Revista de Științe Politice. Revue des Sciences Politiques • No. 91 • 2026: 125 – 137

ORIGINAL PAPER

The shipping contract as a hybrid of commission and transport

Cristina Stanciu[1)]

Abstract
The shipping contract is that contract concluded between one party, called the principal, and another party, called the sender, by which the sender undertakes to conclude, in his own name and on behalf of the principal, a transport contract and to carry out operations ancillary to the transport, in exchange for a remuneration, called a commission. Shipment of goods is an intermediary operation, similar to commission. Although it is a variety of the commission contract, the consignment contract is not reducible to it, having its own legal features. At the same time, the shipping contract is not to be confused with the transport contract and they are autonomous in relation to each other.
The different possibilities of transport between two geographical areas, the emergence of a growing number of international regulations in matters of import and export on the territory of different states, the need to ensure related operations and services to carry out the transport of goods in good conditions, storage, handling of goods, packaging, grouping and monitoring of transport in real time, customs formalities and planning of optimal routes, have led to an increase in the complexity of the activity related to transport. The volume of specific knowledge generally exceeded the usual trade knowledge and led to the division of labor in the trade branch, emerging and developing a new branch with special professional specificity: international shipping.

The interposition of a forwarder (commissioner) between the customer and the carrier is intended to facilitate, from an economic and legal point of view, the movement of goods from the producer to the consumer, all the more so as the economic agent producing the goods or trading the goods usually does not have enough direct information to be able to proceed with the most suitable choice of the carrier and the means of transport. The intermediary specialized in such approaches is the one in a position to exercise convenient options, especially in situations where foreign markets are concerned.

Keywords: *shipment, commission, goods transport contract*

[1)] Associate Professor, PhD, University of Craiova, Law Faculty, Department of Private Law, Phone: 0040744211959, E-mail: cristina.stanciu1@gmail.com, ORCID ID: 0009-0008-7435-5900.

Preliminary remarks

The necessity and complexity of the movement of goods in the contemporary era have gradually led to a separation between the function of actually performing carriage and that of organising it. Since social reality is the material source of every legal rule, Romanian law reflects this development by regulating separately, in the Civil Code, the contract of carriage, the commission contract and the freight forwarding contract. The freight forwarding contract thus received its first express regulation in Romanian law through Articles 2064-2071 of the Civil Code adopted by Law No. 287/2009, which entered into force on 1 October 2011. Its statutory recognition did not, however, resolve the issue of legal classification raised by this contract: the legislature defines it as "a variety of the commission contract", yet assigns to it a body of obligations that cannot be understood without constant reference to the rules governing the carriage of goods. Freight forwarding operates as a hybrid legal construct: structurally, it borrows from commission agency the mechanism of indirect representation; functionally, it derives the content of the services and the standard of liability from the law of carriage. Article 2064 of the Civil Code expressly classifies freight forwarding as a variety of commission contract, but its specific subject matter-the conclusion of a contract of carriage and the performance of ancillary operations-places it at the intersection of agency without representation and carriage. The description "a hybrid between commission agency and carriage" captures the functional character of freight forwarding without implying that it loses either its legal autonomy or its statutory classification as a variety of commission contract.

Carriage activities and the regulation of the contract for the carriage of goods under the current Romanian Civil Code

Carriage is plainly indispensable as an economic activity because it provides the essential physical link between production, distribution and consumption. From a legal perspective, the characteristic performance consists in moving goods from one place to another within a specified period and under conditions ensuring their preservation and delivery at destination. The economic importance and particular features of this activity justify a legal regime distinct from the general law of obligations.

The Civil Code, adopted by Law No. 287/2009 and in force since 1 October 2011, introduced a unified regulation of the contract of carriage. Chapter VIII of Title IX of Book V contains general provisions in Articles 1955-1960, rules on the carriage of goods in Articles 1961-2001, and rules on the carriage of persons and luggage beginning with Article 2002. Accordingly, although the general regulation of carriage continues beyond Article 2001, the analysis of the contract for the carriage of goods centres on Articles 1955-2001 of the Civil Code (Law No. 287/2009: Articles 1955-2001; Baias, Chelaru, Constantinovici, Macovei, 2012: 1967-2006). The Civil Code provisions constitute the general law in this field, irrespective of whether carriage is by road, rail, sea or air, and are supplemented by the special rules applicable to each mode of transport and, where relevant, by the applicable international conventions.

Under Article 1955 of the Civil Code, the defining element of the contract is the carrier's undertaking, as its principal obligation, to move goods from one place to another in exchange for the price payable by the consignor or consignee. The phrase "as its principal obligation" is important in distinguishing carriage from freight forwarding: the carrier undertakes the actual movement of the goods, whereas the freight forwarder under a freight forwarding contract undertakes, in principle, the legal and technical organisation of that movement.

The parties to the contract for the carriage of goods are the consignor and the carrier. As a rule, the consignee does not participate in concluding the contract, but is the beneficiary of the carriage and may acquire the rights and obligations arising from it through the mechanisms laid down by the Civil Code. This configuration gives the contract a distinctive character, resembling in certain respects a contract for the benefit of a third party, although the two mechanisms are not identical because the consignee may acquire not only rights but also obligations (Stănescu, 2015: 30 et seq.). The carrier is a professional service provider. It acts independently of the customer, performs the carriage at its own risk and determines the practical manner in which its performance is carried out, within the limits of the agreement and the relevant special rules. Legal scholarship characterises the contract as nominate, autonomous, synallagmatic, in principle for consideration, commutative and, as a rule, consensual (Piperea, 2013: 21 et seq.). Its autonomy is not affected by the fact that the need for carriage frequently arises from another contract-a sale, lease, deposit or other economic transaction. The legal relationship giving rise to the need for movement and the contract of carriage concluded to effect that movement are economically connected but legally distinct.

The consensual nature of the carriage of goods has generated doctrinal controversy. Some authors have regarded it as a real contract, considering delivery of the goods indispensable to its formation, whereas another view-more closely aligned with the scheme of the current Articles 1967-1968 of the Civil Code-treats delivery as an act of performance rather than a condition for formation of the contract (Pop, Popa, Vidu, 2012: 78; Cotuțiu, 2013: 155-161). As a general rule, the Civil Code does not require delivery of the goods as a condition of validity. The contract is therefore consensual in principle, without prejudice to cases in which special legislation makes its conclusion dependent on delivery of the goods.

Nor is writing, as a rule, a condition *ad validitatem*. Article 1956 of the Civil Code assigns the specific transport documents-the consignment note, bill of lading, receipt, journey sheet or similar documents-primarily an evidentiary function. In practice, however, and under special legislation, written documentation is almost inseparable from the transport operation.

The effects of the contract reflect its synallagmatic character. Among other duties, the consignor must deliver the goods at the agreed place and under the agreed conditions; complete and provide the transport document and the necessary customs, health, tax or other documents; inform the carrier of the hazardous nature of the goods; and pay the price where payment falls to it. The carrier is obliged to take over, preserve, move and deliver the goods at destination and to comply with the time allowed for carriage.

A distinctive institution of the contract of carriage is the right to give subsequent instructions (contraordin), whereby the consignor may, subject to the law, unilaterally alter the performance of carriage already agreed. Articles 1970 and 1973 of the Civil Code permit, among other things, suspension of carriage, withdrawal of the goods, a change of destination or consignee, and return of the goods. The consignor bears the costs and immediate loss caused to the carrier by carrying out the subsequent instruction. In other words, exercising this right entails expense: the consignor owes the price for the portion of carriage already performed, the charges and expenses occasioned by implementation of the instruction, and compensation for any loss. Moreover, the right is not perpetual: under Article 1974 of the Civil Code it is extinguished, and the right of disposal may pass to the consignee when the latter exercises the rights arising from the carriage.

Failure to perform obligations assumed under a contract of carriage gives rise to civil liability on the part of both carrier and consignor. The liability of the consignor or consignee is governed by the ordinary rules of contractual liability, whereas the carrier's liability displays features departing from the general law and is subject to a stricter regime than the ordinary liability of a service provider. The carrier's liability operates on two levels: contractual liability and tortious liability. Viewed as a whole, it may therefore be extra-contractual (tortious) or contractual. A professional incurs tortious liability where it breaches professional duties imposed by law, and contractual liability where it has concluded a contract with the customer defining the framework within which its specific professional functions are exercised. Its liability is likewise tortious where third parties to the contract suffer loss as a result of its professional activity. Scholarship (Luntraru, 2017: 151-160) notes that a special law of professional liability can in fact be identified, distinct from the classical rules of civil and commercial law: an autonomous law of professional liability, containing many original elements and requiring special assessment criteria by which its legal nature, specific conditions and foundations may be determined. The legal regime governing the carrier's contractual liability is also stricter than the general regime, because the carrier is subject to an obligation to achieve a specified *result* and any defective performance may be treated as an unlawful act. Under Article 1984 of the Civil Code, the carrier is liable for loss caused by the total or partial loss of the goods, their alteration or damage during carriage, and delay in delivery. Article 1985 requires compensation at the actual value of the goods, assessed at the place and time of their delivery for carriage; Article 1986 requires a proportionate refund of the price and expenses; and Article 1987 permits a declaration of value, subject to reduction to the actual value. Compensation may not exceed the amount prescribed by special legislation (Civil Code: Article 1989); the carrier may exclude or limit liability only in the cases provided by law (Civil Code: Article 1959); and Article 1991 lists the grounds excluding liability. Overall, the regulation is considered adequate, representing an improved and terminologically updated restatement of the solutions found in the Commercial Code. Nevertheless, scholarship identifies a range of matters capable of improvement and certain drafting difficulties. Thus, the phrase "during carriage" has been criticised for lacking an express technical delimitation, while the wording "without prejudice to the consignor's rights" in Article 1977 is debatable because the consignor's right to give subsequent instructions is extinguished precisely when the consignee asserts its rights and is therefore indeed affected (Popa, 2020: 671). Article 1992 regulates liability for failure to perform carriage without providing a criterion for determining loss, while delay is regulated more than once, in both Articles 1984 and 1992. Article 1983 is unclear concerning the loss of the right of recourse by a carrier that delivers the goods without collecting the sums due (Baias, Chelaru, Constantinovici, Macovei, 2012: 1993; Popa, 2020: 673). Moreover, the scope of exemption does not cover the full range of relevant situations, and the professional carrier's pre-contractual duty to provide information remains a matter that could be regulated in the future.

These observations do not detract from the conclusion that the current Civil Code has provided an extensive and autonomous regime for the contract for the carriage of goods. That very autonomy facilitates a proper understanding of its relationship with freight forwarding: the freight forwarder-the professional under the freight forwarding contract-uses the contract of carriage as the legal instrument by which to perform the mandate received from its own principal.

Commission agency and the regulation of the commission contract under the current Romanian Civil Code

The commission contract is governed by Articles 2043-2053 of the Civil Code, within the section devoted to agency without representation. Its systematic location is essential to understanding the freight forwarding contract, which the law expressly classifies as a *variety of commission* contract.

Under Article 2043 of the Civil Code, commission agency is a mandate concerning the purchase or sale of goods or the provision of services for the account of the principal and in the commission agent's own name, the latter acting professionally in exchange for remuneration called commission (Civil Code: Articles 2043-2053; Boroi, Stănciulescu, 2012: 486-499). Three characteristic elements are thus combined: the intermediary's professional activity, conclusion of the transaction in its own name, and allocation of the transaction's economic effects to the principal's account. This technique distinguishes commission agency from agency with representation. An agent acting with authority to represent binds the principal directly in relation to the third party; by contrast, the commission agent is itself a party to the transaction concluded with the third party. In external relations, the third party is bound to the commission agent and the commission agent to the third party. Internally, the economic effects of the transaction are transferred to the principal in accordance with the commission contract and the rules governing agency without representation.

The contract is consensual, synallagmatic, for consideration and commutative, while the commission agent's professional status is inherent in the statutory definition. Unlike an ordinary mandate, which may be gratuitous, a commission contract is always concluded for consideration and is generally *intuitu personae*. Under Article 2044 of the Civil Code, in the absence of a special provision to the contrary, writing serves to prove the contract rather than to establish its validity.

Articles 2045-2053 bring out the logic of agency without representation. The contracting third party is directly bound to the commission agent. If the third party fails to perform, Article 2046 provides the principal with a mechanism for acquiring the claims against that party. The commission agent must comply with the express instructions received; Article 2048 permits departure only in the narrowly defined circumstances where prior approval cannot be obtained, it may reasonably be assumed that the amendment would have been accepted, and the nature and overall scheme of the mandate are not fundamentally altered.

The contract's onerous nature also follows from Article 2049 of the Civil Code. The commission agent is entitled to remuneration and, in principle, the risk that the third party will not perform the transaction does not deprive it of commission where it has properly carried out its mandate. This rule correlates with Article 2052: merely by reason of its status, the commission agent does not guarantee performance of the third party's obligation. It may, however, expressly assume a guarantee obligation-the mechanism traditionally known as *del credere* - in which case, unless otherwise agreed, it is entitled to additional remuneration.

Article 2051 permits the principal to revoke the authority until the transaction with the third party is concluded, while the commission agent retains the right to that portion of the remuneration justified by the work and expenses already incurred. Finally, Article 2053 gives the commission agent a right of retention over the principal's goods in its possession as security for claims against the principal.

This regulation reveals the legal model on which freight forwarding is built: a professional receives a mandate and concludes a transaction with a third party in its own name, but the operation is carried out in the principal's interest and for the principal's account. The fundamental difference lies in the specialised subject matter: in freight forwarding, the transaction that the intermediary must conclude is necessarily a contract of carriage, supplemented by ancillary operations.

Freight forwarding - a complex legal construct incorporating structural elements of both the commission contract and the contract of carriage

Modern carriage of goods is not confined to their mere movement: it is both an extensive legal structure and an exceptionally complex practical operation. Selecting the mode of transport and the carriers, determining the route, consolidating consignments, handling and storage, insurance, customs formalities, port or airport operations, cargo documentation and tracking through to destination transform movement into a complex logistics chain in which the contract of carriage retains the central role. It was precisely to make that process more efficient that an auxiliary structure-the freight forwarding contract-developed to mediate the relationship between the customer and the carrier and to provide a "legal framework" for all related operations (Piperea, 2013: 73; Budică, Bocean, Popescu, 2005: 334). Freight forwarding consequently developed in order to concentrate all these activities in a professional organisational service.

In legal terms, freight forwarding occupies a particular position. It is not a mixed contract in the technical sense, since Article 2064 of the Civil Code gives it an unequivocal statutory classification: a variety of the commission contract. The term "hybrid" used in the title of this study must therefore be understood functionally: the basic legal structure is derived from commission agency, while the subject matter, performance and a significant portion of the risks are directly connected with the contract of carriage.

Legal analysis of the freight forwarding contract and its structure. The Civil Code devotes Articles 2064-2071 to the freight forwarding contract. Under Article 2064, the freight forwarder undertakes to conclude, in its own name and for the principal's account, a contract of carriage and to perform the ancillary operations. The definition reveals its dual structure: the legal technique is that of commission agency, while the practical purpose is the performance of carriage.

The parties are the principal and the freight forwarder. The principal, traditionally referred to in practice as the customer or instructing party, is the person in whose interest and for whose account carriage is organised. The freight forwarder is the professional intermediary that organises shipment and, when concluding the contract with the carrier, acquires the legal position of consignor in that second contractual relationship (Baias, Chelaru, Constantinovici, Macovei, 2012: 2065). The terminology adopted by the Code is logical but may cause confusion: the Romanian term expeditor denotes both the professional under the freight forwarding contract and the party contracting with the carrier under the contract of carriage. In most cases these are in fact the same person, but the legal capacity in which that person acts is different. The term *expediționar*, established in practice, had the advantage of specificity; moreover, references in other legislation to the notion of *expeditor* raise the question which party is intended-the consignor under the contract of carriage or the freight forwarder under the freight forwarding contract.

The conditions of validity are the general ones: capacity to contract, valid consent, a determined subject matter and a lawful cause. The particular feature concerns the freight forwarder, which engages professionally in intermediary activity. In practice, contracts are often concluded on the basis of general conditions drawn up by freight forwarding undertakings, which may give the relationship features of a contract of adhesion. Standard terms nevertheless become part of the agreement only insofar as they have been validly incorporated into the contractual relationship.

As regards form, the freight forwarding contract is consensual. Read together with Article 2044 of the Civil Code on commission agency, writing generally has an evidentiary rather than constitutive function. The operation's economic importance and the complexity of the instructions nevertheless explain why written form is the norm in practice.

The contract is nominate, synallagmatic, for consideration, commutative, consensual and autonomous. It is in the nature of a contract for services and is, in principle, concluded *intuitu personae* because the freight forwarder generally enjoys the confidence of its customer. Its autonomy must be emphasised: the freight forwarding contract and the contract of carriage concluded in its performance are two distinct legal relationships. The first binds the principal and the freight forwarder; the second binds the freight forwarder, contracting in its own name, and the carrier (Baias, Chelaru, Constantinovici, Macovei, 2012: 2065; Boroi, Stănciulescu, 2012: 496-498).

Because the contract is synallagmatic, it gives rise to reciprocal and interdependent obligations. The Code imposes on *the freight forwarder* (Civil Code: Articles 2064, 2066, 2067 and 2069): the characteristic obligation to conclude a contract of carriage and perform the ancillary operations; the obligation, at the principal's request, to exercise the right to give subsequent instructions; the obligation to comply with the principal's instructions when selecting the route, means and modes of transport and, in their absence, to act in the principal's interest; the obligation to guarantee that the goods reach their destination; the obligation to insure the goods where stipulated in the contract or required by usage; and the obligation to remit to the principal any premiums, allowances and tariff reductions obtained, which belong to the principal as of right unless otherwise agreed (Baias, Chelaru, Constantinovici, Macovei, 2012: 2067; Boroi, Stănciulescu, 2012: 496-498; Moțiu, 2011: 263-266). These are supplemented by implied obligations: to have the necessary structures and resources available; to provide advice; to facilitate collection of the price of the goods; to preserve the ability to bring judicial or arbitral proceedings; and to keep records.

Legal scholarship notes that, although the obligation to perform *ancillary operations* is mentioned by statute, no provision defines its content (Baias, Chelaru, Constantinovici, Macovei, 2012: 2065); it may be assumed to include storage, customs declarations, inspection of the goods and collection of sums due to the principal. An important clarification concerns the guarantee obligation: Article 2067 (2) of the Civil Code provides that, where the freight forwarder also assumes the obligation to deliver the goods at destination, that obligation is presumed not to have been assumed towards the consignee. It is therefore not an obligation of actual delivery-which belongs to the carrier-but a guarantee given to the principal that the goods will reach the consignee.

The freight forwarder is entitled to commission-as stipulated in the contract or, failing that, determined by professional tariffs or usage or, where neither exists, by the court with regard to the difficulty of the operation and the efforts made-and to recover sums advanced, expenses being reimbursed on the basis of invoices or other supporting documents (Civil Code: Article 2069). Correspondingly, *the principal* must pay the commission and reimburse expenses and is also subject to implied obligations: to place the goods at the freight forwarder's disposal, provide the necessary documents, give complete instructions and warrant the accuracy of the information supplied. The principal's statutory rights are the right unilaterally to terminate the contract by revocation (Civil Code: Article 2065) and the right to require the freight forwarder to remain at its disposal for the purpose of giving subsequent instructions (Civil Code: Article 2066). Article 2065 of the Civil Code governs revocation of the forwarding order. Until the contract of carriage is concluded, the principal may revoke the mandate, subject to payment of the expenses and compensation due for work already performed. This solution adapts to the subject matter of freight forwarding the mechanism for revoking commission agency under Article 2051 of the Civil Code.

The freight forwarder's liability is subject to a distinctive regime. Article 2068 (1) establishes liability for delay, destruction, loss, misappropriation or damage where these are connected with negligence in performing the forwarding operation, particularly in taking over and safeguarding the goods or selecting the carrier or intermediate freight forwarders. The freight forwarder must therefore exercise the diligence of a professional both in its own activity and in selecting those to whom it entrusts different segments of the operation.

The regime becomes more stringent where, without sound reasons, the freight forwarder departs from the mode of transport specified by the principal. In that case Article 2068 (2) renders it liable even for loss caused by a fortuitous event, unless it proves that the same result would have occurred had the instructions been followed.

A qualification is nevertheless required. The assertion that the freight forwarder "is liable for the carrier" does not establish a general and automatic guarantee covering every failure of performance by the carrier. Unlike the carrier, whose liability arises directly from the duties to move and preserve the goods, the freight forwarder is liable under the specific conditions of Article 2068-principally for its own negligence in organisation and selection-or where it has expressly assumed additional guarantee obligations. This distinction is essential to differentiating the two contracts. The freight forwarder (as party to the freight forwarding contract) is therefore liable only for its own acts in relation to loss caused by the incorrect selection of a carrier and departure from the principal's instructions, not for the carrier's performance of the carriage; it is not a guarantor of the undertaking that performs the carriage (Nemeș, Fierbințeanu, 2020: 427). The freight forwarder may nevertheless assume, under a special clause, a guarantee of performance of the carriage services in exchange for an additional commission paid by the principal.

Claims arising from freight forwarding are subject to the special limitation period laid down in Article 2071 of the Civil Code: in principle, one year from delivery of the goods at destination or from the date on which delivery ought to have occurred, subject to the special statutory period for carriage beginning or ending outside Europe.

Elements of similarity or interaction between the freight forwarding contract and the commission contract. The connection between freight forwarding and commission agency is, first and foremost, normative. Within the scheme of the Civil Code, both institutions appear in the section on agency without representation: the general provisions are followed by the commission contract, then consignment and the freight forwarding contract. This placement is not accidental, and Article 2064 removes any doubt by expressly classifying freight forwarding as a variety of commission contract.

The first point of interaction lies in the mechanism of acting in one's own name but for another person's account. Like the commission agent, the freight forwarder does not directly represent the principal in relation to the third party. When it concludes the contract of carriage, the freight forwarder itself becomes the carrier's contracting counterparty. The principal retains the economic interest, but external relations arise, in principle, between freight forwarder and carrier.

A second similarity concerns professional status and remuneration. Both the commission agent and the freight forwarder carry on a professional activity and are remunerated by commission. The contracts are for consideration, synallagmatic, consensual and commutative, and confidence in the intermediary plays an important role.

A third point of interaction concerns the principal's instructions. The general commission-agency rule that the intermediary must follow the instructions received is particularised in freight forwarding by the obligation to comply with directions regarding the route, means and modes of transport. If no such directions are given, the freight forwarder has a margin of professional judgment, but must exercise it in the principal's interest-which entails evaluating costs, safety, duration and the characteristics of the goods.

A fourth similarity is apparent in revocation. Article 2051 permits commission agency to be revoked until the transaction with the third party is concluded; Article 2065 permits revocation of the forwarding order until the contract of carriage is concluded. In both cases, the point at which the intermediary contracts with the third party marks a change in the applicable legal regime.

Freight forwarding is nevertheless not reducible to commission agency. The specialised nature of its subject matter gives it a distinct character. The freight forwarder does not receive a generic mandate to purchase or sell goods or provide services, but must legally and technically construct a transport operation. Moreover, Articles 2066-2071 introduce institutions having no exact equivalent in ordinary commission agency: the connection with subsequent instructions under the law of carriage; special obligations concerning the route, insurance and tariff benefits; liability for risks characteristic of carriage; the possibility of functional transformation into a carrier; and a special limitation period.

The relationship can therefore be expressed through the genus-species formula: commission agency supplies the legal architecture, while freight forwarding adds the subject matter and risks inherent in organising carriage.

Elements of similarity or interaction between the freight forwarding contract and the contract of carriage. Whereas the relationship between freight forwarding and commission agency concerns legal nature, the relationship with carriage concerns primarily subject matter and performance. The freight forwarder concludes a contract of carriage, selects the carrier and organises the technical and legal conditions under which the goods will be moved. The two contracts are autonomous, but operate successively and interdependently.

The most telling point of interaction is the mechanism of subsequent instructions. Under the contract of carriage, the consignor is initially the holder of the right of subsequent disposal. Under the freight forwarding contract, however, the economic interest belongs to the principal. Article 2066 resolves this apparent separation: after the contract of carriage has been concluded, the freight forwarder must, at the principal's request, exercise the right to give subsequent instructions.

Legally, this does not make the principal a party to the contract of carriage. The principal communicates the instruction to its freight forwarder, and the freight forwarder-in its separate capacity as party to the contract of carriage-exercises the right provided by Article 1970 et seq. of the Civil Code. The mechanism therefore has two stages: principal

→ freight forwarder → carrier. It is this mechanism that most clearly illustrates the functional overlay of commission agency upon carriage. Furthermore, the sequence of Articles 2065 and 2066 reveals a genuine “boundary line”. Before the contract of carriage is concluded, the principal may revoke the forwarding order. After its conclusion, the operation is modified by exercising the right to give subsequent instructions under the law of carriage. The legal relationship thus moves from the pure logic of commission agency to direct interaction with transport law.

The strongest convergence between the two institutions, however, follows from Article 2070 of the Civil Code. The freight forwarder may undertake to perform the carriage, in whole or in part, using its own means or those of another. In that situation, as regards the carriage assumed, it acquires the carrier’s rights and obligations (Civil Code: Article 2070). This is the exception to the rule that the freight forwarder merely organises carriage. Under Article 2070, the same person combines the role of intermediary with that of carrier. The distinction is no longer made by reference to the professional designation used, but according to the performance actually undertaken. For the segment in which it performs carriage, the freight forwarder is subject to the legal regime applicable to the carrier, including the obligations and liability specific to that capacity.

This solution does not, however, extinguish the freight forwarding contract or justify a general conflation of the two institutions. Depending on the particular activity undertaken, there may be an accumulation of capacities and legal regimes. In organising carriage, the professional remains a freight forwarder; for the movement it has undertaken itself, it has the status of carrier.

Other points of interaction are evident in the field of liability: the events listed in Article 2068-delay, destruction, loss, misappropriation and damage-correspond to the classical risks of carriage. As a rule, the freight forwarder does not physically perform the movement, but the manner in which it selects the carrier, safeguards the goods, transmits instructions and organises the logistics chain may be decisive in the materialisation of those risks.

Similarly, operations ancillary to carriage-temporary storage, handling, loading and unloading, insurance, customs formalities, documentation and consolidation-create points of contact with distinct contracts and legal regimes. The freight forwarder’s role is precisely to ensure their coherence within a single operation viewed from the perspective of the customer’s interest.

Accordingly, the freight forwarding contract may be described as a functional hybrid of commission agency and carriage: commission agency provides its legal structure (the technique of indirect representation), while carriage determines its purpose, the characteristic performance that it mediates, and a substantial part of its specific obligations and risks (its substance-the content of the services and the standard of liability).

Conclusions

The development of freight forwarding is the direct consequence of the transformation of the carriage of goods from a simple movement operation into a complex logistics process. Numerous alternatives may exist between two geographical areas: carriage by road, rail, sea or air, or multimodal combinations; different routes; direct carriage or consolidation; and different terminals, warehouses and customs points. Selecting the optimal solution requires knowledge that ordinarily exceeds the expertise of a producer or trader primarily concerned with its own business. At the same time, the internationalisation of trade has multiplied the rules applicable to the movement of goods.

Import and export formalities, customs regulations, rules governing dangerous goods, health or phytosanitary requirements, documents specific to the various modes of transport and international legal regimes turn the organisation of movement into a markedly professional service. Related services must also be added: storage, handling, packing and repacking, consolidation and groupage of consignments, cargo insurance, customs formalities, booking transport capacity, selecting terminals, route planning, managing transshipments and real-time monitoring. The modern freight forwarder is consequently no longer a mere intermediary that identifies a carrier, but the integrator of a sequence of services.

The importance of this activity may be explained by several convergent considerations. The first concerns information asymmetry: the relevant information in the transport market-available capacity, actual rates, operators' reliability and solvency, and route restrictions-is dispersed and volatile, and the freight forwarder professionally consolidates and exploits it. The second concerns reducing transaction costs: instead of a network of separate contracts with carriers, warehouse operators, handlers, customs agents and insurers, the principal concludes a single contract and transfers the coordination risk to the intermediary. The third concerns economies of scale achieved through consolidation: combining small consignments permits full use of transport capacity and the sharing of costs. The fourth concerns compliance: the complexity of European customs regulations, export controls, dangerous-goods rules and phytosanitary requirements makes the freight forwarder the compliance manager of the logistics chain.

Recent transformations in the profession must be added to these considerations. The digitisation of transport documents, real-time monitoring, intermediary platforms and traceability now form part of the freight forwarder's service, while carbon-footprint reporting adds a further level of expertise. Multimodal carriage assigns it the task of articulating different legal regimes within a single economic operation. In this context, the expression used in legal scholarship to describe the freight forwarder-"the architect of transport"-remains apt. Its activity may begin before the producer concludes the commercial transaction, by supplying the information needed to estimate logistics costs, and may end only after the goods have been delivered at destination. Freight forwarding transforms a plurality of contracts, formalities and operations into a route organised as a coherent whole from the customer's perspective.

From a legal perspective, the current Civil Code reflects this reality convincingly. Freight forwarding is a variety of commission agency because the freight forwarder acts in its own name and for the principal's account. Yet it inevitably approaches carriage because the very subject matter of the mandate is the conclusion and organisation of a contract of carriage, because the right to give subsequent instructions traverses the two contractual relationships, and because, under Article 2070 of the Civil Code, the freight forwarder may itself become the carrier.

A comparative legal analysis of the freight forwarding contract and related legal structures reveals scope for improving the rules in three respects. The first is terminological clarification: the dual use of the Romanian term expeditor is a foreseeable source of difficulty in identifying the basis of liability, and reverting to expediționar or introducing an express distinction would eliminate it. The second is defining the minimum content of the "ancillary operations" referred to in Articles 2064 and 2067 of the Civil Code, whose indeterminacy leaves room for divergent interpretations precisely in the area where the added value of the service is concentrated. The third is expressly coordinating Article 2068 of the Civil Code with Article 1984 et seq., in order to establish unequivocally whether and to what extent the freight forwarder may invoke against the principal the limits on compensation available to the carrier. Pending such legislative intervention, classifying the freight forwarding contract as a hybrid-a variety of commission agency in structure and an extension of carriage in function-remains the interpretation most faithful to Articles 2064-2071 of the Romanian Civil Code. Put differently, the contract derives its structure from commission agency, but constructs its distinct identity from the requirements of carriage.

References:

Baias, Fl.A., Chelaru, E., Constantinovici, R., Macovei, I. (coordinators), (2012), *Noul cod civil, Comentariu pe articole,* art. 1-2664, Bucharest: C.H. Beck Publisher

Boroi, G.; Stănciulescu, L., (2012), *Instituții de drept civil în reglementarea noului Cod civil*, Bucharest: Hamangiu Publisher

Budică, I., Bocean, A., Popescu, A., (2005), *Transportul și asigurări de mărfuri*, Craiova: Universitaria Publisher

Cotuțiu, A., (2013), *Discuții privind caracterul consensual sau real al contractului de transport de mărfuri*, Revista Dreptul, 2

Luntraru, L.B., (2017), *Constantele răspunderii civile a profesionistului (I)*, Revista Română de Drept al Afacerilor, 3

Moțiu, F., (2011), *Contracte speciale în noul Cod civil*, Bucharest: Universul Juridic Publisher

Nemeș, V., Fierbințeanu, G., (2020), *Dreptul contractelor civile și comerciale. Teorie, jurisprudență, modele,* Bucharest: Hamangiu Publisher

Piperea, Gh., (2013), *Dreptul transporturilor*, ed. a 3-a, Bucharest: All Beck Publisher

Pop, L., Popa, I.F., Vidu, S.I., (2012), *Tratat elementar de drept civil, Obligațiile*, Bucharest: Universul Juridic Publisher

Popa, I., (2020) *Contracte civile de la teorie la practică*, ed. a II-a revizuită și adăugită, Bucharest: Universul Juridic Publisher

Stănescu, A.T., (2015), *Dreptul transporturilor. Contracte specifice activității de transport*, Bucharest: Hamangiu Publisher

Legea nr. 287/2009 privind Codul civil, available online at: https://legislatie.just.ro/Public/DetaliiDocumentAfis/109883

Article Info

Received: August 10 2026
Accepted: August 30 2026

How to cite this article:

Stanciu, C. (2026). The shipping contract as a hybrid of commission and transport. *Revista de Științe Politice. Revue des Sciences Politiques,* no. 91, pp. 125-137.