

LEGAL FRAMEWORK FOR DEVELOPMENT OF SMALL AND MEDIUM ENTERPRISES IN BULGARIA

RADOSTINA YULEVA - CHUCHULAYNA¹

Abstract

Changes in the world economy are a result of wider expansion of competition between companies based in different countries, including Bulgaria. This requires all parties, as well as individual enterprises, to adopt new strategies that allow them to develop competitive advantages through knowledge of innovation and the essence of small and medium - sized enterprises. In recent years, it has solidified the understanding that small and medium - sized enterprises are more flexible and adaptable than large organizations. Small and medium -sized enterprises have a new idea of a product, service or process, smaller costs and are faster than big business. Small companies usually strive with all the forces and means to enter the market and conquer a certain position. Sometimes large firms do not absorb inventions developed in their own scientific divisions because of the risk of getting an insufficiently high profit margin to cover the costs. In order to be more easily managed small businesses, managers should be familiar with the nature of the organization, its goals and motives, the market, as well as the legislation allowing all this to be in accordance with the law of Bulgaria. The formation of an appropriate economic and legislative environment for the effective functioning of small and medium - sized enterprises is a difficult and lengthy process for each country. Small and medium - sized enterprises are a key prerequisite for the existence of competition and working markets, and therefore for the overall economic development of a country. Not surprisingly the EU's business support policies focus precisely on supporting small and medium - sized enterprises – in this segment is the most turbulent entrepreneurial activity, there are creating the most new jobs and often they are a source of successful innovation. The main objective of this article is to clarify the nature and peculiarities of small and medium - sized enterprises, as well as the impact of Bulgaria's legislation on small businesses. The main research methods used in the development are content analysis, method of analysis and synthesis, intuitive and systematic approach.

Keywords: *small and medium - sized enterprises (SME's), competition, innovation, economy, legislation, regulatory frameworks*

JEL Codes: *H00, H19, H50, K00, M00*

Introduction

The semantic and logical notion of "enterprise" is deduced from the personality of the entrepreneur, who undertakes an initiative, invests capital, organizes the production unit (the enterprise) and assumes the entrepreneurial risk. In this case, it does not matter which sector of the holding (production, services or elsewhere) the entrepreneurial initiative is targeted. This suggests that as companies can be seen factories, factories, combinations, conglomerates and hotels, restaurants, cinemas, cafes, etc. Therefore, the criterion of entrepreneurship, resp. and to the enterprise is not the type of production and the industry, but the existence of a speculative element and the monetary value expression of the exchange. It is these two elements that are the most typical and specific signs of the enterprise. As an economic organism, the enterprise

¹ PhD Student in Departure "Management and Marketing" in Faculty of Economic, South-West University "Neofit Rilski", Blagoevgrad, Bulgaria, r.yuleva@gmail.com

is an evolutionary product of economic differentiation in the production-consumption system. In particular, the modern enterprise is the result of the historical process of separating the individual producer from its predecessor - the individual-consumer.

"For the public to exist, it must obtain and use a certain amount of goods. At first in the way of collecting, man satisfied his immediate elementary, mainly physiological needs. This process was too slow and lengthy. However, at a certain point in time, when the producer goes on the market with a surplus of manufactured products, the public production starts. Since then, production has been an intermediate unit, a process mediated by the exchange between man and nature. The production is not a one-time, sporadic act, but a continuous, dynamic process that can no longer be stopped and will continue in the future to the existence of civilization" (Skolev, 2010). Each production is carried out in a certain place. In the center of this place is the man with his means of work and the extracted from the nature substances, materials and forces. Very accurately and correctly Henry Ford says that nature has given man hands, feet and mind to manifest through them the blissful power of labor that transforms "states" to receive "values" (Ford, 1922). However, the productive forces in question have mainly two aspects:

- Firstly, some of them can be regarded as production conditions (terrain, buildings, labor, etc.);

- Secondly, the other elements represent the means of work. Such differentiation not only is not meaningless, but it is absolutely necessary, since the elements of each group give a corresponding impact on production and management in the enterprise.

To transform "statuses" most effectively into values, productive forces, resp. The factors of production must be primarily mobilized, matched, balanced and used in the most rational way for the specific conditions. The rational combination of production factors in space and time represents their organization, that is, the necessary complex of actions for the formation of a certain structure or system. However, each individual community covering a particular territory, technical equipment, office furniture, personnel, environment, etc., which is tasked with satisfying certain human rights, is already a distinct organization, i.e. a corporate system with a certain structure and objectives. In this case, the interest is precisely this aspect of the organization.

1. Characteristics of small and medium - sized enterprises (SME's)

The first more systematic studies and ideas pertaining to the enterprise, called then "private-economic" studies, date back to the epoch of the Renaissance and are mainly related to the development of Italian trade. They continued to dominate until the middle of the 18th c., when the concepts fell "under the influence of the cameralistic exercise for the management of the state and lordly organizations" (Dobrev, 1936, p. 17). "Micro, small and medium - sized enterprises are the engine of the European economy. They are a major source of jobs, create entrepreneurial spirit and innovation in the EU and are therefore vital to promoting competition and employment. The new definition of small and medium - sized enterprises, which entered into force on 1 January 2005, represents an important step towards a better business environment for them and is aimed at promoting entrepreneurship, investment and growth. This definition was made after extensive stakeholder consultations, proving that the hearing of small and medium-sized enterprises is the key to the successful implementation of the Lisbon Strategy goals" (EU, 2007, p.2).

The evolutionary development of the enterprise has historically been accompanied by the deepening of the differentiation in the forms and its gradual separation as a separate type of production unit. In addition, the main signs, principles of organization, objectives and functions performed have changed. Suffice it to say that, unlike the primary forms (the

household), where the aim is to meet more needs with the least possible resources, the main objective of the modern enterprise is reduced to making the maximum profit by Spending at least cost. In addition, in honors from the household, the main functions of today's enterprises are aimed at the creation and realization of exchange values (goods and services) to satisfy consumer and production needs outside the business unit, thereby putting individuals and businesses in a mutually reinforcing market. The designation of an enterprise as small or medium is carried out with the help of different indicators – which can be summarized in two large groups – quantitative and qualitative. Quantitative indicators give a better basis for comparisons and analysis, allowing the data to be provided in the different regions of the country, as well as for different time periods with a view to tracking changes in dynamics. The perception of an economic unit as an SME is directly linked to its independence.

The more significant signs that characterize the essence of the modern enterprise are the following (Scolev, 2010):

- Business organization;
- Financial - economic and managerial autonomy guaranteeing its economic freedom;
- Market links;
- Use of own and foreign means as capital of the enterprise;
- The existence of an entrepreneurial (business) risk;
- Striving for survival and profits, etc.

The foregoing shows that the notions of 'economic organization' and 'undertaking' should be distinguished, although it is too subtle. The difficulties in distinguishing between the two categories are due to links i.e. between them, dictated by the fact that they express the same object in different ways and from different sides of it. However, the term 'economic organization' is broader and general. It expresses in an indeterminate sense the totality of the tangible, intangible and human agents of any manufacturing and technical complex, regardless of its composition, structure or scale, in any sector of the national economy (agriculture, Industry, services, etc.) without identifying the specific initiative. Therefore, each business unit that is organized and manufactured is represented by its internal functional nature, technical - technological and resource - friendly assurance is a business organization.

Where the totality of the organized agents engages in the realization of a specific economic initiative (production), the economic organization acquires external formal identity and identification in the national holding, in the form of undertaking. In those circumstances, an industrial plant, a construction company, an insurance undertaking, an agro - enterprise, etc. can now be talked about. It is clear from the reasoning thus made that the undertaking is a narrower concept than the business organization, but the latter is a prerequisite. Ultimately, an enterprise can be defined as an external manifestation of the formal and legal separation of the business organization within the national economy.

The creation of small and medium - sized enterprises has long been one of the main milestones in the operation of the market economy in developed countries. The main reasons for government support are: from one part, their non - competitiveness in sourcing funding; the high administrative costs of complying with government requirements, including tax legislation; difficulties in gathering information about novelties; on the other hand, the reason that companies are much more flexible and dynamic than large firms and therefore support the overall growth of the economy (CED, 2001, p. 12).

The composition of the commercial enterprise includes rights in rem or contractual real rights/of use, of construction, servitudes (on movable or immovable property). This chamber also enters the possession, although it is not a subjective right in rem. The company also includes the real weights – a pledge and a mortgage. Another essential element of the enterprise is the obligation rights/receivables and payables/ and debts. They arise from contracts (sales,

vehicles, commissions, insurance, etc.), from unilateral transactions (check, promissory note/or non-contractual grounds/unjust enrichment). The company also includes personal collateral – warranty and guarantee, as well as the repayment deadlines. The composition of the commercial enterprise includes more rights and obligations from civil transactions (e.g. rental contract); administrative and financial obligations (fines, taxes, fees, insurance, etc.); rights and obligations under employment contracts.

The company may also include rights and obligations related to the objects of the so - called intellectual property (artistic and industrial) - works of science, art, literature, brands, utility models, inventions, industrial etc.

A specific place in the composition of the commercial enterprise occupies the right of a company. The company's composition includes not only ordinary rights but also legal expectations (e.g. rights under deferred conditions) and natural (degenerate) rights – those who have lost the possibility of state protection. The commercial establishment must not be equated with the commercial property, which is a set of rights and obligations of a direct value nature. The enterprise has a broader concept and includes the property.

Factual relations are defined as the most delicate and most valuable element of the commercial enterprise. They consist of specific internal organization of production and management, market position, clientele, trust in buyers, led accounting, etc. therefore, the factual relationship is not a legal relationship or a right. They have no economic and legal value outside the enterprise, but as part of it is an important pricing factor in transactions with a commercial enterprise. Fundamental attention from the factual relationship is paid to the clientele. It is not an element of the actual relationship of the trader, but it has a bearing on the commercial enterprise with a view to its formation and existence. The main activity is the conclusion of transactions and thus creates both rights and obligations and factual relations.

The elements of the composition of the commercial enterprise can be distinguished by property and non - material. Property elements have content that is directly valued in money and non-property elements do not have such content (e.g. the right to a company and a brand). Another division of the elements from the commercial enterprise is on stand-alone elements that can be transferred separately from the enterprise (e.g. proprietary rights) and non - standalone elements that can only be transferred together with the entity (e.g. law of a company). It is irrelevant that the classification of elements of the composition of the commercial establishment is essential and immaterial, since the same elements may have different meanings for individual undertakings. The commercial enterprise is a dynamic complex. The relationship between rights, obligations and factual relationships changes with regard to the change of trading activity.

2. Analysis of the legal framework for small and medium - sized enterprises

The legal framework for the development of small and medium - sized enterprises in Bulgaria is characterized by numerous laws and regulations regulating various aspects of their activities, as well as different spheres of economic activity in the country (CFD, 2001, p.16). The overall regulatory framework relevant to the small and medium - sized enterprises sector is characterized by inconsistencies, instability, sluggishness and complexity. The procedures in it are lengthy and complex, high tax fees, including large administration, etc. thanks to Bulgaria's entry into the European Union in 2007 a few years later stimulated small and medium - sized enterprises with different projects and financing for business, but it is not possible to remove some of the obstacles for SME's. The main difficulty of SME's is the relative high cost of complying with tax laws and other forms of government regulation, especially if they are involved in an international market. Nevertheless, the legislation is a necessary part to protect business and its environment, the state of health and the working

conditions of employees, to determine the necessary social security norms, to determine the minimum wages and working hours, etc. The legislation aims to create the conditions for building a favorable and stable institutional and economic environment for the creation and development of competitive small and medium - sized enterprises. Small and medium - sized enterprises are: micro, small enterprises and medium - sized enterprises.

- Micro - enterprises are small enterprises with an average list of staff of less than 10 people.

- Small enterprises are enterprises that: have an average number of staff of less than 50 people, and annual turnover up to 5 000000 BGN or the value of their fixed material activations up to 1 000000 BGN.

- Medium - sized enterprises are enterprises that: have an average number of staff of less than 250 people and have an annual turnover of up to 15 000000 BGN or the value of their fixed material activations up to 8 000000 BGN.

The organizations are described in detail and discussed in different legal regulations in the Commercial Law of Bulgaria. For example, pursuant to article 15 (1) of the commercial law of the Republic of Bulgaria, an entity as a set of rights, obligations and factual relationships may be transferred through a transaction (CL, 2010). With this definition, our legislature has adopted the so-called object theory. As a whole, the enterprise is a single object of ownership that belongs to the legal entity - the trader. There are many theories about the commercial enterprise:

- According to personification theory, the commercial enterprise is a separate (self - governed entity of law);

- The patrimony theory examines the commercial enterprise as a dependent target property – patrimonies;

- Anatomical theory - the commercial enterprise is a factual population, etc.

The commercial enterprise is an organizational and dynamic complex (assembly), not a mechanical sum of elements. For this reason, the value of the predevelopment generally, as a rule, significantly exceeds the sum of the values of the various elements. The right of ownership of the entity differs from the right of ownership over individual elements, which may belong to both the trader and another person. It is therefore a new right to property which is defined as a higher-ranking right/right of an organised property.

Depending on the functions and the objective pursued - whether it is profit or not - organisations are allocated to business (business) organizations and non-profit organizations. In this specification it is good to define the business organisation with the most common first definition as:

- Community, an organism where continuous movement is carried out, in which the resources ("states"), combined with the machines under the influence of labor, are transformed into values (products and services) satisfying the manifested human needs.

The business organization may be of a simplified form or a complex conglomerate. It depends on its content, its legal form and its organizational and technical structure. To put it another way, the business organization can be represented only by one plant, one factory, and even by a separate workshop (e.g. dry cleaning); on the other hand, it may cover a number of functionally differentiated units, divisions, branches, etc., which themselves may also constitute economic organizations. Business organizations can be public and private according to what ownership they are. Although the two types of organizations do not differ in the objects of the productive activity in a given sector and in the relationship of economic exchange, their status quo and role in the national economy differ significantly. The main differences are manifested except in terms of ownership, even in the organization, funding, some of the objectives, etc. Ultimately, the business organization can be more fully defined as:

- Production-economic complex (community), expressing the internal functional nature and content of the production unit through the rational combination (organization) of tangible, intangible assets, human resources and other elements of production and realization of goods and services.

However, this definition does not yet specify and does not represent, externally (within the national economy), the main production unit, but merely reflects its organization and feasibility to fulfill its functions. While the term 'economic organization' expresses only the internal functional nature and content of the main production unit, its formal manifestation and its legal identity in the aggregate national holding is expressed by enterprise. It appears to be the main cell in the national economic organism and subject to the current scientific direction, which requires a more precise clarification of its essence.

In theory and practice, different opinions are maintained on the number of commercial enterprises that a trader may own. According to one opinion, the trader can only have one enterprise. Another opinion is also supported, according to which the trader may have several undertakings. Support deserves the first opinion - the trader can carry out his business under one trade name (company). The commercial enterprise does not have a separate legal registration, only the entities of the commercial law – the traders.

Registration of the trader shall be deemed to be entered and the commercial enterprise. For this reason, the company simultaneously individualizes the trader in turnover and is an element of the commercial enterprise, i.e. it matters to both the legal entity and the legal entity. The company can be transferred only with the commercial enterprise, as it is mentioned in article 60, (1) in CL of Bulgaria.

Understanding that a trader can have several enterprises, proceeds from non-legal criteria - business and organizational autonomy of the various activities of the trader (e.g. workshop for soft drinks, factory for production, etc.). These activities can be carried out in different settlements, justifying the theory of separate commercial enterprises. The commercial enterprise is a legal category and is inextricably linked with the trader and its registration in the commercial register. The traders can only economically/not legal/owning several enterprises. This is the case where the trader registers several LTD. In this case, the economic owner is one, but the legal entities and objects multiply.

In art. 15, (1), the CL of Bulgaria, expressly provides for the possibility of transferring the commercial establishment. It follows that consideration is given to transactions in a contractual-property action: a contract for sale, a replacement, a donation, an acquisition in a commercial company, a will, a covenant, a partition, a donation or a partition - a will. In the argument of a stronger basis, transactions with a commercial enterprise which do not have a transfer effect are also permissible: a rental contract, a lease, a use. The transactions to be transferred are commercial, irrespective of their pecuniary or royalty - free nature. A trade is a transaction concluded by a trader which is linked to the occupation he pursues. It can be assumed that, when transferring a commercial undertaking, the transferor concludes the latter and the successor to his first commercial transaction. With the change of legal framework, the legislature has, at last, expressly designated the competent authority of the commercial company, which may adopt a decision to transfer the commercial undertaking, as well as the necessary majority and form of the decision. Article 15, (2) CL refers to art. 262, which designates the body (s), the majority and the format for deciding to convert the CL. To transfer the company to the partnership, the consent of all partners is required, given in writing with notary's certification of signatures, etc.

Article 15, (2) CL is an imperative rule. If the company contract or the statutes of commercial organization provide for another order, majority or form of acceptance of the decision to transfer the undertaking, the relevant clauses will be null and void. For the

application of article 15, (2) CL is irrelevant the type of the transfer transaction (sale, exchange, donation, acquisition in a commercial company, etc.) art. 15, (2) CL does not apply to non-transferable transactions (non-appropriable, non-transferable, only with bond action). These transactions may be concluded in the order laid down in the constituent instrument of the company concerned. When transferring the enterprise in article 15, (3), the liability of the expropriator is regulated for the liabilities in the transfer of the company. The expropriator is responsible for the debts jointly with the successor. With the changes in the legislation, this responsibility is "limited to the extent of the rights obtained".

The transfer of the undertaking should be entered in the commercial register. The registration rules have undergone several successive, substantive changes. In view of the most recent changes in the commercial legislation (in force since 01.10.1006) the transfer of the enterprise should be registered simultaneously in the case of the expropriator and the successor. This eliminates the requirement to observe a certain order when entering the transfer of the enterprise in cases where the seats of the transferor and the transferee are in the different courts. According to article 16a, (1), the successor to the transferee shall administer an undertaking separately for a period of 6 months. This period shall run from the date of entry of the transfer into the commercial register.

Art. 16a, (2) CL narrow the circle of creditors, which can benefit from the advantages of separate management. These are only creditors whose claims are not secured. Lenders with secured receivables have no protection under article 16a CL. No matter is the type of collateral - real or personal. The second limitation of the circle of creditors to which the separate management is applied is provided for in the event of their claims being incurred. According to article 16a, (2) CL these are only those creditors of the expropriator and the transferee whose claims arose before the date of the respective entry of the transfer. According to article 16a, (3) CL the members of the managing body of the transferee shall be jointly and severally liable to the creditors for the separate management. This responsibility is a tort.

Conclusion

Small business is that essential part and a kind of complex mechanism of the economy, which in an individual way it is possible to have a deficit in a wide range of social life areas. Despite the difficulties caused by the regulatory framework, small and medium-sized enterprises are able to exist. The commercial law must be renewed and changed to help to a greater extent the business, defend its positions and give more leeway.

Based on what has been said here, the following conclusions can be drawn for SME's and the legal framework in the country:

- Small and medium - sized enterprises are the largest source of new jobs and economic growth. To promote their development, it is of particular importance to improve the regulatory environment and to remove bureaucratic obstacles for entrepreneurship. Compared to large enterprises, small and medium business is much more affected by excessive regulation because it suffers much higher administrative costs calculated according to the number of employees.

- In this respect, the initiative to reduce the administrative burden of small and medium - sized enterprises was launched in 2006 and a specific action program was presented in January, which clearly identifies the problematic areas and presents specific proposals. The aim is to reduce the administrative burden by 25% by 2012. According to forecasts, this would lead to a 1.5% growth of EU GDP, amounting to 150 million. The Commission's efforts in this regard consist in reducing and simplifying existing legislation relevant to small and medium - sized enterprises, e.g. easing accounting rules, reducing the cost of international payments and simplifying customs procedures.

- Despite the steps to build a more effective institutional framework to support SME's, there are still problems arising from the lack of sufficiently effective program, insufficient business awareness of the functions, objectives and the tasks of State institutions in this field, as well as the existence of significant bureaucracy. The easing of regulatory regimes, the improvement of competition law and public procurement procedures, insolvency regulation, the resolution of commercial disputes, and the neutralization of corrupt practices have a positive impact on the business climate and environment in which SME's are directly working. Nevertheless, in this area, it is necessary to continue the measures, especially in the areas of regulatory regimes and administrative procedures, in order to accelerate, simplify and ensure greater transparency.

References

- Center for Economic Development. (2001). *Small and medium - sized enterprises and competitiveness*, prepress "Ran design", Sofia, print "Varna – print", Varna, p. 12, 16.
- Commercial Law*, last amended, No. 88 from 23.10.2018, Bulgaria.
- Daskalov, R. (1992). *Introduction to the sociology of Max Weber*. Publ. "St. K. Ohridski", Sofia.
- Dobrev, D. (1936). *Introduction to private - business science*, Sofia, p. 17.
- European Commission. (2007). *The new definition of small and medium - sized enterprises, publications for businesses and industry*, Available of European Communities, 2007 http://europa.eu.int/comm/enterprise/enterprise_policy/sme_definition/index_bg.htm.
- European Union Guide. (2019). www.europarl.europa.eu/factsheets/bg.
- Ford, H. (1922). *My Life and Work*. Garden City, Garden City Publishing Company.
- Sclev. (2010). *What is actually an enterprise?* Available article on: <https://skolev.wordpress.com/2010/07/03/kaka-e-predpriqtieto/>.
- The obligations of the companies reached 157 billion BGN*. At the beginning of 2010, available on: <http://www.bia-bg.com/1/1/MIW-gRW7I5WnIIWHUZK3YJS-c9O3IdOfMhKvYZe7gRK-UdOLU9OHUIKLgdaPIRmXct iP>.
- Vladimirov, G. (2001). *Is a well-functioning market economy built in Bulgaria?* In: The European dimension in the management and economy of countries in transition. Sofia University – St. "Kliment Ohridski", Faculty of Economics, ed. - Paradigm, p. 176-198.