Abstract

International outsourcing agreement

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Historically, companies adopted a vertically integrated organizational model, whereby they directly manufactured nearly all components required for a finished product and internally provided the full range of services necessary to support their economic activity. Over time, a shift in perspective occurred, as companies began to transfer certain ancillary or non-core functions to contractual partners. One of the primary mechanisms facilitating the transfer of such functions is the outsourcing contract.

The outsourcing contract may be defined as an agreement through which a company transfers a part of its own economic activity to another company for a fixed period, with the former retaining control over the outsourced activity. This control is exercised regarding the quality, quantity, as well as the manner in which the partner company performs the activity. Furthermore, considering the complexity of the agreement, it is possible that a transfer of personnel between the two enterprises may also occur. The most likely scenario involves the transfer of employees holding managerial positions within the outsourcing company, who are responsible for supervising and controlling the outsourced activity.

The key point of any outsourcing contract is that all transferred activities (whether related to production, services, etc.) remain outwardly visible to third parties as being carried out by the company that outsourced them. The entities that have contributed to the creation of the final product are not disclosed to final consumers.

Outsourced activities are highly diverse. In principle, they may be classified as either activities involving the production of goods or the provision of services. In certain cases, depending on the nature of the transferred activity, the outsourcing contract may acquire a specific legal character, being expressly regulated by legislation.

These contracts may also be used by transnational corporate groups with the exclusive purpose of transferring profits between different entities within the group. In such cases, one company within the group transfers a particular activity to another group entity. Through this mechanism, profit is shifted from the original state to another state where the second company is registered.

Typically, such transfers occur when the first company—the one that actually generated the profit—is incorporated in a high-tax jurisdiction, where corporate income tax rates are

significant. In such circumstances, the company located in the low-tax jurisdiction provides a service to the entity in the other state, and the profit is transferred through the pricing mechanism applied for that service.

At present, the global economy is marked by a trend toward reorganization. This phenomenon is driven by a variety of factors, among which a significant one is the economic and logistical dependence of enterprises based in the United States and Western Europe on products and services supplied by companies operating in Asia.

This state of dependency is the result of a long-standing trend through which companies based in the United States and Europe have progressively outsourced an increasing number of economic activities to enterprises located in Asia. Consequently, in the current production chain, these companies rely heavily on components manufactured exclusively in countries such as China, Taiwan, or India. Any disruption in the economic activity of these enterprises may trigger a chain reaction, ultimately affecting companies based in Europe and the United States.

This dependency became particularly evident during the pandemic period of 2020–2022, when enterprises in China were unable to maintain production volumes at the required levels, resulting in a reduction of exports. A chain reaction was triggered, affecting companies in Europe and North America, which were consequently unable to fulfill their own contractual obligations due to the unavailability of finished goods or essential components thereof.

As a result, at the policy-making level, certain states have begun adopting regulations aimed at encouraging the reshoring of activities that had previously been systematically outsourced. These regulatory measures discourage imports by indirectly prompting companies to reduce their reliance on goods or services originating from other countries. In effect, this represents an attempt at forced reshoring, brought about by the introduction of customs duties intended to increase the costs incurred by companies when importing finished goods or their components.

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This thesis examines the international outsourcing contract by analysing relevant doctrinal, legislative, and jurisprudential sources within the framework of international trade law.

The research draws upon both Romanian and international legal scholarship in order to outline the theoretical foundations of outsourcing in a cross-border context. Particular attention is given to various legal forms that may fall under the broader category of outsourcing contracts, such as agency agreements, lohn manufacturing contracts, and cloud computing agreements.

These contractual models are considered not as distinct objects of analysis, but rather as comparative tools intended to clarify the legal nature and specific characteristics of the international outsourcing contract. The overarching objective of the thesis is to provide a comprehensive and structured overview of this type of agreement, which continues to evolve in the context of global economic interdependence.

From a legislative perspective, Romanian law is used as the primary reference framework, complemented, where appropriate, by elements of comparative law. At the same time, the Romanian legal order is influenced by the normative acts adopted at the level of the European Union, with EU law being integrated into the national legal system. Accordingly, relevant EU legal instruments that regulate certain aspects or effects of outsourcing are also considered.

Finally, the analysis takes into account soft law instruments applicable to international outsourcing contracts. While these instruments do not possess binding legal force, they play a significant role in shaping contractual practices by providing guidance, standards of conduct, and interpretative frameworks that support the development of consistent and predictable legal relationships in cross-border outsourcing.

From a jurisprudential perspective, the analysis draws upon both national court decisions and selected arbitral awards. Considering the influence exerted by European Union law on the domestic legal system, particular attention is also given to the case law of the Court of Justice of the European Union (CJEU). These judgments are especially relevant when national courts are called upon to interpret and apply EU legal instruments, in which case the CJEU ensures a uniform interpretation that becomes binding for national courts across Member States.

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Structurally, the thesis is divided into two main chapters. The first chapter, entitled "*General Considerations Regarding the International Outsourcing Contract*", examines the contract from a general, historical, and comparative perspective. The second chapter, entitled "*Content of the International Outsourcing Contract*", focuses on the pre-contractual phase, as well as the main contractual clauses, variations, and specific features of this type of agreement.

Each chapter concludes with a set of intermediate findings, which are subsequently synthesized in a unified body of final conclusions presented at the end of the thesis.

The first chapter is divided into two main sections. The first section provides an introductory and general overview of international outsourcing contracts, beginning with certain terminological clarifications. A distinction is drawn between the outsourcing contract and the outsourcing operation, and two illustrative examples from the manufacturing industry are presented.

The section continues with a historical overview of outsourcing, highlighting key developments that led to the emergence of international outsourcing contracts. It also addresses the underlying reasons that may drive professionals to enter into such agreements, alongside the risks to which they may be exposed.

Furthermore, this section proposes a classification of international outsourcing contracts and distinguishes them from other legally similar contractual arrangements. It also outlines the legal characteristics that define this type of agreement. Finally, the section analyzes the specific features that arise when outsourcing contracts are concluded by enterprises that are part of a transnational corporate group.

The second section of the first chapter is dedicated to the legal regulation of outsourcing contracts at the national, regional, and international levels. Given the diversity of outsourcing arrangements, such contracts are not subject to a unified regulatory framework. However, various forms of outsourcing contracts are governed by legal instruments at different levels, national, regional, or international, through both mandatory rules and soft law instruments.

The second chapter is structured into three sections. The first section examines the pre-contractual phase, detailing the internal procedures a company may follow, as well as the negotiation techniques typically employed. The second section addresses the key clauses commonly found in international outsourcing contracts. Finally, the third section explores specific features and variations of such contracts. This includes an analysis of the use of Artificial Intelligence in outsourcing arrangements, the outsourcing of corporate management functions, and the ethical considerations that may arise throughout the outsourcing process.

Regarding Artificial Intelligence, three hypotheses are put forward illustrating the potential impact of algorithms on outsourcing contracts. First, the scenario is examined whereby the partner company—the entity assuming the outsourced activity—integrates algorithms into the service provision process, thereby employing AI through the contractual partner. Second, it is anticipated that, owing to AI, traditional outsourcing contracts may cease to be concluded, with activities being directly outsourced to algorithms, a phenomenon referred to in the literature as “Outsourcing 2.0.” Third, an analysis is conducted on the modalities by which AI can be utilized to verify the transferred activities and to enhance their synchronization with the core activities retained by the outsourcing entity.

Within the category of activities specific to corporate management, the administrative duties incumbent upon the company administrator, as well as the voting activities at the general meetings of associates, have been analyzed. Consequently, companies may outsource administrative functions by appointing another company to act as administrator. This section takes the Romanian legislative framework as a point of reference and examines the permissibility of such an appointment with regard to the principal forms of companies recognized under Romanian law.

With respect to the voting activity at general meetings, scenarios are presented in which institutional investors engage specialized firms to obtain advisory services prior to casting their votes. Accordingly, the research function is outsourced, and in some cases, the actual voting activity at general meetings is also delegated.

The ethical issues arising from outsourcing practices are varied and complex. Predominantly, companies based in Europe and North America, through outsourcing, externalize ethical concerns to their contractual partners. Motivated primarily by economic considerations, such companies often prioritize profit maximization, while the means employed to achieve this objective are treated as secondary. Consequently, the entities to which activities are outsourced—frequently located in Asia—may fail to observe the ethical standards upheld in European or North American jurisdictions. Among the ethical concerns transferred in this manner are those related to environmental degradation, as well as violations of labor rights (including forced labor, inhumane working conditions, and similar practices). This final section provides a focused analysis of the ethical challenges associated with the fashion industry—particularly the fast-fashion sector—and of misleading corporate practices that portray an apparent commitment to sustainability, despite a lack of substantive compliance with such principles.

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International outsourcing contracts have historically been, and continue to be, significantly shaped by prevailing economic realities. From their inception, outsourcing operations have exerted a considerable economic impact, both at the level of individual companies and across various sectors of the global economy. As a result, certain states have aligned themselves with specific types of activities, while others have developed specializations in distinct fields, in accordance with broader economic dynamics. These strategic orientations have been largely determined by the structure of the global economy. At present, outsourcing is increasingly influenced by the rapid expansion of the Internet and the evolution of Artificial Intelligence, which enable the delegation of ever more complex and diverse activities to external entities.