulations and judges alike use the term "pledge" to refer generally to all kinds of securities.[27] Notwithstanding the terminological integration, the immovable pledge (mortgage) is subject to a different regulatory framework,[28] thus P449 is applicable in a complimentary fashion only.[29] For this reason, mortgage will not be subject of discussion in this piece.

There are two prominent readily discernible policy features in the new amendments. On the one hand, A173 augments secured transaction numbers by employing a transaction-flexibility approach. That is, it allows the grantor and security creditor a significant margin to tailor security arrangements in ways that best suit their pursued interests.[30] For instance, grantors can pledge their funds on bank accounts[31] to the benefit of their secured creditors while retaining the disposition of the funds therein (non-possessory pledge). Mandatory rules are set forth to regulate overarching areas – occupying thus the role of a sentry to public order – such as the form of the security agreement, the moment of pledge creation and priority, and object of security rights. On the other hand, the "weak-party protection" policy sequentially shifts sides to benefit both the grantor and the secured creditor. It is, therefore, more a matter of time situation that makes such protection available to each side of a security agreement than the contractual quality *per se*. Specifically, P449 affords increased protection to the grantor at the moment of conclusion of the security agreement, and, respectively, to the secured creditor upon

grantor's default. For instance, the provision that allows the grantor to negotiate the non-extension of the pledge over insurance indemnities, proceeds, and accessory assets is favourable to the grantor and is situated in time at the conclusion of the contract. On the contrary, the provision that allows the secured creditor to request early performance is ostensibly in the secured creditor's benefit. The rationale of this protection shift is that it is not always easily determinable who the weak party of a pledge agreement is. This might depend on a number of factors, notably time situation and specific market conditions such as demand and supply ratio etc.

Overall, the purpose of the reform was to increase access to credit by (i) expanding the type of assets which can constitute the object of movable charges; (ii) expanding the regime of publicity and priority among creditors, beyond the movable pledge, to other financial instruments with a similar purpose, including the financial leasing; (iii) improving the protection of commercial interests of both creditors and pledgors, by striking an adequate balance of interests; and (iv) streamlining the process of recovery of secured loans to prevent bottlenecks at the stage of enforcement and encourage creditors to accept movable charges to a larger degree.[32] Moreover, a number of concerns were addressed, particularly referring to (i) the lack of a cohesive mechanism to obtain input VAT credit on the purchase of the pledged asset within enforcement – in cases where the pledgor refused to issue a tax invoice to the buyer; (ii) the risk of fraudulent transactions involving secured assets, following the decriminalization of the sale of the pledged assets without creditor's consent; (iii) disuse of certain types of movable pledge (enterprise pledge) or under-use thereof (notably the pledge of body of assets and pledge of receivables had scarcely been the object of a security agreement); and (iv) the impossibility of registering security rights of concurring secured creditors.[33] These reasons single-handedly justified the amendment of P449, for they posed a serious risk of imperilling the efficiency of secured transactions. Systemic legal problems that required special attention referred to (i) object and scope of pledge, (ii) creation of the pledge and publicity, (iii) subsequent pledge, and (iv) enforcement.

3. OBJECT AND SCOPE OF A173

As Lévy judiciously observes, goods change – what could undoubtedly serve as attractive pledge at one point in time, loses its flashiness to later creditors.[34] In the original version of P449 (2001), the secured transactions framework fostered the advent of innovative pledges, among which *future assets* and the pledge on a *body of assets*.[35] Despite those innovations, certain pledges contained vague and misguiding language that made the legal regime thereof unclear.[36] Thus, the most important challenges A173 was called on to give answers to were the pledge on funds in accounts[37] (2.1., below), the pledge on receivables (2.2., below), and the proceeds of disposition of a pledged asset (2.3., below).

3.1. Pledge on Funds in Bank Accounts

The concept of pledge on funds in bank accounts[38] was first introduced in the secured transactions framework in 2012.[39] At that time, the concept was rather confusing, notably due to the fact that it could only be constituted by way of dispossession. As noted above, secured creditors became increasingly mindful of the fact that dispossessing the clients of their assets (i.e. funds) shackled their activity, which in turn negatively influenced the debtors' repayment capacity. Additionally, lawmakers observed that funds in accounts are rights and not things, thus the pledge thereon ought to be non-possessory, and not possessory.[40] Considering these reasons, it follows that the pledge on funds in accounts would have remained void of meaning had A173 not changed its course by stipulating the non-possessory pledge as an alternative.

A173 affects the pledge on funds in accounts in a number of ways. First, it untangles certain aspects of the bank's right to set-off and the confidentiality obligation in relation to prior pledges.[41] Second, it enlarges the scope of pledge over future money introduced in the bank account. Finally, it consecrates increased protection for the secured creditor. The latter measure was galvanized by an urge to allay enforcement-related concerns and thus made the pledge on funds in bank accounts a reliable security to the creditors.[42] Consider this: Where the security right is a tangible movable asset, creditors dispose a vast array of protection measures, including (i) the right to follow the pledged asset into the hands of transferees; (ii) the creditors' rights automatically expanded on the replacement assets or equivalent compensation persist in the event of goods' transformation, extend to the goods resulted from the union of several movable assets, some of which have been pledged, except when derogation is permitted; and (iii) the person acquiring the ownership of the secured assets is accountable to the secured creditor, if the secured creditor has not consented to the transfer. In the case of pledge on funds in accounts, none of the above measures is applicable. So, what protection measures could effectively respond to a creditor's reasonable expectations of legal protection? The response of lawmakers was to introduce a new tool – the control agreement.[43] The control agreement has two functions. First, it is a protection measure in case of pledgor's default. Second, it is a tool that ensures third-party effectiveness.[44] That is, the control agreement need not be registered in the Registry of Charges of Movable Assets (Charge Registry). Its effectiveness against third parties is ensured by the creditor's control over the account, including the current accounts[45] and the deposit accounts[46]. In the case of the subsequent pledge, priority is determined by reference to the moment of the conclusion of the control agreement. The lack of formalism, in this case, might result costly and cumbersome, since it requires tripartite negotiations to enter into a control agreement.[47] Nonetheless, there is a major benefit to this, namely that the pledge made public by way of the control agreement gives the secured creditors the privilege to effect their rights with preference over secured creditors who made their

pledge rights public by way of registration.[48] Some argue that although the control agreement is not as transparent a method of publicity as registration in the Charge Registry, this does not worsen the already disadvantageous position that third parties occupy.[49]

This kind of pledge can be established in favour of the depositary bank, a third bank or a non-banking creditor. The control agreement is either a tripartite agreement concluded between the depositary bank, the pledgee and the pledgor, or a bilateral agreement if the pledgee is the depositary bank itself, whereby the bank where the account is opened undertakes certain obligations toward the pledgee.[50] If the debtor is acting in *bona fides*[51] – that is, repays the loan as set out in the repayment schedule –, the purpose of the control agreement is reduced to the monitoring function. On the contrary, if debtors default on their obligations under the control agreement, the secured creditor will have priority to the account's funds with preference to other creditors. Typically, the account holder is free to dispose of the funds in account until the default occurs. However, the parties may agree to limit or withdraw the access of the account holder to the account where there are economic reasons to do so.

Instituting a pledge on the account's funds has a number of advantages and disadvantages. From the pledgee's perspective, there are several advantages, namely that (i) typically, the creditors receive a first-priority pledge that entitles them to claim their rights with preference over other creditors; (ii) the secured creditors may ask for early enforcement if other creditors counterclaim it; (iii) if the bank fails to notify the secured creditor of any counterclaims, the bank may be held responsible for damages; (iv) it is a means of collecting the indemnification due to the debtor; that is, in case the same secured creditor has concurrently created a pledge on other kinds of pledges (e.g. has created a pledge over pledgor's funds in accounts and vehicle) and if the other kind of pledge has been damaged and indemnities are due to the pledgor, the secured creditor will be entitled to ask that the due indemnities be paid to account,[52] which will be encumbered in the favour of the secured creditor within three days of the request, subject to an "early performance" sanction. Downsides, from the pledgee's perspective, are (i) the prevalence of the bank's right to set off renders inefficient any contractual clauses that stipulate otherwise; (ii) under the law, the debtor does not own indemnities if the bank effects its set-off right (thus a contractual provision is highly recommended); (iii) since this kind of pledge does not require registration, the lack of possibility of obtaining, from an entrusted authority, a list of persons that could potentially counterclaim or raise concerns (thus a condition precedent requiring that the pledgor obtain from the depositary bank a document (form of acknowledgement) stating that no other pledges on the funds in accounts, to their knowledge, exist, is highly recommended). From the pledgor's perspective, it affords the benefit of enjoying the possession of the funds, unless the parties have agreed otherwise.[53]

A173 indicates that upon receipt by the depositary bank of the enforcement order issued by the pledgee (that is, if the pledgee is other than the depositary bank), the bank shall refuse to execute the pledgor's orders on debiting the funds, if after such charging the account's balance will be reduced below the balance of the secured obligation indicated in the enforcement notice.[54] With respect to the latter, if the bank breaches its obligation not to execute the pledgor's orders, it will be jointly liable for the damage caused to the pledgee.[55]

As mentioned above, A173 provides priority to the depositary bank's right to set off.[56] Noticeably, even after the amendments, P449 does not generally regulate the set-off.[57] Having entrenched roots in many jurisdictions,[58] the set-off right entitles the depositary bank to set off any debtor's obligations towards it in preference to the rights of other creditors of the grantor, whether secured or unsecured.[59] There is a sharp distinction between a pledge right over funds in accounts and the right to set off that arises under the law. The latter is not a security right, and thus it is not subject to any public registration requirement.[60] The right to set off and the pledge right in favour of the depositary bank are analogous in their effects;[61] the distinction thereof lies in the enforcement procedure. Thus, in the case of a set-off right, a bank will enforce its rights against the debtor when it has a counterclaim of the same nature that is certain, liquid, and due; by way of declaration sent to the debtor.[62] In the case of a pledge on funds in accounts, a bank will enforce its rights by way of an enforcement notice.[63] Upon enforcement, if the currency of the guaranteed obligation and the currency of the money in the bank account are different, the bank will have the right to exchange the money received in the currency of the guaranteed obligation by extinguishing the equivalent amount of the secured debt at the official rate of the National Bank of Republic of Moldova, at the time of debiting the account.[64] In the wake of the communication of the respective documents, the effects of both institutions are similar – obligation enforcement.

Comparatively, in Germany, the pledge on account funds encumbers all present and future rights arising against the depositary bank. The pledge is created by a simple agreement and will not be effective unless the depositary bank has been notified thereof. Such agreement may prohibit the pledgor to make withdrawals from the account in the ordinary course of business. In France, the pledge only extends over the credit balance, be it temporary or permanent; execution is subject to account adjustment operations, according to the enforcement procedure. In Croatia, it is possible to encumber funds in accounts although the law does not expressly set forth in what manner (provisions concerning movables apply where reasonable). Consequently, the pledge on account funds can only be enforced by voluntary submission to enforcement; that is, where the debtor agrees to encumber funds in accounts, it must provide a statement in the form of a notarial deed authorizing the depositary bank to enforce the available amount in its bank accounts. Non-judicial enforcement on bank accounts is possible via a decree issued by a public notary.

3.2. Pledge on Receivables

At the origins of this pledge there is a personal right, as contrasted to *in rem* rights – a distinction that did not enjoy a safety harbour from scholarly critique.[65] Some argue that personal and *in rem* rights overlap; that is, any personal right is the outcome of the application of a thing to the patrimony of a person.[66] The tenet is simple. What matters, in the view of scholars, is not the person that has the undertaking, but the goods that are subject to such undertakings.[67] The opposing doctrine argues that, although personal and *in rem* rights are somewhat similar, the distinction cannot be overlooked since creditors can only claim their rights by addressing them to an individual person.[68] Nonetheless, it is important to maintain the distinction between personal rights and *in rem* rights, as they enjoy different juridical regimes.[69]

To apprehend the impact of A173 in this domain it is helpful to observe that Section 4 subsection 3 which was entitled "Particularities of pledge on receivables" and contained two provisions: (i) the obligation of registration and (ii) encumbering receivables, became "Particularities of pledge on intangible goods" and regulates, inter alia, patrimonial rights which can be any property rights, including intellectual property rights, money claims, other contractual claims, and claims arising from other grounds of liability, with the exceptions provided by law.[70] One provision that has remained intact is that any patrimonial right can be subject to this pledge, including the pledgor's claim against the pledgee.

An audacious amendment involves that encumbering receivables does not require the consent of the debtor of the patrimonial obligation; this is also a beneficial amendment on at least three accounts.[71] First, any receivable is part of creditor's assets, thus they should be able to freely dispose thereof. Second, the hectic nature of business transactions requires timely resolutions that would be hindered by negotiations with third parties (the debtor). Finally, a potentially unjustified negative notice from the debtor would amount to shackling creditors' business transactions in an arbitrary fashion.

The way this kind of pledge works is simple. The debtors of the patrimonial obligation (obligors) carry on the repayment to the creditor (pledgor) according to contractual terms, until they receive an enforcement notice from the pledgee stating that the creditor whom they've been repaying has defaulted on its obligations under an agreement with the pledgee. Upon receipt of the enforcement notice, the obligor will continue the payment according to the instructions of the pledgee only, subject to the payment of indemnities.

Intuitively, the pledgee will require that the obligor reverse the payment to its benefit. In this case, for purposes of avoiding over-charging, the pledgee shall inform the obligor of the amount of the secured obligation. If the contractual obligation is not a cash receivable (e.g. delivery of goods), the obligor will perform its obligations in accordance with the pledgee's indications, especially those regarding place and date of delivery. If there is no

determined term for performing the obligation or if it does not arise from its nature, the obligor shall perform the obligation within 7 days from the pledgee's request, if immediate performance does not result from the law, contract or nature of the obligation. It is noticeable that upon receiving the enforcement notice (i) any changes of the performance conditions, made without the pledgee's consent, are deemed null; (ii) the pledgor's acts in connection to the performance or enforcement of the rights with respect to the secured obligation, made without the pledgee's consent, are invalid.

During this process, any goods received by the pledgee will be deemed encumbered by pledge, which renders the enforcement rules under Chapter VIII of P449 applicable. Thus, any goods that the pledgee has received are to be directed towards the extinction of the pledgor's debt. If the pledgee seeks enforcement in Court, it shall ensure that the debtor is part in the litigation.

Additionally, A173 provides that pledging receivables is valid and enforceable even if the debtor and the pledgor have included a contractual restriction that prohibits disposition thereof. This amendment pinpoints to the pro-business orientation of A173 and is a key feature that assigns maximum value to patrimony as a means to secure business transactions. Moreover, if the security agreement does not provide otherwise, the pledge on receivables extends to any personal or real security interest of the pledged receivables.

Banca de Finanţe şi Comerţ v. Victoriabank[72] indicates that (i) the pledgor cannot assign a receivable without the pledgee's consent, subject to nullity, and (ii) if the secured creditor has assigned the receivable to a third party (upon pledgors' default), the third party shall have received, with the receivable, all the rights arising out of the pledge agreement. In this case, Banca de Finanţe şi Comerţ and X concluded a loan agreement; X secured the loan by pledging receivables from Y. Upon X's default, Banca de Finanţe şi Comerţ sold the receivables to A; later on, X sold the same receivables to Victoriabank. The first instance Court judgment quashed the assignment concluded between X and Victoriabank and dismissed the plaintiff's motion to enter into possession of the pledge. The Appellate Court upheld the judgment by motivating, inter alia, that the receivables and the pledge thereupon may only be transmitted together and simultaneously, thus it is A who is entitled to enforce on the receivables.

3.3. Proceeds of Disposition of a Pledged Asset and Fruits

The importance of this revision in A173 is highlighted by situations where the debtor disposes of the pledged assets before redemption occurs. In this regard, A173, alongside with other legal systems,[73] distinguishes between (i) replacement assets, (ii) civil and natural fruits, (iii) proceeds of disposition, and (iv) indemnities. For instance, where in the ordinary course of business the pledgor sells a part of the pledged body of assets (replacement assets), expropriation has occurred (indemnities), the secured creditor has

consented a sale of assets (proceeds of disposition), the offspring of animals (natural fruits). The rule preceding A173 was that security rights do not extend to civil or natural fruits, or proceeds unless otherwise provided by the parties in a security agreement.

A173, recasting the rule's angle to fit economic actualities, adopted a more inclusive approach. The new law forthrightly states that security rights in an asset automatically span over its proceeds, unless otherwise agreed by the parties of the security agreement. Although this provision does not grant new rights, it emphasizes the logic of asset encumbering: a security right in an encumbered asset should extend to its civil and natural fruits, unless otherwise decided by the parties. Albeit this conversion, arguably it is still uncertain if secured creditors can claim rights over proceeds of proceeds, for instance, the progeny generated by the offspring of a pledged animal. A173 takes the position of UNCITRAL in this matter, namely that if a secured creditor can claim rights in the proceeds of a secured asset, it would logically follow that they can claim rights in proceeds of proceeds.[74] Even if we believe the above logic to be implicitly stated in the law, there is still some space for the argument that, to prevent misinterpretation, the principle shall be expressly regulated by the law.

Creation of the Pledge and Publicity

The reason why we treat the creation of the pledge and publicity together in this Section is the interconnection between the two concepts. The publicity of the movable pledge – given by the registration in the Charge Registry – determines the creation of the rights arising from a security agreement.[75] Pledge registration has a number of functions. First, as contended above, the pledge registration in the Charge Registry determines its creation; corollary, the pledge is not created by way of concluding a security agreement.[76] Second, it enables prospective creditors to learn about the pledged assets of a potential pledgor. Finally, it is the regular way of establishing priority amongst secured creditors (i.e. except cases of control agreements for the pledge on funds in accounts).

International best practices point that modern secured transactions regimes should determine priority by reference to objective facts (such as registration of a notice, possession, a control agreement and a notation on a title certificate).[77] The rationale for this rule is based on the premise that it is often difficult to prove that a person had knowledge of a particular fact at a particular time.[78] To adopt this practice, A173 provides the creation of a special single Registry – wherein registration, as set forth – hinges upon "simplicity, efficiency and accessibility."[79]

To understand why this is a revolutionary amendment requires some background. As a matter of fact, before the enactment of A173, there were four Registries in Republic of Moldova where the movable pledges were recorded, namely (i) the Nominative Securities Holders Registry – in the case of pledge on nominative securities; (ii) the State Securities Holders Registry – in the case of pledge on state securities; (iii) the Intellectual Property

Registry – in the case of pledge on intellectual property rights; and, finally (iv) the Movable Pledge Registry – in the case of other movable pledges.[80] A173 provided that there would be one centralized Registry, namely the Registry of Charges of Movable Assets.[81] In the Charge Registry there are currently registered movable security interests, including financial leasing and, as the civil law reform progresses, the unpaid seller's charge and others.[82] We believe that this amendment is especially clarity-oriented since the registration of pledges, in the old version of the P449, had to be carried out in accordance with the legislation governing each Registry.[83] Notably, international best practices recommend that States adopt a single Registry that accommodates all kinds of movable pledges, including the existing or potential rights and excluding pledges on documents.[84] To further this concept, A173 set forth that the technical accommodation and procedure of pledge registration be provided in a distinct normative act approved by the Government.[85] Subsequently, the Government passed a Regulation on Charge Registry No. 210 of 26.01.2016. Moreover, it is recommended that States adopt systems which provide that, except limited situations, the moment of registration in the Registry gives rise to third-party effectiveness and determines priority.[86] Here, Moldovan lawmakers used a different approach and also attributed (more specifically, left the previous rule unchanged) the constitutive effect to registration. In contrast, in Romania, for instance, Article 2.387 and 2.409 of the Civil Code provide that non-possessory pledge (called mortgage on movable assets) is created upon execution of the security agreement, nonetheless it only becomes effective when the secured obligation arises and the secured creditor acquires rights over the secured asset – in the case of perfect mortgage, by meeting the publicity requirements via registration in the Electronic Archive of Security Interests. Thus, registration in the Electronic Archive of Security Interests has a third-party effectiveness purpose, not a creation purpose.[87] The possessory pledge, on the other hand, is constituted either by transmission of the asset to the creditor or by conservation of the asset by the creditor, with the consent of the debtor.[88] The creditor's possession of the pledged asset must be public and unequivocal. Nonetheless, registration in the Archive of Security Interests is not mandatory.[89]

To achieve third-party effectiveness and priority, alongside with the movable pledge, other security interests may be registered in the Charge Registry (e.g. financial leasing, unpaid seller's charge, conditional assignment of claim). Nonetheless, the lack of registration thereof is not subject to invalidity.[90] While special laws govern the registration of these security interests, the registration procedure is the general one established in P449.[91] Additionally, P449 explicitly states that priority among security interests is established chronologically[92] – even in the case of floating charges – according to the time of registration, and not according to the type of the security interest. Therefore, it is essential that interested third parties have access to the Charge Registry.

However, given the lack of formalities of the pledge registration,[93] hypotheses of illegal pledge registrations are not far from reality. Regarding unauthorized pledge registrations, A173 has not departed from the view expressed in the old P449. In the absence of any pledge-validity test upon registration, during the drafting phase of A173 legitimate concerns were raised about potential hoaxes from non-authorized parties registering a pledge right.[94] To mitigate concerns, policy-makers adopted a moderate solution that promotes information reliability on two accounts.[95] First, only authorized (and not licensed) operators could register the pledges.[96] Second, the pledgor-signature requirement on the registration notice was preserved, adding the option of digital signature.[97]

Likewise, given the notification requirement upon enforcement of the pledge,[98] and in order to prevent abusive contentions as to not having received the enforcement notice because of a change in domicile, it was set forth that notices sent to the pledgor's address indicated in the Charge Registry would be deemed properly sent, the pledgor having the onus to record the change in address.[99] Thus, this amendment intended to curtail pledgors acting in bad faith and bolster secured transactions reliability.

Republic of Moldova Agroindbank v. Glorinal[100] indicates that one enforcement notice conveyed to be pledgor at the time of defaulting on the loan agreement suffices although in the wake thereof changing events arise. Specifically, in this case the pledgee has served the pledgor (Glorinal) a notice of enforcement upon the pledgor's default. This ensued negotiations between the pledgor and the pledgee as to the extension of the repayment of the loan, in exchange for Glorinal's continuation of enjoying the possession of the pledged assets. The negotiations culminated in a debt reschedule agreement,[101] which, indeed, lengthened the repayment timeframe by around one year.

Glorinal had failed to repay the loan in the timeframe set out in the debt reschedule agreement. According to the Appellate Court decision, at the time of Glorinal's default on the obligations under the debt reschedule agreement, the pledgee did not have the obligation to register a new enforcement notice.[102] The Court's decision is legally sound for a number of reasons. First, the purpose of the enforcement notification is to afford the debtor sufficient time to redeem its assets or to relinquish the possession of the secured assets. In cases where the secured creditor has expressed the intention of enforcing security rights against the debtor, even if there is a time lapse, the debtor can foresee a future course of actions. Second, the repayment obligation arising out of the loan agreement had not changed its source by having concluded the debt reschedule agreement; that is, concluding the latter does not extinguish obligations arising out of the former and does not give rise to new obligations. The debt reschedule agreement, as the name suggests, only alters the performance terms, mainly time related. Thus, even if the debtor had complied with the debt reschedule agreement, it would have executed obligations arising out of the loan agreement and not of the debt reschedule agreement.

Finally, the encumbered assets are still the same, therefore the debtor knows by way of the enforcement notice which assets are to be enforced and what the reasons are for such enforcement. Noticeably, P449 does not regulate a second notice registration, regardless of the intervened circumstances (i.e. time lapse). Corollary, a hypothetical regulation of a second notice registration would bear the chance of steering up incentives to temporize the enforcement procedure. That is, dishonest pledgors could use such a requirement to seek annulment of an otherwise legal procedure.

A number of provisions were set forth to avoid fraudulent and disloyal behaviour. First, in case of timely fulfilment of the pledgor's obligations, the pledgee has a legal obligation deriving from the new Article 43 (3) of P449 to issue a pledge cancelation notice in order to delete the record of the pledge within 3 days after the pledge has been extinguished, subject to indemnification.[103] Alternatively, if the parties have agreed so, the pledgee can submit the said notice directly to the Charge Registry. In addition, the pledgor can seek a court decision for cancelation of the pledge.[104] Moreover, if the pledged assets were sold, the buyer, based on the sale confirmation issued by the pledgee, can seek cancelation of the pledge.[105] Second, if the pledgor defaulted on its obligations, the pledgee may send a notice providing a reasonable time for performance.[106] Lastly, any interested person can appeal against the Registrar's refusal to register,[107] change or cancel the pledge, unwarranted filing, late filing or refusal to provide the necessary information about the registration of the pledge.[108] A particular matter which is still not regulated by P449 is the time limit for the pledge registration. While this could hypothetically be an issue, in practice, it does not raise concerns, as long as P449 maintains the old approach of registration as pledge constitutive effect and not only as third-party enforceability effect.

4. SUBSEQUENT PLEDGE

The subsequent pledge refers to situations where the debtor uses the same assets to secure obligations towards multiple subsequent creditors. Prior to A173, potential creditors could use their advantageous position in contract negotiations to include the subsequent pledge interdiction (in some jurisdictions known as "negative pledge").[109] Thus, if the pledgor had contracted against this clause, the security agreement would have been invalid between the parties of the agreement and against third parties. This rule did not distinguish between debtors' credit worthiness and amount of pledged assets, which transformed it in a "creditors-prone" rule that did not favour neither creditors nor debtors. By 2014, the rule had translated into a "pledge-monopolization" practice, which had ostensibly given rise to inequity reverberations; remarkably, secured creditors who did not provide the requested additional financing refused to allow a subsequent pledge, thus blocking the further financing of the debtor.

Amid the drafting phase of A173, unwilling to forgo the benefits of this rule, a chorus of financial institutions rallied for its preservation. In this case, both sides have good arguments: On the one hand, financial institutions wish to minimize credit risk by relying on a viable prospective pool of assets in case of enforcement. On the other hand, such are the demands of modern economy that require an active flow of secured credit to maintain a good standing on a vibrant market. Faced with a two-way pressure, our lawmakers decongested the gridlock by turning to acclaimed international standards that unequivocally argue in favour of the subsequent pledge and preventing unjustified prohibitions. Consequently, the amended provision states that the subsequent pledge shall be allowed unless other laws prohibit it for special reasons (hitherto, no such legal prohibitions exist).

In the advent of what might seem at first absolute contractual liberty, several caveats are due. First, the pledgor shall inform each subsequent pledgee about all previous pledges, subject to the payment of indemnities. Second, subject to a similar sanction, the pledgor shall inform all previous pledgees about each subsequent pledge, immediately after the creation thereof. In the latter case, the pledgor will also have to communicate to prior pledgees the information regarding (i) the name of subsequent pledgee; (ii) the address of the pledgee; (iii) the description of the pledged asset; (iv) the essence and due date of the secured obligation, the maximum guaranteed amount thereof, excluding interest and expenses; (v) type of collateral.[110] Finally, the altering of previous pledges will not be prejudicial to the rights of the pledgee holding a subsequent pledge, unless otherwise agreed by the subsequent pledgee and the pledgor.[111] In case of augmentation of the secured obligation under the previous pledge, the pledge guaranteeing the amount of the accretion will have a lower priority as contrasted to the pledges created before the security of such an accretion was registered.[112]

5. ENFORCEMENT

Generally, enforcement is to the disadvantage of both the pledgee and the pledgor.[113] For the pledgee, the enforcement procedure may result costly or cumbersome, while the pledgor faces the dispossession of the valuable assets that best fit its day-to-day business necessities. Given the underlying sensitive nature of this area, special attention needs to be paid to maximize efficiency and to conserve the resources of involved parties.

Before the enactment of A173, the enforcement area was singled out as being “the most significant bottleneck area in the secured lending framework.”[114] Major sources of concern stemmed from (i) the ineffectiveness of judicial proceedings in ordinance (as the pledgor could easily obtain the cancellation of the ordinance by filing objections thereto); (ii) once a judgment was granted, enforcement through the bailiff was ineffective and with

delay; (iii) the possibility of delaying or even reversing the enforcement discouraged the purchase of pledged assets.

With this in mind, lawmakers expanded the scope of self-help measures. On the one hand, secured creditors can obtain possession of secured assets if the pledgor expressly agreed to this in the security agreement or otherwise after the conclusion thereof.[115] Therefore, after having duly notified the pledgor and the debtor of the secured obligation – if these are different persons –, any third party that holds the pledged asset as well as the other pledgees, the secured creditor can enter into the possession of the secured assets by concluding the "Act of transmitting possession of the tangible pledged asset."[116] On the other hand, if the debtor fails to transfer the possession voluntarily, A173 introduced the procedure of direct enforcement, without resorting to Court. Under this new proceeding, the creditor will go directly to the bailiff, who shall enforce the pledge given that the security agreement on movable assets has been attributed the character of an enforcement document.[117]

The new proceeding aimed to streamline the enforcement process significantly thus preventing financing backlogs and excessive provisioning by financial institutions. Debtors were also equipped with adequate protection tools, being able to resort to judicial control at any phase of the enforcement. Empirical evidence of enforcement of the new proceeding shows that it has served the purpose and indeed has become a major achievement of the legal reform.

6. OVERVIEW OF RECENT SECURED TRANSACTIONS REFORMS

A brief synopsis of foreign secured transactions systems would be helpful in order to illustrate the variety of approaches to the above concepts. While mindful of the fact that different market conditions and legal traditions propel different outcomes, we will list a few countries that have undergone a similar reformative process in the past years.

6.1. United Arab Emirates (UAE)

On 15 March 2017 the new Law on the Pledge of Movables as Security for a Debt No 20. of 2016 entered into force.[118] A remarkable innovation of the new law is the creation of an electronic Registry that will contain information on pledges.[119] It is still unknown what information the Registry will foster, but it is certain it will ensure the publicity of all created pledges.[120] The advent of the Registry follows the regulation of a non-possessory pledge, after a history of possessory guarantees.[121]

Likewise, it seems that the new law has also broadened the scope of the object of the pledge which incorporates, inter alia, bank accounts (deposits), receivables, bonds and

similar financial instruments, equipment among other tangible commercial assets, goods on consignment, raw material and agricultural products.

Enforcement and priority dispositions lay out that (i) the first-come-first-served tenet grants priority to preceding secured creditors; (ii) a registered security interest automatically extends to proceeds of disposition of a pledged asset, which, in turn, follows the priority regime of the former; (iii) depending on the practicalities of specific encumbered assets, a number of self-help remedies are available to the secured creditor, including seizure and sale of the secured asset.[122]

UAE lawyers praise the new law as being a "[s]tep in the right direction" and a "[m]ove toward greater transparency in commercial life in the Emirates."[123]

6.2. Italy

The entry into force of the new Italian pledge law (known as Banks' Decree) on 29 June 2016 attempted to align the Italian system to the international standards set out by the United Nations Commission on International Trade Law (UNCITRAL) and by the World Bank.[124] Regardless, easily discernible contrasts between the new law and the UNCITRAL relate to (i) the publicity requirement to register the security agreement rather than a notice of registration of the pledge, (ii) conditioning the creation of a security right to registration in the electronic Registry, (iii) unwarrantedly maintaining several Registries.[125] Likewise, although UNCITRAL recommends a unitary comprehensive reform of pledge related laws, the Italian lawmakers have not altered a number of instrumental regulations in connection to the pledge.[126]

The Banks' Decree introduces the non-possessory pledge that can encumber a wide array of assets. The legal confusion may create the confinement of the new law's scope to certain present, future, tangible and intangible assets, and to the exclusion of assets subject to special registration, such as motor vehicles, patents, trademarks and registered design.[127] Consequently, the excluded category will be subject to registration in a different Registry.[128]

A new electronic Registry will be held by the Tax and Revenue Agency. For registration purposes, a succinct description of the pledged assets shall suffice.[129] Similar to other legal systems, priority is determined by the moment of registration of the secured interest.[130] The parties may negotiate a clause that entitles the secured creditor to dispose of the secured assets (e.g. lease), or which would operate a possession transfer in case of debtor's default.[131]

Altogether, the new law, despite indeed having increased access to credit by adopting the non-possessory pledge, is commonly perceived as having failed to provide a fully-fledged legal framework. Moreover, critics consider the new law has sown complexity rather than diffusing it.

6.3. The Russian Federation

1 January 2017 was marked by the entry into force of the Law on Movable Pledge for Commercial Transactions No. 6750.[132] Although broadly extending the scope of the pledge, the new law has introduced an interdiction to pledge a body of assets if single identifiable assets provide sufficient security to creditors.[133]

Enforcement remedies are still largely in need for an authority – either a bailiff or a Court.[134] In bankruptcy, in order to obtain ownership of the secured assets, a bailiff will rank secured creditors according to priority, indicating the amounts due to each of them.[135] Secured creditors have a limited seven-day time period to object to the list, subject to an invalidity sanction.[136]

Self-help measures relate to (i) transferring the secured assets into the secured creditor's possession; (ii) transferring the secured assets to an asset managing company; (iii) licensing or leasing rights deriving from intangible secured assets.[137]

Despite the novelties of the new law, lawyers consider it yet to be exuding any clear conclusions as to its application.[138]

7. CONCLUSION

Despite the fact that several amendments were made over time, by early 2000s, P449, enacted back in 2001, has required significant interventions, in order to align with the economic realities and to the best international standards. Relevant EU legislation on the matter is absent; therefore the UNCITRAL Model Law on Secured Transactions has become a worthy source of reason and solutions for Moldovan policymakers, who could also rely on the recent successful stories of other reformer country (e.g. Romania, the Russian Federation, and Croatia).

The fair public consultation process, the transparent dialogue with all stakeholders and a thorough *ex-ante* regulatory impact analysis were the factors that contributed to designing a set of rules which took into account the sometimes opposing interests of stakeholders, particularly the financing institutions, on the one hand, and businesses and consumers, on the other hand. A systemic assessment of the new legal regime outcome is probably too early at this time, however, empirical data show that the novelties and improvements brought by the amendment law enacted back in November 2014 have been well-received by the market players and tend to strike the balance of interests which is the prerequisite for improving access to finance and ensuring economic growth.

NOTES

[1]The World Bank – Europe and Central Asia Region (Financial and Private Sector Development Department), Improving Access to Credit through Secured Transactions Reform: Republic of Moldova [hereinafter *Report*] (2010).

[2] *Id*. at 2, 8.

[3] *Id*. at 10.

[4] *Id*. at 7.

[5] The exchange rate of EUR to MDL (Leu) is ca. 1/21.

[6] *See* Report *supra* note 1, at 12; *see also* NATIONAL BANK OF REPUBLIC OF MOLDOVA, *Situaţia financiară a sectorului bancar în 2014 [Financial Situation of the Banking Sector in 2014]* (2014). Noticeably, the share of foreign investments in the banks' capital constituted 78.6 per cent in 2010, 76.4 per cent in 2014, and 82.7 per cent in 2015. *See also* NATIONAL BANK OF REPUBLIC OF MOLDOVA, *Situaţia financiară a sectorului bancar [Financial Situation of the Banking Sector]* (2010-15).

[7] *See* NATIONAL BANK OF REPUBLIC OF MOLDOVA, *Situaţia financiară a sectorului bancar în anul 2013 [Financial Situation of the Banking Sector in 2013]* (2013).

[8] *See* NATIONAL BANK OF REPUBLIC OF MOLDOVA, *Situaţia financiară a sectorului bancar în semestrul I 2017 [Financial Situation of the Banking Sector in the First Semester of 2017]* (2017).

[9] Roger Gladei, Presentation at Financial Sector Lawyers: Movable Pledge and Leasing in the Light of the Recent Legislative Amendments (Nov. 19, 2014).

[10] *Id*.

[11] *See* ROSS CRANSTON, THE PRINCIPLES OF BANKING LAW 433 (1997).

[12] *Id*. at 433.

[13] *See* Cranston, *supra* note 11, at 435.

[14] *Id*.

[15] *See infra* p. 15.

[16] *See* Civil Code, Article 457 (2002); *see also* Pledge Law, Article 8 (2001).

[17] *See* MIHAI POALELUNGI ET AL., MANUALUL JUDECĂTORULUI PENTRU CAUZE CIVILE [JUDGE'S HANDBOOK FOR CIVIL CASES] 882 (2013).

[18] JEAN-PHILIPPE LÉVY & ANDRÉ CASTALDO, HISTOIRE DU DROIT CIVIL [HISTORY OF CIVIL LAW] 1063-64 (2002).

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] United Nations Commission on International Trade Law [hereinafter *UNCITRAL*], Legislative Guide on Secured Transactions, U.N. Publ'n, N.Y., para. 52, 43 (2010); *see also* E.P. ELLINGER ET AL., MODERN BANKING LAW 724 (2002).

[23] Where intangible assets are encumbered, the creditor may retain the documents that give rise to such rights. UNCITRAL, *supra* note 22, para. 54, 44.

[24] *See* Ellinger, *supra* note 22, at 756; *see also* Cranston, *supra* note 11, at 436.

[25] Shortly, any enforcement procedure commences with the pledgees conveying a notice of execution to the pledgor allowing the latter at least ten days for voluntary execution (subject to registration in the Charge Registry). It seems, according to recent jurisprudence, that granting time for voluntary execution should be balanced in the light of the size of the debt; that is, more time should be granted where the payable debt is greater. Nonetheless, Courts have failed to suggest an algorithm to determine a precise time that should be given to the pledgor to redeem the pledged assets; they rather seem to scrutinize the issue on a case-by-case basis. After having received the notice of execution, the debtor can either (i) redeem the pledged assets by executing the obligations, or (ii) transfer the pledged assets to the pledgee. In the former scenario, the parties of a security agreement often agree to a new payment schedule. Finally, if none of these measures yielded results, the secured creditor could obtain possession of the pledged assets either one-sidedly (if such a clause existed in the pledge agreement) or by way of a court order (contentious procedure) or ordinance (non-contentious procedure). For a similar enforcement summary preceding A173, see Report *supra* note 1, at 18.

[26] *See* Poalelungi, *supra* note 17, at 873; s*ee also* COMENTARIUL CODULUI CIVIL AL REPUBLICII REPUBLIC OF MOLDOVA [COMMENTARY OF THE CIVIL CODE OF THE REPUBLIC OF MOLDOVA] 723 (2005).

[27] *See* Poalelungi, *supra* note 17, at 873.

[28] *See* Mortgage Law (2008).

[29] Gladei, *supra* note 9.

[30] *See generally* UNCITRAL, *supra* note 22, para. 57, 21-2.

[31] *See infra*, p. 5.

[32] Gladei, *supra* note 9.

[33] Gladei, *supra* note 9.

[34] *See* Lévy, *supra* note 18, at 1066 (pointing to how pledge laws have changed in the French history, from the old practice where debtors pawned goods with personal value to the impressive array of goods that can be pledged nowadays).

[35] *See* Decision on the Application of Some Provisions of Pledge and Mortgage Legislation of the Plenary of the Supreme Court of Justice, para. 7, 3 (2014) [hereinafter *Pledge Decision*].

[36] Gladei, *supra* note 9.

[37] For a discussion on the possibility of using money as collateral see generally BAIEȘ SERGIU ET AL., DREPT CIVIL: TEORIA GENERALĂ A OBLIGAȚIILOR [CIVIL LAW: GENERAL THEORY OF OBLIGATIONS] 643 (2015); Gladei, *supra* note 9.

[38] For a different terminology, see UNCITRAL, *supra* note 22, at 7, 27, 107 (referring to this kind of security as "a security right in a right to payment of funds credited to a bank

account"); *see also* Ellinger *supra* note 22, at 802 (employing the term of "charges over bank balances").

[39] The dichotomous approach to money – economic and juridical – is not novel; as Garrigues shrewdly asserted "[i]t is only money that which the law or custom has recognized as being money," *see* JOSÉ LUIS LACRUZ BERDEJO ET AL., DERECHO DE OBLIGACIONES [OBLIGATIONS LAW] 88 (2011). In the Moldovan jurisdiction, money enjoys the juridical regime of goods by virtue of Article 302 corroborated with Article 284 of the Civil Code.

[40] Gladei, *supra* note 9.

[41] Banks are required to keep confidential all the facts that they learn in business relationships with customers. Nonetheless, this obligation is quenched if the information concerns general information that does not prejudice the interests of the client if disclosed.

[42] *See* Cranston, *supra* note 11, at 432; *see also* Ellinger, *supra* note 22, at 724 (outlining the importance of collateralization in case of debtors' insolvency).

[43] *See* UNCITRAL, *supra* note 22, at 137-40.

[44] Notably, another way of achieving third-party effectiveness of a pledge on a bank account is by registering the pledge in the Registry. *See* Pledge Law, Article 25[1] para. (1) (2001).

[45] *See* Civil Code, Article 1239 (2002).

[46] *Id.* at 1222.

[47] UNCITRAL, *supra* note 22, at para 143, 139.

[48] *See* Pledge Law, Article 57 (6) (2001).

[49] *See* UNCITRAL, *supra* note 22, at para. 146, 139.

[50] Gladei, *supra* note 9.

[51] *See* Ellinger, *supra* note 22, at 654 (noting that a financial institution will not grant a loan if it has doubts as to the client's *bona fides*); *accord* Report, *supra* note 1 at 18 (pointing that due to the unreliability of borrowers' financial books, financial institutions weight previous relations between the financial institution and the borrower, and the availability of strong third-party guarantees to assess creditworthiness).

[52] *See* Pledge Law (2001), Article 9 para. (3)-(4).

[53] *Id*. at Article 25[1] para. (3).

[54] *Id*. at para. (7).

[55] *Id*. at para. (8).

[56] *Id*. at para. (4). *See also* Civil Code, Article 1232, 651 (2002).

[57] *Id.*

[58] UNCITRAL, *supra* note 22, at para. 146, 139; *see also* Ellinger, *supra* note 22, at 802 (arguing that the restrictive scope of application of the set-off right has propelled

numerous English banks to incorporate a set-off clause in the financial agreement between them and their borrowers).

[59] *See* Pledge Law, Article 25[1] (3) (2001); *see also* Ellinger, supra note 22 at 803 (noting the priority of a bank's set off right over other creditors' rights on the funds).

[60] UNCITRAL, *supra* note 22, at para. 146, 139.

[61] UNCITRAL, *supra* note 22, at para. 144, 139.

[62] The declaration is void if it is affected by modalities. *See* Civil Code, Article 651 para. (4) (2002).

[63] Pledge Law, Article 66[1] para. (1) (a) (2001).

[64] *See* Pledge Law, Article 66[1] (2001).

[65] *See generally* FRANÇOIS TERRÉ & PHILIPPE SIMLER, DROIT CIVIL: LES BIENS [CIVIL RIGHTS: GOODS] 38 (1998).

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] Pledge Law, Art. 25 (2001).

[71] *Id.*

[72] Banca de Finante şi Comert SA vs Victoriabank SA, No. 02-2ac-8093-13042016, Dec. 19, 2016 (Chisinau Appelate Court dec., No. 9, 2016).

[73] *See* UNCITRAL, *supra* note 22, at para. 23, 36.

[74] *See* UNCITRAL *supra* note 22, at para. 22, 36.

[75] *See* Pledge Decision, *supra* note 35, at para. 37, 14 (2014).

[76] *See also* Ellinger, *supra* note 22, at 760.

[77] *See* UNCITRAL, *supra* note 22 at para. 125, 218.

[78] *Id.*

[79] *See* Pledge Law, Article 37 para. (1) (2001).

[80] *See* Pledge Law (initial version), Article 7 (2001).

[81] *See* Pledge Law, Article 37 para. (1) (2001).

[82] Gladei, *supra* note 9.

[83] *See* Pledge Law (initial version), Article 47 (2001).

[84] *See* UNCITRAL, *supra* note 22, at para. 66, 25.

[85] Gladei, *supra* note 9.

[86] *Id.*

[87] Comparatively, in England it is not clear whether a pledge is validly created upon the execution of a security agreement or upon pledge registration in the Companies Register. On the one hand, Section 395 (1) of the Companies Act of 1985 provides a twenty-one-day-registration rule in which the parties of a pledge agreement shall register the pledge, subject to an "invalidity sanction," which renders the pledgee's rights under the pledge

agreement ineffective. This sanction does not affect the pledgee's rights of enforcement against the pledgor, nonetheless, the creditor will become unsecured as against other secured creditors. On the other hand, regulations of particular pledge objects, such as intellectual property, aircraft and ships provide that registration is mandatory for third-party effectiveness. This uncertainty seems to create difficulties for secured creditors. Notably, where the pledge has not been registered in the time limit provided by law, obligations rising out of the security agreement become immediately enforceable against the pledgor. *See* Ellinger, *supra* note 22, at 760. In what concerns similar security agreements concluded with consumers, the same deficiency causes the security to be enforceable only by a court order, while in other cases the security agreement will be considered as "[n]ever having effect"; s*ee* Cranston, *supra* note 11, at 454.

[88] Romanian Civil Code, Article 2481 (1) (2011).

[89] *Id.* at 2482.

[90] Gladei, *supra* note 9.

[91] *Id.*

[92] *But cf.* Ellinger, *supra* note 22, at 763. The authors argue that, in English law, a number of circumstances may disturb the chronological factor. First, due to the nature of floating charges, subsequent fixed charges shall entitle a secured creditor preference over the assets. Ellinger explains that "[t]he essence of a floating charge is that the chargee permits the company to carry on dealing with (including charging) its assets. Thus, a subsequent fixed charge generally takes priority over a prior (uncrystallized) floating charge." Second, a charge which shall be registered under the English law but which is not registered loses priority against a subsequent secured creditor even if the latter knew about the former's charge. However, the law is uncertain as to the situations where both the former and the latter chargees have not registered their security rights. Finally, theoretically – that is, as deemed by the authors, not likely to occur in practice due to the access to the Charge Registry availability to third parties –, a *bona fides* purchaser of the secured asset is to have priority over equitable chargees.

[93] Mostly, due to the Registrar's lack of competency to request the pledge agreement or verify the data contained in the registration notice; s*ee* Pledge Law, Article 39 (4) (2001).

[94] Gladei, *supra* note 9.

[95] *Id.*

[96] *Id.*

[97] *See* Pledge Law, Article 39 (3) (2001).

[98] The rule provides that any secured creditor shall notify the debtor and allow a time period of at least 10 days for execution of the debt or for conveyance of the secured assets; *see* Pledge Law, Article 67 (1) (2001).

[99] *See* Pledge Law, Article 39 (8) (2001).

[100] B.C. "Republic of Moldova Agroindbank" S.A. v. S.R.L. "Glorinal," No. 02-2ac-21331-18092016, Aug. 15, 2017 (Chisinau Appelate Court dec., Apr. 25, 2017).

[101] Some sources use the "debt-readjustment agreement" term to refer to this type of agreements. *See* UNCITRAL, *supra* note 22, at para. 4, 276.
[102] Thus, the Court dismissed Glorinal's argument according to which the pledgee had an obligation to register a new enforcement notice since the underlying legal basis for the enforcement changed due to the new legal regime governing the relations between the parties set forth in the debt reschedule agreement.
[103] The practice of allowing only the creditor to extinguish a security right by way of cancelation notice hinges on security reasons. *See* UNCITRAL, *supra* note 22, at para. 107, 176.
[104] *See* Pledge Law, Article 43 (2001).
[105] *Id.*
[106] *See* Indian Contract Act 1872 for a similar condition precedent for sale of the pledged goods.
[107] There are only two hypotheses where the Registrar can deny notice registration: (i) the notice does not embody the data provided in Article 56 of the Regulation on Charge Registry, or (ii) registration taxes were not paid (around 20 EUR).
[108] *See* Pledge Law, Article 44 (5) (2001).
[109] *See* Ellinger, *supra* note 22, at 789.
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *See* UNCITRAL, *supra* note 22, at para. 4, 275.
[114] *See* Report, *supra* note 1, at 4.
[115] *See* Pledge Law, Article 70 (2001).
[116] *Id.*
[117] *See* Enforcement Code, Article 11 n).
[118] *See* DOUGLAS G. SMITH, *New UAE Pledge Law Takes Effect* (2017).
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] GIULIANO G. CASTELLANO, *The New Italian Law for Non-possessory Pledge: Villain or Hero?* (2016) Oxford Business Law Blog.
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] *Id.*

[130] *Id.*
[131] *Id.*
[132] GÜR Law Firm, *New Law on Movable Pledge for Commercial Transactions and its Application* (2017).
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] *Id.*

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