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EFFICIENCY-BASED RATIONALES FOR NOTICE OF DEFAULT AND ANTICIPATED MATURITY IN ROMANIAN CIVIL LAW*

Abstract: *This research aims to examine the legal institution of placing the debtor in default from a legal and economic perspective, emphasizing its function in maintaining contractual efficiency and balancing the interests of the creditor and the debtor. The debtor's default is portrayed as a dual protection mechanism: on one hand, it enables the preservation of the contractual relationship and promotes voluntary performance; on the other hand, it protects the creditor's interests by ensuring timely access to contractual remedies. The study highlights that, in order to secure a coherent interdisciplinary interpretation in the spirit of the Law and Economics theory, the mechanism of debtor's default cannot be examined in isolation, as it operates mainly through relative and absolute presumptions designed to streamline the dynamics of obligations, as implicitly derived from articles 1522–1523 of the Romanian Civil Code.*

The second part of the paper focuses on the interaction between the debtor's default and the accelerated maturity of the claim. From the creditor's standpoint, both mechanisms may undermine contractual trust and generate uncertainty regarding the likelihood of claim satisfaction; nevertheless, their normative foundations and legal effects on the contract differ substantially. Accordingly, the study underlines the creditor's need to identify appropriate legal mechanisms and procedural avenues to achieve the intended outcome – the enforcement of the debtor's contractual liability.

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The general conclusion emphasizes that these institutions operate as instruments for balancing and optimizing the contractual relationship, reconciling the requirements of legal stability with those of economic efficiency.

Keywords: *debtor's default, presumption (rebuttable/irrebuttable), anticipated maturity, forfeiture of the benefit of the term, contractual remedies.*

1. INTRODUCTORY ASPECTS OF NOTICE OF DEFAULT.

The moment a contract is concluded, as the outcome of the negotiations undertaken, serves as evidence of the parties' optimism that their contractual interest will be fulfilled. The optimal scenario, and the most economically efficient one at that time, for both parties, is the precise performance of reciprocal obligations[1]—quantitatively, qualitatively, and in due time—thus reaching the Pareto standard of contracts[2]. Beyond this initial moment, however, the dynamics of the market economy and their impact on the personal business of each contracting party may evolve in ways unforeseen by them (or even if foreseen, not yet materialized or profitable[3]). Contractual difficulties arising when a breach of obligations becomes imminent[4] revolve around maintaining a balance between: (i) preventing or efficiently remedying the harm that may be caused to the creditor who finds themselves abandoned by their debtor in the course of contractual performance; and (ii) protecting the debtor from a potentially hasty or vindictive reaction of the creditor, while providing minimal guarantees to ensure coherence in the system of remedies.

The remedies available in the event of contractual non-performance, as well as the demarcation line between the creditor's interests and those of the debtor, are outlined as early as Article 1516(2) of the Civil Code. According to this provision, when the debtor, without justification, fails to perform their obligation and is in default (*mora debitoris*), the creditor gains access to the entire range of contractual remedies enshrined in the Civil Code, which may also be combined with

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[1] Stanciu Cărpenaru, "Corelația dintre diferitele forme ale răspunderii civile contractuale în condițiile noului Cod civil", published in *Volume In Honorem Corneliu Bîrsan*, Hamangiu 2013, 266.

[2] An allocation of resources is Pareto efficient if no change can improve the position of one person without making another worse off. In this regard, see: Cristian Paziuc, *Răspunderea contractuală – o analiză juridică și economică*, Universul Juridic, București 2019, 36-37; Pedro Aleman Lain, *On the Scope of Economic Efficiency in Judicial Reasoning. A Pattern Derived from U.S. Case Law on Corporations*, Lincoln Lae Review, vol. 45/2018, 55 -57; Robert Cooter, Thomas Ullen, *Law and Economics*, 6th edition, Pearson 2016, 28-29, 51.

[3] Lucian Bercea, "Clauza penală, între executarea eficientă și (ne)executarea (in)eficientă", *Revista Română de Drept Privat* nr. 4/2023, 260, 271-284.

[4] Raluca Clarisa Gligor, *Executarea prin echivalent ca remediu al neexecutării obligațiilor contractuale,* Universul Juridic București 2025, 51- 62.

damages[5]. The central element of this rule—and the one most relevant to the present analysis—is the debtor's default. Depending on the manner in which it occurs, default may acquire a threefold significance: (i) it safeguards the principle of favor contractus[6]—a principle which consistently guides the solutions of the Civil Code, the Romanian legislator preferring, wherever possible, the preservation of the contractual relationship over its termination[7]; (ii) it affords additional protection to the debtor against an impatient creditor; and (iii) it acts as a catalyst for the remedies available to the creditor.

From a theoretical standpoint, the debtor's default may also be examined through the lens of the economic efficiency it brings to the contractual relationship. Nevertheless, this perspective does not operate in an autonomous or isolated manner, since notice of default functions, to a significant extent, based on rebuttable or irrebuttable presumptions[8], designed to streamline the dynamics of contractual obligations.

1.1. Notice of Default of the Debtor

When examining the two categories of interests protected by notice of default, one may observe that the governing rule is outlined in Article 1522 of the Civil Code. Where the debtor fails to perform the obligation within the time stipulated in the contract or within a reasonable time, given the nature of the undertaking, the creditor may place the debtor in default by means of a notification whose communication must necessarily be capable of proof[9]. The essential function of

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[5] Marian Nicolae, "Nulități, prejudicii, restituiri, ieri și azi. De la Vechiul Cod la Noul Cod și mai departe?", *Revista Română de Drept Privat* nr. 4/2024, 75-78.

[6] Ionuț Florin Cofaru, *Existența principiului favor contractus în sistemul Codului civil român*, Universul Juridic București 2022, 184.

[7] In a previous work, I defined concrete economic efficiency as the situation in which the contract, although not always achieving an optimal distribution of resources at the theoretical level, nonetheless reflects the genuine agreement of the parties and, in the given context, produces the most advantageous possible outcome for them. In essence, from the parties' perspective, the conclusion of the contract represents a beneficial business opportunity, placing them in a better position than if the transaction had not taken place. For further details, see: Iulia Ungureanu, "Echitatea vs. Eficiența. O perspectivă comparativă în materia adaptării contractului", published in *Volume Conferinței Internaționale a doctoranzilor în drept Timișoara/ ediția 17 „Echitate și/sau eficiență în drept"*, Timișoara 2025, 622-624.

[8] For the manner in which conclusive (irrebuttable) and rebuttable presumptions operate, see: Maria Fodor, *Probele în procesul civil. Legislație, doctrină și jurisprudență,* Universul Juridic București 2021, 798 – 805; see also Gheorghe Liviu Zidaru, Paul Pop, *Drept procesual civil. Procedura în fața primei instanței și în căile de atac,* Solomon București 2020, 210-213; Florina Popa, *Drept procesual civil. Partea generală,* Universul Juridic București 2025, 552 – 565.

[9] According to Article 1,522(5) of the Civil Code, the filing of a statement of claim may also amount to a notice of default. However, in this latter case, the creditor bears the risk that the debtor, benefiting from the additional reasonable period for performance, may fulfill the obligation before the first hearing; in such an event, the litigation costs would remain the creditor's responsibility.

notice of default lies in gradually opening the path towards the contractual remedies available to the creditor.

At the outset, the mere maturity of an obligation does not entail the existence of any dissatisfaction on the part of the creditor[10]. For non-performance to be treated as a genuine contractual breach, it is necessary for the creditor to undertake an express act of will[11], through which the non-conformity is formally signaled to the debtor. This assertion does not, of course, imply that the contractual due date is of a purely indicative nature or stipulated merely as a recommendation, such an interpretation being contrary to the principle of *pacta sunt servanda*. *De lege lata*, although exceeding the due date constitutes non-performance, this fact alone is not sufficient to trigger sanctions against the debtor[12], since the law institutes an implicit rebuttable presumption of tolerance regarding the way the obligation is performed. Even more, it presumes that the beneficiary of the performance does not suffer actual prejudice from the manner chosen by the debtor to fulfill the obligation[13], as long as the creditor has not placed the debtor in default. Accordingly, under the general rule, the debtor is not deemed to be in default until the moment this state is expressly communicated to them.

Being a rebuttable presumption, it may be overturned[14] by the creditor's notice of default addressed to the debtor. Through this notice, the debtor is informed[15], on the one hand, that exceeding the contractual deadline is disapproved of by the creditor and constitutes non-performance, and, on the other hand, that from the date of the notification they are deemed to be in a situation of contractual breach. At the same time, the notice serves to warn the debtor of the consequences they will face should they fail to perform the obligation within the additional (reasonable) period granted as an ultimatum[16]. The mandatory nature of this additional period[17] directly reflects the principle of *favor contractus*[18], since during this time the creditor enjoys only limited access to defensive measures. Within this interval, the creditor is limited[19] to claiming damages and may suspend the performance

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[10] Cristina Elisabeta Zamșa, *Efectele obligațiilor civile,* Hamangiu București 2013, 105.

[11] Roxana Dan, *Executarea silită în natură și celelalte remedii contractuale. O perspectivă substanțială și procesuală,* Solomon 2025, 266-267.

[12] I.F. Cofaru, 184 – 185.

[13] C.E. Zamșa (2013), 105.

[14] M. Fodor, 798 – 805; see also Gh.L. Zidaru, P. Pop*,* 210-213; F. Popa, 552 – 565.

[15] For the preventive and informational role of the notice of default, as well as its evidentiary function, see C.E. Zamșa (2013), 107.

[16] Mihai David, "Perspectiva neexecutării ca factor relevant în decizia de încheiere a contractului sau despre gestionarea riscurilor asociate neexecutării", *Revista Română de Drept Privat* nr. 3/2019, 115; C. Paziuc (2019a), 486.

[17] R. Dan, 322-323.

[18] I.F. Cofaru, 184 – 186.

[19] C.E. Zamșa (2013), 110-111.

of their own obligation[20], but must refrain from seeking enforcement of the obligation[21], resolution or resiliation, as well as any other remedies.

Moreover, the additional period does not merely constitute a waiting time for the creditor[22] but represents a genuine safeguard for the debtor: if the debtor performs within the granted period, the creditor is bound to accept the performance[23]. In this respect, it should be observed that this institution essentially operates with the implicit absolute presumption that both parties continue to manifest interest in the performance of the contract; for this reason, the creditor may not refuse the debtor's performance if tendered within the additional period[24]. The period between the notice of default and the expiry of the additional deadline thus functions as a "cooling-off period," a time of reflection intended to encourage voluntary performance and preserve the contractual relationship.

Once the additional period expires, however, the debtor's protection ceases[25], exposing them to the risk[26] that the creditor may resort to remedies of such severity as to significantly burden their patrimonial situation[27].

This dynamic may be illustrated along a temporal axis, as follows: *T0 = maturity of the obligation:* the moment when the obligation was due to be performed; *T1 = notice of default:* marks the overturning of the implicit rebuttable presumption of tolerance for delay; *between T1 and T2 = the additional period granted to the debtor*: the creditor finds themselves in an antechamber of contractual remedies, with access restricted to low-impact instruments; *T2 = expiry of the additional period*: the breach of the contractual obligation is confirmed, and the creditor gains full freedom to opt for any contractual remedy deemed suitable to restore legal balance, irrespective of the effect that such remedy may have on the continued existence of the contract.

From the perspective of maintaining the economic efficiency of the contract, the procedure of placing the debtor in default is essential, as it allows the preservation of the contractual benefits through the granting of an additional period during which voluntary performance remains possible. At the same time, it does not deprive the creditor of the right to claim damages[28] to the extent that even this "reasonable" delay causes them prejudice.

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[20] R. Dan, 81-82.

[21] *Ibidem*.

[22] Vladimir Diaconiță, *Executarea silită în natură a obligațiilor contractuale în sistemul Codului Civil Român,* Universul Juridic, București 2017, 226-227.

[23] I.F. Cofaru, 184 – 186.

[24] Cristian Paziuc, "Decizia de a nu executa contractul – despre oportunitatea ilicitului contractual", *Revista Română de Drept Privat* nr. 3/2019, 84-85.

[25] M. David, 121, 124-125.

[26] V. Diaconiță, 226-227.

[27] M. David, 136-137.

[28] Camelia-Maria Solomon, "Momentul de la care curg daunele moratorii în cazul obligației de a face"*, Revista română de drept privat nr.* 2/2022, 262-263.

1.2. Default by Operation of Law

Moving forward, Article 1523 of the Civil Code establishes the concept of default by operation of law[29], through which the creditor's access to contractual remedies is considerably accelerated. The legislator enumerates five distinct situations in which both the breakdown of the contractual relationship and the legal and economic prejudice caused to the creditor are presumed in absolute terms. At the same time, it recognizes the parties' ability to conventionally designate other essential obligations, the non-performance of which would irreparably undermine contractual trust.[30]

In such cases, tolerance for the debtor's delay in performing the contract is entirely excluded. Consequently, without any additional formalities, the creditor acquires immediate access to default penalties, compensation for other losses incurred as a result of non-performance, and the possibility of invoking the *exceptio non adimpleti contractus*.[31] Furthermore, default by operation of law compresses the procedure for invoking other contractual remedies, as it eliminates the first two previously essential stages: the creditor's subjective tolerance period and the additional reasonable time imposed by law. The removal of these phases justifies the severity of the regulation, since the creditor is placed at once in a position to react. As a result, provided that the substantive conditions for applying any contractual remedy are met, nothing prevents the creditor from opting, even *ab initio*, for the most radical remedy available (i.e. termination[32], accompanied by damages).

By absolutely presuming the creditor's non-acceptance of the debtor's non-conforming conduct, the institution of default by operation of law functions exclusively for the creditor's benefit, authorizing them to resort as swiftly as possible to the contractual remedy they deem appropriate[33].

Naturally, the exercise of remedies remains a right and not an obligation of the creditor. Thus, it is not excluded that, although the law entitles the creditor to react immediately, the creditor may—by way of subjective choice—approve the debtor's conduct and waive the exercise of their prerogatives or simply allow the prescription period to lapse.[34]

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[29] Cristina Elisabeta Zamșa, *Drept civil. Teoria Generală a Obligațiilor – curs universitar*, Hamangiu București 2023, 239.

[30] In legal doctrine, the derogations from the rule of notice of default are classified, depending on their nature, into three distinct categories: contractual, statutory, and factual objective. In this regard, see C.E. Zamșa (2013), 108 – 109.

[31] M. David, 127; see also Liviu Pop, Ionuț-Florin Popa, Stelian-Ioan Vidu, *Drept civil. Obligațiile,* Universul Juridic București 2020, 238.

[32] Valeriu Stoica, "Modurile de operare a rezoluțiunii și mecanismul declarației unilaterale de rezoluțiune", published in Volume *In Honorem Corneliu Bîrsan*, Hamangiu 2013, 356-358.

[33] C. Solomon, 262-263.

[34] C.E. Zamșa (2013), 105; see also V. Stoica, 357; C.E. Zamșa (2023), 237.

Considering the foregoing, an intermediate conclusion may be drawn regarding the debtor's default. The implicit rebuttable presumption of temporary acceptance of delay fulfills a function of economic efficiency, as it promotes the preservation of the contractual relationship within the limits of its initial Pareto efficiency, thereby operating in favor of the debtor. By contrast, the implicit absolute presumption of default under Article 1523 of the Civil Code acts as a catalyst for access to contractual remedies, strengthening the creditor's position while discouraging the perpetuation of a compromised contractual relationship.

2. THE INFLUENCE OF THE BENEFIT OF TERM ON THE DEBTOR'S DEFAULT

Although the general rule in the performance of obligations is simultaneity and execution from the moment the agreement is concluded, in business contracts with significant economic stakes, the nature of the performances/services is, in most cases, such that at least one of the parties' obligations is subject to a term or condition.[35]

In this context, it becomes necessary to examine the interaction between forfeiture of the benefit of term (Article 1417 of the Civil Code) and the debtor's default (Articles 1522–1523 of the Civil Code), both in terms of their relationship to each other and of their reciprocal effects. More precisely, two fundamental questions arise: (i) can the forfeiture of the benefit of term automatically trigger the debtor's default by operation of law in the performance of the obligation?; (ii) conversely, can the occurrence of a default by operation of law trigger the debtor's forfeiture of the benefit of the term?

In order to answer either of the two questions, it is first necessary to examine the premises that may trigger the debtor's forfeiture of the benefit of term. *De lege lata*, these premises may consist of the following situations: (a) the debtor is insolvent or in a state of insolvency, as declared under the conditions of the law; (b) the debtor has culpably or intentionally diminished the securities established in favor of the creditor, or has failed to constitute the promised securities; (c) the debtor no longer fulfills a condition regarded by the creditor as essential at the time of the contract's conclusion.[36]

Upon analyzing these scenarios, it becomes clear that, strictly textually, none of them coincides with the situations in which the debtor is in default by operation of law. In other words, there is no identity between the two institutions, as their respective premises do not overlap.

[35] Cristian Paziuc, "Răspunderea pentru neexecutarea anticipată a contractului", *Revista română de drept privat* nr. 2/2020, 248.

[36] Article 1417 of the Romanian Civil Code.

2.1. Question (i): Can the forfeiture of the benefit of term automatically trigger the debtor's default by operation of law in performing the obligation?

For the reasons above, in relation to the first question, the following observations may be made. The causes leading to the forfeiture of the benefit of term concern primarily the debtor's situation and diminish the co-contractor's legitimate trust in their ability to perform the obligation at the agreed maturity. The fact that the debtor is insolvent or in a state of insolvency, or that they no longer provide sufficient patrimonial guarantees, does not necessarily imply the impossibility of performing the obligation in kind. The forfeiture of the benefit of term expresses either the consequence of the debtor's inability to pay or the presumption of an intention to evade performance at maturity[37].

Consequently, the creditor is no longer required to wait for the initial term to see whether the debtor's situation improves or deteriorates. In order to avoid the risk of an irremediable non-performance, Article 1417 of the Civil Code grants the creditor the right to accelerate the maturity of the obligation, which becomes immediately due[38] upon the occurrence of one of the cases of forfeiture.

However, this acceleration does not automatically place the debtor in default by operation of law, insofar as none of the hypotheses provided under Article 1523 of the Civil Code are met. The creditor wishing to activate contractual remedies must first follow the procedure of notice of default, granting the debtor an additional period for voluntary performance, while temporarily[39] accepting a limitation on the remedies available.[40]

2.2. Question (ii): Can the occurrence of a default by operation of law trigger the debtor's forfeiture of the benefit of the term?

The second question generates an even more intense debate, Romanian legal doctrine having previously raised the issue of whether an anticipated maturity of the obligation may be admitted in one of the cases of default by operation of law.

From the perspective of such anticipated maturity, of particular interest are letters (b) and (c) of Article 1523(2) of the Civil Code, which regulate the situations

[37] Călina Jugastru, *Drept civil. Obligațiile,* Hamangiu București 2023, 370 – 372.

[38] Silviu-Marian Munteanu, "Excepția de neexecutare: o formă de manifestare a potestativității în materie contractuală, (noțiune, condiții, natură juridică)", *Revista română de drept privat* nr. 2/2022, 308.

[39] C.E. Zamșa (2013), 106.

[40] For reasons of sound case management, in practice a prudent creditor would proceed to place the debtor, forfeited of the benefit of the term, in default, thereby informing him both of the ground for forfeiture, the reference date taken into account by the creditor, the additional period granted, as well as the creditor's intention to resort to legal action should the obligation remain unperformed at the expiry of that period.

in which the debtor has rendered performance in kind impossible or, respectively, has unequivocally expressed their intention not to perform.

According to an initial opinion[41], attempts were made to ground the immediate enforceability of the claim by directly referring to the cases of default by operation of law; however, the lack of textual correspondence between the relevant provisions led to the abandonment of this thesis. Likewise, the extensive application of Article 1417 of the Civil Code was also rejected[42]. As a compromise solution, legal doctrine has retained the existence of an implicit obligation, derived from the principle of good faith and the duty of loyalty, consisting in the parties' duty not to compromise the performance of the contractual relationship. The breach of this obligation would reasonably justify the anticipation of maturity and the creditor's immediate access to the appropriate remedies.[43]

Although the arguments supporting this latter theory are persuasive—anchoring the parties' pragmatism and legitimate expectations in fundamental principles of civil law—I consider that, in practice, the parties would be less exposed to the risks of interpretation or unpredictability if the legal reasoning for resolving their dispute were grounded on a more technical rather than a purely principled basis.

From my perspective, this technical argument can still be found within a case of anticipated maturity expressly provided by law, which, however, does not stem from or overlap with the cases of forfeiture of the benefit of term, but rather derives from the waiver of the benefit of term, as mentioned in Article 1418 of the Civil Code. Inevitably, insofar as the term is stipulated in favor of one of the parties, that party is recognized as having the right to waive it at any time, either expressly, through a clear declaration, or tacitly, through unequivocal conduct[44]. It must be recalled that, under Article 13 of the Civil Code, "waiver of a right may not be presumed." Therefore, the law enshrines, as a protective mechanism for the waiving party, the requirement that the manifestation of will be unequivocal, without imposing any particular form. It follows that, even in matters of waiver of the benefit of term, the debtor's manifestation need not necessarily be literal or formal; it is sufficient that it can be clearly and undeniably inferred from their conduct.

Although the classic example of tacit waiver of the benefit of term is the performance of the obligation prior to the contractual maturity date, this scenario does not exhaust the range of possible hypotheses. On the contrary, such an illustration appears unsatisfactory, as it reflects only the favorable situation of contract performance, where neither party suffers prejudice. Yet the real need for

[41] C. Paziuc (2020), 267-270.
[42] C. Paziuc (2020), 270-273.
[43] C. Paziuc (2020), 273-275.
[44] Viorel Terzea, *Răspunderea civilă contractuală*, Solomon Bucureşti 2021, 257-258.

answers and legal solutions arises in the opposite scenario—when the obligation is not duly performed. The law would be inequitable if it provided remedies solely for circumstances in which they are not actually needed.

In this logic, unequivocal waivers of the benefit of term—capable of triggering the anticipated maturity of the obligation—are precisely to be found in the situations governed by letters (b) and (c) of Article 1523(2) of the Civil Code, namely when the debtor renders performance in kind impossible or unequivocally expresses their intention not to perform.[45]

2.2.1. The Situation under Article 1523(2)(b) of the Civil Code: "through their own act, the debtor has made performance in kind of the obligation impossible"

The exact reverse of anticipated and voluntary performance is the scenario in which the debtor, through their own conduct, induces a state of impossibility of performing the obligation in kind. From the wording of Article 1523(2)(b) of the Civil Code, it follows that the impossibility in question must be total and irreversible, with any other hypothesis being excluded, even for default by operation of law.

In such a context, once the debtor, by their own act, places themselves definitively in the impossibility of performing the undertaken obligation, the benefit of term becomes devoid of utility. Even in the absence of a verbal or express declaration on the debtor's part, the act that has led to an irremediable impossibility of performance constitutes an unequivocal manifestation of the intention to renounce the benefit of term.

2.2.2. The Situation under Article 1523(2)(c) of the Civil Code: the debtor has clearly expressed to the creditor their intention not to perform the obligation

The debtor's declaration repudiating the contract is likewise assimilated to a tacit waiver of the benefit of term. When the debtor firmly expresses their intention not to perform the obligation, the temporal element becomes irrelevant, since their refusal concerns both the agreed maturity date and any subsequent moment.

In such a situation, the creditor is entitled to consider that the debtor no longer seeks to benefit from the granted term but, on the contrary, manifests the will to disregard the agreement altogether. It is important to emphasize once again that waiver of the benefit of term does not necessarily require an express, literal, or textual manifestation; it is sufficient that the debtor's declaration or conduct clearly and unequivocally demonstrates their intention not to perform the contract.

[45] Florin-Ion Mangu, "Rezoluțiunea, rezilierea și reducerea prestațiilor (II). Condițiile", *Pandectele române* nr. 2/2014, 23-24.

2.2.3. Reasonable Doubt and the Appearance of Non-Performance. Special Hypotheses

An additional case examined in legal doctrine[46] in connection with the possibility of invoking anticipated maturity is that of the debtor who, "*even without creating an impossibility of performance in the strict sense regarding the future obligation, nonetheless creates the appearance that they will be unable to perform—that is, generates a reasonable doubt as to future performance, amounting to a high risk of non-performance."* Examples mentioned in this regard include the absence of preparatory or preliminary measures necessary for performance, or the creation of a state of insolvency. The latter hypothesis requires no further analysis, since it is already expressly recognized by law as a ground for forfeiture of the benefit of term.

By contrast, the first hypothesis gives rise to numerous nuances. In my view, the anticipated maturity of the claim cannot be justified solely on the basis of the creditor's suspicion, in the absence of real and objective circumstances of such gravity as to warrant a reasonable fear. Moreover, insolvency, illiquidity, or the disappearance of certain guarantees/attributes of the debtor are in any case subject to judicial scrutiny, such that the reasonableness of the creditor's suspicion is confirmed through the judge's assessment[47]. Outside the cases expressly regulated by law, the creditor's mere subjective doubts cannot constitute sufficient ground for resorting to anticipated maturity of the claim. Necessarily, the doubt must be capable of objectification and verification.

Returning to the doctrinal example concerning the debtor's omission to undertake the preparatory measures necessary for performance, this could justify declaring the anticipated maturity only insofar as those steps are indispensable—and not merely optional—for the execution of the obligation[48]. Only in such a scenario could the delay send the creditor an objective signal that the obligation will not be fulfilled, thereby exceeding the level of mere unease or subjective apprehension.

In such cases, the analysis must be related to the existence of determined or determinable deadlines applicable to each stage preceding final performance. Establishing these chronological benchmarks is essential to avoid leaving them to the discretion or goodwill of one of the parties, which could otherwise generate contractual instability and unpredictability regarding the debtor's maturity date.

The contract is built, among other things, on the parties' mutual trust; therefore, in the absence of clear conduct indicating the contrary, the creditor is bound to maintain the conviction that they will receive due performance at the agreed

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[46] C. Paziuc (2020), 276.

[47] See *supra* footnote number. 41; see also C. Jugastru, 373.

[48] C. Paziuc (2020), 274-277.

maturity date. Only insofar as the due date approaches and it becomes evident that, given the debtor's passivity and the complexity of the assumed obligation, the debtor no longer objectively has sufficient time to complete performance within a useful term, is the creditor entitled to adopt a proactive stance and sanction the debtor in advance for a future, yet certain, breach of their obligation.

In any case, I do not believe that this hypothesis should be resolved solely through the general provisions on contractual remedies or by a forced interpretation thereof, in a manner that might cast doubt on the correctness of the identified solution.

In practice, situations such as the one described above most often arise in the performance of enterprise contracts[49]. In this respect, however, the Civil Code expressly recognizes the possibility of sanctioning the debtor in advance, even through termination of the contract[50]. Thus, Article 1872 of the Civil Code provides that the beneficiary may seek termination or rescission when *"compliance with the agreed deadline for acceptance of the work has become manifestly impossible."*

This special provision confirms the idea that a creditor's mere subjective suspicion is not sufficient to resort to remedies prior to the maturity date. What is required instead is the anticipatory finding of an irremediable delay. Starting from this rule, if the manifest impossibility of meeting the deadline justifies access to the most forceful remedies—termination or rescission—then, by application of the principle *qui potest plus, potest minus*, the creditor must equally be recognized as having the right to resort to less severe remedies.

Accordingly, even this atypical case of anticipated maturity and sanctioning of the debtor may find a sound technical-legal foundation, this time by reference to the special provisions governing civil contracts.

3. CONCLUDING REMARKS

The analysis of the institution of placing the debtor in default reveals the close interdependence between legal rationality and economic efficiency in the performance of contracts. In its general-law configuration, the debtor's default serves a balancing function: it tempers the creditor's reaction and provides the debtor with an supplementary reasonable period for voluntary performance in kind, thereby reinforcing the principle of *favor contractus* and preserving the economic value of the agreement initially agreed by the parties. At the same time,

[49] Or in the performance of a complex, hybrid, innominate contract, to which, by analogy, the provisions governing contracts for services (Article 1,168 of the Romanian Civil Code) are applicable.

[50] Stanciu Cărpenaru, *Tratat de drept comercial român,* Vth edition, Universul Juridic București 2016, 521-522.

the regime of automatic default, through its absolute presumptions, accelerates the creditor's access to remedies, enhancing the efficiency of contractual enforcement and discouraging non-performance.

The correlation between the debtor's default and the loss of the benefit of the term shows that, although both institutions seek to protect contractual trust, they operate on distinct levels: the former through warning and graduality, the latter through the acceleration of the maturity of the claim and the limitation of contractual risk. Consequently, accelerated maturity cannot be regarded as a mere automatic effect of default, but rather as a legal reaction that must be grounded either on statutory grounds for the forfeiture of the benefit of the term or in the debtor's unequivocal manifestation of intent to waive such benefit.

Together, these mechanisms establish a framework for balancing the parties' interests, whereby the law grants the debtor a reasonable opportunity for compliance without depriving the creditor of the necessary legal protection.

In conclusion, both default and accelerated maturity should not be seen merely as technical instruments of contract law, but as expressions of a modern contractual paradigm aimed at harmonizing the requirements of legal certainty with the imperatives of economic performance. From this perspective, they reflect not only a coherent application of the principles enshrined in the Civil Code, but also the law's capacity to adapt to the dynamics of contemporary economic relations.

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На ефикасности засновани разлози за опомену дужника и превремену доспелост у румунском грађанском праву

Сажетак: *Ово истраживање има за циљ да испита правни институт пада дужника у доцњу из правне и економске перспективе, уз наглашавање његове функције у очувању уговорне ефикасности и успостављању равнотеже између интереса повериоца и дужника. Доцња дужника приказана је као механизам двоструке заштите: с једне стране, она омогућава очување уговорног односа и подстиче добровољно испуњење обавезе; с друге стране, штити интересе повериоца обезбеђујући му благовремен приступ правним средствима уговорног права. Студија истиче да, ради обезбеђивања кохерентног интердисциплинарног тумачења у духу теорије права и економије, механизам доцње дужника не може бити размотран изоловано, будући да он функционише претежно путем релативних и апсолутних претпоставки које имају за циљ унапређење динамике облигационих односа, како се имплицитно може закључити из чланова 1522–1523 Румунског грађанског законика.*

Други део рада фокусира се на однос између доцње дужника и превремене доспелости потраживања. Са становишта повериоца, оба механизма могу нарушити уговорно поверење и створити неизвесност у погледу вероватноће намирења потраживања; ипак, њихови нормативни темељи и правна дејства на уговор битно се разликују. Сходно томе, студија наглашава потребу повериоца да идентификује одговарајуће правне механизме и процесне путеве ради остваривања жељеног циља – принудног извршења дужникове уговорне обавезе.

Општи закључак наглашава да ови институти функционишу као инструменти уравнотежења и оптимизације уговорног односа, усклађујући захтеве правне сигурности са захтевима економске ефикасности.

Кључне речи: *доцња дужника, претпоставка (оборива/необорива), превремена доспелост, губитак погодности рока, правна средства уговорног права.*

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