

# ASPECTS REGARDING THE NOTION OF PROFESSIONALS AND THE CLASSIFICATION OF PROFESSIONALS

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## **Abstract**

*The work summarizes the theoretical consequences of introducing the notion of "professional" in the New Civil Code. This notion outlines a new conception in the commercial or business law doctrine, being an effect of replacing the old term "trader" (natural person or legal person) used for a long time, not only by theoreticians, but also by practitioners with the complex term "professional trader". Thus, not only the notion of professional is of interest here, but also the classification of professionals. Moreover, with the entry into force of the New Civil Code, the old objective concept of defining commercialization, set by the old Commercial Code from 1887 (implicitly repealed by the New Civil Code, on October 1, 2011), was abandoned and a formal criteria was introduced, procedurally regarding the definition of commerciality (registration in the Trade Register of any professional trader, be it a natural person or a legal person).*

**Keywords:** professional, New Civil Code, professional trader, professional non-trader, uniqueness of private law.

**JEL Classification:** K15, K22

## **1. Introduction**

The entry into force of the New Civil Code (N.C.C.), on October 1, 2011, generated, in our country also, the outline of the monistic conception. Thus, the theory regarding the duality of private law; civil law - commercial law has been replaced, for the most part of the specialized doctrine, by the conception (supported by legal regulation) regarding the uniqueness of private law (civil law being considered dominant, but seconded by special commercial law).

As it has been shown in the commercial doctrine<sup>2</sup>, "there are a number of difficulties regarding the conceptual framework of ≤professionals≥ and especially of the professional traders arise."

## **2. The notion of professional**

Starting with art. 3 of The New Civil Code, we find out right from par. (1) that:

"The provisions of this Code also apply to the relations between professionals, as well as to the relations between them and any other subjects of civil law."

As such, the provisions of the new Civil Code apply directly to professionals both in their relationships, as well as in their relationships with individuals<sup>3</sup>.

Article 3 paragraph (2) N. C. C. provides: "All those who operate a business are considered professionals".

So, the distinction between professionals and other civil law subjects is that the former operate a business.

In art. 8 paragraph (1) of Law no. 71/2011 for the implementation of Law no. 287/2009 regarding the Civil Code, it is shown: "the notion of < professional > provided by art. 3 of the Civil Code includes categories of trader, entrepreneur, economic operator, as well as any other persons authorized to carry out economic or professional activities, as these notions are stipulated by the law, at the date of entry into force of the Civil Code."

In art. 6 of the same Law no. 71/2011 for the implementation of the New Civil Code, it is stipulated that the references in the law to the term "trader" are considered to be made to the person subject to registration in the Trade Register.

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<sup>2</sup> Smaranda Angheni, *Commercial law. Professional - traders*, C. H. Beck Publishing House, Bucharest, 2013, p. 1.

<sup>3</sup> See Fl. A. Baias, E. Chelaru, R. Constantinovici, J. Macovei (coordinators), *The new Civil Code, commentary on articles art. 1 – 2664*, C. H. Beck Publishing House, Bucharest, 2012, p. 4.

Also, art. 8 paragraph (2) of the aforementioned law provides that: in all the normative acts in force, the expressions <acts of trade>, respectively <deeds of trade> are replaced by the expression <activities of production, trade or services>.

### 3. Classification of professionals

The definition of the notion of professional trader has an undeniable practical interest. The quality of a professional trader implies a certain legal status, different from the non-trader professionals and from non-traders<sup>4</sup>.

The distinction between professional traders and professional non-traders is emphasized mainly by the requirement to register at the Trade Register Office of professional traders, while non-traders carry out, for the most part, liberal activities, authorizing themselves to this purpose at a competent authority in their respective field.

The professional traders can be<sup>5</sup> unincorporated: the authorized natural person, the individual enterprise and the family enterprise (regulated by the Government Emergency Ordinance no. 44/2008 modified and completed by Law no. 182/2016 regarding the approval of the Government Emergency Ordinance 44/2008) or with legal personality: mainly companies (regulated by Law no. 31/1990 on companies, updated).

For the smooth running of the trade, the law establishes certain obligations for the professional traders - considered in the doctrine as professional obligations of the traders.

Firstly, before the commercial activity begins, the professional trader is required to apply for registration in the Trade Register. During the execution of the activity and upon its termination, it must request the registration of mentions regarding the acts and deeds stipulated by the law, respectively to request the deletion from the Trade Register (Law no. 26/1990 on the updated Trade Register).

Secondly, any professional trader has the obligation to keep the accounting, in single or double part, as the case may be, by drawing up and completing the registers required by law (Law no. 82/1991 updated - the accounting law).

Thirdly, the professional trader must carry out the commercial activity under the conditions of legal or legal competition (Law no. 21/1996 updated - the competition law and Law no. 11/1991 on combating unfair competition, as subsequently amended).

Fourthly, professional traders must comply with the obligations provided by the law on consumer protection (the Government Ordinance no. 21/1992 on consumer protection, Law no. 296/2004 on the Consumer Code).

As for non-trader professionals, the forms of exercise of the liberal professions with the right to free practice, are carried out either independently, by setting up individual offices, associated offices, simple (civil) professional companies; or in salary regime, by entering into individual contracts of work with the beneficiary of the liberal service.

In addition to professional individuals, there are also professional legal persons.

The following are part of the category of professional traders, legal persons: companies<sup>6</sup>, autonomous administration<sup>7</sup>, national societies and national companies<sup>8</sup>, cooperative organizations<sup>9</sup>,

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<sup>4</sup> Stanciu T. Cârpenaru, *Treaty of Romanian commercial law*, 5<sup>th</sup> edition, updated, the Universul Juridic Publishing House, Bucharest, 2016, p. 41 et seq.

<sup>5</sup> See Ioana Nely Militaru, *Business Law. Introduction to business law. The business legal report. The Contract*, Universul Juridic Publishing House, Bucharest, 2013, p. 49.

<sup>6</sup> According to Law no. 31/1990 on companies, updated.

<sup>7</sup> Established by reorganizing the state economic units according to Law no. 15/1990, with the subsequent changes, in the strategic branches of the national economy.

<sup>8</sup> See Law no. 26/1990 regarding the Trade Register, updated.

<sup>9</sup> See Law on agricultural cooperative no. 566/2004, updated.

cooperative societies<sup>10</sup>, economic interest groups<sup>11</sup>.

Returning to art. 3 of the New Civil Code in par. (3) it is shown: "The operation of an enterprise constitutes the systematic exercise, by one or more persons, of an organized activity that consists in the production, administration or alienation of goods or in the provision of services, whether or not it has a lucrative purpose."

For profit, there are activities that seek to make a profit, whether they are commercial or civil.

Thus, there are professional non-trader associations and foundations, which carry out a charity activity, without pursuing the profit - so, by their activity, they operate an enterprise, but for no profit purpose.

Regarding associations and foundations, they acquire legal personality by registering in the Register of associations and foundations located at the registry of the court in whose territorial area they have their headquarters<sup>12</sup>.

#### 4. Conclusions

The work is constituted as a synthesis of the provisions of the New Civil Code regarding the notion of professional. Also, along with other exponents of the commercial doctrine, we observe the fundamental classification of professionals into professional traders and professional non-traders. Each of the two categories can include both individuals and legal persons.

Thus, the professional trader is characterized, according to the current analyzed regulation, by a formal, procedural criterion (obtaining the authorizations required by law and registration in the Trade Register). Moreover, the activities of production, trade or service provision can be performed not only by professional traders, but also by professional non-traders, i.e., by any person who runs a business.

#### Bibliography

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5. The new Civil Code republished 2011.

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<sup>10</sup> According to the Law no. 1/2005 on the organization and functioning of the cooperatives, republished..

<sup>11</sup> Being an association of natural or legal persons in order to facilitate or develop the economic activity of its members, as well as to improve the results of the respective activity (art. 118 paragraph (1) of Law 161/2003). The economic interest group has legal personality and may have the status of trader or non-trader.

<sup>12</sup> According to Government Ordinance no. 26/2000 on associations and foundations, updated.