



ORIGINAL PAPER

The Enterprise in the Romanian Legal System - Past and Present

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Abstract

The national legislature has constantly focused on the concept of enterprise. The previous Commercial Code, the current Civil Code, as well as certain special laws co-existing with the two codes allocated imprecise and contradictory provisions to the enterprise, generating a diversity of opinions in the literature. In time the regulations on the enterprise as part of the legal institution of trade acts, as a legal entity, as an economic activity or an essential element for the professional quality reveal the complexity of this concept and the need to explain its content.

Keywords: *enterprise; trade act; legal entity; economic activity; professional*

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Regulatory evolution related to the notion of enterprise

A. Regulation of the enterprise subject to the Commercial Code

Throughout the entire implementation period of the Commercial Code (1887-2011), the notion of enterprise was treated both by the Romanian Commercial Code, but also by other legislative acts, the meanings given to it being sometimes different. The invoked legislative framework outlines two trends of understanding and defining the concept of enterprise, namely the enterprise as a business activity and the enterprise as legal entity. The Romanian Commercial Code represented the main legislative act approaching the notion of enterprise until its abolition (October 1st 2011). Its text did not establish a definition of the enterprise, however it was reduced to the classification of the enterprise as an act of merchant and to the enumeration of the types of enterprise.

In the Article 3 Commercial Code the legislator nominated 20 legal acts and business operations known within the doctrine as objective acts of merchant, within which the enterprises were also included (Article 3 Commercial Code point 3-10, point 13, point 17-18). In relation to their object of activity the enterprises enlisted by the Commercial Code were grouped into the literature (Cărpenaru, 2000: 40; Voica, 2000: 317) into: a) production enterprises, of which the building enterprises, factory, manufacturing and printing enterprises were part; b) service supply enterprises, of which publishing, library and artefact enterprises were part, whenever another than the author or artist is selling; the supplies enterprises; the public performance enterprises; the fee, agency and business office enterprises; the insurance enterprises; passenger transport enterprises or maritime or inland freight enterprises; docking and warehousing enterprises (for details, Găină, Smarandache, 2010: 175-178; Mihăilă, Dumitrescu, 2013: 9; Stanciu, 2015: 40-41). The absence of a legal definition for the enterprise was compensated by literature by formulating numerous definitions. If applicable, these confirmed the economic, social, legal or mixed meaning of the notion of enterprise (see for a synthetic presentation of these definitions and also their critics, Cărpenaru, 2012: 29-30; Căpățână, 1990: 28-30; Georgescu, 1946: 241 et seq.; Juglart, Ipolito, 1995:158). The doctrinary delimitations and, especially the provisions of the Commercial Code allow the identification of a definition for the enterprise for the analysed period.

The enterprise as act of merchant assigns the business activity organized by an entrepreneur with the aid of the production factors on his own risk and liability, having as object the production of goods, service supply or execution of works such as those provided in the Commercial Code or in other commercial special laws meant for the exchange and the attainment of a profit. Within this context the object of the business activity was the one making the difference between the enterprises enlisted by the Commercial Code and which at the same time explains the terminology used by the legislator. In its turn the Government Emergency Ordinance no. 44/2008 regarding the performance of business activities by authorized natural persons, the individual enterprises and the family enterprises (published in the Official Gazette no. 328 as of 25.04.2008) treated the notion of business enterprise and its organization forms. In this case the law placed the notion of enterprise from the Commercial Code into a new concept, singularized by limiting the type of entrepreneur that can organize it. According to the provisions of the Article 2 letter f) from the Government Emergency Ordinance no. 44/2008 the business enterprise is the business activity performed in an organized manner, permanently and systematically, combining financial resources, entailed labour force, raw

materials, logistic means and information on the entrepreneur's risk in the case and under the terms provided by the law. According of the definition provided by Government Emergency Ordinance no.44/2008, the business enterprise can be *individual* or *family*, in both cases lacking legal personality. The organization of the business enterprise was reserved for the natural person entrepreneur (in the case of the individual enterprise), namely the natural person entrepreneur together with his/her family (in the case of the family enterprise).

The continuance of the trend to define the enterprise as business activity and the regulation of its form was based on the Law no. 381/2009 on preventive composition and ad-hoc warrant (published in the Official Gazette no. 87 as of 14.12.2009, with its subsequent amendments, the Law no. 381/2009 was abolished by the Law no. 85/2014 regarding the prevention of insolvency and the insolvency proceedings.). According the meaning of this law [Article 3 letter a)] the enterprise was the business activity performed in an organized, permanent and systematic manner, combining the financial resources, entailed labour force, raw materials, logistic means and information on the entrepreneur's risk according to the cases and terms provided by the law. The enterprise at risk was also defined as the enterprise whose managerial and economic viability potential is decreasing, but whose holder performs or is capable to perform the payable obligations [Article 3 letter b)]. A change in the meaning of the enterprise notion is presented by the *Law no. 346/2004* regarding the stimulation of the creation and the development of small and medium enterprises (published in the Official Gazette no. 681 as of 29.07.2004, amended, with its subsequent amendments and additions). Different from the conception promoted by the Commercial Code, according to this law *the enterprise is legal entity* and benefits from *classifications in relation to new criteria*.

For the analysed period the provisions of the Article 2 from the Law no. 346/2004 determined that the enterprise is any form of organization related to an authorized business activity which according to the legislation in force would perform any trading activity and acts of merchant with the purpose of obtaining any profit under the competition circumstances, namely: companies; cooperatives; natural entity performing independently business activities and family associations authorized according to the legal provisions in force. Article 4 paragraph (1) from the Law no. 346/2004 defined *small and medium enterprises* as being those enterprises fulfilling cumulatively the following terms: a) have an annual average number of employees less than 250; b) achieve an annual gross business turnover of up to 50 million Euro, namely the equivalent amount in lei or hold total assets which do not exceed the equivalent value of 43 million Euro according to the last approved financial report.

Depending on their relation with other enterprises, in relation to the capital or the vote rights held or to the right of exercising any dominant influence, Article 4¹ from the Law no. 346/2004 identified three types of enterprises: a) autonomous enterprises; b) partnership enterprises; c) associated enterprises (the meanings given to these 3 types of enterprises are established by the provisions of the Article 4²⁻⁴ from the Law no. 346/2004). Last but not least, within Romania's accession process to the European Union, *Law no. 217/2005* regarding the set-up, organization and operation of the European Works Councils (published in the Official Gazette no. 628 as of 19.07.2005, republished the second time in the Official Gazette no. 889 as of 15.12.2011). According to this legislative act the notion of *enterprise* had the meaning of *legal entity* and *new categories of enterprises* were established. According to the provisions of the Article 6 point 1) from

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the Law no. 217/2015 the notion of enterprise designates a public or private entity performing a profit or non-profit business activity.

Taking into consideration the citizenship of the enterprise's employees, the Law 217/2005 (Article 6 point 4) established *the community enterprise* as the enterprise which employs minimum 1,000 employees in the member states and in at least 2 different member states, at least 150 employees in each of them. In relation to the control level between the enterprises, Article 6 point 5 also defined the enterprise which has control within the group of enterprises as the enterprise which can exercise a dominant influence on another enterprise, referred to as controlled enterprises based on the ownership, financial contribution and governing rules. In conclusion, for the implementation period of the Commercial Code (1887-1948 and 1990-2011) the enterprise established through this legislative act had a significant weight on the acts of merchant, therefore being one of the main sources for the trading legal relations. In their turn the enterprises governed by the special legislations mentioned, having the meaning of business activity or legal entity, represented in most cases a commerciality criterion for the legal relations (when the business activity is an act of merchant and/or was performed by merchants, namely when the legal entity was a merchant and/or performed acts of merchant).

B. Regulation of the enterprise during the communist period

During the time period corresponding to the communist period the Romanian Commercial Code was fragile (Schiau, 2009:11-12). Although it was not abolished, its implementation became impossible based on the transformation of the national economy into a socialist economy planned according to the centralized system. It was characterized by the state's exercise of an absolute monopoly on all economic activities, possibly mainly due to the overwhelming supremacy of the state property which in fact cancelled the individual initiative. Regarding the notion of enterprise, its meaning was exclusively of legal entity. The enterprise was designated through the phrase "socialist enterprise" (Gheorghe, 2013: 42) and indicated the legal entities specific for the socialist economy, meaning business operators based on the state property.

C. Regulation of the enterprise subject to the Civil Code

The abolition of the Romanian Commercial Code and the entry in force of a new Civil Code adopted through the Law no. 287/2009 regarding the Civil Code marked the change of the national legislator's view both at the level related to the positioning the commercial law within the national law system (Nicolae, 2015: 211-396), and also at the level of the enterprise institution. Regarding the enterprise, as novelty elements, its regulation is ensured by the current Civil Code and benefits from a wider sense. As a continuity element, the Civil Code is doubled by the legislative acts which established during the implementation period of the Commercial Code the meanings of business activity or legal entity related to the notion of enterprise. In the Civil Code, the approach of the enterprise notion is usually one mediated through the phrase "exploitation of the enterprise". According to the Article 3 paragraph (3) from the Civil Code the systematic performance of an organized activity by one or many persons, consisting of the production, administration or alienation of goods or service supply constitutes the exploitation of an enterprise, irrespective whether it has as a remunerative purpose.

The juridical establishment of the enterprise in relation to the exploitation of the enterprise is presently the essential criterion for the acknowledgement of the professional

quality. According to the Art 3 para (2) from the Civil Code professionals are deemed all those exploiting an enterprise.

The absence of the definition related to the enterprise from the Civil Code deprives us from the exact identification of the notion's meaning according to this new legislative act. The establishment of such a definition was imposed within the context in which the legislator determined an inseparable relation between the notion of enterprise and that of professional. According to the Civil Code the enterprise became the gravitation centre of the professionals' juridical regime. The legislator's view on the enterprise highlighted by the Civil Code is an extended one in comparison with the previous one from the Commercial Code, as it has a view at the same time on the remunerative and non-remunerative scope.

The implementation of the new Civil Code has not brought amendments to the meaning of the term "enterprise" specific for the provisions contained in certain legislative acts, which have survived the abolishment of the Commercial Code. We take into account the meanings of the notion of enterprise determined by the Government Emergency Ordinance no. 44/2008 regarding the performance of the business activities by authorized natural entities, individual enterprises and family enterprises [Article 2 letter f)], from the Law no. 346/2004 regarding the stimulation of setting-up and developing small and middle size enterprises (Article 2) and by the Law no. 217/2005 regarding the set-up, organization and operation of the European Enterprise Committee (Article 6 point 1). Considering these special legislations, the term of enterprise preserves the sense depending on the business activity or the legal entity.

Beside the analysis of these regulations (performed above) we would like to mention only the adjustment of the notion of enterprise by the Law no. 346/2004 (Article 2) according to the amendments occurred within the private legal system. Currently the Law no. 346/2004 deems enterprise as any form of organizing a business activity authorized according to the laws in force to perform production, trade or service supply activities with the purpose of obtaining income under competitive conditions, namely: companies regulated by the Company Law no. 31/1990, republished, with the subsequent amendments and additions, cooperatives, authorized natural entities, undertakers holding an individual enterprise and family enterprises authorized according to the legal provisions in force, that perform business activities. The provisions of this law are applicable also to the associations and foundations, agricultural cooperatives and agricultural companies performing business activities.

Notion of enterprise according to the Civil Code

In relation to enterprise the Civil Code is a source of controversies based both on the absence of an explicit definition of the enterprise and also on the fluctuant and inconstant use of this legal term within its text. The definition of the notion of enterprise ensured by the Civil Code [Article 3 paragraph (3)] is an indirect one, deducted from the phrase "exploitation of an enterprise" (on this theme, Gheorghe, 2012: 331). From this regulation it results the appreciation of the enterprise as an activity organized and systematically exercised by one or many persons, consisting of the production, management or alienation of goods or of service supply irrespective if it has a remunerative purpose or not. This regulation deficiency from the beginning of the Civil Code is doubled within the context of regulating certain judicial institution, by the legislator's oscillation related to the used terminology and its inconsistency regarding the meaning of the enterprise. The provisions of the Civil Code equally use the term of "enterprise" (non-

regulated) and also the phrase “exploitation of an enterprise” (according to the regulated sense). The notion of enterprise is also used in terminological enunciations (such as “on behalf of an enterprise”) or “the exercise of an enterprise’s activity” which induce the idea that the enterprise is a legal entity, thus deviating from the initial meaning, deduced from the Article 3 para (3) from the Civil Code. It constitutes examples within the previously mentioned meanings of the provisions from the Civil Code, contained by: Article 741 paragraph (2) determining in relation to the beneficial interest of the life annuity that “the vote which has as an effect (...) *the termination* of the legal entity or, if applicable, *an enterprise* belongs to the bare owner”; Article 2339 paragraph (1) letter a) determining in relation to the privileged debts that the debt of the seller not being paid for the price of the movable asset sold to a natural entity is privileged “regarding the asset sold, except for the case when the buyer acquires the asset from the *service or exploitation of an enterprise*”; Article 1297 paragraph (2) determining in relation to the mandate contract that “the representative, when concludes a contract with the third party within the granted powers *on behalf of an enterprise*, claims to be its owner, the third party who subsequently discovers the identity of the true owner, can exercise against the latter the rights which the third party has against the representative”; Article 1523 (2) letter d) determining that the debtor is rightfully in default when “the payment obligation related to the payment of an amount of money, assumed *within the exercise of an enterprise’s activity* is not fulfilled”. Article 1446 providing that “the solidarity is presumed between the debtors of an obligation assumed *within the exercise of an enterprise’s activity* if the law provides otherwise”.

Taking into account the adverse and contradictory regulation ensured by the Civil Code regarding the notion of enterprise, within literature (Buta, 2012: 62, Găină and Găină, 2012: 216) there were identified and it was tried to clear the following issues: if the enterprise is an activity or is a legal entity; if the exploitation of the enterprise is performed only by the owner or and by other persons; if other persons than the owner acquire also the status of professional as a result of exploiting the enterprise.

Regarding the classification of the concept of enterprise we claim that the enterprise is an activity organized according to the Civil Code [Article 3 paragraph (3)] by a professional. The ensemble of the provisions from the Civil Code assigned to the enterprise must be interpreted only in this sense, the doubtful phrases being only the expression of some terminological deviations, an example of failed legislative technique. Currently the sense of legal entity for the notion of enterprise is exclusively possible to be taken into account by some special laws which expressly regulate this specific sense of the notion.

Regarding the identification of the one exploiting the enterprise, we appreciate that he is always only the owner of the enterprise, namely the professional. According to a reinterpretation of the definition provided by the Civil Code to the exploitation of the enterprise, its meaning is to perform an activity within its entire range (Găină and Găină, 2012: 21). According to this sense the exploitation of the enterprise includes all the aspects related to the organization of the activity, its actual performance and the assimilation of its results. The owner of the enterprise is only that who assumes the risk for the exploitation of the enterprise, being the one who shall obtain a profit or a loss from the performance of the activity (irrespective of the way in which it is fulfilled and, if applicable, the type of assumed liability). Any other persons intervening in the exercise of the activity (such as the employees or representatives) are auxiliary of the enterprise’s owner, acting in the name and/or on behalf of the owner (Găină and Găină, 2012:217). These contribute only to the achievement of the enterprise’s objective, being a component

of its exploitation. Therefore we appreciate that the enunciation “systematic exercise by one or many persons” used in the definition of the enterprise definition from the Civil Code [Article 3 paragraph (3)] must be interpreted.

Regarding the status of professional this can be acquired only by the owner of the enterprise. Any other persons taking part in the achievement of the enterprise’s objective have the quality of auxiliaries. These persons act in the name and on behalf of the professional and do not assume the risk of exploiting the enterprise.

Component elements of the enterprise

The provisions of the Civil Code assigned to the “exploitation of an enterprise” and to the “professional”, and also those from the Law no. 71/2011 reserved to the “professional” represent the source to identify the elements necessary to define the notion of “enterprise”. In our opinion the component elements of the notion of enterprise (see for similar opinion: Cărpenaru, 2012:31; Găină, 2016: 15-16) are as it follows:

a) *Organized activity*. The enterprise is essentially an activity organized according to the law and systematically performed. Taking into account the provisions of Article 8 paragraph (1) from the Law no. 71/2011, this can be an economic or professional activity. The organization of an economic or professional activity is achieved by combining some specific production factors. The production factors can put on different forms of: financial resources, attracted labour force, raw material, logistic means and information. The activity thus organized must be performed systematically, namely with a character of permanent continuity.

b) *Owner*. The one performing systematically the organized activity on own risk, acquires the quality of professional. The risk means the possibility to make profit or to lose profit (Piperea, 2011: 8). Therefore, the professional is the enterprise’s owner, being able to organize and to perform the activity by himself or together with other persons acting in his name and/or on his behalf (see the opinion according to which he is professional and the one exploiting the enterprise in the owner’s name such the representative, the administrator of his assets, the trustee, the lessor of the enterprise, Piperea, 2012: 40-42). As it was underlined in the doctrine, there are differences between professionals depending on the judicial status of the legal regime applicable for each category (Angheni, 2013:3).

c) *Object*. The enterprise’s object is ensured by the object of the activities organized and performed by the professional. If applicable, the object consists of the production, management or alienation of goods or service supply. Practically they are materialized in a variety of legal deeds, legal actions or business operations.

d) *Scope*. The finality pursued through the organization and exploitation of an enterprise can be of remunerative or non-remunerative type. The scope is remunerative when the achievement of a profit is usually pursued and as exception the attainment of some advantages or benefits. The scope is non-remunerative when the provision of knowledge and skills to those interested is pursued for which a remuneration occurs. The received amounts do not constitute a profit and do not have its legal regime.

The component elements resulting from the provisions of the Civil Code [Article 3 paragraph (2) – (3)] and from the Law no. 71/2011 [Article 8 paragraph (1)] enable the definition of the enterprise. In our opinion, the enterprise is an activity organized and performed systematically by a professional on his risk and responsibility, which has as object the production, management or alienation of goods or service supply and a remunerative or non-remunerative purpose.

Classification criteria of the enterprise

The provisions of the Civil Code and the Law no. 71/2011 do not classify the enterprises. But these regulations enable the performance of some classifications related to the enterprise in relation to the component elements of the notion of enterprise, depicted from the legal text in the field. The component elements of the enterprise can be viewed as an unit and deemed as sole criterion or can be used separately as separate criteria (such as owner, object and scope of the enterprise). If we consider all the component elements of the notion of enterprise a sole criterion, we can classify the enterprises into *commercial (business) enterprises* and *civil enterprise*. These represent the main forms of the enterprise identified and treated in the literature (Cărpenaru, 2012: 32). Both types of enterprises have the same component structure but each of the component elements present particularities which delimitate and impress them a distinctive juridical regime. The commercial (business) enterprises represent a favourite study object of the commercial law discipline and civil enterprise are study object mainly for the civil law discipline. In their turn, the distinctive criteria such as owner, object and scope of the enterprise enable also other classifications of the enterprise (see also Găină, 2016: 16). According to the type of the professional we distinguish between individual enterprises and collective enterprises. Depending on the object of the enterprise, these can be goods production enterprises, goods management enterprises, goods alienation enterprises and service supply enterprises. In relation to the scope of the enterprise, these can be (business) enterprises with remunerative scope and (civil) enterprises with non-remunerative scope.

The classification of the enterprise are determined explicitly or implicitly also by special legislations which regulate the specific meanings of the notion of enterprise (Law no. 346/2004, Government Emergency Ordinance no. 44/2008, or Law no. 217/2005). For these cases the classification criteria of the enterprises (already analysed) are different from the ones depicted by the civil legislation.

Commercial enterprise

The commercial (business) enterprise is a specific category of the enterprise established by the Civil Code, the phrase being the result of the doctrine (Cărpenaru, 2012: 31). In order to avoid the possible confusions generated by the terminology used by the legislator and the one used in literature, we would like to remind that the phrase “business enterprise” preceded and prevailed the implementation of the new Civil Code, being determined by the Government Emergency Ordinance no. 44/2008. Within the meaning of this legislative act it assigns only the individual enterprise and the family enterprise as business enterprise, without legal personality. Once with the implementation of the Civil Code these two forms became components of the business enterprise, the phrase being used within the doctrine in order to designate a category of the enterprise instituted by the Civil Code.

The regulation of the commercial enterprise has a primary source the Civil Code [Article 3 paragraph (3)] and Law no. 71/2011 [Article 8 paragraph (1)] and additionally the legislative acts which regulate the organic state and the merchants’ activity. Based on the enterprise’s status of specific category established by the Civil Code, the commercial enterprise benefits from all the component elements of the enterprise (organized activity, owner, object and scope) but each of them presents particularities according to the delimitations below (see for similar opinion Găină, 2016: 16-17). At the commercial

enterprise the organized activity designates a business activity organized with specific production factors and systematically performed.

In most relevant cases for the commercial enterprise the legislative references to the business activity are achieved by the previous and external legislations of the current Civil Code. Consequently, the interpretation of the phrase must follow the rule set-up by the implementation norm of Civil Code [Article 8 paragraph (1) from the Law no. 71/2011], namely the notion shall be considered as it was provided by the law upon the entry date in force of the Civil Code. The legislator uses the phrase “business activity” within the context regulating the legal status of different legal entities, but also within other numerous contexts. But its definition is determined only by the provisions of the Article 2 letter a) from the Government Emergency Ordinance no. 44/2008. According to this legislative act the business activity is the agricultural, industrial, commercial activity performed to obtain any goods or services whose value can be expressed pecuniary and which are meant for selling or trading on the organized markets or to some determined or determinable beneficiaries with the purpose of obtaining profit. This definition targets only the business activities of the authorized natural persons as authorized natural entities, individual enterprises and family enterprises. In our opinion the mentioned definition can be used as benchmark for all the other cases where the special laws mention the business activity but do not define it, however it must be adjusted in relation to the possible particularities depicted from the corpus of each such legislation.

The production factors initially necessary for the organization of the business activity and subsequently for its exercise shall be different depending on the type of the business activity actually performed. As a whole, the category of production factors contains financial resources, attracted labour force, raw materials, logistic means and information. In literature the production factors were classified into natural factors, human factors and material means (Schiau, 2009: 72-74).

The business activity organized with the help of the production factors must be exercised systematically, namely with a character of permanency, stability, continuity.

The business enterprise’s owner is a professional such as the merchant.

The quality of merchant is held by natural and legal entities set-up in the legal forms for which the law acknowledges this status (for the categories of merchants see Smarandache, 2011: 96-105). Within the context of different special laws the quality of merchant can overlap the one of enterprises, business operator or authorized person performing business activities according to the law. The professional such as the merchant can exploit the commercial enterprise individually or collectively with other persons acting in his name and/or on his behalf, he is the one bearing the risk and is liable to organise and exploit the commercial enterprise.

The object of the commercial enterprise consists of production, trade or service supply. The phrase “production, trading or service supply activities” is the one which has replaced the phrases “trading acts” and „acts of merchant” in all the legislative acts in force [Article 8 paragraph (1) from the Law no. 71/2011].

Although the phrase “production, trade or service supply activities” is not explained by the legislator, we assert that this can target the production, management, alienation, exchange or circulation of the goods, work execution and service supply according the general meaning of the enterprise from the Civil Code and according to the special meanings from the special legislation.

The object of the commercial enterprise is materialized in the conclusion of different legal deeds and in the performance of legal actions (for the classification of the

commercial legal deeds deemed as legal deeds related to the exploitation of a commercial enterprise, see Cărpenaru, 2012: 32).

The scope of the commercial enterprise is always remunerative.

As a rule related to the commercial enterprises the remunerative scope consists of obtaining a profit. As an exception, certain commercial enterprises can have as finality the attainment of some advantages or benefits, this scope being able to double or not the scope of attainment of profit. As an exception, the enterprises exploited by cooperative organizations (including by the European cooperative companies) and the enterprises exploited by the groups of economic interest (including the European groups of economic interest) fall into this. In the first case, the pursued scope is to promote social, economic and cultural interests of the co-operator members, which can be ended in attaining profits, distributing dividends, supporting the co-operator members by granting facilities or attaining services. In the second case, the pursued scope is to facilitate or to develop the members' economic activity and also to improve the results of the relevant activity.

In conclusion, we define the commercial enterprise as the business activity organized with the help of the production factors and exercised systematically by a professional such as the merchant on his risk and responsibility, which has as purpose the production, trade or service supply and which pursues a remunerative scope.

Civil enterprise

It its turn, the civil enterprise is a specific category of the enterprise determined by the Civil Code. According to terminology the phrase “civil enterprise” is a creation of the literature (Cărpenaru, 2012: 31). The civil enterprise is mainly *regulated* by the Civil Code [Article 3 paragraph (3)] and by the Law no. 71/2011 [Article 8 paragraph (1)] and additionally through legislative acts which regulated the organic status and the non-trading professionals' activity.

As a specific category of the enterprise, the civil enterprise benefits from all the component elements of the enterprise (organized activity, owner, object and scope), but each of these presents particularities according to the delimitations below (see for similar opinion Găină, 2016:17-18). At the civil enterprise the organized activity designates as a rule an organized professional activity with specific production factors. As an exception, the organized activity can consist also of a business activity organized with specific production factors.

The rule targets the activities performed within the liberal professions. The exception targets the business activities performed by associations and foundations, by institutions or by other legal entities (non-trading). The production factors initially necessary for the organization of the professional activity or business activity and subsequently for its exercise shall be different depending on the type of activity actually performed. The category of the production factors contains different factor of human or material type. The professional or business activity organized with the help of the production factors must be exercised systematically, namely with character of permanency, stability, continuity.

The owner of the commercial enterprise is a non-trading professional.

The category of non-trading professionals is extremely diversified. It includes persons exercising liberal professions (such as doctor, lawyer, architect, chartered accountant etc.) but also other categories of legal entities (e.g.: associations, foundations or public institutions performing business activities). The owner can exploit the civil enterprise individually or collectively with other persons. The non-trading professionals

is the one assuming the risk and liable for the organization and exploitation of the civil enterprise.

The object of the civil enterprise usually consists of the service supply and as exception of the production, management or alienation of goods.

The object of the civil enterprise is materialized in the conclusion of different legal deeds and the performance of some legal actions within the activities which, if applicable, presume the exercise of the liberal professions or the performance of business activities (e.g. medical activities, the activities of the administrative receiver, activities performed by lawyers, agricultural activities etc.).

The scope of the civil enterprise is always non-remunerative.

The scope of the civil enterprise usually consists of putting at the disposal of those interested in knowledge and skills, for which they receive fees and not a profit. If the civil enterprise consists in a business activity, the benefits achieved by its performance are used to reach the non-remunerative scope. The scope become thus the element essential for the delimitation of the civil enterprise from the commercial enterprise.

In conclusion, we define the civil enterprise as the professional or business activity organized with the help of the production factors and exercised systematically by a non-trading professional on his risk and responsibility, which has as object the service supply, production, management or alienation of goods and which aims a remunerative scope.

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