

Entering Into the Register of Providers of Special Financial Education¹

Andrea Slezáková²

Abstract

Special financial education is one of the components of a professional competence. The purpose of the regulation is to provide knowledge and skills to individuals so that the minimum requirements of the law are met, given the complexity and scope of the activities performed by financial agents and financial advisors. Objective of the special financial education is to form and deepen information related to regulation in the sector in which financial intermediation or financial advisory will be carry out.

Key words

Special financial education, providers of special financial education, National Bank of Slovakia

JEL Classification: K20

Received: 19.6.2018 Accepted: 23.10.2018

Introduction

Special financial education can be defined as a training, a course and another form of education designed to ensure that a natural person who has received it, is sufficiently aware of financial services and also to improve the quality of her/his theoretical knowledge and practical skills in order to carry out activities the content of which is financial intermediation or financial advisory. Special financial education is a component of professional competence. Special financial education has been introduced in the year 2010 as a new kind of course and therefore has created a space for entrepreneurship on the market of education.

In practice, until 23 February 2018, this training activity was not subject to any state "licensing" by any form of approval, authorization or accreditation for its provision; it was accessible to a natural person - the entrepreneur or a legal person. According to the legal state until 22 February 2018, the themes that were subject to special financial education had been anchored in the Decree of the Ministry of Finance of the Slovak Republic No. 600/2009 Coll. on Special Financial Education of Persons Carrying Out Financial Intermediation and Financial Advisory, as amended by the Decree of the Ministry of Finance of the Slovak Republic No. 181/2013 Coll. Amending and Supplementing the Decree of The Ministry of Finance of the Slovak Republic No. 600/2009 Coll. on Special

¹ This contribution is the result of the project implementation: APVV-16-0553 "Metamorphoses and innovations of the corporations' concept under conditions of globalization"

² JUDr. Andrea Slezáková, LL.M., PhD., University of Economics in Bratislava, Faculty of Commerce, Department of Business Law, Dolnozemska cesta 1, Bratislava, Slovakia, E-mail: andrea.slezakova@euba.sk

Financial Education of Persons Carrying Out Financial Intermediation and Financial Advisory. This was followed (27 October 2014) by the Recommendation No. 1/2014 of the National Bank of Slovakia's Financial Market Supervision Department defining syllabi for individual themes.³ However, the legislation has changed fundamentally.

Into the regulation of financial intermediation and financial advisory major changes had been introduced. The Directive (EU) 2016/97 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 January 2016 on insurance distribution (recast) has been transposed into the Slovak legal order by the Act No. 282/2017 Coll. on the Amendment and Supplement to The Act No. 186/2009 Coll. on Financial Intermediation and Financial Advisory and On Amending and Supplementing Certain Laws, as amended, and amending and supplementing the Act No 39/2015 Coll. on Insurance and On Amending and Supplementing Certain Laws as amended. These changes are effective since 23 February 2018. At the same time, on 23 February 2018 the Decree of Ministry of Finance of the Slovak Republic No. 39/2018 Coll. on Special Financial Education of Persons Carrying Out Financial Intermediation and Financial Advisory entered into force.

The regulation, the Act No. 186/2009 Coll. on Financial Intermediation and Financial Advisory and Amending and Supplementing Certain Laws as amended (hereinafter „Act“), is defining the category of subjects providing special financial education as providers of special financial education.

1 Methodology

A systematic study of the relevant Slovak legislation, in particular financial law is necessary. A doctrinal method will be applied. Within this method the current Austrian legal situation will be determined on the basis of the analysis of opinions in the doctrine and by legal regulations.

2 Results and Discussion

According to valid legislation, two categories of subjects providing special financial education can be derived.

2.1 The provider of special financial education

Firstly, it is a financial institution which is organizing training for its employees or training for financial agents or financial advisors concerning its products. Into the second category belongs the providers of special financial education. Attention will be paid to the second category.

³ http://www.nbs.sk/_img/Documents/_Legislativa/_Vestnik/ODPORUC_UDFT_1_2014.pdf

The provider of special financial education is a person with a place of business or registered office in the Slovak Republic or an organizational unit of a foreign legal entity with its location in the territory of the Slovak Republic registered in the register of special financial education. Meaning a provider of special financial education can be either a natural person – entrepreneur or a legal person. It may be e.g. company or interest association of legal entities. The legal association of interest is a special type of legal entity; in the concept of legal persons, it belongs to legal persons of private law and to associations of persons, meaning to corporations (Števček et al., 2016).

2.2 The entering into the register of providers of special financial education

The register of providers of special financial education is maintained by the National Bank of Slovakia and published on its website.⁴ The register of providers of special financial education is a set of specific data published to the extent set by the Act.

From the register of providers of special financial education, the National Bank of Slovakia publishes data about the provider of special financial education in the following extent:

- a) Business name, website, identification number, if it is a legal person, or name, surname, website, identification number and place of business, if natural person;
- b) Date of entry in the register of providers;
- c) Sectors, in which the special financial education is being provided.

The National Bank of Slovakia shall enter in the register of providers of special financial education, a person who submits the proposal for registration in the register of providers of special financial education. A complete proposal for registration in the register of providers of special financial education must be submitted.

The National Bank of Slovakia has published on its website a "template of the proposal for registration in the register of providers of special financial education".⁵ The National Bank of Slovakia does not conduct proceedings in supervisory matters when registering a subject in the register of providers of special financial education and therefore no individual administrative act is being issued.

When registering a subject into the register of providers of special financial education, on the registration principle is being reflected. Meaning, if the proposal for registration satisfies the legal requirements, a duty to carry out the registration arises (Čič et al., 2012).

However, the applicant is obliged to bear the burden of proof relating to it to demonstrate compliance with legal conditions for providing specific financial education. In this context we can speak about the burden of proof, because the applicant is responsible for proving the data in the proposal for registration. There also exists the

⁴ <https://registre.nbs.sk/odb-sposobilost/institucie>.

⁵ <http://www.nbs.sk/sk/dohlad-nad-financnym-trhom/dohlad/financne-sprostredkovanie-a-financne-poradenstvo/osobitne-financne-vzdelavanie>

applicant's interest in proving the allegations, since the capability of bearing the burden of proof results in registration.

It can be inferred from the legal wording that the conditions which must be demonstrated in order to be entered in the register of providers of special financial education can be divided into two groups. The conditions which must be fulfilled in order to be entered into the register of providers of special financial education can be divided into two groups. The first group is created by a set of conditions which can be proved by evidence coming from the sphere of public authorities (e.g. the license to perform educational activities). The second group is arising from the sphere and activity of the applicant.

According to the Act, in the proposal for registration, the applicant is obliged to prove:

- a) The license to perform educational activities;
- b) The integrity of the provider of special financial education, which is a natural person, in case it is a legal person, the integrity of any member of the statutory body or management body of the provider of special financial education who is responsible for providing special financial education;
- c) Technical and organizational preparedness to provide special financial education.

In the context of the condition concerning the obtaining of the license to perform educational activities, it is necessary to focus on the fact, that this kind of authorization must be granted before filing the proposal for registration. It must already exist at the time when the proposal for registration is submitted. The legislator does not explicitly set how the prospective provider shall demonstrate this kind of authorization (e.g. a commercial company files to the National Bank of Slovakia an extract from the Commercial Register, which indicates that its business is the pursuit of extracurricular educational activities, or an interest association of legal person delivers an extract from the register of interest associations of legal entities, from which it is clear that the area of its activity are training courses).

An applicant is obliged to pay a fee for a proposal for registration in the register of providers before submitting the proposal for registration. The fee, 1000, - EURO, for the proposal for registration is an income of the National Bank of Slovakia. The applicant is responsible for the correctness and completeness of the data contained in the proposal for registration.

The proposal for registration has to be filed in paper form and contains especially:

- a) Business name, registered office, legal form, identification number, if assigned;
- b) The designation of the official register or other official register in which the provider of special financial education is registered, including the registration or registration mark or the number under which the provider of the special financial education is entered;
- c) Name, surname, personal identification number, permanent residence address of the members of the statutory body or the managing body together with the

- appointment of a member of the statutory body or the managing body responsible for providing special financial education;
- d) The address of the website of the future provider;
 - e) Sectors and the degree of professional competence in which the special financial education will be provided;
 - f) Document proving the payment of the fee.

If the proposal for registration is incomplete, the National Bank of Slovakia asks the applicant to complete it together with a determination of a time period appropriate to the scope of the data necessary for completion. If the proposal for registration is not completed within the specified period, such a proposal is considered as if it had not been filed and the National Bank of Slovakia shall inform applicant in writing within three working days of the expiry of the time period for completion. The fee for the incomplete proposal for registration is not refundable.

If the proposal for registration is complete and the fee has been duly and timely paid, the National Bank of Slovakia especially shall, within 30 calendar days from the date of receipt of the complete proposal for registration:

- a) Register the applicant in the register of providers of special financial education;
- b) Assign the provider of special financial education access rights to the list maintained by the National Bank of Slovakia;
- c) Send to the provider of special financial education information on the login data to the list maintained by the National Bank of Slovakia.

The provider of special financial education is obliged to:

- a) Meet the conditions for the entry in the register of providers continuously throughout the period of registration;
- b) Inform the National Bank of Slovakia of any change in the facts that had been considered in the proposal for registration in the register, together with documents proving the changed fact;
- c) Perform special financial education at least once per calendar year in all sectors and for all levels of professional competence in which he is entitled to carry out special financial education;
- d) Publish at its website no later than 15 calendar days prior to the performance of the special financial education the dates of the special financial education at least to the extent of date, place, time, degrees and sectors, in which special financial education will be provided;
- e) Report within ten working days of the special financial education a list of participants who have completed the specific financial education.

2.3 De lege ferenda proposal

The transposition of the Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) into the national law in Slovakia has introduced the obligatory registration of providers of special financial education. According to the current legislation, before entering a provider of special financial education into the register of providers of special financial education, this subject

is obliged to proof the fulfilment of conditions set by the Act. Meaning, the legislator has included in the regulation for the public authority applying the law, the National Bank of Slovakia, the duty not only to formally review the proposal for the registration, but also to focus on the content.

Due to this fact it seems appropriate to think about a *de lege ferenda* proposal reflecting on a potential possibility of proving the preparedness for the providing of special financial education in the procedure in supervisory matters. The regulation of the procedure in supervisory matters is contained in the third part of the Act No. 747/2004 Coll. On Financial Market Supervision and On Changing and Supplementing Certain Laws as amended (hereinafter "Financial Market Supervision Act"). It is an administrative procedure. But the subsidiary application of the Act No. 71/1967 Coll. On Administrative Procedure (Administrative Code) as Amended is excluded.

In the procedure in supervisory matters, the National Bank of Slovakia decides about the rights and duties of supervised entities of the financial market and about the rights and duties of other persons defined by special laws. The output of the procedure in supervisory matters is an individual administrative act permitting or suppressing the performance of a business or performing an action on the financial market, placing a sanction upon a subject or it may be by a procedural act. The procedure in supervisory matters in first instance can be divided into a licensing and a sanction procedure.

In the context of the *de lege ferenda* proposal it is necessary to pay attention to the licensing procedure.

The *de lege ferenda* proposal suggests a change of regulation. According to the proposal an entering into the register of providers of special financial education would not be a result of a registration, but would be performed on the basis of a license for the provision of special financial education granted in a procedure in supervisory matters. This license would be a decision of the National Bank of Slovakia.

According to the Article 27 of the Financial Market Supervision Act a decision of the National Bank of Slovakia contains the following parts: the statement of the decision, the grounds of the decision and the information concerning appeals against the decision. It is especially necessary to focus on the grounds of a decision, as they contain mainly the key information regarding which findings of fact served as the basis of the decision, which considerations had been taken into account for the decision.

The core of the decision-making process is the taking of evidence. It is a cognitive activity which aim is the obtaining the factual and legal knowledge necessary for issuing the decision of the National Bank of Slovakia. Generally, the term evidence means the process of obtaining knowledge relevant to the assessment of the case (Boguszak, Capek, Gerloch, 2003). Taking of evidence consists of three stages; namely the gaining of the evidence, the taking of the evidence, the procedure in which the National Bank of Slovakia acquaints with the evidence and the evaluation of the evidence (Potásch, Hašanová, 2012). The burden of proof is the procedural responsibility of a party the proceedings to prove the allegations resulting in a decision in its favor (Viček, 2006).

When assessing the proposal for registration, the National Bank of Slovakia acquires, in particular from the documents submitted to the applicant, the information necessary to assess compliance with the legal conditions for the provision of special

financial education. According to our opinion the principle of material truth is being applied, according to which the National Bank of Slovakia is obliged to ascertain the real state of the matter. Taking of evidence is being carried out. But an individual administrative act is not being issued, as the registration not a proceeding. Logically, the applicant does not gain any information about taking evidence. In case the applicant is entered into the register of providers of special financial education, there exists no negative "side effect" of the registration; there exists no need for an individual administrative act. However, if the applicant has failed to comply with any legal condition, an entering in the register of providers of special financial education will not take part. The applicant is being informed about this fact in written form. The legislator does not determine the content of this written notification. It is not clear from the currently valid legislation to what extent the applicant will be notified about the factual and legal assessment of the proposal for registration (meaning also about the process of taking evidence). This "lack" can lead to legal uncertainty. Therefore, we believe that the *de lege ferenda* proposal replacing the registration with a proceeding in supervisory matters which is ending with the issuing of an individual administrative act would create a state of legal certainty and would be a legislative solution.

Conclusion

The aim of special financial education is the deepening of information concerning the regulation which is related to the sectors in which financial intermediation or financial advisory is going to be performed. The Act has been changed. These changes brought essential changes concerning special financial education. A major change is the obligatory entering into the register of providers of special financial education. The legislation does prescribe the providing of the entering in the proceeding in supervisory matters. The *de lege ferenda* proposal would be that it seems appropriate to change the currently valid regulation and perform a proceeding rather than a registration. The main argument for this change is the legal certainty.

Bibliography

- Boguszak, J., Čapek, J. & Gerloch, A. (2003). *Teorie práva*. Praha: ASPI.
- Čič, M. et al. (2012). *Komentár k Ústave Slovenskej republiky*. Bratislava: EUKÓ-DEX.
- Potásch, P. & Hašanová, J. (2012). *Zákon o správnom konaní (správny poriadok). Komentár*. Praha: C. H. Beck.
- Števček, M. et al. (2016). *Civilný sporový poriadok. Komentár*. Praha: C. H. Beck.
- Vlček, R. (2006). *Dôkazné prostriedky v občianskom súdnom konaní z právneho, sociologického a psychologického pohľadu*. Bratislava: Epos.