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Shareholders' Right to Information – a Comparative Analysis of Hungarian and Romanian Company Law

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Abstract. This study examines one of the basic rights of shareholders, the right to information in Hungarian and Romanian company law. The right to information is a non-property, organizational right originating from the shareholder's membership right, which is related to the convening of the general meeting of the company limited by shares and the voting right that can be exercised there. The right to information is the individual right of the shareholder and the individual obligation of the company. The right to information belongs to all shareholders, regardless of the extent of their financial contribution. The exercise of the right to information is a fundamental principle and serves the protection of the shareholder, but in addition to its protective nature, it establishes and prepares the decisions of the company's shareholders.

Keywords: company limited by shares, right to information, shareholders, Hungary, Romania, company law regulations, general meeting, business secrets, trade register

1. Introduction

The company limited by shares is the most complex form of companies as economic enterprises. The company limited by shares is a capital company in which the personal traits of the members (shareholders) are less significant, with greater emphasis on the resources placed by them at the disposal of the company, the capital. It may also be said of the company limited by shares that it constitutes a concentration of capital which is able to function independently of its shareholders. In the organizational functioning of the company limited by shares the principle of democratic governance is applied, whereby as a rule during the company's shareholders' meetings the majority of shareholders may pass valid decisions, while the task of controlling the company falls to the executive officers, the supervisory board supervises management with the aim of protecting company interests, and the auditor is a guarantee for the legal functioning of the company.

From the shareholders' perspective property rights may seem more significant than organizational rights with no monetizable value, because the primary goal of the 'investor' is achieving a profit, which he/she is able to attain either by payment of dividends or capital gains (the difference between the price at which stock was bought and resold). In order to achieve such profit, it is also indispensable for the shareholder that the company function efficiently because he/she is only entitled to dividends from any corporate profits remaining after taxes have been paid. This is the reason why, in order to exercise his/her rights over assets the shareholder may have an interest in exerting influence over the control of the company. This influence may be primarily exerted by exercising his/her rights within the organization, which do not pertain to any property or asset.

According to the point of view formulated in Hungarian legal history literature two groups of shareholders have formed:

> *"the first, smaller group consists of large shareholders who have ceased to be anonymous capitalists and were able to exert decisive influence on the control of the company. Opposing them stood the large mass of small shareholders who have acquired shares only in hopes of a dividend or of profiting from an increase in the share price, but were unable, and in large part also unwilling to meddle in the affairs of the company. The small shareholder is less of an entrepreneur, but more rather becomes a creditor."*[1]

As it is apparent from the cited text of legal literature it is from the perspective of "large shareholders" that it may become important for them to exercise their non-property/organizational rights for they are the ones who in effect are able to wield decisive influence over the control of the company. Naturally, the property and non-property/organizational rights should also be considered rights to which minority shareholders are entitled to, based on the principle of equal treatment, and it is for this reason that regulations attribute a large degree of attention to ensuring the exercise of non-property rights for the minority shareholder, like for example initiating a session of the shareholders' assembly or developing the agenda of such assemblies.

In our study, we examine one of the basic non-property rights of shareholders, the right to information in Hungarian and Romanian company law. We endeavour to examine the shareholders right to information from the perspective of legislations which constitute the backbone of company law regulations that are currently in force in these two countries: the relatively new Hungarian Civil Code (henceforth used as Civil Code/CC), which also integrated the company law and in the already obsolete, fragmented Romanian Law no. 31/1990, the Law on companies (henceforth used as: Companies Act). As it is also stated in Hungarian legal literature, as relevant to the significance of comparative legal analysis of company law, various experiences to which national company law regulations give rise, may, through their comparative evaluation and the formulation of conclusions, contribute to the development of various company law regimes.[2]

While Hungarian and Romanian company law rests on different foundations of legal doctrine – in Hungarian company law the German influence, while in the Romanian a stronger French influence may be demonstrated – the rules in force do show similarities in the case of both countries. Numerous differences, especially solutions developed by jurisprudence may also be demonstrated. According to our view the topic to be examined is timely, as ensuring the exercise of the right to information and this protection is a constant presence in various company law norms. At the same time the topic, which is the object of our enquiry, the interpretation of relevant company law norms, can also be readily discovered in the rich jurisprudence of various courts.

2. The Role of the Right to Information

The right to information is a non-property, organizational right originating from the shareholder's membership right, which is related to the convening of the general meeting of the company limited by shares and the voting right that can be exercised there. The right to information is the individual right of the shareholder and the individual obligation of the company. One of the basic purposes of the law is for a well-informed shareholder to be able to exercise the rights related to the general meeting, such as the right to control and have a say in the company's business. The exercise of the right to information is a fundamental principle and serves the protection of the

[1] Horváth 2004, 180.
[2] Szikora 2017, 182.

shareholder, but in addition to its protective nature, it establishes and prepares the decisions of the company's shareholders. As correctly stated in the French legal literature, a shareholder's right to information should be considered as a means of practicing his/her voting right.[3] The right to information is a fundamental shareholder right guaranteed by both Hungarian and Romanian company law provisions. The right to information belongs to all shareholders, regardless of the extent of their financial contribution. It is also not possible to limit this with the consent of the shareholder. By this right we mean the shareholder's right to information (access to documents, provision of information).

For a shareholder informed in the affairs of the company, information is also a means of defense and discretion. Think, for example, of a minority shareholder, for whom knowledge of company information can provide protection against majority shareholders and is also the legal basis for various legal remedies. At the same time, a minority shareholder can only request judicial review / control of company decisions if he or she has the appropriate information. The right to information, in addition to its protective nature, is of paramount importance in reconciling shareholder interest and corporate interest.[4] Having information on the operation of the company, the shareholder can weigh the potential risks of his investment[5] and, if he/she considers that the risk exceeds the normal business risk and does not want to take on more risk, he/she can decide to sell his/her shares.

In summary, only an informed, up-to-date shareholder is able to assess the effectiveness of the company's management and at the same time be able to take measures at the general meeting that guarantee the security of his investment and provide him with a profit in the form of dividends. In reality, however, most shareholders tend to be more 'indifferent'. As Ödön Kuncz correctly states, we can distinguish two types of shareholders: *permanent shareholders*, the majority of whom see only capital investment in their membership, and a smaller part who manage the fate of the company and *nomadic shareholders* who buy shares because of the marketability and suitability for speculation.[6]

3. The General Meeting of the Company Limited by Shares and the Right to Information

3.1. Hungarian Company Law Regulations

The inalienable right of a shareholder is to attend the general meeting, where he may request information from the senior executives of the company limited by shares, make comments and motions, and vote in the possession of a share with voting rights. The shareholder has the right to information before the general meeting [CC Section 3:17, para. (3), CC Section 3:258], but may also request more information at the general meeting in connection with what was said there [CC Section 3:257]. The senior executives of the legal entity are obliged to provide the members of the legal entity (shareholders) with access to the documents and records concerning the legal entity. The right of access to documents is a personal right of a member of a company, which he is entitled to regardless of his property contribution.[7]. The right to information and access to documents may be denied if the legal person violates business secrecy, if the person requesting the information

[3] Germain–Magnier 2011, 397.; Mestre–Pancrazi–Grossi–Merland–Tagliarino-Vignal 2016, 395-396.
[4] Catană 2007, 2.
[5] Török 2005, 3-10.
[6] Kuncz 1939, 323-324.
[7] BH 1998.12.598: Legfelsőbb Bíróság Cgf.VII.33.429/1996 [Supreme Court of Hungary].

abuses his rights or fails to make a confidentiality statement despite requested to do so [CC Section 3:23].

The general rules regarding legal persons of the Civil Code Section 3:17, para. (3) provides that the meeting of the decision-making body shall be convened by the senior official by sending or publishing an invitation. The invitation shall include the name and registered office of the legal entity, the time and place of the meeting and the agenda of the meeting. The agenda must be indicated in the invitation in such detail that those entitled to vote can form their position on the topics to be discussed before the general meeting, prepare for the decision and make appropriate decisions in the interests of the company at the moment of the general meeting.[8]

There are many examples in judicial practice when the convening of a general meeting is not considered lawful by the judicial forum if the agenda is determined in such a general, superficial way that it cannot be determined from it with average attention and interpretation.[9]

As one of the decisions of the Court of Appeal of Szeged points out, the agenda only sets the framework for the meeting of the supreme body, reflecting the issues that the members can discuss and decide at the meeting. Therefore, each item on the agenda may not contain all the details. The aim of Civil Code Section 3:17, para. (3) is not for the shareholders to arrive at the meeting of the supreme body with a position that has been finally established on all issues, without any doubt, since the essence of the general meeting is to discuss the issues and form their opinion there, but to come to the general meeting with sufficient basic training and information, they can formulate any further - relevant - questions, thus helping to make decisions.[10]

An improperly convened meeting of the decision-making body may be held only if all those entitled to participate are present at the meeting and unanimously agree to hold the meeting [CC Section 3:17, para. (5)]. In connection with holding an improperly convened meeting, it is important that the right to information of the person entitled to participate, in this case the shareholder, is not violated. In our opinion, the shareholder may also decide that, in the absence of prior information, he does not wish to participate in the resolution of the irregularly convened meeting, but agrees to hold it. A shareholder may also decide to agree to hold a meeting that has not been duly convened, to vote on matters that are clear and undisputed to him or her, and to abstain or vote on matters that are not obvious and potentially controversial. A decision may be taken at a meeting of the decision-making body only on an item on the agenda which has been duly communicated. However, if all those entitled to participate are present at the meeting of the decision-making body, a decision may be made on issues not included in the agenda, provided that the persons entitled to participate unanimously agree to discuss it [CC Section 3:17, para (6)]. This regulation is intended to facilitate the operation of the company.[11]

The regulations regarding legal persons of the Civil Code Section 3:17, para. (3) is completed by Section 3:258 with the provision on the obligation for general information of shareholders. The paragraph (1) of the secondly cited Section stipulates that the senior executives of a limited company are obliged to provide the shareholders with all the information necessary for the discussion of the items on the agenda. Civil Code Section 3:258, para. (1) does not specify exactly what information the board of directors should provide to shareholders, but it is clear that informing shareholders relates to the items on the agenda of the general meeting. Shareholders

[8] Kisfaludi 2014, 226.
[9] See: Kúria Pfv.21491/2016/5 [The Curia of Hungary], Szegedi Ítélőtábla Pf.21252/2016/3 [Court of Appeal of Szeged], Fővárosi Ítélőtábla 16.Gf.40.695/2009/7 [Budapest Court of Appeal].
[10] Szegedi Ítélőtábla Pf.21185/2015/8. [Court of Appeal of Szeged].
[11] Papp 2014, 406.

may request to be briefed on the agenda in a written request at least 8 days before the date of the general meeting. The response containing the information must be received by the shareholders at least 3 days before the general meeting. Section 3:258 does not contain a requirement regarding the form of the reply, but it may be inferred from the phrasing that it must be given in writing. It is important to mention that the shareholder right regulated in this § can only be exercised in connection with the matters set out in the agenda items of the general meeting. If the Board of Directors considers that the information provided in the request for information is not related to the items on the agenda of the general meeting, it may refuse to respond.[12] In our opinion, the 8-day deadline can only apply to a written request for information and may not restrict the exercise of the shareholder's rights set forth in Section 3:257 of the Civil Code to be informed at the general meeting. Thus, if the shareholder failed to request written information at least 8 days prior to the general meeting, he may do so at the general meeting itself. In our view, the subject matter of a request for information at a general meeting is not limited by law, so any question that could have been asked in advance and has not been formulated in advance for any objective or subjective reason may be asked in advance.

Section 3:258, para. (2) stipulates the right of information related to the report of the senior officials according to the Accounting Act. The Board of Directors and the Supervisory Board shall disclose the relevant information of the report to the shareholders at least 15 days prior to the General Meeting. It can be concluded from the wording of the second paragraph that the information may be provided earlier, however, a shorter deadline may not be prescribed by the Articles of Association. The Civil Code does not specify what constitutes substantial information in relation to the financial statements or the report of the board of directors / supervisory board, nor does it clarify how that information should be made available to shareholders. In our opinion, the manner of disclosing the relevant information should be stated in the Articles of Association of the company limited by shares, however, if the shareholders have failed to do so, the regulations for sending the invitation to the general meeting shall apply.

The Civil Code Section 3:272 contains special provisions for public limited companies in connection with the announcement of the invitation to the general meeting and its content. A separate provision for a public limited company is needed because, due to the larger number of shareholders, the shareholder's right to information is much more likely to be violated. The method of sending an invitation to the general meeting is not discussed in this paper, however, with regard to the content of the invitation, it is important to mention that it must include the conditions for exercising the right to supplement the agenda and the place where the original and full texts of the draft resolutions and documents to be submitted to the general meeting are available. Among other things, the company must publish on its website the proposals related to the matters on the agenda, the relevant reports of the Supervisory Board and the proposed resolutions. At the request of shareholders, the materials of the general meeting to be published shall be sent to them electronically at the same time as the disclosure. The purpose of the regulations is to facilitate communication, which is more difficult for public limited companies due to the large number of shareholders, and to ensure the exercise of the shareholder's right to information.

The statutes of a public limited company may not restrict or exclude the shareholder's right to information. The statutes' regulations regarding this is to be considered void. The Section 3:258, para. (3) however does not state what happens in case if the Board of Directors discloses information from shareholders related to the items on the agenda of the General Meeting with reference to Section 3:23, para. (2) of the violation of business secrets and economic interests of

[12] Kisfaludi 2014, 465.

the company limited by shares. In such a case, if the shareholder considers the refusal to provide information to be unreasonable, he/she may request the court of registration to oblige the legal person to provide the information. At the general meeting, the shareholder is entitled to request information regarding what was said at the general meeting, if he/she did not request or receive adequate information on the issues to be discussed before the general meeting, or needs further information to resolve certain issues. Although we agree that the right to enlightment stated in Civil Code Section 3:257 is not the same as the right to information in Section 3:258 para. (1), given that in the first case the information must be requested at the general meeting, while in the second case the briefing takes place several days before the general meeting. We believe that the request for information could be with the same content in both cases, as I have already explained, the shareholder may also request information at the general meeting on the issues listed on the agenda and to be discussed. Of course, the Articles of Association of a public limited company may contain an *expressis verbis* provision for this right, but in the absence of this, the right to information at the general meeting of shareholders may not be infringed either.[13] However, a request for information may relate to what has been said at the general meeting, any new information on the agenda or new items on the agenda of the general meeting.

3.2. Romanian Company Law Regulations

Following the 2006 amendment of the Romanian Companies Act Article 117^2 was added, the first paragraph of which takes over the provisions of Article 184 of the previous version of the Act and on the other hand it includes the OECD's Corporate Governance Recommendations.[14] Prior to the 2006 amendment, Article 184 of the Companies Act provided that the company's annual accounts, reports of senior executives and auditors should be deposited at the company's registered office or branches within 15 days prior to the general meeting for shareholders to inspect. Shareholders were able to request copies of the annual report and the reports of senior executives and auditors at their own expense.

These provisions have been taken over in Article 117^2 (1) with some amendments and additions. The amendments include that the company's annual accounts, senior executives (board of directors, supervisory board), auditors' reports and dividend proposals should be deposited at the company's registered office from the moment the general meeting is convened. Prior to the 2006 amendment to the Companies Act, the wording of the Act *expressis verbis* provided that shareholders had 15 days prior to the general meeting to exercise their right of access to the file. On the other hand, Article 117^2, which was inserted into the law after the amendment, does not provide for this, only that the documents listed above may be viewed by shareholders at the company's registered office from the moment the general meeting is convened and the company is obliged to provide a copy of the documents. So the question is what counts as the moment of convening a general meeting? In order to answer this question, we need to examine the legal provisions for convening a general meeting. It can be read from the provisions of the Companies Act that the general meeting cannot be held earlier than 30 days after the publication of the invitation in the Official Gazette, so the shareholder has 30 days from the publication of the invitation to inspect the company's official documents listed by law. Of course, the date of the general meeting in the invitation published in the Official Gazette may also be more than 30 days.

[13] Vezekényi 2014, 809.
[14] Cărpenaru–Piperea–David 2014, 390.

In this case, the company must grant shareholders a right of access to the file for the entire period between the appearance and the holding of the general meeting.

The invitation to the general meeting may also be sent to the shareholders by registered mail (via post) or, if the company's Articles of Association allow it, by e-mail with a qualified electronic signature, to the e-mail address provided for this purpose. In this case, in our opinion, the moment of receipt of the letter or receipt of the e-mail in the account is considered to be the moment the invitation takes effect. If the company has its own website, in order for shareholders to have free access to information, the invitation to the general meeting but also the agenda items supplemented at a subsequent shareholder request, the annual financial statements, the reports of senior executives and auditors must also be published on the company's website. In this case, the publication of the invitation on the website constitutes the moment of convening, even if the invitation has not yet been published in the Official Gazette or the shareholder has not yet received the invitation to the general meeting by registered mail or electronically.

Different views have been expressed in the literature regarding what exactly counts as the moment of convening the general meeting, from when the shareholder can exercise the right of access to the file. According to some opinions, which we ourselves agree with and have already been described previously in this paper, the moment of convening is the date when the shareholders were notified of the holding of the general meeting in the manner prescribed by the Companies Act or the Articles of Association.[15] According to this position, the moment of convening is the publication of the notice of the general meeting in the Official Gazette or the receipt of the registered letter with invitation or the receipt of an e-mail. A contrary opinion states that the sending of a notice of convocation for publication, the sending of a registered letter or the sending of an e-mail is already considered the moment of the summons.[16]

Article 117^2 para. (3) of the Romanian Companies Act allows all shareholders, regardless of the amount of their financial contribution, to address issues related to the operation of the company to the company's senior executives before the general meeting is held, but after its convening. The questions may relate to both past and future operations.[17] Questions must be formulated in writing and forwarded to senior executives, who are required to answer questions at the general meeting. The Companies Act does not require senior executives to respond in writing or orally to questions asked by shareholders. In our opinion, the answer can also be given orally in the framework of the general meeting, given that the minutes of the general meeting are drawn up, which the shareholder can later view and request a copy with reference to his right to information. The questions asked may also highlight issues that are not included in the agenda items detailed in the invitation to the general meeting.

Unless otherwise provided in the company's memorandum and Articles of Association, the company's senior executives may publish their answers on the company's website and the information so published shall be deemed to be a response. Of course, there is nothing to prevent a shareholder from asking a question again at the general meeting if it is not exhaustive for the answer posted on the website. The shareholder may explicitly request a written answer to his/her questions at the general meeting. This is especially justified in cases where, due to the complexity of the issue at hand, the company's senior executives are unable to provide an immediate answer at the general meeting. Senior executives may refuse to respond to the general meeting only if it would seriously harm the interests of the company. In such a case, senior executives may invoke

[15] Schiau–Prescure 2009, 356.
[16] Cărpenaru–Piperea–David 2014, 392.
[17] Duțescu 2010, 104.

Article 144[1] para. (5) of the Companies Act, which prohibits members of the board of directors from disclosing confidential information and trade secrets about the company.

The legislature did not impose a sanction for violating the right to information, but in Romanian case law we find many examples of a shareholder basing his action for invalidity on a resolution of the general meeting on Article 117[2] para. (3) of the Companies Act. The development of the case law was also defined in Article 135 of the Companies Act prior to the 2006 amendment.[18] Pursuant to the first paragraph of the repealed provision, shareholders had the right to request information on the company's operations, financial and economic situation from the general meeting between the general meetings, but not more than twice during the financial year. If the company's board of directors did not comply with the shareholder's request within 15 days of filing the shareholders' request for information, the shareholders could apply to the competent judicial authority, which could oblige the company to pay a certain daily fee for the delay to the requesting shareholders. We can see that under the repealed provision, the judicial authority could not oblige the company to provide the information requested by the shareholders, however, the fine imposed on the company could have prompted it to provide the requested information.

According to some interpretations in the Romanian legal literature, in the repealed Article 135 of the Companies Act, the legislator deliberately used the plural shareholder designation, thus inclining shareholders to address their issues in an organized and joint manner rather than individually to the company's senior executives. On the basis of this interpretation, the company could also have rejected the shareholder's request for information on the grounds that they could no longer exercise their right under Article 135, given that the two opportunities for information had been exhausted in the year in question.[19] In our view, the legislature did not intend to restrict the shareholders' right to information and the interpretation that emerged stems only from the superficial and often inconsistent wording of the text of the law. In the wording of Article 117[2] para. (3) of the Companies Act 2006, the legislature already cautiously states when it explicitly allows all shareholders, regardless of the level of their contribution, to hold before the general meeting address issues related to the operation of the company to senior executives of the company.

As mentioned above, the legislature did not impose a sanction for violating the right to information, but it is a criminal offense under Article 271 of the Companies Act and punishable by six months to three years in prison for the founder, manager, managing director, auditor or board member, as far as he/she provides shareholders with inaccurate information about the financial and economic situation of the company in bad faith, in order to obscure the real situation of the company.[20]

The publication of the invitation to the general meeting in the Official Gazette of Romania serves to inform the shareholders. The invitation shall state the place and time of the meeting and shall include the items on the agenda of the general meeting. Different views were expressed in the literature as well as in the case law on the level of detail in which the invitation should describe the items on the agenda. In our opinion, the provisions of the Companies Act only state that the items of the agenda to be discussed must be clearly and unambiguously indicated in the invitation to the general meeting, however, the law does not require a detailed description of these. The decison no. 2096/09.01.2012. of the Bucharest Court of Appeal supports this position by adding that it is not enough for the invitation to the general meeting to simply list the items on the agenda,

[18] Act 441 of 2006 repealed Article 135.
[19] Cărpenaru–David–Predoiu–Piperea 2002, 307.; Duțescu 2010, 104.
[20] Tița-Nicolescu 2018, 150.

but also to explain them in order to provide effective and prior information. The interests of minority shareholders are protected by a provision that allows shareholders representing individually or jointly at least 5% of the share capital to supplement the agenda items.

4. The Constant and Continuous information of the Shareholder

4.1. Hungarian Company Law Regulations

As stated in the Explanatory Memorandum of Hungarian Civil Code, there is an information asymmetry between the senior executives of the legal person and the members of the company, in this case the shareholders, the senior executives of the joint stock company have more information or more accurate information than the other shareholders.[21] This is because senior executives have regular access to information as a result of their activities, while shareholders, unless they are members of the company's management, do not necessarily have the information to make strategic decisions and control management.

a) Access to Documents and Protection of Business Secrets

As already mentioned previously, the right to information and clarification cannot be limited or excluded by the Articles of Association of a company limited by shares. Information may be disclaimed only in cases stated in the Civil Code Section 3:23, if the legal person would violate a trade secret, if the person requesting the information abuses his / her right, or if he / she does not make a declaration of confidentiality despite the invitation. According to Section 3:23, the senior official is obliged to provide the members with information about the legal entity and to also provide them with access to the documents and records concerning the legal entity.[22]

Access to documents may be tied to the shareholder's written declaration of confidentiality or it may be refused by senior executives, if it would violate the company's business secrets, if the person requesting the information abuses his right or if the shareholder does not make a declaration of confidentiality despite the invitation. If the shareholder considers the refusal to provide information to be unjustified, the Civil Code shall apply Section 3:23, para. (2), the registrar may request the court to oblige the legal person to provide the information. The court of registration has jurisdiction to conduct non-litigious legality supervision proceedings.[23] In legal proceedings, a shareholder may request the enforcement of his right to information only if a body of the company (board of directors, supervisory board) has made a board decision refusing the request for access to the file.[24] This position is consolidated by the Court of Appeal of Győr, which upheld the decision that in the case of an application for access to documents the court of registration has no jurisdiction to adjudicate it only int hat case if the company's bodies have decided to exclude access to documents, refusing to grant access.[25]

According to the case law, the right of access to documents is a fundamental membership right and a means for the shareholder to control the lawful operation of the company and the

[21] Bill No. T/7971. on the Civil Code
[22] Any shareholder shall be entitled to request a copy or an extract of the minutes of general meetings from the board of directors [CC Section 3:278, para. (5)].
[23] BH 2010.12.550: Legf.Bír. Gfv.X.30.013/2010. [Supreme Court of Hungary].
[24] Varga 2007, 4-7.
[25] Cgtf. IV. 25 335/2016/2 Győri Ítélőtábla [Court of Appeal of Győr].

management. That is why that right cannot be precluded by reference to business secrets alone. Of course, the information and data obtained by enforcing the law must be treated as a trade secret by the shareholder.[26] According to a similar view, disclosure of information covered by business secrecy by a member (shareholder) does not constitute disclosure of the information or disclosure by an unauthorized person. In accordance with established judicial practice, in our view, the right of access to documents, as one of the fundamental rights of membership, cannot be limited to a shareholder by reference to the protection of business secrets. The obligation to maintain business secrecy applies not only to the company's senior executives, but also to the company's members / shareholders. In the event of a breach of this obligation, the person required to maintain secrecy shall comply with the provisions of Act LIV of 2018 on the protection of trade secrets and may be subject to the sanctions specified in the law.

b) The Share Register and the Right to Information

The board of directors company limited by shares is required to keep a share register of its shareholders which is accessible to anyone [CC Sections 3:245-248]. The share register is, on the one hand, the foundation of the exercise of shareholder rights, since its entry is a precondition for the exercise of membership rights,[27] and, on the other hand, it serves to inform the public. One of the individual rights of a shareholder is to ask the head of the share register to be entered in the share register. As a general rule, entry cannot be refused. Entry in the share register is not mandatory for the shareholder, it is only a legal option. However, at the request of the shareholder, the head of the share register is obliged to delete the shareholder from the share register immediately.[28] According to the Civil Code Section 3:246, para. (4) the data deleted from the share register must remain identifiable.

The share register is a public register open to everyone, the function of which is to identify and get to know the shareholder registered in the share register. The rules concerning the disclosure of the share register and access by third parties are mandatory, they cannot be legally deviated from in the Articles of Association. There is no legal interest in accessing the information in the share register, access to the share register must be provided without any probability of legal interest.[29]

The share register provides information on the one hand about the company limited by shares and on the other hand about who how many shares and what kind of shares has.[30] Another important function of the share register is that the shareholder can exercise his shareholder rights against the company, including the right to information and access to documents, only if he is registered in the share register. Of course, the non-entry in the share register does not affect the shareholder's right of ownership over the share, and thus the right to transfer the shares.

The share register is kept by the board of directors of the company [CC Section 3:245, para. (3)], but they may instruct a clearing house, central securities depository, investment firm, financial institution, lawyer or auditor to keep the share register. The permanent auditor of the company may not be instructed to keep the share register. If the share register manager is a foreign resident, access to the share register must also be provided at the registered office of company limited by

[26] ÍH 2004.144: Fővárosi Ítélőtábla [Budapest Court of Appeal] 16. Cgf. 44.281/2004/2.
[27] Veress 2019, 206.
[28] Papp 2011, 490-491.
[29] BH 2017.4.124: Kúria [The Curia of Hungary] Gfv. VII. 30.112/2016.
[30] Kisfaludi–Szabó 2008, 1150.

shares or at a site (office) located in the same settlement as the registered office of the company.[31] In the case of a public limited company, the fact of the order, the details of the trustee and the information on access must also be published on the company's website. It is also important from the point of view of the right of information that if the data recorded in the issued share or in the share register change, these will be modified by the management.

Disclosure of the information contained in the share register means that it can be inspected by anyone, be it a shareholder of the company limited by shares or an outside third party. However, a copy of the data in the share register can only be requested by the person for whom the share register contains existing or deleted data, ie only by a person who was or is a shareholder of the company and has applied for entry in the share register. The Civil Code Section 3:247 follows from the provisions of para. (2) that a shareholder who has not requested to be entered in the share register does not have the right to request copies because the share register does not contain information about such a shareholder. The right of access to the share register cannot be denied on the grounds that it would violate the company's business secrets, so the Section 3:23, para. (2) is not applicable in this case.[32]

The applicant may request a copy only of the personal part of the share register. The public limited company or the person entrusted with the management of the share register must provide access to it at all times during its working hours at its registered office. A copy of the book of events may be requested from the manager of the share register, who must issue it to the holder free of charge within five days of the request. During the inspection of the share register, the company limited by shares is obliged to inform the inspector (shareholder) if it has initiated an ownership matching to keep the share register. However, if the share register already contains the details of the shareholder matching, the manager of the share register is obliged to inform the insider about the record date of the last shareholder matching.[33]

c) Minutes of the General Meeting and Right to Information

Minutes shall be drawn up of the general meetings of the company limited by shares and the resolutions passed there [CC Sections 3:278-279], signed by the secretary of the minutes and the chairman of the general meeting. The board of directors of the public limited company is obliged to place and keep the minutes of the general meeting and the attendance sheet of the general meeting among its own documents. If the Articles of Association of the company limited by shares allow for decision-making without holding a meeting, the shareholders shall vote in writing. Of course, no minutes will be drawn up of the general meeting in such a case, but the board of directors is obliged to notify the shareholders of the result of the vote. The result of the vote will be notified to all shareholders listed in the share register, whether or not they attended the general meeting. The Civil Code does not specify how the notification may be made, but in our opinion this issue can be settled in the articles of association of the joint stock company.

In the case of a conference general meeting, what has been said and the decisions taken must be recorded in such a way that they can be verified later. If a record has been made of what was said at the general meeting, the minutes shall also be prepared on the basis of the record, which shall be certified by the board of directors.

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[31] Government Decree No. 67/2014. (III. 13.) § 1.
[32] Kisfaludi–Szabó 2008, 1156.
[33] Government Decree No. 67/2014. (III. 13.) § 4. para. (2)

Any shareholder who does not participate in the general meeting may request a copy of the minutes meeting or an extract containing a part of the minutes from the board of directors. The Civil Code Section 3:278, para. (4) serves to inform shareholders and third parties, according to which the board of directors of a public limited company must submit the minutes of the general meeting and the attendance form to the registry court within thirty days after the end of the general meeting. This provision in Act IV of 2006 on business associations Section 238, para. (3) required all public limited companies, regardless of their form of operation, to create the possibility for the company to submit only a certified copy of the extract from the minutes and the attendance form to the court of registration with reference to the protection of business secrets. The Civil Code has now retained this requirement only for public limited companies, with the modification that the public limited company is required to submit the minutes of the general meeting, thus eliminating the possibility to submit an extract.[34] Of course, a private limited company is also obliged to keep the minutes of the general meeting and submit them to the court of registration in the procedure for amending the register.[35] The Civil Code Section 3:279 states that a public limited company is obliged to publish the resolutions passed at the general meeting. The method of disclosure is not regulated by law, however, it is clear that the decision can be published at least on the website of the joint stock company. As we can see, in the case of a public limited company, the range of persons entitled to information is wider than the shareholders of the company. In our view, by extending the scope of beneficiaries, the legislator intended to ensure capital market transparency, because only detailed information of investors can ensure the proper and efficient functioning of the market.

d) Changes in the Status of the Company Limited by Shares and the Right to Information

The shareholder has the right to information and access to document also in the case when the company limited by shares decides on a transformation, merger or division. Regarding changes in the status of legal entities and companies, the Civil Code and Act CLXXVI of 2013[36] contains provisions. When drafting the provisions regarding the status changes, the legislative took into account Council Directives 82/891/EEC and 89/666/EEC and Directives of the Europeean Parliament and of the Council 2005/56/EC, 2009/101/EC, 2011/35/EU and 2012/30/EU, which have since been repealed by Directive 2017/1132.

The Civil Code places among its general rules applicable to legal persons the general provisions on the transformation, merger or division of legal persons [CC Sections 3:39-47]. Here we also find regulations on the mandatory disclosure of members (shareholders) of a legal entity. The change of status is decided by a resolution of the members or founders (shareholders) of the legal entity (joint stock company). Following the decision, the management (board of directors) of the legal entity is obliged to prepare a plan containing the draft balance sheet corresponding to the decided change of status so that the members or founders (shareholders) of the legal entity make a well-founded and serious final decision. on the change of status.[37] The management is obliged to communicate the completed draft balance sheet to the members or founders (shareholders).

The Act CLXXVI of 2013 under the common rules on changes in the status of legal persons, the decision-making body of a legal person decides on the change of status twice (the

[34] Gál 2018, 392.
[35] Kisfaludi 2014, 488.
[36] Act CLXXVI of 2013 on the Reorganisation, Merger and Demerger of Legal Persons.
[37] Sárközy 1998, 193.

two-seat procedure is the rule). First, the decision-making body (general meeting) of the legal person (company limited by shares) determines whether the members of the legal person agree to the change of status on the basis of a proposal from the management (board of directors) of the legal person. If the legal person has a supervisory board, the supervisory board shall also give an opinion on the proposal prior to the decision of the decision-making body. If the members (shareholders) do not agree with the intention to transform, it will become pointless to discuss the detailed issues related to the further change of status.[38] However, if they agree to the transformation, merger or division of the legal entity, the management will prepare a plan for the change of status, which it will communicate to the members (shareholders) in writing. Informing the members and thoroughly getting to know the plan is necessary in order for a final decision on the change of status to be made at the meeting of the decision-making body at the second decision-making [Act CLXXVI of 2013, Sections 1-11].

In the case of a merger of legal entities, after the first meeting of the members of the legal entities affected by the merger, the management is obliged to provide all information related to the merger. As part of the draft terms of merger and division, a contract of merger or division shall be drawn up and communicated to the members of the legal person in writing together with the plan. Following the final decision on the merger or division, the legal entity is obliged to initiate the publication of a notice to the Company Gazette within eight days of the decision, which must be published in two consecutive issues.

In the event of a merger or division of public limited companies, the management of the public limited companies has additional obligations. At the same time as drawing up the merger or division agreement, they must draw up a written report justifying the need for the merger or division and the share exchange ratio, explaining the legal and economic aspects. A complete or abstract copy of the documents available to the shareholders shall be prepared at the request of the shareholder, at the expense of the joint stock company. The management is also obliged to inform the shareholders at the general meeting if there has been a significant change in the company's assets between the preparation of the merger or division plan and the date of its approval by the general meeting [Act CLXXVI of 2013, Section 24, paras. (2)-(3)]. The application of Section 24, para. (2) of the Act is complicated by the fact that it is not clear from the text of the act what the legislator means by a document available to the shareholder. In this case, the general rules on access to documents in the Civil Code and judicial practice apply.[39]

The public limited company shall submit the plan, the draft contract, the written report prepared by the senior executives and the auditor's report to the court of registration of the merging limited liability company or the demerging limited liability company thirty days before the general meeting approving the merger or division agreement. With this provision, the law ensures access to information for shareholders on the one hand and creditors on the other.[40]

The companies limited by shares participating in the merger are obliged to ensure the shareholders' right of access to the file. Therefore, at least thirty days prior to the second general meeting deciding on the merger, each shareholder may inspect the merger plan, the content of the merging companies' accounts for the last three years, the written report of the management and the auditor's report at the registered office. Shareholders of merging companies may also inspect the records of a company of which they are not shareholders. At the request of the shareholder, he shall make a copy of all the documents available to him or of each of the documents specified by

[38] Bakos 2011, 117.
[39] Adorján–Gál 2010, 175-176.
[40] Bakos 2011, 138.

the shareholder at the expense of the joint stock company. If a shareholder requests the sending of documents electronically or consents to the sending of documents electronically, the documents shall be sent to the electronic address provided by him [Act CLXXVI of 2013, Section 25, paras. (1)-(3)]. In our view, the right of access to the file of the shareholders of the merging company cannot be denied by reference to business secrets. However, if the company limited by shares provides free access to the documents on its website at least thirty days before the date of the general meeting approving the merger agreement and at least until the close of the general meeting, it is exemt of the obligations contained in Section 25, paras. (1)-(3) of the Act CLXXVI. In the case of publication on the website, the company must ensure that the documents can be downloaded and printed from the website. However, one must continue to have access to the documents at the company's registered office [Act CLXXVI of 2013, Section 25, para. (4)].

e) Trade Register and the Right to Information

In conformity with the introductory provisions of Act V of 2006 on Public Company Information, Company Registration and Windig-up Proceedings, the purpose of the Law is to establish the procedure for founding and registering enterprises and the constitutional rights of entrepreneurs, security of trade, creditors' interests or other public interests to ensure full accessibility of the data in the public register of companies, directly or electronically. The tasks of the court of registration are listed exhaustively in the law, which include the obligation to provide information on company documents and company register data.

The purpose of the company register is to make the registered company data available to the public, so that anyone (including the shareholder of the company limited by shares) can view it without proving his interest.[41] Existing and deleted company register data and company documents are public. The public company information is provided by the Court of Company Registration, the Company Information Service and the publication in the Company Gazette [Act V of 2006, Section 10, para. (1) and Section 11]. In the Court of Registration, anyone can view the company documents free of charge and make a note of them. A copy of the company register, a company statement or a company certificate can be requested. The copy of the company certifies all existing and deleted data of the register of companies, the extract of the company certifies the existing data of the register of companies, and the company certificate, depending on the application, authentically certifies some existing or deleted data of the register of companies. The deleted data must remain identifiable in the company register [Act V of 2006, Section 12, para. (1)].

4.2. Romanian Company Law Regulations

a) Share Register, Resolution Book and the Right to Information

Pursuant to the first paragraph Article 177 of the Companies Act, a public limited company is required to keep various records in connection with the operation and activities of the company. Thus, the directors or the board of directors is required to keep a register of shareholders, a book of general meetings and resolutions passed thereon, and a record of the bonds issued. The share

[41] Sárközy 2014, 261.

register must indicate the surname and last name, ID number, residence (in the case of an individual), name and registered office (in the case of a legal person) of the shareholders, as well as the payments made for the shares. The Romanian Companies Act also allows the share register to be kept by an authorized person (Depozitarul Central), but the law also stipulates that this can only be a legal entity authorized for this purpose. The share register is public, so not only shareholders but also third parties can gain insight into it. Furthermore, the share register is also important from the point of view that the transfer of shares and the exercise of the rights conferred by a share are only possible if it has also been transferred to the share register.[42]

The book of general meetings and resolutions is the record of the minutes of the meetings and deliberations of the general meeting. The minutes shall include the resolutions passed at the general meeting, the number of votes cast, possible abstentions and dissenting opinions on the resolutions. Similar to the book of general meetings and resolutions, the minutes of the meetings of the senior executives of the company limited by shares and the decisions made there are prepared and then they are entered in a single register / book. Decisions must be recorded in order to be valid and enforceable.

Pursuant to Article 131, para. (5) of the Act, a public limited company is also obliged to inform the shareholder of the resolutions passed at the general meeting and the result of the vote at the request of an individual shareholder. If the company has its own website, the results of the general meeting voting must also be published on this website within 15 days from the date of the general meeting. The provision mainly serves the interests of shareholders and provides adequate protection for those who did not attend the general meeting of the company limited by shares. The text of the law does not specify how the information is to be provided, but this can be deduced from Article 178, which requires senior executives to make copies of the share register, the book of general meetings and resolutions issued at the request and expense of shareholders and make them available to them. The resolutions passed at the general meeting must be submitted to the court of registration so that they can be published in Annex IV to the Official Gazette. Therefore resolutions of the general meeting can only be enforced after this step against third parties. There are 15 days to submit resolutions to the general meeting, however, the wording of the law is inaccurate and does not clarify when the 15-day period begins to run. In our opinion, the time limit begins to run when the person chairing the general meeting and the secretary of the general meeting have authenticated the minutes by signing them. In our view, this moment coincides with the end of the general meeting, when the minutes of the general meeting must also be prepared. There is also a position in the literature that the 15-day deadline starts after the closing of the general meeting, however, the minutes of the general meeting can be prepared within the available deadline.[43]

The law does not require a public limited company to present minutes of meetings and decisions of senior executives at the request of a shareholder.[44] Of course, this does not mean that a shareholder cannot request and receive access to these minutes. They may do so, for example, in accordance with the principles and procedure laid down in the company's statutes. Unless the Articles of Association of the public limited company provide for this and the senior executives deny the shareholder the right of access to the file on the grounds that the Companies Act does not *expressis verbis* instruct senior executives to present minutes of their meetings and decisions at the shareholder's individual request, the general meeting may instruct senior executives to present the

[42] Duțescu 2010, 109.
[43] Duțescu 2010, 109.
[44] Catană 2007, 6.

requested minutes. There is also an example in the case law that, at the individual request of a shareholder, a court decision required the senior executives of a public limited company to present the minutes of the meetings and the decisions taken there.[45]

b) Changes in the Status of the Company Limited by Shares and the Right to Information

The shareholders' right to information is guaranteed by Article 244 of the Companies Act, which requires the company's senior executives to make the draft merger or division agreement available to shareholders at least one month before the date of the general meeting deciding on the draft terms of merger or division. The company's senior executives must also prepare a detailed written report explaining the legal and economic aspects of the draft merger / division agreement and the share exchange ratio. Article 244, para. (3) of the Act provides that the preparation of a written report is not obligatory if the shareholders of the companies involved in the merger / division agree to it unanimously. In addition to the draft contract and the accounts, the following must be made available to the shareholders: the annual accounts and annual business reports of the companies involved in the merger or division for the last three financial years; the auditor's report; if necessary, an interim report covering a date not earlier than the first day of the third month preceding the date of the draft terms of merger / division, if the last annual report relates to a financial year ending more than six months before that date; an expert examination of the draft terms of merger or division and a record of contracts not yet performed with a value of more than 10,000 lei.

If the company has its own website and has published the listed documents on its website, it is not obliged to make them available to shareholders at its registered office. However, regardless of the publication on the website, the company is obliged to make copies or extracts of the listed documents free of charge at the request of the shareholders and to make them available to the shareholders. With the approval of the shareholders, the information and copies of the documents may also be sent to the parties concerned by e-mail. However, if the documents relating to the merger or division can be downloaded from the website, the company is not obliged to send the required documents on paper or electronically at the shareholder's request.

c) Trade Register and Right to Information

Last but not least, shareholders can obtain information on the transactions recorded in the trade register relating to the company from the trade register kept by the National Trade Register Office (Oficiul Național al Registrului Comerțului). The trade register is publicly available under Article 4 of the Trade Register Act,[46] which governs it, and is therefore available not only to the company's shareholders but to everyone. The Registry shall provide, at the expense of the applicant, a certified copy of the entries in the Register and the documents submitted by a particular company, the information relating to the information contained in the Register, and shall issue certificates as to whether a particular document or transaction has been registered. Documents can also be requested and issued in person, by post and electronically.

Of course, the documents and transactions recorded in the trade register and the information stored there do not provide a complete view of the operation of a company. However,

[45] Cărpenaru–Piperea–David 2014, 626. Curtea de Apel Ploiești [Court of Appeal of Ploiești], *Decision No. 1270/2001* 2001, 248-251.
[46] Act no. 26/1990 – on the Trade Register.

the applicant may obtain important information from the company statement, request copies of the company's Articles of Association, amendments thereto, shareholders, senior executives or auditors.[47]

5. Conclusions

The shareholder has the right to information under both Hungarian and Romanian Company Law. According to both regulations, in addition to constant and continuous briefing, the shareholder has the right to be informed about the items on the agenda of the general meeting and to be informed about the report. While the Hungarian regulations provide the shareholders with information prior to the general meeting, regarding the items on the agenda of the general meeting [CC Section 3:258], the Romanian legislation also provides for the possibility for the shareholder to formulate questions to the company's senior executives in matters related to the company's operations, which are not included in the agenda, after the convening of the general meeting and before its holding. Questions must be sent in writing or by e-mail to senior executives, who will answer the questions previously formulated in the framework of the general meeting [Companies Act Article 117^2 para. (3)]. However, taking into account the Hungarian Civil Code Section 3:23, para. (1), it cannot be ruled out that a shareholder may request information in connection with matters not included in the invitation to the general meeting in the period after the convening of the general meeting and before its holding.

There is also a position in the Romanian literature that the right to ask questions belongs to the shareholder only in the period after the convening of the general meeting and before the general meeting. In our view, this position is not correct.[48] In our opinion, there is no legal impediment to the shareholder asking additional questions to the senior executives of the company during the general meeting in connection with the questions already asked in writing before the general meeting or new questions which occur during the meeting. We believe that when the law is amended, it would be reasonable to clarify this issue and supplement and clarify the text of the law.

Unlike the Romanian regulations, the Hungarian regulations *expressis verbis* provide for shareholders the right to be informed at the general meeting. Pursuant to Civil Code Section 3:257, the shareholder is entitled to request information at the general meeting, however, it no longer becomes clear from the relevant provision of § what the request for information may cover. According to one of the positions expressed in the literature, the shareholder may request further information only in connection with what has been said at the general meeting.[49] In our opinion, the subject of information and requests for information at the general meeting is not limited by law. As a result, the shareholder may ask the General Meeting any questions that he or she could have asked in advance. In our view, the difference between the two rules is not fundamental to the issues outlined above. In the two examined legal regulations, the different legal places, building on each other and complementing each other, result in similar solutions in both regulations.

In both Hungarian and Romanian company law, the rules for keeping the share register are given priority. This is due, on the one hand, to the fact that registration is a precondition for the exercise of membership rights[50] and, on the other hand, that the share register is intended to inform

[47] Duțescu 2010, 114-115.
[48] Schiau–Prescure 2009, 356.
[49] Vezekényi 2014, 809.
[50] Veress 2019. 206.

the public. Both company laws provide for the necessary data to be entered in the share register. With regard to the data to be reported, there is a difference in the fact that the Romanian legislation requires the indication of the personal identifier (personal number) of the natural person shareholder. The discrepancy does not appear to be significant, although in our view the inclusion of a personal identification number in a public register is unfortunate. The relevant company law rules in both states allow the share register to be maintained by an authorized person [CC Section 3:245, para. (3), Companies Act Article 180, para. (1)]

While according to the Hungarian regulations, a copy of the share register can only be requested by the person for whom the share register contains existing or deleted data, and the copy can only contain data concerning his / her person [CC Section 3:247, para. (2)], the Romanian legislation allows anyone to request copies of the ownership structure from the share register at their own expense. In our opinion, the Hungarian company law solution is the right one, according to which anyone can inspect the share register, but only the shareholder concerned can request a copy. According to the position expressed in the Hungarian legal literature, with which we ourselves agree, this is a "coherent rule, because the shareholder is not entitled to request a copy of the share register or any part of it, but only of the part concerning it." In our view, the shortcoming of the Romanian regulation is also that it does not provide for the subsequent identification of the data deleted from the share register, thus no asset is provided in the share register.

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