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PECULIARITIES OF INTERNATIONAL COMMERCIAL AGENCY AGREEMENTS FROM A COMPARATIVE PERSPECTIVE

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Abstract. The purpose of this paper is to analyse the legal regulation of international commercial agency agreements in selected jurisdictions. This research is conducted from a comparative perspective, explaining the problems of international commercial agency agreements in civil-law and common law legal traditions. The legal regulation of international commercial agency agreements is fragmented in many jurisdictions; therefore, the general principles of agency law are applied is this research in order to propose effective solutions. The authors conclude that the lack of international regulation for commercial agency agreements leads to the application of conflicting national rules that are not sufficient in aligning the interests in all parties of such complex legal relations.

Keywords: agent, commercial agency, international commercial agency agreements, cross-border commercial agency.

JEL Classification: K12, K20.

Introduction

The international commercial agency has always been of interest to legal practitioners and courts. Nevertheless, the legal instruments of regulation of agency contracts on the European level were introduced rather late and have never enjoyed a high popularity among lawyers, judges, and legal scholars.

Currently in most jurisdictions, the contracts of commercial agency, distributorship, and franchising are regulated by the general principles of contract and tort law. Even though the mentioned principles managed to provide the framework for establishing the liability of the principal with regard to the contracts concluded by the agents as well as torts, they failed to enlighten the doctrine comprehensively (Albaric & Dickstein, 2017).

The analysis of the legislation in relation to the international commercial agency has shown the lack of internationally agreed uniform legislation for agency agreements. As a result, the gap in regulation forced the parties to rely on national laws that vary from country to country, not taking into account the international nature of the contract. Moreover, divergent national law may encourage opportunism by commercial parties who may choose to litigate in a forum that suits best their interests. This creates a risk of increase of the fraudulent behaviour among the parties or the desistance from commercial activity at all.

Therefore, the purpose of the current research is to analyse and compare the existing legal regulation of international commercial agency agreements from the perspectives of the civil law and common law.

Legal framework is extremely important in minimizing agency conflicts, since it established the general rules that are supposed to guide the businesses and agents in their performance. However, the legal regulation of agency agreements has come into European legal regulation relatively late and has always been under-theorised in the academic legal environment. In the UK, for instance, the relationships between the agents and principals have not been explicitly regulated, until 1994, while other countries of the EC, like France, Germany, and Italy have, however, provided fragmented statutory protection (Randolph & Davey, 2003).

Conducting legal activities from different countries and jurisdictions might cause real problems when the

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rules are not harmonized or provide different levels of protection to the parties. Therefore, introducing uniform no-conflict rules that would be aimed at aligning the interests of all parties to agency relationships and preservation of the value of the agency itself would constitute the focus of the current research.

The lack of an adequate legal regulation might give rise to the opportunism among the agents as well as abuse of powers among the principals causing the conflicts of interest and undermining the basic principles of agency. Therefore, a close analysis of both national and international legal instruments would be performed together with the evaluation of their effectiveness, which would also constitute an object of the present paper.

Thus, the originality of the research is stipulated by the fact that currently there is a lack of comprehensive international legal research in respect of the regulation of international commercial agency agreements in the European and international law.

The scientific value of the current research is also justified by an need for the creation of the efficient system of international commercial law with the unified rules of regulation of commercial agency relationships in order to reduce the number of conflicting national rules while regulating the specific issue and to exclude the parallelism of actions in the various national laws.

The relevance of the present research is also justified by the fact that a deep comparative analysis of the international legal framework has been provided with regard to the international commercial agency. Moreover, there is also a lack of information with regard to the international commercial agency from the perspective of common law. Therefore, the paper will also investigate the effectiveness of the legal regulation of international commercial agency agreements in common law system.

The research will be further developed in the research papers enlightening the problems of the legal regulation of international commercial agency relationships and aligning the interest of all the parties of international commercial agency from the civil law and common law perspectives and their practical implementation.

Research methodology in the research paper will be mainly aimed at describing the development of international instruments of regulation of cross-border commercial agency agreements. The scientific work is based on the view and principles of qualitative methodology. While collecting data, the document analysis method is used. When processing and analysing the data, the comparative method is applied.

1. Development of the legal regulation of international commercial agency in European law

Since the recognition of the doctrine of representation in the late XVII century, two main agency theories have been developed to interpret the doctrine in different jurisdictions – the theory of separation and the theory of identity (Grotius, 1901; Rigaux, 1963; Coke et al., 1830). Although both theories have their benefits and drawbacks, their importance in the development of Agency theory cannot be diminished.

The importance of the "separation theory" lies in the fact that the limited authority of a representative is ineffective in relation to the third parties and protects the rights and interests of third parties with whom the representative enters into legal relationships. In other words, the contract contains certain limitation of the agent's powers describing what he "should not do", but this is not the same as he "cannot do", and as a result does not diminish his powers (Tiura, 2016).

Specifically, the legal type of commercial agency under German law is created when a parties enter into the commercial agency agreement, the form of which is different. Regardless of the lack of requirements to the agreement, the commercial agent has to comply with certain specific features. The legal definition of the commercial agent is described in the German Commercial Code. The essential features of the commercial agent are independency, continuity of relationship and fixed remuneration (Sec. 84 par. 1 sent. 1, Händelsgesetzbuch, 1897).

Continental law distinguishes between the internal (between the principal and the agent) and external (agent acting in relation to third parties) relationships, excluding the possibility of the agent acting without authority on behalf of the principal (Clarise, 1949).

On the contrary, the common law studying identifies the agent and principal without making a distinction between the internal and external relationships, but simply involving the contract of only two persons. In general, the theory of identity is more focused on principal's protection, allowing the agent to act outside the scope of the authority granted without binding the principal himself (Schmitthoff, 1988).

The common law has been developing in its distinctive manner where the agent is considered as an *alter ego* of the principal, and is duly authorized to act within the limits of his authority (Schmitthoff, 1988). Therefore, the "*uniform concept*" under the doctrine of identity better corresponds to the needs of the reality, as the agent has more avoiding the conflict between theoretical and commercial reality and linking it with the everyday needs of the principal–agent relationship.

The fundamental differences contained in both theories stipulated also the difference in legal regulation of the agency relationships among parties.

In practice, most agents in the UK that would be considered commercial agents according to Continental law are not agents in the strict legal sense under the common legal approach. Such a difference is characterised by the fact that when obtaining orders from the principals, the common law agents have to forward them to their principals for acceptance, otherwise the requirement of "fiduciary" will not be accomplished (Campbell et al., 1984).

Thus, in the basic view of common law the understanding of a commercial agent from the perspective of

the Continental law is a type of an independent contractor who seeks orders and who may or may not be able to accept them on this principal's behalf.

Common law view on Agency is based on the "*externalized*" theories that explain agency from the third party's point of view, thus, no proper distinction is made between the internal relations of principal and agent and the external between the agent and third parties, involving just the contract of only two persons. Due to such an approach, common law allows *undisclosed (indirect) agency.*

The essence of indirect agency reveals in the situation when a duly authorized agent acts in his own name, without disclosing the personality of his principal. In this case, the third party is unaware of the existence of agency relationships, since a direct contractual relation will be constituted between the principal and the third party who will be parties to the main contract and the agent who originally contracted in his own name will be disregarded (Müller-Freienfels, 2018).

German law, however, does not regulate the abovementioned relationships, since only "direct representation" is acceptable, when third parties are aware that they interact with the agent who is acting on behalf and in the name of the principal, otherwise his actions will not have a legal effect or create legal consequences for the principal. Thus, "indirect representation" is not recognised under the German civil law as it follows the two-contract construction in agency relations (contract between the third party and the agent and between the agent and the principal), which are immutable (Lawson, 1969).

In case with undisclosed agency, the two – contracts construction is avoided, since the third party does not know about the existence of the principal and the third-party contracts with the agent considering him the party to a contract.

The approach of the continental law is, however, directed by the idea that the agent is obliged at least to disclose his intention of contracting as an agent or the third party must be able to imply this from the circumstances. Otherwise, the contract between the agent and the third party will be considered as concluded on the agent's behalf, and it will have direct consequences on the latter's liability as the third party may treat either the agent or the principal as a party to a contract and consequently to hold either of them liable.

2. Trends in regional and international unification of the regulation of conflicts within commercial agency

As it was previously mentioned, agency has always been under-theorized, which is supported by the fact that until the middle of the XX century the unification was clearly of a continental character. Thus, the agency was understood as the abstract authority provided by one person to another in order to perform legal acts towards the third parties.

This was specifically defined in the Art. 4 of the UNIDROIT, Draft Convention providing a Uniform Law on Agency in Private Law Relations of an International Character where it was stated that "the law deals with agency arising from some authorization conferred on or recognized in a person who is to act in the name of another, in matters of private law" (UNIDROIT, 1961).

Even though the unification was not welcomed by the common law countries, the initiative constituted much more than just a creation of better tools, it was about the creation of a common tradition where the legal certainty and diversification will be prevailing.

When it comes to international commercial agency, uniform law texts that promoted the progressive harmonization and modernization of commercial agency law had been preparing for several decades by various international organisations, among which were The Hague Conference on Private International Law (hereinafter HCCH), the United Nations Commission on International Trade Law (hereinafter UNCITRAL) and the International Institute for the Unification of Private Law (hereinafter UNIDROIT). Other international governmental and non-governmental organizations have also made significant contributions at the global and regional levels.

Over time, the HCCH, UNCITRAL and UNIDROIT have produced a series of complementary documents, focused specifically on Agency problems: Hague Convention on the Law Applicable to Agency (Hague Conference on Private International Law, 1978) and Geneva Convention on Agency in the International Sale of Goods (UNIDROIT, 1983).

At the level of European Union, a Directive 86/653/EEC on the coordination of the laws of the Member States relating to self-employed commercial agents has been passed by the European Council in 1986. Considering other international instruments of private law unification, there can be mentioned: UNIDROIT Principles of International Commercial Contracts (2016), Principles of European Contract Law (Lando & Beale, 2000), Draft Common Frame of Reference (Von Bar et al., 2009) and Restatement (Third) of Agency (American Law Institute, 2006).

Uniform international law was aimed at setting globally harmonised rules which would be international in their origin, formulation, framework of application and interpretation. In other words, the uniform commercial agency law would eliminate the legal obstacles to the flow of international trade, strengthens commercial relations and opens new investment opportunities.

Having international commercial relations, parties might face real problems when the rules are not harmonized or provide different levels of protection. Conflicts are inherent to relationships where the principal, the agent and (in some cases) the contractor reside in different countries and each of them has its own (sometimes) conflicting rules. Therefore, uniform non-conflict rules are essential in aligning the interests of all parties

to agency relationships and preservation of the value of the agency itself.

In order to make the rules compatible, a great number of international legislative initiatives have been offered, one of those is The Hague Convention on the Law Applicable to Agency (Hague Conference on Private International Law, 1978), which offers flexible choice of law rules that work in a great number of practical cases, introducing the reasonable compromise between the various approaches in the sphere of Agency taken by common law and civil law States.

Currently the Convention has been ratified by four states including the Netherlands, France, Portugal and Argentina. Some other countries have enforces the national legal acts that contain rules similar to those defined in the Convention that could be used for their interpretation. Moreover, in 1992 it has finally entered into force and there is a reasonable belief that it will be ratified by more states.

The Convention itself is important to every practitioner in law or who is involved in international business relations. Its provisions are applicable to all international agency relationships.

The general scope of The Hague Agency Convention is described in the Article 1(1) where it is stated that the Convention applies to "relationships of an international character arising where a person, the agent, has the authority to act, acts or purports to act on behalf of another person, the principal, in dealing with a third party". It is, however, not specified whether the narrow civil law approach or the broader common law vision is used where the notion of authority is not necessarily linked with acting in the name of someone else.

Certain clarification is provided in the Art. 1 (3) defining that "the Convention shall apply whether the agent acts in the name of the principal or in his own name and whether he acts regularly or occasionally".

Therefore, the scope of the Convention is not confined to the "traditional" internal commercial agency relationships, but also encompass case where agency takes place, both directly and indirectly. Therefore, the Hague Agency Convention applies to cases both of disclosed and undisclosed agents (Reszczyk-Król, 2014) as well as to indirect agency (commission agent acting under civilian laws) (Hay & Müller-Freienfels, 1979).

Moreover, according to the rules defined in the Art. 1(3), the provisions also enlighten non-commercial agency, including regular agency. Moreover, there are also intensions to include the cases of ratification of the cases of a *falsus procurator* and *negotiorum gestio* (Pfeifer, 1978).

What also attracts attention is that the Hague Agency Convention deals with both the internal and external relationships, regulated by Chapters II and III of the Convention.

Regulation of the internal conflicts that arise between the agent and the principal within the agency relationships is indeed a really sensitive issue, and most of the international instruments do not include such norms, since according to some Continental legal systems (e.g. German, Italian and Swiss) the relationship between principal and agent (internal relationship) do not fall under the agency law conflicts and should be governed by the general law of contract. Nevertheless, internal conflicts like those relating to salary and wages, damages, and other compensation, arise much more frequently in litigation than other aspects of agency (Hay & Müller-Freienfels, 1979).

With regard to the choice of law, Hague Convention prioritizes the parties' autonomy in the choice of law that will be applicable to their relationships in case of a conflict. In cases when no choice of law was made by the parties in the agreement, the law has to be designated by conflict rules on the basis of objective connecting factors.

Convention relies on the use of connecting factors as a main rule in the case where no choice of law has been previously made by the parties, although with certain exceptions. Therefore, it allows several scenarios of the choice of the applicable law: agent's place of business, agent's habitual residence, law of the country where the agent is acting coincides with the principal's place of business or, habitual residence (Convention on the Law Applicable to Agency, 1978, Art. 6, 11).

Application of this rule ensures consistency within the relationships and protection, since the agent is treated as authorised to act within the country as well as over its borders. Such an approach adopted in the Article 6 of The Hague Agency Convention was characterized by Hay and Muller-Freienfels as: "a compromise between flexibility and predictability, which the interests of the parties require" (Hay & Müller-Freienfels, 1979).

A great move towards the unification of international trade law has been made by the adoption of the Convention on Agency in the International Sale of Goods drawn up by the UNIDROIT (1983).

The Convention had its goal to harmonize the rules not only within the Continental legal system, but also make them compatible with the common law system of law. However, the text prepared by the UNIDROIT was not well accepted by the international community and the Convention has not come into force, lacking the minimum of ten ratifications, even though it was a culmination of 50 years of work by UNIDROIT on the subject of agency (Badr, 1984).

The Convention binds only the parties that are directly participating in the contract, and is applicable in cases of undisclosed agency, or agent's operating outside the scope of his authority. Following the provisions defined in the Convention, the principal does not become a formal party to the agency agreement concluded by the agent and third party, also losing the right for direct action against the third party. The third party also cannot exercise the same right against the principal. Such a solution aims to accommodate the contrasting approaches of the common law and the civil law and to adopt of the general principle that "the agents agent shall directly bind the principal and the third party to each

other". There is still, however, one exception that allows the agent to bring a direct action against the third party, or vice-versa whenever the agent fails to perform in substance, which proves to be very sensitive to the practical needs of commerce (Bonell, 1984).

In order to comply with the principles of the common law system that recognizes the direct link between an undisclosed principal and the third party, the UNIDROIT Convention also allows the principal and the third party to sue each other directly for the nonperformance of the sales contract, when the parties have a particular interest in the main transaction (Bowstead et al., 2014).

Nevertheless, besides all the progressive norms enlightened in the Convention, its value is reduced by leaving the internal relations of principal and agent out of scope that leads to conflicts and uncertainty between the parties. The document applies to agency in the purchase or sale of goods, leaving other important transactions with the participation of agent, unregulated.

Moreover, the Convention seems to be non-mandatory, following the provision in Article 2, para. 1b, which states that the Convention will be applicable where the state's conflict rules specify the application of the national law. In reality, it would mean that where the Convention is ratified, it becomes an integral part of the national law of the contracting State. However, Article 28 expressly excludes the application of Article 2, para. 1b, requiring the application of rules only where the conditions of the Article 2, para. 1a are fulfilled, making the provisions of the Convention of a declaratory nature (Bonell, 1984).

All these in addition to omission of the issues related to the principal's and agent's capacity, defects in consent, the abuse of agency power in general, substitution, etc. severely diminishes the practical importance of the Convention and could have compromised its fate entirely (Bonell, 1984).

3. Council Directive 86/653 on the coordination of the Member States relating to self-employed commercial agents

At the European level Council Directive 86/653 on the coordination of the Member States, relating to self-employed commercial agents (Eur-Lex, 1986) is a remarkable achievement in the course of agency law unification, first of all because unlike the first two Conventions, it has entered into force and was implemented to the national legislation of Member States.

The Directive aims to unify the national law of the Member States and to reconcile the fundamental differences in the concept of commercial law both in the civil law and common law states with regard to the internal agency relationship, so as to protect the weaker party (the agent) and to maintain the security of commercial transactions (Goode et al., 2015).

The European Court, in Ingmar v Eaton Leonard (2000), ruled that the Directive must apply in case where an agent is acting in a Member State, even if the principal is established in a non-member country, and the contract is governed by the law of that country (under the normal conflict rules).

In addition, the scope of application of the overriding mandatory provisions should be determined according to the law of the enacting EU Member State. Thus, the courts in the Member States will have to follow the rules of the Directive in cases where the European Court considers it applicable (Aljasmi, 2015).

The Directive altered the common law vision of a commercial agent, which recognizes as such everyone who was engaged into the transaction in the "customary course of business". In the Art. 1(2) of the Directive, the concept of "commercial agent" is qualified as: "self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person, hereinafter called the 'principal,' or to negotiate and conclude such transactions on behalf of and in the name of that principal".

Thus, the Directive does not apply to the agent's activities in the sphere of provision of services. This document regulates the issue of rights and obligations of the commercial agents, their remuneration, the conclusion and termination of a contract with an agent, etc. (Tsiura, 2017).

According to the Directive, commercial agency differs from the original one in several aspects: 1) commercial agents possess their own specific regime of rights and duties to their principals, 2) and of entitlements upon termination of their agencies (Munday, 2010).

Describing mainly the German agency concepts, the Directive is sharply contrasting with the common law understanding, thus limiting the broad common law conception of agency to the civil law concept of direct representation "on behalf of and in the name of the principal". The Law Commissioners were even unable to identify to particular social group the intermediary described in the Directive would apply as the proposed form widely differed from the forms of agents already existing in the common law tradition (Campbell et al., 1984).

Therefore, the law-makers in the UK did not want to implement it until the 1994, since these provisions brought changes into the domestic law in favour of commercial agents.

Following the requirement of the UK national legal system, in order for the Directive to be implemented into the national legislation, the national Regulations had to be enacted (Legislation, 1993).

As far as the Regulations were composed by simply copying out the EU Directive, they were met with reluctance by many practitioners and judges, who stated that "the Regulations are dealing with concepts which are strange to English lawyers" (Ingmar GB Ltd. v Eaton Leonard Technologies Inc., 2000).

The Regulations 1993 as well as the Directive 86/653 govern only the internal relationship, leaving the external relations outside its scope.

Moreover, in the Article 1(2) of the Regulations it is stated that the Regulations apply only to "commercial

agents that carry out their activities in Britain". Unfortunately, no definition of these "activities" has ever followed to find out if the acts of negotiation or conclusion of a contract of sale or purchase of goods concluded on behalf of the principal can fall within the scope of the Regulations (Morse et al., 2012). However, it was held in Crane v Sky In-home Services (2007) that the agency contract relating to the sale of Sky Television digital packages was a service, thus, was outside the scope of the Regulations.

The definition of a commercial agent is, however, not restricted to individuals only and extends to both partnerships and companies. What is important is that the agent possesses a continuing authority to negotiate or negotiate and conclude agreements on behalf of the principal.

Some types of agents are not included into the definition in the Regulations, however, still enjoy their protection. For instance, the definition can be extended to the agents who sell "goods" but not those who market the "services", even though the latter, in the strict terms, are still agents, however, do not enjoy protection in the UK (though can be covered in Spain) (Singleton, 2015).

With regard to this selective protection granted by the Regulations, one still can refer to the decision of the Court of Appeal in the case of Mercantile International Group Pls v Chuan Soon Huat Industrial Group Plc. (2002). The Court states that in a case where an individual could be considered either an agent of a distributor the contract should be read as the one of agency.

Moreover, it is not explicitly defined whether the agent should be personally located in Britain, or, if there is a legal entity, should it have a place of business within the country. Therefore, it is questionable if the Regulations will be applicable to the case where the agent acts in Great Britain by correspondence, using telephone or electronic mail.

However, it can also refer to the Directive itself, since its provisions should apply to cases the agent's establishment from which he wholly or mainly carries out the activities is defined by the agency contract, or his habitual residence (as stated in the Rome I Regulation, 2009) are situated within the European Union.

Same approach seems to be included into the decision of the European Court of Justice Ingmar GB Ltd. v Eaton Leonard Technologies Inc (2000). The Court ruled that Articles 17 and 18 of the Directive should be applicable to cases where the agent performs from a Member State, although the principal is located in a non-member country, and the contract expressly states that the law of that country should apply (Ingmar GB Ltd. v Eaton Leonard Technologies Inc., 2000). Thus, the Regulations will apply, although the parties have chosen the law of a non-Member State (Bowstead et al., 2010).

Nevertheless, the basic principle of the Regulations is that the document becomes applicable only when there is a breach, otherwise the parties enjoy the autonomy of actions. Thus, the extent of rights and obligations as well as the amount of compensation is usually set in the agreement between the parties.

After the Brexit, when the UK left the EU on 31 January 2020, it most EU legislation together with the Regulations will continue to apply to the UK during the transition period, however, the further fate of the Regulations seems to be indefinite.

Although it seems feasible to exclude certain provisions of the Regulations, the document cannot be excluded entirely. For instance, rules related to termination such as, minimum notice requirements for termination: one month for first year; two months for the second year; three months for the third year and subsequent years – such periods can only be prolonged.

Therefore, one cannot disregard the fact that on a practical level the Directive 86/653 achieved the most significant purpose: that is, to secure freedom of establishment for commercial agents and preserve the competition in the internal market. Moreover, by incorporating its rules into the British legislature, it also achieved the goal of preventing the principals from abusing their dominant position over an agent and, upon termination, to give agents appropriate compensation for the goodwill that they create for their principals after the termination of agency contract (Ingmar GB Ltd. v Eaton Leonard Technologies Inc., 2000).

4. Regulation of agency law through soft law instruments

As far as the soft law instruments in the sphere of private law are concerned, they also provide a decent regulation of commercial agency agreements, trying to combine the concepts of both legal families. The documents like UNIDROIT Principles of International Commercial Contracts (2016), Principles of European Contract Law (Lando & Beale, 2000), Draft Common Frame of Reference (2007) and Restatement (Third) of Agency (American Law Institute, 2006) are aimed to unify the rules, create the common approach to dealing with agency issues and to eliminate the conflict of laws.

During the 80th and 90th of the twentieth century the first initiatives of academic and nonofficial source lead to the formation of various working groups (Lando Commission, Academy of jurists of private law of Pavia, Common Core Group, the Study Group on a European civil Code, Acquis Group).

UNIDROIT Principles follow the common legal approach regarding the apparent authority where the agency is based on estoppel, whereas the European Principles try to enforce the continental vision. The UNIDROIT Principles on the International Commercial Contracts (UNIDROIT, 2016) – is an instrument of an utter importance for the general contract law, firstly published in 1994 and now in their fourth edition published in 2016 – could be used as an alternative to the traditional conflict-of-laws approach focused on national law. It should be noted that its provisions apply to both direct and indirect agency, the authority of the agent and the internal agency relationship.

In 1999 European Commission of Contract Law European Contract law, led by Ole Lando, started to work on the principles of European contract law that regulated the material relations of representation, including unauthorized representation (Lando & Beale, 2000). The scope of the PECL for agency relationships is essentially analogous to the UNIDROIT Principles; however, PECL puts more emphasis on the individual representation types, characteristics and details of the persons involved in the legal representation relations, rights and obligations.

All abovementioned acts include provisions regarding the apparent authority, however, UNIDROIT Principles follow the common law position where the agency is based on estoppel, whereas the continental approach is defined in the European Principles. In addition, PECL also apply at the national level (not only to international commercial contracts) and to consumer relations (UNIDROIT, 2016).

Almost analogous approach is defined in PECL rules on representation were presented by the European Civil Code Study Group on a European Civil Code and European Community private law (Acquis Group), which can be regarded as updated and supplemented PECL version.

For the realization of the Common Frame of Reference, the joint Commission has provided a three-year research, and finally in December 2007 the Draft Common Frame of Reference (DCFR) was published (Von Bar et al., 2009).

The main purpose of the project was to increase the consistency of the acquis communautaire in the field of contract law, to promote the uniform application targeted towards the proper functioning "of cross-border transactions and, thereby, the completion of the internal market", confirming all the strategic importance to design a "European civil code" (Ritaine, 2007). The idea was, however, denied by the Council in its conclusions of 29 November 2005. Nevertheless, in 2006 the European Parliament passed the Resolution on European Contract Law where it expressed the support towards the preparation of the CFR project that would encompass both general contract law issues and consumer contract law.

It is important to note that the DCFR, follows the continental legal tradition, and not only separates internal and external relations of representation, but, unlike others soft law, pays special attention to the regulation of internal relations.

The European Code of Contract Law drawn up by a working group set up by the European Academy of Private Lawyers (the so-called Pavia Group) could also be mentioned as a soft law act (Radley-Gardner et al., 2003).

The main feature of this document is that, contrary to the soft law mentioned earlier, it only attributes to the agency relationship cases where the agent acts exclusively on behalf of and in the interests of the principal. Therefore, indirect representation is not included to the scope of the European Contract Code (Radley-Gardner et al., 2003). This document, like other soft law, lays down rules on alleged representation, approval of the actions of an unauthorized representative, and the civil liability of a falsus procurator (Jurkevičius, 2014).

Speaking about an unauthorized agent in the United States, fundamental elements of the doctrine are defined in the Restatements of Agency (American Law Institute, 2006). Restatements include basic concepts and deal with the basic questions of actual and apparent authority, doctrines of estoppel and ratification also rules about unauthorized agency are included. Being merely advisory guidelines offered by academic experts, US courts sometimes can apply these conflict rules in case resolution.

To sum up, within the Agency theory various many legal approaches have elaborated and the legal resolution of the similar case may not be the same under different national laws. The existing diversity of theoretical and practical approaches cause legal uncertainty for all parties involved in the specific agency relationship. Therefore, the unification of national material laws on agency at least those that apply to international commercial contracts is absolutely essential.

Conclusions

Adoption of unified rules that would be applicable to international commercial agency relations is absolutely inherent for the alignment of the interests of all parties to agency relationships and preservation of the value of the agency itself.

From the beginning of its development, the doctrine of agency has been divided into the continental theory of separation and the common law theory of identity, under which agency relationships have been developing in distinctive manners, thus their legal regulation also contains fundamental differences.

The first legislative initiatives to unify the rules on international commercial agency were offered in the late 20th century after the adoption in 1978 the Convention on the Law Applicable to Agency, with the flexible choice of law rules that accommodate between the diverse approaches of common law and civil law States.

The Hague Agency Convention has its goal to harmonize the rules not only within the Continental legal system, but also make them compatible with the common law system. Therefore, it applies to cases of disclosed and undisclosed agency as well as to indirect agency and deals with both the internal and external relationships.

One more progressive step in the unification of the Agency law was taken in 1983 with the introduction of the Convention on Agency in the International Sale of Goods. The Convention is aimed at reconciliation of the polar positions of the common law and the civil law systems by regulating the cases of undisclosed or unauthorised agency, which is a great step towards the unification of two contrasting approaches on agency. Nevertheless, the practical value of the Convention is significantly reduced by excluding the regulation of internal relations between the agent and the principal out of its scope.

Moreover, the entire Convention seems to be non-mandatory by virtue of its provisions and will apply where the national conflict rules enforced the application of the Contracting State's law.

The unification at the EU level was mainly revealed in the Council Directive 86/653 that achieved its goal to protect the autonomy of actions by all the parties and to protect the freedom of establishment for all commercial agents and secure the fair competition in the internal market. Moreover, mainly following the German approach, the Directive was not welcomed by the British legislature, where it managed to introduce the provisions of preventing the principals from abusing their dominant position over an agent and to give agents appropriate recompense upon the termination of agency agreement.

Even though soft law instruments contain a great number of progressive provisions on harmonization of the rules on international agency most of them failed because of the existing unbridgeable differences between the two legal systems. For instance, UNIDROIT Principles and PECL generally regulate analogous agency relationships, but the European Principles try to enforce the continental approach while UNIDROIT Principles accept the common law position where the agency is based on estoppel.

To sum up, currently there is no document existing that would regulate international commercial agency comprehensively, including the specific legal doctrines of both civil law and common law approaches. Thus, the lack of international regulation for commercial agency agreements leads to the application of conflicting national rules that are not sufficient in aligning the interests of all parties of such complex legal relations. The uniform legal framework of international commercial agency contracts would be significant in minimising conflicts between the parties and exclude the parallelism of actions in various national laws.

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