Bulletin of the *Transilvania* University of Braşov
Series VII: Social Sciences • Law • Vol. 19 (68) No. 1 – 2026
https://doi.org/10.31926/but.ssl.2026.19.68.1.11

THE INTERMEDIATION AGREEMENT

Codruț Nicolae SAVU[1]

Abstract: *The intermediation agreement is a distinct nominate contract under Romanian law, whereby the intermediary undertakes to connect a client with a third party for the purpose of concluding a contract. Unlike mandate, the intermediary does not act as a representative and does not participate in the formation of the contract, except where expressly authorized. It also differs from agency, which involves a continuous relationship and the agent's active role in negotiating or concluding contracts on behalf of the principal. The intermediary's right to remuneration arises only if the mediated contract is concluded as a result of its activity, being subject to a complex suspensive condition.*

Key words: *intermediation agreement, remuneration, suspensive condition.*

1. Introduction

Pursuant to Article 2096(1) of the Civil Code, "intermediation is the contract whereby the intermediary undertakes, vis-à-vis the client, to bring the client into contact with a third party for the purpose of concluding a contract".

The aforementioned statutory definition describes the subject matter of the obligation [Article 1226(1) of the Civil Code], namely the obligation of the intermediary, as debtor of the characteristic performance. According to the criterion of the nature of the performance (i.e., the content of the obligation), this is an obligation to perform an act (obligation *to do*), consisting in placing the client in contact with a third party with a view to concluding a contract proposed by the client.

As may already be inferred, the parties to the intermediation agreement are the intermediary and the client, both of whom may be natural or legal persons, either professionals within the meaning of Article 3(2) of the Civil Code or private individuals.

The third party is not a party to the intermediation agreement, but may become a party to the mediated contract, namely the contract that may be concluded with the client. Likewise, the intermediary does not become a party to the contract concluded between the client and the third party. The principle of privity of contract (Article 1280 of the Civil Code) remains unaffected in either of the two agreements (the intermediation agreement and the mediated contract), whose distinct legal operations

[1] *Transilvania* University of Braşov, codrut.savu@unitbv.ro, corresponding author

clearly delineate and define their respective subject matters [Article 1225(1) of the Civil Code].

The intermediation agreement is a nominate contract, consensual, synallagmatic (bilateral), onerous, commutative, and *intuitu personae*, and it may be performed either in a single instance (*uno ictu*) or on a successive (continuous) basis.

2. Distinction from the Mandate Agreement

In analysing the distinction between the two types of contracts, it must be stated from the outset that the intermediary is neither the mandatary nor the representative of the client, and even less of the third party. This follows expressly from the provisions of Article 2096(2) of the Civil Code, according to which "the intermediary is not the agent of the mediated parties (the client and/or the third party – author's note) and acts independently from them in the performance of its obligations."

The fact that, pursuant to Article 2102 of the Civil Code, the intermediary may, on the basis of an express authorisation, represent the mediated parties in concluding the mediated contract or in performing other acts relating to its execution does not mean that the mechanism of intermediation is grounded in a mandate agreement or in the institution of representation, for the reasons set out below.

The intermediation agreement entails the facilitation or brokerage of the conclusion of a contract by bringing the client into contact with a third party. Intermediation may exist and be performed independently of the representation of one or both of the mediated parties.

The provisions of Article 2102 of the Civil Code stipulate that the representation of the mediated parties may be effected only on the basis of an express authorisation, which indicates that mandate/representation lies outside the mechanism of the intermediation agreement. It does not constitute a component thereof, but rather an option that may be exercised after the client has been introduced to the third party with whom the mediated contract is to be concluded.

In this respect, it should be noted that, from a systematic (topographical) standpoint, Article 2102 of the Civil Code is the final provision governing the intermediation agreement. This rule is neither included as a separate paragraph within Article 2096 of the Civil Code nor placed immediately thereafter. This legislative positioning suggests that the lawmaker intended to exclude any interpretation whereby the content of the intermediation legal relationship would be "transformed" into a legal relationship based on a mandate with representation (Piperea Gh., 2019 p. 544-545). Accordingly, in our view, once the intermediary has performed its obligation consisting in identifying and bringing the third party into contact with the client, any subsequent authorisation granted by the client to the intermediary to represent it in concluding the contract with the third party does not alter the nature of the intermediation operation, but merely supplements it with a mandate with representation. The placement of Article 2102 at the end of the regulation highlights the legislator's intention to confer upon the intermediation agreement its own autonomous mechanism, whose operational nature is neither conditioned nor altered by other legal institutions (mandate/representation), thereby establishing intermediation as a distinct legal construct, preserving what the former Commercial Code of 10 May 1887 (Article 3 point 12) regulated as an objective act of commerce, namely “brokerage operations (commercial intermediation).”

The fact that the representation of the client and/or of the third party by the intermediary is not a component of the intermediation mechanism also follows from Article 2096(2) of the Civil Code, in which the legislator not only provides that the intermediary does not have the status of an agent of the mediated parties, but further reinforces this aspect by expressly affirming the intermediary’s independence in the performance of its obligations.

By granting the possibility for the intermediary to be authorised by the client and/or by the third party to conclude the contract between them, the legislator did not intend, through Article 2102 of the Civil Code, to derogate from Article 2096(2) of the Civil Code (a different aproach is adopted by Stănescu A.T., Stănescu Ș.A., Mitu A.M, 2012, p. 2104). This is not a case of establishing an exception to the rule, since such an interpretation would undermine the entire mechanism of the intermediation agreement. On the contrary, Article 2102 reflects the legislator’s intention to treat the mandate with representation not as an autonomous mechanism, but as a function complementary to intermediation. Accordingly, we are not in the presence of a derogating rule, as there is no normative conflict between the two provisions, but rather a relationship of complementarity.

However, where, under the very terms of the intermediation agreement, in addition to identifying a third party to be introduced to the client, the client expressly authorises the intermediary to conclude the contract with that third party in the name and on behalf of the client, it is highly likely that the agreement in question is not an intermediation agreement, but rather a mandate with representation. Evidently, the legal classification of the contract is not determined by the denomination given by the parties, nor by the mere formal existence of the authorisation (which must be express), nor by the timing of its issuance, nor by the order of the clauses, but by the characteristic and predominant performance.

In this regard, the characteristic performance of intermediation consists in bringing the client into contact with a third party for the purpose of facilitating the conclusion of a contract, whereas, in the case of a mandate with representation, the characteristic performance consists in concluding the contract in the name and on behalf of the principal. Consequently, the act of bringing the parties into contact (intermediation) may constitute merely a preliminary material act, devoid of independent legal significance. For a proper legal classification, it is essential to identify as precisely as possible the content of the authorisation, which must be assessed in conjunction with the terms of the contract. Such analysis may reveal that the introduction of the parties does not constitute an autonomous purpose capable of qualifying as an intermediation operation, but may instead be absorbed into the scope of the mandate, especially since Article 2016(3) of the Civil Code provides that “the mandate extends to all acts necessary for its performance, even if not expressly specified”.

Accordingly, intermediation may be regarded as a mere preliminary material act absorbed into the mandate where: (i) the main objective of the contract is the conclusion of the contract by the "intermediary" (in reality, the mandatary – author's note), rather than the introduction of the client to a third party; (ii) the "client" (in reality, the principal – author's note) does not participate in the negotiations; (iii) the remuneration of the "intermediary" is granted for the service consisting in concluding the legal act in the name and on behalf of the "client," rather than for intermediation services; and (iv) the "intermediary" identifies the third party, conducts negotiations with it, and executes the contract in the name and on behalf of the "client."

3. Distinction from the Agency Agreement

Although Article 2072(2) of the Civil Code expressly provides that the agent acts as an intermediary, the agency agreement must not be confused with the intermediation agreement, as there are essential differences between the two:

Under an agency agreement, the principal grants the agent a standing authority, which implies the performance of a stable and continuous activity over time. By contrast, under an intermediation agreement, the intermediary carries out operations for the client that are isolated in nature, involving an occasional activity that does not entail an ongoing relationship.

The activity of negotiating contracts, or negotiating and concluding contracts in the name and on behalf of the principal, inherently (per se) involves an authorisation granted by the principal to the agent, who acts by externalising the will of the principal and participates in the mechanism of contract formation and conclusion. In practice, where the agent merely negotiates a contract, such activity entails a mandate without representation (akin to the commission agreement, the provisions of which apply insofar as they are compatible), whereas, where the agent is also vested with the authority to represent the principal in concluding the contract, the specific rules governing agency are supplemented by those applicable to a mandate with representation.

By contrast, the activity of the intermediary does not, as a rule, inherently involve any authorisation from the client, the mechanism of this agreement not being founded upon a mandate. It is limited to bringing the client into contact with a third party for the purpose of concluding a contract, the intermediary having no role whatsoever in the mechanism of contract formation or conclusion. By way of exception, the intermediary may represent the mediated parties in concluding the mediated contract or in performing acts relating to its execution, but only where expressly authorised to do so. This demonstrates that the mechanism of the intermediation agreement is not based on a mandate without representation or on a specific form thereof (such as the commission). In summary, the agent directly participates in the negotiation, or in both the negotiation and conclusion, of the contract, whereas the intermediary merely facilitates or brokers the conclusion of the contract, without participating either in its negotiation or in its execution, performing a purely factual activity of introducing (i.e., brokering) the client to a third party.

The agent's activity is territorially delimited. Article 2072(1), final sentence, provides that such activity may be carried out "in one or more specified regions," which means that agency constitutes an instrument for the territorial organisation of the principal's business. The determination of the region(s) is essential both for exclusivity (Article 2074 of the Civil Code) and for the non-compete clause (Article 2075 of the Civil Code). By contrast, Article 2096(1) of the Civil Code does not territorially delimit the activity of the intermediary, the client being free to be introduced to any third party, irrespective of the area, zone, or region where the opportunity to conclude a contract arises.

Although, by reference to the legal provisions specific to each of the two contracts, the distinctions are clear, in practice the lack of fundamental legal knowledge often leads the parties—even where they qualify as professionals—to include within the same agreement both clauses specific to agency and clauses specific to intermediation. Consequently, by applying the rules of contractual interpretation, it becomes necessary to clarify the legal nature of the transaction in order to determine the applicable rules.

To illustrate the difficulties in identifying the legal nature of such agreements, we may consider a concrete example based on clauses extracted from a contract denominated by the parties as an "agency agreement," in which the "object of the contract" is described as follows: the identification by the "agent" of one or more investors willing to acquire assets from the "client" (note that, in an agency agreement, the correct term would be "principal," whereas "client" is specific to intermediation agreements); the intermediation commission payable by the client to the agent upon the execution of the contract with the third party; and the services provided to the client, including the preparation of the strategy for the performance of the contract with the third party.

The latter clause is specific to an agency agreement, whereas the first two are specific to an intermediation agreement.

For this reason, we consider that such an arrangement constitutes a complex contract, which cannot be classified as a mixed contract (agency and intermediation), but rather as an innominate contract, to which Article 1168 of the Civil Code applies. According to this provision, "contracts not regulated by law shall be subject to the provisions of this Chapter (Chapter I – Contract, within Title II – Sources of Obligations, Book V – Obligations), and, where these are insufficient, to the special rules governing the contract to which it is most closely related."

In such a context, the general rules of contract law are, in practice, insufficient, which brings us back to the same issue—namely, determining to which of the two contracts (agency or intermediation) the agreement at hand is most closely related. In our view, for the purpose of determining the degree of similarity, by applying the general rules of contractual interpretation (Articles 1266–1269 of the Civil Code), precedence should be given to those specific rules whose applicability is greater, having regard to the predominance of clauses that may be attributed to one or the other of the two contracts (agency or intermediation).

4. Proof of the Existence of the Intermediation Agreement

Whereas, in the case of the agency agreement, the law (Article 2078 of the Civil Code) requires, *ad probationem*, the written form—thus excluding witness evidence even where the agency agreement has been concluded by a professional in the course of its business activity (Article 309(2), final sentence, of the Civil Procedure Code)—in the case of the intermediation agreement, in the absence of an express legal provision, the existence of the contract may, in principle, be proven by any means of evidence, including witness testimony.

In this regard, witness evidence is admissible in all cases where the law does not provide otherwise (Article 309(1) of the Civil Procedure Code). However, the law provides otherwise where (most likely) the value of the subject matter of the intermediation agreement, by reference to the intermediary's remuneration (Article 2097 of the Civil Code), exceeds RON 250, in which case witness evidence becomes inadmissible.

Where one of the parties to the intermediation agreement qualifies as a professional within the meaning of Article 3(2) of the Civil Code, the provisions of Article 309(2) of the Civil Procedure Code become applicable, allowing the contract to be proven by witness evidence irrespective of its value, provided that the agreement was concluded in the course of the operation of the enterprise.

Nevertheless, pursuant to Article 309(5) of the Civil Procedure Code, witness evidence shall not be admissible against or in addition to the contents of the intermediation agreement, nor in respect of what is alleged to have been stated prior to, during, or subsequent to the execution of the contract, even where the law does not require the written form for evidentiary purposes, save for the exceptions provided under Article 309(4) of the Civil Procedure Code.

5. Remuneration of the Intermediary. Remuneration in the Case of Multiple Intermediaries

Pursuant to Article 2097(1) of the Civil Code, "the intermediary is entitled to remuneration from the client only if the mediated contract is concluded as a result of its intermediation," and, according to paragraph (2), "in the absence of an agreement between the parties or of specific legal provisions, the intermediary is entitled to remuneration in accordance with the prior practices established between the parties or with the usages prevailing among professionals for such contracts."

It follows that the intermediary's right to remuneration arises only if the mediated contract is concluded between the client and the third party as a result of the intermediary's activity consisting in bringing the client into contact with the third party.

In our view, the intermediary's right to remuneration is not a pure and simple right, but rather a right subject to a complex mixed suspensive condition, the fulfilment of which depends on: (i) the conclusion of the mediated contract between the client and the third party; and (ii) the fact that such conclusion occurs as a result of the intermediation services rendered by the intermediary. In the context of the intermediation agreement, the mixed nature of the suspensive condition derives from the concurrence of the will of the client and that of the third party identified by the intermediary. It should be emphasised that Article 2097(1) of the Civil Code does not establish two separate suspensive conditions, but rather a single, unitary yet complex condition, consisting in the conclusion of the mediated contract as a causal consequence of the intermediation activity.

The two elements are inextricably linked, as they cannot be legally dissociated; the condition is neither alternative nor cumulative, but unitary, albeit composite in structure.

Where the parties to the intermediation agreement (the client and the intermediary) have not determined the amount of the remuneration—whether as a lump sum or as a percentage (commission)—and in the absence of special legal provisions, the remuneration shall be determined in accordance with prior practices established between the parties. Where no prior intermediation relationship exists between them, the remuneration shall be determined in accordance with the usages prevailing among professionals in the field of intermediation agreements.

If the parties have not agreed upon a term for payment, the remuneration becomes due upon the fulfilment of the suspensive condition, namely on the date of conclusion of the mediated contract between the client and the third party as a result of the intermediary's services. In other words, in the absence of an agreed suspensive term for payment—which, naturally, would begin to run only after the fulfilment of the suspensive condition—the right to remuneration becomes immediately due and payable on the date the mediated contract is concluded.

Furthermore, in the absence of a suspensive term for payment, where the intermediation agreement is concluded in the course of the operation of an enterprise, the client, as debtor of the payment obligation, is deemed to be in default *ipso jure* as of the date of fulfilment of the suspensive condition [Article 1523(2)(d) of the Civil Code].

The intermediary's right of action for the determination of the amount of remuneration is subject to the same limitation period as the right of action for payment of such remuneration for services rendered under the intermediation agreement, namely a limitation period of two years [Article 1431 of Law No. 71/2011, Article 2010(3) of the Civil Code, Article 2519(2) of the Civil Code].

Given that the right to remuneration is subject to a suspensive condition, the two-year limitation period applicable to both the determination and the payment of remuneration begins to run, pursuant to Article 2524(3) of the Civil Code, from the date on which the condition is fulfilled.

The ascertainment of the fulfilment of the condition is governed by the rules set out in Article 1404(1), (2) and (3) of the Civil Code.

Since, in practice, the intermediary may not always be in a position to become aware of the conclusion of the contract between the client and the third party, and in order to facilitate the exercise of the right to remuneration, Article 2101(1) of the Civil Code imposes on the client the obligation to inform the intermediary whether the mediated contract has been concluded, within a maximum period of 15 days from the date of its conclusion, under penalty of doubling the remuneration, unless otherwise provided by the contract.

The phrase "unless otherwise provided by the contract" is open to criticism in light of the purpose of the aforementioned legal provision, namely to ensure prompt notification of the conclusion of the mediated contract in order to facilitate the exercise of the right to remuneration. In this respect, the legislator should have adopted a more restrictive approach to the principle of freedom of contract (Article 1169 of the Civil

Code), at least with regard to the possibility of extending the 15-day period, as such an extension may deprive the intermediary of the protection intended by the legislator. Following the introduction of the third party to the client, the intermediary does not stand on an equal legal footing with the client, but rather in a position of inferiority, and the period may be contractually extended without any statutory limit. Accordingly, although a literal interpretation does not support this view, we consider that the aforementioned phrase should rather have allowed for the reduction of the 15-day period and, of course, for the modification of the amount or nature of the sanction.

Returning to the issue of limitation, within the framework established by Article 2101(1) of the Civil Code, the two-year limitation period begins to run: (i) either from the date of conclusion of the mediated contract, where the intermediary was present at its conclusion or represented the mediated parties; or (ii) from the date on which the notification from the client is received by the intermediary, which may coincide with the date of conclusion if the notification is made and received on the same day. Naturally, it is also possible for the notification to originate from the third party with whom the client has concluded the mediated contract, in which case the limitation period begins to run from the date on which such notification is received by the intermediary.

Where the client has failed to fulfil its obligation to inform the intermediary of the conclusion of the mediated contract, and the intermediary has not become aware of this fact from other sources, even though the suspensive condition is objectively fulfilled, the two-year limitation period cannot begin to run, since prescription does not run against a person prevented from acting (*contra non valentem agere non currit praescriptio*). In such a case, Article 2523 of the Civil Code becomes applicable, enshrining the general rule governing the commencement of limitation periods, according to which "limitation begins to run from the date on which the holder of the right of action (the intermediary – author's note) became aware, or, as the case may be, should have become aware, of its accrual," namely from the date on which the intermediary knew or, in the circumstances, ought to have known that the condition consisting in the conclusion of the mediated contract between the client and the third party had been fulfilled.

Finally, in the case of multiple intermediaries, pursuant to Article 2099(1) of the Civil Code, "each intermediary is entitled to an equal share of the remuneration established globally, unless otherwise stipulated by the contract." This rule applies, according to Article 2099(2) of the Civil Code, both where the plurality of intermediaries arises from separate intermediation agreements and where it arises from the same intermediation agreement.

6. Conclusions

The intermediation agreement, as regulated by the Civil Code, represents a distinct and autonomous contractual mechanism, whose legal identity must be carefully delineated from related institutions such as mandate and agency. The analysis carried out demonstrates that, although certain functional similarities may exist, the defining feature of intermediation lies in the intermediary's obligation to bring the client into contact with a third party, without participating, as a rule, in the negotiation or conclusion of the mediated contract.

This specific functional role justifies the qualification of the intermediary's obligation as an obligation to perform an act (*obligation de facere*), limited to facilitating contractual interaction, rather than influencing its legal formation. Consequently, the principle of independence of the intermediary, expressly enshrined by law, constitutes a cornerstone of the legal regime applicable to this contract.

The distinction from the mandate agreement is particularly significant, as it highlights that representation is not inherent to intermediation, but may arise only exceptionally, based on an express authorisation. Even in such cases, the existence of a mandate does not alter the nature of the intermediation agreement, but merely complements it, preserving the autonomy of each legal mechanism.

Similarly, the comparison with the agency agreement reveals fundamental structural differences, especially with regard to the continuity of the relationship, the territorial dimension, and the agent's active involvement in contract negotiation and conclusion. These distinctions confirm that intermediation operates as a separate legal construct, primarily characterized by its occasional and factual nature.

The intermediary's right to remuneration further reflects the specificity of this contractual arrangement, being subject to a complex suspensive condition, the fulfilment of which depends both on the conclusion of the mediated contract and on the causal link between such conclusion and the intermediary's activity. This conditional structure reinforces the idea that remuneration is not guaranteed, but contingent upon the effectiveness of the intermediary's intervention.

The rules governing the determination and payment of remuneration, as well as those concerning the limitation period, emphasize the importance of legal certainty and predictability in contractual relations. At the same time, the obligation imposed on the client to inform the intermediary of the conclusion of the mediated contract serves as a necessary safeguard for the effective exercise of the intermediary's rights.

From an evidentiary perspective, the absence of a formal requirement for the validity or proof of the intermediation agreement reflects the legislator's intention to maintain flexibility, while still subjecting the contract to general rules on evidence, including the limitations applicable to witness testimony.

In practice, however, the coexistence of clauses specific to different contractual types often generates difficulties in legal qualification. This underlines the importance of identifying the characteristic performance and the predominant purpose of the agreement, in accordance with the general rules of contractual interpretation.

Ultimately, the intermediation agreement must be understood as a legally autonomous instrument, designed to facilitate economic exchanges without interfering with the contractual autonomy of the parties involved in the mediated transaction. Its proper qualification and application require a nuanced analysis of both its legal structure and its practical function.

In addition, the evolution of commercial practices and the increasing complexity of economic relations suggest that the role of intermediation will continue to expand, particularly in sectors characterized by informational asymmetries and the need for efficient matchmaking between contracting parties. In this context, the intermediary performs not only a factual function, but also an economic one, contributing to the reduction of transaction costs and to the acceleration of contractual exchanges. This functional perspective further supports the recognition of intermediation as a distinct legal institution, adapted to the dynamics of contemporary markets.

At the same time, the flexibility inherent in the legal regime of the intermediation agreement requires a heightened level of diligence on the part of contracting parties, especially in drafting clear and precise contractual clauses. The absence of strict formal requirements, while advantageous from a practical standpoint, may generate interpretative uncertainties, particularly where elements specific to other contractual types are incorporated. Therefore, careful contractual structuring remains essential in order to avoid requalification and to ensure the correct application of the relevant legal provisions.

Finally, from a doctrinal perspective, the intermediation agreement offers fertile ground for further analysis, particularly in relation to its interaction with other legal institutions and its adaptation to emerging forms of digital and platform-based intermediation. As legal systems increasingly confront novel modes of contracting, the principles governing traditional intermediation may require reinterpretation or refinement, while preserving their core function of facilitating contractual relationships without altering their fundamental legal structure.

In conclusion, the legal framework governing intermediation achieves a balance between flexibility and legal certainty, ensuring that this contractual form remains a viable and efficient tool in modern commercial practice.

References

Piperea, Gh. (2019). *Contracte și obligații comerciale* [Commercial contracts and obligations]. București: Editura C.H. Beck.

Stănescu ,A.T., Stănescu, Ș.A., Mitu A.M. (2012). In F.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei (ccord.) *Noul Cod civil. Comentariu pe articole art. 1-2664* [The New Civile Code. Article-by-article Commentary]. București: Editura C.H. Beck.

Nemeș, V., Fierbințeanu, G. (2022). *Dreptul contractelor civile și comerciale. Teorie jurisprudență, modele*, ed a 2-a, revizuită și adăugită [Civil and Commercial Contract law: Theory, Case Law, patterns, second edition, revised and expanded]. București: Editura Hamangiu.

Law no. 287/2009 on the Romanian Civile Code.

Law No. 134/2010 on the Romanian Code of Civil Procedure.

Other information may be obtained from the address: codrut.savu@unitbv.ro