THE IMPACT OF THE EUROPEAN COUNCIL DIRECTIVE 86/653/EEC ON THE ROMANIAN LEGISLATION REGARDING THE TERMINATION OF THE AGENCY CONTRACT, AS A MANDATE IN COMMON INTEREST

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Abstract: *This article aims to highlight a contract that has proven its great importance in commerce, namely the agency, as a legal mechanism that provides an extremely flexible juridical framework for many professional activities. In 1986, the agency contract received its own rules at a European Community level, by the adoption of the European Council Directive no. 86/653, regarding the harmonization of the Member States legislations concerning the independent commercial agents. This directive was intended to eliminate the existing regulatory differences in the laws of the Member States relating to commercial representation, which affected competition and the smooth running of trade relations within the Community. Legal doctrine and jurisprudence have revealed the complexity of this type of conventional relations, especially in the case of unilateral termination of contract, since agency is generally considered a type of mandate in common interest and the revocability of such an agreement is questionable, given the mutual and common interest of the contracting parties in the execution of the contract. In this context of uncertainty, the European Council Directive no. 86/653 brought important clarifications, which were later taken over in the national legislation, namely the Law no. 509/2002 and later the Civil Code, regarding the right to unilateral revocation, the limits of its exercise, as well as the indemnity for contractual termination.*

Keywords: *agency; mandate in common interest; unilateral termination of contract; indemnity*

JEL Classification: *K11; K12; K15; K22*

1. Introduction

By the Directive 64/224/EEC of 25 February 1964, the Council of the European Communities abolished the restrictions on the freedom of establishment and the

freedom to provide services in respect to activities of intermediaries in commerce, industry and small craft industries. Still, the differences in national laws concerning commercial representation substantially affected the conditions of competition and the carrying-on of that activity within the Community and were detrimental both to the protection available to commercial agents in relation to their principals and to the security of commercial transactions. Moreover, those differences were such as to inhibit substantially the conclusion and operation of commercial representation contracts where principal and commercial agent were established in different Member States (European Council Directive 86/653/EEC, 1986).

Therefore, the Council considered that trade in goods between Member States should be carried on under conditions which were similar to those of a single market, and this necessitated approximation of the legal systems of the Member States to the extent required for the proper functioning of the common market. In this regard, the legal relationship between commercial agent and principal was considered a priority, which would be achieved by harmonizing the laws of the Member States relating to commercial agents .

To this aim, the Council adopted the Directive of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (86/653/EEC). It provided harmonization measures that would apply to the laws, regulations and administrative provisions of the Member States governing the relations between commercial agents and their principals.

In the Romanian law system, the commercial agents had been submitted to the regulations of the Commercial Code, namely art. 402. Afterwards, the measures prescribed by the Council Directive were integrated into the national legislation by the Law no. 509/2002, and then by the Civil Code, which aimed both to harmonize the conditions of competition in terms of commercial representation within the Community, and to ensure the protection of commercial agents against their principals.

2. Revocability of the agency, as a type of mandate in common interest. The French doctrine theory

From all the legislative innovations that occurred as a result of the transposition of the Council Directive 86/653/EEC into the national legislation, we believe that the issue of revocation of the agency contract requires some special clarifications.

The legal regime of its unilateral termination derives from the fact that this type of contract is generally perceived as a mandate in common interest (Tulai, 2020a: 322).

The common law mandate is concluded and executed in principle in the exclusive interest of the principal, which also explains the power of the principal to revoke it at any time and in any situation, *ad nutum* (art. 2031 para.1 Romanian Civil Code). The right to unilaterally revoke the mandate can also be justified by the traditionally free of charge nature of this contract, as well as by the fact that the mandate was designed in principle to fulfill some tasks of an occasional nature, the trustee acting for the principal only until he will be able to take care of his affairs personally.
The agent, on the other hand, acting to fulfill his tasks, carries out this activity as a regular and independent profession, through which he develops his own activity. The power of attorney given by the principal to the agent usually has a permanent character, being the very support of his professional activity; the agent, developing the principal's clientele, contributes to the growth of his own business. The principal is interested, by concluding the agency contract, to capitalize on his manufactured products or provide the services that are the object of his speculative activity, and the agent is interested in negotiating and concluding as many contracts as possible for the principal, depending on which he will be remunerated. Therefore, the conclusion and execution of the agency contract is in the interest of both parties, benefitting both the principal and the agent. That is why permanent commercial agents have often been qualified by the doctrine as "the prototype of the trustee in common interest" (Collart Dutilleul et al., 1998: 517). The same qualification was given to commercial agents by other French authors, too (Malaurie et al., 2009: 286). French jurisprudence has shown that the pursuit of an own interest by the trustee is the necessary, but not sufficient, condition of the mandate in the common interest. It must be completed by the existence of another condition, namely representation. Therefore, the commissioners, who conclude legal operations in their own name, do not exercise a mandate in the common interest (Malaurie et al., 2009: 286). As article 2043 of the Romanian Civil Code states, *"The commission contract is the mandate whose object is the purchase or sale of goods or the provision of services on behalf of the principal and in the name of the commission agent, who acts in a professional capacity, in exchange for a remuneration called commission."* Thus, in a decision from 1970, the French Court of Cassation established that *"the special rules of the mandate in the common interest (...) only apply to the one who, in relation to the clientele, acts on behalf of the principal, and not on in his own name."* Moreover, neither the concessionaires, who could invoke the fact that they work on their behalf, nor the intermediaries, who carry out material acts for clients, from whom they are independent, will be considered agents in the common interest. Thus, the French doctrine established that *"the exclusive concession contract does not constitute a mandate in the common interest (...), the grantor can terminate the concession*

contract, without giving the reasons, subject to compliance with the notice period and in the absence of abuse of the right to termination. " (Mestre, 1998: 370). In one case, the Galeries Lafayette had granted a merchant a site for the sale of products chosen by the latter, but ordered by the company. When the Galleries revoked this concession, the Court decided that it was not a mandate in the common interest, since the merchant's employees were only carrying out material acts of presentation of the products, excluding the conclusion of any legal documents, on behalf of the company (Malaurie et al., 2009: 286). Another decision in the same sense of excluding the qualification as mandate in common interest of a mobile telephony intermediary was given on the 26th of February 2006 by the same Court.

We must draw attention to a terminological aspect: in legal relations, often the name *"agents"* is also used by other intermediaries from different fields of activity (transport, insurance, guarantees, credits, payments etc.), who are in fact commission agents, consignees, depositaries, brokers, dealers, employees. We believe that the generic use of the name *"agents"* in the case of these categories of persons can generate confusion related to the legal framework in which they carry out their activity, the legislator explicitly stating, in art. 2073 of the Romanian Civil Code, that various persons carrying out mediation or representation activities should not be assimilated to the category of agents.

Thefore, what makes an agent is not the name given by the contracting parties, but the legal framework in which the collaboration relations take place, which will be agency relations only if they comply with the regulations established by the legislator for the contract of mandate. Thus, in a case submitted to the attention of the French Court of Cassation, the contract of the parties qualified a person as an *"independent commercial agent"*. After several years of activity, the company he had worked for decided to terminate the contract. The person in question requested the payment of the indemnity for the termination of the contract, which was refused, the Court showing that *"the application of the status of the commercial agent does not depend either on the will expressed by the parties to the contract, nor on the name they gave to their conventions, but on the conditions under which the activity is actually carried out"* (Malaurie et al., 2009: 286). As regards probation in the matter, unlike the French law, where the agreement of the parties can be expressed in any form, the Romanian Civil Code explicitly imposes, by art. 2078 para. (1), the written form *ad probationem*.

It should also be mentioned that in practice, many agents are bound by an international contract and therefore the provisions of the Romanian Civil Code are applicable to them only to the extent that the Romanian law was chosen as the law of the contract by the parties or, in lack of choice, to the extent that the respective

contract has the closest ties with the Romanian state, or the act was concluded on the territory of the Romanian state. At the same time, special legal provisions are applied to certain categories of agents, in relation to the object of their specific activity.

The agent always works as a trustee with power of representation when concluding contracts in the name and on behalf of the principal and can act not only on behalf, but also in the name of the principal even when his power of attorney only concerns the negotiation of the lattest' future contracts. Therefore, given the fact that in the case of the agency contract both the condition of the common interest of the parties at the conclusion of the contract and the condition of representation are met, we consider that the agent can be qualified as a trustee in common interest. As stated in the doctrine (Clocotici et al.,1995: 81), the contract between the principal and the agent has the legal nature of a *"pact"*, i.e. a mandate of common interest, concerning successive operations over time, with the aim of prospecting the market, finding clients and placing one or more products on a particular market.

In French law, the Council Directive 86/653/EEC was transposed by the Law of June 25th 1991, which clarifies from the beginning (art. 4) the basis of the special protection enjoyed by the agent against his principal: *"Contracts between commercial agents and their principals are concluded in the common interest of the parties."* Moreover, French jurisprudence had identified the mandate of the agent as one of common interest long before the legislator confirmed this theory in explicit terms (Collart Dutilleul et al., 1998: 517).

Thus, the doctrine established that the power of attorney given to the agent by the principal is a mandate in the common interest, which cannot be revoked by the principal except for a just reason, so that its termination entitles the agent to compensation, if necessary (Ripert et al., 1992: 693). The Romanian doctrine embraced the same position on the matter (Cărpenaru, 2012: 87; Popescu, 1983: 344).

The cause of the "common interest" of the parties is justified by two aspects specific to the agency contract, namely, on the one hand, the continuity and duration of collaboration between the parties, and on the other, the joint establishment of a clientele (Leloup, 1998: c.15).

From this naturally follows the mutual obligation of the parties to execute the contract in good faith and loyalty (Civil Code, art. 2079 para. 1, art. 2080 para. 1), as well as the mutual duty to inform (Civil Code, art. 2079 para. 2a, art. 2080 para. 2b). Reciprocal loyalty means that the principal must not limit himself to not hindering the execution of the contract, but must be actively involved in ensuring that the agent is able to achieve the common goal. Moreover, our legislator explicitly

enshrines this duty of the principal, tying it to good faith in the contract and detailing the methods of fulfillment by the principal, through the provisions of art. 2080 Civil Code.

We must specify that the French jurisprudence and doctrine appreciate that the obligation of loyalty falls on both contracting parties only in the case of the mandate in common interest, whereas in the case of the mandate concluded for the achievement of the interest of the principal, this duty falls only on the trustee. In Romanian doctrine, the opinion was expressed, even under the rule of the regulations of the old Civil and Commercial Codes, that the obligation of mutual loyalty would also fall on the parties of the common law mandate, invoking as a legal basis art. 378 Commercial Code, which obliges the trustee *"to inform the principal of all the facts that could determine him to revoke or modify the mandate"*, respectively art. 385 Commercial Code, according to which *"the principal is required to provide the trustee with the means necessary to fulfill the mandate, unless there is an agreement to the contrary"* (Bocșan, 2001: 70-71). More so, there have been proposals in the sense of a legal regulation of the obligation of the trustee to inform the principal about the progress of the operation, but also of the obligation of the principal to create the necessary conditions for the execution of the contract (Munteanu, 1984: 40-42). We embrace this opinion that supports the reciprocal character of the loyalty obligation of the parties in the case of the common law mandate, especially in the context of the current legal regulations, which enshrines in the Civil Code texts, therefore as general rules, the obligations previously established for the principal and the commercial representative. Thus, art. 2018 para. (2) Civil Code shows that *"the agent is obliged to inform the principal about the circumstances that arose after the conclusion of the mandate and that may determine its revocation or modification"*, and art. 2025 para. (1) Civil Code provides that *"in the absence of a contrary agreement, the principal is obliged to make available to the trustee the means necessary for the execution of the mandate."* As far as the agent is concerned, he will have to perform the necessary diligence for the execution of the power of attorney received in the most advantageous conditions for the principal (Civil Code art. 2079 para. 2b), he therefore owes the diligence of a good owner in the way he seeks to achieve the interests of his principal. The principal himself has the obligation, according to art. 2080 Civil Code, to provide the agent with all the information and documentation necessary for the execution of the mandate, as well as to pay him the remuneration under the conditions and within the terms established in the contract or provided by law. Therefore, the combined efforts of the parties to the agency contact must converge towards achieving the same goal, namely the creation and development of a common clientele, profitable

for each of them. As a result, the contract is often concluded for an indefinite period and can only be revoked unilaterally with the observance of a mandatory notice and the correlative right of the agent to be compensated, except in situations explicitly provided by law as exceptions.

The notion of *"common interest"* also justifies the rights of the agent in case of termination of the contract (Tulai, 2021: 78).

However, French doctrine draws attention to the fact that the regime of revocation of the agent is not identical to that of the trustee in common interest (Malaurie et al., 2009: 286; Collart Dutilleul et al., 1998: 518). In case of termination of his relations with the principal, including in the event of death, and excluding situations where the agent is the one who initiated the termination of the contract, or the principal terminates the contract due to the agent's violation of his obligations (art. 2092 Civil Code), the agent will be entitled to an allowance, intended to compensate him within a certain limit, set by the legislator, the loss of benefits that the agent would have gained from the continuation of contractual relations (art. 2091 Civil Code). In doctrine (Gaudemet-Tallon, 1981: 118), the opinion was expressed that this allowance is autonomous and independent of the contract, finding its basis directly in the law.

If the contract is concluded for a fixed period, it ends at the end of the term. If, however, it continues to be executed by the parties after the expiration of the term, it is transformed, unless there is a contrary agreement of the parties, into a contract for an indefinite period (Civil Code art, 2088). The contract concluded for a definite period can be unilaterally terminated by any of the parties, with the provision of a mandatory notice, only if it provides for an express clause that allows the possibility of early unilateral termination (Civil Code art. 2089 para. 2).

The agency contract concluded for an indefinite period can be terminated unilaterally by any of the parties, but only with the observance of a mandatory notice, established by the legislator through a provision of public order (Civil Code art. 2089), which also fixes its duration. The Civil Code does not allow the parties to shorten the notice periods established by the legislator, but they can be longer, without the principal being able to benefit from a shorter term to free himself from the contractual relationship than the one provided for the agent.

However, the legislator (Civil Code art. 2090) allows any of the parties, in *"exceptional circumstances"*, to terminate the contract without notice, but imposing the correlative obligation to repair the damage thus caused to the other party, unless the party terminating the contract is unable to continue it due to force majeure or fortuitous circumstances. We consider that, despite the legislator's omission to mention it, the fault of the co-contractor also removes the obligation to pay damages

that falls on the party that denounces the contract without notice, of course, on the condition that they prove the fault of the contractual partner, which makes it impossible to continue the collaboration.

3. The termination of the contract in *''exceptional circumstances''*

Regarding the phrase *"exceptional circumstances"*, the legislator does not clarify its meaning, limiting himself to showing that they are *"other than force majeure or fortuitous circumstances"*, and that they *"make it impossible to continue the collaboration between the principal and the agent"*.

The wording chosen by the legislator, which refers to *"exceptional circumstances, other than force majeure or fortuitous event"*, could suggest the application of the theory of unpredictability in contracts in the special matter of the relations between agent and principal, an institution that was introduced for the first time in the Romanian private legislation by the regulations of the new Civil Code, namely by art. 1271.

Thus, according to it, *"if the execution of the contract has become excessively onerous due to an exceptional change in circumstances that would make it manifestly unfair to compel the debtor to perform the obligation, the court may order: a) adaptation of the contract, in order to fairly distribute the losses between the parties and the benefits resulting from the change in circumstances; b) termination of the contract, at the time and under the conditions it establishes."* For this, it is necessary to meet several conditions expressly provided by the legislator, namely: the change in circumstances must have occurred after the conclusion of the contract, without the debtor being able to reasonably have considered it at the time of the conclusion of the contract; also, the debtor must not have accepted the risk of the change of circumstances, nor could it reasonably have been assumed that he would have taken this risk; finally, the debtor must have tried, within reasonable time and in good faith, to negotiate a reasonable and fair adaptation of the contract to the new circumstances.

As it can be easily seen, the unpredictability, as it is regulated by the Civil Code art. 1271, does not give the right to the contracting party that would be disadvantaged by the change in contractual circumstances to unilaterally terminate the contract. The parties will be able to try to revise the agreement by mutual agreement, in order to rebalance the benefits, and if they fail to reach an agreement, it will be up to the court to decide the fate of the contract. The disadvantaged party will not even have the right to suspend the execution of the contract until it is readjusted, as stipulated by the UNIDROIT Principles (art. 6.2.3 para. 2)., Therefore, they will be even less

entitled to decide unilaterally the termination of contractual relations, this being the exclusive attribute of the court, in the absence of an agreement of the contracting parties. Art. 1271 Civil Code unequivocally stipulates that the court will be able, if the revision of the contract by the parties has failed, to decide between the adaptation of the contract or its termination, at the time and under the conditions established by the court.

Therefore, we think that the *"exceptional circumstances"* referred to by the legislator in art. 2090 of the Civil Code are not those that would lead to the appearance of unpredictability in the agency contract.

The legislator stipulates that there would be circumstances whose exceptional character will allow any of the parties to terminate the agency contract without notice, through a simple written notification, which will cause the contractual relations to cease from the date of receipt of this notice of unilateral termination of contract (art. 2090 Civil Code).

Therefore, it remains unclear, in the context of the current regulations, the meaning and content of the notion of *"exceptional circumstances"* referred to by art. 2090 C. civil.

To make it even more difficult to understand the purpose of this provision, the legislator stipulates that these exceptional circumstances do not exempt the party that terminates the contract from repairing the damages thus caused to the other party, therefore the only advantage being that they will no longer have to comply with the period of notice, which is otherwise mandatory in case of unilateral denunciation.

Trying to find a justification for the regulation contained in art. 2090 C. civ., we can also think of a possible attempt to transpose the *"frustration of contract"* theory into our private law. This doctrine, enshrined in the Anglo-Saxon legal system, also known frequently as *"commercial frustration"*, is somewhere between unpredictability and fortuitous impossibility of execution (Tița-Nicolescu, 2012: 16) It appears when an unforeseen event compromises the very reason or purpose for which a person took part in a contract, without being a fortuitous case or force majeure and excluding the fault of the parties. In such situations, it is possible to unilaterally denounce the convention. But this theory does not find its applicability in the situations regulated by the Romanian legislator in art. 2090 C.civ., since, in the case of this frustration of the contract, the party that cannot fulfill its obligations is not liable, whereas the regulation mentioned in our Civil Code does not exempt the party that terminates the contract from paying compensation to the contractual partner for the damage thus caused.

As rightly noted in the doctrine (Iacob, 2010: 66), even under the provisions of the Law no. 509/2002, which contained a provision similar to that of the Civil Code, under these conditions, in which the *"exceptional circumstances"* that make it *"impossible to continue the collaboration"* do not exonerate the party invoking them from liability, we do not see where their exceptional character resides and what is the difference from the situation in which the party that no longer wishes to continue the contractual relationship simply ceases to perform its obligations derived from the contract, in which case they would also owe damages.

4. The right to claim an indemnity for unilateral termination. The exceptions

The termination of the contractual relationship between the agent and the principal entitles the agent to an indemnity, which is intended to cover, to a certain extent, potential benefits that the agent would have achieved in the case of continuing the contract; thus, the agent will be entitled to be compensated only if they have provided the principal with new clients, or they have significantly increased the volume of operations with the current clientele, and the principal continues to obtain substantial benefits from the operations intermediated by the agent; also, only if the payment of this indemnity for termination of collaboration is fair, taking into account the benefits that the agent would have achieved by continuing the contract, in particular the commissions that he would have received following the operations concluded for the principal with these clients ; also, the allowance is intended to cover the losses that the agent will record as a result of the restriction of his professional activity due to the existence of a non-competition clause in the agency contract (Civil Code art. 2091).

We therefore conclude that the notion of *"termination of the contract"* is understood by the legislator in a broad sense, the agent having the right to this allowance not only in the case of unilateral termination of the contract for an indefinite period, but also in the case of non-renewal of a contract for a fixed period and even in those situations in which the agent can no longer continue his activity due to objective causes, for which he is not to blame, such as advanced age, illness, infirmity or death (Civil Code art. 2091 para. 4).

Therefore, we cannot share the opinion expressed in the doctrine, that the purpose of the legal establishment of the right to compensation is to protect the agent *"against untimely termination of his contract or unjustified non-renewals"* (Collart Dutilleul et al., 1998: 522). On the contrary, the right to indemnity is recognized to the agent independent of any fault of the principal, the causes of termination of the contract being diverse. If the principal in bad faith terminates the contractual

relations with the agent, thus causing him damages, it is a case of culpable non-execution of the principal's contractual obligations, which will entail his contractual liability, under common law. Moreover, the legislator expressly states that the payment of this indemnity for termination of the contract does not remove the agent's right to claim compensation, under the law (Civil Code art. 2091 para. 3). In fact, the agent is always required to compensate the principal for the damages he caused by not respecting the power of attorney received, regardless of whether the contract was terminated for a just or unjust cause (Sasu, 2005: 30), but only under the condition of proof by the principal, under common law, of a fault on the part of the agent related to the diligence, good faith or loyalty he showed in the execution of the contract.

Also, the parties cannot derogate from the legal stipulations that give the agent the right to indemnity, any such clause being considered unwritten (Civil Code art. 2094). Therefore, the agent's waiver of the indemnity will not be possible before the termination of the contract.

However, the compensation conferred as a principle, to the agent, in cases of termination of the contract, will not be due in certain situations, expressly mentioned by the legislator.

Thus, the agent will not be entitled to the indemnity if the contractual relationship ends with the dissolution of the contract by the principal, due to the agent's violation of his obligations (Civil Code art. 2092a). The agent's fault therefore naturally leads to his forfeiture of the right to collect the indemnity, with the condition of its proof by the principal. The jurisprudence decided as such, for example, in a case when the principal denounced and proved an insufficient prospecting of the clientele by the agent, which led to a decrease in sales, or the agent's non-compliance with the non-competition clause, or the agent's refusal to practice sales methods adapted to the respective sector of activity (Stancu, 2007: 17).

Likewise, the agent will not be able to claim the allowance if he himself has the initiative to terminate the contract, except in cases where he cannot reasonably be expected to continue his activities, for reasons such as age, infirmity or illness (Civil Code art. 2092b). Unjustified resignation of the agent shows his disinterest in the common value established together with the principal and reveals the violation of the obligation of loyalty and information, which are at the very basis of the permanent character of this mandate and consequently determine the agent's loss of the right to compensation.

The agent will also not be able to claim the indemnity in situations where he assigns the agency contract to a third party with the consent of the principal (Civil Code art. 2092c); also, if the contract is transformed by replacing the agent with a third party,

provided that the parties have not agreed on maintaining the right to compensation of the replaced agent (Civil Code art. 2092 d). It should be noted that if the assignment of the contract by the agent takes place without the consent of the principal, the agent will not only be deprived of the right to compensation, but he may be obliged to pay compensation for any damages caused to the principal in this way, based on contractual liability, under common law conditions. The same will happen if the agent refuses to fulfill his contractual obligations unjustifiably, without being able to invoke as an excuse his advanced age, infirmity or illness, or any fault of the principal that makes it impossible to continue the collaboration.

The legislator stipulates that the agent's right to indemnity is conditioned by him notifying the principal that he intends pursuing his entitlement, within 1 year following termination of the contract (Civil Code art. 2091 para. 5).

As regards the amount of compensation to which the agent is entitled, its value is determined by special provisions of the law, which indicate both the criteria by which the parties or the court have to make the evaluation (Civil Code art. 2091 para. 1), as well as its maximum value (Civil Code art. 2091 para. 2), which *"cannot exceed an amount equivalent to an annual remuneration, calculated on the basis of the annual average remuneration received by the agent during the last 5 years of contract. If the duration of the contract does not add up to 5 years, the annual remuneration is calculated based on the average remuneration collected during the respective period."* Therefore, it will not be calculated according to the rules of common law regarding the assessment of damage caused by non-compliance with obligations (Civil Code art. 1531), since the indemnity for termination of the contract is due to the agent independent of any fault of the principal. In cases where the termination of the contract occurs as a result of the principal's fault, the agent's right to be compensated extends beyond the limits established by the legislator for the aforementioned indemnity, the damages that the principal will owe having to cover, according to the rules of common law, the entire damage caused to the agent. Of course, however, that the granting of these damages, under common law, will be conditioned by the agent's proof of the principal's fault and of the direct causal relationship between his culpable act and the damages invoked by the agent. These damages may be at a much higher value than what could be covered by the contract termination indemnity; they may result, for example, from the loss of the relationships established with the clientele around the principal's brand and products or services (more precisely, the commissions that the agent would have collected if he had continued the relations with the principal), but also from the personnel expenses, caused by the dismissal of certain employees or subcontracting with third

parties, or from the lack of profitability of the investments made by the agent for the execution of the contract with the principal.
The agent maintains his right to compensation even if he terminates the contract for reasons attributable to the principal, such as his systematic delay in paying the commission, or the non-communication of information necessary for the execution of the mandate; such situations were taken into account by the legislator when they stipulated that the granting of the indemnity does not affect the agent's right to claim compensation (Civil Code art. 2091 para. 3). The termination of the contract will therefore take place under the conditions of common law (Civil Code art. 1549-1554), being conditioned by the agent's proof of the principal's fault and attracting the correlative right to request damages for the full reparation of the damage thus suffered. Of course, the right to request termination can be exercised at any time, regardless of the fact that the parties have established a fixed duration of the contract or not and without requiring the observance of any notice period addressed to the party faulty for termination.

5. Conclusions

The current status of the agent, as enshrined by the Romanian Civil Code, under the impact of the European Council Directive 86/653/EEC, aims at increased protection granted to him in relation to common law trustees, who carry out occasional activities, in the exclusive interest of the principals, in contrast to the agent, who works professionally and permanently, in the common interest of himself and the principal (Tulai, 2020b: 69). Thus, for example, the agent has the right to commission for contracts concluded thanks to him or even without him, but with a client from a group of determined persons or from a region for which the agent has exclusivity (art. 2083 Civil Code); the notice is in principle mandatory before the termination of the contract concluded for an indefinite period, or for a fixed period, with an early termination clause (art. 2089 Civil Code); the transformation of a fixed-term contract into an open-ended contract, when the parties continue to perform even after the term has expired (art. 2088 Civil Code); the right to compensation in case of termination of the contract, whatever the cause of termination may be, with the exception of the agent's initiative or fault (art. 2091 - 2092 Civil Code).

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