

## 18<sup>TH</sup> CENTURY BILL OF EXCHANGE LEGISLATION – INSPIRATION FOR OR ROOTS OF CZECH LEGAL PROVISIONS ON BILLS OF EXCHANGE?

Tereza Vyoralová\*

**Abstract:** *The bill of exchange code of 1850 was extended by some special provisions, especially ministerial decree of 1858, the Nurnberg Amendment of 1872, Jasinsky's Amendment and an act from 8 March 1876.*

*Bill of exchange law has its history and also today it is an inseparable special part of the private law. It is therefore necessary to pay special attention to it, especially because there is very little professional literature covering its history, perhaps with the exception of V. Urfus.*

*In the context of the Austrian bill of exchange codes I mentioned above a bill of exchange (cambium) was basically a written record of an exchange transaction. It was defined as a brief written promise that had to meet certain conditions defined by the law and whose content was otherwise identical to the contents of an exchange relationship. These conditions were either essential or non-essential.*

*The authorized person in a bill of exchange could transfer his rights to another person. This was done in the form of an endorsement, also called "indosament" and "žiro". A bill of exchange had to be accepted regardless of this endorsement. When paying the bill of exchange, the acceptor was to deposit the exchange amount to a court.*

*The number of transfers by endorsement was not limited. However, each transfer had to meet various conditions defined by the bill of exchange code. If any of the required exchange requisites was missing the endorsement was, according to the bill of exchange code, treated as procuration. In this case endorsement did not transfer the rights from the endorser to the endorsee. For this reason, if the endorser was in bankruptcy proceeding, the bill of exchange was included in the bankruptcy assets.*

*In the period of interest, a number of special exchange and mercantile courts were established with three-level structure. These courts would make decisions on exchange relationships until they were reorganized by the Josephine reforms.*

**Keywords:** *Bill of exchange, 18. century, Bank capital, Trade, Legislation, Roots of Czech legal provisions*

### INTRODUCTION

It is quite clear that the increasing power of capital is currently affecting national policies. This is happening at both national and international scales. This trend of blending financial and banking power with political power is not a new trend, its roots can be traced in history.

The development of bank capital is accompanied by a legal institute, namely the Bill of Exchange (B/E). Its roots can be traced back to northern Italy of early 11<sup>th</sup> century. Soon after its consolidation took place in northern Italy, B/E made its way also to our lands.

To achieve a secure transfer of money, business transactions presented the need to transfer receivables between individual traders without having to deal with real money. The reasons also included the currency fragmentation, often exacerbated by the ban on local currency exports and thus severely curtailing trade. And the B/E solved this situation.

---

\* JUDr. Tereza Vyoralová, PhD candidate at the Department of Commercial Law, Faculty of Law, University of West Bohemia in Pilsen, Pilsen, Czech Republic

As far as the first B/Es are concerned, they are characterized by avoiding the use of discount. Their form was also different from that of later times. They were in fact instruments of international payment and therefore involved currency conversion. However, it was not possible to use discount for the purposes of interest. The Roman Catholic Church acted against discount because it considered it an immoral source of profit in B/E transactions. However, in the Renaissance world, profits came from the movement of exchange rates with interest already included.

In the Czech lands B/Es only began to be used regularly at the beginning of the 18<sup>th</sup> century. That century witnessed a steep rise in the use of B/Es in our territory. At its beginning, however, this usage had an entirely different nature and was based on a completely different economic basis. In our lands, the B/E payments rarely mediated any foreign connections. In most cases, the use of the B/E was covered by conditions that are, without any doubt, purely local and domestic. The B/Es were used as instruments for getting short-term credit. The relationship between the subjects of the B/E arrangements was closer to one between a lender and a borrower than to one between the trading partners. B/Es in the Czech lands at that time were mostly Bills of Sale. Bills Payable or Drafts were quite exceptional, and an overwhelming majority of B/Es were payable at the place of issuance.<sup>1</sup>

The B/E Law was originally developed in the form of B/E custom. From the 17<sup>th</sup> century onwards written local particular legislation emerged,<sup>2</sup> one notable example being the 1672 Wroclaw B/E Act, whose provisions include, in particular, provisions on bail, acceptance, and B/Es, and also the second B/E Act of 1712.<sup>3</sup>

However, the first true legislation covering B/E Law in our territory is the Bill of Exchange Patent of 22 December 1763 (hereinafter referred to as “B/E Act”), issued under the reign of Maria Theresa.

B/E Law is an important institution of payment not only today, but it has clearly been one in the history of Czech lands. This also involved B/E judiciary.

## II. 18<sup>TH</sup> CENTURY B/E LEGISLATION

The B/E Act of 22 December 1763 can be considered the first actual regulation of B/Es in our historical territory.<sup>4</sup> However, the adoption of this act had been preceded by a truly long journey, involving numerous negotiations and creation of individual outlines of the B/E Act that had become the focal points of various debates, polemics, or even of direct resistance.

---

<sup>1</sup> VLČEK, E. Vývoj kodifikace směnečného práva. In: SCHELLE, K. (ed.). *Vývoj právních kodifikací*. Brno: Masarykova univerzita, 2004, p. 118.

<sup>2</sup> For legal historians, a valuable source providing information on a large number of these local resources is the Zimmerl collection (ZIMMERL, J. M. *Vollständige Sammlung der Wechselgesetze aller Länder und Handelsplätze in Europa*; available online).

<sup>3</sup> In a published form, the 28 November 1672 Wroclaw B/E Act and the 30 April 1712 Wroclaw B/E Act are best available in ZIMMERL, J. M. *Vollständige Sammlung der Wechselgesetze aller Länder und Handelsplätze in Europa*. Vienna, 1809, I. 2, p. 188ff and p. 194ff.

<sup>4</sup> SCHELLE, K., SCHELLEOVÁ, I. K 230. výročí kodifikace směnečného práva. *Časopis pro právní vědu a praxi*. 1993, Vol. 1, No. 2, pp. 167–171.

## II.1. Codification Efforts and Draft Outlines of B/E Act in 18<sup>th</sup> Century

Since the beginning of the codification efforts the need for a genuine general binding nature of the rules of B/E exchange has been put to the fore. In the proposed draft of the outline of a B/E Act, among the oldest results of the codification efforts, we come across provisions stipulating who was supposed to be concerned by the general binding nature of the B/E rules.

A detailed list of persons to be subjected to the rules of the B/E law was specified. The rules of B/E exchange were supposed to be binding for everyone, regardless of gender, to clergy, princes, earls, barons, noblemen, to both educated and uneducated people. The binding nature of B/E rules was also supposed to apply to serfs and subjects. The latter could bind themselves by B/Es even without the express permission of their authority if they performed a trade or business with its permission.<sup>5</sup>

However, the proposed provisions of the B/E Act not only specified the range of persons to be subject to the rules of the Act, but also the general purpose of the general binding nature of the B/E rules. It was clearly stated that all the persons mentioned above should be subjected to summary B/E enforcement. Similarly to the Wrocław B/E Act, the individual provisions were accompanied by rules to the effect that no objection to the exercise of the B/E claim could be raised that could successfully delay its swift performance.

According to the B/E Act outline a special B/E Court based in Prague should have had jurisdiction over the B/E disputes. This court should have been composed of a mercantile or commercial college. The B/E Court or the commercial college should have consisted of two noble members of the governor's office, one of whom was to chair the tribunal. Further members were to include two appellation councilors from the knightly bench of the Appellation Court and additional separately appointed councilors, one of them charged with the office of B/E Court syndicate.

The B/E Court was supposed to operate as a judicial authority in both the first and second instances. In the first instance, the court was supposed to have jurisdiction over all Prague B/Es and business disputes, as well as over basically all disputes brought against members of the higher classes. In contrast, rural courts and city councils were supposed to retain the jurisdiction in business and B/E cases and the B/E Court was to be only entitled to exercise certain oversight over that jurisdiction. In the second instance, the B/E Court was only supposed to hear disputes that were tried in the first instance by the rural courts. In Prague disputes, there was no appeal envisaged from the Court.

In the B/E Act outline, the relationship between the commercial college and other courts and judicial authorities was such that the other judicial authority is to make judgments "*cum derogatione aliarum instantiarum*" and also regardless of the social status and social appurtenance of the parties. The limits of its jurisdiction were defined by the notion of business dispute. The outline used a very broad approach to the notion of business dispute. It included all B/E matter as well as everything that was in any way related to the conduct of business and business exchange. This connection was defined in terms

---

<sup>5</sup> Cf. here and further in this paper URFUS, V. *Zdomácnění směnečného práva v českých zemích*. Prague, 1959, p. 155ff.

of both substance and persons, and thus the commercial college was competent not only for the disputes of traders, but also for the disputes of non-traders concerning in any way a business exchange.

Various drafts of the B/E Act differed in terms of the rules of B/E procedure. The older proposal by Glouchov had the form of a uniform outline, while the more recent proposal by Anthonio involved two parts, namely the B/E Act itself and a separate bill on B/E Court Procedure. The Glouchov proposal excluded special procedural provisions on B/E procedure, only paraphrasing the provisions of the 11 May 1688 patent. In this sense, the Glouchov proposal did not introduce any special summary B/E procedure and basically only repeated an older norm.

The Glouchov proposal was composed of seventy articles. In all of these articles casuistic formulations prevailed. The proposal had some internal system, but the latter was not consistently implemented. This system is based on some of the more general principles, such as the regulation of B/E essentials and definition of persons for whom the B/E signatures were binding. The most important B/E operations were detailed in the main part. In the concluding part, we encounter some B/E norms relating to the B/E exchange from other perspectives.

The draft outline presented by J. Ch. Anthoni later became the starting point for all other codification proposals. The Anthoni proposal, although exhibiting minor instances of conformity with that of Glouchov, can be perceived, in both formal and to a large extent substantive terms, as a completely new proposal. This proposal had a different, divided formal structure. This formal division meant that it consisted, essentially, of two rather independent outlines, as mentioned above, namely an outline of the B/E Act and an outline of the Bill on B/E Court Procedure. It was further divided into individual articles and chapters, but here the articles (chapters) were provided with titles that briefly outlined the contents of the matter covered by the article. Compared to the Glouchov proposal, the Anthoni proposal is much more systematic and clear, although not even here was the system perfect, which was reflected in the fact that the individual parts of the proposal were not entirely logically connected.

One outstanding feature of the Anthoni proposal was the number of abstractly drafted formulations, some of them being the actual definitions of individual B/E operations. Anthoni tried to explain perfectly some of the rules and their meaning, which led to avoidance of pure casuistic in individual provisions. However, on the other hand, this effort to explain and clarify everything led to his proposal being rather cumbersome, which was mainly reflected in some of the longer definitions.

All the other proposals that followed were essentially editorial modifications of the Anthoni proposal. The first overhaul occurred in the first half of the 1720s and was probably associated with the consultation procedure of the Anthoni proposal. Most probably it dates to 1724. This phase produced two elaborates – “corrections,” which were essentially identical to the original proposal. The next phase of codification efforts dates to the mid-1730s, most probably to 1736. Sometime before that date the original Anthoni proposal was reworked, and the previous corrections were not taken into account. This redrafting resulted in the “revised proposal,” which was a result of all codification works.

As for the codification methodology, the individual proposals make evident that most of the regulations were created as a compilation of various foreign B/E acts. The notes

contained in particular in the original and revised proposals list a rather large number of different B/E acts.

Cited B/E acts include the Wrocław B/E Act as the main source of inspiration, as well as B/E acts of Magdeburg, Leipzig, Vienna (Lower Austria), Braunschweig, Brandenburg, Prussia, Gdańsk, Hamburg, Augsburg, Frankfurt, Cologne, Amsterdam, Lyon, Denmark, Norway.

Along with B/E acts the revised proposal also cited some theoretical literature on B/E law. The most cited literary works were the “*Wechsprozess*” by Ludovici and “*Tractatus de cambio*” by Zipfel. Numerous citations also point to a treatise by a Czech lawyer and professor at Prague law faculty Wenceslao Neumann de Puchholz<sup>6</sup> entitled “*Tractatus de cambio cum annexa nova ordinatione cambiali.*”<sup>7</sup>



**Wenceslao Neumann of Puchholz. Tractatus de cambio cum annexa nova ordinatione cambiali. 1715.**

Available at: <https://books.google.cz/books?id=o0ldAAAACAAJ>

The codification proposals were interesting in terms of their contents, especially their introductory articles,<sup>8</sup> as these formed “preambles” explaining the reason, goal, and purpose of the B/E Act. The introductory provision of the Anthoni proposal presented the effort to make the public acquainted with the rules of B/E transactions in more depth and detail as the main goal of the B/E Act.

<sup>6</sup> ADAMOŤ, K., LOJEK, A. *Právníci doby osvícenské*. Prague: Ústav státu a práva AV ČR, 2014, pp. 91–92.

<sup>7</sup> NEUMANN OF PUCHHOLZ, W. *Tractatus de cambio cum annexa nova ordinatione cambiali*. 1715.

<sup>8</sup> Except the Glouchov proposal.

For example, this provision mentions that many people in the Czech lands use B/Es and participate in B/E transactions without being informed about their rules in detail, while pointing out that these were often persons who did not perform trading business. It also claims that their lack of information is furthered by the fact that regular B/E law had never been implemented in the Czech state, and in order for these persons to be fully informed about B/E transactions and their rules and to be aware of the significance and consequences of the use of the B/E form, especially as regards the consequences in terms of execution, the rules of B/E transactions should be enacted in the Czech lands in the proper legal form. With these rules properly enacted, people who use B/Es will not be able to invoke unfamiliarity with the rules of B/E transactions in courts.<sup>9</sup>

The procedural rules that were to determine the court proceedings at the commercial college under the B/E Act were based on two main principles: the principle of oral proceedings, and the principle of rapid, summary proceedings. Oral hearing of the case was mandatory in the court of first instance, and any disposition freedom of the parties was ruled out. For this reason, the matter had to be heard orally in court, regardless of the parties agreeing to the opposite. Unlike at the court of first instance, the proceedings before the court of second instance were to take place according to ordinary forms of written proceedings.<sup>10</sup>

However, the process at the commercial college was not supposed to have a uniform nature. Although all the procedural provisions of the draft outline were conceived so that the court proceedings were as summary as possible, there was a clear difference between the proceedings in case of B/E disputes and other business disputes. However, this division does not correspond to the actual content of the proposed provisions in one respect. The B/E process was not to be only applied in the case of a B/E claim, but also whenever the claimant based his claim on a certified commercial bill of debt. And any bill of debt where the borrower was in default for at least six weeks was considered a certified business-related bill of debt. In this part of the B/E Court Act outline the B/Es and bills of debt were equalized.<sup>11</sup>

In both types of proceedings, the principal significance was that the defendant in a B/E process was obliged to obey the first court summons, otherwise there would be judgment by default. In the B/E proceedings, it was also virtually impossible to apply objections, in line with the abstract nature of the B/E. Finally, the main difference was supposed to be in the deadlines imposed by the outline on the fulfillment of the obligation under a court judgment. In the case of a B/E dispute, the performance was supposed to be immediate under the threat of execution, whereas in the case of other business disputes, the execution was to be preceded by issuance of three orders in succession with gradual deadlines.

The issue of the general binding nature of the rules on B/E transactions and the creation of a special B/E and commercial court was in the focus of the opinion of a “review commission” appointed in 1716 from the representatives of the Court of the Land Tables (*Zemské desky*) and of the Court of Appeals. The commission issued a negative opinion to both draft outlines of the proposal (Glouchov and Anthoni) which it detailed in its review.

<sup>9</sup> See the Anthoni proposal. URFUS, *V. Zdomácnění směněného práva v českých zemích*. Prague, 1959, pp. 174–175.

<sup>10</sup> URFUS, *V. Zdomácnění směněného práva v českých zemích*. Prague, 1959, p. 157.

<sup>11</sup> *Ibid.*

The general part of the review contained substantial critical comments and evidenced the fact that the very idea of creating a special B/E court and of the associated binding nature of the B/E law was one that did not fit well with the aristocracy of the times. The outcomes of the review commission work clearly suggest that the Land Tables bureau and the Court of Appeals were among the main opponents of the B/E codification.

According to the commission members the B/E Act outline breached the fundamental land laws and estate privileges. The commission was firmly against the creation of any special court. According to the commission, this special court authority, as suggested in the outline, was an instance deviating from the entire court system of the times that would take an unduly dominant place within it, thus threatening the agenda of other courts.

The commission was most offended by the concept that the B/E court should rule “*cum derogatione aliarum instantiarum*,” a concept that actually became the backbone of all the provisions of the B/E Act outline. Against it, the review commission tried to push a different concept based on the idea that the court should not be built as an instance independent of other elements of the judiciary. The B/E court was only supposed to create its auxiliary and supplementary element.

The review was opposed by the Mercantile College in its response. This response entailed a very detailed discussion of the principle that the B/E Court should be established in such a way as to judge independently of other courts. The Mercantile College referred in particular to the fact that there had already been some “*judicia delegata*” in the Czech lands as well as some special courts that made judgements in a similar way on persons of higher estate status. A very good argument for the College was the Prague New Town court of horse trade – although it was a court of municipal law, it could also hear disputes against the nobles. At the same time, the College emphasized that there are courts in the Czech lands judging only one sort of agenda and pointed out in this case the Chamber Court and the Burgrave Court.

Another critical comment of the review commission, that a B/E court would be in breach of the estate constitution of the Czech Kingdom, was refused by the College, underlining that the Renewed Land Order (*Obnovené zřízení zemské*) itself mentions support for trade. According to the College, the B/E Court was only supposed to hear and try “*causae cambiales et mercantiles*” without touching upon the agenda of other courts, so there could never be any infringement of the “*leges fundamentales patriae*”.<sup>12</sup>

On the other hand, the Mercantile College paid significant attention to two points. In its response, the College was very clear about the need to resolve business disputes quickly. In this sense, it pointed out that the land courts are entirely unsuitable for this purpose as they only had sessions four times a year. Large attention was also paid to a defense of the generally binding nature of the rules of B/E transactions for all persons, regardless of their social status. This was mainly supported by the argument that the nobility is not forced to use B/Es; however, when a noble did enter a B/E transaction, he had to respect its particularities.

---

<sup>12</sup> Ibid., p. 161.

Further discussion on the main principles of codification outlines of the B/E Act can be encountered in the activities of the viceregent commission, appointed in 1717. This commission was chaired by the chief land judge, count Johann Ernst Schaffgotsch. The task of this commission was to study the materials associated with the review commission report and elaborate them. However, from its appointment this commission tried to act independently and also provided its own opinion on some issues.

Its most interesting suggestions include one concerning the generally binding nature of the rules of B/E transactions. The commission suggested a compromise that, however, was not clear enough. According to this suggestion the provisions of the B/E Act outlines were to be amended in such a way as to provide anyone willing to bring a B/E obligation to court with the option to decide, whether to approach a general court or the B/E court.

In 1718 yet another draft outline of a B/E Act was produced by the Czech Court Bureau. By its nature, this draft was again a compromise proposal. According to the Czech Court Bureau proposal the provisions on the binding nature of the rules of B/E transactions should be based on the distinction between propertied nobility and nobility devoid of property, more precisely between domiciled and non-domiciled nobility. According to this proposal only a noble possessing a special entitlement in the form of a privilege or another prerogative was to be authorized to issue a B/E. Without such entitlement only the non-domiciled nobles, i.e. nobles with no property inscribed in the Land Tables, could issue B/Es. And also, it was to be banned to issue B/Es against any other values than cash money.

This proposal encountered little sympathy in the viceregent commission charged with assessing it. The viceregent commission raised various critical comments in this respect. One interesting feature of these comments is that they featured an overview of the most important advantages for the nobility stemming, in the eyes of the commission, from using B/Es and participating in B/E transactions. Especially, the commission stressed that a B/E is a good means for quick acquisition of money. It also pointed out how a noble can use B/E operations associated with remitting cash, if he was staying abroad.

Codifications work were renewed in 1720s, in a direct link to the stay of Charles VI in Prague in 1723. Very likely, the ruler was to be presented with a proposal for final approval. But different opinions were present and visible again. The opposition of the nobility against B/E law was still evident. The base of resistance remained in the Land Tables Bureau, expressing fears that introduction of the B/E law could lead to increased indebtedness of the nobility.

On the other hand, the commercial college reconfirmed its arguments supporting the introduction of B/E law. This college argued that without established B/E transactions any foreign trade is unthinkable, the institution of the Land Tables is not threatened by statutory rules on B/E transactions, and that the usage of B/Es was supposed to promote development of credit-based relationships with persons that, being foreigners, could not be inscribed in the Tables. It was the B/E that was supposed to be the best form of their securitization, as such relationships could not be secured by an in-book mortgage. B/E transactions were essential for establishing manufactures.

In connection with the general binding nature of B/Es, the difference between formal and dry bills was also discussed. By both sides, this distinction was seen as a way out of the dispute over the general binding nature of the rules of B/E law. At that time, the oppo-



nents of general binding nature had the initiative. The aim of this initiative was to ensure for the nobility its participation in B/E exchange only if it was in the interest of nobles. The general binding nature of the B/E rules was not in doubt as to the formal B/Es, that is, the B/Es used in normal long-distance transactions. However, in the case of bills due at the place of issuance, a proposal was made to allow this type of B/Es to be issued only to persons who are in some way involved in commerce or other business. The estate membership of these people was to be irrelevant here. Such B/Es were to be allowed to be issued also by nobles. Otherwise, a ban on dry bills was requested. The ban was justified by the fact that dry bills serve only to conceal usury. However, if it was required by trade interests, it would be possible to allow the issuance of such B/Es as well.

The advocates of the outline tried to use this opinion to support their proposal. For them, the distinction between formal and dry bills was probably considered to be an acceptable limitation of the general binding nature of B/E rules. From these intentions another outline variant emerged.

For the rules on formal B/Es, general binding nature was established for all persons regardless of their social status. In the case of dry bills, the situation was different. The rules on B/E transactions, especially on summary B/E executions, were to apply only to such dry bills that would be used by traders or businessmen. All other dry bills were to be regarded as ordinary bonds. The proposed provisions thus ceased to coincide with the original proposal on dry B/Es. It differed, in particular, in that non-trader dry B/Es were not forbidden, but rather allowed. However, they were to have the status of ordinary debt bonds. But even this was a big difference from the ban that was originally demanded. On the other hand, it was not accepted to allow noble businessmen to use dry B/Es with the same effect as formal B/Es. In this, the change of the outline was designed to the detriment of the nobility. It should be added that, in the end, none of these amendments were accepted, and neither was the outline enacted.

In 1730s, we again encounter a tendency to codify the rules of B/E exchange. The outline that emerged from this last attempt to enact a common B/E act for the Czech state can, in principle, be regarded as identical to the previous outlines. Its most prominent features included the re-presentation of the call for general binding nature of B/E rules. Again, all members of the nobility were enumerated in titular order and presented as subject to the same strengthened executions as other persons. Another feature of this codification was the new opinion of the drafters on the use of B/E execution also to enforce non-B/E receivables of businessmen and traders.<sup>13</sup>

During the Moravian negotiations on introduction of the 1738 Silesian B/E Act to Moravia, establishing of a special B/E and commercial court was considered for the last time. The commission set up to do so considered in particular the possibility of establishing a special court body for dealing with B/E and business disputes. The basis considered were the provisions of the Silesian B/E Act according to which no special court was to be established, but rather the B/E disputes were to be dealt with in ordinary courts, extended for those cases by trader and businessman lay judges. However, this procedure was not con-

---

<sup>13</sup> URFUS, V. *Zdomácnění směněčného práva v českých zemích*. Prague, 1959, p. 166.

sidered suitable for Moravia. On the contrary, the commission pleaded for establishment of a special and commercial court. In support of its proposal it pointed to the overload of cases in both civil and criminal courts and to the lack preliminary resources to pay for service benefits at these court bodies. However, this proposal ended with no result as well.<sup>14</sup>

As for introducing the Silesian B/E Act to Bohemia, this plan was received even worse than in Moravia, except for a statement of Czech representation and Chamber issued on 17 April 1750. This statement included a call for the B/E law to be enacted only as an estate law of traders, and hence the only true B/Es according to this statement were to be B/Es issued by traders or manufacturers. Other B/Es, especially B/Es issued by persons of higher estate status, were not to be regarded as true B/Es and were thus not to be subjected to execution.<sup>15</sup>

This statement of the Czech representation and Chamber made it very clear how strong was in Bohemia the opposition to introduction of B/E law, especially in some social spheres. Nevertheless, the codification attempts of early XVIII<sup>th</sup> century were important in terms of economic and social development of our lands in that era.

Already in early 1750 the introduction of the Silesian B/E Act was considered and there was also a proposal to consider a possible introduction of the 1717 Lower Austria B/E Act.<sup>16</sup> 1753 saw an attempt to create a special commission that was supposed to deal with this issue. This body was probably never summoned, as already in 1754 a new commission was appointed, chaired by earl Hatzfeld. This commission showed some activity, but never reached a codification of B/E law. In 1761 the Vienna government sent a proposal to the Czech consensus to reenact the 1717 Lower Austria B/E Act, as well as to enact it for the Czech lands. The same year a commission was also appointed to assess this issue.<sup>17</sup>

Most of the members of this commissions were Prague businessmen and money changers, or persons with close links to them. Prague businessmen included Sobek and Kern, money changers included Curt, Bradáč and Schubert. Then there were commerce councilors Loscani and Vesterhold, university professors Dvořák z Boru and Burgraff, appellation councilor earl Bubna and a representative of the Land Tables office Sir Turba.<sup>18</sup>

## II.2. The 1763 B/E Act and Further B/E Patents

The 1763 B/E Act undoubtedly took over and generalized the rules of customary B/E law that were followed in practice. In terms of legal regulation of B/E transactions it unified the Czech and Austrian lands. However, in Austria, unlike in Czech lands, it was not the first B/E act ever, as already by the 1717 patent a B/E act for Lower Austria had been introduced. After 1763, the act was also introduced into other Habsburg domains, especially Trieste and Galicia.

The 1763 B/E Act had two parts. Part one was the B/E act itself, i.e. the set of rules on B/E essentials and on using the B/E form in B/E transactions. Part two was a special court

---

<sup>14</sup> Ibid., p. 167.

<sup>15</sup> Ibid.

<sup>16</sup> URFUS, V. *Zdomácnění směnečného práva v českých zemích*. Prague, 1959, p. 213.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

act for a B/E and mercantile court. The court act mainly included procedural rules on proceedings at the B/E court and on B/E execution.<sup>19</sup>

The B/E Act meant the first systematic regulation of B/Es.<sup>20</sup> The system of the B/E Act is such that it starts with the general and moves on to particulars. It defines a B/E, a B/E relationship, individual types of B/Es.<sup>21</sup> It features detailed provision on main B/E operations. Particular attention is given to the ways of determining the due date of a B/E. The final sections include provisions that were supposed to deal with various situations that could occur in B/E transactions.

The most important include regulations on who is bound by the provisions of the B/E Act. These norms provide the best characteristics of the nature of B/E law and differ the most from customary rules that had governed B/E transactions in Czech lands beforehand. The binding nature of the B/E Act was established very clearly. Anyone who issued a B/E was to be subjected to the provisions of the Bill just like traders and money changers, regardless of his/her social status, employment, military rank, or anything else. In case of dishonor of a B/E, anyone was supposed to bear equal consequences according to the ruling of a special B/E court, deciding on the basis of strict principles on accelerated B/E proceedings, execution, and abstract obligation. There was one exception from this general rule, applying to clergy and military persons. Clergy was exempted from the jurisdiction of the B/E court entirely, and under no circumstances could a B/E execution be performed on them. On the other hand, an execution on a B/E obligation could be performed on military persons, save some limitations. Only person in actual military service were regarded as military persons, not civil staff of military offices and bureaus, even if otherwise subject to military jurisdiction.<sup>22</sup>

The B/E Act was a regulation that covered developed long-distance B/E transactions. In its provisions, however, it also covered local credit B/E transactions, as evidenced mainly by the provisions on dry B/Es.

Along with the B/E Act the 1 October 1763 patent also established B/E and commercial courts (*Wechsel- und Merkantilgericht*) in Prague, Brno, and Opava, charged mainly with fulfilling and enforcing in practice the principles of the B/E Act.<sup>23</sup> In Prague and Brno, second-instance B/E courts were also established as B/E and mercantile appellate courts. The third instance was the Supreme Court in Vienna.<sup>24</sup> That meant a substantial intrusion into the competences of the existing special court. It was a ten-domain court<sup>25</sup> that had

<sup>19</sup> Cf. JÁNOŠÍKOVÁ, P., KNOLL, V., RUNDOVÁ, A. *Mezníky českých právních dějin*. Pilsen: Aleš Čeněk, 2010, p. 109.

<sup>20</sup> Cf. SCHELLE, K., SCHELLEOVÁ, I. *Počátky obchodního soudnictví. Obchodní právo*. 1993, No. 3.

<sup>21</sup> For more details on this issue see ex. VLČEK, E. *Vývoj kodifikace směnečného práva*. In: SCHELLE, K. (ed.). *Vývoj právních kodifikací*. Brno: Masarykova univerzita, 2004, p. 121–122.

<sup>22</sup> Cf. art. VI. Of the 1763 B/E Act.

<sup>23</sup> KOVAŘÍK, Z. *Směnka a šek v České republice*. 6<sup>th</sup> edition. Prague: C. H. Beck, 211, p. 8.

<sup>24</sup> MALÝ, K. et al. *Dějiny českého a československého práva do roku 1945*. Prague: Linde, 1999, p. 168.

<sup>25</sup> For more details on this court in the present context see ex. ADAMOVIČ, M. et al. *Dějiny českého soudnictví od počátků české státnosti do roku 1938*. Prague: LexisNexis CZ, 2005; JIREČEK, H. *Spisy právnícké o právu českém XVI. -tém století*. Vienna: H. Jireček, 1883; KALOUSEK, J. *České státní právo*. Prague: Bursík a Kohout, 1892; ŠEBÁNEK, J. *Desetipanský úřad Starého Města pražského a jeho knihy*. Prague, 1926; VOJTÍŠEK, V. *Z minulosti naší Prahy*. Prague: A. B. Černý, 1919.

dealt with B/E disputes beforehand. The patent establishing the new courts as mentioned above thus also meant an important intrusion of the state power into the system of municipal courts.

For Czech lands, the main importance of the B/E Act was in the fact that it was the first legal regulation of B/E transactions.

Already in 1760s an extensive legislation appeared covering all loan relationships and settling some issues of the state financial economy. In the 1 May 1766 patent,<sup>26</sup> a tool of this regulation, B/Es were also touched upon. Above all, the patent established a new statutory interest rate of 4 % that was also to apply in case of B/Es. Among the B/Es that were supposed to be bound by this legislation, it listed dry B/Es issued by the debtor to himself. If the agreed interest rate of any such qualified B/E exceeded the statutory limit, the resulting obligation was not to be claimed under the rules of accelerated B/E execution. An exception was allowed for the “mercantile B/Es.” The Bill, however, neither specified nor defined “mercantile B/Es.”

This unclear wording led to an amendment to the Act performed by a 10 October 1768 patent. Here, the term “mercantile B/E” was defined very broadly. In particular, it provided that all dry B/Es, be them between businessmen or only simple lay persons, were not to enjoy the benefits of mercantile B/Es, if they were secured by mortgage and if their agreed interest rate exceeded the 4 % statutory limit.<sup>27</sup>

The actual concept of mercantile B/E was defined in such a way that the essential condition for a B/E to be considered a mercantile B/E concerned the parties of the B/E relationship. Only a B/E where the B/E relationship was established between traders or persons of equal status (i.e. factory and manufactory owners, craftsmen, and Jews) was to be considered a mercantile B/E. In case of these B/Es, the 4 % statutory interest rate was allowed to be increased to 6 %. Other benefits of these B/Es applied when the B/E relationship also featured a third person, i.e. in particular a B/E acceptor who was also a trader.

The general condition for a B/E that complied with all these requirements to be indeed considered a mercantile B/E was that it could not be secured by mortgage. In case of B/Es issued by a trader and also featuring non-trader persons in the B/E relationship, a statutory interest rate of 5 % was allowed. This was a less privileged level of mercantile B/Es.

## CONCLUSION

B/E law is clearly represented in the history of our state and is still an undeniable special component of Private Law. It is therefore necessary to study it, especially as there is a lack of scholarly literature on its historical developments.<sup>28</sup>

The issuance of the B/E Act on 22 December 1763 had immense impact on the development of commercial law and on its separation into a distinct branch of law. It contained

<sup>26</sup> *Ottův slovník naučný*. Vol. XVI. Prague: J. Otto, 1900, p. 11ff.

<sup>27</sup> Cf. here and further in this paper URFUS, V. *Zdomácnění směnečného práva v českých zemích*. Prague, 1959, p. 229.

<sup>28</sup> The only exception probably being V. Urfus, who has dealt with this issue in more depth and whose work is being elaborated in this paper.

B/E and commercial regulations, some norms of bankruptcy law,<sup>29</sup> regulation of commercial companies, and it also covered the administration of business registry. Three-instance B/E and mercantile courts were also established and charged with commercial legal agenda.

The 1763 B/E Act was not only the first legal regulation of B/E law in our lands, at the time of adoption it also represented a unification of Austrian and Czech laws. It was truly a groundbreaking norm that introduced B/E transactions to Czech lands and facilitated the development of capitalist economy.

---

<sup>29</sup> For more detail on this issue see SCHELLE, K., SCHELLEOVÁ, I. *Konkurs und Ausgleich in der Tschechischen Republic*. Munich, 2010.