



ORIGINAL PAPER

The electronic Bulletin of the trade register in the context of the legal publicity function of the trade register

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Abstract:

Over time, the trade register has been a database that has played an essential role in the legal publicity of some normatively established information. The current legal regime of the trade register, drawn up by the provisions of Law no. 265/2022 regarding trade register and amending and supplementing other legal enactments having impact on registrations with the trade register, highlights the introduction of certain new elements in the matter. Such a status has the electronic Bulletin of the trade register regulated as an legal publicity tool for certain acts registered in the trade register. The regulation of the electronic Bulletin calls for the identification of its role in the increase of the accessibility of any interested person to specific information and services, as well as its relation with the other legal means of publicity preserved by the legislator in the field of documents registered in the trade register.

Key-words: *electronic Bulletin of the trade register; trade register; Law no. 265/2022; legal publicity tool; electronic resources of communication.*

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The role of the trade register in ensuring legal publicity in the period prior to Law no. 265/2022. In the sphere of commercial law, the trade register had an essential role in ensuring the publicity of the existence and activity of traders, carried out in the cases and under the conditions established by the legislator.

The entry into force of the current Romanian Civil Code brought as a novelty the mention of the trade register in the category of general methods of publicity, establishing the general rules regarding the publicity of legal rights, acts and facts in the sphere of Romanian civil law (Stuparu, 2020: 69-70). In consideration of the text of the Civil Code (article 18), the trade register, together with the land register, the Electronic Archive of Real Estate Guarantees, as well as other forms of publicity established by the legislator, ensure the publicity for the rights, acts and facts regarding the status and capacity of the subject persons registration, the assets belonging to them, as well as any other legal relations subject to publicity in the cases expressly provided by law.

The mentioned normative approach remained at the level of common law, motivated by the fact that there was a special legislation in the matter of the trade register, with a role in drawing up its concrete legal regime. Law no. 26/1990 on the trade register (duplicated over time by other relevant nominative acts such as: Order of the Ministry of Justice no. 2594/C/2008d, Law no. 359/2004, Order of the Ministry of Justice no. 1082/2014, G.E.O. no. 116 /2009), in its capacity as a framework law, outlined for traders the professional obligation of registration and publicizing through the trade register (Cărpenu, 2009: 62).

In summary, the trade register constituted a database, kept in electronic format, at the national level by the National Trade Register Office (NTRO), and at the local level by the local Trade Register offices. The trade register constituted a complex system of record and publicity, as a rule, of traders, natural persons and legal persons, as well as some aspects of their economic activity. The category of merchants targeted by the legislator included the following individuals and legal entities: authorized natural persons, individual partnerships and family partnerships, companies regulated by Law no. 31/1990, national companies and national societies, autonomous companies, economic interest groups, cooperative societies, cooperative organizations, European societies, European cooperative societies and European economic interest groups with their main headquarters in Romania. As an exception, the registration and legal publicity through the trade register had other natural or legal persons as holders only if Law no. 26/1990 (e.g. research and development institutes that carried out economic activities) or a special law explicitly established them. Regarding the main and traditional effect of registration in the trade register, to create a presumption of commerciality for all persons registered in this database, specialized literature supported and argued that, after the entry into force of the Romanian Civil Code (on 01.10.2018), the purpose of the trade register to be oversight of commercial activities and actors was compromised (Gheorghie, 2013: 72).

The registration component had the role of ensuring the record of those registered and of their certain rights, acts or facts, being carried out by performing the operations specific to the registration in the trade register and, as the case may be, other operations prior to and subsequent to this undertaking. In this sense, before the start of the economic activity, the owners subject to the legal obligation to register in the trade register had to apply for registration (if they were legal entities) or matriculation (if they were natural persons) in the trade register, and during the exercise of their activity or

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upon termination to it, they had the obligation to request the entry in the same register of the mentions regarding the acts and facts whose registration was required by law.

The component of legal publicity of persons subject to registration and certain operations of their economic activity was carried out by making entries in the trade register (detailed above), by displaying the documents at the deadlines, in the places and in the ways established by law, as well as by submitting the documents provided by law for publication in the Official Gazette of Romania (Part IV, Part VII) or, as the case may be, on the website/online service portal of the National Trade Register Office or in the Official Journal of the European Union or on the European e-Justice portal, under the law. Practically, depending on the concrete situation, the legal publicity ensured through the trade register could entail one or more forms of publicity, the course of which generates the legal effects established by the legislator. The main legal effect pursued by the regulation of legal publicity outlined by Law no. 26/1990 was to ensure a real protection of third parties who contract with the legal subjects registered in the trade register.

The functions of the trade register (Angheni: 2019: 76; Găină, 2017:106-107), summarized in the two components of the professional obligation to register and legal publicity through the trade register, were consistent with its very public character, expressly established by Law no. 26/1990 (articles 4 - 41). Practically, any interested person could have access to the records operated in the trade register, the request being made on the basis of a request, by correspondence or by electronic means. The trade register office, as the institution holding the database called the trade register, had the obligation to issue, at the applicant's expense, information, register extracts and certificates confirming the data recorded in the trade register, as well as certificates confirming that a certain act or fact is or is not registered, copies and certified copies of the entries made in the register and of the documents presented, for which fees are charged according to the law. Electronic copies of these documents and information could also be made available to the public through the trade register interconnection system.

The legal publicity function of the trade register outlined by the Law no. 265/2022. The current framework law in the matter of the trade register is Law no. 265/2022 regarding the trade register and for the modification and completion of other normative acts affecting registration in the trade register. As a whole, this normative act reveals a codification of the provisions relating to registration operations in the trade register and in other registers kept by the National Trade Register Office (NTRO), based on the control of the registrar with the trade register, or, as the case may be, based on the decision of a court. In summary, the legal institutions and regulatory solutions from Law no. 265/2022 (some of which are novel) ensures the simplification and standardization of registration procedures in the trade register, for all categories of professionals, natural and legal persons subject to this obligation, as well as increasing the accessibility of any interested person to the information and services offered by the trade register, including through the use of electronic means of communication and identification (Răducanu, Daskălu, 2021). Related to this new normative framework, the publicity function traditionally recognized by the trade register was not only preserved, but even detailed and amplified.

In Romania, the trade register is kept by the National Trade Register Office (NTRO), respecting the organizational structure established by Law no. 265/2022. This

public institution with legal personality is based in Bucharest and is organized under the Ministry of Justice. At the territorial level, the National Trade Register Office has subordinated, within each county and in the Municipality of Bucharest, local Trade Register offices, structures without legal personality, which operate alongside each court.

The local Trade Register offices make entries in the trade register, in the computer system, based on the conclusions of the registrar with the trade register or the court decisions. We specify the fact that registrar with the trade register is a new legal institution, defined as the specialized person in charge of the prior legality control of the registrations with the trade register, being responsible for analyzing and processing registration requests. The National Trade Register Office keeps the trade register, in the computer system, by centralizing all the entries made by the local Trade Register offices.

The national legislator maintained for the trade register its recognition as a public service of general interest by ensures the registration and legal publicity of the persons, acts, facts and operations established by law, but brought nuances and additions to it in relation to the previous regulation.

The legal subjects of the professional obligation to register in the trade register, before the start of their economic activity, are natural persons and legal persons that were established in the legal forms nominated by Law no. 265/2022, as well as legal entities for which this obligation is imposed by a special law. Currently, the trade register ensures the registration and legal publicity of professionals authorized natural persons, individual partnerships and family partnerships, respectively the registration and publicity of professionals companies, European companies, cooperative societies, European cooperative societies, cooperative credit organizations, economic interest groups and European groups of economic interest, with the main headquarters in Romania, the registration and publicity of their branches, as well as the branches of listed legal entities with the main headquarters abroad.

Although the text of article 4 paragraph 1 of Law no. 265/202 did not include autonomus companies, national companies and national societies in the above list, they remained holders of the professional obligation of registration and publicity through the trade register. The conclusion is drawn from the analysis of various other provisions of the legislation incident to the matter. Law no. 265/2022 is addressed to legal subjects of the type of professional carrying out economic activity. Indeed, the quality of professional can be subjected to analysis in the case of autonomus companies, national companies and national societies if we consider the recent changes brought to their status as public enterprises by Law no. 187/2023, which appeared after the entry into force of the new framework law of the trade register. In its current form, G.E.O. no. 109/2011 on the corporate governance of public enterprises states that the object of activity of such public enterprises consists in the performance of economic activities and/or public service obligations. Consequently, a possible discussion can exclusively concern the professional status of these three types of public enterprises if they limit their activity only to the execution of services of public interest, without performing economic activity. However, even in such a situation, the legal obligation to register in the trade register remains.

Moreover, the trade register is structured according to the following categories of registers: a) a register for the registration of companies, national companies, national societies, autonomus companies, economic interest groups, European companies, European economic interest groups, other expressly provided legal entities by law, with

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the main headquarters in Romania, of their branches and, as the case may be, of the branches of legal entities with the main headcourthes abroad; b) a register for the registration of cooperative societies and European cooperative societies with their main headquarters in Romania, their branches and, as the case may be, branches of cooperative societies or European cooperative societies with their main headquarters abroad; c) a register for the registration of authorized natural persons, individual partnerships and family partnerships, with professional headquarters and, as the case may be, workplaces in Romania.

The common element for all legal subjects that must be registered in the trade register is the status of a professional carrying out an economic activity (for the legal meaning of this wording, see Stuparu, 2020: 39-40). The meaning of the term professional, used abundantly by the trade registry new law, is the one established by the text of article 3 of Law no. 287/2009 on the Civil Code (for developments on terminology, Stuparu, 2020: 48-54, Piperea, 2012: 33, Nicoale, 2015: 545, 547). The mentioned article conditions, expressly and exclusively, the quality of a professional on the exploitation of an enterprise (that is, the systematic exercise, by one or more persons, of an organized activity consisting in the production, administration or disposal of goods or in the provision of services, regardless whether or not it has a profit-making purpose). In the view of the Civil Code, which introduced the professional as a legal institution in the Romanian legal order, establishing its general legal regime, in order to access the quality of professional there is no need for any other requirement (for example the fulfillment of a legal formality such as registration in -a public registry and/or authorization. We appreciate that Law no. 265/2022 creates, from the date of registration in the trade register, a relative presumption of professional quality for all natural and legal persons who register in the trade register, before starting their economic activity. As a result, the legislator's change of vision in the analyzed field becomes evident. For all legal subjects that have the obligation to register in the trade register, the formality of registration in this public register becomes an intrinsic condition of professional status, doubling the pre-existing constitutive obligation consisting in the operation of the enterprise (in the sense of the Civil Code).

The public character of the trade register was preserved, even detailed by the provisions of Law no. 265/2022 (article 11-14, article 27 paragraphs 7-8). Mainly, this public character is closely related to the access of any interested person to the records operated in the trade register, under the conditions and limits established by law.

As a procedure, this kind of request involves an application that is submitted at the counter or it is sent by mail (post or courier services) or by electronic means. Another new element, in addition to the one regarding the possibility of sending an application signed with a qualified electronic signature (the only option that does not require the presentation of a copy of the applicant's identity document), is the transposition into Law no. 265/2022 of making the performance of the legal publicity function conditional on compliance with the legislation on the protection of personal data (on reducing the risk of compromising data, see Zaharia, Axinescu, 2022). Currently, the local Trade Register office can issue, at the expense of the interested person, in Romanian, in compliance with the legislation on the protection of personal data, information and certificates confirming the data registered in the trade register, as well as certificates confirming that a certain act or fact does not is registered, copies and/or certified copies of all registered or presented documents or any part of them, in the form in which they were submitted in support of registration applications.

Symmetrical to the tools for requesting information, the legislator has expanded the means of issuing the requested documents, they can be provided both in the classic version, on paper, at the NTRO headquarters and the local Trade Register offices, respectively by postal or courier services, as well as in a new version, by electronic means, in electronic form, signed with a qualified electronic signature or with a qualified electronic seal .

A valence of the public nature, newly regulated, aims at providing information and releasing documents, free of charge, to persons and entities clearly determined in terms of composition and/or purpose. A first category of beneficiaries established by the legislator includes public authorities and institutions, diplomatic missions accredited in Romania, as well as other legal entities if they are expressly provided for by law. Also, the NTRO and the local Trade Register offices release, free of charge, to journalists and representatives of the mass media specific information registered in the trade register, which can only be used for the purpose of informing public opinion. Also free of charge, the following information on natural and legal persons registered in the trade register is currently available through the trade register interconnection system, on the NTRO website or on its online service portal: a) the company and legal form; b) the registered/professional headquarters and, in the case of branches, the member state in which it is registered; c) order number from the trade register, EUID and unique registration code; d) condition; e) the website, if any; f) the legal representatives of the legal entity and if they are empowered to act together or separately, as well as the representative of the family business; g) branches opened in another member state, including the company, registration number, EUID and the member state in which the branch is registered. Last but not least, NTRO makes available to the public, free of charge, in Romanian and English, on its website or on the online services portal, with access and through the unique digital portal, including information on the legislation that regulates the most important aspects of the operations, data or acts of natural and legal persons subject to registration in the trade register (see article 14 of Law no. 265/2022).

The role of the electronic Bulletin of the trade register. The electronic Bulletin of the trade register (Bulletin) was introduced into the national legal system through the provisions of Law no. 265/2022. Being an absolute novelty, its role is one of consolidating the legal publicity function traditionally assigned to the trade register.

In the sense of article 15 of Law no. 265/2022, the electronic Bulletin of the trade register is edited, at the national level, by the National Trade Register Office and is organized as a central electronic platform through the NTRO online service portal. The local Trade Register offices, existing in each county and in the Municipality of Bucharest, are the ones that transmit to the NTRO (through the integrated IT system of the NTRO) the information designated by the legislator to be subject to publication in the Bulletin.

The condition preceding the start of the publicity procedure through the electronic Bulletin is the registration in the trade register of the documents nominated by article 15 paragraph 2 of Law no. 265/2022, respectively: a) the conclusion of the registrar with the trade register or the court decision regarding the registration of a legal entity, the registration of a branch of a legal entity, the registration of an authorized natural persons, individual partnerships and family partnerships; b) conclusion of the registrar with the trade register, in the case of any other entries in the trade register; c) other documents registered in the trade register for which the law provides for

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publication in the Bulletin; d) court decisions according to the law, other than decisions regarding registration/matriculation in the trade register (for professionals and branches) and court decisions for which the courts expressly order publication in the Official Gazette of Romania

The publication is made *ex officio*, within no more than 3 working days from the date of registration in the trade register of the above-mentioned information. The publication in the electronic Bulletin and its consultation is free of charge.

Specifically, Law no. 265/2022 changed and adjusted the tools for ensuring publicity regarding professionals, acts, facts and operations subject to the obligation to be registered in the trade register. We remind you that during the period of application of Law no. 26/1990, the publicity of registrations in the trade register is carried out, at the national level, either only on the basis of a simple registration in the trade register, or by cumulatively fulfilling the registration in the trade register and publication in the Official Gazette of Romania (this last variant representing the rule). At present, the performance of the publicity function is mainly recognized by the electronic Bulletin, but always under the condition of prior registration in the trade register and, in the cases provided for by law, doubled by publicity in the Official Gazette of Romania.

Regarding the role of the Official Gazette of Romania in the publicity of the registrations made in the trade register, we note a quantitative decrease in the new legislative approach. Although such publicity is maintained will mandatory legal procedure, Law no. 265/2022 (article 16) imposes an exclusive for the following documents: a) extract of the registrar's conclusion or of the court decision regarding the registration of a legal person or the registration of a branch of a legal person; at the express request of one of the parties, the court decision can be published in its entirety; b) court decisions for which the courts expressly order publication in the Official Gazette of Romania; c) decisions of the general assembly of associates/shareholders/members, additional documents of legal entities subject to the obligation to register in the trade register, for which the law provides for publication in the Official Gazette of Romania; d) the decisions of the administrative and/or management bodies of legal entities subject to the obligation to register in the trade register, for which the law provides for publication in the Official Gazette of Romania; e) other documents of legal entities, subject to the obligation of registration in the trade register, for which the law provides for publication in the Official Gazette of Romania. The said entries are sent electronically by the trade register office, for publication, to the Official Gazette of Romania, within no more than 3 working days from the date of registration in the trade register.

In summary, the availability to the public of the records made through the NTRO, according to the above delimitations, constitutes one of the roles assigned to the electronic Bulletin by law, highlighting a concrete valorization of the digitization process in the matter.

Then, the main legal effect of the entries made in the trade register and published in the electronic Bulletin and/or in the Official Gazette of Romania is their opposition to third parties. The rule in the matter is clearly established by the legislator. In this sense, the person who has the obligation to request a registration cannot oppose the unregistered acts or facts to third parties, unless he proves that they were known to them. For their part, third parties are always able to invoke the acts or facts regarding which the publicity was not carried out, except in the case where the omission of publicity lacks its effects. This reality implicitly justified the normative solutions that

intervene in the case of notification of inconsistencies. The text of Law no. 265/2022 (article 46) instituted the prevalence of the data registered in the trade register against third parties in case there are inconsistencies between the data recorded in the trade register and those contained in the archived documents in the file of the professional registered in the trade register. In the case of documents and information published in the Bulletin or, as the case may be, in the Official Gazette of Romania, if there is any inconsistency between them and the data and documents registered in the register, the latter prevail over third parties. Moreover, the operations carried out by the natural or legal person before the 16th day from the date of their registration in the trade register are not opposable to third parties who prove that they were unable to learn about them. The vision revealed by Law no. 265/2022 (previously detailed) agrees with the general rules recognized by the Civil Code in the matter of publicity of legal rights, acts and facts (Tuleaşcă, 2018: 100-101).

Last but not least, we retain as a legal effect of the completion of the implicit legal publicity the possibility of exercising appeals against the trade registry registrar's conclusion. According to Law no. 265/2022, against the conclusion of the registrar with the trade register, a complaint may be filed by the applicant of the registration request or by any other interested person, within 10 calendar days. For the applicant, the 10-day period runs either from the date of communication of the conclusion (if communication was requested by mail or by electronic means), or from the date of publication of the conclusion in the electronic Bulletin (if this date is prior to communication), or from the date of collection from the trade register counter, and if it is not picked up from the counter from the date of publication of the conclusion in the electronic Bulletin of the trade register. For other persons interested in contesting the conclusion of the registrar, the 10-day term runs differently and, respectively: from the date of publication of the conclusion in the electronic Bulletin of the trade register or from the date of publication of the documents in the Official Gazette of Romania, where the law provides for this publication.

In conclusion, the implementation of the electronic Bulletin of the trade register contributed to the optimization of the relationship with the persons interested, regardless of the reason and theme, in the information registered in the trade register. Its editing on the own portal of the National Trade Register Office led to the reduction of payments made by applicants for data, information and documents published in the electronic Bulletin as well as a speed of legal publicity compared to that provided in the Official Gazette of Romania, which is much limited under the Law no. 265/2022.

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Article Info

Received: November 15 2023

Accepted: November 24 2023

How to cite this article:

Stuparu, L.E. (2023). The electronic Bulletin of the trade register in the context of the legal publicity function of the trade register. *Revista de Științe Politice. Revue des Sciences Politiques*, no. 80, pp. 99 – 107 .