

ASPECTS REGARDING THE LEGAL REGIME OF AUTHORIZED NATURAL PERSON IN THE LIGHT OF THE AMENDMENTS BROUGHT BY LAW NO. 182/2016 FOR THE APPROVAL OF GOVERNMENT EMERGENCY ORDINANCE NO. 44/2008 ON THE CONDUCT OF ECONOMIC ACTIVITIES BY AUTHORIZED NATURAL PERSONS, INDIVIDUAL ENTERPRISES AND FAMILY ENTERPRISES

Assistant professor **Radu Ștefan PĂTRU**¹

Abstract

The legal framework regulating the legal regime of the authorized natural person has been modified relatively recently by Law no. 182/2016 for the approval of Government Emergency Ordinance (G.E.O.) no. 44/2008 on the conduct of economic activities by authorized natural persons, individual enterprises and family enterprises². The amendments brought by the mentioned normative act concern the issues related to the authorization of the authorized natural persons, the number of employees, but also in the field of taxes and duties. In the present study, we will analyze the impact of new legislative changes on the business environment for authorized natural persons.

Keywords: Authorized natural persons, G.E.O. no. 44/2008, legislative modifications, Law no. 182/2016 approving the Government Emergency Ordinance no. 44/2008 on the carrying out of economic activities by authorized natural persons, individual enterprises and family enterprises.

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1. Introductory aspects

The law regime of authorized natural person has gone through some significant changes once with the coming into effect of the Law no. 182/2016³.

The law mentioned above has modified the existing legislative framework by a series of conceptual supplements regarding the patrimony by appropriation, the economic enterprise, the economic activity as well as the notion of professional head office⁴.

The new approach of the legislator clarifies the words defined; for instance, in terms of the patrimony by appropriation, they underline the connection between patrimony and the patrimony by appropriation by giving up the legal provision which stipulated the separation of the patrimony by appropriation from the general pledge of personal creditors⁵.

¹ Radu Ștefan Pătru - Law Department, Bucharest University of Economic Studies, radupatru2007@yahoo.com.

² Official Gazette no. 828 of 19 October 2016.

³ For the legal regime of authorized natural person see: F. C. Stoica, *Dreptul societar. Note de curs*. ASE Publishing House, Bucharest, 2015, pp. 17 – 18, I. N. Militaru, *Dreptul afacerilor. Introducere în dreptul afacerilor.Contractul*, Universul Juridic Publishing House, Bucharest, 2013, pp. 53 – 54, Ciprian Păun, *Dreptul afacerilor.Teoria.Profesiuniștii.Impozitarea*, Universul Juridic Publishing House, Bucharest, 2015, pp. 30 – 32.

⁴ Law no. 182/2016 defines the notions mentioned above as follows:

economic activity – profit-making activity consisting in the manufacture, administration or alienation of assets or the provision of services (article 2(a) of GEO no. 44/2008);

economic enterprise – economic activity carried out in an organized, permanent and systematic manner which combines financial resources, workforce, raw materials, logistic and information means, at entrepreneur's risk, in the cases and in the conditions provided under the law (article 2(f) of GEO no. 44/2008);

patrimony by appropriation – financial assets and liabilities within entrepreneur's patrimony representing all rights and obligations appropriated to the exercise of an economic activity by written declaration or the establishment agreement or an additional act thereto, as the case may be (article 2(j) of GEO no. 44/2008);

professional head office – main location/head office declared at the trade register for the registration and authorization of functioning of authorized natural persons, individual enterprises and family enterprises representing their identification element in the legal relationships they have (article 2(j¹) of GEO no. 44/2008);

⁵ For supplementary clarifications in the field of patrimony by appropriation see: Bazil Oglindă, *Dreptul afacerilor. Teoria generală. Contractul*, Universul Juridic Publishing House, Bucharest, 2012, pp. 118 – 129.

The concept of economic activity refers, according to the legislator, to the profit-making activities consisting in the manufacture, administration or alienation of assets or the provision of services without mentioning any more, like in the previous regulation, the fact that the value of assets and services must be expressed in money in order to obtain profit.

The professional head office has been defined for the first time as the element of professional's identification within the legal relationships they have.

The professional head office, namely the main location where the authorized natural person is going to carry out their activity will be registered at the Trade register.

2. The modifications brought to SEP system of law by the Law no. 182/2016 approving the Government Emergency Ordinance no. 44/2008 on the carrying out of economic activities by authorized natural persons, individual enterprises and family enterprises

The novelties brought by the above mentioned law in the field of legal regime of the authorized natural person are the following:

The authorized natural person is defined as the economic enterprise lacking legal personality and organized by a natural person that mainly uses their own workforce (article 2 (i) of GEO no. 44/2008 after the amendments brought by the Law no. 182/2016).

As for the registration of authorized natural person, the competence belongs further to the trade register.

The legislative instrument expressly stipulates that the manager of the trade register office may delegate, through an internal decision, a person to whom they may attribute competences in matters relating to registration formalities.

The legislator instituted applicant's obligation upon registration to submit a document that might attest the right of use on the real property serving as professional head office or place of business.

Another new aspect is the submission by the holder of the right of use on the real property of a declaration of honour, under private signature, that may attest that no economic activity is carried out at the professional head office, this way eliminating the formalities necessary in terms of neighbors' agreement in accordance with the Law no. 230/2007 on the establishment, organization and functioning of the associations of flat owners, as subsequently amended and supplemented⁶.

As for the period of time in which the applicant may complete the file sent back due to some missing documents, Law no. 182/2016 has stipulated that the 15 day deadline for the completion of file may be extended only once by maximum 15 days in the context in which, before this, the 15 day deadline for file completion could be extended without any legal deadline.

The legislator established a unique deadline for the issue of the registration certificate and of the enlistment certificate, as the case may be, namely 3 working days since the date of registration of the application or since the date of completion of the application with the documents requested, as the case may be.

In the previous regulation, there was also a 5 working day deadline besides the 3 working day deadline that started running on the date of completion of the application with the documents requested, while today the deadline is unique, namely 3 working days.

As for the change of head office in other locality or county, once with the modification of article 14(2) of GEO no. 44/2008, the competence to solve the application shall belong to the manager or designated person from the trade register office where the authorized natural person is registered that shall approve the change of professional head office to another county, the deregistration from the current trade register office and the registration to the new trade register office corresponding to the new professional head office.

⁶ Published in the Official Journal no. 490 of July 23rd 2007.

A very important change refers to the object of activity, therefore a natural person registered as authorized natural person may have in their object of activity not more than 5 classes of activities as provided in the NACE code.

For the implementation of this legislative provision, authorized natural persons having more than 5 classes of activities as their object of activity shall, within two years, change their object of activity. The new registration certificates and the modifications relating to the object of activity shall be free of charges. If they fail to comply with the two-year deadline, the trade register office shall deregister ex officio the authorized natural person within 60 days.

These provisions shall also be valid for the individual enterprises having a maximum limit of 10 activities, and this is the reason for which the authorized natural persons may have another option, namely to change their form of organization into a sole individual enterprise.

As for us, we consider that the two-year deadline is a term of decline not a term of prescription.

In matters of work relationships, the Law no. 182/2016 has brought important changes, thus the authorized natural persons may hire not more than 3 employees.

In this context, article 17 (1) stipulates as follows: the authorized natural person may carry out the activities for which they are authorized by themselves or together with not more than 3 persons employed by them, in quality of employer, with an employment contract concluded and registered under the law.

We may notice that the legislator has reduce the number of employees of an authorized natural person to 3 which is a lower number than for individual enterprises which may hire not more than 8 employees.

This modification may generate practical issues for the authorized natural persons that have more than 3 employees. For example, what will do an authorized natural person who used to have four employees before the coming into effect of this law?

We consider that the solution may be found according to the situation of employees of each authorized natural person. Thus, if the authorized natural person has 4 employees each of them having different attributions, the authorized natural person may give up one of them, according to their personal needs, and enjoying the right an employer has to organize their business. The legal ground for the termination of position is article 65(1) from the Labour code.

But if the authorized natural person has 4 employees working in the same domain (e.g. 4 insurance brokers), the employer should, in order to avoid a potential legal action initiated by the employee, perform a preliminary assessment of employees so as to decide which position will be terminated. An extremely important role in this context is played by the establishment of employees' performance objectives. Even if the employer is not compelled to establish them, they are very useful, including for the employer who is a natural person.

In this case again the legal ground is article 65(1) from the Code with the application of provisions relating to employees' assessment.

Pursuant to article 16, authorized natural person may have contractual relationships under the law with any legal or natural persons, with other authorized natural persons, individual enterprises and family enterprises in order to carry out an economic activity without any change of their legal status.

Therefore, the authorized natural persons may hire not more than 3 employees but they may collaborate via a legal agreement, a service contract or other legal means with other professionals in order to carry out the activity for which they were authorized to function.

It is true that the professionals contracted in the legal forms above shall not have the legal status of employees with all the rights and obligations resulted from such status.

Just like in the previous regulation, the authorized natural persons may cumulate the qualities of a self-employed person and an employee of a third party working both in the same domain and in a domain of economic activity different from the activity for which the authorized natural persons is authorized, as provided under article 17(2) from GEO no. 44/2008 after modification.

In terms of liability, article 20 from GEO no. 44/2008 has been modified in the sense that the authorized natural person shall answer for the obligations assumed in the exploitation of the economic enterprise with the assets from the patrimony by appropriation, and if the assets in the patrimony by appropriation are not enough, the authorized natural persons shall answer with their entire patrimony.

The former regulation stipulated that the authorized natural person answers with the patrimony by appropriation if it has been created, but the current regulation expressly stipulates the obligativity of the patrimony by appropriation.

The provisions of the Civil code in article 31 on the patrimony, financial assets and liabilities and the patrimonies by appropriation, article 32 on the inter-patrimonial transfer and 2324(3) regulating creditors' joint guarantee shall apply.

As for the termination of the quality of an authorized natural person, the current law no longer expressly stipulates the case provided in article 25 from the Law no. 26/1990 on the trade register, as subsequently amended and supplemented.

Special provisions for students. The law no. 182/2016 stipulates for the first time favourable measures for the students who wish to start a business as an authorized natural persons or individual enterprises in the sense of exemption from paying the fees for registration and authorization.

To enjoy these legal provisions, students must cumulatively meet the following conditions imposed by the new article 35¹ of GEO no. 44/2008, introduced by the Law no. 182/2016:

- a) to attend the courses of a higher education institution accredited in Romania;
- b) to be at least in their 2nd year of study and have fulfilled all the requirements of the curriculum provided by the institution senate on the date of application;
- c) they have not turned 30 yet.

The fulfilment of the conditions above shall be proved by the applicants before the Trade Register by a document issued by the higher education institution.

3. Conclusions

The system of law of the authorized natural person has gone through some significant changes once with the coming into effect of the Law no. 182/2016 approving the Government Emergency Ordinance no. 44/2008 on the carrying out of economic activities by the authorized natural persons, individual enterprises and family enterprises.

Apart from some necessary conceptual clarifications regarding certain concepts such as patrimony by appropriation, professional head office or economic activity and the establishment of an encouraging legal status for the young students who choose to run a business in a form provided under GEO no. 44/2008, the abovementioned law provides a series of constraints mainly for the authorized natural persons, and alternatively for the individual enterprises.

The main aspects among the ones analysed in this study obviously refer to the limitation of the number of activity classes provided in the NACE code to only 5 classes (while for individual enterprises the limit is 10 classes) and the reduction of the number of employees to maximum 3 (while an individual enterprise may have 8 employees).

In this context, the evolution of businesses run by authorized natural persons within the business environment should be monitored.

We may also infer that the small businesses which do not rely on employees or do not carry out activities in more NACE classes will not be affected in the performance of their activity.

For the authorized natural persons who carried out relatively big businesses in relation to this form of organization, the current legislative framework seems to be discouraging, thus one possibility might be their reorientation towards an individual enterprise or even a LLC with everything the running of a business in this form may suppose (higher establishment costs, more formalities upon establishment, double-entry bookkeeping etc.).

An alternative to the limited number of employees allowed under the law for authorized natural persons might be the collaboration with diverse professionals by means of civil contracts.

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II. Legislation

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2. Law no. 230/2007 on the establishment, organization and functioning of the associations of flat owners, as subsequently amended and supplemented.
3. Law no. 287/2009, republished, (Civil Code), as subsequently amended and supplemented.
4. Law no. 53/2003 (Labor Code), with subsequent modifications and completions, as subsequently amended and supplemented.