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Fiducia-warranty in the Romanian law - a possible practical transposition from the French law?

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Abstract. The fiducia is an institution of long standing tradition in the civil law systems, being regulated in these ever since the roman law period. But, by the assuming the Napoleon French Civil Code, the fiducia was taken out of the regulations of our country, until the entry into force of the 2011 Civil Code. Then, our legislator decided to acquire the French regulations and reintroduce in the national regulations the fiducia institution. Unfortunately, the institution did not come to know success – although meant to compete with the Anglo-Saxon trust, at the present moment there are up to 200 fiducia registered in Romania. On the opposite side, almost 20% of Americans owns a type of trust. The circumstances in Romania are similar to those in France, where the current regulation of the fiducia was „conceived”, where scholars as well as practitioners have tried the implementation of different variations of the fiducia in order to make the institution applicable. Thus were created fiducia-warranty (fiducie sûreté), fiducia management (fiducie gestion), and scholars have spoke about fiducia concessionary (fiducie libéralité). The present study aims to analyse the fiducia warranty institution and to suggest a „transposition” of this practice in the Romanian legislation. We do not consider that the fiducia will generate as much enthusiasm as the trust, that is much more flexible in its constitution as well as its exploitation, but we consider that it may develop its application in our national legislation.

Keywords. Fiducia, fiducia warranty (fiducie sûreté), fiducia management (fiducie gestion), fiducia concession (fiducie libéralité) .

1. Introduction

Fiducia is a newly introduced institution in the contemporary Romanian legislation, considering that it was regulated in its modern form for the first time on the entry into force of the Civil Code in 2011. Generally, this institution entails the establishment of a relationship between three persons: a settler who creates a fiduciary patrimony estate which is distinct from its patrimony and which he/she places to a fiduciary who has the right but also the obligation to “operate” [1] to the benefit of third-party beneficiary. It is true that both the settler and the fiduciary can also be the beneficiary.

In our opinion, this institution, although it has shortcomings or omissions from a regulatory point of view, it can prove to be very useful for the asset management. However, its practical implementation may be burdensome and onerous. On the other side, as pointed out earlier, the *common law* jurisdictions have regulated a simpler form, the trust. It can be established at any time (*inter vivos* or *mortis cause*), in any form (since a particular form is not required, the written form is only imposed by many laws *ad probationem*), by any person (we are referring

to the freedom given to the settler to choose the fiduciary, any person he trusts, because the latter is not required to fill a certain capacity, such as notary, attorney-at-law, credit institution etc.) and for almost all purposes (the trust can be created both to manage a patrimony and to transfer an inheritance or to create a concession to the benefit of a person). We notice that, in the explanatory memorandum of Civil Code, the legislator initial intention was, actually, to import the trust *tale quale* in the Romanian legal system. However, such was not possible given the incompatibility of the trust (legal title and equity title) with the continental system [2].

As to the origins of fiducia, despite the many opinions claiming that it is an institution that tends to duplicate the Anglo-Saxon *trust*, we consider that this institution, influenced by the *common law* system, has sufficient particularities to be treated as a distinct institution [3]. There is no denying that the fiducia in Romania was reproduced on the French model which - as the Civil Code study papers show - was an institution meant to compete with the Anglo-Saxon *trust*. Reviewing, however, the particularities of this institution, we cannot ignore the remains of the Roman institution or even the influence of other jurisdictions regulating similar institutions, such as the Swiss law regulating *Treuhand* [4] or Liechtenstein *anstalt*.

Without dealing with the differences between fiducia and trust, this study aims to briefly analyse the current national regulation of fiducia, pointing out the essential differences with respect to the French law [5], and then analyse the institution of fiducia-warranty enshrined in France, in order to see to what extent it can also be applied in the Romanian law. This study does not claim to present any of these institutions exhaustively or their ramifications but intends to address the unexploited potential such institution has, which can possibly be transposed in the national regulations.

While the current civil law tradition systems fail to fully exploit the fiducia, in the *common law* systems the *trust* is often used both by natural and legal persons. First, the *trust* has commercial applications; secondly, it is used for the transfer of the patrimony estate of heirs' and businesses. The main three uses of the *trust* can be broken down to management, warranty, and transfer of assets [6]. With regard to management, we stress that fiducia doesn't make express reference to the possibility to transfer a patrimonial liability, while there isn't any indication in the trust as to the creation of the relevant assigned patrimony, which grants an additional freedom to the settlers.

In the interest of this study, we will particularly examine the French and Romanian regulations. While the French law shows the legislator's concern to stress the contractual formalism of fiducia in order to avoid tax evasion and/or inheritance taxes (hence the logic of prohibition of concessions to the benefit of the beneficiary), the form and registration of the fiducia transactions in special and public registries, as well as the qualification of the persons who can have the capacity of fiduciaries, in our opinion, in Romania, such choices are not equally manifest. We will further analyse the elements of fiducia, and the example provided for the regulation of the fiducia-warranty.

2. The definition of fiducia

The Romanian Civil Code defines fiducia in art. 773 as "the legal operation whereby one or more settlers transfer rights in rem, debt, securities or other property rights or a combination of such rights, current or future, to one or more fiduciaries performing the same with a specific purpose, for the benefit of one or more beneficiaries. These rights make up an autonomous assigned patrimony, distinct from other rights and obligations of the fiduciaries' properties." The same kind of regulation is also found in the French Civil Code, in art. 2011 [7].

It is thus possible to state that the fiducia is the operation whereby a natural or legal person, called settler, transfers assets or right to a fiduciary (assigned) patrimony which will be managed by another person called fiduciary, to the benefit of a third party, the beneficiary.

As far as we are concerned and for the purposes of this study, we highlight the following differences between the Romanian and French rules specific to the institution of fiducia: (i) the Romanian law requirement that any fiducia is made through a notarised deed, in contrast to the French law where the notarised deed is only required for the shared ownership between spouses or in case of an undivided co-ownership, (ii) the notaries can also be fiduciaries in the Romanian law, (iii) in the Romanian law, the settler can appoint a third party to represent its interests in connection with the fiducia, while in the French law, this is mandatory if the settler is a natural person, (iv) regarding the duration of the fiducia contract, the Romanian law sets a maximum length of 33 years, in contrast to the 99-year duration in the French law, (v) regarding the effectiveness against third parties, fiducia is acquired in Romania upon the registration in the Electronic Archive for Security Interests in Movable Property, while in France it is acquired upon the registration in the National Register of Fiducia, with the exception of the fiducia claim assignment, in which case it becomes enforceable against the debtor only upon notification, and against the third parties on the date when the agreement is ascertained; (vi) regarding the declaration of the fiduciary capacity, in the French law, the fiduciary must declare its capacity, while the national law enables the fiduciary to declare its capacity save as when such is forbidden by the fiducia contract; (vii) regarding the termination of the fiducia contract, the French law adds a cause for the termination of the agreement, *i.e.* the settler's death, in order to force the assets subject to the fiducia to be reverted to the deceased and to secure the payment of the inheritance tax [8].

Further on we will review the French doctrine and practice that led to three main uses of the fiducia: (1) fiducia-warranty (*fiducie sûreté*), used when the assets transferred to the fiduciary patrimony are intended to secure one or more current or future claims; (2) fiducia management (*fiducie gestion*), when the settler can also be the beneficiary and (3) fiducia concessionary (*fiducie libéralité*), strictly forbidden in the positive law, but often used in the Anglo-Saxon law [9].

According to the doctrine, fiducia management is the operation by which the settler, appointing itself as the beneficiary thereof, will transfer assets, rights and securities that will be reverted to the patrimony at the end of the 90-year maximum period, while being managed by the fiduciary. The criticisms made to this definition primarily refer to the avoidance of the transfer of debts but also to the fact that the non-translative property transactions are not stipulated, narrowing the fiducia to transfer operations. However, as stipulated in the doctrine, the patrimonial transfer is part of the fiduciary transaction, not a vital item thereof [10].

Regarding the fiducia concessionary, it cannot stand in practice, because art. 2013 of the French civil Code states, as the Romanian Civil Code does, that the fiducia established for the purpose of a concession will become null and void. As mentioned, the main fear of the French legislator was that of the tax evasion in the certain contexts such as rights of patrimony transmissions or transfer of inheritance [11].

3. Fiducia-warranty in the French law

As the doctrine emphasises, the fiducia-warranty has emerged since the Roman law: the stated purpose of establishing the *fiducia cum creditore* was to guarantee the fulfilment of an obligation, meaning that the debtor of the obligation transferred the creditor's asset, who, in its turn, would commit to return the relevant asset as soon as the debtor would have fulfilled the

undertaken obligation [12]. This institution was later replaced by Justinian by the pledge agreement whereby only the possession of the asset was disposed of.

The fiducia-warranty is nowadays one of the most widespread and most important uses of fiducia in France. This aspect was illustrated in the specialised doctrine in which it noted that the fiducia-warranty had existed even before the official regulation had entered into force, as a form of untitled agreement, very appealing for the creditors, because it often entailed the exclusivity of the provided guarantee [13]. Practice also showed that further to the official regulation the first two fiducia registered in France were fiducia-warranty [14].

The fiducia-warranty is characterised by the fact that the debtor settler appoints a fiduciary who will maintain the pledge in a fiduciary (assigned) patrimony reserved to the creditor. The beneficiary will be appointed at the expiry date and will either be the debtor settler, if the liability is paid, or the creditor, if the liability is not complied with [15]. But this will differ: (i) if the settler is also debtor or if it guarantees for someone else's debt, (ii) if the fiduciary is also the creditor of the obligation, (iii) it may be done with or without escrow, or (iv) the settler can preserve the or not the disposal of the assets from the fiduciary (assigned) patrimony [16].

It must be emphasised that the scope of interest of the fiducia-warranty is not to bring added value to the settler, its main purpose is to establish for the beneficiary a real and sufficient guarantee to satisfy the obligation. Nonetheless, this transaction is distinguished from all the other institutions of guarantees given by the French law [17] and is closer to the classic institution of fiducia by that the fiduciary keeps in all situations the obligations it has both towards the settler and the beneficiary (such as accountability, through the obligation to declare the capacity of fiduciary or even through the possibility to replace the fiduciary). Most often the fiduciary will likely preserve the assets or rights transferred in the fiduciary (assigned) patrimony, and if such will be disposed of, they will be returned to the beneficiary upon the termination of the fiducia contract.

With regard to the potential liabilities arising from the assets or rights that are part of the fiduciary patrimony, they will be paid from the fiduciary (assigned) patrimony and in the alternative, from the settler's patrimony, unless the fiduciary expressly undertakes this obligation in the fiducia contract, but these costs are generally low [18]. The fiduciary must declare its capacity through direct publicity, in order to avoid a potential pursuit of its own assets. Also, the fiduciary must keep the accounts in accordance with the company law rules, but the tax will be paid by the settler.

The fiducia-warranty contract is a synallagmatic agreement which, as is the case under any type of fiducia, it must be registered within a month from the establishment. What is of the essence is its irrevocable nature upon which the efficiency of the guarantee granted by the settler is conditioned. As the specialised doctrine emphasizes the irrevocability of the fiducia-warranty is not expressly stipulated by the legislator, as such it is exposed (A) to a risk of revocation of the agreement, in which case, according to the French Civil Code there are two possible situations (i) if the beneficiary doesn't accept the fiducia – therefore, the creditor doesn't accept the fiducia or (ii) the agreement is amended or revoked either with the consent of the beneficiary or by the court of law. As previously showed, the court intervenes in these cases to alter the agreement in case of appointing a new beneficiary, if a concession was created through the fiducia, if the mandatory elements are not stipulated in the agreement or if the terms for declaring the fiducia agreement were not complied with [19]. In all cases mentioned above, the creditor still holds a sufficient control over its rights and may oppose if it deems that the guarantee is in danger. Another risk to which the creditor is exposed is (B) the early termination of the agreement, which may occur (i) in the cases laid down for the fiducia in general: expiry of the term of fiducia, fulfilment of purpose, withdrawal of beneficiary or (ii) the specific cases

of fiducia-warranty in the case of the fiduciary's inability for whatever reasons – but this issue also can be solved through a clause inserted in the fiducia agreement. However, the death of the settler is not cause for termination. [20]

The fiducia-warranty should contain all the clauses laid down for the “general” fiducia, identification of the assets or rights in the fiduciary patrimony and of the parties, the length, the power and management entrusted to the fiduciary, but above all, it must contain a clause regarding the guaranteed debt and the estimated amount of the assets or rights from the assigned patrimony, under the penalty of absolute nullity of fiducia [21]. The agreement should also stipulate that the fiduciary must transfer the fiduciary (assigned) patrimony to the beneficiary creditor unless the debtor settler fails to pay at the expiry date. The beneficiary creditor will then be liable to return to the settler the potential difference between the assigned patrimony and the credit.

4. Applications of the fiducia-warranty

The main users of the fiducia-warranty in France are usually the trading companies, thus the legal persons. We noticed from our researches and the doctrinal studies that the fiducia are mainly used to establish guarantees in favour of the employees. Another advantage that must be pointed out is the possibility to establish this institution even within an insolvency procedure.

As emphasised in the doctrine, the scope of fiducia is triple: the creditor is very well protected due to the exclusivity given through the transfer of the assigned patrimony, the establishment of the fiducia-warranty is simple and may be done even within a collective procedure, also offering an advantageous arrangement to its beneficiary [22].

Practice has shown that fiducia has a huge advantage to prevent that any item of the fiduciary (assigned) patrimony is not used – “recharge” fiducia (*fiducie de recharge*) thus allows the settler to reuse the same assigned patrimony after the payment of the credit in order to guarantee a new claim.

The convention for the recharge of fiducia is regulated by the Civil Code [23] and must be expressly stipulated in the initial fiducia contract. In this case, the settler may provide a new patrimonial guarantee both to the initial creditor and to a different creditor even if the initial creditor has not been paid so far. The convention for the recharge of fiducia will abide by the same rule of establishment and registration as the initial fiducia, and the date of registration represents the creditors' rank. These dispositions are public, and any contrary disposition will be deemed unwritten. However, the French legislator states that when the settler is a natural person, the fiduciary patrimony can not be assigned to the guarantee of a new debt unless within the limit of its value estimated on the recharge day. Per a contrario, if the settler is a legal person, it can recharge the fiducia without having limit for the debt. This difference seems unfair to us, because in our opinion it offers protection only to the settler; in addition, even if a natural person assigned an asset to the assigned patrimony of a lower value than its debt, such lack in the fiduciary patrimony does not prevent the creditor beneficiary to pursue the assets of the natural person. Moreover, upon the establishment of a fiducia-warranty, the settler legal person has the obligation to conduct an assessment of the assets assigned to the fiduciary patrimony [24]. It appears that this difference has no justification for us, all the more that this assessment was imposed to any settler who intended to recharge the fiducia to the initial form laid down by the law.

5. The merits and drawbacks of the fiducia-warranty in France

Although not in a comprehensive manner, we will present in this section some of the practical and theoretical merits and drawbacks of the fiducia-warranty but not in a comprehensive manner.

Among the first merits and perhaps the most important one we find it to be the protection offered to the creditor, who will dispose of a fiduciary patrimony strictly assigned (unless the case of several creditors or if the fiducia does not allow a recharge) to satisfy its claim. Furthermore, any kind of property can be assigned to the placement of a fiduciary patrimony hence it can be assigned to guarantee the claim against the debtor.

We consider that the form of this guarantee is another advantage because, since is established an assigned patrimony that is different from the settler's patrimony and the fiduciary's patrimony, the creditor has more certainty in the full recover of the claim. This isolation of the assets allows, as showed in the doctrine, a double protection for the beneficiary, protecting it against the risk of bankruptcy of the fiduciary [25].

A potential weakness, which was converted by the French legislator in an advantage, is that the settler loses the use of the asset – as such, if the fiducia contract expressly stipulates this possibility to the settler, the latter can continue to use the assets part of the fiduciary (assigned) patrimony; therefore, the fiducia-warranty contract can stipulate that although the assets will be in the patrimony that guarantees the claim, their owner can continue to use them throughout the agreement. This is how a fiducia-warranty “without dispossession”.

A merit that can not be ignored is the possibility to establish a recharge of the fiducia if the debtor's claim does not deplete the fiduciary patrimony. As previously mentioned, this must be expressly stipulated in the fiducia-warranty contract but is a reliable possibility to guarantee more claims. In addition, the asset allocated to the fiduciary patrimony may be assigned to a new guarantee for the same creditor or for a different one. This method of guarantee derogates from the ancillary principle where the extinction of the initial debt does not automatically trigger the termination of the fiducia. It also shapes the principle of the guaranteed claim principle which can be determined at a further time, without having to be determined *ab initio* [26].

With regard to the weaknesses of this legal transaction, documented both in practice and emphasised by the doctrine, we must first evoke the limitation of the possibility for certain persons to establish fiducia-warranties: thus, the minors or their representative, even if authorised [27] or the majors in the trusteeship or even with the authorisation of the competent body [28] are not allowed to establish such guarantees. In addition, the foreign companies registered in a country that does not participate to the automatic exchange of information can not make use of the fiducia-warranty institution [29].

With regard to the conditions of validity of the fiducia-warranty transaction, it must be stressed that it must be registered in several public registries, for the validity of the document and for enforceability against third parties. However, at a careful analysis of the French law, we note that all the sanctions for the noncompliance of the registration deadlines represent public nullities, if they automatically result in the invalidation of the entire transaction. We consider that this emphatic formalism is a weakness with respect to the versatility of other guarantee institutions.

Another assumption that may pose problems is mixing the capacity of fiduciary and that of beneficiary-creditor of the fiducia-warranty - the fiduciary must accomplish its mission diligently and with loyalty, but this double function is likely to create a conflict of interests that tends to deny the obligation of loyalty, which is not exclusively due to the beneficiary, but also to the settler, in terms of the purpose to fulfil [30]. For example, in the case of establishing a

fiducia-warranty, where a bank is the fiduciary (we recall that both in the French law and in the Romanian one, only certain categories of persons can hold the capacity of fiduciary) and also the beneficiary, suspicions of abuse by the bank may arise. In addition, to continue more in-depth, we can imagine a bank practice, with adhesion contracts, whereby the settler is obliged to accept the double capacity of the bank.

Another possible situation likely to create problems in practice is the case in which the settler preserves possession and the use of the assets assigned to the fiducia-warranty. While there is no publicity of this fiducia (which for the moveable assets is relatively difficult to check) the risk that a good faith third party seizes or acquires the asset is rather increased. In addition, the third party can avail oneself of the apparent possession of the settler debtor and may enforce the good faith acquisition against the creditor beneficiary of the fiducia transaction.

A last potential problem in practice that we wish to underpin is within the recharge fiducia-warranty. If a fiduciary patrimony is established over a company, the company's creditors will be paid before the creditor beneficiary of the fiducia, because the former see their claims as arising from the maintenance, preservation or improvement of the fiduciary patrimony; this means that the creditor beneficiary may not satisfy its claim, if the settler was the company which was assigned to the fiduciary patrimony.[31]

6. Conclusions

As previously noted, the fiducia-warranty regulated in the French law is an institution of interest on the current economic market. In addition, given the duplication of the French law in the national law, we consider that amending the current stipulations and including other similar ones, analysing and addressing the risks could bode well also for the institution of fiducia which is not fully exploited in Romania.

The institution of the fiducia-warranty can have consequences on several levels, but among those that we deem the most important are the effects in the trade and fiscal fields. As the Romanian Civil Code shows, art. 32 para. 2 the transfer of the rights and obligations from the assigned patrimony of the settler in the fiduciary patrimony does not represent an alienation, hence it does not bring fiscal amendments. The tax code distinguishes between the transfer of the fiduciary patrimony if the beneficiary is the settler or if the beneficiary is the fiduciary [32]. The fiscal code does not however expressly regulate the case of the incomes from the transfer of the fiduciary patrimony from the fiduciary to the beneficiary in case the beneficiary is resident. In all cases, concerning the taxes due to the fiduciary patrimony, the fiduciary is the one who has to make the payments to the local administrations, which is logic from our perspective, taking into consideration that under the fiducia contract it should exercise the powers over this patrimonial mass. However, there is nothing that can forbid the parties to appoint in the agreement the person in charge with the allocation of funds for the payment of the dues to the state.

We consider that in Romania the institution of fiducia is underdeveloped and not fully exploited. We however believe that a potential transposition with the relevant amendments of this institution from the French Civil Code could contribute to revive this institution and could find sympathizers even among the credit institutions

References

- [1] The term was introduced in the jurisdiction in force by Law 71/2011 implementing the Civil Code, which was replaced by the term „management”. We affiliate ourselves with the doctrinal majority who roots for this legislator's semantics; we believe that this is how we can avoid terminological misunderstandings, which may downgrade the fiduciary's activity to the mere preservation or management of the assets of the

- fiduciary patrimony, while the latter would not be able to dispose of the relevant assets. For a widespread development, see Flavius-Antoniou Baiaș, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei (coord.), *New Civil Code, comments on articles*, 2nd Edition, reviewed and supplemented, Bucharest, C.H.Beck Publishing House, 2017, pp. 882-883
- [2] Cornelia Lefter, Gunay Duagi, *The parties of fiduciary contract*, in the Tribuna Juridică, volume 7, December 2017, p. 78
- [3] See in this respect Daniel Moreanu, *Fiducia și trust-ul, definiție, utilizări practice și deosebiri principale*, in Law Review: Juridical Doctrine & Case law, nr. 2, București, April-June 2014, pp. 149-160 and Flavius-Antoniou Baiaș, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei (coord.), *op. cit.*, pp. 881-897
- [4] For a comparative analysis between the Swiss law and the French law and the relevant institutions of *Treuhand* and fiducia, see Irina Gvelesiani, *Swiss "Fiducie" vis-a-vis French "Fiducie" (Terminological "Coincidences")*, in Academic Journal of Interdisciplinary Studies, Vol 3 No 3, MCSER Publishing, Rome-Italy, June 2014
- [5] We consider that the inspiration for this institution comes from the articles in the French Civil Code not those of the Canadian Civil Code. For similar opinions, see Daniel Moreanu, *op. cit.*, p. 168-172
- [6] See Bouteille Magali, *La fiducie, un potentiel inexploité* în Pérennisation des entreprises patrimoniales: l'apport de la fiducie, Numéro Spécial, RJO, 2011, p. 3
- [7] „La fiducie est l'opération par laquelle un ou plusieurs constituants transfèrent des biens, des droits ou des sûretés, ou un ensemble de biens, de droits ou de sûretés, présents ou futurs, à un ou plusieurs fiduciaires qui, les tenant séparés de leur patrimoine propre, agissent dans un but déterminé au profit d'un ou plusieurs bénéficiaires.”
- [8] For further details on the regulatory differences between the Romanian and the French law, see Roxana Chirieac, *Societăți comerciale offshore - între optimizare și evaziune fiscală*, București, Editura Hamangiu, 2019, 107-112
- [9] Dammann Reinhard, *Fiducie sûreté et conflit de lois*, în Droit international privé : travaux du Comité français de droit international privé, al 19-lea an, ediția 2008-2010, publicat în 2011, p. 19
- [10] See Bouteille Magali, *op. cit.*, p. 6
- [11] *Idem*, p. 6
- [12] Daniel Moreanu, *Fiducia și trust-ul*, Editura C.H.Beck, București, 2017, p. 53
- [13] François Barrière, *La fiducie sûreté en droit français*, în McGill Law Journal, volumul 58, nr. 4, iunie 2013, p.872
- [14] The first case was related to the registration of a fiducia placed by Gaz de France, with Deposit and Consignment Office (Caisse de dépôts et consignations) as fiduciary, in order to ensure that certain commitments towards the GDF employees are fulfilled (who were in this case beneficiaries). The second case involved a trading company facing financial difficulties that was the debtor of a tax receivable (the settler), the company Natixis (a French banking and investment company) as fiduciary and the French State as beneficiary.
- [15] Jean-Marie Delperier, *La fiducie sûreté*, în Revue Juridique de l'Ouest, nr. special, 2011, Pérennisation des entreprises patrimoniales: l'apport de la fiducie, p. 130
- [16] François Barrière, *op. cit.*, p. 871
- [17] For an in-depth study in this regard, see Jean-Marie Delperier, *op. cit.*, pp. 131-133
- [18] François Barrière, *op. cit.*, p. 888
- [19] For a more detailed development *Idem*, pp. 893-894

- [20] Jean-Marie Delperier, *op. cit.*, p. 134
- [21] See the French Civil Code art. 2372-2 for the movable assets and art. 2488-2 for the immovable assets
- [22] François Barrière, *op. cit.*, p. 872
- [23] See art. 2372-5 and art. 2488-5 of the French Civil Code
- [24] For an in-depth detailing of the matter and more arguments in this regard see François Barrière, *op. cit.*, p. 896-898
- [25] *Idem*, p. 887
- [26] *Idem*, p.890
- [27] Art. 408-1 of the French Civil Code
- [28] Art. 509-5 of the French Civil Code
- [29] Jean-Marie Delperier, *op. cit.*, p. 130
- [30] François Barrière, *op. cit.*, p. 891
- [31] Jean-Marie Delperier, *op. cit.*, p. 136
- [32] Art. 30 of the Romanian Fiscal Code; see also art. 63 of the Fiscal Code, regarding the General Rules applicable to the incomes from fiducia