

On the Effects of Registration of Documents at the Romanian Trade Register

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Abstract

The Romanian Trade Register is the public institution organised under the Ministry of Justice whose attributions are regulated by law. As regards the registrations of documents to the trade register, its purpose is to ensure the opposability of such documents, and not to confirm the validity of the act based on which the registration in the trade registrar is done. This aspect has been mentioned in the doctrine and it has been stated by a recent decision no. 607/2023 of the High Court of Justice and Cassation. Without claiming an exhaustive analysis of the topic, this article aims to underline the importance of this institution, which has been subject to major changes in recent years, of the registrations in the trade registrar made by the professionals, along with the limitations brought by the formal analysis of the documents subject to registration.

Keywords: Romanian Trade Register, registration, opposability of the registration, legal representative.

JEL Classification: K22

1. Introduction

The constant changes in the Romanian legislation, in accordance with the guidelines of the European Union² and the requests of the business environment, have lately affected the Romanian Trade Register Office.

Over time, since the 1990s, the Companies Act no. 31/1990³ (hereinafter referred to as the "Companies Act") has undergone numerous amendments. This has been due to the need to constantly improve the legal framework towards striking the right balance between satisfying certain requirements imposed by law, necessary to protect the public interest and facilitating the access of professionals⁴ to legal

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² See also Adriana Deac, „The legislative acts of the European Union”, *Perspectives of Law and Public Administration Journal*, 2019, vol. 8, issue 2, pp. 186-191 and Ioana Nely Militaru, *Dreptul Uniunii Europene. Conologie. Izvoare. Principii. Institutii. Piata interna a Uniunii Europene. Libertatile fundamentale*, Universul Juridic Publishing House, Bucharest, 2017, p. 40 et seq.

³ Republished in the Official Gazette No. 1066 of 17 November 2004 with subsequent amendments and additions. The last amendment was made by Law no. 214 of 5 July 2024 on the use of electronic signatures, time stamps and the provision of trust services based on them, published in the Official Gazette no. 647 of 8 July 2024 and entered into force on 8 October 2024.

⁴ For a detailed analysis on professionals, see Ioana Nely Militaru, *Dreptul afacerilor. Introducere in dreptul afacerilor. Raportul juridic de afaceri. Contractul*, Universul Juridic Publishing House, Bucharest, 2013, p. 50 et seq.; Cătălin Silviu Sararu, *Dreptul afacerilor. Curs pentru invatamantul economic*, A.S.E. Publishing House, Bucharest, 2015, p. 65 and Angela Miff, „The associative forms in Romania following the new Civil Code, republished in 2011”, *Juridical Tribune - Tribuna Juridica*, Vol 3, Issue 2, December 2013, p. 289-307; for a view on the obligations of professionals, see Andreea-Teodora Stanescu, *Drept comercial. Contracte profesionale*, Hamangiu Publishing House, 2020, p. 37; for the sanctions stipulated by the Companies' Law, see Neculai Cârlescu, *Drept penal al afacerilor. Infractioni prevazute in Codul penal si*

institutions and their implementation in practice quickly and efficiently. This time⁵, the change of impact for professionals was the law on the commercial register, the one in force since 1990 having been repealed by the new Law No. 265/2022 on the commercial register (hereinafter referred to as the "new law" or "Law on the commercial register").

2. National Trade Register Office of Romania

The National Trade Register Office (O.N.R.C.) is a public institution with legal personality, organised under the subordination of the Ministry of Justice, financed entirely from the state budget, through the budget of the Ministry of Justice (Art. 19 of the new Law).

From a historical point of view, the first records of those who carried out acts of trade date back to the Middle Ages, being kept by guilds. Such registers became more important after the union of the Romanian Principalities. Thus, in 1864, the first law organising the Chambers of Commerce and Industry was passed and promulgated. Subsequently, in 1884, the "Law on the Registration of Firms" was promulgated, which organises in a modern sense the record-keeping of commercial firms, and the "Regulation on the form and manner of keeping the registers of firms" was adopted⁶. The legislation that governed the institution has undergone changes over the years, to stop at the present time with the new Trade Register Act.

According to Article 4 of the new law, the commercial register ensures the registration and publicity of authorised natural persons, sole proprietorships and family businesses, the registration and publicity of companies, European companies, European cooperative societies, European cooperative societies, European cooperative societies, cooperative credit organisations, economic interest groups and European economic interest groups, with their main office in Romania, the registration and publicity of their branches, as well as of the branches of the listed legal entities with their main office abroad.

In line with similar institutions in other European countries, the O.N.R.C. has a number of tasks, among which we mention the keeping of the Trade Register, the Electronic Bulletin of the Trade Register, the Register of beneficial owners, the Bulletin of insolvency proceedings, all in computerised system, etc.

According to the Explanatory Memorandum⁷ to the new law, it transposes the digital solutions provided for in the new European Company Directive 2019/1151 - Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in the context of company law, published in the Official Journal of the European Union L186 of 11.07.2019.

So, the new law regulates the procedure of registration in the trade register, the organisation and functioning of the O.N.R.C. and, for the first time, the status of the

in Legea societăților. Comentarii și explicații, C.H. Beck, Bucharest, 2018.

⁵ Law no. 265/2022 on the Trade Register and for amending and supplementing other normative acts affecting the registration in the Trade Register published in the Official Gazette no. 750 of 26 July 2022 and entered into force on 26 November 2022.

⁶ <https://www.onrc.ro/index.php/ro/despre-onrc>, accessed on 15 November 2024.

⁷ <https://www.cdep.ro/proiecte/2022/100/30/3/em154.pdf>, accessed on 15 November 2024.

registrar of the trade register.

With regard to the procedure of registration in the Commercial Register, the aim was to create the possibility of completing online all the formalities for the incorporation of a company and the registration of a branch by using electronic means of identification and electronic means of communication (e.g. the articles of incorporation can be drawn up online by filling in a standard form, the applications for registration and the documents submitted in support of them drawn up by lawyers or notaries public can be signed by them with a qualified electronic signature and transmitted by electronic means, the use of a central electronic platform maintained by the Commercial Register, *i.e.* Electronic Bulletin of the Trade Register). Also, one of the most important aspects is provided for in Art. 9 of the new law, namely that the trade register, kept by the O.N.R.C., is part of the system of interconnection of the trade registers of the Member States.

At the same time, in support of professionals, the Trade Register Act introduces for the first time in such a framework, the regulation of the procedure of registration in the Trade Register on the basis of the legality control, performed by the registrar. Thus, the control carried out by the judge delegated to the trade register is replaced by the one carried out by the registrar, an amendment which was also made at the same time in the Companies Act. We mention that such a control has been provided for since 2009⁸, but by an emergency ordinance and not at the level of a law. It should be noted that third parties, or even the applicant for registration, although no longer able to intervene in the registration procedure, have a remedy after the registration application has been dealt with, namely a complaint against the registrar's decision.

The organisation and functioning of the O.N.R.C. and of the trade register offices before the courts is essentially maintained in the current legislative form.

In contrast, the trade register registrar is given its own status by this law. Thus, according to the new law⁹, he is the specialised legal staff within the O.N.R.C. entrusted with the public service of legality control prior to registration in the commercial register. Thus, by means of a final decision, the registrar deals with applications for registration in the commercial register and other applications concerning registrations in the commercial register, and the registrar's decisions, bearing his holograph or electronic signature, are acts of public authority, having the evidentiary and enforceable force provided for by law.

Also, as summarised in the explanatory memorandum to the new law, access to the profession is based on examination or competition; the registrar is appointed and dismissed by the Director General of the Trade Register, and in the exercise of his duties he is not subject to hierarchical control over the decisions taken. The registrar is also subject to certain prohibitions and incompatibilities in order to ensure impartiality in the exercise of the pre-registration control and is subject to disciplinary, civil and criminal liability.

⁸ Government Emergency Ordinance (GEO) no. 116/2009 for the establishment of some measures regarding the activity of registration in the Trade Register published in the Official Gazette no. 926 of 30 December 2009 and entered into force on 14 January 2010, approved by Law no. 84/2010.

⁹ Art. 28.

3. The nature of registrations in the Trade Register

As regards registrations in the Trade Register, the new law also details the opposability and procedure for each type of registration.

Thus, professionals have the obligation to request the registration of the statements concerning the acts and facts whose registration is required by law, no later than 15 days from the date of the acts or the occurrence of the facts subject to the obligation of registration.

Also, according to Article 46 of the Law on the Commercial Register, the registration and entries are opposable to third parties from the date of their registration in the Commercial Register or from the date of publication of the entries in the Official Journal of Romania or in the Electronic Bulletin of the Commercial Register, where the law so provides. The operations carried out by the natural or legal person before the 16th day from the date of their registration in the commercial register shall not be opposable to third parties who prove that they were unable to become aware of them.

Another important point is that the person who is required to apply for registration may not rely unregistered acts or facts against third parties, unless he proves that they were known to them. Third parties are always entitled to rely on acts or facts in respect of which publicity has not been given, unless the failure to give publicity deprives them of their effects.

At the same time, the new law stipulates that in the event of discrepancies between the data recorded in the business register and the data contained in the documents archived in the file of the professional registered in the business register, the data recorded in the register shall prevail vis-à-vis third parties.

With regard to the effects of the registrations in the commercial register, the doctrine¹⁰ also mentions, in addition to determining the trader's status and ensuring publicity regarding the status of the professional, the opposability of the registrations against third parties, as is evident from the analysis of the legislative provisions.

4. Decision of the High Court of Cassation and Justice No. 607 of 15 March 2023¹¹

In fact, on 4 March 2021, ON.R.C. - Trade Register Office of the Gorj Court submitted to the Gorj Court, in accordance with the provisions of Article 7, index 1 of the Government Emergency Ordinance (O.U.G.) no. 116/2009, the applications for intervention filed by A. and filed by B. in file no. x/02.03.2021 concerning the company C. S.A. By the applications for intervention filed, A. and B. requested the rejection of the application no. x/02.03.2021. On 18 March 2021, D. filed an ancillary application for intervention in favour of the board of directors consisting of E., F. and G., by which it requested the rejection of the applications for intervention filed by B. and A. and to

¹⁰ Stanciu D. Cărpănu, *Tratat de drept comercial român conform noului Cod civil*, Universul Juridic Publishing House, Bucharest, 2012, p. 74; it should be mentioned that the same author speaks of a legality control regarding the application for registration of the company, which is to verify compliance with the mandatory rules on the incorporation of companies, in particular the provisions of the memorandum of association (p. 164).

¹¹ <https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=208472#highlight=###>, accessed on 15 November 2024.

order the registration of the application for registration filing the mention of the acts subject of file no. x/2021 in the records of the Commercial Register Office of the Gorj Court. The file goes through several stages, merits, ordinary and extraordinary appeals, reaching the High Court of Cassation and Justice.

In the appeal, the High Court states that the reviewing court, in compliance with the abovementioned procedural rule, held that, according to the registration with the O.N.R.C. of the application for registration of entries no. 4618/02.03.2021, ordered by decision no. 713 of 17 November 2021 of the Craiova Court of Appeal, 6 persons are registered as holding the position of directors of the company and 2 persons as holding the position of general manager.

Therefore, at the time the contested decision was handed down, it is listed as having two administrative boards: the Administrative Board composed of A., H. and I., elected by the General assembly of associations Decision of 31 March 2020, and the Administrative Board composed of E., F. and G., elected by the A.G.A. Decision of 5 February 2020.

As provided in Art. 151 para. (4) of the Code of Civil Procedure, 'The representatives of legal persons governed by private law shall submit a copy of an extract from the public register in which their authorisation is mentioned'. It follows, therefore, that no infringement of those provisions can be found, since the reviewing court referred to the entries in the commercial register.

On the other hand, the High Court points out that the procedure for registration in the commercial register is a procedure which entails verifying the formality of the acts whose registration is sought, the purpose being to ensure their enforceability by ensuring the formalities of publicity, any interested person having the right to question, in the ordinary procedure, the validity of the act on the basis of which the registration was made in the commercial register, and subsequently, in the event of the act being cancelled by a final court judgement, the interested person may request, pursuant to Art. 25 of Law No. 26/1990 - in the form in force on the date on which the action is brought - the cancellation of the entry made in the commercial register on the basis of that act.

The Commercial Register, the High Court also holds, does not have the role of validating the acts subject to registration, which confirms that the procedure of registration in the Commercial Register is a non-contentious procedure, independent of the allegedly contentious nature of the objections raised by an application for intervention, a nature which is also apparent from the interpretation of the provisions of Article 25 of Law No. 26/1990 - in the form in force at the date of the action - whose role is precisely that of removing the entries made on the basis of irrevocably cancelled acts.

In another decision, No. 576 of 10 March 2021¹², the High Court of Cassation and Justice takes into account the provisions of Article 54 para. (2) of Law no. 31/1990, according to which the company may not invoke against third parties the appointments in the positions referred to in para. (1) or the termination of such positions, if they have not been published in accordance with the law.

Thus, if, after the expiry of the company director's term of office, he continued to appear in that capacity in the commercial register, without any other person having

¹² <https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=186770#highlight=###>, accessed on 15 November 2024.

been appointed as company director under the conditions of validity required by law and publicity, necessary to be opposed by third parties, the court has lawfully rejected the plea of lack of representative capacity.

5. Conclusion

Public register registrations should also be seen beyond the registration procedures, which the authorities endeavour to simplify with each legislative amendment. They are therefore of major importance for both professionals and society as a whole.

Making these registrations on time, within the deadlines given by law where applicable, or as soon as possible in other cases, ensures a correct, appropriate image of the professional as an entity and of its activity, influencing its relations with partners and authorities.

It is true that these recordings are not absolute and may be the subject of litigation in court, but their enforceability until the moment of their cancellation by the court remains unwaivable. This is an advantage for the professional and he should, in the first place, be the most concerned to ensure that they are made correctly.

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