

Diversification as a tool to increase energy security

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Abstract

The aim of this paper is to highlight the importance of diversification in the gas sector in Slovakia. We focus on defining the category of diversification, from the views we have received from foreign and domestic literature. The aim is to introduce individual approaches to the perception of energy security in its complexity. Its security affects all economic subsets at both transnational and national levels. Given the high capital intensity, it has become a problem not only for economic clusters but also for individual states. On a concrete example, we calculated the "price" of increasing security in the household sector under SR conditions.

Key words

diversification, energy security, price, capital intensity

JEL Classification: L0, O12, P3

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Introduction

Natural gas has a significant strategic position in the energy market and has been provided for a long time by European sources as well as by imports from Russia. Such a relatively stable situation has been disrupted by gas crises starting from 2004, 2006 to 2009 (Duleba, A. 2009). At that time, import-dependent countries have perceived the urgency of diversifying transport routes in order to reduce the risk of falling supplies or completely shutting them down, especially when are secured from only one source (Bhagwat, 2011). Issues of safety of gas supply have become very urgent not only in terms of their practical security, but also in the context of serious discussions in academic circles as the flows of energy raw materials are the "arteries" of every economic system. The need for continuous and high quality provision of this commodity is an important assumption for the efficient functioning of each economy. The relationship between producers, distributors, suppliers and their customers determines relations across the whole production chain as it is a basic European, state, regional or local infrastructure, network (Stringer, 2018).

Countries that are heavily dependent on the import of this raw material can help increase their independence by creating sufficient reserves or efficient gas consumption. Gas trade requires a high level of interconnection between countries that are committed to building partnerships with several countries that have sufficient reserves. A barrier may be capital-intensive construction of transport routes, also affecting the geographical area through which these pipelines pass.

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1 Methodology

In this paper we have used a variety of methods, from collecting information, especially from scientific works from both, foreign and home authors. Subsequently, we classified these knowledges into separate chapters. From the scientific methods we used mainly coupled methods of induction and deduction, analysis and synthesis and then we formulated partial conclusions. To better illustrate of the results obtained, we used graphical and mathematical methods, which are mainly used for the clear presentation of our results in tables and charts.

2 Results and discussions

In the article, we introduced several approaches from authors who originally defined energy security as part of state security, through finding its quantity at both transnational and national levels. The authors understand it in its complexity, in relation to other sectors of the national economy or the economic clusters of states, for example in the European Union. By using theory of comparative advantages, countries can jointly strive for security of supply, safety of transport routes in their regional space.

2.1 Theoretical Approaches to Defining Diversification

Since the Churchill Day's (Duleba, A. 2009) declaration, the key to energy security is diversification (Stringer, 2008). The European region is more sensitive to "fluctuations" in the gas market compared to other regions. Its high dependence has been historically conditioned, because its need was mainly covered by European sources located in the Netherlands and Norway. Increasing demand requires an urgent need to diversify sources of natural gas. It causes the need to solve new strategies for finding potential partners and then building new links. For several decades, Russian gas was been an optimal and fully reliable source of natural gas. (Baláž, 2009) For both Russia and Europe, it was and still is a good agreement, as in Europe the demand for this commodity is still high, but the resources in its territory are considerably limited. On the other hand, Russia has enough reserves to cover own consumption European too. This relatively peaceful and beneficial relation for both sides had its lacks, which occurred in the form of gas crises in 2004, 2006 and 2009. In 2004 and 2006, Gazprom restricted gas supplies to Ukraine and Bulgaria. It was caused by price disagreements between Russia and these countries. The situation has sharpened in 2009 when tense financial and political relations caused a complete gas shutdown from Russia via the Bratstvo gas pipeline on Ukrainian territory. This situation led to the serious discussions about diversifying gas supplies and planning future transport routes that would provide energy security for gas consumers. To this situation has been expressed by Dr. Alex Pravda, whom is an expert on Russian politics at the University of St. Anthony in Oxford: "They know that they have the same dependent on us as we to them, if not more." He relied mainly on the fact that Gazprom in 2008 provided the state budget with an amount of about 20%. This is a significant source of income for Russia. Gary Gastineau, director of the Exchange-Traded Funds

Consultants (ETF), also deals with diversification. He sees diversification as "the creation of a portfolio that includes several measures to reduce risk." It stated an example in the financial field, but we can also apply it on the gas market. If the planned investment includes only the shares of one company, it carries a high risk. We try to minimize the risk side and revenues maximizing. Mr Gastineau has characterized diversification in the financial sphere. Companies that trade with shares represent three types of diversification: diversification of source, transport and supplier (Stringer, 2008). The shares represent the costs that countries "invest" in individual parts within the gas market. Even in the gas sector, the state obtains wider the broader base of natural gas sources, builds more transport routes and creates space for new entrants, its energy security and price stability will increase.

Diversification is one of the main pillars of energy security. We can consider it as so-called protection of countries against unpredictable threats from individual natural gas suppliers. Diversification itself contains several elements, such as producers, network operators, suppliers, distributors of gas within aim to reduce risk of the country and find possible ways of alternative gas routes. Diversification can be achieved in two ways: diversification of the importing countries and diversification of transport routes (Yergin, Hillenbrand, 1982). Precise definition of the concept of energy security in the case of countries dependent on energy supplies is quite difficult in view of the absence of generally accepted definitions.

One of the experts on this issue is Daniel Yergin. He is perceived energy security as a reliable energy supply and access to energy resources in adequate amounts and at reasonable prices. Yergin emphasizes that the state in ensuring its energy security should base on several principles, namely: the diversification of supply of various raw materials, flexibility, market integration on raw materials and also the importance of the information. (Yergin, 2006). These targets include all aspects, by which the state is able to ensure its energy security. At the same time we try as well as a sufficient level of investment, creation of storage capacity and diversify supplies. (European Gas Market, 2008) Another author, Ľubomír Ľupták, speaks about energy security as a impact of security, transit and use of existing or potential (alternative) energy sources on the environment and society. The energy security is perceived differently by different authors and it is the reason, why we can perceive as multidimensional view and it is possible to see from different perspectives. From a military point of view, energy security is the ability of the state to ensure the functioning of the essential components of the army in the event of a crisis. From an economic viewpoint in the case of countries dependent on energy supplies the attention is placed mainly on ensuring a adequate amount of energy required for economic growth and the availability of such energy at an acceptable price. (Belyi, 2008). In our article, we will investigate energy security from a political point of view, at which energy security is perceived as a state's ability to ensure continuous availability of energy sources on the market for all consumers to ensure the well-being of the population. Given that, in this paper we will analyse the energy security from the perspective of a small country and we will concentrate on the analysis to secure supply of natural gas and other energy sources. We will energy security characterize as the ability to ensure the stability of supply for all consumers and adequate level of diversification of such supplies. When we energy security adopted as an important part of national security, we can explain in accordance with the principles of the Copenhagen

School was developed within the realistic theory. The Copenhagen School does not perceive security threats as a direct impact lack of resources, but rather as the result of political interpretations of the threat by security process. (McSweeney, 1996). In the case of the Copenhagen school can be analysed energy security as Theory complex regional security (RSCT). Regional energy security complexes are formed through the interaction between two or more States in limited geographic area which includes the relationship of energy dependency of these countries and the perception of this dependence as a threat. This interaction includes energy sources trading in whole production chain, from their production (export), purchasing (import) and transportation of energy. (Gloystein, 2017)

This dependence has increased, because through Slovak territory flows approximately 2/3 of the total volume of natural gas, which flows into EU. Russia wants to circumvent the territory of Ukraine and to supply the natural gas by other routes due to financial disagreements. One of the ways how it could possible to reduce dependence Slovak Republic from the Russian Federation and thereby increase our energy security is diversification of supplies. Through diversifying energy supplies raw materials we can reduce the risk of lack of the necessary volume of raw materials in case of failure their supplies from a single source as well as acquire new possibilities for sufficient energy supplies to increase their energy security. We can adopt three possible scenarios: the diversification of energy resources, diversification of countries from which these raw materials flow as well as the diversification of transport routes (Baumol, - Bailey, - Willing, 1977). Diversification of energy resources means that the country should seek for greater possible diversity in the field of energy raw materials used, thus, to try to reduce their dependence the only source. It is necessary to increase the number of countries from which the needed source can be imported. This type of diversification is oriented on increasing of the number of sources, which reduces dependence from the one sources of energy raw materials. Diversification of transport routes means increasing the number of routes, which are going to the country, which is important for lowering the risks of transit states.

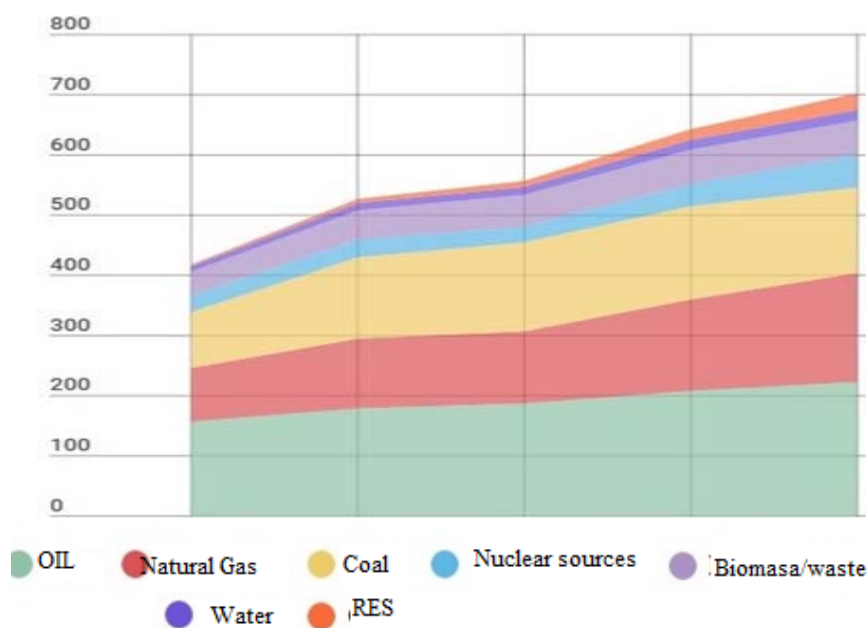
Souleiman specifies diversification as a way of reducing or the layout the risk if deliveries fails or if the only one source is shutdown. However, the problem is the limited number of suppliers for European Union countries (hereinafter EU). (Jambor, 2009) The issue of country interdependence is closely related to diversification, with the authors Richard Rosecrance and Arthur Stein defining it as the interrelationship between countries, bringing both advantages and disadvantages. The basic principle is to compare the advantages of one country A in relation to another country B. (Rosecrance, Stein, 2017) Country A focuses only on the production of those products that are profitable for it – sale them at lower costs than in country B. On the other hand, it imports the goods it produces with relatively high costs. In resolving the question of interdependence, the authors point to two alternatives. The first is to create a relatively equally advantageous relationship of country A with other C, D countries, too, so that A country "protects" itself in case of disturbing good relations with the original country B. Subsequently, the participants will rather try to find a compromise on the arisen disputes. The second possibility is the orientation and focus on the self-sufficiency of the national economy. This path is perhaps only a theoretical example in today's globalized world and with the limited resources. Cooperation and integration of the gas market is also supported by

Fabian Wigand, who is the lead consultant for Ecofys in Berlin. (Wigand,2013) He appeals the EU member states to integrate their gas systems more closely so that they do not focus on finding expensive solutions on their own territory but to prefer globalization that would bring a risk spreading of several countries, and that would lead to a safer system.

3 Analysis of the natural gas market

Natural gas is a relatively cheap and clean energy source that is environmentally friendly. In the long term it is projected 2% annual increase in demand of natural gas in all regions of the world.

Chart 1 Perspective demand of natural gas

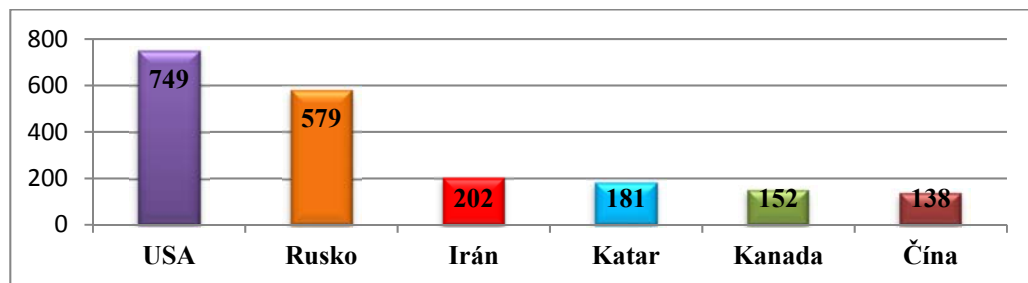


Source: own processing according: Outlook for Energy, 2017

This development supposed that natural gas in 2040 will be placed at the leading places of fossil sources. It is a way to minimize the carbon dioxide and thereby improve the quality of air.

The six largest natural gas producers, according to the information available on the International Gas Union (IGU) web site, these countries are officially stated for the year 2016 as the biggest producers. (in billions of cubic meters of bcm).

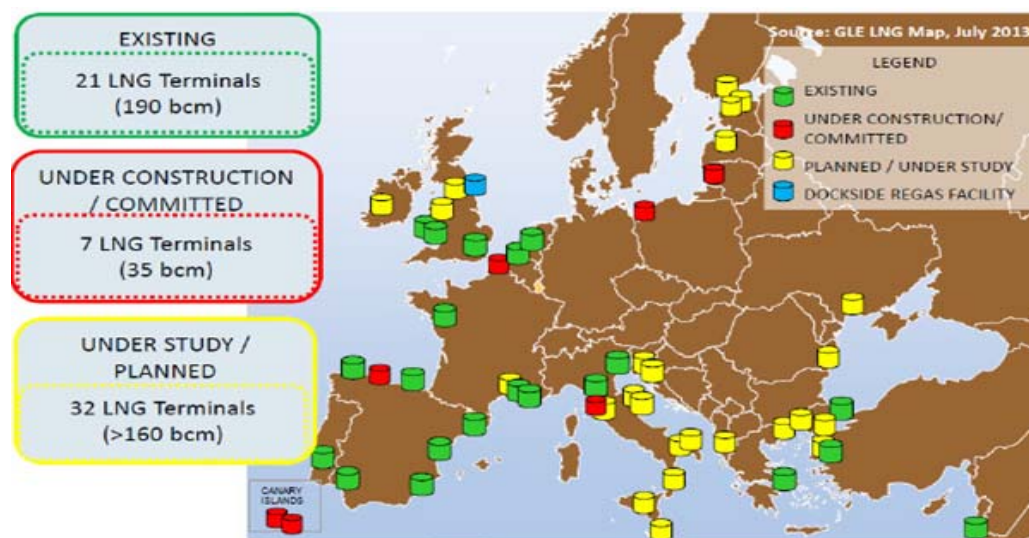
From the chart above, we can conclude that the US is the largest natural gas producer (and consumer) in 2016, despite the fact that its production has fallen by 2.27% compared to the previous year. (Pitatzis, 2016).

Chart 2 Production of natural gas in 2016(bcm)

Source: Own processing by IGU

An important role in ensuring European gas supplies is played Norway. Due to its favourable geographic location and adequate natural gas reserves, it is a reliable gas supplier to Europe. The Cedigaz International Natural Gas Association states that Norway has exported approximately 110 billion cubic meters of natural gas to Europe, which is 21% of total European demand.

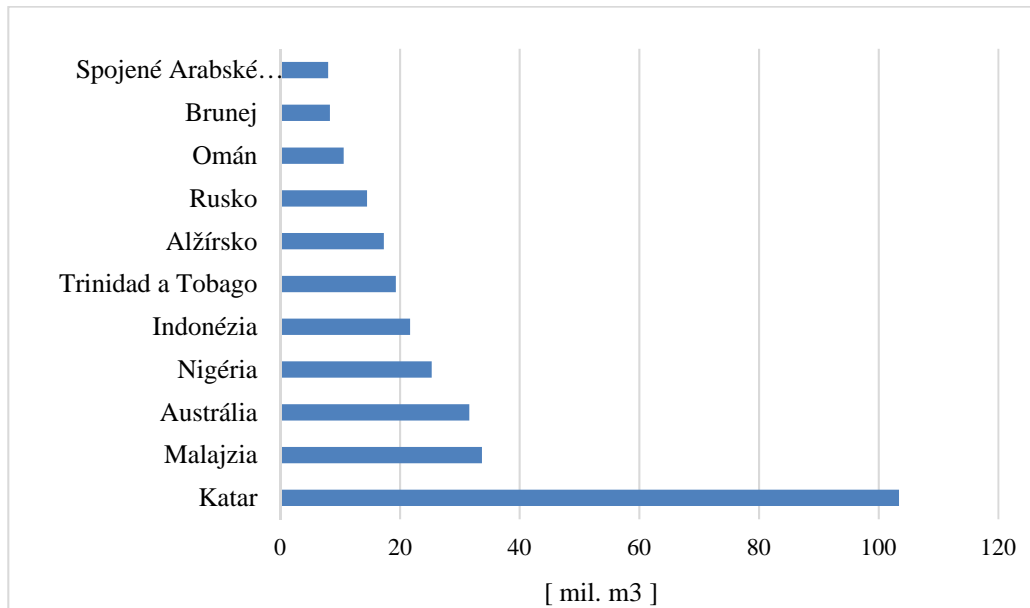
A suitable alternative is, for example, the use of liquefied natural gas(hereinafter LNG)(Pitatzis,2017) Demand for natural gas is not uniform in the year, and to building underground gas storage is one tool as provide continuous supply during year. Storages are filling in summer when offer exceeds demand and the gas purchase price is advantageous and free shipping capacity yare favourable, too. Use of LNG is increasingly mentioned, but most of the terminals are situated in Western Europe. The European Union's goal is to remove this shortcoming by building additional 24 LNG terminals in the South East region, particularly in Italy, Greece, the Western Balkans and the Baltic countries.

Picture 1 Types of European LNG terminals

Source: www.eia.com

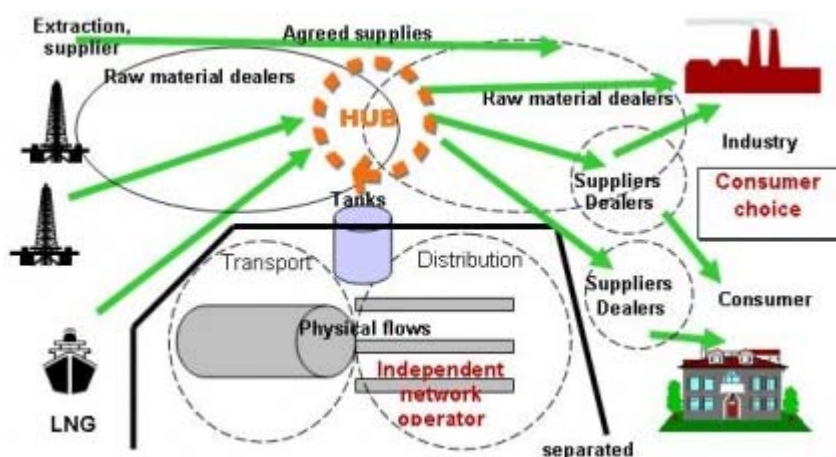
Europe needs to make greater efforts to diversify its gas resources, possible solutions are imports of LNG from America, opening of the southern corridor to transport natural gas from Azerbaijan and later also from Iran and Turkmenistan to Europe, newly discovered natural gas deposits in the Eastern Mediterranean, LNG imports from Africa or other suppliers - such as Qatar and Australia. (OECD/IEA. World Energy Outlook 2017)

Chart 3 Main exporters of LNG in 2016



Source: Own processing by: <https://iakal.wordpress.com/2015/10/30/largest-lngexporters-indonesiavsmalaysia/>

Since 2005, the Western Classical Markets have developed a gas exchange trading model that is very fast. When the shares price is low, the gas is bought and filled in the underground storages. When the gas price increases, the gas is preferably delivered to the stock market. Spot markets are currently the most advanced trading tools. An important company with underground storages is Nafta, a.s., which has, of course, its traditional clients - energy companies, as well as new customers, which arised from the gradual liberalization of the market and become traders. The second part of customers are traders who speculate on gas exchanges. NAFTA has in its portfolio of clients all the traditional players operating in Slovakia, but the company also has a fairly significant number of foreign clients who use the storage for the suppling of gas to Baumgarten-hub and markets in Germany, France, Italy or Switzerland. In terms of storage capacity utilization of natural gas of all operators in Slovakia can say that the capacity at the Slovak market are sufficient. It is interesting that about half the storage capacity in operation of NAFTA is intended for export. For Slovakia, which is highly dependent on imports of energy resources and the storage capacity is one of the few products in the field of energy that we can export.

Picture 2 Underground storages in connection of LNG

Source: own processing according: www.jstor.org

The main form of LNG transport is import by sea in order to match the demand for natural gas in selected EU countries. While in 2007 world LNG production was 230 billion cubic meters (hereinafter m³), in 2015 it was already 333 billion m³. By 2019, growth is projected to be at least 450 billion cubic meters. The average distance of its delivery in 2015 was 14,260 km, what it took 16 days. LNG is a form of condensed, ecological energy that can be transported over long distances. Next table provide us tips go Hubs.

Table 1 Tips of natural gas hubs

Trading Hubs	Hubs, which are considered stable place of business and have achieved a certain degree of implemented business contracts. They are open and accessible points to large number of participants with a virtual character. For example, American Henry Hub, British NBP and Dutch TTF.
Transit Hubs	They allow the transport of large volumes of natural gas for further transported. Significant are the Austrian Baumgarten and the Belgian Zeeburch.
Transition Hubs	Transitions Hubs are virtual points have not yet reached a certain degree of advanced business. These include German Gaspool and NCG.

Source: own processing according: Heather,P

4 Energy safety

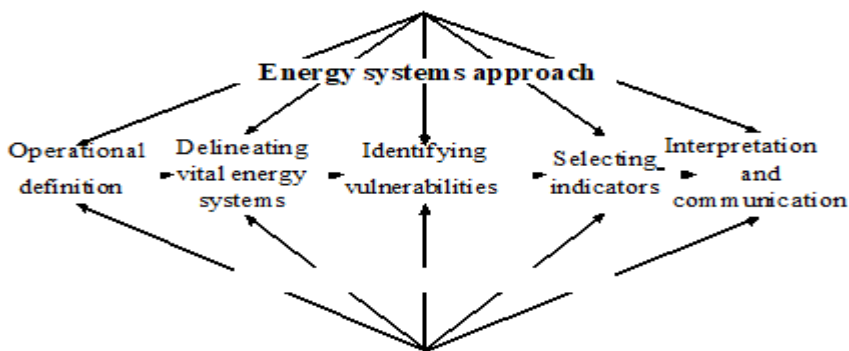
The new concept to energy safety is concentrate on to ensure a smooth and reliable supply of natural gas in adequate volume and for all segments of customers. In contrast with the previous tradition, the indicators do not provide measurable indicators. It focuses on making transparent and informed decisions in five different stages of the

energy security assessment, with aim to ensure a safe and reliable supply of natural gas in a adequate volume and for all segments of customers, it is important to monitor conditions of supplies from point of view of ensuring:

- Balance of supply of natural gas and demand and consumption of gas,
- The levels of expected future gas consumption and available supplies,
- Anticipated and planned transport, distribution and storage capacities, measures to cover peak natural gas consumption.

The main component and program for the further development and implementation of energy security are focused on how to make transparent and informed decisions in five different stages of the energy security assessment. As shown next scheme, access to energy systems helps to make informed decisions at each stage of the evaluation.

Scheme 1 Generic versus specific approach to energy safety



Source: own processing according: International Handbook of Energy Security.

The first part reflects the idea that energy security is the same in perceptions as in the reality of energy system. (Dyer, -Trombetta, 2013)

The second set of options states the fact that energy security is a highly context-specific system. A good evaluation of decisions will strike the right balance between these main options at each of the five phases.

- In the first phase, a definition of energy security will be chosen, which will be acceptable for the evaluators and will be sufficiently functional with respect to all the energy systems analysed.
- The second phase defines vital energy systems. These are important for all benchmarks, political interests and the security of real energy flows.
- The third phase identifies the vulnerabilities of these vital energy systems. Existing energy policy concerns are a good starting point, but human perceptions of risk may be heightened. We should reduce this bias by an objective analysis of all components of safety.
- In the fourth phase, energy security indicators are selected that reflect (but do not necessarily measure) identified vulnerabilities or possible risks. It is usually easier to start with metrics indicators. Second reason expresses typically, data

for these measurements will be available. It may seem complicated that we want to get a vulnerability indicator using for calculations and indicators. Such a complex indicator will require more effort for interpretation and discussion. These indicators are relevant to a choiced situations. They should also be comparable for all the situations covered by the assessment.

- In the fifth and final phase, the indicators are interpreted and presented in a form that facilitates the response to the initial safety assessment issues. This interpretation can either be in the form of composite indexes or qualitative evaluations.
- One of the first energy security experts is Daniel Yergin. The simple formulation states Daniel Yergin whom energy security is defined as sufficient supplies provided energy with affordable prices. (Yergin, D. 2006) He has extended this definition on dimension of energy security; he reacted to answer increasing tensions on the global market for energy resources, the impact of various natural disasters, technical failures and attacks on energy infrastructure. He also responds to various market speculations, political instability and numerous other internal and external factors influencing the current energy security. Yergin defines four basic principles to secure of the energy safety.
 - The first principle is traditionally diversification, access to alternative sources reduces the risk of ensure continuous supplies of energy raw materials.
 - For creating a flexible system Yergin emphasizes the need for strategic reserve, reserve production capacity, back - up systems along the production and distribution chain. In this context, now comes to the fore underground gas storage facilities.
 - The third principle is the recognition of integration.
 - The fourth principle is the need and importance of the information. This principle is based on experience. Precise definition of the concept of energy security in the case of countries dependent on energy supplies is difficult in view of the absence of generally accepted definitions. One could however be said that the definition of energy security for countries importing energy commodities most often consist of three aspects:

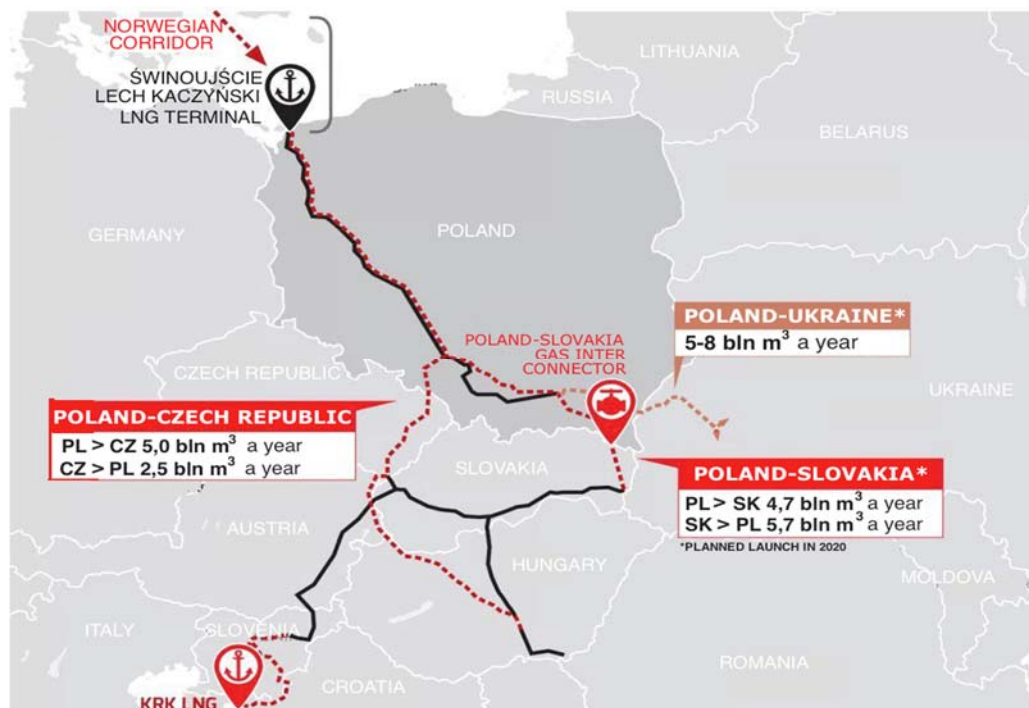
- A Adequate quantity of energy raw materials
- B Adequate form
- C Adequate price (Yergin,2006).

5 Calculation of energy security in Slovak republic

The EU is currently seeking diversification of transport routes, is oriented on North-South gas pipelines. "In general, gas pipelines are built only when the long-term contracts have been secured," said Peter Fox-Penner, an expert on economic, regulatory and strategic questions in network industries. The aim of implementing a North-South project is to connection of Baltic Sea with southern European waters in the Aegean, Adriatic, Mediterranean and Black Sea. The result should be diversification of transport links and higher stability of gas supplies not only for this region but also for the entire European continent. The following countries cooperate on the project: Italy, Cyprus,

Austria, Bulgaria, Slovakia, the Czech Republic, Germany, Poland, Greece, Hungary, Romania and Slovenia. The North-South Corridor will allow the transport of natural gas from Swinoujscie in Poland to port Omišalj in Croatia. (Polkinghome, 2016) At present, some of its parts are in operation, such as the interconnection of Slovakia and Hungary near the Szada Hungarian village or the Polish gasification terminal at Swinoujscie port. By implementing this projects, the Central European countries will ensure better interconnection for a more liquid and competitive gas market, with increasing stability and security of supplies to the participating countries. (Gloystein, 2017)

Map 1 Map of planned north-south connection



Source: own processing according to Biznesalert, available on website: <http://biznesalert.com/polish/briefing-eu-grant-agreementpolandslovakiasinterconnection>

Next important project is Eastring project; the survey will focus on economic, technical and environmental analyses and should be known in June 2018. Implementation will be carried by the Slovak company Eustream, a.s. and the Romanian company Transgaz S.A. The building work could begin in 2020; with the expected end of construction being in 2024. The calculation of increased security will be applied only in the Slovak household sector. The household is defined in Slovakia as a individual person, persons who enter into an agreement with the supplier of the quantity of consumed natural gas.

The contract also specifies the type of tariff to which the household belongs. In accordance with the Decree of the Office for Regulation of Network Industries (hereinafter RONI) no. 223/2016 Z. z. households in the territory of the Slovak Republic from

01.01.2017 are divided into new groups according their consumption of gas. In the next table we also state current and the previous tariff breakdown.

Table 1 Overview of individual household tariffs since 2017

Tariff group valid from 01.01.2017	Tariff group valid to 31.12.2016	kWh	m ³
T1	D1	< 0, 2 138 ≤	< 0, 200 ≤
T2	D2	< 2 138, 18 173 ≤	< 200 – 1 700 ≤
T3	D3	< 18 173, 42 760 ≤	< 1 700 – 4 000 ≤
T4		< 42 760, 69 485 ≤	< 4 000 – 6 500 ≤
T5	D4	< 69 485, 85 000 ≤	< 6 500 – 7 951 ≤
T6		< 85 000, 100 000 ≤	< 7 951 – 9 355 ≤
T7		< 100 000 – 300 000 ≤	< 9 355 – 28 064 ≤
T8		< 300 000 – 641 400 ≤	< 28 064 – 600 00 ≤

Source: own processing according: Decree č. 223/2016 Z.z. ÚRSO

Under the SR conditions, the commodity price for households is composed of the item weighted average of year consumption created on the European Energy Exchange (EEX) in Leipzig, Germany, representing 30% and an additional 70% derived from prices agreed in long - term contracts between SPP, as and the Russian giant Gazprom. At present, the final gas price is comprised of the Total Fixed Monthly Rate and the Total rate for gas consumed. In line with all the above information, including the regulated, unregulated components and current charges, we will present in next table the current maximum prices set by the ÚRSO, which are binding on the target household group from 01.01.2017.

Table 2 Maximum gas rates of final prices of households with VAT since 2017

Tariff	Total fixed monthly rate (€ / month)	Total rate for gas consumed (€ / kWh)
1	2,35	0,0521
2	6,91	0,0390
3	10,37	0,0372
4	16,03	0,0365
5	50,94	0,0444
6	62,14	0,0478
7	153,20	0,0433
8	341,20	0,0428

Source: own possessing according annual report SPP 2017

Impact of the PR - SR gas pipeline on the final price for households

In this part of the article we calculate the fee, which is Eustream, a.s. Justified to include in the final price for gas transportation according to a decision issued by the URSO on 17.08.2017 and which will directly reflect the relatively increased degree of security achieved by the introduction of the PR - SR. The charging of these fee in the structure of the price is possible only in one from these dates, 01.01.2021 or the day of beginning of operation the PR - SR gas pipeline.

The Decision also sets out the exact method of calculating this charge, in which it is necessary to determine the rate in all tariffs according to the statutory coefficient to all categories of customers: wholesalers, medium subscribers, retail customers and vulnerable customers, i.e. households. For the purposes of this article, we will calculate the coefficients only in the household sector.

5.1 Calculation of the charge rate

Indicator for setting the fee rate for increasing the level of security of gas supply for 2021:

$$\text{SOS (2021)} = 0.08 * \text{HICP (2019)} / \text{HICP (2016)},$$

Where:

SOS (2021) - Charging rate to increase the level of security of gas supply for 2021,

HICP (2019) - inflation index in the European Union published by Eurostat,

Item "HICP - annual average index 1 - European Union", valid for the calendar year 2019,

HICP (2016) - inflation index in the European Union published by Eurostat,

Item "HICP - annual average index 2 - European Union" valid for the calendar year 2016.

After calculating the security charge level, a fee for each customer group is still required. This is derived from the following formula:

$$\text{PSOS (t)} = \text{SOS (t)} * \text{CSOS (t)},$$

Where:

SOS (t) - charge rate to increase the level of security of gas supply,

CSOS (t) - assigned shipping capacity expressed in MWh. For capacity allocation under SOS contracts (t), it represents the maximum number of MWh that a network user can carry on that day.

Depending on the above relationships, the RONI sets the maximum level of price increases for individual groups of vulnerable customers based on current prices and the current use of capacities in Home Point as follows. Tariffs of group 7.8 is not set, because it is no longer regulated, so we do not include them into our calculation.

Table 3 Charges related to increased security of gas supply

Tariff	Average year consumption m ³	Impact on annual gas payment (increased payment due to increased security)
1	100	+ 0,12 €
2	950	+ 0,81€
3	2 850	+ 2,44 €
4	5 250	+ 4,49 €
5	7 226	+ 6,18 €
6	8 653	+ 7,40 €

Source: own processing according to: RONI Decision, 17.08.2017.

In compliance with all the above information, including the regulated, unregulated components and current charges, we will present in next table the current maximum prices set by RONI, which are binding on the target household group from 01.01.2017.

Conclusion

In the last decade the natural gas has come to the forefront due to its more environmentally friendly features. The reason is the countries are trying to ensure a smooth flow of this commodity into their territory. As the history of gas crises shows us, it is important for the importing country to have multiple sources of gas. Nowadays, the country's energy policy is oriented towards improving existing transport routes as well as planning projects that would allow for new connections with countries with adequate gas reserves. One of such solutions for Slovakia is the PL - SR gas pipeline, which is integrated into NSI East projects aimed at connecting Central and Southeast Europe. After its implementation, the Baltic Sea's connection with the Aegean, Adriatic, Mediterranean and Black Seas would be achieved, which would bring stability to the supply of the raw material for this area. Based on the decision of RONI for the Eustream, a. s. we derived the amount of the fee for individual tariffs in which households are reallocated according to natural gas consumption. In conclusion we can state, the construction of the PL - SR gas pipeline will, on the one hand, increase the level of safety for the customers of both countries but, on the other hand, a new fee will be included to the final gas price, reflecting the increase in safety.

References

Baláž, P., Ružeková, V., Svobodová, V., Perényiová, A., Pullmanová, T., Gaval'ová, V., et al. (2009). *Ekonomické aspekty novej energetickej politiky EÚ a jej vplyv na strategické rozvojové zábery SR s ohľadom na lisabonskú agendu*. Bratislava: Vydavateľstvo EKONÓM.

- Baláž, P., Margan, F., Ružeková, V., & Zábojník, S. (2011). *Energetická bezpečnosť v období globalizácie a jej vplyv na konkurencieschopnosť EÚ*. Bratislava: Sprint dva.
- Bahgat, G. (Ed.). (2011). *Energy security: an interdisciplinary approach*. John Wiley & Sons.
- Duleba, A. (2009). Poučenia z plynovej krízy v januári 2009. Analýza príčin vzniku, pravdepodobnosti opakovania a návrhy opatrení na zvýšenie energetickej bezpečnosti SR v oblasti dodávok zemného plynu. *Analýzy, VÝSKUMNÉ CENTRUM SFPA, NO Bratislava*, 18.
- Icis Heren. (2008, July). *European Gas Market: "Focus on cushion gas in storage"*. Retrieved September 13, 2018, from <https://www.icis.com/explore/resources/news/2008/07/17/9305447/focus-on-cushion-gas-in-storage/>.
- Gloystein, H. (2017). *Q&A: What is a gas trading hub, and how are they established?* Retrieved September 10, 2018, from <https://www.reuters.com/article/us-china-gas-exchange-q-a/qa-what-is-a-gas-trading-hub-and-how-are-they-established-idUSKBN1EN0I1>.
- Heather, P. (2012). *Continental European gas hubs: Are they fit for purpose?*.
- Jambor, E. (2009). *Hodnotenie energetickej politiky Slovenskej republiky v oblasti ropy a zemného plynu*. Diplomová práca. Masarykova univerzita, Fakulta sociálnych štúdií Brno.
- McSweeney, B. (1996). Identity and security: Buzan and the Copenhagen school. *Review of international studies*, 22(1), 81-93.
- Polkinghorne, M. A. (2014). Take-or-pay conditions in gas supply agreements. *Oil, Gas & Energy Law Journal (OGEL)*, 12(4).
- Rosecrance, R., & Stein, A. (1973). Interdependence: Myth or Reality?. *World Politics*, 26(1), 1-27.
- Stringer, K. D. (2008). Energy security: applying a portfolio approach. *Baltic security & defence review*, 10(1), 121-142.
- Wigand, F. (2013, March). GG2022 - Connecting Systems: EU's Internal Energy Market and Future Cooperation with MENA. *Global Policy Journal*, s. 44. Retrieved August 6, 2018, from <https://www.globalpolicyjournal.com/blog/13/03/2013/gg2022-connecting-systems-eu%E2%80%99s-internal-energy-market-and-future-cooperation-mena>
- Yergin, D., & Hillenbrand, M. (1982). Global insecurity: a strategy for energy and economic renewal.
- Yergin, D. (2006). Ensuring Energy Security. *Foreign Affairs*, 85(2), 69-82. doi:10.2307/20031912.
- Igu. (2018). *Natural Gas Facts & Figures, Market, Market Players*. Retrieved August 7, 2018, from <https://www.igu.org/resources-data>.
- Oecd/Iea. (2017). *World Energy Outlook 2017*. Retrieved August 10, 2018, from <https://www.slideshare.net/internationalenergyagency/world-energy-outlook-2017-82032554>.
- Eurostat. (2017). *Štatistika cien zemného plynu*. Retrieved August 4, 2018, from https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Natural_gas_price_statistics/sk.

- Teraz. (2014). *R. Fico s V. Orbánom otvorili prepojenie sietí plynovodov*. Retrieved August 14, 2018, from <https://www2.teraz.sk/ekonomika/fico-orban-madarsko-plynovod/79171-clanok.html>
- Energia. (2017). *Plynovod Eastring nevylučuje ani Maďarsko*. Retrieved August 18, 2018, from <http://energia.sk/dolezite/zemny-plyn-a-ropa/plynovod-eastring-nevylucuje-ani-madarsko/25224/>
- Enviroportal. (2016). *Prepojovací plynovod poľsko – Slovensko*. Záverečné stanovisko, Retrieved August 14, 2018, from http://www.enviroportal.sk/sk_SK/eia/detail/prepojovaci-plynovod-polsko-slovensko
- Gaz-system. (2014). *Interkonektor Polska – Słowacja - Gaz System*. Retrieved August 21, 2018, from http://www.gaz-system.pl/fileadmin/pliki/do_pobrania/ulotka_PL-SK.pdf
- Eustream. (2017). *Agentúra EÚ, GAZ-SYSTEM a Eustream podpísali grantovú dohodu na stavebné práce pre Prepojovací plynovod Poľsko – Slovensko (projekt spoločného záujmu pre EÚ)*. Retrieved August 19, 2018, from https://www.eustream.sk/sk_media/sk_aktuality/agentura-eu-gaz-system-a-eustream-podpisali-grantovu-dohodu-na-stavebne-prace-pre-prepojovaci-plynovod-posko--slovensko-projekt-spolocneho-zaujmu-pre-eu

Consumer-Oriented Sales Promotion of Organic Food in Slovakia and the Czech Republic

Paulína Krnáčová¹ – Martin Závodský²

Abstract

Based on the evaluation of partial research results the aim of the presented paper is to find out current state of using consumer-oriented sales promotion tools at the organic food market in Slovakia and the Czech Republic and to suggest recommendations for improvement. We conducted primary quantitative research by inquiry method via standardized online questionnaire. The research results reveal that the most used consumer-oriented sales promotion tools are information materials, merchandising and multipacks. Business entities focus on the non-monetary sales promotion. The results point to insufficient implementation of sales promotion tools at the organic food market and probably low interest of business entities to them.

Key words

organic food, sales promotion, consumer-oriented sales promotion

JEL Classification: M31

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Introduction

The organic food market is expanding worldwide annually. In the last decades, it has resulted in multi discipline of the research focused on the psychological and anthropological factors of organic food consumption. Several studies concluded that ethical principles, such as ecological sustainability and care for animal welfare influence the consumer choices of organic food. Other studies claim that consumers of organic food are motivated by the perceived healthiness of such products (Guido, 2009; Guido et al., 2010; Siegrist, 2008; Pino et al., 2012). Since consumer attitudes have an essential role on the success of sales promotion activities, the business entities should pay attention to identification of consumer segments and implementation of customized strategies. Furthermore, the increased availability of information about consumers' behavior enables and simplifies to customize marketing efforts to the consumer preferences (Venkatesan and Farris, 2012a).

Based on the results of studies (Mela et al., 1997; Papatla and Krishnamurthi, 1996), sales promotions have a significant impact on the consumer's decision making process. Approximately 70% of decisions about which brand to purchase are made in-store (De Pelsmacker et al., 2001). Therefore, business entities want to understand and

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influence this decision process. Understanding the factors that influence an existing or potential customer's decision process is essential for business entities in implementation of an effective marketing mix that generates sales. Besides product characteristics and price, promotional activities are the most popular tools used by manufacturers and retailers to influence the consumer's decision process (Nagar, 2009).

Sales promotion can be defined as marketing activities usually specific to a time period, place or customer segment, which encourage a direct response from consumer or marketers, through the offer of additional benefits. Sales promotion has been labeled almost exclusively as short-term and tactical instruments. The nature and duration of the effects of sales promotion is still a topic of contention among marketing practitioners. The incremental, and usually temporary, effect of sales promotion on sales seems to be widely accepted, while the profitability of sales promotion is a more contentious issue. There is also evidence that increased promotional activity weakens brand loyalty, detracts brand quality image, and generates a short-term management orientation. The fundamental features of sales promotion can be summarized as follows (Brito and Hammond, 2007):

- Incentive or inducement to generate immediate sales boost;
- Effects are short rather than long-term;
- Secondary and subordinate status or role when compared with advertising.

Sales promotions are being used not only at the business-to-customer (B2C) but also business-to-business (B2B) market. There are several various sales promotion classifications, such as „active, „passive, „price“, „non-price“, „value-increasing“ or „value-adding“ and „monetary“ and „nonmonetary“ sales promotions. Even if there have been different classifications, there are three main sales promotion categories as follow (Köksal and Spahiu, 2014): (1) consumer-oriented sales promotion (samples, coupons, cash refunds, cents-off deals, premiums, Point-Of-Purchase promotions); (2) trade-oriented sales promotion (discounts, allowance, free goods, advertising items, etc.); and (3) business- or retailer-oriented sales promotion (trade shows, sales contests, rewarding customers, motivating sale people).

Sales promotion has been collected to attract consumers' attention such as price and brand perception, brand choice, evaluation and equity, etc. (Srilekha and Jawahar, 2011). One of the purposes of a consumer-oriented sales promotion is to elicit a direct impact on the purchase behavior of the consumers. Sales promotion provide various advantages to retailers such as (1) accelerating sales, (2) increasing shelf space revenue, (3) encouraging and motivating sales representatives to interact with customers; and (4) producing increased tangible sales (Owens et al., 2001).

1 Methodology

Selection of scientific methods depends on the paper content focus and the paper aim. To elaborate theoretical knowledge, we primarily used theoretical scientific methods, including method of analysis and synthesis, method of induction and deduction, abstraction and concretization, but also the comparative method. As a method of collecting primary data we conducted research. We evaluated and interpreted the obtained

quantitative data through statistical and graphical methods in the Statgraphics software and MS Excel.

Based on the research results the aim of the presented paper was to find out current state of using consumer-oriented sales promotion tools at the organic food market and to suggest recommendations for improvement.

The basis for the analysis of sales promotion of organic food represents the results of primary research that we conducted by the inquiry method through the standardized online questionnaire in February 2017. Our research was focused on two groups of respondents: (1) consumers and their attitude to sales promotion tools of organic food; and (2) business entities in the field of organic food. However, this paper is focused on the analysis of partial results concerning the attitude of producers and retailers of organic food to sales promotion. We set the following research questions:

Which tools of sales promotion do business entities in the field of organic food in Slovakia and the Czech Republic use?

What is the attitude of the producers and sellers of organic food in Slovakia and Czech Republic to the selected tools of sales promotion?

Based on the list of control authorities Naturalis SK and eAGRI (CZ), 100 Slovak and 100 Czech producers and retailers were selected randomly and contacted via an online questionnaire. After testing for complexity, accuracy, validity, reliability and consistency, we analyzed 43 questionnaires, representing a return of 21.5%.

The questionnaire consisted of 12 closed-ended and open-ended questions. The respondent's answers were evaluated through frequency tables and cross tabulations, in some cases relevant descriptive statistics (e.g. average, standard deviation) were calculated.

2 Results and Discussion

2.1 Consumer perception of organic food sale

One of the most important factor of consumer's buying process of organic food is that consumers perceive their higher quality. Question of organic food quality has been subject of many scientific debates for a considerable amount of time. Numerous scientific studies have been carried out in the past that have addressed the issue of the quality of organic food as compared to conventionally produced foods. Various studies compared values such as dry matter content, sugar content or content of vitamin C in organically and conventionally produced foods. There are many organic food adherents in the scientific world, but also their counterparts (Kahl et al., 2012).

According to a study carried out in 2009 that had summarized scientific articles and publications since 1958, organic food do not have higher nutritional value and higher quality (Dangour et al., 2009).

The most recent study from the year 2014 claims that higher value of antioxidants, lower cadmium content and lower value of pesticide residues are found in organically grown foods (Barański et al., 2014).

The main factors influencing consumer decision-making when choosing and purchasing organic food can be described as follow (Dickieson and Arkus, 2009):

- Consciousness of health - consumers who purchase organic products take care about their health, promote and live a healthy lifestyle. Health can be mentioned as the most important factor associated with the very concept of organic food.
- Effort - the supply of organic food is demand-oriented, product range limited and not available everywhere. It depends on the efforts of the consumers, where they are willing to go to buy these foods.
- Consumer confidence - economic factors can greatly influence consumer-purchasing decisions. For example, in the case of an economic crisis, the consumer reconsider whether he is willing to spend more money on more expensive organic food when his/her own existence is threatened.
- Perception of quality – consumers associate the term “organic” with the higher quality that is also one of the reasons why consumers buy organic products. In the case of conventional products, price is the most considerable factor.
- Importance of social status - for some consumers, organic food and its higher prices are such as manifestation of their social status or lifestyle. Therefore, some consumers do not buy these products for protecting their health or promoting environmental protection, but as a way of expressing themselves, a fashion trend or a level that no one can afford.
- Premium prices - high prices are the most important factor that says "against" organic food compared to conventional products. On the one hand, higher price can act as barrier to the purchase of the organic food; on the other hand, the higher price is associated with a perceived higher quality.
- Confidence in labeling and marketing - when purchasing organic food, the consumer has to trust the producer that the food labeling is not misleading or deceptive and rely on the reliability of the declared certificates.
- Value - the consumer's decision to buy organic food is not only a result of his/her psyche but a reflection of his/her life values.
- Food safety concerns - concerns about the use of pesticides or genetically modified organisms represent an important reason why consumers buy organic food that they trust and consider as safe.

Hughner et al. (2007) divide the theories and barriers of organic food purchases into fifteen topics explaining consumers' attitudes towards organic food. The consumer choice and purchase of organic food are motivated by: (1) health and nutrition, (2) better taste, (3) environmental concern, (4) concern about food safety, (5) concern over animal welfare, (6) support of local economy, (7) higher beneficial effect, (8) nostalgia, and (9) fashionable and/or curiosity. In spite of many positive aspects that encourage consumers to buy organic food, there are also barriers that also affect consumer buying behavior: (1) high prices, (2) lack of availability, (3) skepticism and mistrust of labeling, (4) insufficient marketing, (5) satisfaction with the current food source; and (6) sensory defects.

From the point of view of organic food retailers, marketing activities are mainly focused on presenting the different values associated with these products (Marketing-schools.org, 2016):

- altruism (relationship to others),
- ecology (unity with the universe),
- universality (protecting the welfare of people and nature);
- charity (enriching the welfare of relatives),
- Spirituality (inner peace)
- Self-control (independent thinking and action).

Many companies build their image based on the low impact of their activities on the environment and on the local character of the products. By presenting their products as organic and at the same time the products of their competitors as potentially dangerous, they attract consumers who promote environmental protection and alternative lifestyles. When a consumer buy products that meet his/her values and lifestyle, he/she fulfill his/her egoistic needs that make him/her feel better (Marketing-schools.org, 2016).

At the organic food market, the concept of quality is very important because consumers expect a higher price and a higher quality of organic food compared to traditional/conventional food. The selling process of quality and certified organic food no longer ends by sales. Business in the organic food market is associated with the different groups of interested parties: customers are interested in products; scientists and experts pay attention to organic projects; potential (but also fake) retailers and farmers are interested in cooperation and, lastly, state authorities that primarily set legislative requirements, manage and control compliance with the set requirements (Elzakker & Eyhorn, 2010).

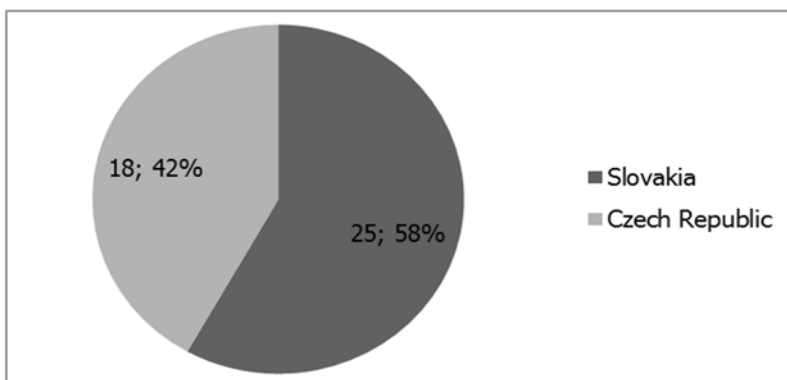
The concept of organic food quality has been developing for decades and has gradually begun to push from a product-oriented concept of quality to a consumer-oriented concept. Every part of the food chain, from farmer to consumer, has its own requirements that change over time under the influence of social changes or scientific development. The quality of organic food can be assessed by six aspects (Kahl et al., 2010): (1) authenticity, (2) function and storage, (3) biology/physiology, (4) nutrition, (5) sensual perceptions; and (6) ethics.

2.2 Consumer-oriented Sales Promotion tools Used at the Organic Food Market

Based on the research results the aim of the presented paper is to find out current state in using consumer-oriented sales promotion tools as one part of the marketing communication tools at the organic food market.

In this part of the paper, we present partial results of the research that provide us with answers to the research questions and testify to using of sales promotion tools by organic food business entities.

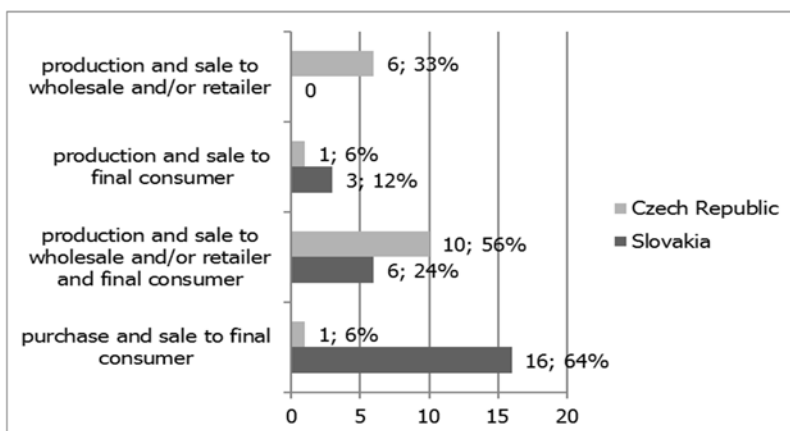
A total of 43 representatives of business entities participated in the research, of which 25 (58%) represented Slovakia and 18 (41%) the Czech Republic (see graph 1).

Graph 1 Structure of research sample

Source: own results

In terms of Slovak business entities structure, there was the largest representation of retailers (16, i.e. 64%) and companies dedicated to production and sale of organic food to wholesale and/or retailers and final consumers (6, i.e. 24%). Companies engaged in production and sale to final consumers were represented by 3 business entities (i.e. 12%).

In the case of Czech business entities, there was the largest representation of companies focused on production and sale to wholesale and/or retailers and to final consumers (10, i.e. 56%). Second largest group was represented by business entities that produce and sale organic food to wholesale and/or retailers (6, i.e. 33%).

Graph 2 Structure of business entities in Slovakia and the Czech Republic

Source: own results

Which tools of sales promotion do Slovak and Czech business entities use?

Within the research, we wanted to find out which forms of consumer-oriented sales promotion do producers and sellers use. This part of research was dedicated to the business entities that offer organic food to final consumers, i.e. 25 Slovak and 12 Czech

business entities. When evaluating the research, points were assigned to each option (1 - always; 6 – do not use) and based on the average assessment of individual aspects we determined their order of importance.

Tab. 1 Frequency of consumer-oriented sales promotion tools using in Slovakia and the Czech Republic

Consumer-oriented sales promotion forms		Always (1)	Very often (2)	Often (3)	Sometimes (4)	Rarely (5)	Don't use (6)	Average	Ranking
Free samples and tastings	SVK (25)	1 4%	5 20%	3 12%	8 32%	5 20%	3 12%	3.80	2
	CZ (12)	2 17%	1 8%	0 0%	5 42%	3 25%	1 8%	3.75	3
Discount coupons	SVK (25)	2 8%	2 8%	1 4%	8 32%	4 16%	8 32%	4.36	6
	CZ (12)	0 0%	1 8%	1 8%	3 25%	3 25%	4 33%	4.67	5
Gift items	SVK (25)	1 4%	1 4%	1 4%	13 52%	4 16%	5 20%	4.32	5
	CZ (12)	0 0%	0 0%	0 0%	4 33%	2 17%	6 50%	5.17	8
Loyalty programs	SVK (25)	3 12%	2 8%	2 8%	4 16%	0 0%	14 56%	4.52	7
	CZ (12)	1 8%	0 0%	0 0%	2 17%	0 0%	9 75%	5.25	9
Games and contests	SVK (25)	1 4%	0 0%	2 8%	2 8%	6 24%	14 56%	5.16	8
	CZ (12)	0 0%	0 0%	1 8%	2 17%	6 50%	3 25%	4.92	6
Discounts	SVK (25)	2 8%	3 12%	6 24%	5 20%	3 12%	6 24%	3.88	4
	CZ (12)	1 8%	2 17%	2 17%	2 17%	1 8%	4 33%	4.00	4
Merchandising	SVK (25)	5 20%	4 16%	4 16%	1 4%	0 0%	11 44%	3.80	2
	CZ (12)	2 17%	1 8%	2 17%	3 25%	2 17%	2 17%	3.67	2
Information materials	SVK (25)	1 4%	6 24%	7 28%	6 24%	2 8%	3 12%	3.44	1
	CZ (12)	3 25%	4 33%	2 17%	1 8%	2 17%	0 0%	2.58	1
Multipacks	SVK (25)	2 8%	2 8%	7 28%	6 24%	3 12%	5 20%	3.84	3
	CZ (12)	0 0%	0 0%	0 0%	3 25%	6 50%	3 25%	5.00	7

Source: own results

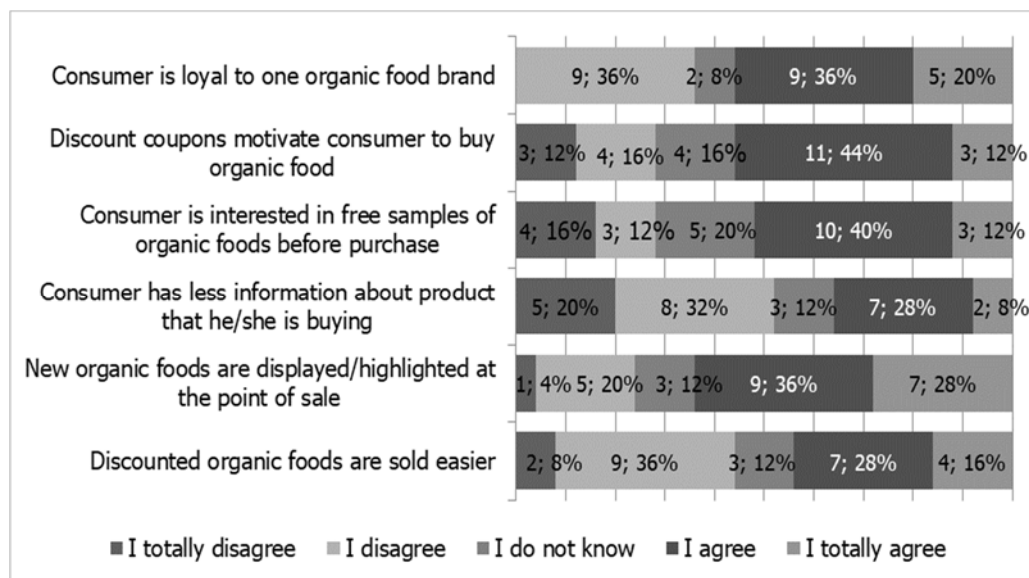
Based on the results shown in table 1, we have found out that Slovak business entities prefer to use information/promotional materials provided in the stores/shops (1st position in ranking), merchandising and free samples and tastings (2nd position) and multipacks (3rd position).

The practices in the field of consumer-oriented sales promotion tools of Czech business entities are very similar to the Slovak ones. They use especially information materials (1st position), merchandising (2nd position) and free samplings and tastings (3rd position). The most significant difference compared to Slovak companies is the ranking position of multipacks, which ranks up to seventh position in the case of Czech companies.

What is the attitude of business entities in the field of organic food in Slovakia and Czech Republic to the tools of sales promotion?

Furthermore, we focused also on the attitude of business entities to claims that indirectly relate to using of consumer-oriented sales promotion tools. 44% of Slovak companies agree that discounted organic food are sold easier. The most majority of respondents (64%) highlight/display new organic food at the point of purchase. Moreover, 52% of Slovak business entities believe that consumers have enough information on what they are buying. About a half of the companies (52%) have opinion that consumers are interested in free samples and tasting of organic food. 56% of business entities agree that discount coupons enable to motivate consumers to buy organic food. The same amount of companies (56%) agrees that consumers are loyal to one food organic brand.

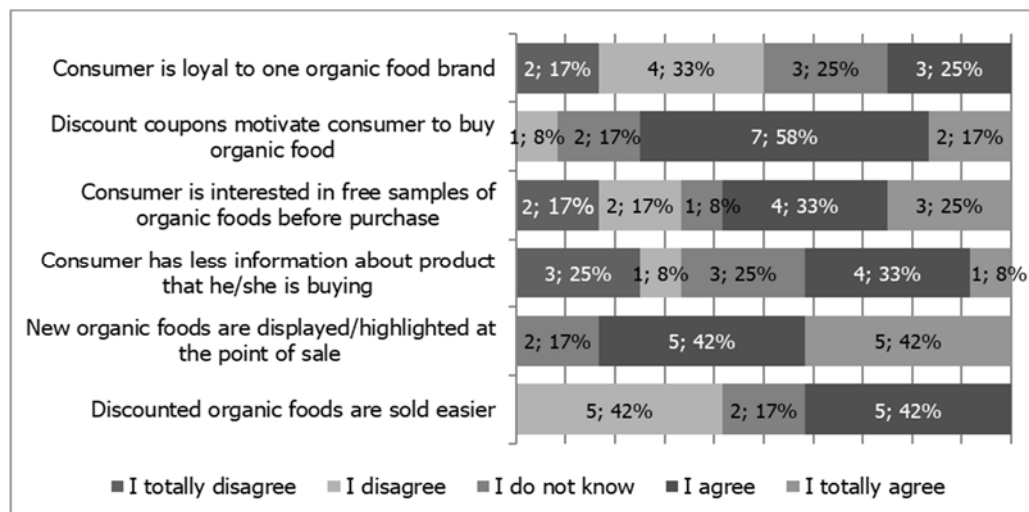
Graph 3 Attitudes of the Slovak business entities



Source: own results

Comparing to Slovak business entities, similar number of Czechs (42%) agree that discounted organic food are sold easier. The rest of Czech companies (84%) highlight/display organic food at the point of sale. Based on results shown in graph 4 we assume that the most important sales promotion tools are discounted coupons (besides displaying products at the point of sale). 75% of business entities consider discount coupons as motivation factor for consumers but only 66% of business entities use this tool very often to rarely (see table 1). Regarding the loyalty of Czech consumer, exactly a half of the business entities agree that consumers are loyal to one organic food brand.

Graph 4 Attitudes of the Czech business entities

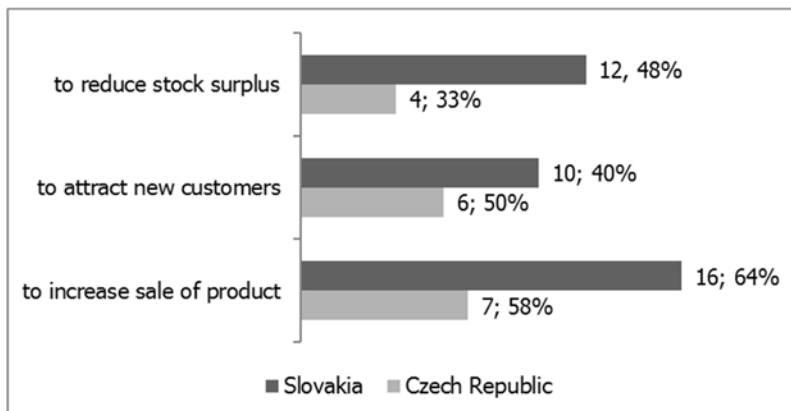


Source: own results

*Why do business entities use selected consumer-oriented sales promotion tools?
What is their motivation?*

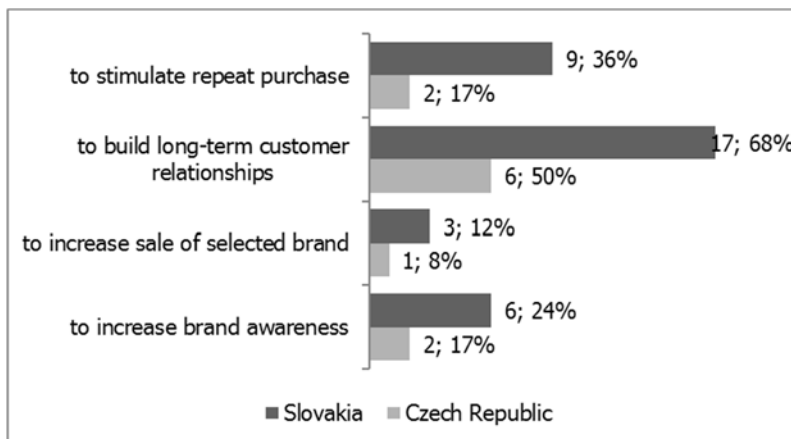
The aim of this part of research was to find out if the business entities know the benefits of sales promotion. At first, we wanted to know why they offer discounts for selected organic food.

As results in graph 5 show, the business entities in both countries consider increasing of sale as the most important benefit. 48% of the Slovak companies use discount with the aim to reduce stock surplus and 40% of them would like to attract new customers. On the other hand, 50% of Czech companies are focused on attracting new customers.

Graph 5 Benefits of discounts from the business entities' point of view

Source: own results

Regarding the reasons why the business entities use gift items for free as sales promotion tool, we found out that 68% of Slovak companies are oriented to build long-term relationships with their customers (see graph 6) or to stimulate repeat purchase (36%). There is a psychology to sales and selling and reciprocity matters. Giving away free gifts and free samples is a prime example of reciprocity. Customer may not buy directly after receiving a free reward, but when they do become sales-ready, the likelihood is that they will remember their obligation to the company who gave them something. To be more open to the possibility of buying from them (Bain 2013). A half of the Czech business entities try to build long-term relationships with their customers by offering them gift items for free.

Graph 6 Reasons of using gift items for free

Source: own results

2.3 Discussion

There are many studies dedicated to the consumers' attitude and behavior in the field of organic food market. Based on published results we know why consumers buy organic food, whether they trust in organic food or consider the price of organic food to be adequate. However, there is a lack of research studies that would be focused on the practices of business entities, especially their using of sales promotion tools at the organic food market. Therefore, the most important benefits of the presented paper are results of conducted research and recommendations for more effective sales promotion.

Based on collecting data, their processing and evaluating we suggest recommendations for Slovak and Czech producers and retailers as follow:

- Samples and tastings – sampling has become an integral part of the sales promotion mix. Marketers commonly use product samples to stimulate consumer interest (Wadhwa et al., 2008). Based on our consumer research we can claim that Slovak and Czech consumers are very interested in this sales promotion tool. At the same time, they are very excited to try new products in this way. Samples and tastings enable to introduce new product to consumers or to reach new customers. Since only 54% of Slovak and 69% of Czech consumers have previous experience with organic food samples or tastings, producers and/or retailers should use this tool more intensively.
- Discounts and discount coupons - marketers have long realized that coupons can serve as advertisements that attract new customers and inspire gratitude and loyalty among existing ones by delivering important messages about a company. The effect has become stronger in recent years as technology has enabled businesses to personalize their coupons. If businesses realized how powerful this increased awareness can be, they would take as much care with coupons as they do with other marketing materials, striving to delight customers, not simply to close a deal (Venkatesan and Farris, 2012b). In terms of the vast majority of Slovak (79%) and Czech consumers (83%), business entities in these countries use discount coupons or discounts sometimes or not at all. However, the consumer interest in discounts and discount coupons is very high.
- Multi-packs – multi-pack products are way to enhance consumers' purchase weight as well as raise assortment purchase. However, it is necessary to provide consumers a viable selection of products that meet their needs at the price they are willing to pay (Davey and Florio, 2016). A multi-pack product also reduces the cost involved in the packaging of the product. Multi-packaging also helps in clearing the old stocks quickly. In case of new products, multi-packs help generate trial and familiarize consumer with a larger part of brand's range in one go. A multi-pack product also helps in retaining brand loyalty so that consumer does not switch to some other brand too easy. Moreover, products of daily use sell more when are sold as a multi-pack (Pandey, 2011).

Conclusion

Based on the research results the aim of the presented paper was to find out current state of using consumer-oriented sales promotion tools at the organic food market and to suggest recommendations for improvement. We set two research questions: (1) Which tools use of sales promotion do business entities in the field of organic food in Slovakia and Czech Republic? (2) What is the attitude of the producers and retailers of organic food in Slovakia and Czech Republic to the selected tools of sales promotion?

In terms of Slovak and Czech business entities, we can conclude that the most used consumer-oriented sales promotion tools are information materials, merchandising and multipacks. The most implemented sales promotion tools represent non-monetary tools that do not cause any other additional costs for retailers. They are easy to use. On the other side the least used tools are games and contests; loyalty programs and gift items. Based on evaluating of the average assessment of individual tools we found out that the sales promotion tools are used just often (the average rating of all tools was higher than 3 which correspond to the frequency of often to never). The results point to insufficient implementation of sales promotion tools at the organic food market and probably low interest of business entities to them.

Furthermore, we focused also on the attitude of business entities to claims that indirectly relate to using of consumer-oriented sales promotion tools in practice. If we generalize obtained results, the Slovak business entities claim that consumers are loyal to one organic food brand and are not price sensible. At the same time, they have enough information about products they are buying. Consumers are motivated to buy a certain product by discount coupons and/or samples and tastings at the point of purchase. The results did not testify to the discounted products would be sold easier. Moreover, this part of research revealed that merchandising is important sales promotion tool not only in Slovakia, but also in the Czech Republic. Differences between these two countries are recorded in the consumer loyalty to one organic food brand. In terms of the Czech business entities, consumers are not informed about product they are buying adequately. Discount coupons and/or samples and tastings at the point of sale motivate Czech consumers to buy presented product, too.

Majority of the Slovak and Czech business entities provide discounts to increase sale of products. The main reason why they give away gift items is to build long-term customer relationships. These results reveal focus on their financial benefits of sales promotion more than on the benefits for consumers.

Finally, as we identified the lack of studies dedicated to sales promotion application by business entities at the organic food market, the most important benefits of the presented paper are results of conducted research and recommendations for more effective sales promotion. Moreover, the results of consumer research that we conducted previously confirm the results presented in this paper. As we found out (in the previous consumer research), the consumers were not faced with very encouraging sales promotion activities when buying organic food. It is confirmed by the results of this research - the use of consumer-oriented sales promotion tools by producers and retailers are considered to be insufficient.

References

- Bain, M. (2013). *The Psychology of Sales: Why Reciprocity Matters* Retrieved March 19, 2017, from <https://www.salesforce.com/blog/2013/10/sales-psychology-of-selling.html>
- Barański, M. et al. (2014). Higher antioxidant and lower cadmium concentrations and lower incidence of pesticide residues in organically grown crops: a systematic literature review and meta-analyses. *British Journal of Nutrition*, 112(5), 794-811.
- Brito, P. Q., & Hammond, K. (2007). Strategic Versus Tactical Nature of Sales Promotions. *Journal of Marketing Communications*, 13(2), 131-148.
- Dangour, A. et al. (2009). Nutritional quality of organic foods: a systematic review. *The American Journal of Clinical Nutrition*, 90(3), 680-685.
- Davey, K. S., & Florio, R. (2016). *Price Pack Architecture: A Proven Strategy for Sustainable and Profitable Innovation*. Retrieved March 17, 2017, from <https://www.iriworldwide.com/IRI/media/IRI%20-%20Price%20Pack%20Architecture%20POV.pdf>
- De Pelsmacker, P., Geuens, M., & Van Den Bergh, J. (2001). *Marketing Communications*. London: Prentice Hall.
- Dickieson, J., & Arkus, V. (2009). Factors that influence the purchase of organic food: A study of consumer behaviour in the UK: projekt. London: Cass Business School.
- Elzakker, B., & Eyhorn, F. (2010). *Organic Business Guide*. Germany : IFOAM.
- Guido, G. (2009). *Behind Ethical Consumption: Purchasing Motives and Marketing Strategies for Organic Food Products, Non-GMOs, Bio-Fuels*. Bern: Peter Lang AG International Academic Publishers.
- Guido, G. et al. (2010). The Role of Ethics and Product Personality in the Intention to Purchase Organic Food Products: A Structural Equation Modeling Approach. *International Review of Economics*, 57(1), 79-102.
- Hughner, R. et al. (2007). Who are organic consumers? A compilation and review of why people purchase organic food. *Journal of Consumer Behaviour*. 6(2-3), 94-110.
- Kahl, J. et al. (2012). Organic food quality: a framework for concept, definition and evaluation from the European perspective. *Journal of the Science of Food and Agriculture*, 92(14), 2760-2765.
- Kahl, J., Busschner, N., & Ploeger, A. (2010). Questions on the validation of holistic methods of testing organic food quality. *Biological Agriculture and Horticulture*, 27(14), 81-94.
- Köksal, Y., & Spahiu, O. (2014). The Efficiency of Monetary and Non-Monetary Sales Promotions on Brand Preference: A Case of Albanian GSM Companies. *Istanbul University Journal of the School of Business*, 43(2), 319-331.
- Marketing-schools.org. (2016). *Marketing organic products*. Retrieved November 11, 2016, from <http://www.marketing-schools.org/consumer-psychology/marketing-organic-products.html>

- Mela, C. F., Gupta, S., & Lehmann, D. R. (1997). The Long-term Impact of Promotion and Advertising on Consumer Brand Choice. *Journal of Marketing Research*, 34(2), 248-261. DOI: 10.2307/3151862.
- Nagar, K. (2009). Evaluating the Effect of Consumer Sales Promotions on Brand Loyal and Brand Switching Segments. *Vision: The Journal of Business Perspective*, 13(4), 35-48.
- Owens, D. L., Hardman, M. & Keillor, B. (2001). The Differential Impact of Price-Related Consumer Promotions on Loyal versus Non-Loyal Users of the Brand. *Journal of Promotion Management*, 6(1-2), 113-131.
- Pandey, R. (2011). *Multi benefits with Multi-pack* Retrieved September 2, 2017, from <https://retail.franchiseindia.com/magazine/2011/august/Multi-benefits-with-Multi-pack.m49-2-2/>.
- Papatla, P., & Krishnamurthi, L. (1996). Measuring the Dynamic Effects of Promotions on Brand Choice. *Journal of Marketing Research*, 33(1), 20-35. DOI: 10.2307/3152010.
- Pino, G., Peluso, A. M., & Guido, G. (2012). Determinants of Regular and Occasional Consumers' Intentions to Buy Organic Food. *Journal of Consumer Affairs*, 46(1), 157-169.
- Siegrist, M. (2008). Factors Influencing Public Acceptance of Innovative Food Technologies and Products. *Trends in Food Science & Technology*, 19(11), 603-608.
- Srilekha, J., & Jawahar, R. K. (2011). The Impact of Promotional Offers in off Season with Special Reference to Big Bazaar. *International Journal of Current Research*, 33(3), 54-59.
- Venkatesan, R., & Farris, P. W. (2012a). Measuring and Managing Returns from Retailer-Customized Coupon Campaigns. *Journal of Marketing*, 76(1), 76-94.
- Venkatesan, R., & Farris, P. W. (2012b). *Unused Coupons Still Pay Off*. Retrieved March 17, 2017, from <https://hbr.org/2012/05/unused-coupons-still-pay-off>.
- Wadhwa, M., Shiv, B., & Nowlis, S. M. (2008). A Bite to Whet the Reward Appetite: The Influence of Sampling on Reward-Seeking Behaviors. *Journal of Marketing Research*, 45(4), 403-413.

Consumer Protection in the Slovak Republic and Protection of Air Passengers' Rights

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Abstract

The authors analyse a legal regulation of consumer protection in the Slovak Republic, comprised (among others) the Civil Code, the Act on Consumer Protection and the Act on Consumer Protection in Provision of Certain Tourism Services. They refer to the specifics of consumer law, which undermines the basic principles of private law (the principle of equality of the involved parties and the principle of the dominance of dispositive legal norms), because it primarily serves for the protection of a weaker party of the consumer agreement – a consumer. They focus on the claims of consumers - air passengers. The conclusion is that air passengers' rights drive mainly from the EU law. They also present a survey regarding air passengers' rights and propose suggestions on how to improve their satisfaction. The aim of a paper is to start a discussion on air passengers' rights because the number of air passengers increases.

Key words

consumer agreement, consumer protection, travel law, claim, air passenger word.

JEL Classification: K15, K23

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Introduction

The Slovak Republic became a member state of the EU on 1 May 2014. This fact represents an important milestone for the Slovak Republic. The free movement of goods, services, persons and capital. Beside of these economic advantages, the membership in the EU offers many other advantages of noneconomic character (e.g. social, legal, safety and other).

The EU membership is also linked with the need to harmonize the Slovak law with the EU law. This applies to protection of consumers' rights as a part of a consumer law as well. Transport services present inseparable part of each country's infrastructure.

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They relate with progress in economic, business, trade, social services and culture. According to Horvat et. al. (2017) a strong influence of EU legislation is seen when it comes to protection of consumer rights in all markets of transport services.

Consumer agreements were introduced into Slovak law by the Act No. 150/2004 Coll. amending and supplementing the Act No. 40/1964 Coll. Civil Code, as amended. This act, which entered into force on 1 April 2004, through an amendment of the Civil Code implemented into the Slovak law the Council Directive No. 93/13/EEC of 5 April 1993 on unfair terms in consumer agreements.

According to the provisions of the Civil Code, consumer agreement means each contract regardless of the legal form, concluded between a supplier and a consumer (Section 52 paragraph 1 of the Civil Code). The supplier means a (physical or legal) person, who, in concluding and performing the consumer agreement, acts in the framework of his trade or other business activity (Section 52 paragraph 3 of the Civil Code). The consumer means a physical person who, in concluding and performing the consumer agreement, does not act in the framework of his trade or other business activity (Section 52 paragraph 4 of the Civil Code).

The supplier (entrepreneur, seller, producer, importer) and the consumer are similarly defined by the Act No. 250/2007 Coll. on Consumer Protection and on amendment of the Act of the Slovak National Council No. 372/1990 Coll. on Offences, as amended.

A paper focuses on legal regulation of consumer protection in the Slovak Republic. It deals with survey regarding air passenger's rights.

1 Methodology

A paper deals with general legal regulation of consumer protection in the Slovak Republic. Our own (non-representative) research focuses on air passenger's rights. We wanted to inquire the respondent's (Slovakian air passengers) knowledge about their rights and through these questions realized them about their rights. A research was made during three weeks with 60 volunteers (40 women, 20 men), elder than 18 years, at the Bratislava airport (airport M. R. Štefánika) by the students of the subject "Tourism Law". Theoretical and empirical methods were used, e.g. analysis, synthesis, deduction and induction. To eliminate non-important and coincident from important and regular we also used method of scientific abstraction.

The questions for research:

1. What type of airline (low cost or classic/traditional airline) do you prefer?
2. Have you ever experienced a cancellation of a flight?
3. Have you ever experienced a delay flight? If yes, please provide details on the flight delay (1-hour delay, 2-hours delay, 3-hours delay, above 3-hours delay; experienced once, twice, 3-times, 5-times, 6-times and more).
4. Have you ever required a compensation from the airline?

5. Do you know about your right:
- a) in case of cancellation/delay of the flight exceeding 3 hours within the territory of EU you have the right to compensation of 250 EUR – distance of 1500 km or less, 400 EUR – for a distance above 1500 km?
 - b) in case of cancellation/delay of flight exceeding 3 hours between an EU airport and non-EU airport you have the right to compensation of 250 EUR – distance of 1500 km or shorter, 400 EUR for a distance between 1500 km and 3500 km or 600 EUR for a distance longer than 3500 km?
 - c) if your flight is delayed for more than 2 hours, you have the right to refreshment and free, fax or e-mail communication?
 - d) if the following flight is postponed until the night hours, you also have the right for accommodation to be provided?
 - e) if your flight is delayed for 5 hours or more, the carrier is obliged to offer you a refund of air ticket?
 - f) in case of lost, damaged or late delivered luggage your compensation can amount up to 1.220 EUR?
 - g) if during turbulence the stewardess spills a drink and damages your clothes, you have the right to refund the cost of a cleaning shop?

2 Literature review

Although the Civil Code defines the consumer agreement, it is not a special type of agreement, but merely a certain type of agreement. Consumer agreements are characterized by fragmented regulation. They are regulated not only by the Civil Code, but also by other legal regulations (e.g. the Act on Consumer Protection; the Act No. 161/2011 Coll. on Consumer Protection in Provision of Certain Tourism Services and on Amendment of Certain Acts, as amended, etc.). We can find variety of Acts on consumer protection in the legal regulation of the financial market. (Slezáková, 2017).

According to Magurová et. al. (2016) a character of consumer agreement has e.g. the contract on passenger transport, the contract on acquisition of a tour, the contract on accommodation and other contracts. The decision whether an agreement is or is not a consumer agreement depends, among others, on the position of the parties of a shared contract - supplier and consumer (Magurová, 2017).

The consumer agreement may be concluded in any form. That means not only in writing, but also orally or by conduct (tacitly). The Civil Code sanctions (by absolute invalidity) written agreements that indicate the subject of agreement and the price in smaller font than the other parts of agreement. That's because in practice the smaller font often caused consumer's overlooking of provisions, which provided a unilateral advantage for the supplier. A smaller font can only be used in the name of the agreement and in its headings (Section 53c of the Civil Code).

The Civil Code defines terms that must and must not be contained in consumer agreements. Contract terms, which cause considerable imbalance in the rights and ob-

ligations of the contracting parties to a disadvantage of consumer are called unacceptable contract terms. Some of them are characterized in Section 53 paragraph 4 of the Civil Code. They (e. g.) include provision that:

- a) the consumer is obliged to comply with and that had not been made available to her/him before conclusion of the agreement;
- b) exclude or limit the consumer right in claiming liability for defects or damage;
- c) limit access to evidence or impose on the consumer the burden of proof which, according to the law, governing the contractual relationship should be borne by the other party and many others.

Unacceptable terms in consumer agreements seriously damage the consumer, therefore the Civil Code declares them as invalid (Section 53 paragraph 5 of the Civil Code). We note, that invalid is only the unacceptable contract term, not the whole consumer agreement. However, we do not exclude the possibility that such invalidity will affect the whole consumer agreement. A term concerning the main subject of performance or price, which is expressed clearly and comprehensible or individually agreed, cannot be regarded as unacceptable (Krajčo, 2011).

As mentioned above, consumer agreements are regulated not only by the Civil Code, but also by other legal regulations by the Act on Consumer Protection, which entered into force on 1 July 2007. It is the most comprehensive public-law regulation on consumer protection because its Annex No. 2 contains list of transposed legally binding acts of the EU law relating to consumer protection (Veterníková, 2015).

Pursuant to Article 3 paragraph 3 of the Act on Consumer Protection each consumer has the right to the protection against unacceptable terms in consumer agreements. If a consumer regards one or more terms of the consumer agreement as unacceptable he has the right:

- a) to approach the Commission for Assessment of Terms of Consumer Agreements, reporting to the Ministry of Justice of the Slovak Republic, which submits proposals to legal persons founded or established for consumer protection (so-called consumer protection associations). Consumer protection associations may initiate legal proceeding on behalf of the consumers. In this case the burden of proof that the contract terms were agreed individually rests on the supplier. In case of doubts, the interpretation more favorable for the consumer will be applied (Section 54 paragraph 2 of the Civil Code);
- b) to request the competent court to decide that the contract term has the character of an unacceptable term and is invalid.

Consumer rights relating to unacceptable contract terms include, among others:

- a) the right to compensation for damage caused to consumer by an unacceptable term in the consumer agreement;
- b) the right to account for unjust enrichment or
- c) the right to adequate satisfaction, which is independent from the right to compensation of damage and from the right to account for unjust enrichment.

According to the provision of Article 298 paragraph 1 of the Act No. 160/2015 Coll. Civil Procedure Code, as amended, in its judgement the court may, even without being

requested to do so, declare a contract term unacceptable. In the judgement the court will indicate the term in the wording as agreed in the consumer agreement or in other contract documents relating to the consumer agreement. Whenever the right to a payment of an amount from the consumer agreement is exercised in relation to a consumer (as defendant), the court will not issue the payment order if the consumer agreement or other contract documents related to the consumer agreement contain an unacceptable contract term (Article 299 paragraph 2 of the Civil Procedure Code).

General consumer rights include (among others) the right to: products and services in standard quality; lodge a complaint; a compensation for damage; information; the protection of health, safety and economic interests; lodge complains to supervisory and control bodies and to municipality for infringement of the consumer rights granted by the law; etc.

The Act on Consumer protection defines unfair and aggressive commercial practices. Unfair commercial practices are prohibited. Unfair commercial practices are, among others, misleading acts and misleading omissions and aggressive commercial practice. The list of commercial practices, which are unfair under any circumstances, is contained in Annex No. 1 to the Act on Consumer Protection.

Misleading commercial practice is e. g. making a false statement, that a product will be available only for very limited time or on particular terms, with the aim to elicit an immediate decision and deprive consumer of sufficient opportunity or time to make an informed choice or describing a product as "gratis", "free", "without charge" or similar, if the consumer has to pay anything other than unavoidable costs for responding on commercial practice and collecting or paying for the delivery.

Aggressive commercial practice is e.g. giving an impression to the consumer that he may not leave before she/he concludes an agreement or inclusion of direct enticement for children in advertisements to buy advertised products or persuade their parents or other adults to buy these products.

The supplier is obliged to inform the consumer about the conditions and the procedure of lodging a complaint properly, including where the complaint may be lodged. The complaint means claiming liability for defects of a product or service. It must be handled not later than 30 days following the date of lodging. After the vain expiration of the period for handling of complaint the consumer has the right to withdraw from the agreement.

Supervision of fulfilment of the obligations determined by the Act on Consumer Protection is executed by the supervisory bodies. Where competences of the supervisory body cannot be determined, the supervision and control are executed by the Slovak Trade Inspection.

By adoption of the Act on Consumer Protection in Provision of Certain Tourism Services, which entered into force on 1 July 2011, the Directive 2008/122/EC of EP and the Council of 14 January 2009 on consumer protection in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts was transposed into the Slovak law. This act regulates the rights of consumers and the obligation of the seller related to timeshare, provision of long-term recreational services, their exchange and mediation of their resale, the content of these consumer agreements and competences of supervisory bodies.

Contracts on provision of certain tourism services mean:

- a) contracts on timeshare,
- b) contracts on provision of long-term recreational services,
- c) contracts on participation in the exchange system and
- d) contracts on mediation of resale.

A body supervising compliance with the provisions of the Act on Consumer Protection in Provision of Certain Tourism Services is the Slovak Trade Inspection. It may impose a fine up to the amount of 30.000 EUR on the seller for violation of the same obligation or for violation, which represent a danger to the rights of two or more consumers.

3 Results and discussion

Airline transport services are popular among inhabitants of the EU, because they can travel even long distance fast and comfortable. The rise of airlines and air passengers causes that there is a discussion about protecting their rights. A leading role in protecting air passengers' rights plays the EU regulation, comprised (among others):

- a) Council Regulation (EC) No. 2027/97 of 9 October 1997 on air carrier liability in the event of accidents;
- b) Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No. 295/91;
- c) Regulation (EC) No. 1107/2006 of the European Parliament and of the Council of 5 July 2005 concerning the rights of disabled persons and persons with reduced mobility when travelling by air;
- d) Regulation (EC) No. 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC;
- e) Regulation (EC) No. 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community.

Slovak civil air force is regulated by the Act No. 143/1998 Coll. About Civil Air Force (Aviator Act) and on Amendment of the Acts, as amended.

An airline trade being huge, therefore the airlines compete about air passengers, using various marketing strategies, e. g. the price of air ticket or provided services. However, airlines are not often correct to their passengers. Therefore, we wanted to inquire the respondent's (Slovakian air passengers) knowledge about their rights.

A limiting factor of result is the fact, the inquiry was held only in one airport in the Slovak Republic, so it's not applicable to the whole Slovak Republic.

Based on the results of research, 55% of passengers prefer classic/traditional airline. This preference probably results from the fact that classic/traditional airlines provide a higher standard of services. Majority of passengers would prefer to pay more for air ticket and provided services rather than accept a lower travel comfort. In concrete 66,7% of women (22 respondents) and 33,3% of men (11 respondents) prefer classic/traditional airline for their travelling. Low-cost airlines are preferred by 45% of passengers. We assume that the airfare is important for this category of passengers and that services provided by the airline to passengers does not mean a lot by selection of their airline.

Tab. 1 Type of a preferred airline

	Number of respondents	%
Low-cost airline	27	45
Classic/traditional airline	33	55

Source: Authors

Based on the inquiry, 20% of passengers have experienced a cancellation of flight, while 80% of passengers have not had this negative experience.

Tab. 2 Experience with a cancellation of a flight

	Number of respondents	%
No	48	80
Yes	12	20

Source: Authors

Based on results of research, 48,3% of passengers have not yet experienced a flight delay but more than a half (51,7% of passengers) have already had this negative experience. Of course, unexpected problems may occur sporadically, but we are not sure whether such a high percentage of delayed flights are justified and whether it is not simply caused by the lack of responsibility of airlines or by circumstances, that could have been foreseen.

Tab. 3 Experience with a delayed flight

	Number of respondents	%
No	29	48,3
Yes	31	51,7

Source: Authors

Passengers have most often experienced a 1-hour flight delay (51,6%), 29,9% of passengers have experienced a 2-hours delay, 3,2% of passengers 3-hours delay and 16,1% of passengers a flight delay longer than 3 hours.

Tab. 4 Time of an experienced flight delay

	Number of re- spondents	%
1-hour delay	16	51,6
2-hours delay	9	29
3-hours delay	1	3,2
Above 3-hours delay	5	16,1

Source: Authors

Passengers (29%) have most often experienced a flight delay once and 3-times, 22,6% of passengers had experienced it twice and 9,7% of passengers have experienced it 5-times and more often.

Tab. 5 Number of an experienced flight delay

	Number of re- spondents	%
Once	9	29
Twice	7	22,6
3-times	9	29
5-times	3	9,7
6-times and more often	3	9,7

Source: Authors

Most passengers (91,7%) don't require a compensation from the airline.

Tab. 6 Requirement of a compensation from the airline

	Number of respondents	%
No	55	91,7
Yes	5	8,3

Source: Authors

Most of passengers (70%) don't know about possibility of compensation in case of cancellation/delay of flight exceeding 3 hours within the territory EU.

Tab. 7 Knowledge about rights in case of cancellation/delay of flight exceeding 3 hours within the territory of EU

	Number of respondents	%
No	42	70
Yes	18	30

Source: Authors

Most of passengers (70%) don't know about possibility of compensation in case of cancellation/delay of flight exceeding 3 hours between an EU airport a non-EU airport.

Tab. 8 Knowledge about rights in case of cancellation/delay of flight exceeding 3 hours between an EU airport and a non-EU airport

	Number of respondents	%
No	42	70
Yes	18	30

Source: Authors

Most of passengers (60%) don't know about a right to refreshment and free telephone, fax or e-mail communication.

Tab. 9 Knowledge about rights in case of a flight delayed more than 2 hours

	Number of respondents	%
No	36	60
Yes	24	40

Source: Authors

More than a half of passengers (56,7%) know about their right to be provided by accommodation when the flight is postponed until the night hours.

Tab. 10 Knowledge about rights in case of a flight postponed until the night hours

	Number of respondents	%
No	26	43,3
Yes	34	56,7

Source: Authors

Most passengers (78,3%) don't know about their right to be offered a refund of air-ticket in case the flight is delayed for 5 or more hours.

Tab. 11 Knowledge about right in case of a flight delayed for 5 or more hours

	Number of respondents	%
No	47	78,3
Yes	13	21,7

Source: Authors

Most passengers (73,3%) don't know about their right of a compensation in case of lost, damaged or late delivered luggage.

Tab. 12 Knowledge about rights in case of a lost, damaged or late delivered luggage

	Number of respondents	%
No	44	73,3
Yes	16	26,7

Source: Authors

Almost all passengers (91,7%) don't know about their right of a compensation of the cleaning shop cost in case of damages on clothes, caused by stewardess.

Tab. 13 Knowledge about right in case of damages on clothes caused by stewardess

	Number of respondents	%
No	55	91,7
Yes	5	8,3

Source: Authors

The results of the inquiry show, that most of the air passengers (60 respondents) do not know about their rights. They are not enough informed. These questions confirm that passengers actually need to be informed.

Therefore, we recommend the airlines to issue to the passengers, together with purchased air tickets, free brochures informing them about their rights. By doing so, the airline providing such brochures will gain good reputation on the market and overrun the competition, because the loyalty of passengers will increase with the certainty, that the airline would take care of them in case of delay or other unpleasant situation.

When the passenger feels unique and protected by the airline, she or he will recommend the airline and spreads its good reputation. With increasing loyalty of the passengers, profits of the airline will grow up too. With the right marketing strategy, the airline could make part of well-known and preferred airlines. We came to this inclusion based on interviews with passengers conducting during inquiry, when the respondents have indignantly described their negative experience.

Conclusion

The rise of airlines and air passengers in EU causes, that there will be more discussions about air passenger's rights and their better protection. A leading role in protecting air passenger's rights plays the EU regulation. It adopts the minimum standard of rights, granted to air passengers. Even the fact, the national legislation can grant broader scope of rights, this is not case of the Slovak Republic. The results of the inquiry show, that most of the air passengers (60 respondents) don't know about their rights because they are not adequately informed. Therefore, we recommend the airlines to provide to passengers (together with purchased air tickets), free brochures informing them about their rights.

References

- Horvat, M., Magurová, H., & Srebalová, M. (2017). Protection of Consumers' Rights in Railway in the Slovak Republic. *Yearbook of Antitrust and Regulatory Studies*, 10(16), 177-190.
- Krajčo, J. (2011). *Spotrebiteľská zmluva v aplikačnej praxi v SR a EÚ*. Bratislava: Euro-union, spol. s r.o. – Ikarus.SK.
- Magurová, H. et al. (2016). *Základy práva v cestovnom ruchu pre ekonómov*. Bratislava: Wolters Kluwer.
- Magurová, H. (2017). Ochrana spotrebiteľa a právo v cestovnom ruchu. In *Paneurópske právnické fórum 2017*. (pp. 483-494). Bratislava: Paneurópska vysoká škola.
- Slezáková, A. (2017). Die Klienteneinstufung und die daraus folgenden Informationspflichten im Sinne des slowakischen Finanzvermittlungsgesetzes. *Wirtschaft und Recht in Osteuropa (WiRO)*. (pp. 45-48). München: C.H.Beck.
- Veterníková, M. (2015). *Vybrané kapitoly zo spotrebiteľského práva*. Bratislava: Ekonóm.

Impact of Corporate Governance Framework on Economic Performance in European Union

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Abstract

In the current post-crisis period, the implementation of Corporate Governance principles has proven to be important. The Organization of Economic Cooperation and Development considers failure of Corporate Governance as one of the causes of the latest financial and economic crisis. We assume that the higher quality of institutional environment point to higher performance of the economy. The aim of the paper is to quantify the implementation of Corporate Governance in the European Union through selected qualitative indicators and his impact on economies. We have verified that countries with better values of judicial independence, protection of property rights, corruption, minority investor protection, extent of conflict of interest and resolving insolvency have a higher value of gross domestic product per capita. The index of enforcing contracts was statistically insignificant.

Key words

Corporate Governance, crisis, institutions

JEL Classification: G34, B25

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Introduction

Corporate Governance has been more intensively processed after economic crisis of 2008, when the Organization for Economic Cooperation and Development (OECD) identified the failure of Corporate Governance as one of the main causes of this deep recession (Kirkpatrick, 2009). According Klimiková and Muchová (2017): "*weak and ineffective governance of financial institutions has been widely cited as an important contributory factor in the massive failure of financial sector decision making that led to the global financial crisis*". Author's collective Hučka, Malý and Okruhlica (2007) defines the term of Corporate Governance "*as an issues of proprietary relationships and systems by which owners exercise their proprietary rights and control over the management area of the company; at the same time, Corporate Governance includes processes, structures and relationships, by which administrative authorities supervise the work of their executive staff.*" "*In the wake of the crisis, financial institution governance was too often revealed as a set of arrangements that approved risky strategies, was blind to the dangers on the balance sheet and in the global economy* (Klimiková & Muchová, 2017)".

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Based on the experience of Corporate Governance failures since the 1970s, firms implemented principles and rules into its internal processes in form of written Codes and in form of establishment of responsible positions: *"In order to abide by the rules of corporate governance several companies have appointed also "Chief Governance Officers" and yet, there is still some confusion about what these officers do. There is a disparity between what these officers actually do, as practice depends on the company's circumstances. Moreover, there is also great disparity between what is "written" in the corporate governance code and corporate governance practices „done" (controversy between perception and reality)"* (Knapik & Krajčik, 2012)." Corporate Governance is usually processed as microeconomic issues, however, by Kittová and Steinhauser (2017) processed this theme especially in the context of the interaction between the institutional and macroeconomic environment of companies. In this way, the paper contains evidence and arguments for a constant effort to improve the institutional environment of companies. The authors assumed that the better quality of the institutional environment means better macroeconomic conditions; and vice versa - favourable macroeconomic conditions have a positive impact on the quality of the institutional environment. The role of the state should be to support the protection of property rights, further on in the constant effort to suppress corruption and to promote the access of enterprises to sources of financing. Companies should further implement the principles of Corporate Governance into their internal processes. In this way, they will gain better access to financial sources and gain a competitive advantage at the organizational level.

Corporate Governance is theoretically explained most often in the background of the new institutional economic theory and in the theory of transaction costs. The theoretical basis for Corporate Governance was mainly provided by the work and definition of governance structures by the Nobel Prize winner for Economist Williamson (1990). The amount of transaction costs is difficult to quantify, but author Okruhlica (2013) recommends using qualitative indices, in this case competitiveness indices. An analogue approach has chosen by author's team, Hasan, Kobeissi and Song (2014), applied quantitative analysis on Corporate Governance, specifically multiregional analysis. Steinhauser (2015) used as a measure the amount transaction costs and as at the same times an indicator of the institutional environment quality - the credit derivatives, namely Credit Default Swaps (CDS). Index of Institutional Environment expressed using Credit Default Swaps represents a negative value the CDS premium on the underlying asset (sovereign debt bonds of EU countries). The deterioration of the country's risk exposure represents an increase in amount of transaction costs, which is accompanied by an increase in the CDS premium, ie the decrease in the value of the institutional measurement index using the CDS. In our case, the CDS premium was used as a control variable to illustrate a complex model image.

1 Methodology

Corporate Governance is difficult to quantify. This is related to the problematic methodology for measuring the amount of transaction costs. However, we have applied a quantitative analysis of qualitative indicators. We assume that the higher quality of institutional environment level to higher performance of the economy. Aim of our paper

is to quantify the implementation of Corporate Governance in the European Union (except Luxembourg and Malta) through selected qualitative indicators. These variables and their choices have tried to adapt to the usual content of Corporate Governance theory. The Corporate Governance implementation level correlates indirectly with the level of transaction costs in the institutional environment. Higher amount of index values presents higher institutional quality. We assume that the higher value of the selected indexes indicates a higher quality of the institutional environment and a better implementation of the Corporate Governance principles. An even implementation principle of Corporate Governance represents the transaction cost, but in a better institutional environment this implementation is less costly. These assumptions outputs are the same as in paper Kittová & Steinhauser (2017). Our work follows this paper and presents a continuation and deepening the analysis of other indexes. The implemented a descriptive and multiregional analysis, which we have processed in Gretl and the results were interpreted according to the literature (Pacáková et al., 2009; Lukáčik, Lukáčiková, Szomolányi, 2011). WDescription and source of variables shows table 1.

Tab. 1 Description of variables

Variables	Description and source
GDP per capita (current US\$) 2015	Gross Domestic Product per capita from year 2015 – dependent variable (World Development Indicators, WBG)
Index_CDS 10Y 2014	Index of Institutional Environment through Credit Default Swaps (10 years Senior Unsecured Debt CR, Mid Spread) from year 2014 – independent control variable (Thomson Reuters – Eikon Database)
Judicial independence 2014	Subindex Judicial Independence from year 2014 – independent variable (The Fraser Institute)
Protection of property rights 2014	Subindex Protection of Property Rights from year 2014 – independent variable (The Fraser Institute)
Extra payments/bribes/favoritism 2014	Subindex Extra Payments, Bribes and Favoritism from year 2014 – independent variable (The Fraser Institute)
Strength of minority investor protection index (0-10) 2015	Subindex Strength of Minority Investor Protection from year 2015 – independent variable (Doing Business, WBG)
Extent of conflict of interest regulation index (010) 2015	Subindex Extent of Conflict of Interest Regulation from year 2015 – independent variable (Doing Business, WBG)
Enforcing Contracts – DTF 2015	Subindex Enforcing Contracts from year 2015 – independent variable (Doing Business, WBG)

Resolving Insolvency – DTF 2015	Subindex Resolving Insolvency from year 2015 – independent variable (Doing Business, WBG)
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Source: Own processing by WBG, 2017a; WBG, 2017b; The Fraser Institute, 2014; Thomson Reuters, 2018.

2 Results and Discussion

In order to achieve the main aim of our paper we proceeded to quantitative analysis. Table 2 contains input data descriptive statistics. We analysed 26 EU countries except Luxembourg and Malta (N). The average GDP per capita was around 27,800 USD. The average value of the CDS Index was at -181 USD. The fact is that a higher index value means a higher quality of the institutional environment. For our needs is interesting kurtosis and skewness. Kurtosis value higher than 1 means, that dataset contains observations (states) with a variable value higher than normal distribution. In our case, we can say, that GDP per capita is divided normally within the countries surveyed; on the other hand, we have seen significant extreme observation.

Skewness reveals the shape of the distribution. Positive rate skewness means a positive, right-handed asymmetric distribution (there are a larger number of countries with an index value less than the average).

Tab. 2 Descriptive Statistics

Variable	N	Mean	Std. Dev.	Skew.	Kurt.
GDP per capita (current US\$) 2015	26	27 836,98	15 666,82	0,50	-1,05
Index CDS 10Y 2014	26	-173,27	199,37	-3,25	12,64
Judicial independence 2014	26	6,12	2,03	0,04	-1,28
Protection of property rights 2014	26	6,46	1,55	0,20	-1,45
Extra payments/bribes/favouritism 2014	26	5,37	1,61	0,23	-1,25
Strength of minority investor protection index (0-10) 2015	26	6,36	0,65	0,63	-0,38
Extent of conflict of interest regulation index (0-10) 2015	26	5,98	1,02	0,61	0,65
Enforcing Contracts – DTF 2015	26	65,88	9,17	-0,79	-0,47
Resolving Insolvency – DTF 2015	26	71,40	13,03	-0,19	-1,05

Source: Own processing by WBG, 2017a; WBG, 2017b; The Fraser Institute, 2014; Thomson Reuters, 2018.

Table 3 contains multiple regression analysis between GDP per capita and Subindex Judicial Independence. The model is statistic significant based on F-statistics and R-

squared explains up to 69 % of the observations. With an increase in Judicial Independence by one point, we expect an increase in GDP per capita of approximately 6,097 USD. Quantitative analysis has shown that with an increase in the quality of judicial independence we can expect an increase in economic performance. This conclusion demonstrates the need to implement Corporate Governance in economic processes. For comparison, the lowest value of this index is reached by the Slovak Republic (2, 65 points Judicial Independence, GDP per capita 16 088 USD), the highest value of Finland (9, 32 Judicial Independence, GDP per capita 42 311 USD).

Tab. 3 Multiple Regression Analysis - Judicial independence

Model 1: OLS, using observations 1-26

Dependent variable: GDP_per_capita_currentUSD_2015

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
Const	-8329,31	7130,32	-1,168	0,2547	
Index_CDS_10Y_2014	6,54251	10,0257	0,6526	0,5205	
Judicial_independence_2014	6097,07	982,306	6,207	<0,0001	*
					*
					*

R-squared	0,687760	Adjusted R-squared	0,660608
F(2, 23)	25,33059	P-value(F)	1,54e-06

Source: Own processing by WBG, 2017a; WBG, 2017b; The Fraser Institute, 2014; Thomson Reuters, 2018.

Tab. 4 Multiple Regression Analysis - Protection of property rights

Model 2: OLS, using observations 1-26

Dependent variable: GDP_per_capita_currentUSD_2015

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
Const	-31562,4	8639,08	-3,653	0,0013	*
					*
					*
Index_CDS_10Y_2014	-3,61040	9,12550	-0,3956	0,6960	
Protection_of_property_rights_2	9092,28	1174,90	7,739	<0,0001	*
					*
					*

R-squared	0,768233	Adjusted R-squared	0,748080
F(2, 23)	38,11885	P-value(F)	4,99e-08

Source: Own processing by WBG, 2017a; WBG, 2017b; The Fraser Institute, 2014; Thomson Reuters, 2018.

The result of the regression analysis between GDP per capita and Protection of Property Rights is shown in Table 4. Statistical significance is similar Table 3. In this case, we expect an increase of GDP per capita by 9,092 USD with an increase in the

index by 1 point. The lowest value of this index is Hungary (4.08 points Protection of Property Rights, GDP per capita 12 363 USD), the highest value of Finland (9.04 points of Protection of Property Rights, GDP per capita 42 311 USD). Proprietary rights protection is an essential component of Corporate Governance. The quality of the legal system, we can only recommend increasing the quality of the institutional environment in the field of property rights.

Table 5 contains a statistically significant model between GDP per capita and index Extra Payments, Bribes and Favouritism. With an increase in this variable by one-point, we expect an increase in GDP per capita of 7,886 USD. The lowest value of this index is reached by the Slovak Republic (2.72 points Extra Payments, Bribes and Favouritism, GDP per capita 16 088 USD), Finland's highest value (8.36 points Extra Payments, Bribes and Favouritism, GDP per capita 42 311 USD). Corruption under the new institutional economic theory is an informal institution (Liška et al., 2011). Its suppression, based on our analysis, contributes to a substantial increase in the performance of the economy by enhancing the quality of the institutional environment.

Tab. 5 Multiple Regression Analysis - Extra payments/bribes/favouritism

Model 3: OLS, using observations 1-26

Dependent variable: GDP_per_capita_currentUSD_2015

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
Const	-14006,3	7989,75	-1,753	0,0929	*
Index_CDS_10Y_2014	3,06633	10,2590	0,2989	0,7677	
Extra_payments_bribes_favoritis	7886,63	1269,30	6,213	<0,0001	* * *

R-squared	0,688169	Adjusted R-squared	0,661053
F(2, 23)	25,37892	P-value(F)	1,51e-06

Source: Own processing by WBG, 2017a; WBG, 2017b; The Fraser Institute, 2014; Thomson Reuters, 2018.

One of the partial areas of Corporate Governance and Codes is the protection of both majority and minority shareholders. These facts belong to the core of Corporate Governance theory. Regression analysis between GDP per capita and Subindex Strength of Minority Investor Protection is shown in Table 6. For this model, the impact of the CDS index on economic performance as a control variable was also statistically significant. This model is based on F-statistics with lower reporting power and according to R-squared explains only 27 % of the observations. For this reason, we can only say that we expect an increase in economic performance with the growth of this variable country. The lowest value of this subindex is reached in Slovak Republic (2.72 points of the Strength of Minority Investor Protection, GDP per capita 16 088 USD). The highest value presents United Kingdom (7.8 points Strength of Minority Investor Protection, GDP per capita USD 43 876).

Tab. 6 Multiple Regression Analysis - Strength of minority investor protection index

Model 4: OLS, using observations 1-26

Dependent variable: GDP_per_capita_currentUSD_2015

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
Const	-16365,6	27436,5	-0,5965	0,5567	
Index_CDS_10Y_2014	31,1129	13,9986	2,223	0,0364	*
Power of minority_investor_p	7800,57	4265,35	1,829	0,0804	*

R-squared	0,270789	Adjusted R-squared	0,207380
F(2, 23)	4,270475	P-value(F)	0,026473

Source: Own processing by WBG, 2017a; WBG, 2017b; The Fraser Institute, 2014; Thomson Reuters, 2018.

The statistical significance of the model in Table 7 is equal to the previous model. In this case, we also assume that the growth of the Subindex Extent of Conflict of Interest Regulation increases the GDP per capita. The lowest value of this subindex is Hungary (4.0 points Subindex Extent of Conflict of Interest Regulation, GDP per capita 12 363 USD). The highest value presents United Kingdom (8.3 points of the Subindex Extent of Conflict of Interest Regulation, GDP per capita 43 876 USD). Conflict of interests is one of the most serious forms of corporate failure.

Tab. 7 Multiple Regression Analysis - Extent of conflict of interest regulation index

Model 5: OLS, using observations 1-26

Dependent variable: GDP_per_capita_currentUSD_2015

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
Const	535,137	17004,6	0,03147	0,9752	
Index_CDS_10Y_2014	28,3582	13,9612	2,031	0,0539	*
Extent_of_conflict_of_interest_	5389,99	2728,03	1,976	0,0603	*

R-squared	0,285944	Adjusted R-squared	0,223852
F(2, 23)	4,605172	P-value(F)	0,020793

Source: Own processing by WBG, 2017a; WBG, 2017b; The Fraser Institute, 2014; Thomson Reuters, 2018.

Tab. 8 Multiple Regression Analysis - Enforcing Contracts

Model 6: OLS, using observations 1-26

Dependent variable: GDP_per_capita_currentUSD_2015

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
Const	57321,6	25285,5	2,267	0,0331	*
Index_CDS_10Y_2014	39,1765	16,5325	2,370	0,0266	*
Enforcing_Contra- cts_DTF_2015	-344,508	359,388	-0,9586	0,3477	

R-squared	0,196838	Adjusted R-squared	0,126997
F(2, 23)	2,818400	P-value(F)	0,080397

Source: Own processing by WBG, 2017a; WBG, 2017b; The Fraser Institute, 2014; Thomson Reuters, 2018.

Based on the regression model in Table 8, we cannot confirm the link between Subindex Enforcement Contracts and GDP per Capita. The lowest value of this subindex is reached by Cyprus (45.82 Enforcing Contracts, GDP per capita 23 243 USD), the highest value has Lithuania (77.88 Enforcing Contracts, GDP per capita 14 147 USD).

The model shown in Table 9 between Subindex Resolving Insolvency and GDP per capita is statistically acceptable by the base of statistical tests. With the increase in the index by one point we expect growth GDP per capita by 904 USD. The lowest value of this subindex is reached by Lithuania (48.47 Resolving Insolvency, GDP per capita 14 147 USD), Finland achieve the highest score (93.85 Resolving Insolvency, GDP per capita 42 311 USD). Business insolvency causes a deterioration of the institutional environment by increasing of insolvency risk of enterprises, by reducing confidence in the business sector. This risk threatens others subjects of the supply and demand chain, too.

Tab. 9 Multiple Regression Analysis - Resolving Insolvency

Model 7: OLS, using observations 1-26

Dependent variable: GDP_per_capita_currentUSD_2015

	<i>Coefficient</i>	<i>Std. Error</i>	<i>t-ratio</i>	<i>p-value</i>	
Const	-36582,2	15083,5	-2,425	0,0236	*
Index_CDS_10Y_2014	0,939495	12,5293	0,07498	0,9409	
Resolving_Insol- vency_DTF_2015	904,452	191,678	4,719	<0,0001	*

R-squared	0,575594	Adjusted R-squared	0,538689
F(2, 23)	15,59670	P-value(F)	0,000052

Source: Own processing by WBG, 2017a; WBG, 2017b; The Fraser Institute, 2014; Thomson Reuters, 2018.

Conclusion

We have confirmed the opinion that higher quality of institutional environment pointed to higher performance of the economy. It could be applied on EU countries, which were objects of our observation without Malta and Luxembourg. In our paper we confirmed the premise that implementation of Corporate Governance indirectly correlates with the level of transaction costs. Higher value of indexes indicates a higher quality of the institutional environment that means lower level of transaction costs and better implementation of the Corporate Governance principles. The implementation of corporate governance in form of principles or rules increases level of transaction costs however in a better institutional environment this implementation is less expensive. The strong linkage and the relationship between the variables are confirmed among GDP per capita and variables in table 3, 4, 5. It means that Judicial Independence; Protection of Property Rights; Extra Payments / Bribes / Favouritism significantly correlated with economic performance of countries as well as with implementation of Corporate Governance.

In other cases, models have low statistical significance, but the direction of the linkage indicates that with the increase in the quality of indices (Strength of Minority Investor Protection Index; Extent of Conflict of Interest Regulation Index; Resolving Insolvency) we can see also increase in quality of the implementation of Corporate Governance principles. These models also pointed out increasing of the economic performance measured by GDP per capita (analysis in table 6, 7, 9). In one case, the regression model between Subindex Enforcement Contracts and GDP per capita in Table 8 was not confirmed. We assumed that there will be a linkage, because the issue of Corporate Governance can be understood as prevention of economic failures on microeconomic level. Governance should avoid the risk of opportunism and thus increase enforcement of contracts. To our surprise, the linkage between these variables was not confirmed.

Here we have space to return in to the work of Wiliamson (1990) and his government structures which is related to the protection of contract failures from all contract parties. It is also related to the theoretical apparatus of opportunistic behaviour, asymmetric information and asset specificity. This also explains the selection of all factors that present the Corporate Governance implementation. This means connection between macro- and microeconomic perception. The performance of micro-level entities is reflected at the macroeconomic level. This means that the failure of economic subjects increases the risk of the crisis. To reduce the risk of the crisis, we recommend increasing the quality of implementation Corporate Governance principles by individual economic entities as well as for decision makers. This link and recommendation is found in much of the influential literature. We have confirmed this conclusion by updating of database and selecting of variable set. Authors Knapik and Krajcik (2012) claim that Corporate Governance failures triggered the 2008 economic crisis (careless implementation of the principles and rules). They also argue that respect for these principles has the potential to restore lost confidence in the financial sector to gain capital for further development of corporations and growth: *"Companies that fail to reform their governance will find themselves in a competitive disadvantage when they try to obtain capital to finance growth. High governance standards must be seen in practices and results of corporate activities. Good corporate governance is not easy and it is neither formal nor ceremony. An efficient board of directors involves a combination of right people, the right structure, and the right processes. It is the real challenge to determine the right combination for*

each individual company. Each company and country should consider its own circumstances before choosing the best way to improve corporate governance and prevent corporate failures."

References

- Thomson Reuters (2018). Eikon - Dataset Credit Default Swaps on Sovereign Bonds – selected countries.
- Hasan, I., Kobeissi, N., & Song, L. (2014). Corporate governance, investor protection, and firm performance in MENA countries. *Middle East Development Journal*, 6(1), 84-107. Retrieved January 19, 2016, from <http://dx.doi.org/10.1080/17938120.2014.886421>
- Hučka, M., Malý, M. & Okruhlica, F. (2007). *Správa spoločností*. Praha: Kernberg Publishing.
- Kirkpatrick, G. (2009). *The Corporate Governance Lessons from the Financial Crisis*. Financial Market Trends. Pre-publication version for Vol. 2009/1. Retrieved February 11, 2016, from <http://www.oecd.org/daf/ca/corporategovernanceprinciples/42229620.pdf>.
- Kittová, Z., & Steinhauser, D. (2017). Inštitucionálne a makroekonomické prostredie firiem [Institutional and Macroeconomic Environment of Corporations]. *Politická ekonomie*, 2017(2), 234-248. Retrieved from <https://www.vse.cz/polek/1138>.
- Klimiková, M., & Muchová, M. (2017). Effective corporate governance of financial institutions. Challenges for financial sector of CEE countries in overcoming problems of economic integration in the EU In Proceedings of the 9th international conference on currency, banking and international finance, 20. – 21. september 2016 (s.154-162). Bratislava, Slovak Republic. Bratislava: Ekonóm.
- Knapik, P., & Krajčík, D. (2012). Corporate Governance Failures–Causality And Consequences1. *Ekonomické rozhlady*, 41(4), 452-470. Retrieved from ftp://193.87.31.84/0165821/er4_2012_fulltext_knapik_krajcik.pdf
- Liška, V., Sluková, K., Volejníková, J. & Sojka, M. (2011). *Institucionální ekonomie*. Praha: Professional Publishing.
- Lukáčik, M., Lukáčiková, A., & Szomolányi, K. (2011). *Ekonometrické modelovanie v programoch EViews a Gretl*. Bratislava: Ekonóm.
- Okruhlica, F. (2013). Výška transakčných nákladov ako meradlo kvality podnikateľského prostredia v Slovenskej republike a Českej republike. In Majtán, Š. et al. (2013). *Aktuálne problémy podnikovej sféry*. Bratislava: Ekonóm.
- Pacáková, V. et al. (2009). *Štatistické metódy pre ekonómov*. Bratislava: IURA Edition.
- Steinhauser, D. (2015). Measuring the quality of the institutional environment through the development of prices of credit default swaps in times of economic disturbances. In *Investment Management and Financial Innovations*. 12(4), 98-105. Retrieved from <https://businessperspectives.org/journals/author/dusan-steinhauser>

- The Fraser Institute (2017). *Economic Freedom Rankings*. Retrieved March 31, 2017, from <https://www.fraserinstitute.org/economic-freedom/dataset?year=2014&page=dataset&min-year=2&max-year=0&filter=0&most-free=1&quartile2=1&quartile3=1&least-free=1>
- WBG (2017a). *World Development Indicators*. Retrieved March 31, 2017, from <http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators&Type=TABLE&preview=on#>
- WBG (2017b). *Doing Business*. Retrieved Juny 04, 2017, from <http://www.doingbusiness.org/Custom-Query>
- Williamson, O. E. (1990). *Die ökonomischen Institutionen des Kapitalismus* (Transl.. M. Streissler). Tübingen: Mohr Siebeck.

Limited Liability Companies in the Slovak and European Legal Context

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Abstract

This paper analyses provisions of a Limited Liability Company under the Slovak Commercial Code, mainly conditions governing the process of foundation and incorporation of the company and the structure of company bodies. Legal provisions of the Limited Liability Company are primarily compared with Private Limited Company by Shares established according the Companies Act 2006 and secondarily with proposal for a Directive of the European Parliament and of the Council on single-member Private Limited Liability Companies. The result of the research is a comparison of the Slovak and the British legislation and an effort to predict the future development of Private Limited Liability Companies in the European area.

Key words

Limited Liability Company, Private Limited Company by Shares, foundation and incorporation of the company, Memorandum of Association, Articles of Association, company bodies, director, General Meeting, Supervisory Board

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Introduction

A Limited Liability Company is the most popular business company in the Slovak republic. According to the statistics of the number of newly established business companies in Slovakia in 2017, 92 % of newly established companies have the form of Limited Liability Company, only 1% of these companies have the form of Joint Stock Company. (Finstat.sk, 2018) One of the main advantages is liability of participants limited to the outstanding part of their pledged contributions registered in the Commercial Register, the amount of the participant's contribution must be at least 750 EUR. A company with full legal capacity is liable for any breach of its obligation with its entire property. (§ 106 CC) The minimum amount of the company's registered capital is 5000 EUR. (§108 (2) CC)

English law provides two main types of organisation for those who wish to associate i to carry on business for profit, partnerships and companies. Historically, the word company was applied to both, but the modern lawyer regards companies and company law as distinct from partnerships and partnership law. The Companies Act have long provided a form of the company which may be regarded as particularly suitable for companies which carry on a no profit activities. This is the Company Limited by Guarantee, as

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opposed to the Company Limited by Shares, the latter being the form normally used for profit-making activities and by far the more common one. The Company Limited by Guarantee is widely used by charitable and quasi-charitable organisations (such as schools, colleges) since incorporation with limited liability is often more convenient and less risky than a trust. The distinction between public and private companies is embodied in the Companies Act. A private company must not offer to the public any of its securities. However, unlike in many continental European countries, there is no separate legislation for public and private companies. (Davies, Worthington, 2012)

Private Limited Company by Shares under the Companies Act 2006 are widely extended in European area due to the informal way and speed of incorporation and low capital, a highly stable legal environment of the United Kingdom, a sophisticated system of electronic filing and tax returns, including a developed network of double taxation treaties. (Pala, 2004, CEVE.cz, 2013) Aforementioned advantages made Private Company Limited by Shares one of the most preferred form of companies with limited liability in the European Union, which must have registered office in the United Kingdom, but business activities can be carried out in any member state of the European Union (Málek, 2018)

The main reason why we choose the most common business company in the Slovak republic and one of the most frequent used company in the European region is that results of this comparison would probably show possible improvements and suggestions to the Slovak legislation.

In 2014 came up European Commission with proposal for Directive of the European Parliament and of the Council on single-member Private Limited Liability Companies (thereinafter only "proposal"). The overall objective of the proposal, which provides an alternative approach to the 2008 proposal for a European Private Company Statute (SPE) is to make it easier for any potential company founder and for small and medium-sized enterprises (SMEs), to set up companies abroad. The proposal would facilitate cross-border activities of companies by asking member states to provide in their legal system for a national company form that would have an EU-wide abbreviation – SUP (*Societas unius personae*) and would be formed and operate in compliance with the harmonised rules in all member states.

The Commission in its Work Programme 2018 announced that the proposal will be withdrawn, which it formally did on 3 July 2018. (De Grandes Pascual, 2018) According to this comparison with the proposal will be just informative and marginal. The main interest of this paper is concentrated on comparison of Limited Liability Companies according to the Commercial Code with Private Limited Companies by Shares under the 2006 Companies Act.

1 Literature review

Limited Liability Company is the most frequently used form of business companies in the Slovak republic. Therefore there are a lot of sources concerning the process of foundation and incorporation of the company and the structure of company bodies, for example Patakyová, 2016, Suchoža, 2016, Ovečková, 2012. The literature of Czech authors can be used, due to the fact that the Slovak Commercial Code and the Czech

Commercial Code were similar until the Business Corporations Act 2012 has been adopted, for example Eliáš, Pokorná, Dvořák, 2010 or Pelikánová, Černá, 2006.

Detailed comparison between Limited Liability Company and Private Limited Company by Shares can be found in the journal paper of Baňouch, 2001. This comparison is based on the Companies Act 1985 meanwhile the Companies Act 2006 has been adopted. British company law is detailed for instance in Hannigan, 2016, Davies and Worthington, 2012, Dignam and Lowry, 2014 and European corporate law in Dorrestein, Monteiro, Teichman and Werlauff, 2009. The process of establishment and incorporation of Private Limited Companies is also contained on the website GOV.UK, 2018, to the fact that Private Limited Companies can be registered with the Companies House online. This website concerns actual and substantial information and template of Memorandum of Association and Articles of Association, too.

2 Methodology

The aim of this paper is to compare Limited Liability Company under the Commercial Code and Private Limited Company according to the 2006 Companies Act. The comparison concerns conditions of foundation and incorporation of the company and the structure of company bodies. Proposal for a directive of the European Parliament and the Council for one-single member Private Limited Liability Company (SUP) will be just supplementary.

The main objects of the paper are Limited Liability Companies and Private Limited Companies. There are two types of Private Limited Companies in the United Kingdom – Private Companies Limited by Guarantee and Private Company Limited by Shares. Only the second one will be the object of our research.

The main methods of scientific research used in this paper are method of analysis and comparative method. Supplementary scientific methods applied in the paper are method of deduction, method of induction and method of synthesis.

We will analyse conditions and the process of foundation and incorporation of the companies and company bodies. Afterwards we will compare both objects of research.

The proposal of single-member Limited Liability Companies will be compared, too. We will also try to predict a future direction of Limited Liability Companies in the European Union.

3 Results and discussion

3.1 Foundation and incorporation

Limited Liability Company may be established by one person, a natural person or legal entity, maximum numbers of shareholders is 50. The minimum shareholder's contribution is 750 EUR and the minimum company's registered capital is 5000 EUR. (§ 108,

109 CC) Before filling the application for the company's registration in the Commercial Register every pledged contribution must be paid up by no less than 30%. The paid-up contributions in cash together with the value of the contribution in kind which have been handed over to the company must create at least 50% of the minimum amount of the company's registered capital. (§ 111 (1) CC)

If there is only one founder of the company, registered capital must be fully paid before its registration. (§ 111 (2) CC) Single-member Limited Liability Company may not be the only founder or the only participant of another company. A natural person may be the only participant in three partnerships or companies at the most. (§ 105a CC)

Private Limited Company by Shares registered in the United Kingdom must have at least one shareholder, maximum number of shareholders is not specified. The price of individual share can be interesting for shareholders and they can choose low share value, for example 1£ to limit their liability. (GOV.UK, 2018) The minimum capital requirement for the Private Company Limited by Shares is 1£, usually 100£ is recommended. (Ltdcompany.co.uk, 2018) Statement of capital and initial shareholdings must state the total number of shares and the aggregate nominal value of the shares to be taken on formation by the subscribers to the memorandum, the aggregate amount, if any, to be unpaid on those shares, for each class of shares prescribed particulars of the rights attached to them, the total number of shares of that class and the aggregate nominal value of those shares. (Hannigen, 2016) *The statement of capital is a useful innovation in the CA 2006 which provides important information as to the structure of the company. The share structure is important in terms of establishing how much share capital has been raised and how much is paid and unpaid and identifying the rights attached to the shares where there are classes of shares. Most companies have only one type of share, an ordinary share, such as the 1£ share and class rights are irrelevant in such a company.* (Hannigen, 2016)

Here is the fundamental difference between Limited Liability Company and Private Limited Company by Shares. Shares of the Limited Companies (private or public) are of the same nature, there should be various classes of them. The business share (ownership interest) in the Limited Liability Company is set percentage and one shareholder may own only one business share (See Tab. 1), which represents the rights and duties of each shareholder and his participation in the company. The shares of the Limited Companies in the United Kingdom are not transferrable by the deal. The director issues a share certificate, what is a confirmation about holding the shares. (Baňouch, 2001, IPodnikatel.cz, 2013)

The numeric value of capital is the minimum at which company should have a property which guarantees that third parties claim will be repaid. The registered capital must be maintained throughout the life of the corporation. (Eliáš, Pokorná, Dvořák, 2010) Registered capital, unlike business property, is essentially an accounting variable that is largely unrelated to the real asset situation. The actual value of business assets depends on the results of its management. It can be higher or lower than the registered capital. (Ovečková, 2012)

The shared capital in the United Kingdom has special character. A capital written in the Memorandum of Association is called nominal capital. It concerns issued or subscribed share capital and unissued capital. Issued capital consists of paid up capital and

unpaid or uncalled capital. When Private Limited Company enters the process of liquidation, there is still amount of unpaid capital, which is also named reserve capital. The unissued capital entitles company to raise issued or subscribed capital of the company to the amount of nominal capital. Synonym of issued or subscribed capital is our registered capital. (Baňouch, 2001)

The capital requirements in some European Union countries are less rigid in comparison with public companies. The United Kingdom traditionally follows a liberal approach, according to which no minimum capital is required to incorporate a private company. For example, in France minimum capital as a requirement to form a SARL (*société à responsabilité limitée*) was abolished in 2003. In Germany there is a variation of the GmbH (*Gesellschaft mit beschränkter Haftung*) without minimum capital (25 000 EUR) called *Unternehmergesellschaft (haftungsbeschränkt)* or UG (*haftungsbeschränkt*) which has considerable restrictions imposed on the distribution of the profits in order to enable the company to progressively accumulate the minimum nominal capital required for a normal GmbH. The capital required to form a private company varies from zero, which applies to the Ltd, the SARL and the UG (*haftungsbeschränkt*) up to 25 000 EUR for the GmbH. (Dorrestein, Monteiro, Teichman, Werlauff 2009) In our opinion the development of private companies with limited liability in European area is progressively moving towards reducing the minimum amount of registered/shared capital. The trend can be explained by the fear that businesses seem to prefer incorporating abroad where they would find less restrictive requirements than the ones they would have to comply with in their own jurisdiction. (Dorrestein, Monteiro, Teichman, Werlauff 2009)

Since 1st January 2017 a new form of business companies under the Commercial Code, Simple Joint Stock Company, can be established in the Slovak republic. Simple Joint Stock Company is ideal form for start-ups. Advantages of a hybrid form of Joint Stock Company and Limited Liability Company are low capital requirement (1 EURO), possibility of foundation single-member (individual or legal entity) company (§ 220t (1,2 CC), no obligation to form Supervisory Board (§ 220ze CC), option to issue specific classes of shares such as the right to a larger share of the profit (§ 220i (3) CC) and to enter into agreements among shareholders regarding their rights and obligations for instance tag-along right or drag-along right (§ 220w CC). In the first year of its existence only 54 Simple Joint Stock companies were founded. (Finstat. sk, 2018)

Before the incorporation of the Limited Liability Company, Memorandum of Association must be written. According to the provisions of § 110 (1) CC it contains business name and the registered office of the company, identification of the shareholders, scope of the business (activities), amount of the registered capital, amount of contribution of each shareholder and the manner and period for the payment of the pledged contributions, identification of the company's first executives and the manner in which they will represent the company, identification of the members of the first Supervisory Board, if established, name of the custodian of the contributions, amount of the Reserve Fund, if it is formed upon its establishment, planned costs related to the foundation and the incorporation of the company, advantages to the persons participating in the foundation of the company and other data, if stipulated by law. Limited Liability Company may issue Articles of Association which deals with company's internal organization and matters included in Memorandum of Association more detailed. (§ 110 (2) CC) In single-member Limited Liability Companies a Founding Agreement must be written. It must contain the same essential parts as the Memorandum of Association. (§ 57 (3) CC)

The application for registration in the United Kingdom must state the company's proposed name, whether the registered office will be situated in England and Wales, Wales, Scotland or Northern Ireland, whether the member's liability is to be limited and if so, whether by shares or by guarantee and whether the company is to be a public or a private company. Application for association of a company must contain a statement of capital and initial shareholdings (if a company limited by shares), a statement of the company's proposed officers, including the proposed company secretary (if the company is a public company or where a private company chooses to have a company secretary), a statement of initial significant control (it must state whether there will be anyone who will count for purposes of register of people with significant control over company as a person whose particulars would be required to be entered in the company's PSC register), a statement of the intended address of the company's registered office and a copy of any proposed Articles of Association unless the intention is to rely on the model default articles. (Hannigen, 2016)

An application for registration must be accompanied by a Memorandum of Association, which is a document stating that the subscribers wish to form a company under the Companies Act 2006 and agree to become members of the company and to take at least one share each. *Previously the memorandum of association was an important external/facing document telling the outside world the key facts about the company. Now the memorandum simply records the identity of the original founders of the company and indicates how many shares they took on formation. In many cases, the original founders will be formation agents and so the document will have no continuing relevance.* (Hannigen, 2016) Articles of Association are written rules about running the company agreed by the shareholders and the directors or the company secretary. Both documents are necessary to register the company with the Companies House. (GOV.UK, 2018)

The Limited Liability Company is established when the Memorandum of Association is signed by all shareholders. Signatures of the founders must be officially authenticated. The Articles of Association are possible but not compulsory. For the registration of the Private Limited Company with Companies House both Memorandum of Association and Articles of Association to be written. By the online registration standard Articles of Association are used. There is no obligation to officially verify a single signature, everything is based on the principle of "good faith". There is also no Trade Licencing Office in the Great Britain, subjects of business are registered with the Companies House as they are in the Articles of Association. (IPodnikatel.cz, 2013)

Private Limited Company in the United Kingdom can be registered by post, which takes from 8 to 10 days and registration fee is 40 £. Faster registration by post in one day is also possible, if the costs 100 £ are paid and application gets to the Companies House by 3 pm. Private Limited Company by Shares can be incorporated online by using standard Articles of Association (model articles). Online registration costs only 12 £ and company is usually registered within 24 hours (GOV.UK, 2018), 2 working days are maximum (Ltdcompany.co.uk, 2018).

The court fee for the registration of the Limited Liability Company in the Commercial Register is 300 EUR (Scale of Court Fees, Slovak National County Act No. 71/1992 Coll. on Court Fees and the Court Fee for a Copy from the Criminal Record, as amended). If the company is registered electronically court fee is reduced by half. The Register

Court makes an entry within 2 working days of receiving the application for registration (§ 8 (1) Act No. 530/2003 Coll. Commercial Register Act, as amended)

We may notice that registration fees of the Private Limited Company are significantly lower than registration fees of the Limited Liability Company. The time of online registration with Companies House is very similar to the time of registration in the Commercial Register. When comparing the time and amount of the registration fee, the online registration of Private Liability Companies is the most advantageous (See Tab. 1).

The proposal contained harmonised process of the company's registration via a registration template and facultative online registration connected with unit template of Articles of Association. Registration should take 3 days, if the company would be newly established. The minimum shared capital should be 1 EUR, or equivalent of 1 unit of currency of the member state, where euro isn't national currency. There was no obligation to build up legal reserves, but it was possible to build voluntary reserves in accordance with Articles of Association. Protection of the creditors should be ensured by obligation of the SUP directors (or the SUP single founder) to provide distributions. The main intention of the proposal was to diminish set-up and operational costs of the company. (Eur - lex.europa.eu, 2014)

The Limited Liability Company is obligated to establish a reserve fund which can be used to cover company's losses unless otherwise stipulated by law. The purpose of the reserve fund is to save certain parts of the profits at a time when the company is successful in business as to cover future losses through its less successful business. It is a certain reserve, which together with the registered capital provides certainty to creditors. There must be some proportionality between the value of the registered capital and the amount of the reserve fund. (Ovečková, 2012) If the reserve fund is not established upon the registration of the company in the Commercial Register, the company is obligated to establish it from net profits reported in ordinary financial statements for the year in which it shall produce profits for the first time, at the amount equal to at least 5% of net profits, but not more than 10% of the registered capital. (§ 124 CC)

There is no obligation to form reserve fund in Private Liability Company by Shares nor in the single – member Private Limited Liability Company. In our opinion the general trend is a company with limited liability of the shareholders, with low registered/shared capital and informal setting-up process without the obligation to create reserves (reserve fund). No obligation to establish the reserve fund in combination with low shared capital was the proposal on single-member Private Limited Liability Companies was rejected by the European Economic and Social Committee.

3.2 Company Bodies

The supreme body of the Limited Liability Company is a General Meeting consisting of all shareholders. (§ 125 (1) CC) The statutory body is constituted of one or more executives acting on behalf of the company. If there are more executives, each of them is entitled to act individually on behalf of the company, unless the Memorandum of Association stipulates otherwise. The executives are appointed by the General Meeting from shareholders or other individuals. Hold the office of executive of the company may

only individuals. (§ 133 CC) Although shareholders are only legal entities, the manager, can only be a natural person, who has reached the age of 18, who has a full legal capacity and is irreproachable. (Suchoža, 2016) The register court at the registration of the first executives doesn't examine legal capacity of the executives or their integrity. The examination of these assumptions is ensured by the law for example in obtaining a Certificate of Trade Authorisation. (Patakyová, 2016) Individuals also may not be disqualified by the court from being a member of the statutory body or a supervisory body. (§ 13a CC) A Supervisory Board, which is not obligatory body of the company, must have no less than 3 members elected by the General Meeting. Executives can't hold the office of member of the Supervisory Board. (§§ 137, 138 CC)

Decisions of Private Limited Company in the United Kingdom are also made at General Meetings, where shareholders or other entitled persons exercise their right to vote and right to speak. The chairman of the meeting is appointed by directors, when he is not present, the meeting must appoint the chairman, which will be the first business of the meeting. No business other than the appointment of the chairman is to be transacted at the General Meeting if the persons attending it don't constitute a quorum. A management body, Board of Directors, consists of one or more directors, at least one director must be a natural person, who must be over 16 and cannot be disqualified from being a director under Company Directors Disqualification Act 1986. (Baňouch, 2001, Patakyová, 2016, GOV.UK, 2018) A company secretary is not more obligatory (unlike the Public Limited Companies). It can be used to take on some of the director's (chairman's) responsibilities. Directors are taken decisions collectively. Any decision of the directors must be either a majority decision or a unanimous decision. If the company has only one director, general rules about decision-making don't apply. (GOV.UK, 2014) The responsibilities at the head of the company are divided between the chairman of the board who is responsible for leadership of the board and the chief executive with responsibility for running of the business. These roles should not be exercised by the same individual and the chief executive of the company should not move up to become chairman. The division of responsibility between them should be clearly established, set out in writing and agreed by the board. (Hannigen, 2016)

If there is only one shareholder in the Limited Liability Company in the Slovak republic, he exercises the scope of powers of the General Meeting. Unless the Commercial Code stipulate otherwise, decisions of the only member during the exercise of functions of the General Meeting must be in writing and must be signed by the only member. (§ 132 CC) In decisions with more serious legal consequences such as increasing or reduction of the registered capital, appointing and recalling executives, changing of the legal form of the company, winding-up of the company, must be shareholder's signature officially authenticated. If the only shareholder is executive of the company at the same time, agreements made between this shareholder and the company must be in writing. (Čurila, 2017)

According to the proposal decisions of the single member executing powers of the General Meeting should be recorded in writing, records of taken decisions should be kept for 5 years, agreements between single member and the company should be also recorded in writing. Member states might decide not to apply stated to contracts concluded under market conditions in the ordinary course of business which were not detrimental to the single-member company. (Eur - lex.europa.eu, 2014) Management body of the SUP consisted of one or more directors. Directors should be natural persons or

legal persons, where allowed by applicable national law. A natural person who is disqualified by either the law or a judicial or administrative decision of the member state of registration could not act as a director. The single member might become a director.

Directors might exercise all the powers of the SUP that are not exercised by the single member or, where applicable, by the Supervisory Board. Directors might represent the SUP individually, including entering into agreements with third parties and in legal proceedings, unless the Articles of Association provide for joint representation. (Eur - lex.europa.eu, 2014)

A Supervisory Board is not compulsory body of the Limited Liability Company. Although the Companies Act 2006 does not categorise directors into executive and non-executive directors, modern corporate practice, in the light of corporate governance reforms, recognises the division between two types of directors. Executive directors are generally full-time officers of the company. The Articles typically give extensive management powers to them and they will usually have separate service contracts with the company. Non-executive directors are appointed to the boards of larger companies to act as monitors of the executive management and they are typically part-time appointments. (Dignam, Lowry, 2014) At least half the board, excluding the chairman, should be independent non-executive directors while smaller companies should have at least two independent non-executive directors. (Hannigen, 2016)

The proposal just mentioned powers of the Supervisory Board of the member states where it is created. The difference is that members of the statutory body of the Limited Liability Company may be only individuals, in Private Limited Company at least one member must be a natural person, in SUPs nature of the statutory body depends on legislation of the member state (See Tab. 1). Executives of Limited Liability Company acts individually unless the Articles of Association stipulates otherwise. The directors of the Private Limited Company take decisions collectively (majority or unanimous decisions). Decisions of single-member companies should be in writing, agreements between the single member and the executive (director) at the same time and the company must be in writing, too. In addition, in more serious decisions of the single member executing powers of the General Meeting must be signature of the single-member officially verified under the Commercial Code.

Tab. 1 The comparison between Limited Liability Company, Private Limited Company by Shares and Societas Unius Personae (SUP)

	Limited Liability Company	Private Limited Company	Societas Unius Personae (SUP)
Minimum number of shareholders	1	1	1
Nature of shareholders	natural person/ legal entity	natural person/ legal entity	natural person/ legal entity
Maximum number of shareholders	50	not stated	-

Minimum registered/shared capital	5000 EUR	any value (1£)	1 EUR/1 unit of currency of the member state
Minimum shareholder's contribution/price of individual share/single-share	750 EUR	any value (1£)	1 EUR/1 unit of currency of the member state
Number of business share/shares for one shareholder	1	Unlimited	1
Classification of shares	the unified nature of the share	types (classes) of shares	single share
Split of the share	share can be split	share can't be split	share can't be split
Statutory body	one or more executives	one or more directors	one or more directors
Nature of the statutory body	only individuals	at least one director must be a natural person	individual or legal person (depends on the member state's legislation)
The supreme body	General Meeting	General Meeting	single-member is executing powers of the General Meeting
Supervisory Board	facultative	non-executive members of the Board of Directors monitor executives members	facultative, depends on the member state's legislation
Reserve fund	compulsory	-	Facultative
Online registration	facultative	Facultative	Facultative
Registration costs	300 EUR	40 £, 100 £ registration by post	depends on the member state
Advantages of online registration	½ of registration costs	12£ (online registration) significantly shorter time of registration	set-up costs reduction
Time for registration of the company	2 working days	8 – 10 days, 1day (by post) 24 hours – 2 working days (online registration)	3 days

Source: Own processing according to H. Baňouch, 2001, p. 375

Conclusion

Private Company Limited by Shares and Limited Liability Company are both separate entities with full legal capacity. They have similar features such as relatively low registered/shared capital (5000 EUR/1EUR), simple structure of company bodies (at least one executive/director and General Meeting, Supervisory Board is not compulsory under the Commercial Code/in the United Kingdom system of non-executives and executives is developed) and possibility of foundation of single-member companies (by natural person or legal entity). Also single-member Private Limited Liability Company (SUP) under the proposal used combination of these characteristics (shared capital in the amount of 1 EUR or one unit of currency of the member state, the only shareholder exercises powers of the General Meeting, creation of the Supervisory Board depends on the legislation of the member state).

The reserve fund is obligatory only in the Limited Liability Company, there is no notice about the reserve fund in the provisions of Private Limited Company by Shares. The establishment of the reserve fund in SUPs was only facultative, protection of the creditors was secured via obligations of directors in profit distributions.

Online registration is/was facultative and usually connected with unit template of Articles of Association (Private Company/SUP), significant reduction of registration costs (Limited Liability Company, Private Limited Company) in combination with short time of registration (Private Limited Company) (For more details see Tab. 1).

Another attractive side of the Private Limited Company by Shares and Limited Liability Company as well as single-member Private Limited Liability Company is/was that registered office and the principal place of business don't need to be in the same member state according to the EU legislation.

The European Economic and Social Committee (thereinafter only "EESC") which rejected the proposal had criticized minimum reserved/shared capital in the amount of 1 EUR together with no obligation to create reserves in SUPs. Verification of the identity of the founder should be required by online registration. Further the EESC suggested the unification of registered office and principal place of business to provide unify rules for SUPs including rights of employees to co-decision. According to the EESC SUPs should be multinational companies and the target groups of the proposal would be only small and middle enterprises with cross-border activities.

In our opinion fast, simple and inexpensive online registration involving unit template of registration and Articles of Association, low registered or shared capital, foundation of single-member companies with limited liability, where only member is also director or executive of the company is not only the presence, but also the future of companies with limited liability. The question is: "What about creditors, consumers and providers? Is registered/shared capital 1 EUR without obligation to make reserves enough to protect them? From our point of view not high amount of registered capital together with obligation to make reserves is optimal. The Mini-GmbH in Germany needs only minimum registered capital, but there is obligation to create reserves in the amount of 25% of profits. The inspiration from the British legislation to us should be mainly informal and not expensive way of incorporation of Private Limited Companies by Shares. It is the reason why they are so popular. The proposal of European Parliament and

Council for Directive on single-member Private Limited Liability Companies was withdrawing, we expect that legislation of Private Limited Companies will be governed by national law and that "regulation competition" on the side of legislators and "company law shopping" on the side of businessmen will continue.

References

- Baňouch, H. (2001). Private Company limited by shares – britská obchodní společnost odpovídající naší společnosti s ručením omezeným. *Časopis pro právní vědu a praxi*, 9(4), 367-377.
- CEVE. cz (2013). *Společnost Ltd. (Limited) ve Velké Británii a její specifika*. Retrieved June 19, 2018, from <http://www.ceve.cz/cs/spolecnost-llp-britanie>
- Čurila, D. (2017). Postavenie jediného spoločníka obchodnej spoločnosti. *Dane a účtovníctvo v praxi: mesačník plný informácií z oblasti daní, práva a účtovníctva*, 22(11), 22-25.
- Davies, P. Worthington, S. (2012). *Principles of modern company law*. Ninth edition, London: Sweet & Maxwell
- De Grandes Pascual, L. (2018). *Legislative train schedule. European Parliament. Single-member private limited companies (Societas Unius Personae)/2014*. Retrieved September 24, 2018, from <http://www.europarl.europa.eu/legislative-train/theme-connected-digital-single-market/file-single-member-companies>
- Dignam, A., & Lowry, J. (2014). *Company Law*. Eight edition. Oxford: Oxford University Press.
- Dorrestein, A., Monteiro, T., Teichman, Ch., & Werlauff, E. (2009). *European Corporate Law*. Second Edition, Kluwer Law International.
- Eliáš, K., Pokorná, J., & Dvořák, T. (2010). *Kurs obchodního práva. Obchodní společnosti a družstva*. Praha: C. H. Beck.
- Eur - lex.europa.eu (2014). *EUR-Lex - 52014PC0212 - EN - EUR-Lex. Proposal for a Directive of the European Parliament and of the Council on single-member private limited liability companies*. Retrieved January 25, 2018, from <http://eur-lex.europa.eu/legal-content/SK/TXT/?uri=CELEX%3A52014PC0212>.
- Finstat.sk. (2018). *Štatistika počtu vzniknutých a zaniknutých firiem*. Retrieved October 10, 2018, from <https://www.finstat.sk/analyzy/statistika-poctu-vzniknutych-a-zaniknutych-firiem>.
- GOV.UK (2014). *Model articles for private companies limited by shares*. Retrieved January 29, 2018, from <https://www.gov.uk/government/publications/model-articles-for-private-companies-limited-by-shares>.
- GOV.UK (2018). *Set up a private limited company*. Retrieved January 25, 2018, from <https://www.gov.uk/limited-company-formation>.
- Hannigan B. (2016) *Company Law*, Fourth Edition, Oxford: Oxford University Press.
- IPodnikatel.cz (2013). *Jak založit firmu ve Velké Británii*. Retrieved June 20, 2018, from <http://www.ipodnikatel.cz/Zalozeni-obchodni-spolecnosti/jak-zalozit-firmu-ve-velke-britanii/Akcie-v-Anglii.html>

- Ltdcompany.co.uk (2018). *Private Limited Company (UK). Advantages of Private Ltd Company UK*. Retrieved January 30, 2018, from <http://www.ltdcompany.co.uk/company-formation/private-limited-company/>
- Málek, O. (2017). Legislativní soutěž v inkorporačním právu v EU: Cesta ke zvyšování konkurencieschopnosti trhu. In: *Právo v podnikání vybraných členských států Evropské Unie – sborník příspěvků k IX. ročníku mezinárodní vědecké konference*, 2017, (s. 167-172). Praha: Troas.
- Ovečková, O. (2012). *Obchodný zákonník : komentár*. Bratislava: Iura Edition.
- Pala, R. (2004). *Kde sa oplati založiť eseročku*. Retrieved June 19, 2018, from <https://www.etrend.sk/podnikanie/kde-sa-oplati-zalozit-eserocku.html>
- Patakyová, M. (2016). *Obchodný zákonník : komentár*. Praha: C. H. Beck.
- Suchoža a kol. (2016). *Obchodný zákonník a súvisiace predpisy. Komentár*. Bratislava: Eurounion.

Legal Regulation of Timesharing Contract and Other Contracts on Providing of Certain Services in Tourism Services in Slovak Republic

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Abstract

In relation with vacation we are able to meet the terms of timesharing or timeshare. To the definition there is necessary to state that their nature rests in time limitation (time) and sharing (share) of using a thing. The timesharing contract was introduced to Slovak legal order by amendment of Civil Code by the Act No. 150/2004 of the Coll. as a consumer contract on right to use of building or its part in certain time periods. Original legal regulation of timesharing was however later abolished by the Act No. 161/2011 of the Coll. on Protection of the Consumer in Case of Providing of Certain Tourism Services and on Change and Amendments of Other Acts. This paper provides look into evolution of legal regulation of timesharing in Slovakia and further analyses of valid legal regulation of timesharing contract and other contracts related thereto. The Author furthermore inform on using of the mentioned regulation in practice.

Key words

timesharing, entrepreneur (provider), consumer, consumer contract on right to use building or its part in time periods, contract on using of accommodation facility in limited time periods, contract on providing of long-term recreation services, contract on participation on exchange system, contract for resale mediation

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Introduction

Timesharing in today's term emerged in 60's of the last century in France. Original idea of timesharing was based on principle of joint stock company in which the shareholder buys the stocks/shares. In legal area, such timesharing company provided points for which the shareholder could have spent the vacation in facility owned by the company instead of dividends. The value of the points was dependent on season and place of facility (Duláková et al., 2012, p. 666). The idea of timesharing was spreading mainly in Europe and the USA. In our parts of Europe we were able to meet the timesharing no sooner than 90's of the last century when it was generally common that the dealers invited married couples by phone to the meetings under the pretext win a trip, where the unsuspecting "winners" obtained advantageous offer to conclude the contract on the ground of which they were able to "buy" the apartment for example on Canary

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Islands. Contract on such "purchase" could be concluded only during that particular event and could not be cancelled. Many of addressed by this way did not have a clue that it was all about the sale of right to use the real estate in exactly specified time of the year in certain area valid for longer time, for example 20 years (Vozár, 1997, p. 24). Unfortunately, in relation to timesharing there occurred many unfair entrepreneurs in those times. There did not exist special legal regulation of such sales in Slovak legal order in 90's of the last century. Timesharing contract was introduced to our legal order together with the Act No. 150/2004 of the Coll. that amended the Civil Code in wording of previous amendments as a consumer contract on right to use the building or its part in specified time periods. By adoption the Act No. 150/2004 of the Coll. there was implemented into the Slovak legal order directive of European Parliament and the Council 94/47/ES dated 26th of October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis. The right to use the building or its part in one or more time periods in the year was to be concluded in form of consumer contract on right to use the building or its part in certain time periods that was regulated in provisions of §§ 55 to 60 of the Civil Code. These periods could not be however shorter than week (Vojčík, 2008, p. 17). The Directive from 1994 was replaced by the directive of the European Parliament and the Council on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts dated 14th of January 2009. This directive was implemented into Slovak legal order by adopting the Act No. 161/2011 of the Coll on Consumer Protection at Providing of Certain Tourism Services and on change and amendments of certain acts in wording of changes and amendments (thereinafter only as "Act on consumer protection in providing certain tourism services" or "Act. No. 161/2011 of the Coll."). This act came into force on 1st of July 2011 and simultaneously derogated the provisions of §§ 55 to 60 of the Civil Code.

1 Methodology

The main goal of this paper is to get closer to the evolution of legal regulation of the timesharing contract and to the analysis of valid legal regulation of the timesharing contract and other contracts related thereto. The authors set also the goal to discover how is the aforementioned legal regulation being used in practice. In order to achieve set goals of the paper there are being used various methods of scientific research at the process of drafting the paper. Firstly, the methods of analysis and synthesis. In order to separate the relevant information from non-relevant ones there served the method of abstraction. The conclusion was formulated through the methods of synthesis and induction. The information are sorted in the article in way to form one logical unit.

2 Results and Discussion

2.1 Consumer protection at providing of certain services in tourism

Act No. 161/2011 of the Coll. regulates rights of the consumer and duties of the seller related to timeshare using of accommodation facilities, providing long-term recreation services, its exchange and intermediation of its further selling, requirements of these consumer contracts and competence of the authorities of supervision at inspection of abiding the rules in this act.

Legal regulation is related exclusively to relations between consumer and entrepreneur, that is being named by the law as the seller. Under the term of consumer there is necessary to understand the consumer in meaning as specified in the Act on Consumer Protection No. 250/2007 of the Coll. in wording of changes and amendments. The same shall be applied in case of the seller.

For legal relations regulated by the Act No. 161/2011 of the Coll there shall be applied special legal acts, mainly Civil Code and Act on Consumer Protection.

Under contracts on providing certain services in tourism there shall be understood:

- Contract on timeshare using of the accommodation facility
- Contract on providing of long-term recreation services,
- Contract on participation on exchange system and
- Contract on reselling mediation.

Providing the information before contract conclusion

The seller is obliged in sufficient time before conclusion of the contract to provide the consumer clearly, certainly and free of charge with certain and correct information via form as specified in attachments No. 1 to 4 of the Act depending on type of the contract. This information must be in state language of the member state of European Union while the language per selection of the consumer may be the language of the state in which the consumer does have the permanent or temporal residence or which citizenship he bears. The information shall be provided in written form or on other permanent media that must easily accessible by the consumer. The filled form is inseparable part of concluded contract while the consumer confirms that he is familiar with the information form by special signature at relevant information form. The data filled in form before conclusion of the contract may be changed only exceptionally.

The act orders the seller to inform the consumer also in case of advertisement, presentation or other propagation event.

Before conclusion of the contract the seller is obliged to expressly instruct the consumer on right to withdraw from the contract, on period for withdrawal and on prohibition of provisional execution of rights of the seller.

Ad individual contracts on providing of certain services in tourism

In contract on timesharing of accommodation facilities the seller obliges to provide the consumer with one or more accommodation facilities for using with possibility of night's lodging for time longer than one accommodation period and the consumer obliges to pay agreed sum. The contract is being concluded for period longer than one year. Act No. 161/2011 defines accommodation facility as a building, premises, or space, in which there is being provided temporal accommodation to the consumer for price and services related thereto. There is not important whether accommodation facility is real estate, crucial is the fact that it allows overnight sleeping (Lazar, 2014, p.209).

The contract on providing the long-term recreation services the seller obliges to provide the consumer with discounts or other advantages at accommodation independently or in connection travel services or other services, and the consumer obliges to pay the agreed price. Contract on providing the long-term recreation services is concluded for period longer than one year. The definition includes products like holiday clubs providing discounts. The ground is that the consumer obtains the right to get the discounts or other advantages at accommodation in combination with travel or other possibilities or without it. It relates to the contracts, where the right is obtained for price (Duláková at al, 2012, p. 742).

In case of contract on timesharing (so called timesharing contract) and in case of contract on providing long-term recreation services there is possible to notice common attributes – in both cases the contract must be concluded for period longer than one year and in both cases the subject matter relates to accommodation. The difference is in the fact that in case of timesharing the consumer obtains "right to use" one or more accommodation facilities, while in case of long-term holiday product the consumer gets "right for discount or other advantage" at accommodation.

With the contract on participation on exchange system the seller obliges to provide the consumer with possibility to participate on exchange system, and the consumer obliges to pay the agreed price. The contract is about inclusion of the consumer for the price into the exchange programme that allows the consumer the access to overnight accommodation or to other services for allowing other persons to have temporal access to advantages that results from the contract on timesharing or accommodation facility (Duláková at al., 2012, p. 743). The consumer may therefore use other holiday destinations.

With the contract on resale mediation the seller obliges to provide the consumer with the possibility to conclude the contract on timesharing of accommodation facility or the contract on providing the long-term recreation services and the consumer obliges to pay the agreed price, if the seller mediated the resale. The mentioned regulation there shall be covered the brokerage contracts concluded between consumer that have the interest to sell or buy time-bound using of the real estate and other property or long-term holiday product, and relevant seller that mediates the sale. The provision is not related to products when timesharing product is being sold by the consumer to other consumer nor to the situation when the entrepreneur buys from the consumer the subject matter of the contract reselling it to another consumer (Duláková at al., 2012, p. 744).

Any of these contracts must contain at minimum following data about the consumer and the seller:

Name, surname, date of birth, and the residence address of the consumer, Commercial name, registered seat, identification number, legal form, if the seller is the legal entity,

Commercial name, place of enterprising, identification number, if applicable, in case the seller is the natural person,

Date and place of conclusion of the contract.

The seller is obliged in time of concluding of the contract to provide the consumer with the original of the contract in written or on other permanent media that is easily accessible to the consumer in state language of the member state of European Union while in case of the consumer with permanent or temporal residence in other member state or with the citizenship of other member state this language can be the language of this member state according to preference of the consumer. If it is the case of the contract on timesharing of accommodation facilities, where the subject matter is the using of the only one real estate, the seller is obliged to provide the consumer with the official translation of the contract into state language or to one of official languages of the member state of European union, where the real estate is taking place, if the language is the official language of European Union.

The inseparable part of the contract is the form about the withdrawal from the contract. The seller is obliged to fill it in and to submit it to the consumer.

Withdrawal from the Contract

The consumer is entitled to withdraw from the contract without reason in period of 14 days from the date of conclusion of the contract or contract on future contract, or from the date of its delivery or from the personal receiving of the contract by the consumer in case that the contract or the contract on future contract is submitted to the consumer later than the date of conclusion.

The Act allows prolongation of the period for withdrawal from the contract to the consumer in case:

1. If the seller fails to fulfil the obligation to attach the form about withdrawal from the contract, the period for withdrawal is prolonged to 1 year and 14 days,
2. If the seller fails to fulfil the obligation to provide the consumer with filled information form in sufficient advance, the period for withdrawal is prolonged to 3 months and 14 days.

The consumer may execute the right for withdrawal from the contract against seller in written form or in other form on durable media as well as by form for withdrawal from the contract in period for withdrawal while the period is procedural period i.e. it is sufficient to submit the delivery at the post on last day of the period.

By withdrawal from the contract there cease to exist any claims of the seller for compensation of costs related to fulfilment of the contract.

If the seller withdraws from the contract on timesharing of the accommodation facilities or from the contract on providing of long-term recreation services, there is also terminated from the beginning any other contract on the ground of which the consumer obtains the services related to subject matter of the contract on timesharing of accommodation facilities or on the ground of the contract on providing long-term recreation services that are being provided by the seller or by third party on the ground of the agreement with the seller. The same applies also to the contract on participation on exchange system that is bound to the contract on timesharing of accommodation facilities or to contract on long-term recreation services.

Before the period for withdrawal from the contract passed the seller or third party must not require the fulfilment on the ground of contract on timesharing of accommodation facilities, contract on providing the long-term recreation services or on the ground of contract on participation on exchange system that is mainly advance payment, payment agreed in the contract, providing the guarantee, blocking of financial resources on accounts in bank or branches of foreign bank, express acknowledgement of debt or any other counter value for seller or third person. On the ground of the contract on resale mediation there is not possible to require fulfilment from the consumer sooner than the mediation is provided or sooner than the contract is terminated on the ground of other reason.

Supervision over compliance with the law

The supervision body according to Act No. 161/2011 of the Coll is Slovak Trade Inspection (Slovenská obchodná inšpekcia) that may fine the seller up to 30.000,- EUR in case of findings of breaches of duties set by the Act in case of breaching the same duty or in case that breach of the duty may endanger rights of two or more consumers.

Conclusions

The legal regulation of timesharing contract was introduced to Slovak legal order in 2004 in relation to requirement for harmonization of the Slovak legal order with the legal order of European Union. Originally the regulation was contained in general part of Civil Code of § 55 to 60 where there was regulated consumer contract on right to use the building or its part in time periods. Before introducing the legal regulation, the Slovak consumer was protected in situations related to timesharing via various provisions that were contained in private law regulation as well as in public law, for example in Act on Consumer Protection, Civil Code, Commercial Code and in Act on Advertisement. Using of timesharing in practice proved that legal regulation contained in § 55 to 60 of the Civil Code, does not cover all situation, that occurred at the market, therefore there was necessary to adopt wider legal regulation. On 17th of May 2011 National Council of the Slovak Republic adopted the Act No. 161/2011 of the Coll, that derogated aforementioned legal regulation in Civil Code and instead of this regulation there are being regulated four contracts on providing of certain services in tourism: contract on timesharing of accommodation facility, contract on providing long-term recreation services, contract on participation on exchange system and contract on resale mediation. These contracts are focused on surrendering the accommodation facility for using, however they are

following also other goals Providing the long-term recreation (for example using of wellness or other advantage in case of accommodation), participation on exchange system (i.e. some kind of trading with participation in system where the advantage is gained for providing other advantage) and for resale mediation. The Act on Consumer Protection in Case of Providing Certain Services in Tourism introduced the obligation of seller to provide the consumer with information via filled information form in sufficient advance before contract conclusion. The Seller is also obliged to instruct consumer on right to withdraw from the contract, on period for withdrawal from the contract and on prohibition of provisional execution of rights of the seller. In contrast with previous legal regulation in Civil Code supervision in this area is entrusted by the law to Slovak Trade Inspection. Since timesharing is currently in Slovak Republic not very popular among consumers in practice we are able to encounter the timesharing contract as well as other contracts on providing the services in tourism relatively rarely.

References

- Duláková, D. et al. (2012), *Zmluvy o prenechaní vecí na užívanie. Nájomné zmluvy, zmluva o ubytovaní, zmluva o pôžičke a výpožičke a timesharingová zmluva. S komentárom. 1. vydanie*. Bratislava: C.H.Beck.
- Lazar, J. et al. (2014). *Občianske právo hmotné*. II. diel. Trnava: Iuris Libri.
- Vojčík, P. (2008). Spotrebiteľská zmluva (ochrana spotrebiteľa). *Bulletin slovenskej advokácie*, 14(12), 15-21.
- Vozár, J. (1997). Ochrana spotrebiteľa a tzv. time-sharingové zmluvy. *Bulletin slovenskej advokácie*, 3(6), 24-31.
- Zákon č. 161/2011 Z.z. o ochrane spotrebiteľa pri poskytovaní niektorých služieb cestovného ruchu a o zmene a doplnení niektorých zákonov v znení neskorších predpisov.
- Zákon č. 250/2007 Z.z. o ochrane spotrebiteľa a o zmene zákona č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov.
- Zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov.