

Considerations regarding the New Trade Register Law (Law No. 265/2022 regarding the Trade Register)

Maria Nica-Dumitru¹

¹ Associate Professor PhD, Faculty of Law and Administrative Sciences, „Ștefan cel Mare” University, Suceava; Lawyer, Iași Bar.

Abstract: Law no. 265/2022 regarding the trade register and for amending and supplementing other normative acts with incidence on the registration within the trade register has entered into force on November 26, 2022. Through the new normative act, simplification and digitization in the field of registrations in the trade register was pursued, in order to streamline and accelerate procedures, constituting a transposition of Directives (EU) no. 1132/2017 and no. 1151/2019.

This article proposes a brief analysis of the elements of novelty brought by the new trade register law. Greater attention will be given to the regulation of the status of the registrar of the trade register, given the fact that there have been failed attempts in the past to do so.

Keywords: *Trade register; registrar of the trade register; registration in the trade register.*

How to cite: Nica-Dumitru, M. (2022). Considerations regarding the New Trade Register Law (Law No. 265/2022 regarding the Trade Register). *European Journal of Law and Public Administration*, 9(2), 88-96. <https://doi.org/10.18662/eljpa/9.2/185>

1. According to the statement of reasons, the main purpose of the Law no. 265/2022 regarding the trade register and for amending and supplementing other normative acts with incidence on the registration within the trade register (hereinafter „Law no. 265/2022 regarding the trade register”) (Romanian Parliament 2022) was the digitization of the registration process in the trade register, the online accessibility of all formalities, as well as the simplification of registration procedures, in accordance with the European Directives in this field, namely the transposition of Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 regarding certain aspects of company law, consolidated version (through the European Directive regarding companies 2019/1151).

Also, another objective pursued was the regulation of the status of the registrar of the trade register, given the fact that in 2011 and 2012 two other draft laws were approved by the Legislative Council by which this kind of regulation was desired, but which no longer ended up being subject to parliamentary debate, according to the same statement of reasons.

Last but not least, through the provisions of art. 129, Law no. 265/2022 regarding the trade register also brings important changes to Companies Law no. 31/1990 (Romanian Parliament, 1990), which we will not address in this paper.

Considering the breadth of the analyzed normative act, we will present only the main new elements introduced, focusing our attention more on the aspects related to the legal and institutional regime of the registrar of the trade register.

2. According to art. 1, the Law no. 265/2022 regarding the trade register regulates „the registration procedure in the trade register based on the control of the registrar of the trade register or, as the case may be, based on the court decision”, „the status of the registrar of the trade register” and „the way of organization and operation of the National Trade Register Office (...) and of the trade register offices attached to law courts”.

3. A first amendment that the new law brings is the replacement of the term „merchant” with that of „professional” in the content, for example, of the article that enshrines natural persons, respectively legal persons that have the obligation to register in the trade register and, otherwise, in the entire content of the normative act. Thus, a standardization of the language used in the Civil Code and in other normative acts in the field of private law (civil law, commercial law) is created.

Also, the term „delegated judge” was replaced by that of „registrar”.

4. Another novelty that Law no. 265/2022 regarding the trade register brings it into the legislative environment refers to the introduction of the

Electronic Bulletin of the Trade Register whose role is to publish the registrar's conclusions, other acts registered in the trade register for which the law provides the publication in the Bulletin, as well as court decisions, in certain cases indicated by the new normative act.

The Electronic Bulletin of the Trade Register is a tool similar to the Insolvency Proceedings Bulletin whose beneficial role has been proven. The publication in the Bulletin is extremely important because, in addition to the effect of opposability of the published acts, the moment of publication is also the moment from which certain deadlines will begin to run, such as: for certain categories of people, the deadline for filing a complaint against the registrar's decision (Romanian Parliament, 2022), the deadline for promoting the appeal against the dissolution decision (Romanian Parliament 2022), the deadline for opposition to the merger or division project (Romanian Parliament, 2022).

5. The registration in the trade register will be carried out from now on based on the legality control carried out by the registrars of the trade register, who come to replace the designated person, the regulation of their status being found in the content of articles 28-40 of Chapter III of Section 4 of Law no. 265/2022 regarding the trade register. Having noticed this new element, it is necessary to make a short foray into time.

Until 2009, registrations within the trade register were made based on an interim judicial order of the judge delegated to the Trade Register Office, a judge of the commercial section of the court, who carried out a legality control (jurisdictional and administrative). Against the interim judicial order of the delegated judge, the dissatisfied person could file a complaint that was resolved by the courts, the decision of the first court could have being subject to second appeal that would have been resolved by the Court of Appeal.

Starting with 2009, by the provisions of art. 1 paragraph (1) of the Government Emergency Ordinance no. 116/2009 (Romanian Government, 2009), part of this control - the administrative control of the legality of registration operations in the trade register - was transferred for a period of 6 months to the Director of the Trade Register Office attached to the Court/the person designated by the General Director of the National Trade Register Office. In art. 12 para. (2) of the Government Emergency Ordinance no. 116/2009, text amended by Law no. 84/2010, it was provided that „within 4 months from the date of entry into force of the law approving the present emergency ordinance (24.05.2010), the Government will adopt, upon the proposal of the Ministry of Justice, the draft law regarding the establishment, the organization and the functioning of the profession of commercial registrar”.

However, for 13 years, the one who fulfilled the role and duties of the commercial registrar, as it results from the interpretation of art. 1 of the Government Emergency Ordinance no. 116/2009, was the Director of the Trade Register Office attached to the Court/the person designated by the General Director of the National Trade Register Office to carry out the registration of applications in the trade register. In the end, the draft law regarding the trade register was finally adopted by the Senate and the Chamber of Deputies, becoming, as it was stated before, Law no. 265/2022 regarding the trade register.

Law no. 265/2022 regarding the trade register dedicates an entire chapter - Chapter III - to the status of the registrar, regulating aspects such as appointment conditions, incompatibilities, the registrar's duties or his disciplinary liability. The first paragraph of the first article of Chapter III also provides a definition of the notion of registrar, according to which it represents „the legal specialist staff within National Trade Register Office designated to carry out the public service of legality control prior to registration in the trade register”.

The new law exempts the courts from any operation related to the functioning of companies. Thus, if until the adoption of Law no. 265/2022 regarding the trade register, the verification of the legality of certain operations was within the competence of the court, such as the merger and division of companies, once that Law no. 265/2022 has entered into force, the registrar of the trade register will be the one who will have the competence in this regard.

The new normative act provides in art. 133 para. (2) that „the persons designated to carry out the attributions of resolving the applications provided by the Government Emergency Ordinance no. 116/2009 (...) are reintegrated into the specific function of registrar of the trade register, (...), within the limits of the necessary posts established according to this law”. In other words, Law no. 265/2022 regarding the trade register confirms that the legal regime of the person designated by the General Director of the National Trade Register Office is similar to that of the registrar of the trade register.

Art. 32 of Law no. 265/2022 regarding the trade register consecrates a series of incompatibilities, in the sense that the registrar will not be able to resolve applications for registration in the trade register made by spouses, relatives or relatives up to the fourth degree inclusive, nor applications for registration regarding a legal entity in which they are associates, shareholders, members, administrators, directors, authorized persons, statutory auditors. If the seised registrar finds himself in one of these situations, he will be obliged

to refrain and immediately notify, in writing, the ones from the management of the trade register office, in order to assign the work to another registrar.

In continuation, Law no. 265/2022 regarding the trade register also regulates other aspects that concern the registrars of the trade register, such as: the annual evaluation process, their disciplinary liability which is being provided for several deeds that could be qualified as disciplinary violations and the disciplinary sanctions that can be applied, the cases of suspension from the function of the registrar, the situations in which the registrar's employment relationship may end.

In section 7 of Law no. 265/2022 regarding the trade register, in the content of articles 105 – 117, it is regulated, under this marginal name, „the procedure before the registrar”. Section 8 is devoted to the procedure before the court that will resolve the complaint filed against the registrar's conclusion.

Thus, following the entry into force of Law no. 265/2022 regarding the trade register, from now on the applications for registration in the trade register and other applications regarding registrations in the trade register will be resolved by the registrar through a conclusion, qualified as an act of public authority (Romanian Parliament, 2022). Against registrar's conclusion, the applicant will be able to file a complaint within 10 calendar days from the moment of communication, if he requests the communication by electronic means or by mail, with confirmation of receipt. In these situations, the applicant will also have the possibility to file the complaint from the date of publication of the conclusion in the Electronic Bulletin of the Trade Register, if this moment will be prior to the moment of communication. If the applicant opts for communication directly at the counter at the trade register offices and the conclusion will not be lifted within the deadline for issuing the documentation, then he/she will be able to file the complaint within 10 days from the date of publication of the conclusion in the Electronic Bulletin. Also, any interested person, other than the applicant, will be able to file a complaint against the registrar's conclusion within 10 calendar days from the date of publication in the Electronic Bulletin or within 10 calendar days from the date of publication of the documents in the Official Gazette of Romania, where the law will so dispose.

Related to these aspects, some changes can be noted compared to the regulation so far, in this case the Government Emergency Ordinance no. 116/2009. This last normative act stipulated that the director of the trade register office attached to the court/the designated person pronounces a resolution against which a complaint could be filed within 15 days from the pronouncement, for the parties, and from the date of publication of the act amending the Constitutive Act of the company in the Official Gazette of

Romania, Part IV, respectively Part VII, for any other interested person. In the case of resolutions rejecting the registration application and of the registrations that did not lead to the amendment of the Constitutive Act of the company, a complaint could be filed against the resolution within 15 days from the pronouncement, for the parties, and from the date of publication on the National Trade Register Office website or on its online service portal, for any interested person.

According to art. 113 of Law no. 265/2022 regarding the trade register, the complaint must be submitted, in the case of Authorized Physical Persons, Individual Enterprises and Family Enterprises, to the court in whose territorial radius the professional headquarters of the applicant is located. In the case of legal persons, the complaint must imperative be submitted to the trade register office, which will mention it in the trade register and communicate it to the court/specialized court within three working days from the date of submission (Romanian Parliament, 2022). If the complaint against the registrar's conclusion is submitted directly to the court/specialized court, at the first hearing the court will ask the applicant to provide proof of the mention in the trade register of the filing of the complaint until the next hearing.

The wording of the legislator regarding the institution to which the complaint is submitted and the sanction that intervenes, as well as the route of this complaint, leaves space for interpretation, in an area that should have been very clear, as it is about procedure, deadlines and sanctions with serious consequences for the professional concerned.

Thus, according to art. 113 para. (1) and para. (2) from Law no. 265/2022 regarding the trade register it would seem that in the case of Authorized Physical Persons/Individual Enterprises/Family Enterprises it is mandatory to submit the complaint against the registrar's conclusion to the court, and in the case of legal persons it is mandatory to submit it to the trade register office. But, para. (3) of art. 113 of Law no. 265/2022 regarding the trade register removes this idea by suggesting that, in fact, the petitioner has the possibility to choose whether to submit the complaint directly to the court or to the trade register office, establishing an additional obligation when he has opted to submit it directly to the court, that consisting in proving the mention in the trade register of the filing of the complaint.

If the professional that carries out activities of a lucrative nature is an Authorized Physical Person/Individual Enterprise/Family Enterprise, the complaints against the registrar's conclusion will be resolved by the court - the civil section - in whose territorial radius the professional headquarters of the applicant is located. If the professional that carries out activities of a lucrative

nature is a legal person, the complaint will be resolved by a specialized trial panel from the commercial section (litigations with professionals) of the court in whose territorial radius the professional headquarters of the applicant is located.

The decision of the court by which the complaint is resolved is enforceable and subject only to the first appeal, the appeal term being 15 days and starting to run from the moment of communication of the decision.

6. Law no. 265/2022 regarding the trade register brings important changes also in the registration procedure, for example: the condition of presenting the proof of the company's name availability in support of the incorporation application is removed, company representatives will no longer have the obligation to submit a specimen signature, etc.

Conclusions

As can be noted, Law no. 265/2022 regarding the trade register brings important changes both in terms of the infrastructure of the trade register and the regime of the registration procedure, as well as in terms of the content of some essential laws for the conduct of the activity of professionals, such as the Companies Law no. 31/1990. Also, the regulation of the registration procedure within the trade register based on the legality control carried out by the registrar represents an approach that, although desired for a long time, was finally carried out. It remains to be seen whether, in practice, the new trade register law will really simplify the activity of professionals and bring benefits to the business environment.

Acknowledgment

Some of the ideas exposed in this article were presented at the International Conference „Law, Public Administration, Sustainable Development and Heritage in the context of artificial intelligence processes”, organized by the „1 Decembrie 1918” University of Alba Iulia, Faculty of Law and Social Sciences, on October 20 - 21, 2022.

References

Romanian Parliament. (2022). Legea nr. 265/2022 privind registrul comerțului și pentru modificarea și completarea altor acte normative cu incidență asupra înregistrării în registrul comerțului [Law no. 265/2022 regarding the trade register and for amending and supplementing other normative acts with incidence on the registration within the trade register]. *Monitorul Oficial*,

- Partea I, 750, 26 iulie 2022 [Official Gazette of Romania, Part I, no. 750 of July 26, 2022]. <https://legislatie.just.ro/Public/DetaliiDocument/257835>.
- Romanian Parliament. (1990). Legea nr. 31 din 16 noiembrie 1990 privind societățile [Companies Law no. 31/1990]. *Monitorul Oficial*, Partea I, 126-127, 17 noiembrie 1990 [Official Gazette of Romania, Part I, no. 126-127 of November 17, 1990], republished in the *Monitorul Oficial*, partea I, 33, 29 ianuarie 1998 [Official Gazette of Romania, Part I, no. 33 of January 29, 1998] and in the *Monitorul Oficial*, partea I, 1066, 17 noiembrie 2004 [Official Gazette of Romania, Part I, no. 1066 of November 17, 2004]. <http://legislatie.just.ro/Public/DetaliiDocument/56732>
- Romanian Parliament. (2022). Legea nr. 265/2022 privind registrul comerțului și pentru modificarea și completarea altor acte normative cu incidență asupra înregistrării în registrul comerțului [Law no. 265/2022 regarding the trade register and for amending and supplementing other normative acts with incidence on the registration within the trade register]. *Monitorul Oficial*, Partea I, 750, 26 iulie 2022 [Official Gazette of Romania, Part I, no. 750 of July 26, 2022], articolul 112 [article 112]. <https://legislatie.just.ro/Public/DetaliiDocument/257835>.
- Romanian Parliament. (2022). Legea nr. 265/2022 privind registrul comerțului și pentru modificarea și completarea altor acte normative cu incidență asupra înregistrării în registrul comerțului [Law no. 265/2022 regarding the trade register and for amending and supplementing other normative acts with incidence on the registration within the trade register]. *Monitorul Oficial*, Partea I, 750, 26 iulie 2022 [Official Gazette of Romania, Part I, no. 750 of July 26, 2022], articolul 129 pct. 50 [article 129 point 50]. <https://legislatie.just.ro/Public/DetaliiDocument/257835>.
- Romanian Parliament. (2022). Legea nr. 265/2022 privind registrul comerțului și pentru modificarea și completarea altor acte normative cu incidență asupra înregistrării în registrul comerțului [Law no. 265/2022 regarding the trade register and for amending and supplementing other normative acts with incidence on the registration within the trade register]. *Monitorul Oficial*, Partea I, 750, 26 iulie 2022 [Official Gazette of Romania, Part I, no. 750 of July 26, 2022], articolul 129 pct. 50 [article 129 point 54]. <https://legislatie.just.ro/Public/DetaliiDocument/257835>.
- Romanian Government. (2009). Ordonanța de urgență a Guvernului nr. 116/2009 pentru instituirea unor măsuri privind activitatea de înregistrare în registrul comerțului [Government Emergency Ordinance no. 116/2009 for implementing measures regarding the registration in the trade register]. *Monitorul Oficial*, partea I, 926, 30 decembrie 2009 [Official Gazette of Romania, Part I, no. 926 of December 30, 2009]. <https://legislatie.just.ro/Public/DetaliiDocument/115004>

Romanian Parliament. (2022). Legea nr. 265/2022 privind registrul comerțului și pentru modificarea și completarea altor acte normative cu incidență asupra înregistrării în registrul comerțului [Law no. 265/2022 regarding the trade register and for amending and supplementing other normative acts with incidence on the registration within the trade register]. *Monitorul Oficial*, Partea I, 750, 26 iulie 2022 [Official Gazette of Romania, Part I, no. 750 of July 26, 2022], articolul 28 [article 28].
<https://legislatie.just.ro/Public/DetaliiDocument/257835>.

Romanian Parliament. (2022). Legea nr. 265/2022 privind registrul comerțului și pentru modificarea și completarea altor acte normative cu incidență asupra înregistrării în registrul comerțului [Law no. 265/2022 regarding the trade register and for amending and supplementing other normative acts with incidence on the registration within the trade register]. *Monitorul Oficial*, Partea I, 750, 26 iulie 2022 [Official Gazette of Romania, Part I, no. 750 of July 26, 2022], articolul 113 [article 113].
<https://legislatie.just.ro/Public/DetaliiDocument/257835>.