

# 2008 racks up some controversial laws

**Negative reaction to some legislation adopted last year in legal and business circles**

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2008 was a fertile year for legislation, some of which led to fiery debates both in parliament and among lawyers. The most controversial acts, according to experts, were the new Press Code, a package of laws to speed up highway construction, and legislation to protect the suppliers of large commercial chains.

One new law even attracted the attention of the European Commission, which called on the country to withdraw the Postal Service Act which expanded the monopoly of the state-run postal operator.

The impact of these and other measures has been strongly debated among professionals and some have alarmed the business community.

In November 2008, for example, the German-Slovak Chamber of Commerce and Industry raised a red flag over legislation that resets the rules that



One of the criticised laws affected highway construction. Photo: TASR

energy companies must observe before they can change their prices. The legislation took away the right of firms' boards to decide on price-change proposals submitted to the national network regulator, and gave it to those companies' shareholders. The chamber warned that the legislation could lead to Slovakia losing its high ranking as an attractive investment destination.

For Ondřej Majer, an attorney at Peterka & Partners Law Offices, one of the most controversial legislative changes of 2008 was the act on

extraordinary measures to speed up highway construction in Slovakia.

"This legislation allows construction on private land plots before expropriation proceedings are duly terminated and, consequently, irrespective of their result," Majer told The Slovak Spectator. "Furthermore, under the latest amendment, owners who do not accept the buy-out conditions proposed by the state and thus exercise their statutory right to the proper expropriation proceedings are in fact sanctioned due to the lower

buy-out prices which this legislation stipulates."

The law came into effect in early February 2008, giving the government broad powers to expropriate land needed to complete a cross-country highway which Prime Minister Robert Fico promised to provide to the nation by 2010. Instead of requiring the state to settle all the ownership rights to the land before receiving a construction licence, the new law requires only that the state has settled the rights by the time the construction is finished and approved.

The Transportation Ministry said that the legislation was needed to prevent "a billion" investments from being left in the lurch due to haggling over compensation. But critics contend that the law violates the constitutional right to property.

Nonetheless, the ruling coalition amended it in November 2008 to extend the list of highways and dual carriageways categorised as forming the national-level transport infrastructure. This gave the state the power to begin construction on land without prior agreement from its owner.

According to Majer, another problematic regulation is the new law on inadequate conditions in commercial relations. This act is intended to protect the suppliers of large commercial retail chains against certain commercial conditions and practices generally regarded as unfair, Majer explained.

"Unfortunately, its application in practice will be extremely difficult due to the improper, ambiguous and vague formulation of this legislation," Majer said. "Perhaps we may expect more unintended than originally intended effects from this legislation."

The law, which came into effect this month, applies to the sale of products or services to end-consumers at prices lower than their production cost or the purchase price for which the goods were supplied to the retailer.

The law prohibits this practice in principle, though prices may still be trimmed on the basis of a specific agreement between the supplier and the retailer. The bill also limits the fees that retail chains can charge for stocking a product, its placement in a specific position in stores, or for other marketing costs.

"Certain recently passed legal regulations are problematic just because they are strikingly purpose-driven," Majer said.

His criticism applies to the latest amendment to the Commercial Code, which changes the proportion of powers between boards of directors and general meetings of joint stock companies - for the sole reason that this gives the state a more favourable position in relation to one particular energy corporation in which it is a shareholder, said Majer.

Tomáš Rybár, partner at Čechová & Partners Law Office also views this amendment, affecting price proposals as among the most controversial measures passed in 2008.

## Euro, highway and civil law

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We also regard the revision to the Civil Act as a positive development. It widens the definition of inappropriate terms in consumer contracts.

AMONG laws adopted by Slovakia last year, measures linked to the adoption of the European single currency, amendments to speed up highway construction, the Press Code and new regulations related to pricing in the energy sector all attracted international attention.

Legal experts operating in Slovakia say that laws are still needed to address lobbying activities, support renewable energy sources, and oversee internet domain names. The Slovak Spectator spoke to lawyers Martin Magál, a partner at Allen & Overy Bratislava, Julián Juhász, from Squire Sanders, and Katarína Pecnová, from Salans, for the following brief survey.

**The Slovak Spectator (TSS): Which were the most significant laws adopted in the Slovak Republic in 2008?**

**Martin Magál (MM):** The adoption of the Lisbon Treaty in April 2008 and the legislative package for euro implementation as of 1 January 2009. For private individuals, the most noteworthy laws are likely to be the amendments to the existing consumer protection legislation, creation of the commission for assessment of terms in consumer contracts, the introduction of consumer loans interest caps calculated from average market rates from July 2008, the establishment of 100-percent protection of funds deposited in bank accounts effective as of 1 November 2008, and 100-percent protection of client financial instruments in custody effective as of 1 January 2009.

The various amendments to the second pillar pension saving system we also consider significant.

For companies, the amendment to the Commercial Code on cross-border mergers effective as of 1 January 2008, the act on European Grouping of Territorial Cooperation, and the act on disproportionate commercial terms were particularly relevant.

Interesting developments occurred in the regulated sectors. There is a new insurance act, and in the energy sector there is the act on price requests by commercial companies which introduced a condition that general shareholder meetings (rather than boards) have to approve all price requests addressed to the network industries regulator.

**Julián Juhász (JJ):** These include the revision to the Civil Procedure Code, which brings not only significant changes but simultaneously introduces some new measures. In a similar vein, there was a change to preliminary rulings.

New measures include for example a new type of verdict in the event that proceedings need to be shelved, as well as a new special proceeding relevant to generally binding directives by municipalities and higher territorial units.

**Katarína Pecnová (KP):** The most important new legislation includes the revision to the Civil Procedure Code, which introduced some new institutions (for example in so-called petty-cash disputes, or in disputes over property ownership), the revision to the Civil Procedure Code effective as of October 15, 2008 which amended a number of aspects of procedural law (for example inheritance procedure) and laws and regulations pertaining to the adoption of the European single currency, even though the general law on euro adoption in Slovakia was passed in 2007.

Regarding the legislation on euro adoption, a quite large defect is that under the umbrella of "harmonization of laws due to the transition to the euro" various other regulations not directly related to euro adoption were affected, but the result of these changes has been difficult to determine.

**TSS: Which important laws legal norms does Slovakia lack?**

**MM:** Despite heavy legislative activities and massive implementation of EU legislation, there is a long-lasting legal vacuum with respect to [internet] domain names in the Slovak Republic. Moreover more detailed legislation on the third sector and public-private partnership (in particular on concession dialogues) would be much appreciated.

**JJ:** Legislation, or a legal norm, is still absent with respect to arranging lobbying activity, which might regulate its existence and define its basic rules. Slovak legislation does not even recognise the term lobbying.

Also, laws pertaining to the support of renewable energy sources are inadequate. Even though Slovakia has prepared a Strategy on Higher Usage of Renewable Energy Sources, this does not fill the gap left by the absence of an independent law, which neighbouring countries have already passed.

A law would itself contribute to the general development of business in the alternative energy sector, with a positive impact not only on the energy sector but also the general development of Slovakia.

**TSS: Which laws need to be revised in the future?**

**MM:** Despite several amendments to the Civil Code and the Civil Procedure Code, a complex recodification of the civil law system appears overdue. Partial amendments, e.g. allowing an effective pledge over an entire enterprise, or the reinstatement of the possibility to wind up asset-free companies without liquidation would be welcome as well.

**JJ:** A number of revisions to individual acts will result only in a partial improvement of the existing state, but will be unable to solve systemic problems.

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# ACT: EC takes note

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The amendment requires that proposed new prices for network industries, for example those supplying gas and electricity, are made only based on the approval of a general meeting of the shareholders of the respective company, Rybár told The Slovak Spectator.

"The law was adopted because of the government's disagreement with price increases proposed by the main gas supplier, in which the state holds a 51 percent share but carries no managerial control," Rybár said. "This constitutes a severe interference with the entrepreneurial freedom and decision-making of companies."

First of all, those shareholders with managerial control paid a premium for their shares at the time of privatisation, and are now being deprived of it without compensation, said Rybár. Their investment is therefore significantly damaged, he added.

"Secondly, the state is turning the whole system of price regulation upside down," said Rybár. "Instead of regulating the manner by which price increases are justified and approved upon submission of a proposal, it just prohibits enterprises from submitting the respective proposal. Thereby it implicitly admits that such a proposal would be in fact justified and presumably approved under the present economic conditions and related rules."

According to Rybár, it is very abnormal in a market economy to require a private enterprise to implement the government's social policies and to deprive a company of its legitimate right to make adequate profits.

Rybár also noted that the law was adopted in a procedure which lasted just a few days, avoiding the debate and discussion which is necessary and expected in a democracy.

"This sends a negative signal about the predictability of the legal regulation of business, and le-



Postal legislation attracted the EC's attention in 2008. Photo: TASR

gal certainty for entrepreneurs," Rybár said.

However, for Rybár the most controversial law adopted in 2008 remains the amendment to Slovakia's postal legislation.

"It was adopted with the aim of strengthening the monopoly of the incumbent operator and to basically put the operators of hybrid mail out of business for items below 50 grams," said Rybár. "All this happened despite the fact that previously such services had been liberalised and the market regulator issued a number of decisions confirming that fact."

Hybrid mail is generated when customers transmit content electronically to a postal operator which then prints and envelopes items, and delivers them to the addressees.

This area of the postal services market had been open to competition in Slovakia for several years until February 2008, when the Fico government changed the law to grant Slovenská Pošta, the state-owned operator, the exclusive right to deliver such mail.

According to Rybár, the amendment was in gross violation of the competition rules enshrined in the Treaty Establishing the European Community (also called EC Treaty) as well as the Postal Directive, as re-monopolisation of an already liberalised field of activities is prohibited and any reservation of postal ac-

tivities to a monopoly needs to be clearly justified by economic and financial reasons. Such reasons were not demonstrated.

This breach was confirmed by a decision of the European Commission of October 7, 2008, which found the amendment to be illegal and ordered the Slovak Republic to reinstate the previous status, said Rybár. At the same time and with immediate effect, it allowed the hybrid mail operators to provide their services again, he added.

However, Slovakia has not taken the required steps and further infringement proceedings had to be opened by the Commission on December 17, 2008, said Rybár, whose firm represented one of the alternative postal operators in the dispute.

Rybár also listed the decrees of the Ministry of Labour pertaining to the extension of applicability of collective agreements as controversial and significantly interfering with the employment policies of a number of employers.

"It obliges [employers] to follow agreements concluded by industry associations of which they are not members and the text of which they did not influence," Rybár said. "Such agreements contain mainly a set of additional benefits agreed between trade unions and employers grouped in respective industry associations. These benefits are on top of those required by law."

The decrees in fact extend employee benefits to enterprises which have not negotiated these with the local trade unions and which may not be justified under specific economic conditions, Rybár said.

"This is a legal instrument which affects the business environment negatively and through which the state asks employers to increase employee benefits although it did not use the opportunity to require such benefits through laws, which it could adopt," Rybár said.

Majer also added to the list of controversial legislation the revision to the law on social security, which reopens the second pillar of the pension savings scheme, the new Press Code and the amendment to the Criminal Code stipulating severe sanctions for increases in regulated prices in connection with the introduction of the euro.

As for the effects some of these controversial laws might have on society, professionals agree that they might result in uncertainty for both foreign investors and domestic businesses. These impacts have been intensively discussed in legal circles.

For example, the legislation on inadequate conditions in commercial relations may result in reduced legal certainty for businesses, said Majer.

"The potential effect on the market, on prices for final consumers in particular, is unclear. However, it is certain that this legislation will not result in the reduction of retail prices," Majer said.

According to Rybár, the revised postal services act had a negative impact on the legal certainty of entrepreneurs concerning their investments and the stability of the business environment.

"Alternative postal operators have made investments into an area which had been open to competition and suddenly the rules of the game were changed," Rybár said.

# LAW: 2008 changes

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The change directly affects foreign shareholders in Slovakia's dominant gas utility, Slovenský Plynárenský Priemysel (SPP). These shareholders' decision to buy a 49-percent share in the company in 2002 was partly based on an agreement that they would have managerial control despite the state retaining a 51-percent stake.

The government created the law in little more than a day in response to an SPP proposal to raise household gas prices by up to 24 percent, submitted to the Regulatory Office for Network Industries (ÚRSO) in early November. In July, the state also handed more authority to ÚRSO to control energy prices.

After banning private health insurers from paying dividends to their shareholders and instead obliging them to return any profits to the health care system, the Fico government amended last year the law on health insurers in a way that gives the state the authority to review their budgets.

According to the legislation, health insurers which fail to submit their budgets to the cabinet could be fined up to €2 million (Sk60.25 million).

Slovakia also now has a law that will allow the authorities to keep a tighter grip on retail chains while also aiming to protect suppliers from the power of large purchasers.

The law regulates the way contracts are concluded between retailers and suppliers, discounting practices, and the return or exchange of goods to suppliers at their own cost.

The law specifically applies to the sale of products or services to end-consumers at prices lower than their production cost or the purchase price for which the goods were supplied to the retailer. The new law prohibits this practice in principle, though prices may still be trimmed on the basis of

a specific agreement between the supplier and the retailer.

The country's pension system did not enjoy much stability during 2008: the government opened the second, so-called capitalisation, pillar twice to allow clients to return freely to the state-run pay-as-you-go system (or first pillar).

The second pillar was opened up for the first time between January and June 2008. During that six-month period, more than 103,000 people quit - and over 21,000 joined - the pillar.

The second pillar was reopened again on November 15, 2008, and will remain so until mid-2009. This time the Labour Ministry expects between 30,000 and 150,000 savers to quit while 5,000 to 20,000 people may decide to join it.

In early January 2008, President Gašparovič signed into law a bill that gives the government the means to expropriate land needed to complete a cross-country highway.

Under the new law, the state does not need to have all the ownership rights to the land settled in order to receive a construction licence.

It just needs to have these rights settled by the time the construction is finished and approved. The Transportation Ministry said that the legislation was needed so that "a billion" investments would not be stuck because of bargaining about the expropriation price. But the measures included in the law have been described by critics as violating Slovaks' constitutional right to property.

Highway construction on disputed property will no longer be limited to the priority D1 and R1 highways projects either.

Parliament on November 26 approved the revision to the law enabling the state to build roads on land whose ownership rights are not settled and extended the state's rights in this area.

# SHIELD: Euro ends currency volatility but crisis effects unclear

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The process of adopting the euro started to ease the impact of the financial crisis on Slovakia in the second half of 2008, after the conversion rate of the Slovak crown to the euro had been fixed, said VÚB bank senior analyst Martin Lenko.

Due to uncertainties surrounding the crisis and an anticipated slowdown in the growth of developing economies some of their relatively weaker currencies came under pressure, Lenko told The Slovak Spectator.

"However, the exchange rate of the Slovak crown towards the euro, because it was fixed, was the least volatile and recorded the slightest change when compared to the exchange rates of other currencies in the Central European region," Lenko said.

The Slovak crown strengthened towards the euro in the second half of 2008 by 0.3 percent while the Czech crown weakened against the euro by 11.8 percent, the Polish zloty by 22.5 percent and the Hungarian forint by 11.8 percent, said Lenko.

Lenko expects local currencies to continue to be exposed to similar pressures this year too.

"Slovakia, because of its adoption of the euro, will not be threatened," Lenko said. "Of course, we can't say that the euro will fully neutralise the negative impacts of the crisis on the Slovak

economy, but it might ease these impacts by removing the foreign-exchange related costs."

Poštová Banka analyst Zuzana Holeščáková agrees that one of the positives of the euro is that at a time of crisis it is not vulnerable to turbulence on the market to the same degree as other countries' currencies.

However, it also moves the country to a more sensitive situation vis-à-vis weakening demand for goods and services within the eurozone, Holeščáková told The Slovak Spectator.

"Still, the euro is a stabilising and integrating element, which is particularly important from the point of view of foreign investors," Holeščáková said.

By removing the exchange rate risks along with transaction and administrative costs, the euro adds some new advantages to Slovakia's geographical location and low costs, Holeščáková said.

"A significant part of Slovakia's exports, at about half of them, go to eurozone countries," Holeščáková said. "Thanks to the adoption of the euro, Slovakia now has more favourable conditions for the prompt resumption of foreign trade [growth]."

According to Holeščáková and Lenko, many export- and import-oriented Slovak firms will see their transaction and administrative costs fall.

Mária Valachyová, a senior analyst with Slovenská Sportifná, the

country's largest bank, shares the view that adoption of the euro should help Slovakia in terms of foreign investment inflow.

"Investors might see the euro as a competitive advantage when making decisions about where to place their investments," Valachyová told The Slovak Spectator.

In future, the euro could particularly benefit the exporting sector, including the automotive, electro-technical and machine industries, since the crown had been gaining strength in the long term, Valachyová added.

However, Valachyová also suggested that it could be too early to make assumptions regarding the blessings that the euro might bring to the country's economy.

"Currently, local currencies have been weakening towards the euro, which might be an advantage for their exporters," Valachyová said. "Moreover, the Slovak crown was fixed at quite a strong level, so at this point I think it is too early to say whether the adoption of the euro has or hasn't helped us during a time of economic crisis."

By removing the exchange rate risks between the euro and the Slovak crown, the opportunity for gains from foreign-exchange operations, at least between these two currencies, has also been eliminated, Holeščáková concluded.

As for the impact that entry to the eurozone might have on Slovak

banks, Holeščáková said that these are not yet suffering from a lack of liquidity. So Slovakia's entry to the eurozone means for its existing members the arrival of a country with enough money and liquidity, she said.

"While prior to our entry to the eurozone, the NBS announced regular two-week sterilization repo tenders, where the banks were able to deposit their free cash at its key interest rate, the European Central Bank regularly announced refinancing repo tenders, where the banks can borrow money at its key interest rate," Holeščáková told The Slovak Spectator. "Since Slovak banks do not have problem with liquidity, it is very possible that they will not regularly participate in the announced refinancing repo tenders."

But if the need emerges, these repo tenders still might represent an interesting source of money for the banks, she added.

## The most watched pair

The most closely observed pair of currencies is certainly the euro and US dollar, market watchers agree.

In the past six months overall, the euro weakened against the US dollar. But during the last month of 2008 it strengthened against the dollar by about 10 percent, Holeščáková told The Slovak Spectator.

According to Holeščáková, a further weakening of the euro towards the USD in the upcoming period might be linked to the change in US president and related plans to revive the US economy.

A weakening euro might also be linked to the further possibility of lower European interest rates, which would be most likely to take place during the first months of 2009 in order to provide banks with enough accessible finance and assist in the effort to renew trust among banks, Holeščáková said.

Holeščáková also noted that the British pound is reaching historic lows, which is now close to one euro to one pound.

"It is not out of the question that the pound weakens to the level of the euro, since the impact of the global financial crisis on the British economy is very strong," Holeščáková said.

According to Lenko, to assess the development of the main currency pairs is even more difficult than it was in the past.

"The reason is of course the high degree of uncertainty over the development of the world economy and the steps that the central banks will take, as well as the effectiveness of fiscal stimuli which are intended to revive the economic growth," Lenko said.

His fellow-analysts from Intesa Sanpaolo, VÚB's parent bank, suggest that the US dollar might trade at \$1.35 to the euro within one month; then at \$1.28 after three months.