FACTORING CONTRACT. FINANCING PERSPECTIVE IN THE INSOLVENCY PROCEDURE

Diana Maria ILIE, PhD. Student
Faculty of Law, Titu Maiorescu University, Bucharest
dianamaria.ilie@yahoo.com

Abstract
How insolvency law "invades" and suppresses common law governing principles, as well the contractual freedom, obligatory character and irrevocability of contracts concluded by the insolvent debtor before the opening of the procedure, shows once again the specificity of the insolvency matter and its prioritization in the system of national law. The area of interference between insolvency law and common law relates to an economic philosophy that assigns to the contract a role that exceeds the individual interests of the parties, namely granting the second chance to the debtor in difficulty, prioritizing the reorganization and concretization of a rescue culture at the level of the market economy, which becomes a reason, a purpose and a finality in the matter of insolvency. Unlike other contracts, such as transferring property contract, transaction contracts, commission and consignment contracts, which enjoy a legal regime expressly regulated by the Insolvency Code, the factoring, which is a creation of the Anglo-Saxon system of law and which functions in our system of Roman-German law through the institutions of assignment of claims, subrogation and mandate, do not benefit from special clauses, which means that it is subject to the general rules of art.123 of Law no. 85/2014. In this respect, such a contract which collides with the insolvency procedure may be maintained, modified or terminated by the insolvency practitioner. However, we will observe that this contract is a complex one, and the incidence of insolvency implies a multidimensional and customized analysis from case to case.
Keywords: *insolvency, factoring contract, compatibilities, the right of option of the insolvency practitioner, financing perspective.*

Some reflections on compatibility between insolvency law and civil law. Current contracts - objective of convergence between the common law principles and the insolvency principles

What is the place of insolvency law in the Romanian law system? This question can be a starting point in the analysis of the compatibility problem, considering the coercive character of the legal conduct imposed in the matter of insolvency, a character that is required to be conserved regardless of the supplement of the other norms of law in the matter. We agree with the doctrinal opinion [1] that insolvency matter determines "a necessary causality" that allows the application of the rules of common law only in this

context. In this respect, we also invoke the general theory of law [2] which identified in the structure of the order of law two categories of rules, respectively “rules constituting legal value” and “rules that shape the law”, considering that the rules constituting legal value must be distinguished from the rules by which the modelling of the law is evaluated. In other ideas, from the perspective of the compatibility analysis, the legal rules in the field of insolvency which impose certain restrictions and sanctions, or which confer certain rights and protections by virtue of some fundamental principles that governed the final legal construction of the insolvency, cannot be affected by the common law, the application of compatible rules of interference being allowed only on condition that it does not affect the reason of the special insolvency law. Therefore, the rules that “shapes” the legal relation specific to the insolvency procedure is a complementary rule, related to the common law, while the “shaped” rule, with “intrinsic legal value” is the specific rule of the insolvency procedure, which corresponds to a special, autonomous law. [3] Starting from the logical unity of the order of law, the affectation of some principles that ensure the intrinsic justification of the specific legal rule regulated by the insolvency matter leads to the loss of its finality, becoming vulnerable in the legitimacy and effectiveness of its application: [4] “However, the knowledge of the law, like any knowledge, seeks to understand its object as a whole with meaning and to describe it in non-contradictory sentences, it starts from the premise that the conflicts of rules within the material of norms that it is given to him, more precisely it is given to him, they can be solved by interpretation and they must be solved in this way”. Beyond doubt, the way of addressing this interference becomes a very delicate one, in relation to the need for corroboration, conciliation and convergence of the law specific to the insolvency procedure and the branches of common law. An interesting situation is also the one of the executory contracts at the date of the opening of the procedure, “a situation which also becomes governed by specific assets, such as the maximum increase of the value of the debtor’s assets or the criterion of profitability for the debtor”. [5]

In relation to these aspects, we consider that the interaction of insolvency with the common law and its latter modelling in an almost unique way at the normative level, can only represent a justified “alteration” of the established guiding principles, this won vocation of the insolvency law towards by the common law by virtue of clear reasoning

and specificities it can be defined as “rights won by insolvency” [6]. In other words, the insolvency-specific rule of law will attract other norms of law within its sphere of regulation, which through interconnection with the insolvency procedure can be neutralized and adapted to its specificity. More specifically, a common law rule is considered compatible with insolvency law as long as it does not go beyond the scope and limits allowed by the latter.

By violating the principle of contractual freedom governed by common law, the insolvency law sanctions with nullity the contractual clauses meant to either terminate the contract, or shall not be entitled to the benefit of the payment term or to declare the early exigibility for the cause of opening the procedure and limit the impact of the intuitu personae character. As a result, the contractual relationship is protected and strengthened by a special law, applicable with priority, in the form of the insolvency practitioner’s option right within the limits and conditions required by law, as recognized by virtue of the character and purpose of public order of the insolvency. Thus, the clauses that provide for the cancellation of the contract due to the opening of the insolvency procedure, but also the aggravation of the contractual situation of the debtor by not being entitled to the benefit of the payment term or by declaring the anticipated exigibility, lose their effectiveness when opening the procedure, the invalidity of these clauses could not be covered by a clause contained in the contract or by agreement of the parties concluded after the opening of the procedure.

The very reason of the insolvency and the legal regime, we could say original, of the executory contracts after the opening of the insolvency procedure have as purpose the creation of opportunities for economic recovery and revitalization of a debtor in insolvency and of maximizing his assets, principle established expressly by the special law. The right of option of the insolvency practitioner concerning maintenance, modification or cancellation of contracts ensures a social function [7], of general interest, which triggers a paradox of the regime of contracts, following that the way of corroboration, conciliation and convergence of the specific law of the insolvency procedure with the branches of common law becomes extremely delicate and interpretable.

Without strictly referring to the regime of contracts in the insolvency procedure and to emphasize its extravagance in the system of law, the doctrine, otherwise, called it the "rebellious daughter of civil law", [8] why not admit it that despite what the traditionalist authors assert regarding the "sacrosanct" character [9] of the principle pacta sunt servanda, free will remained only an illusion, a misleading appearance, knowing at present a "visible and constant erosion" [10]. Contractual freedom does not (so much) exist in the economic reality [11], where professionals and consumers, on the other hand, no longer have unrestricted freedom to contract or refrain from contracting, a reality in which business needs and personal needs determine people to sign contracts, which we can call adherent contracts or forced contracts.

In the insolvency procedure, the contract becomes an added value in a reorganization procedure, the right of option of the insolvency practitioner regarding the maintenance or cancellation of the current contract at the date of the insolvency procedure triggering a general interest, higher than the particular interest of the contractors, justified by saving the debtor, maintaining the activity and the employees, as well as the collective coverage of the liabilities.

Therefore, the object of the option right is "the executory contract", the Romanian legislator transposing the concept of "current contract" from French law, which is defined by the fact that the respective contract exists at the date of opening the procedure, in the sense that it was concluded prior to this date and is in the process of execution, therefore it has not ceased to date. The new EU Directive 2019/1023 on preventive restructuring frameworks on discharge of debt and disqualifications and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt defines similarly the "executory contract", respectively the contract between a debtor and one or more creditors under which the parties still have obligations to be fulfilled at the date of granting or applying the suspension of individual forced executions".

The doctrine also raised the question of extending the analysis over the contracts in course of creation [12], in the sense of analyzing the intermediate phases underlying the agreement of the parties. We consider that we cannot refer to this type of contracts, as the legislator has not considered them, especially since they can encourage fraudulent purposes, which may favour certain creditors in the insolvency procedure.

Factoring contract - short considerations regarding the current role in the national and international economic system

Without having to claim a comprehensive analysis of the factoring contract and the effects it implies, our intention being first of all to analyze the effects triggered by the insolvency procedure on the clauses of such a contract, but also the possibility of approaching as a financing and capitalization mechanism by an insolvent debtor from the perspective of success of a reorganization plan, however, we consider it appropriate to make some clarifications regarding the factoring operations in relation to their size and their current role in the national and international economic system. [13]

Regarding the international regulation of factoring, we mention that it benefits from the adoption of international instruments that define the regulation of the activities specific to this operation, as well as the rights, obligations and conduct of the parties. Thus, the International Institute for the Unification of Private Law - UNIDROIT [14] expressed a special concern for the legal and economic regulation of modern payment instruments such as leasing or factoring, organizing in 1988 the Convention on International Factoring in Ottawa - Canada, [15] within which the term of international factoring was defined. Subsequently, in 2001 it was signed The United Nations Convention on the Assignment of Receivables in International Trade, which is also one of the greatest efforts to unify the legislation on debt financing, which comes in addition to the UNIDROIT Convention by dealing with the omitted issues regarding the validity of the assignment of debts made abroad and the vital issue of priorities in case of insolvency of the debtor. However, it had as the main purpose of encouraging and practicing international debt financing as a method of facilitating international trade, by reducing the costs of transactions such as factoring, financing projects and insurance, the major problem in this area being given by the national divergences regarding the regulation of the institution, primarily due to the complexity of factoring operations. [16]

We should mention that Romania is a member of UNIDROIT and the UN, but so far it has not signed and ratified neither the 1988 UNIDROIT Convention nor the UNCITRAL Convention in New York in 2001, our system of national law having no normative document of general applicability expressly regulating the factoring institution.

The parties to the contract may decide in the sense of submitting the factoring in part or in full to the international conventions, expressly specifying this by the contractual clauses, or they may adhere to the terms proposed by the big professional associations of international factors in the field, such as Factors Chain International. [17]

The literature defines the factoring operation through mechanisms such as conventional subrogation in the rights of the creditor [18], assignment of debt [19] or mandate [20]. At the same time, referring to the provisions of art.18 of GEO no. 99/2006 regarding credit institutions and capital adequacy [21], which mentions among the specific lending activities carried out by the credit institutions and the lending through the factoring contract, with or without regress, we find that it would be a lending operation specific to the credit institutions. However, a similar provision is found in Law no. 93/2009 regarding non-banking financial institutions, which mentions in art. 14 paragraph (1), in addition to the main object of activity regarding credit granting activities, also the factoring operations. In the secondary legislative plan, we can consider the Order of the National Bank of Romania no. 27/2010 for approving the Accounting Regulations according to the international financial reporting standards applicable to credit institutions, which defines factoring [22] as that, "transaction whereby the client, named adherent, transfers the property of the receivables, more precisely of its commercial invoices, to the credit institution, named factor, the latter having the obligation, according to the contract concluded, to ensure the collection of the debts of the adherent".

By accessing the website of the Romanian factoring association, [23] a major reference in the field, as well as the websites of the credit institutions that offer the possibility of financing through the conclusion of a factoring contract, we can understand in concrete terms what factoring is, how it can be defined internally, what are its advantages and what are the regulations, the normative documents to which we refer.

In a rather simplistic but easily to assimilate definition, some credit institutions have defined factoring as "a quick financing solution to which a company that has a liquidity deficit can appeal to, as a result of a process by which the Factor (in this case the bank) acquires from the Adherent (the client of the factor) the certain, liquid and exigible debts, respectively the invoices resulting from the delivery of goods or the provision of services. The claims must be accepted and confirmed by the client of the Adherent". [24]

Thus, conceived as a complex package of services, [25] which is based on the process of acquiring the claims resulting from the delivery of goods or the provision of services, the factoring operation involves flexible financing, which increases with the level of the business and is structured on its specificity, access to specialized services for claims management and collection, access to specialized services for evaluating, verifying and monitoring the Assigned Debtors and the claims held on them, covering the risk of non-payment of the Assigned Debtors, consulting and specialized commercial assistance, real-time reports and information, without constituting material guarantees.

We can appeal to the common law in order to draw up the legal regime applicable to factoring, respectively the provisions of art. 1.566-1592 of the new Civil Code regarding the "assignment of claims", supplemented by special laws applicable in certain particular situations, such as the provisions of Law no. 125/2011 regarding the approval of the Government Emergency Ordinance no. 121/2010 for amending and supplementing the Government Emergency Ordinance no. 146/2002 regarding the creation and use of resources developed through the State treasury and for the modification of art.52 of Law no.500/2002 on public finances. [26] However, these additions do not validate the equivalence between the factoring institution and the one regarding the assignment of claims, factoring involving certain particularities, in the sense that this is a contract essentially with an onerous title that implies the financing of the adherent, while the assignment of claims can also be free of charge. At the same time, the assignor guarantees only the existence of the claims, not the solvency of the assigned debtor, while in the case of factoring with regress or with recourse, the adherent also guarantees the solvency of the assigned debtor, in the sense that, if the latter does not pay, the factor is directed against the adherent. Moreover, the parties to the factoring contract are specialized, the factor being a banking company, a non-banking financial institution or a specialized factoring company, and the adherent is, in most cases, a trader, a natural or legal person, while the mechanism of the assignment of the debt is accessible to any natural or legal person without imposing a certain quality. As a consequence, we invoke the provisions of art. 1168 of the Civil Code according to which, "the contracts not regulated by law are applied the general provisions of the code regarding contracts, and if they are not sufficient, the special rules regarding the contract with which they are most

similar". Part of the doctrine thus defines the factoring contract as being that "financing contract which contains intrinsically specific elements, especially the assignment of debt, as security or payment, but, in practice, according to the object and purpose agreed by the parties, it may also have the characteristics of a mandate contract". [27]

It is very important to specify and clarify the aspect regarding the classification of factoring, existing factoring with regress and factoring without regress. Regarding the factoring with regress, this option implies that, in the event of non-payment, the factor will recover its sums not collected from the adherent by exercising the right of regress, respectively by debiting the current account of the adherent, or by using the guarantee, depending on the applicable situation. On the other hand, in the case of the factoring without regress, the factor pays to the adherent the accepted value of the invoice or invoices, one part immediately after the issuance and the rest within a certain term from the maturity of the invoice, even in the event that it does not receive in whole or in part one or more invoices. Subsequently, the factor will try to recover the amounts from the assigned debtor or, possibly, from the insurance-reinsurance company to which it was insured against the risk of default. [28] In the case of factoring with regress it can be considered that the adherent, assignor of the claims bought by the factor, assumes towards it, in capacity of assignee, not only the legal obligation specific to the assignment of the claims, to guarantee the valid existence of the assigned claims, but also the conventional obligation to guarantee the assignee with respect to the insolvency of the assigned debtor, an obligation that extends to the nominal value of the claims ceded in the ownership of the factor and not to the amount established between the adherent and the factor as the price of the assignment.

In other words, while in the case of factoring with regress or with recourse, the risk of the insolvency or refusal to pay the debts by the assigned debtor is borne by the adherent, in the case of factoring without regress, the factor takes over the debts assigned with the risk of non-payment or of the insolvency of the assigned debtor, in the sense that the factor can not be directed against the adherent for recovering the amounts paid by way of price of the invoices at the moment when the assigned debtor refuses to pay the debts due.

Factoring contract - financing perspective in the insolvency procedure

Analyzing the factoring contract from the perspective of insolvency, we refer to the following hypotheses. Thus, in the hypothesis factoring with the right of regress of the factor against the adherent, the latter being in the insolvency procedure at the time of the conclusion of the contract, the assignment of the claims is certainly done as collateral, the right of the factor on the claims being one similar to the guaranteed creditor. Therefore, in relation to the regulation of art.1.389 of the Civil Code regarding the chattel mortgage, insofar as the debt is transferred as a guarantee, there is also a right of regress of the factor, meaning that, in the absence of the respective debt being collected at the due date, it will be able to request from the adherent the unpaid amount.

In the hypothesis of the factoring contract without regress, but with the guarantee of the solvency of the assigned debtor, which represents an application of the provisions of art.1.585 par.(3) of the Civil Code and a possibility of aggravation of liability by the parties' agreement [29], the crediting factor may be entered with the price of the assignment as a unsecured creditor in the claims table on the insolvent debtor adherent, under the effect of guaranteeing solvency, to which the expenses of the assignment may be added.

In a third hypothesis, that of the factoring contract without regress, without any other stipulation regarding the guarantee of the solvency of the assigned debtor, in which the assignment of the claims has the meaning of definitive and irrevocable transfer of the claims [30], the factor can no longer be entered with any claims in the table of claims on the insolvent debtor, in this case the adherent, since the former has no right over the assets of the debtor. The doctrine invokes a single possibility of these creditors to join the creditors' list, respectively if the adherent assigner knew the insolvency status of the assigned debtor on the date of assignment, by virtue of the similarity of the provisions regarding the hidden defects in bad faith [31].

As a result, insolvency may be one of the main risk factors for the factors, as parts of factoring contracts, the abrupt deterioration of the financial situation of the adhering company, often annihilating, paralyzing the possibility of continuing financing and guaranteeing liquidity. [32]

In most cases, the insolvency appears during the development of such a factoring contract, as it is difficult for us to admit to taking such risk by the banking or non-banking

institutions, knowing that the adherent is in the insolvency procedure. However, a factoring contract could be an essential element of a preventive agreement, in the insolvency prevention phase, or even in a judicial reorganization plan, in the insolvency procedure phase, all the more so, as such of claims would enjoy the preferential legal regime of the guaranteed ones, through similarities with the financing granted to the debtor during the observation period. A substantial and truly revolutionary change in the safeguarding of the debtor in financial difficulty and the resuscitation of the businesses in order to reintegrate them into the economic circuit is even the possibility of financing the current activity, correlating with offering a "super-priority" of these financing by Law no. 85/2014, as well as their guarantee. Therefore, such a "financing" could be stimulated by ensuring the preferential indebtedness regime, the debts born by lending to the insolvent companies having priority to the repayment.

In relation to the special provisions of the insolvency, if during the development of the factoring contract the adherent enters the insolvency procedure, the insolvency administrator has the right to choose to maintain or unilaterally terminate the respective contract, according to art.123 of the Insolvency Code. Also, the insolvency law gives the factor the right to sue against the adherent with an action for damages for the damage caused by a temporary termination, represented mainly by the unachieved commission. However, we believe that maintaining such a contract, even with the possibility of modifying the clauses by the insolvency practitioner in the sense of an advantageous refinancing, can ensure the capitalization necessary for the reorganization of the insolvent debtor.

On the other hand, if we open the analysis on a factoring contract concluded after the date of the opening of the insolvency procedure, it may take on the legal nature of a "credit for current activities" [33] in the sense of financing the current activities [34] the factor being considered a secured creditor, who benefits from a guarantee represented by the claims held by the adherent against the assigned debtors, being able to request to be entered in the consolidated table of the creditors with a secured debt, as mentioned above.

In interpreting the doctrine [35], credit contracts expressly regulated by Law no. 85/2014 in art. 123 paragraph (5) can also be maintained without the need to obtain the

agreement of the co-contractors, following the analysis of the benefit of the credit by the insolvency practitioner, and, at the same time, they can be modified during the observation period, either with the bank's agreement or invoking the hardship, so that the reorganized contracts may ensure the equivalence of future benefits. Thus, we consider an additional reason to assimilate the factoring contract for these financing, the more so as it can enjoy a special legal regime favourable to both parties involved, especially if the debtor will follow the direction of the reorganization and not the bankruptcy. As a result, the factor will enjoy the continuation of a contract in the current debt regime, the debts born prior to the opening of the procedure being entered in the table of creditors as privileged secured debts, and the adherent debtor will apply the principle of maximizing its assets through capitalization and financing.

All these measures should be taken into account in the light of developments in this area and the opportunity offered to companies to have access to thorough analysis and prudent management of the client portfolio, especially by outsourcing these processes to a Factor, Bank or IFN, as well as the latest predictions about the possibility of triggering a new economic crisis, as noted by the specialists of the Romanian Factoring Association, according to which "the economic environment we are in does not seem very favourable for the private sector in the short term, whether we are talking about large companies or SMEs, which is why concrete measures would be welcomed regarding attracting new European funds and increasing investments, which would lead, in a short time, to the creation of new jobs and, implicitly, to the increase of the volume of taxes and duties brought to the budget. Even in the international context, different scenarios for slowing down the economic growth in the Euro area are considered, which will have a chain effect in Romania as well. For this reason, Romanian companies, which for the most part are not very well capitalized, will be very vulnerable to falling sales and increasing the level of not collected claims, respectively. [36]

Conclusions

By virtue of the latest insolvency regulations, at European Union level, respectively (EU) Directive 2019/1023 and in relation to the situation of ongoing contracts concluded by the debtor entered into the insolvency procedure, we consider it appropriate to

conclude by evoking some issues established at the level European, as discussed in the previous sections. Thus, we consider point (20) of the preamble of the Directive, according to which, (...) Member States should also be able to limit the access to preventive restructuring frameworks to legal persons, since the financial difficulties of entrepreneurs may be efficiently addressed not only by means of preventive restructuring procedures but also by means of procedures which lead to a discharge of debt or by means of informal restructurings based on contractual agreements". At the same time, the Directive provides in art. 7 paragraph (4) the following: "Essential executory contracts shall be understood to mean executory contracts which are necessary for the continuation of the day-to-day operations of the business, including contracts concerning supplies, the suspension of which would lead to the debtor's activities coming to a standstill (...) Member States may provide that this paragraph also applies to non-essential executory contracts". The latter provision also reflects the intention of the internal legislator by regulating the option right of the insolvent practitioner to maintain or not an executory contract, as is the case with a factoring contract, which demonstrates the rallying of the domestic law with the European one, still existing many aspects transposed internally to harmonize and modernize insolvency legislation. Violation of the principle of contractual freedom is temporary, however, since the insolvency law enshrines by art.123 paragraph (3) the return to the principle of contractual freedom in the situation in which the fault in execution occurs after the maintenance of the contract. Therefore, the contracts, once assumed, re-enter under the common legal regime of the contracts, being able to be terminated, all the more so, as executory contracts will give rise to current claims, which enjoy a priority regime.

At the legislative and jurisprudential level we encounter a primary concern in trying to find and identify the best balance between the requirements and principles of each branch of law and the imperative of the insolvency law, but in the confrontation of the common law of the contracts with the insolvency law, the common law is avoided by the expansionism that characterizes this revolutionary matter in evolution and regulation. In this sense very suggestive becomes the doctrinal assertion that, "the opening of the insolvency procedure is only the beginning of a procedure constructed from paradoxes and weaved with challenges of the principles of law that seemed to last forever. Contracts with a force

equal to the law break down with incredible ease or become malleable in the interest of the debtor".

REFERENCES:

[1] See Deli, Andreea, Analiza unor criterii de stabilire a compatibilităţii dintre insolvenţă şi procedura civilă, Partea a II-a, in Phoenix Magazine no. 68 April-June 2019 - https://www.unpir.ro/documents/phoenix/pdf/revista-phoenix-68.pdf;
[2] See Kelsen, H., Doctrina pură a dreptului, Ed. Humanitas, Bucharest, 2000, p. 109;
[3] Deli, Andreea, Analiza..., op.cit.- https://www.unpir.ro/documents/phoenix/pdf/revista-phoenix-68.pdf;
[4] Kelsen, H., op.cit., p. 251;
[5] Obancia, C.A., Procedura insolvenţei. Efectele juridice asupra contractelor debitorului, Ed. Hamangiu, Bucharest, 2014, p. 4;
[6] Ibidem;
[7] Florentina Folea, Situaţia contractelor în curs, în Bufan, Radu (coordonator ştiiinţific), Tratat practic de insolvenţă, Ed. Hamangiu, 2014, p. 562;
[8] Turcu, I., Szombati, A., Dreptul insolvenței. Fiica rebelă a dreptului civil, în revista Uniunii Naționale a Practicienilor în Insolvență din România ,,Phoenix", no. 40-41/2012, p. 3;
[9] Mazeaud, D. (Loyaute, solidarite, fraternite: la nouvelle devise contractuelle?, in teh compendium dedicated toFr. Terre, L'avenir du droit, Press Universitaires de France, Paris, 1999, p. 608) combating the thesis – a simpler one – of a French law philosopher 1in the 19th century, Alfred Fouille, according to which ,,qui dit contractuel, dit juste", citing a French lawyer in the 19th century, Henri de Lacordaire, who used to say that ,,entre le fort et le faible, entre le riche et le pauvre, entre le maitre et le serviteur, c'est la liberte qui oprime et la loi qui affranchit" („between the strong and the weak, between the rich and the poor, between the master and the servant, freedom is the one that oppresses and the law that liberates"), apud Piperea, Gh., O stafie bantuie Europa: terorismul contractual, https://www.juridice.ro/320886/terorism-contractual.html;
[10] Pop, Liviu, Tratat de drept civil. Obligatiile, vol. II (Contractul), Ed. Universul Juridic, 2009, p. 52.
[11] Piperea, Gh., O stafie bantuie Europa: terorismul contractual, https://www.juridice.ro/320886/terorism-contractual.html
[12] See Folea, Florentina, op.cit., p. 557.
[13] "The factoring market continued to grow for the fourth consecutive year, with an advance of 11% in 2018, compared to the previous year, thus exceeding the level of 5 billion Euros. The data comes from the annual study of the Romanian Factoring Association (ARF), regarding the evolution of the market. The largest share (40%) of the volumes carried out by factoring is realized by companies with turnover of over 50 million Euros, 38% by companies with turnover between 5 and 50 million Euros, while 22% is carried out by companies of up to 5 million Euros, which generally enters the SME sector" - Roșu, Bogdan, president of Romanian Factoring Association - https://www.asociatiadefactoring.ro/noutate/factoringul-in-romania-a-ajuns-la-5-miliarde-de-euro/
[14] UNIDROIT – http://www.unidroit.org/about-unidroit/overview;
[15] The convention is ratified by eight states, of which six are current members of the European Union - http://www.unidroit.org/status 1988 factoring.;
[16] UNCITRAL Convention in New York, 2001, it was signed by 3 states and ratified by only one state: http://www.uncitral.org/uncitral/en/uncitral_texts/security/2001Convention_receivables_status.html.;
[17] Can be used similar terms such as INCOTERMS, Regulile Uniforme privind Garanțiile la Cerere – URDG (Uniform Rules for Demand Guarantees), standardele contractuale Loan Market Association (LMA) sau reglementările adoptate/propuse de FCI – Factors Chain International;
[18] Piperea, Gh., Drept comercial, Ed. C.H. Beck, București, 2009, p. 126;
[19] Stoica, B., Considerații asupra instituției și contractului de factoring, în Revista de Drept Comercial nr. 3/2002, p. 60;
[20] Patlăgeanu, A., Lefter, A., Contractul de factoring, în Revista de Drept Comercial nr. 11/2004, p. 111.
[21] Published in the Official Journal no. 1026 of 27 December 2006.
[22] Annex 1, point 75 of the Order of the National Bank of Romania no. 27/2010.
[23] https://www.asociatiadefactoring.ro/de-ce-factoring/#.
[24] https://intreb.bancatransilvania.ro/ce-este-factoringul/

[25] ”The factoring contract has a specific object which consists of financing, tracking and preserving against the credit risks by the factor, in exchange for acquiring debts from the adherent. The contract that has as object any benefits other than those specified will not be qualified as a factoring contract" - https://legeaz.net/dictionar-juridic/cotnract-factoring-ncc.
[26] See for development the official site of the Romanian Factoring Association - https://www.asociatiadefactoring.ro/de-ce-factoring/#
[27] Târnoveanu, Stan, Curiciuc, Dan, Consideraţii cu privire la tratamentul contractului de factoring, inclusiv din perspectiva insolvenţei, portal Universul Juridic, 28 martie 2018 - https://www.universuljuridic.ro/consideratii-cu-privire-la-tratamentul-contractului-de-factoring-inclusiv-din-perspectiva-insolventei/3/
[28] Ibidem.
[29] Baias, F.A., Chelaru, E., Constantinovici, R., Macovei, I., (coord.), Noul Cod Civil: comentariu pe articole, Ed. C.H. Beck, București, 2012, p.1.679.
[30] Hamangiu, C., Georgean, N., Codul civil adnotat, Ed. All Beck, București, 2002, vol. III, p. 504.
[31] Idem, 168.
[32] Banque de France – Commission bancaire, L’affacturage en France. Étude du Rapport annuel de la Commission bancaire, 1994, - http://acpr.banque france.fr/fileadmin/user_upload/banque_de_ france/archipel/publications/cb_ra/etudes_cb_ra/cb_ra_1994_03.pdf, apud Târnoveanu, Stan, Curiciuc, Dan, op.cit.
[33] Târnoveanu, Stan, Curiciuc, Dan, op.cit., - https://www.universuljuridic.ro/consideratii-cu-privire-la-tratamentul-contractului-de-factoring-inclusiv-din-perspectiva-insolventei/5/
[34] In this respect, the provisions of art. 5, point 2, letter c) of Law no. 85/2014 according to which the current activities represent “those activities of production, trade or provision of services and financial operations, proposed to be performed by the debtor during the observation period and during the reorganization period, during the normal course of its activity, such as (…) ensuring the financing of working capital within current limits”.
[35] See Obância, A., Diferite cazuri particulare de modificare a contractelor, prevăzute de Legea nr. 85/2014, accesibil pe portalul Universul Juridic, 5 November 2018 - https://www.universuljuridic.ro/diferite-cazuri-particulare-de-modificare-a-contractelor-prevazute-de-legea-nr-85-2014/.
[36] https://www.asociatiadefactoring.ro/noutate/factoringul-in-romania-a-ajuns-la-5-miliarde-de-euro/.
[37] See Turcu, I., Tratat de insolvenţă, Ed. C.H. Beck, Bucuharest 2006, p. 442.