Benchmarking of existing national legal e-business practices

DG ENTR/04/68
Country report - Slovak Republic

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Slovak Republic

1. General information on the national legal system

Slovak Republic is a unitary republic based upon democratic Constitution[1]. Slovak Republic is a Member of the European Union[2].

EC Directives are usually transposed into national legal system of the Slovak Republic through a separate laws adopted in the Slovak Parliament[3], however, the Constitution also enables the Government to adopt so-called approximating regulations[4] regarding rather technical details of EC legislation. Should an EC Directive concern a legislative field already governed by Slovak law, it is usually implemented through amendments to existing legislation, however, in case of complicated and excessive changes, even new act repealing existing legislation may be adopted.

Slovak law adheres to the Roman civil law tradition and is a part of continental law system based on statutory laws. Court decisions are important source of Slovak law, however, not generally binding. Parties to the dispute usually refer to previous case law of the Supreme Court though the competent court is not bound by such case law.
Slovak law has a lot of common aspects with Czech law given their common past in Czechoslovakia. Therefore, main codes in the field of private law, the Civil Code[5] and the Commercial Code[6] are still based on the same laws adopted within the framework of former Czechoslovakia (of course both codes have been significantly amended since federative state split up).

The civil court proceedings in the Slovak Republic are governed by the Civil Procedure Code[7]. There is a system of "general courts" consisting of the Supreme Court, regional courts and district courts. There are no separate administrative courts. Only separate court established recently is a specialized court dealing with serious crime. There is an appeal system in the Slovak Republic which means that parties to the dispute may file an appeal to have the case reviewed (generally, district court decisions are examined by the regional courts and regional courts decisions – if this is to deal with the case at the first instance – are examined by the Supreme Court).

The parties to a contract are also free to choose arbitration for settlement of a dispute. However, Slovak law sets out where the

[1], Ústava Slovenskej republiky No. 460/1992 Coll., as amended
[2] Slovak Republic has been a member of the European Union since 1 May 2004
[3] Národná rada Slovenskej republiky, www.nrsr.sk
[4] Article 120 par. 2 of the Constitution, Aproximačné nariadenia
[5] Act No. 40/1964 Coll., Občiansky zákonník, as amended
[6] Act No. 513/1991 Coll., Obchodný zákonník, as amended
[7] Act No. 99/1963 Coll., Občiansky súdny poriadok, as amended

arbitration can not be agreed (e.g. in relation to rights to real estate, disputes arising in the course of bankruptcy proceedings) and also where the Slovak court shall have exclusive jurisdiction (e.g. regarding real estate in the Slovak Republic). In the Slovak Republic, arbitration is dealt with by institutional arbitration courts such as the Arbitration Court of the Slovak Chamber and Industrial Commerce[8], foreign arbitration institutions and ad hoc arbitration courts.

2. Electronic signatures

2.1 National legislation and administrative practices

The Slovak Republic has implemented Directive 1999/93/EC on a Community framework for electronic signatures by the Electronic Signature Act[9] in 2002. The Electronic Signature Act entered into force as of 1 May 2002 (some provisions as of 1 September 2002) and has been amended by three amendments so far.

The Electronic Signature Act is implemented by six regulations[10] adopted by the National Security Bureau[11]. The National Security Bureau is a central body of state administration competent, *inter alia*, in the field of electronic signatures.

The Electronic Signature Act governs relationships arising in relation to the execution and the use of the electronic signature, the rights and the obligations of natural persons and of legal entities in using the electronic signature, the credibility and the protection of electronic documents signed by the electronic signature.

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[8] Slovenská obchodná a priemyselná komora, www.sopk.sk

[9] Act No. 215/2002 Coll. o elektronickom podpise a o zmene a doplnení niektorých zákonov, as amended

[10] **Regulation No. 537/2002 Coll**. o formáte a spôsobe vyhotovenia zaručeného elektronického podpisu, spôsobe zverejňovania verejného kľúča úradu, postupe pri overovaní a podmienkach overovania zaručeného elektronického podpisu, formáte časovej pečiatky a spôsobe jej vyhotovenia, požiadavkách na zdroj časových údajov a požiadavkách na vedenie dokumentácie časových pečiatok (o vyhotovení a overovaní elektronického podpisu a časovej pečiatky), **Regulation No. 538/2002 Coll**. o formáte a obsahu kvalifikovaného certifikátu, o správe kvalifikovaných certifikátov a o formáte, periodicite a spôsobe vydávania zoznamu zrušených kvalifikovaných certifikátov (o kvalifikovaných certifikátoch), **Regulation No. 539/2002 Coll**. ktorou sa ustanovujú podrobnosti o požiadavkách na bezpečné zariadenia na vyhotovovanie časovej pečiatky a požiadavky na produkty pre elektronický podpis (o produktoch elektronického podpisu), **Regulation No. 540/2002 Coll**. o podmienkach na poskytovanie akreditovaných certifikačných služieb a o požiadavkách na audit, rozsah auditu a kvalifikáciu audítorov, **Regulation No. 541/2002 Coll**. o obsahu a rozsahu prevádzkovej dokumentácie vedenej certifikačnou autoritou a o bezpečnostných pravidlách a pravidlách na výkon certifikačných činností, **Regulation No. 542/2002 Coll**. o spôsobe a postupe používania elektronického podpisu v obchodnom a administratívnom styku

[11] Národný bezpečnostný úrad, www.nbusr.sk

The Electronic Signature Act classifies two basic types of signatures: (i) an electronic signature, and (ii) a qualified electronic signature. As to its nature, an electronic signature corresponds to what is under the Directive 1999/93/EC defined as "advanced electronic signature". The qualified electronic signature under the Electronic Signature Act is equal to advanced electronic signatures which are based on a qualified certificate and which are created by a secure–signature-creation device (so called SSDC) under Art. 5 par. 1 of the Directive 1999/93/EC.

The Article 5.1 letter a) of Directive 1999/93/EC has been transposed into the Civil Code[12] with effect as of 1 May 2002 by virtue of an amendment set out in the Electronic Signature Act. It is ensured that a written form is preserved if the legal act is made by electronic means and signed by qualified electronic signature as specified in the Electronic Signature Act. Therefore, the qualified electronic signature shall have the same standing and effects as traditional signature by hand-writing.

According to Sec. 5 par. 1 of the Electronic Signature Act, in B2G and C2G relations shall be used either electronic signature or a qualified electronic signature. (prior to amendment of this provision it used to be a general rule that in B2G relations it was necessary that a qualified electronic signature was used). It follows that legislation in particular sectors will state whether a qualified (or simple) electronic signature will be required. However, where the law requires written form of legal act, only acceptable form will be a qualified electronic signature.

In relation to the civil proceedings and administrative proceedings, the relevant codes stipulate that submission to the court (relevant administrative body) can be accomplished by electronic means, however, shall be signed by qualified electronic signature. We have no information how this works in practise, in any case, parties to the proceedings normally use "standard" paper form of filing submissions.

Article 5.1 letter b) of Directive 1999/93/EC (concerning admissibility of electronic signature as evidence in legal proceedings) has not explicitly been implemented in the Slovak Republic. Under the Civil Procedure Code, the court shall take into account any circumstances (i.e. including electronic signature) which may lead to clarification of the state of the subject matter.

The Electronic Signature Act has introduced terms used in the Directive 1999/93/EC such as certificates and qualified certificates. Currently there are four accredited certification-services providers in the Slovak Republic issuing qualified certificates. Certificates are

[12] Act no. 40/1964 Coll., Občiansky zákonník, as amended, its amended Section 40 par. 4

issued by eight certification authorities currently registered with the National Security Bureau.

Identity cards used in the Slovak Republic do not include the electronic signature. However, it is planned that identity cards will in the future contain chips including also electronic signatures.

Major problems of electronic commerce and electronic signature use in practice identified by Slovak Association for Electronic Commerce are the following: (i) issuance of a qualified certificate is too expensive and needs to be renewed every calendar year and (ii) in practice there are not many opportunities in B2G and C2G relations to use a qualified electronic signature.

E-government is planned to be established in the Slovak Republic, however, in practise it is still not applied. Excerpts from the Commercial Registry and Real Estate Registry are available on the internet, the latter for payment only; however, they are not capable of being used for legal action. In other words, they have only informative value. As confirmed by the National Security Bureau, electronic signature is technically prepared for application; however, in relation to governmental bodies it is still not entirely workable as governmental systems are not prepared. Preparatory works for e-government moved recently as the Act on Information Systems of Public Administration[13] was adopted and entered into force as of 1 June 2006. On the basis of this act the central portal of public administration has been established as of 1 July 2006 as a crucial step to e-government.[14]

2.2 Cross border regulatory issues

Section 17 par. 2 of the Electronic Signature Act stipulates that qualified certificates issued by certification authority having its registered seat in one of the EU Member States, validity of which can be verified in the Slovak Republic, shall have equal value as qualified certificates issued in the Slovak Republic. Qualified certificate issued by the certification authority having its registered seat in the EU will have the same legal effect as a qualified certificate issued in the Slovak Republic. As confirmed by the National Security Bureau, from this cited section it follows that there is still some verification (by so called verifiers) to be accomplished in order to accept the qualified certificate issued other EU Member States as being of equal value to the qualified certificate originating in the Slovak Republic.

[13] Act No. 275/2006 Coll. o informačných systémoch verejnej správy a o zmene a doplnení niektorých zákonov

[14] www.portal.gov.sk

3. General elements of electronic contract law

Directive 1997/7/EC on the Protection of Consumers in Respect of Distance Contracts has been implemented through adoption of Act on Protection of Consumer at Home Sale and Distance Sale[15] with effect as of 1 April 2000.

Directive 99/44/EC on Certain Aspects of the Sale of Consumer Goods and Associated Guarantees has been implemented into national law through an amendment to the Civil Code (Act No. 150/2004 Coll.) with effect as of 1 April 2004.

Directive 1998/6/EC on Price Indications has been implemented through adoption of Regulation of the Ministry of Economy of the Slovak Republic on Method of Indication Prices on Products[16] which entered into force as of 1 November 2002.

Directive 2000/31/EC on Information Society Services, in particular electronic commerce, has been transposed into Slovak law through adoption of E-Commerce Act[17] with effect as of 1 February 2004. Art. 5 and 6 of the Directive 2000/31/EC concerning general information to be provided and commercial communications have been implemented into Sec. 4 of the E-Commerce Act.

3.1 National legal and administrative practices

General principles of contract law which shall aplly also to contracts entered into via means of electronic communication are enshrined in the Civil Code. Specific principles which generally apply to B2B contracts (if, at the time of their establishment and taking into account the circumstances, it is apparent that they concern their business activities) and B2G contracts (if public authorities are ensuring public needs or their own operation and at the same time, contract concerns business activities of respective entrepreneur) are set out in the Commercial Code. If not governed in a different manner by the Commercial Code, principles stipulated in the Civil Code will apply also to these B2B and B2G transactions.

As a general rule, contracts may be entered into by the parties in any form (it means that also in the electronic form) unless the law requires the written form (e.g. transfer of real estate) or at least one party to the contract express its will at negotiations that the contract be concluded in writing (this is applicable only to B2B and B2G transactions being subject to the Commercial Code). Should the contract be executed in writing, it can only be amended in written

[15] Act No. 108/2000 Coll. o ochrane spotrebiteľa pri podomovom predaji a zásielkovom predaji, as amended

[16] Regulation No. 545/2002 Coll. Ministerstva hospodárstva Slovenskej republiky o spôsobe označovania výrobkov cenami

[17] Act No. 22/2004 Coll. o elektronickom obchode a o zmene a doplnení zákona č. 128/2002 Z.z. o štátnej kontrole vnútorného trhu vo veciach ochrany spotrebiteľa a o zmene a doplnení niektorých zákonov v znení zákona č. 284/2002 Z.z.

form. According to the Civil Code, a written form is adhered to if the legal act is made by electronic means and signed by qualified electronic signature as specified in the Electronic Signature Act. A contract is deemed written also if the offer as well as acceptance is in writing, however, not being on one and the same sheet of paper. Specific rule concerns a contract on transfer of real estate which shall be executed on one sheet of paper (or more sheets of paper which have to be bound).

A contract is one of several types of legal acts ("právny úkon") and shall at anytime be made freely and seriously, be certain and eligible (Section 37 of the Civil Code). In other words, each contract, even if there is no form prescribed by law, must contain at least sufficient and clear identification of the parties to the contract and subject of the contract in order to be valid and enforceable. Contracts entered into between the parties falling into any type of the contract explicitly regulated by law (so called nominate contracts) must also meet requirements specific for such type of contract. In order to enter into a contract an offer shall be made by an inviting party and such offer shall be accepted by its addressee. The contract shall be deemed to be concluded by the parties when the party inviting the other party to conclude the contract by binding offer was delivered acceptance of this offer from the other party (also see below).

Even if there is no prescription of written form for a particular contract it is highly recommended to execute the contract in writing in order to avoid potential disputes and difficulties to prove oral arrangements between the parties to the contract before the court.

The Slovak Republic invoked Art 9 (2) of Directive 2000/31/EC and the E-Commerce Act provides that specific types of contracts may not be entered into electronically. These are in particular contracts for which a decision of the court, public authority or notary public is required. In addition, contract on securing receivables (pledge, mortgage etc.) may neither be entered into via electronic means.

3.1.1 Electronic invitation to make an offer and submission of an offer

Mechanism of contracts conclusion is generally stipulated in the Civil Code. Specific provisions regarding contracts entered into by means of electronic facilities are enshrined in the E-Commerce Act.

Under Sec. 43a of the Civil Code an offer is defined as manifestation of will aimed to the conclusion of a contract which is addressed to one or several identified parties for concluding the contract provided that such expression of will is sufficiently specific (definite) and clearly reflects the offering party's intention to be bound by such offer in the case the offer is accepted.

According to the Civil Code, the offer shall be effective as of the moment of its delivery to the addressee. Legal theory maintains that the offer made *inter absentes* shall be binding as of the time the offer reached the sphere of disposition of the addressee (letter

delivered in the mail box, the voice message etc.). The E-Commerce Act explicitly stipulates that offer as well as acceptance shall be deemed delivered on condition that persons concerned have an access to them through their electronic devices.

The offer may be cancelled on condition that the cancellation is delivered to the addressee either sooner or at the same time as the offer at the latest. Concerning oral offer or offer made through telephone the nature of cancellation clearly indicates that such offers may not be cancelled, since the cancellation may not be delivered prior or at the same time as the offer. The offer may also be withdrawn (provided that the offer does not stipulate that it may not be withdrawn) at any time until the contract is not validly concluded. The offer may be withdrawn any time prior the conclusion of a contract but the withdrawal shall be delivered to the other party sooner than the acceptance has been sent to the offering party. The offer shall expire (i) at the moment of lapse of time period for acceptance thereof, (ii) lapse of appropriate time period taking into account nature of the offered contract and how quick are means used by offering party to send the offer and (iii) by delivery of non-acceptance to the offering party.

In addition to the offer as mentioned above, the Commercial Code also provides for the public offer for conclusion of a contract[18]. This is however applicable only to B2B transactions (B2C are subject to the Civil Code only). Unlike the offer according to the Civil Code, the public offer for conclusion of a contract is addressed to unspecified persons. In order to be valid, it must be published (it is not however specified by what means, i.e., whether a web page would be sufficient) and contain essential prerequisites of a type of contract it falls into. In case of offers for so called innominate contracts (contracts which are not explicitly governed by any type of contract) such public offer must contain sufficiently specific definition of its subject matter. If it does not meet the aforementioned requirements, such offer would be considered invitation to submission of offers to contract only.

A public offer may be revoked if the offering party notifies its revocation before the acceptance of a public offer, and this notification is made in the same manner as the announcement of the public offer. A contract shall be concluded on the basis of a public offer with a person who, in accordance with the subject matter of the public offer and within the stipulated time period, is the first to inform the offering party of the acceptance thereof and the offering party confirms the conclusion of the contract to this person. Should several persons accept a public offer at the same time, then the offering party is entitled to select the person with whom the contract is to be concluded. Concerning the moment when the contract shall be deemed concluded there are disputes amongst legal theory. It is questionable whether the contract shall be concluded upon the moment of its acceptance by the accepting person or by confirmation

[18] Section 276, verejný návrh na uzavretie zmluvy

of the offering party. In any case, the offering party is obliged to confirm conclusion of the contract without undue delay following delivery of acceptance.

As it results from the aforementioned, an offer under the Civil Code (applicable to B2C as well as B2B transactions) shall be addressed to a specified person (s). Public offer for conclusion of a contract under the Commercial Code is applicable to B2B transactions only. It seems that in B2C relations, a web page including tender specifications shall only be regarded as an invitation to submit offer to enter into contract and not as a binding offer. On the other hand, in B2B relations, a web page including tender specifications might be perceived as a public offer for conclusion of a contract. However, we have no information about any case law supporting this position and it would be desirable to stipulate respective clarifications by virtue of amendments to statutory law.

3.1.2 Electronic acceptance

Under the Civil Code, the contract shall be deemed to be concluded by the parties when the party inviting the other party to conclude the contract by binding offer was delivered acceptance of this offer from the other party. Acceptance may be withdrawn; however, it shall be delivered to the offering party with the acceptance at the latest. Remaining silent (failure to act) as such does not mean acceptance of the offer even if the offer explicitly provides so.

The offer shall be accepted in full as any amendments and modifications made to the offer by its addressee are regarded as a new offer. The E-Commerce Act explicitly stipulates that acceptance shall be deemed delivered on condition that persons concerned have an access to them through their electronic devices.

3.1.2.1 Information obligations in relation to electronic contract conclusion

The legislation in the Slovak Republic reflects the requirements laid down in Article 5 of Directive 2000/31/EC on Electronic Commerce, Articles 4 and 5 of Directive 97/7/EC on Distance Contracts, and Articles 3, 4 and 5 of Directive 2002/65/EC on Distance Marketing of Consumer Financial Services, regarding the information that must be given to the consumer before and after the order is placed.

As confirmed by the Slovak Association of Electronic Commerce, the above referenced obligations are complied with by the most of entrepreneurs. In case of non-compliance, the Slovak Inspection of Commerce[19] (a public body) would be empowered to impose sanctions.
Country of origin principle set out in Article 3 of Directive 2000/31/EC on Electronic Commerce is transposed into the E-Commerce Act (Section 3). It means that information services provider from the other EU Member State is subject to legislation of its domicile country. However, in relation to the state security, public

[19] Slovenská obchodná inšpekcia, www.soi.sk

order, public health, life environment and consumer protection it shall be subject to Slovak law.

Information services provider shall be obliged to inform the consumer of the language offered for the conclusion of the contract. Certain information specified by the E-Commerce Act to be provided by information services provider to the consumer must be executed in Slovak language.

3.1.2.2 Standard terms and unfair clauses

In B2C relations, there is no specific regulation of the standard terms (except to prohibition of unfair clauses, see below) and therefore general provisions of the Civil Code shall apply (requirements on validity of legal acts, Sec. 37 et seq. of the Civil Code, see above).

In B2B transactions, according to Sec. 273 of the Commercial Code, a part of a contract's contents may be specified by reference to general terms and conditions (i.e. standard terms) elaborated by professional organisations or associations, or by reference to other terms and conditions known to the contracting parties or enclosed to the contract. In other words, distinction must be made between general terms and conditions (these are elaborated by professional organisations) and so called other terms and conditions. Under the Commercial Code general terms and conditions are presumed to be known by all entities performing business activities within certain specific sector or industry. Such general terms and conditions shall bind the contracting parties if they express their will to be bound by such terms and conditions in the form of reference in the agreement. Such reference shall include the title (the name) of the terms and conditions and the name of organization which elaborated such terms and conditions (e.g. UNCITRAL). So called other terms and conditions are not generally known terms and conditions (e.g. terms and conditions elaborated by one of the contracting parties). Such terms and conditions shall bind the contracting parties if these terms and conditions are known to the contracting parties (and parties express their intention to be bound by such terms and conditions by reference in the contract), or are enclosed to the agreement. Other terms and conditions if accepted by both parties will not be deemed general terms and conditions (standard terms) as described above but rather a mutual arrangement of both parties and will form an inseparable part of their agreement.

As it results from the above mentioned, in B2C as well as in B2B transactions (subject to general terms elaborated by professional organisations which are deemed known to businesses) the contracting party may not be bound by the terms and conditions if such terms and conditions were not, in a manner prescribed by law, communicated and accepted by the other contracting party.

In both B2C and B2B transactions, standard terms sent after acceptance of the offer with an invoice or order confirmation or just made generally available on the webpage of the seller without any

direct connection to the actual sale will, as a general rule, not be regarded as part of the contractual arrangement.

The technical solution of this issue is that the contracting party must work through the terms of the contract in order to proceed on the conclusion of the contract. This can be accomplished by the contracting party "passing" and "confirming" a page with contract terms before the contract is concluded, possible by the terms appearing in full text on the page and the contracting party confirming having seen it by scrolling down over the page and clicking on a confirmation button. This party should not be able to execute the contract, i.e. send its offer or acceptance, without reading the terms. In such a case, the party to the contract shall be bound by general terms announced to it in this manner. However, there is no case law confirmation of such conclusion.

Regarding unfair clauses, there is a general principle contained in the Civil Code (Sec. 39) under which legal act (including unfair clauses) shall be deemed invalid if its content or purpose contradicts or circumvents the law, or if it contravenes or circumvents good morals.

The Directive 93/13/EC and the Directive 99/44/EC have been transposed into the Civil Code through new chapter on consumer contracts[20] with effect as of 1 April 2004. The consumer contracts basically include purchase contracts and other contract for payment in B2C relations where consumer was not in a position to affect preparation of draft contract (as it has already been prepared by a business). The consumer contracts may not contain provisions causing significant imbalance in rights and obligations of parties to the contract at the expense of the consumer – these provisions are defined as unfair clauses.[21] The Civil Code in its Sec. 52 par. 3 stipulates non-exhaustive enumeration of such unfair clauses (reflecting the Directive 93/13/EC). Unfair clauses contained in a contract shall be invalid. If these unfair clauses are severable from the other contents of the contract, then the remaining part of the contract shall remain valid (Sec. 41 of the Civil Code).

Regarding B2B transactions, the Commercial Code (Sec. 265) stipulates that the exercise of rights and duties contrary to the fair trade practices is not legally protected, in other words it shall not be enforceable before the court.

The court is as a general rule not empowered to change the rights and obligations arising either from the B2C or B2B transactions. However, it is notable that in B2C transactions the court may decrease the amount of compensation of damages and in B2B transactions the court may decrease the sum of contractual penalty.

The Slovak Inspection of Commerce is a body supervising sale of products and provision of services to the consumers. It is however

[20] spotrebiteľské zmluvy
[21] neprijateľné podmienky

not competent to ultimately resolve disputes in B2C transactions. Thus, any disputes arising from B2B and B2C contracts regarding the standard terms and unfair provisions may be decided either by an arbitration body or by the respective court.

3.1.3 Choice of law and forum

Key legislation in the Slovak Republic in this respect is the Private International Law Act[22] which shall apply unless the treaty the Slovak Republic entered into provides for otherwise. As the Slovak Republic is the EU Member State the Council Regulation (EC) No 44/2001 shall also apply and prevail over the Private International Law Act in case of any discrepancies.

Pursuant to Sec. 1 of the Private International Law Act, it shall apply to all civil, commercial, family, employment and other relations with an "international element"[23]. Under Slovak conflict of laws, the parties are free to choose the governing law of their contractual relationship unless provided otherwise in a special law (Section 9). In other words, unless a special law provides that a certain type of agreement must be governed by Slovak Law the parties – of which one shall be a Slovak person – to a contract with an international element are free to choose the governing law of their contractual relationship. However, there is one exception to this rule. According to Sec. 9 par. 3 of the International Private Law Act, should the parties to the consumer contract opted for a law granting lesser protection of consumer's rights than Slovak law, such B2C transaction shall be subject to Slovak law. If parties to the contract do not opt for a particular governing law, the International Private Law Act stipulates several rules. By way of example, purchase contracts (and contracts on work) shall be subject to the law of the seat of a seller (provider of work).

Other contracts for which governing law is not specified shall be subject to the following rule: If the parties do not have a seat in the same state and the contract is concluded at presence of both parties, governing law shall be the law applicable at location where the contract has been entered into. Should the contract be concluded *inter absentes*, the contract shall be governed by the law where the party accepting an offer is seated.

The Slovak Republic has ratified the Rome Convention on the Law Applicable to Contractual Obligations[24] opened for signature in Rome on 19 June 1980 and it entered into force (in relation to the Slovak Republic) as of 1 August 2006.

[22] Act No. 97/1963 Coll. o medzinárodnom práve súkromnom a procesnom, as amended

[23] medzinárodný prvok

[24] 80/934/EEC: Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980

The United Nations Convention on the International Sale of Goods (CISG) was acceded to by former Czechoslovakia with effect as of 1 April 1990. The Slovak Republic became a signatory to CISG with effect as of 1 January 1993 as an independent state. Czechoslovakia made a reservation regarding Section 1/1(b) of CISG which means the CISG is applicable only in case goods purchase contract is concluded between the parties which are seated in the countries which ratified the CISG. For some legal authors it remains questionable whether this old reservation made by Czechoslovakia remained in force as the Slovak Republic in its declaration on succession had not confirmed the old reservation. CISG shall not apply to B2C transactions.

The Directive 2000/31/EC on Electronic Commerce providing for a country of origin principle has been transposed into Slovak law by virtue of the E-Commerce Act (there are however some derogations, please see above). It is not entirely clear what provisions would be applied by Slovak courts where for example information services provider from abroad being subject to law of its domicile commits by such provision of services a criminal offence in the Slovak Republic. It is because of the fact that under the Criminal Code[25] criminal offence committed in the territory of the Slovak Republic shall be subject to Slovak criminal law (the *lex loci* principle). In addition, under the International Private Law Act, laws of a foreign state shall not apply on condition that its effects contradict such principles of social and state constitution of the Slovak Republic which must be without any reservation adhered to (so called public policy reservation).
Regarding the forum, the Slovak courts are competent for B2B and B2C cross border contracts disputes where it implies from the Civil Procedure Code, the International Private Law Act or the Council Regulation No. 44/2001. According to the International Private Law Act, the Slovak court shall be competent in matters regarding consumer contracts where the claimant is consumer having permanent address or seat in the Slovak Republic.

The Slovak Association of Electronic Commerce does not consider choice of law or forum selection as barriers in B2B or B2C transactions.

3.2 Cross border regulatory issues

In the course of preparation of this study, neither specific court rulings on the use of electronic contracts in cross-border trade between enterprises nor any specific cross-border regulatory barriers related to electronic invitation to make an offer, submission of an offer and acceptance of an offer have been identified.

[25] Act No. 300/2005 Coll., Trestný zákon

4. Electronic invoicing, payment and other matters related to execution of electronic contracts

4.1 National legislation and administrative practices

The obligation to pay for goods and services in B2B and B2C transactions does not differ from the obligation to pay in traditional off-line business relationships. Under the Civil Code if both parties have to make a performance, only that party which has already fulfilled its obligation or is ready to fulfil its obligation can claim fulfilment of other party's obligation.

Electronic invoicing

Directive 77/388/EEC as amended by several directives including Directive 2001/115/EC was implemented through the Act on Value Added Tax[26] which entered into force as of 1 May 2004. The Act on Value Added Tax stipulates the required particulars of the invoice.

Article 2 par. 2b) of the Directive 2001/115/EC is reflected in Sec. 75 of the Act on Value Added Tax. According to this section, invoice may be executed in writing or, subject to consent of consumer, by electronic means. In the latter case, veracity of the invoice shall be confirmed on the basis of the electronic signature pursuant to the Electronic Signature Act. No provision of the Act on Value Added Tax requires the "paper" invoice to be signed (please also see below). The Act on Value Added Tax does not make any distinction in relation to value of the "paper" invoice and invoice sent by electronic means duly signed as required by the Electronic Signature Act.

However, also the Accountancy Act[27] must be taken into account when invoicing. Under the Accountancy Act setting out particulars of the accounting document[28] (which includes also an invoice), it shall comprise a signature record[29] of the person responsible for the transaction by the accounting entity and a signature record of the person responsible for the entry. For parties to transactions it is not entirely clear from the Act on Value Added in conjunction with the Accountancy Act whether the invoice shall be signed or not. In practise it is very frequent and usual that the invoice is requested by its addressee to be signed.

Because of the fact that prior approval of addressee of the invoice is required if it is to be issued electronically, practice of electronic invoicing is facing difficulties.

[26] Act No. 222/2004 Coll., o dani z pridanej hodnoty, as amended
[27] Act No. 431/2002 Coll. o účtovníctve, as amended
[28] účtovný doklad
[29] podpisový záznam, as defined in the Accountancy Act, signature record shall mean an accounting record including handwritten signature or similar verifiable accounting record that replaces the handwritten signature in a technical form

Means of payment and the obligation of the parties regarding the use of certain payment instruments

Directive 1997/7/EC on the Protection of Consumers in Respect of Distance Contracts has been implemented through adoption of Act on Protection of Consumer at Home Sale and Distance Sale with effect as of 1 April 2000.

Directive 2002/65/EC concerning the distance marketing of consumer financial services was transposed into Slovak law through the Act on Consumer Protection concerning Distance Financial Services[30] with effect as of 1 July 2005.

Certain aspects of Directive 2002/65/EC concerning the distance marketing of consumer financial services concerning payment were also implemented into the Payment System Act[31] which entered into force as of 1 January 2003 (except to some provisions) and governs the following: (i) performance of domestic transfers of funds, (ii) performance of cross-border transfers of funds, (iii) the issue and use of electronic means of payment, (iv) the establishment and operation of payment systems, (v) supervision over payment systems and payment transactions, (vi) claims and resolution of disputes relating to payment systems.

The Payment System Act (Section 22) sets out that the National Bank of Slovakia[32] may issue sample commercial terms regarding issuance and using of electronic payment means. Requirement of Article 8 of the Directive 2002/65/EC is reflected in Section 25 of the Payment System Act as follows: If a bank payment card is misused by a person other than the authorised holder, and such a misuse was not caused by a conduct or the omission of the authorised holder, then

a) prior to the moment of the notification of the loss or theft of the bank payment card to the issuer or person authorised by him, the authorised holder shall be liable for the disbursement of funds by such a use of the bank payment card only up to the amount agreed in writing between the issuer of the bank payment card and under other conditions agreed in writing,

b) following the moment of the notification of the loss or theft of the bank payment card to the issuer or person authorised by him, the authorised holder shall be entitled to request from the issuer the return of funds disbursed by such a misuse of the bank payment card.
An authorised holder shall be entitled to request from the issuer the return of disbursed funds if a misuse of a bank payment card occurs by a person other than the authorised holder and if such a use was

[30] Act No. 266/2005 Coll. o ochrane spotrebiteľa pri finančných službách na diaľku
[31] Act No. 510/2002 Coll. o platobnom styku a o zmene a doplnení niektorých zákonov, as amended
[32] Národná banka Slovenska

not caused by a conduct or the omission of the authorised holder, and the misuse occurred:

a) without the physical presentation of the bank payment card, or

b) without the presentation of the bank payment card if its nature does not permit physical presentation, or

c) by a physical presentation of the bank payment card without electronic verification thereof by means of telecommunication networks.
Protection against misuse of other types of payment e.g. direct bank transfer is rather an issue to be governed and stipulated directly in the agreement between the respective financial institution and its customer.

4.1.1 Delivery of the good or provision of services ordered electronically and withdrawal period

4.1.1.1 Non-performance of the obligation to deliver and late delivery

General rules regarding non-performance of the obligation to deliver or late delivery are contained in the Civil Code (for B2C transactions) and in the Commercial Code (for B2B transactions).

Under the Civil Code (B2C transactions) if an obligation is not performed properly and timely the obliged party is deemed to be in delay. If it does not perform within an additional adequate time period provided by consumer, consumer shall be entitled to withdraw from the contract. If the contract stipulated for a precise time of delivery and it is clear from the nature of the subject matter that consumer is no more interested in delayed performance (so called fixed term contracts), consumer shall notify obliged party that it sustains on performance otherwise the contract shall be deemed cancelled (to have never been existed).

In addition to the abovementioned, the consumer shall have a right to compensation of damages incurred in connection with non-performance of the obliged party (in case of failure to pay only in case those damages exceed late payment interest paid by the obliged party by virtue of law).

In B2B transactions, purchaser of goods or services shall be entitled to withdraw from the contract in case that (i) provider of goods or services is delayed, (ii) it is deemed material breach of obligations, and (iii) purchaser notifies its withdrawal to the provider without undue delay after it learnt of such breach. Under the Commercial Code, breach is regarded as material if the defaulting party to the contract knew or could have anticipated at the time of its conclusion from the contents of the contract or the circumstances under which it was entered into, that the other party would not have an interest in its performance in the event of a breach of the contract. In case of doubt it is presumed that the breach of the contract is not material.

The contract shall be terminated upon delivery of withdrawal to the defaulting party. On the basis of withdrawal, all rights and obligations arising out of the contract shall cease to exist. This shall however not affect entitlement to damages compensation and choice of law provisions. Indeed, purchaser of goods or services may claim damages compensation from the defaulting party.

4.1.1.2 Right of withdrawal from the contract in B2C transactions and return of the good

Under Section 12 of the Act on Protection of Consumer at Home Sale and Distance Sale, consumer shall be entitled to withdraw from the contract within seven working days as of delivery of a product or conclusion of services contract on condition that the seller fulfilled its information obligations according to this act. In case that the information obligations of the seller were fulfilled later on, right to withdraw may be exercised within seven business days as of fulfilment of these obligations. In any case, the consumer shall have a right to withdraw only within three months as of the delivery of goods or services at the latest.

Regarding distant financial services, the Act on Consumer Protection concerning Distance Financial Services transposed Directive 2002/65/EC and provides for a right to withdraw from a distance contract on financial services including insurance within 14 days. In the case of life insurance and supplementary pension saving[33] this time period shall be prolonged to 30 days.

4.1.1.3 Delivery of a good not in conformity with the contract

Directive 1999/44/EC has been implemented into Slovak law through amendment (Act No. 150/2004 Coll. which except to some provisions entered into force as of 1 April 2004) to the Civil Code.

In B2C transactions, according to the Civil Code, seller shall be liable for defects[34] of the goods sold to the customer at the moment of its delivery. In other words, the seller shall deliver goods to the consumer which is in conformity with the contract of sale.

In general, warranty period in case of sale of products shall according to the Civil Code be **24 months** (unless there is specific provision of the Civil Code or longer warranty period according to the contractual warranty). If in the course of this warranty period a defect of the goods arose the consumer shall have the following rights according to the degree of defect:

(i) <u>if the defect is reparable</u>:
- The consumer has a right to timely and proper reparation for free and the seller shall be obliged to eliminate the defect without undue delay, or

[33] so called third pillar of Slovak pension system, doplnkové dôchodkové sporenie
[34] Slovak law makes distinction between so called legal defects (právne vady) and factual defects (faktické vady)

- The consumer may instead of elimination of the defect in the product (its component) request its exchange for a new one unless the producer will incur unreasonable costs compared to the price of the product or seriousness of the defect, or
- The seller is always entitled to exchange defective product for a new one unless it causes significant complications for the consumer, or
- The consumer shall be entitled to withdraw from the purchase contract (in such a case, the purchase contract is deemed to never have existed) or exchange the product for the new one on condition that the same defect occurred or several defects (more than three) occurred and at the same time the product can not be properly used.

(ii) if the defect is non-reparable and at the same time it prevents the product from being properly used:

- The consumer shall be entitled to exchange defective product for the new product, or
- The consumer shall be entitled to withdraw from the purchase contract.

(iii) if there are other defects which are non-reparable:

- The consumer shall be entitled to reduction of the price of the product.

The abovementioned rights of consumer shall expire by lapse of the warranty period.

National legislation on conformity of goods conforms to requirements of Directive 1999/44/EC and does not significantly expand in excess thereof.

4.2 Cross border regulatory issues

If the invoice is issued by electronic means, its veracity shall be confirmed on the basis of the electronic signature pursuant to the Electronic Signature Act (please see above). Electronic invoicing within the Slovak Republic is not very common business practice and this also stands for cross-border electronic invoicing. As for the details for invoicing as such please refer above.

In addition, no case law in relation to electronic invoicing (either internal or cross-border) has been identified.

The Slovak banks are subject to Regulation 2560/2001. Identification of International Bank Account Number (IBAN) of parties to the contract is frequently used in contracts among big companies owned by foreign capital. However, it may reasonably be expected that local businesses and SMEs are not aware of benefits granted to them by virtue of Regulation 2560/2001.

5. General assessment of national legislation and administrative practices in the fields of e-signatures, e-contracts and e-invoicing

5.1 Main legal and administrative barriers to e-business

The following main legal and administrative barriers to e-signatures, e-contracts and e-invoicing in the Slovak Republic have been identified:

1. Traditional usage of written documents

As indicated above, Slovak law is based upon a civil (Roman) law tradition where statutory (written) laws are applicable and binding towards natural persons and legal entities. Furthermore, businesses as well as natural persons not carrying out business activities are traditionally used to require paper documentation. Therefore, even if perfect from the perspective of law, electronic documents might be considered by the parties to transactions as not sufficiently certain and reliable.

It is also not clear how the court considers the electronic document signed by electronic signature (not qualified electronic signature) as the court shall be free to evaluate the submitted evidence and only qualified electronic signature is given status equal to handwritten signature. Thus, electronic document would be subject to discretionary power of the court as to what extent it would find such electronic document reliable.

2. Lack of case law and clear legislation

There is no case law available in relation to electronic signatures, electronic commerce and electronic invoicing. As the legislation is sometimes not very clear the parties to such transactions might be subjected to uncertainties concerning applications of some provisions of relevant laws.

The Civil Code (and to some extent the Commercial Code) stipulate the mechanism for conclusion of contracts between the parties. Provisions governing offer and acceptance of the contract do not explicitly deal with electronic contracting (with exception to some provisions of the E-Commerce Act) and it will be desirable to stipulate coherent regulation of the electronic transactions.

3. Slow introduction of e-government in the Slovak Republic

In spite of the fact that it is a long-term objective of the Slovak government, the project of e-government is still not completed and applied due to slow implementation on the side of public bodies. However, a step forward has been taken by adoption of the Act on Information Systems of Public Administration and by adoption of the Decree of the Ministry of Transport, Posts and Telecommunications of

the Slovak Republic on Standards for Information Systems of The Public Administration[35] with effect as of 1 August 2006.

4. Lack of practical usage of electronic signature

There are four accredited certification-service providers in the Slovak Republic. Their services (issuance of qualified certificates) are perceived to be too expensive taking into account especially the fact that qualified signatures are not so useful in relation to governmental bodies (see also point on slow introduction of e-government).

5. No protection of SMEs in electronic commerce

Slovak law makes distinction between B2C and B2B transactions whereas B2B transactions comprise all businesses as such (i.e. also SMEs). Therefore, businesses are subject to the same legal regime notwithstanding their size and economic strength. Compared to relatively considerable protection secured for the consumers under Slovak law in electronic commerce relations, there is no statutory protection granted to the SMEs in the electronic commerce especially in relation to big entrepreneurs.

5.2 Awareness about national authorities in charge of solving legal problems in e-business

In general, consumers and businesses in Slovakia are not very familiar with the structure of public bodies where they would be able to invoke their rights. Currently not very sufficient consumers' awareness of rights and obligations is being eliminated by various education and informing initiatives made by the Slovak Inspection of Commerce or private associations.

We are not informed of any particular study dealing with the awareness about national authorities in charge of solving legal problems in electronic business amongst consumers and businesses.

For the sake of completeness, electronic signature falls within the competence of the National Security Bureau[36] and consumer protection (also in relation to electronic commerce) shall be under supervision of the Ministry of Economy of the Slovak Republic[37]. The project of information society is in the competence of the Ministry of Transport, Posts and Telecommunications of the Slovak Republic[38] (its section on information society established in 2005).

[35] Decree No. 1706/M-2006 o štandardoch pre informačné systémy verejnej správy
[36] Národný bezpečnostný úrad (http://www.nbusr.sk/index_en.html)
[37] Ministerstvo hospodárstva Slovenskej republiky (http://www.economy.gov.sk/index/go.php?lang=en&id=30&idm=0)
[38] Ministerstvo dopravy, pôšt a telekomunikácii Slovenskej republiky (http://www.telecom.gov.sk/index/index.php?lang=en)

5.3 Legal and administrative best practices in e-business

In addition to regular bodies of state administration dealing with electronic commerce and information society, the Slovak government also appointed its representative for the information society[39]. There is also a Governmental Council for the Informatics.[40]

As regards strategy documents, one of the most important ones is the resolution no. 557 dated 13 July 2005 adopted by the Slovak government including Action Plan for Information Society comprising summary of steps to be taken in order to develop an information society as well as division of roles to this end[41].

[39] Vládny splnomocnenec pre informatizáciu spoločnosti (http://www.telecom.gov.sk/index/go.php?id=2891&lang=en)
[40] Rada vlády Slovenskej republiky pre informatiku (http://www.telecom.gov.sk/index/go.php?id=1877 – no English version found)
[41] Details may be found at http://www.iminerva.sk/dokumenty/ap/AP/informacna%20spolocnost.doc

ANNEX 1: Interviews performed

- Ing. Marián Krško, CSc., executive director of Slovak Association of Electronic Commerce (Slovenská asociácia pre elektronický obchod)
- Mgr. Zuzana Mikulášková, National Security Bureau (Národný bezpečnostný úrad)

ANNEX 2: E-business national legislation

Namely the following legislation in the Slovak Republic is concerning e-business[42]:

1. The Civil Code[43],
2. The Commercial Code[44],
3. Private International Law Act[45]
4. E-Commerce Act[46],
5. Act on Electronic Signature[47],
6. Act on Information Systems of Public Administration[48]
7. Act on Payment System[49],
8. Act on Protection of Consumer[50],
9. Act on Protection of Consumer at Home Sale and Distance Sale[51],
10. Act on Consumer Protection concerning Distance Financial Services[52]

[42] Each act is accompanied by an internet link below. Where it was not possible to find English versions of these laws, we inserted a link to a Slovak version available on the official web pages of competent Slovak authorities (usually not in the wording of last amendments). Please note Slovak version published in the Collection of Laws (Zbierka zákonov) is binding only.

[43] Občiansky zákonník (http://www.zbierka.sk/get.asp?rr=az&zz=oz, Slovak version only)

[44] Obchodný zákonník (http://www.nbs.sk/DFT/DS/ZAKONY/OBCHOD.PDF, Slovak version only)

[45] zákon o medzinárodnom práve súkromnom a procesnom (http://www.justice.gov.sk/dwn/l7/zmps.rtf, Slovak version only)

[46] zákon o elektronickom obchode (http://www.telecom.gov.sk/index/go.php?id=840, Slovak version only)

[47] zákon o elektronickom podpise (http://www.nbusr.sk/NBU_SEP/leg_rozne/215_2002AJ.pdf)

[48] zákon o informačných systémoch verejnej správy (http://www.zbierka.sk/search-res.asp?ti=no&slovo=275%2F2006&zbn=Vyh%BEadanie – Slovak version only)

[49] zákon o platobnom styku (http://www.nbs.sk/LEGA/A201202P.PDF)

[50] Act No. 634/1992 Coll., o ochrane spotrebiteľa, as amended (http://www.economy.gov.sk/files/spotrebitel/zakonoochranespotrebitela.doc, Slovak version only)

[51] zákon o ochrane spotrebiteľa pri podomovom predaji a zásielkovom predaji (http://www.economy.gov.sk/files/spotrebitel/Zakony%20a%20nariadenia/zakopodomazasielkpredaji.doc - Slovak version only)

11. Act on Protection of Personal Data,[53]
12. Act on Value Added Tax[54],
13. Accountancy Act[55].

[52] zákon o ochrane spotrebiteľa pri finančných službách na diaľku (http://www.economy.gov.sk/files/spotrebitel/Zakony%20a%20nariadenia/zakofinancnychsluzbachnadialku.doc, Slovak version only)
[53] Act No. 428/2002 Coll., o ochrane osobných údajov, as amended (http://www.dataprotection.gov.sk/buxusnew/docs/act_428.pdf)
[54] zákon o dani z pridanej hodnoty (http://www.finance.gov.sk/EN/Documents/1_Adresar_redaktorov/Rybansky/222_2004from012006.rtf)
[55] zákon o účtovníctve (http://www.finance.gov.sk/EN/Default.aspx?CatID=35)