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Assessing Financial Resource Capability on Insurance Claims Management in Nigeria: The Moderating Role of Information Technology

Ehiorobo, Osa Abraham¹

Abstract

This study examines the extent to which financial resource capability impacts claims management in the Nigerian insurance industry and also attempts to determine if this process is moderated by information technology. Given the numerous litigations arising from claims default, the Nigerian insurance sector has earned itself a bad reputation with the consequent customer apathy. However, it is also noteworthy that most of these insurance companies do not appear to possess the financial capacity to meet claims obligations as they arise, perhaps, due to low capitalisation, poor risk assessment and solvency constraints. The research is a quantitative design that utilises the survey strategy. It is predicated on a philosophical foundation of positivism and ontological orientation of objectivism. 17 insurance companies were included in the study using the stratified sampling technique. 280 questionnaires were distributed to the 17 sampled companies out of which 235 were returned and found usable for the study. Data was analysed using the Andy Hayes Process v3.3 for regression. Findings from the study revealed that financial resources and information technology have statistically significant relationship with claims management but the relationship between financial resources and claims management is not significantly moderated by information technology.

Key words:

Financial capability, claims settlement, information technology, payment systems, moderation.

JEL Classification:

G22, O33

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Introduction

Claims handling in the Nigerian insurance industry leaves much to be desired as this aspect of the industry value chain is, perhaps, the major factor militating against the growth of the sector. Claims settlement has been described as the mirror through which the public sees the credibility of the entire insurance industry (Damodar, 2017). Due to poor claims payments history, the Nigerian insurance sector has earned itself a pariah industry status resulting in low patronage and customer apathy (Barbington-Ashaye, 2014). When individuals and corporate organisations obtain insurance policies to mitigate their risks against the unforeseen, they hope for prompt and stress-free indemnity in order to recover from an unexpected loss when they do occur. However, when the insurer fraudulently or deliberately declines liability for claims payment, such

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an insured person or organisation will not only refuse to do any form of business with an insurance company but may discourage other people from doing so (Damodar, 2017). Claims settlement is the lifeblood of insurance business as this has a lot to do with their reputation. Daniel (2013) opines that failure to settle claims promptly has impacted negatively on insurance business in Nigeria.

Financial capacity is, perhaps, the most crucial resource an insurance company requires to survive and perform its obligation to the insuring public which is to settle claims when they do occur. Every organisation requires a strong financial background which may include equity capital and other forms of short and long term finance (Owualah, 1996). For an insurance company, premium earnings constitutes a large portion of the funds they require for normal business operations and claims settlement. This perhaps, explains why risk assessment and risk pricing are very important determinants of survival of insurance companies (Isimoya, 2013). It is instructive to note that any firm operating in the industry that cannot settle claims promptly is supposed to be sanctioned by the regulatory authorities, although this may be far from reality in the Nigerian situation (Ujunwa & Modebe, 2011).

Information technology is a major business enabler in every industry, including insurance. With improved adoption and utilisation of information technology, every aspect of insurance transaction along the value chain can thus be enabled for better performance (Deloitte, 2017). For instance, payments for premiums by customers can be automated or made online while claims settlement can easily be boosted by online transactions which will eliminate unnecessary delays and improve customer experience. Other areas where information technology can be applied in the insurance value chain includes product development, sales and distribution, new business underwriting and customer care (PwC, 2003). The business value that any organisation can derive from information technology that may culminate in improved corporate performance is well documented in the literatures as no modern organisation can survive without embracing information technology (Cakmak & Tas, 2012; Obradovic, Ebersold & Obradovic, 2015; Powell & Dent-Micallef, 1997; Singhal, 2014).

Statement of the Problem and Research Gap

The Nigerian insurance industry cannot be said to be a major contributor to the nation's economy due to its poor performance. The industry accounts for a paltry 0.12 percent of gross domestic product [GDP] (Daniel, 2014), insurance penetration rate is 0.3 percent (Swiss-re Sigma, 2016) while insurance density is \$6.2 (Agboola, 2019). In a country with estimated population of 206 million people (Worldometer, 2020), there are only 3 million people having any insurance policy of some sort (Agboola, 2019). The inability of the sector managers to develop the market is, perhaps, due to the damaging image and reputation it has earned for itself as a result of frequent claims delays, payment defaults or outright avoidance of claims liability (Babington-Ashaye, 2014; Gbede, 2003). Poor claims management characterises the industry as most claims requests cannot be met expeditiously either due to financial constraints or unnecessary delays in claims settlement due to manual methods of claims processing. The low levels of solvency and inability to acquire relevant information technology infrastructure that can improve efficiency and effectiveness in the claims management process calls for urgent attention to save the industry from collapse. Most previous studies have tended to

concentrate on claims fraud, inadequate capital and lack of skilled personnel (Aje-munigbohun, S.S., Isimoya, A.O. & Ipigansi, P. M., 2019; Oke, 2012) as the major cause of poor insurance claims management in Nigeria without considering the impact of financial capacity and the role of information technology in enhancing the claims management process. This research is, however, conducted to fill this gap by examining the extent to which financial resource capability impacts claims management and also to determine if the relationship between financial resource capability and insurance claims management in Nigeria is moderated by information technology.

1 Methodology

1.1 Theoretical Framework and Literature Review

a. Theoretical Underpinning: Strategic Choice Theory

The theory of strategic choice can be credited to the work of John Child (1972). Harney (2016) posits that prior to the early 1970s, the way enterprises were understood was highly deterministic and functional in nature without consideration for the agency function of management. The benefit of the theory is predicated on the amount of discretion management has in charting a strategic direction for the organisation (Child, 1997). Strategic choice theory has become more relevant due to the ever-changing nature of the global environment in which businesses operate. Harney (2016) believes that while the traditional role of management is well appreciated and documented, the concept of strategic choice in its contemporary form came to the fore with the work of Kochan, McKersie and Cappelli (1984). The authors opine that managerial discretion was highly required through strategic choice in understanding the dynamics of the operation of industrial relations and human resources management practices.

An overriding significance of strategic choice as a management theory is derived from its ability to bring managerial agency and corporate decision-making more succinctly into the managerial equation. Because managerial discretion is crucial to how an organisation chooses to compete in the marketplace, strategic choice is a necessity for making such high profile decisions. In view of whether an insurance company chooses to build its financial resource capability by further enabling it with information technology to meet its claims obligations is a strategic choice that is at the discretion of senior management hence this theory is relevant to this study.

b. Literature Review

Building Financial Resource Capability

Financial resource is one of the key organisational resources that are required for business start-up, survival and growth. Every business enterprise requires money to produce and deliver value for their customers. In order to achieve this, a strong financial capacity must be built to enable the company hire and maintain a talented work force, acquire physical and technological assets and provide outstanding goods and services that customers desire. Enz (2008) opines that organisations that are financially strong

and stable can respond quickly and authoritatively to new business opportunities, withstand threats from the environment and gain competitive advantage. Although financial resources cannot be said to be unique, rare or difficult to imitate, the possession of strong financial power is a veritable basis of achieving competitive advantage. Harrison (2003) however avers that a company requires a powerful and steady cash flow, low gearing or levels of corporate debts, strong credit rating, access to reasonably low-interest capital and a good reputation for credit worthiness. Highly profitable organisations with low leverage and high levels of liquidity are investors' choice. In hypercompetitive environments, financial resources are required to wage battles against powerful competitors.

Building a powerful resource capability by an insurance company starts from capitalisation. It is instructive to note that the Nigerian insurance industry is grossly under-capitalised which explains why it is a poor performer in the global insurance business (Babington-Ashaye, 2014; Kuye, Adebisi & Ehiorobo, 2020). Czartoryski (2019) opines that the entire industry capitalization is N300 billion which translates to \$833 million. This amount is too meagre to cover multi-billion oil and gas businesses hence a paltry 30 percent of oil and gas insurance is presently covered by local insurers while 70 percent is taken abroad mostly to European and American insurers thus leading to capital flight (Agboola, 2019).

Another major source of income for insurance companies which, perhaps, forms the backbone of claims payment is premium incomes. Premium is the money paid by an insured after taking up a policy to enter into an insurance contract. The total amount of insurance premium written in Nigeria in 2015 was \$1,420 million consisting of \$974 million for nonlife and \$446 million for life insurance. This amount accounts for 0.03 percent contribution to global premium receipts for 2015 (Swissre-Sigma, 2016). South Africa dominates Africa's insurance market accounting for \$46 billion out of the total \$64 billion premium earnings for the whole continent and contributing 1.01percent to global insurance premiums (Soares, 2017). It is therefore not surprising that insurance companies in Nigeria lack the capacity to pay claims promptly and meet other financial obligations due to their weak financial capacity. However, for any player in the industry to achieve competitive dominance, it must build its available sources of finance into a capability that is unrivalled by the competition. The decision to build any major resource into a capability for competitive advantage is a strategic choice that is the prerogative of senior management.

Claims Management

A Claim has been described as the heartbeat of insurance as it is regarded as the moment the insurer honours its obligation in the insurance contract entered into with the insured. Asokore and Nwankwo (2010) opine that a claim is the demand made by the insured person on the insurer to pay indemnity under a policy. Vaughan and Vaughan (2008) aver that an insurance claim is a notification to an insurer that payment is due for an amount of money agreed upon as stated under the policy. Isimoya (2000) argues that claims payment is the sole reason for the existence of insurance firms as they are legally bound to honour claims settlement in accordance with the terms of the policy. When a loss situation occurs, the insured is awakened to the reality that he/she has taken some preventive measures to mitigate the loss and hence would have to turn to the insurance firm for payment of indemnity as agreed under the policy. Kuye *et. al*

(2020) notes that customer experience on the modalities employed by the insurance firm during claims processing and payment constitutes the most important factor defining the relationship between insurer and the insured.

Claims expenses, perhaps, account for the highest cost burden of insurance companies hence no insurer can afford to toy with the claims handling function (Angima & Mwangi, 2017; Bates & Atkins, 2007). For effective claims management, precautionary measures to prevent or minimize loss must be undertaken by the insurer. Also, before claims are paid, the insurer should ensure that the insured did what was required of him to minimize loss when the insured event occurred (Fernandez, 2009; Isimoya, 2000). Effective claims management has significant impact on an insurance company's bottom-line as it has implications for costs and customer acquisition and retention (Angima & Mwangi, 2017; Michael, 2008; Rose, 2013; Yusuf & Dansu, 2014). Claims represent a huge liability for insurance companies as they are expected to indemnify any insured person or organisation in case an insured event occurs.

Insurance companies are duty bound to investigate the circumstances leading to a loss before making any claims payment to avoid being defrauded. Claims fraud abound in the insurance industry worldwide either as sole operators or syndicate fraud which has led to huge losses in the industry (Ajemunigbohun, Isimoya & Ipigansi, 2019). Kuria and Morange (2014) believe that fraud is an omission or intention by a person to gain an undue advantage through dishonest dealings by knowingly hiding, suppressing, misrepresenting, destroying, non-disclosure of material facts relevant to a transaction and abusing financial responsibility or the position of trust occupied by the official. Singh, Parekh, Indge, Bali and Torpey (2011) opine that fraud in the insurance industry range in level of severity from *slightly exaggerated claims to deliberate acts such as staff-induced fraud, brokers and agents-related third-party fraud, insurance applicants and surrender of policy or claimants. When fraud occurs, it weakens the financial capacity of the insurer and undermines its ability to indemnify genuine claimants and underwrite lucrative contracts.*

An efficient claims management system is required to ensure that a model for effective fraud prevention, detection and control is put in place by an insurance company. It also requires that proactive measures are taken to deal with genuine claims, minimize unnecessary costs, handle claims expeditiously, reduce delays and disputes, minimize the costs of litigation and make robust plans for prompt settlement of claims (Ajemunigbohun *et al.*, 2019; Angima & Mwangi, 2017; Leverty & Grace, 2012).

Information Technology

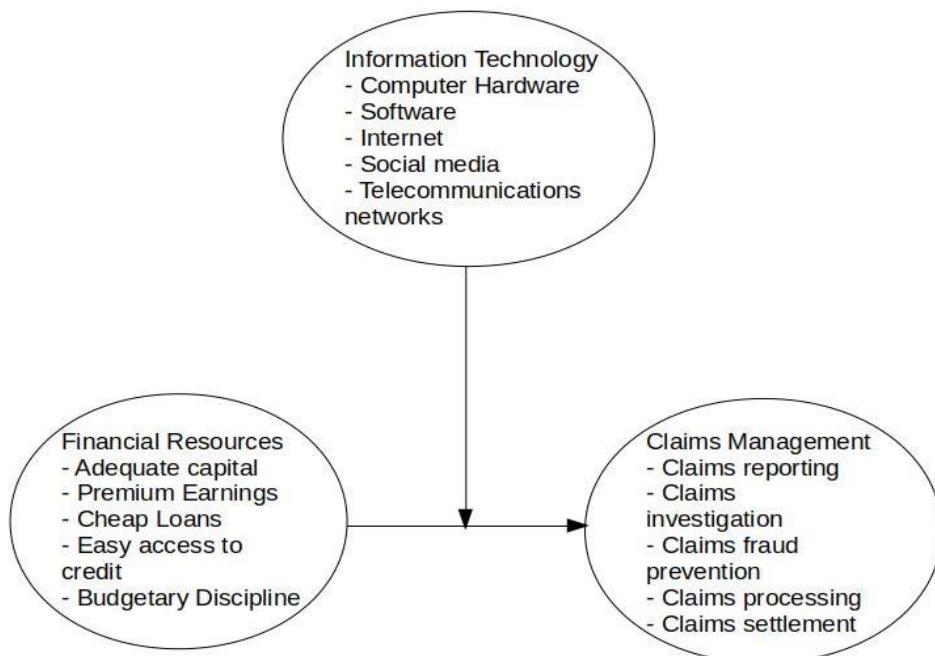
The business value of information technology (IT) is perhaps well established in every business operation and has thus become a major differentiating factor for firms jockeying for market share and competitive advantage. O'Brien (2003) posits that information technology is a computer-based information system that combines computer hardware and software, the internet and other telecommunications networks to convert data into information as may be required by end-users and for business application. Obradovic *et al.* (2015) observe that much of the increase in global productivity in the last decade can be attributed to improvements in information and communications technology. Several studies have been carried out to establish the strategic advantages of information technology usage in business firms. For instance, Cakmak and Tas (2012)

believe that information technology enables an organisation to minimise costs and maximise revenues and therefore, a veritable avenue of attaining a desired level of competitive advantage. IT enhances operational efficiency and effectiveness and can be used to orchestrate the strategy a business may adopt to compete in the marketplace (McFarlan, 1984). Information technology can be incorporated into the major activities of a company's value chain to create or improve sustainable competitive advantage (Mata, Fuest & Barney, 1995; Porter & Millar, 1985; Singhal, 2014). Claims can be handled faster as online platforms for interacting with the customer as well as conducting investigation and analyzing data regarding similar cases are automatically provided by internet search engines. Artificial intelligence which has become the new game changer in every industry can easily be applied to enhance faster, more accurate and reliable claims processing (Deloitte, 2017; Scor, 2018; Shabbir & Anwar, 2015). Payment systems are made easier through electronic banking and other fund transfer capabilities that are internet-enabled.

Conceptual Model

The conceptual model shows the relationship between financial resources (predictor variable) and insurance claims management (dependent variable) while information technology is depicted as the moderating variable.

Figure 1 Conceptual Model



Source: Author (2020)

1.2 Research Objectives, Methodology and Data

Aim and Objectives of the Study

The main aim of this research is to assess the impact of financial capability on claims management in the Nigerian insurance industry. Specifically, the study intends to:

1. evaluate if any relationship exists between financial capability and claims management; and
2. determine if information technology moderates the relationship between financial capability and claims management in the Nigerian insurance industry.

Research Questions

In order to address the objectives, the following research questions are presented:

1. Does any relationship exist between financial capability and claims management in the Nigerian insurance sector?
2. To what extent does information technology moderate the relationship between financial capability and insurance claims management in Nigeria?

Research Hypotheses

1. Ho1: There is no significant relationship existing between financial capability and claims management of insurance companies in Nigeria.
2. Ho2: The relationship between financial capability and insurance claims management is not moderated by information technology.

Research Design

The research adopts a quantitative cross-sectional survey design based on the positivist philosophy and an ontological orientation of objectivism. The reason for the choice of this design is due to the fact that data relating to this study are empirically testable for proof and verification.

Sources of Data, Sample Obtained and Data Collection Technique

The data for this study was obtained from 17 insurance firms sampled from the 56 registered underwriting firms in Nigeria using the stratified sampling technique to obtain samples that included 4 life insurance companies, 10 non-life insurance firms and 3 composite insurance companies. A questionnaire divided into three parts with items to measure level of acquisition of financial resource capability makes up the first section. The second part consists of items measuring knowledge, adoption and usage of information technology while the third part consists of items measuring claims handling, processing and settlement by insurance companies. A total of 280 questionnaires were administered to the senior staff of these companies out of which 235 were returned and found usable.

Description of Variables

The variables of interest in this study are one dependent (Claims Management) and one predictor variable (Financial Resources) while Information Technology was adopted as a moderating variable.

Data Analysis Technique

Data for this study was analysed using the Andrew Hayes Process Approach v3.3 for measuring interactions between variables in regression. This method adopts the grand mean centring which is a process of transforming a variable into deviations around a fixed point. It is usually very important to centre variables when trying to establish interactive effects between two or more independent variables as it makes the b s for lower-order effects very easy to interpret. Thus, when the Andrew Hayes Process tool is applied, centring is automatically effected with SPSS (Statistical Package for the Social Sciences). Consequently, it is easy to determine the effect of the predictor at the mean value of the sample and the average effect of the independent variable across the range of scores for the other predictor.

Model Specification

The regression model for the interaction effect between the exogenous variable (Financial Resources) and the moderator (Information Technology) is given thus:

$$Y_i = (b_0 + b_1 A_i + b_2 B_i + b_3 AB_i) + e_i \quad (1)$$

$$\text{ie. Claims Management} = (b_0 + b_1 FR + b_2 IT_i + b_3 \text{Interaction}_i) + e_i \quad (2)$$

where b_0 = intercept, b_1 = represents the relationship between claims management and financial resources when information technology is zero. And b_2 represents the relationship between claims management and information technology when financial resources is zero; b_3 is simply the interaction between the two predictor variables while e_i is error term.

2 Analysis and Discussion

The model summary in Table 1 shows that $R = .56$ which indicates a positively strong and significant relationship between financial resources and information technology. R^2 which is the measure of the variability in the endogenous variable explained by the predictors is about .32 and all significant at .0000.

Table 1 Showing the Model Summary of the regression analysis

R	R-sq	MSE	F	df1	df2	p
.5644	.3186	.6000	35.9995	3.0000	231.0000	0000

Source: Author's computation (2020)

Table 2 shows the regression analysis for the independent variable (Financial Resources) and the moderator (Information Technology). From the analysis, it can be deduced that $b = .0189$; 95% CI [-.0565-.0943]; $t = 91.2433$, $P = .6213$ which is an indication that the relationship between financial resource capability and claims management in the Nigerian insurance industry is poor and not significantly moderated by information technology. Also, that 0 lies between the lower and upper limits of the confidence intervals equally shows non-significance of the interaction between financial resources and information technology.

Table 2 Showing the Model Coefficients of the Regression Analysis

	coeff	se	t	p	LLCI	ULCI
constant	4.7333	.0519	91.2433	.0000	4.6311	4.8356
FINANCE	.4521	.0549	8.2417	.0000	.3440	.5602
INFOTECH	.1738	.0501	3.4723	.0006	.0752	.2724
Int_1	.0189	.0383	.4947	.6213	-.0565	.0943

Product terms key:

Int_1 : FINANCE x INFOTECH

Table 3, which further shows the R-2 Change, indicates the additional variation in the dependent variable as a result of incorporating the moderator variable which is zero and non-significant.

Table 3 Showing the Test(s) of highest order unconditional interaction(s):

	R2-chng	F	df1	df2	p
X*W	.0007	.2447	1.0000	231.0000	.6213
<hr/>					
Focal predict: FINANCE (X)					
Mod var: INFOTECH (W)					

Table 4 Shows the Linear Model of Predictors of Claims Management

	b	SE B	t	p
Constant	4.73 (4.63, 4.83)	0.052	91.24	p < .001
Finance (centred)	0.45 (0.34, 0.56)	0.055	8.24	p < .001
Infotech (centred)	0.17 (0.07, 0.27)	0.050	3.47	p < .001
Finance x Infotech	0.02 (-.05, 0.09)	0.038	0.49	p = .62

Note: $R^2 = .32$

Table 4 shows the linear model of the predictors. The summary table indicates that both financial resources and information technology have positive and statistically significant relationship with claims management (Finance, $b = .45$, $p < .001$; Infotech, $b = .17$, $p < .001$). However, the interaction effect between information technology and financial resources is a mere $.02$, $p = .62$ which reveals a non-statistically significant relationship.

3 Discussion

Results of the analysis carried out on the data reveal that there is a positive and statistically significant relationship between financial resources and claims management in the Nigerian insurance industry ($b = .45$; $P = .000$). Consequent upon this, H_01 which states that there is no significant relationship between financial resources and claims management is therefore rejected. In addition, H_02 which states that the relationship between financial resources and claims management is not significantly moderated by information technology ($b = .018$; $P = .6213$) is hereby accepted because even though there is a weak interaction effect, the relationship is not significant. From the model summary it can be deduced that both financial resources and information technology have a strong and statistically significant relationship with one another and with the dependent variable, $R = .56$, $P = .000$ while at the same time R^2 which is the degree of variability in the dependent variable explained by the predictors is $.32$ with F -ratio at 35.99 indicating a good model fit.

Given the above scenario it can be deduced that the Nigerian insurance industry has a long way to go in the adoption and application of information technology in its operations. This is consistent with the findings of Babington-Ashaye (2014) and Kuye *et. al* (2020) that both reveal that the poor performance of the insurance sector in Nigeria is partly attributable to the low adoption and usage of information technology. It is instructive to note that as at the present moment in 2020, there is no Nigerian insurance company that has deployed artificial intelligence in its operations (Kuye *et. al*, 2020). Even investments in the other forms of information technology has remained abysmally poor (Ujunwa & Modebe, 2011). Due to poor adoption of information technology in processing claims for clients, the claims settlement process is usually slow and mostly frustrating to the claimants thereby creating a sour relationship between the companies and their customers. This also, perhaps, explains the very negative perception of insurance business generally in Nigeria by the public who hardly voluntarily purchase insurance policies unless they are compelled to do so when it is compulsory.

Conclusion and Recommendations

This study was conducted to assess the relationship existing between financial resource capability and claims management in the Nigerian insurance industry and to determine if the relationship is moderated by information technology. 235 questionnaires were analysed using the Andy Hayes Process v3.3 for moderation. Findings from the research reveal that although there is a positive and statistically significant relationship

between financial resource capability and claims management, the relationship is, however, not significantly moderated by information technology. This finding is a clear indication of the low level of adoption and deployment of information technology in the operations of insurance companies in Nigeria. Given the poor claims settlement history in the Nigerian insurance sector, it is not surprising, therefore, that the industry's performance is abysmally poor with very low contribution to the nation's GDP.

Based on the findings of this research, it is hereby recommended that:

1. Insurance companies in Nigeria should invest more in information technology, especially artificial intelligence, to improve claims management and their overall corporate performance;
2. The insurance industry should strengthen their financial capability through re-capitalization and improved premium earnings in order to be able to meet claims obligations as they arise; and
3. Embrace the adoption of Solvency II which will make it mandatory for every operator in the industry to have the financial capacity to settle any claims that arises from the risks they underwrite.

Suggestion for Further Research: This study is a cross-sectional survey design for which data was obtained from only 17 out of 56 registered underwriting insurance firms in Nigeria. Perhaps, a longitudinal study incorporating more insurance companies outside the ones included in this study may produce a different result.

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Podnikateľské modely v cirkulárnej ekonomike¹

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Business Models in the Circular Economy

Abstract

The concept of circular economy is a new way of finding relationships between individual industries, consumers and natural resources. It represents an economic system model in which products are produced in closed circles or cycles. The implementation of the circular economy is gradually changing and will change the nature and intensity of virtually every industry without its reproductive cycle. Producers, especially in fast-growing industries, will need to develop innovative business models that comply with the principles of the circular economy.

Key words

circular economy, business model, circular business model

JEL Classification: M21, M31

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Úvod

Cirkulárna ekonomika je charakterizovaná ako regeneratívna ekonomika, ktorej cieľom je zachovať čo najväčšiu hodnotu výrobkov a materiálov. Konceptcia cirkulárnej ekonomiky je novým spôsobom hľadania vzťahov medzi jednotlivými odvetviami, zákazníkmi a prírodnými zdrojmi. Predstavuje ekonomický systém, v ktorom sa produkty realizujú v uzavretých kruhoch alebo cykloch. Vyústením tohto procesu by malo byť vytvorenie uzavretého systému, ktorý umožní dlhú životnosť, opäťovné použitie, renováciu, opäťovnú výrobu a recykláciu výrobkov a materiálov. Ide tak o systémový model, ktorého jadrom je efektívnosť zdrojov a ich maximálne využitie nad rámec tradičného dodávateľského reťazca.

Implementácia cirkulárnej ekonomiky postupne mení charakter prakticky každého odvetvia bez ohľadu na jeho reprodukčný cyklus. Pre výrobcov najmä v rýchlo rastúcich odvetviach bude nevyhnutný vývoj inovatívnych podnikateľských modelov, ktoré budú zodpovedať princípom cirkulárnej ekonomiky. V príspevky sme sa zamerali na cirkulárne podnikateľské modely a prístupy k ich využitiu v novom ekonomickom systéme. Venovali sme sa tiež starupom ako atraktívnym podnikateľským formátom v prechodnom období z lineárnej na cirkulárnu ekonomiku. Sústredili sme sa na cirkulárne podnikateľské modely, ktorých využitím by nositelia myšlienky a/alebo podnikateľského nápadu mohli eliminovať niektoré limity a bariéry ich úspešného a efektívneho fungovania.

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1 Metodika práce

Cieľom príspevku je poukázať na možnosti tvorby a implementácie podnikateľských modelov v podmienkach prechodu na cirkulárnu ekonomiku so zreteľom na startup ako špecifický podnikateľský formát. Vzhľadom na aktuálnosť danej problematiky sme pri koncipovaní nášho príspevku konštatovali absenciu relevantných teoretických podkladov ako aj algoritmov pre nenáročné využitie týchto modelov v praxi. Najskôr sme vychádzali z primárnych teoretických poznatkov, zaoberajúcich sa podstatou a špecifickami podnikateľských modelov, využiteľných predovšetkým pre etablované podniky.

Následne sme sa sústredili na relevantné zdroje, ktoré sa zaoberajú cirkulárnymi podnikateľskými modelmi. Poukázali sme na ich hlavné piliere (prvky, nástroje), najmä zákazníkov, tvorbu a dodanie hodnoty zákazníkom a aktivity konkurenčného rozsahu, ktoré sú základným predpokladom pre vytvorenie a dlhodobé udržanie priaznivého postavenia na trhu a v odvetví.

Našou ambíciou nebolo predložiť úplný a/alebo masívny prehľad podnikateľských modelov a cirkulárnych podnikateľských modelov. Sústredili sme sa na tie z nich, ktoré sú v literárnych zdrojoch uvádzané ako optimálne s reálnym potenciálom využitia v praxi. Objasnili sme tiež štruktúru modelu CANVAS, ktorý je pre svoju komplexnosť považovaný za klíčový podnikateľský model v podmienkach cirkulárnej ekonomiky.

V nadväznosti na charakter cirkulárnej ekonomiky ako nového systémového modelu, založeného na technológiách a inováciách sme sa v záverečných častiach príspevku venovali podnikateľským modelom startupov vznikajúcich či pôsobiacich v podmienkach cirkulárnej ekonomiky. Formulovali sme názory, týkajúce sa vhodnosti a opodstatnenosti niektorých cirkulárnych podnikateľských modelov, opísaných v úvodných častiach príspevku. Nakoniec sme konštatovali nevyhnutnosť realizácie výskumov so zameraním na danú problematiku.

2 Výsledky a diskusia

2.1 Teoretické východiská

Podnikateľský model sa objavil súčasne so samotným podnikaním. Najskôr sa však spomína iba ako postup podnikania. Ako pojem bol uvedený do teórie a praxe až oveľa neskôr, a to v súvislosti s rozvojom informačno - komunikačných technológií.

Súčasné podnikateľské modely predstavujú základné princípy toho, ako firmy tvoria hodnotu, ako ju komunikujú a dodávajú svojim zákazníkom. Opisujú, ako do seba zapadajú jednotlivé kroky podnikania. Zaoberajú sa nimi viacerí autori, ktorí vo svojich vymedzeniach tohto pojmu vychádzajú z rôznych prístupov.

Mullins & Komisar (2010) chápú podnikateľský model ako určitú hierarchiu ekonomických aktivít, ktorá určuje, či firma zarobí alebo nezarobí a či bude schopná ponúknut' atraktívne výnosy svojim investorom. Podnikateľský model tak podľa nich predstavuje ekonomický prístup k podnikaniu vo všetkých jeho aspektoch.

Chesbrough & Rosenbloom (2002) zase pristupujú ku chápaniu podnikateľského modelu na základe jeho funkcií. Podľa uvedených autorov podnikateľský model plní niekoľko funkcií. Hlavnou funkciou podnikateľského modelu je tvorba hodnoty pre zákazníka. Podnikateľský model d'alej identifikuje trhový segment, definuje štruktúru hodnotového reťazca, odhaduje štruktúru nákladov a ziskového potenciálu vyrábanej ponuky a opisuje trhovú pozíciu spoločnosti v rámci hodnotovej siete spájajúcej dodávateľov a zákazníkov, vrátane potenciálnych konkurentov. Poslednou funkciou podnikateľského modelu je výber konkurenčnej stratégie, prostredníctvom ktorej firma dosiahne a udrží svoje výhodné postavenie oproti konkurencii.

Autori Demil & Lecocq (2006) charakterizujú podnikateľský model na základe dvoch prístupov:

1. statického,
2. dynamického.

Statický prístup ku chápaniu podnikateľského modelu ho vníma ako akýsi vzor, ktorý zobrazuje prepojenie jadra podnikania a ostatných jeho komponentov.

Dynamický prístup zase zdôrazňuje zmeny vo firme, resp. zmeny v samotnom podnikateľskom modeli, ktoré nastanú, resp. by mohli nastať ako súčasť podnikových a podnikateľských aktivít v rámci implementácie určitého podnikateľského modelu.

Johnson (2010) je ďalší z autorov, zaobrajúcich sa danou tému. Tvrdí, že podnikateľský model je vo svojej podstate prezentáciou toho, ako firma vytvára a poskytuje hodnotu zákazníkovi aj spoločnosti.

Na rozdiel od uvedených definícií a prístupov Burns (2014) patrí k autorom, ktorí vo svojich dielach neuvádzajú pojem „podnikateľský model“, ale „rámcem tvorby nového podnikania“. Až neskôr k nemu pridáva spomínaný pojem „podnikateľský model“, ktorý považuje za jadro nového podnikania. Podľa Burnsa, podnikateľský model má nasledovnú štruktúru:

1. identifikovanie trhových segmentov,
2. definovanie ponúkanej hodnoty,
3. hlavné ponúkané hodnoty,
4. marketingová stratégia trhového výklenku,
5. nastavenie cien,
6. ceny a množstvá,
7. porozumenie zákazníkom,
8. distribučné kanály,
9. porozumenie zákazníckym a spotrebiteľským úžitkom.

Gassmann et al. (2014) vytvorili pomerne jednoduchú postupnosť tvorby podnikateľského modelu, ktorú tvoria štyri roviny:

1. Zákazník – Kto sú cieloví zákazníci? Je nevyhnutné presne pochopíť, ktoré segmenty sú cielové, a ktoré nie. Zákazníci sú alfolu a omegou každého podnikania a podnikateľského modelu.

2. Hodnotová ponuka – Čo sa ponúka zákazníkom? Nasleduje definovanie ponuky (výrobkov a služieb) a spôsobu, ako uspokoja potreby zákazníkov (čo v skutočnosti zákazníci kupujú; jadro produktu).
3. Hodnotový reťazec – Ako sa vyrába ponuka? Definovanie procesov a činností a ich nastavenie v koordinovanej súčinnosti so zdrojmi a spôsobilosťami vytvárajú podnikový hodnotový reťazec.
4. Ziskový mechanizmus – Prečo sa generuje zisk? Obsahuje nákladovú štruktúru a mechanizmy generujúce výnosy, objasňuje, čo spôsobuje finančnú životaschopnosť podnikateľského modelu.

Efektívny podnikateľský model na jednej strane poskytne zákazníkovi hodnotu, ktorú akceptuje a je za ňu ochotný zaplatiť. Na druhej strane podnik pokryje z tržieb všetky svoje náklady a dosiahne zisk.

2.2 Cirkulárne podnikateľské modely

Prechod na cirkulárnu ekonomiku sa týka podnikateľských subjektov bez ohľadu na ich veľkosť a krajinu pôvodu. Jednou z možností ako pomôcť týmto, najmä začínajúcim a/alebo malým podnikateľským subjektom s prechodom na nový ekonomický model je systematizácia poznatkov týkajúcich sa podstaty cirkulárnych modelov a nástrojov ich implementácie do praxe.

Cirkulárne podnikateľské modely sú pomerne novou oblasťou teórie aj praxe, ktorá okrem tradičných využíva viaceré nové nástroje tvorby a podpory týchto modelov (Boccken, 2014). Literatúra uvádzá niekol'ko prepracovaných a overených cirkulárnych podnikateľských modelov, ich dizajnovanie a nástroje ich tvorby (Ellen MacArthur Foundation, Joustra, de Jong, Engelaer, Laubscher & Marinelli, Van Renswoude et al., Osterwalder & Pigneur). Univerzálné využitie týchto podnikateľských modelov je však obmedzené a nezodpovedá súčasným požiadavkám na ich implementáciu do podnikateľskej činnosti (Van Renswoude et al., 2015).

Základné princípy a prvky cirkulárnych podnikatelských modelov možno odvodiť z hlavných princípov cirkulárnej ekonomiky. V literatúre sa takéto prvky definujú rôzne, napríklad: koncept ReSOLVE (regenerovať, zdieľať, optimalizovať, vytvárať, virtualizovať, vymieňať), spôsoby vytvárania kruhovej hodnoty (Van Renswoude et al., 2015), normatívne požiadavky na podnikateľské modely (Boons & Lüdeke – Freund, 2010) a oblasti integrácie (Laubscher & Marinelli, 2014). V tab. 1 sú uvedené vybrané prístupy k typológií cirkulárnych podnikatelských modelov.

Treba konštatovať, že jednotlivé prístupy sa často prekrývajú a rozlišovacie kritéria bývajú nejasné. Tieto diskrepancie by mal odstrániť, resp. eliminovať koncepčný prístup k tvorbe cirkulárnych podnikateľských modelov. Stubbs a Cocklin (2008) vyvinuli koncept cirkulárneho podnikateľského modelu, ktorý sa skladá z dvoch typov atribútov:

1. štrukturálnych,
2. kultúrnych.

Tab. 1 Systematizácia typológie cirkulárnych podnikateľských modelov (vybrané prístupy)

Klasifikačné kritérium	Autori
Zdroj tvorby hodnoty	Lacy et al. (2013); Van Renswouerde et al. (2015)
Hodnota v systémoch služieb a produktov	Tukker & Tischner (2006); De Jong et al. (2015); Planning (2015)
Stratégie návrhu na predĺženie životnosti	Bakker et al. (2014)
Cyklus produktu/komponentu/materiálu v materiálových služkách	Planning (2015)
Zmiešané kritéria	Lüdeke - Freund (2010)

Zdroj: vlastné spracovanie

Každý z nich má definované svoje ekonomické, environmentálne, sociálne a holistické charakteristiky. Ďalším koncepcným prístupom je procesný model zmeny podnikateľského modelu na cirkulárny prostredníctvom interakcií medzi jednotlúcami a skupinami vo vnútri i mimo podniku (Roome & Louche, 2015).

Literatúra taktiež uvádzá nástroje tvorby a implementácie cirkulárnych podnikateľských modelov. Za zmienku stojí model od Joustra et al., ktorý vyvinuli na podporu malých a stredných podnikov v prípade prechodu na cirkulárnu ekonomiku (Joustra et al., 2013). Jedná sa o päťfázový model, ktorý zahŕňa informácie o cirkulárnej ekonómike a o pripravenosti podniku, partnerov a všetkých zainteresovaných strán v dodávateľskom reťazci na prechod od lineárnej k cirkulárnej ekonómike. Následne sa vyhodnocujú príležitosti, ktoré by mohli priniesť produkty do cirkulárneho podnikateľského modelu, identifikujú sa služby, ktoré by podnik mohol poskytovať spolu s postupom na vytvorenie tohto modelu tak, aby bol implementovateľný v praxi. V poslednom kroku sa zistuje, či je vytvorená taká hodnota, ktorú zákazníci očakávajú a za ktorú budú ochotní zaplatiť.

Renswoude et al. (2015) vyvinuli metodiku na zlepšenie prechodu podnikov z lineárnej ekonómiky do kruhovej formy podnikania. Osterwalder a Pigneur definovali päťfáz procesu navrhovania podnikateľských modelov, ktoré zahŕňajú mobilizáciu, pochopenie, návrh, implementáciu a riadenie (Osterwalder & Pigneur, 2010).

V nadväznosti na tematiku cirkulárnych podnikateľských modelov je vhodné spomenúť aj faktory, ktoré súvisia s ich zavedením do praxe. Tieto faktory sa týkajú väčšinou všeobecných faktorov ako podmienok, ktoré je potrebné splniť na zabezpečenie ziskovosti uzavretých kruhov (Planing, 2015), ľudských zdrojov (Joustra et al., 2013; Lacy et al., 2014; Scott, 2015), politického systému a právnych predpisov (Ellen MacArthur Foundation, 2015; Scott, 2015), IT a správy dát (Parlikad et al., 2015; Scott, 2015).

Predmetom úvah o cirkulárnych podnikateľských modeloch a ich zavedení do podnikateľskej činnosti podnikov sú aj postupy na ich hodnotenie. Laubscher a Marinelli (2014) uvádzajú meranie ekologickej stopy a jej redukciu, priamu finančnú hodnotu prostredníctvom obnovy materiálov a aktív a jej nárast prostredníctvom nových podnikateľských modelov.

Za najviac komplexný je považovaný model CANVAS od autorov Osterwalder a Pigneur. Tvorí ho deväť pilierov (prvkov), na ktorých tento model stojí (Osterwalder, Pigner; 2010):

1. zákaznícke segmenty, ktoré firma obsluhuje,
2. tvorba hodnoty pre zákazníkov,
3. distribučné a komunikačné kanály, ktoré firma využíva na obsluhu zákazníkov, komunikáciu s nimi a predaj produktov,
4. vzťahy so zákazníkmi, ktoré firma vytvára a udržiava s každým segmentom trhu,
5. výnosové toky vyplývajúce z cenových ponúk zákazníkom,
6. klúčové zdroje ako aktíva potrebné na poskytnutie a dodanie vyššie uvedených prvkov,
7. klúčové aktivity, ktoré sa vykonávajú s cieľom ponúknut' a dodať vyššie uvedené prvky,
8. klúčové partnerstvá, akými sú siet' dodávateľov a partnerov, ktorí podporujú realizáciu cirkulárneho podnikateľského modelu tým, že poskytujú určité zdroje a vykonávajú určité činnosti,
9. štruktúra nákladov zahŕňajúca všetky náklady vzniknuté pri prevádzke cirkulárneho podnikateľského modelu.

Tento model je považovaný za východisko pre tvorbu ostatných cirkulárnych podnikateľských modelov, pretože každý podnikateľský model je do určitej miery lineárny a kruhový zároveň. Treba však uviesť, že hoci tento model podporuje proces navrhovania cirkulárneho podnikatelského modelu, neuvádza, ako princípy cirkulárnej ekonomiky alebo podnikatelské aktivity, do ktorých sa implementujú princípy cirkulárnej ekonomiky, súvisia s prvkami konkrétneho podnikatelského modelu.

2.3 Podnikateľský model startupu v podmienkach cirkulárnej ekonomiky

Z teórie a praxe je známych celý rad podnikateľských modelov aj pre formát podnikania, označovaný ako startup. Tento pojem, ktorý vznikol na prelome tisícročí v súvislosti s informačno – technologickým pokrokom, vyjadruje novo vzniknutý projekt alebo novovzniknutú firmu, nachádzajúcu sa zvyčajne ešte len vo fáze tvorby podnikateľského zámeru. Startup je založený na vývoji podnikateľského nápadu, determinovaným financovaním. Podnikateľský model v tomto prostredí predstavuje zásadnú podmienku realizácie podnikateľského nápadu.

Startup ako malý začínajúci podnik hľadá, tvorí a nachádza podnikateľský nápad, ktorý postupne pretvára do podnikateľsky realizovateľného výrobku alebo služby. Startup, na rozdiel od etablovaných podnikov sa vyznačuje špecifickým životným cyklom. Je preč typické, že prechádza súčasne niekoľkými etapami svojho životného cyklu (rozvoja), týkajúcimi sa myšlienky/nápadu ako aj rozvoja samotného startupu ako organizácie. Neoddeliteľnú súčasť tohto rozvoja tvoria cykly financovania startupu. Jednotlivé etapy vo svojom súhrne a vzájomnej koordinácii tvoria platformu pre rozvojový a funkčný podnikateľský model, ktorý je nevyhnutnou podmienkou pre úspešné podnikanie formou startupu.

Základnou činnosťou startupu je premeniť nápady na produkty, merat' reakciu zákazníkov a poznat', či má nastať veľká zmena alebo zotrvať v začatom zámere. Startup ako moderná podnikateľská forma je určená na realizáciu originálnych podnikateľských nápadov zväčša na báze nových technológií. Z tohto dôvodu je možné startup vnímať ako vhodnú formu podnikania aj v prechodnom období od lineárnej na cirkulárnu ekonomiku. Podnikanie v podmienkach cirkulárnej ekonomiky je častokrát založené práve na inováciách, vysoko inovačných technológiách a poznatkoch, vyznačujúcich sa jedinečnosťou s vysokým konkurenčným aj komerčným potenciálom.

Pre uvedený druh podnikateľskej jednotky sa preto ako najvhodnejší spоменeme nami vyšie uvedených cirkulárnych podnikateľských modelov ukazuje model CANVAS, a to najmä pre jeho spomínanú komplexnosť.

Treba uviesť, že so vznikom startupom sú spojené niektoré bariéry, najmä trhové riziko. Mnohí začínajúci podnikatelia sa totiž vyznačujú bohatým potenciálom inovatívnych myšlienok, avšak bez relevantného podnikateľského rámca/modelu. Za významný nedostatok, ktorý podľa nášho názoru u týchto podnikateľov prevláda, možno považovať najmä neznalosť trhu/zákazníkov a slabú schopnosť pretaviť myšlienku (podnikateľských nápad) do reálneho produktu. Znamená to, že vedia rozpoznať trendy, avšak ich transformácia do produktu je už problematická až kritická.

Vychádzajúc zo základných úrovni produktu (jadro, vlastný produkt a rozšírený produkt) konštatujeme ako najproblematickejšie správne definovanie prvých dvoch – jadra a vlastného produktu.

V prípade jadra produktu je z hľadiska dosiahnutia podnikateľského, trhového a konkurenčného úspechu životne dôležité, aby nositelia myšlienky/nápadu skutočne rozumeli účelu, na ktorý si zákazník daný produkt kúpi a úžitku, ktorý daný produkt zákazníkovi jeho spotrebou prinesie. Správne identifikovaný účel a úžitok sú základné predpoklady pre tvorbu hodnoty a nastavenie spôsobu, ako ju dodáť zákazníkovi. Vychádzajúc tak z marketingových poznatkov je zrejmé, že zákazník si nekupuje konkrétny produkt pre samotný, ale pre úžitok, ktorý mu prinesie. V prípade, že tento úžitok (nie len) zakladateľ startupu nevie definovať, celý zámer (podnikateľská myšlienka) sa neuskutoční. Zároveň to vytvorí bariéru pre správne vymedzenie trhových segmentov a výber cielových skupín zákazníkov, na obsluhu ktorých by sa nositelia myšlienky mali zameriť. Je to dôležité aj z toho hľadiska, že samotná cirkulárna ekonomika ako nový ekonomický model prináša novú paradigmu spotrebiteľského správania. Vznikajú nové preferencie zákazníkov, ktoré sú spojené s tvorbou hodnoty pre nich a sú pretavené do jadra konkrétneho produktu.

Vlastný produkt a bariéry s ním spojené v podnikaní v podmienkach prechodu na cirkulárnu ekonomiku formou startupu sú neoddeliteľné od chýb, ktorých sa podnikatelia dopúšťajú pri vyššie spomenutom rozhodovaní o jadre produktu. Nadväzujúc na to, čo tvorí vlastný produkt (kvalita, dizajn, značka, vlastnosti produktu) je zrejmé, že nesprávne rozhodnutie podnikateľov o týchto atribútoch má tendenciu zastrieť skutočný zdroj/e tvorby hodnoty a jej dodanie zákazníkovi už v prvých fázach jeho životného cyklu. Je to o to dôležitejšie, že v prípade podnikateľského rámca v podmienkach cirkulárnej ekonomiky pôjde o cirkulárny, resp. o produkty obsahujúce cirkulárny, častokrát vysoko inovatívne alebo s vysokým inovačným potenciálom, ktoré sa zároveň vyznačujú novými vlastnosťami a/alebo prevedením.

Vychádzajúc z predznačeného sa domnievame, že v prípade využitia komplexného modelu CANVAS v podmienkach podnikania formou startupu sa uvedené prekážky môžu čiastočne alebo úplne eliminovať z hľadiska trhových bariér. Z hľadiska využitia tohto modelu sú tak významné osobitne prvé dva piliere: segmenty zákazníkov, ktoré bude/chce firma/startup obsluhovať a tvorba hodnoty pre týchto zákazníkov.

Rovnako ďalšie prvky (piliere) daného modelu podporia úsilie podnikateľov o úspešné podnikanie v podmienkach startupu. Komunikácia so zákazníkmi sprostredkuje hodnotu, ktorá je súčasťou jadra produktu a distribúcia ju dodá zákazníkom. Vytváranie vzťahov so zákazníkmi a partnerstiev s ostatnými subjektmi a prvkami podnikateľského prostredia vytvorí platformu pre ďalší rozvoj podnikania a prechod startupu do ďalšej – vyššej fázy svojho životného cyklu. Osobitne vzťahy so zákazníkmi sú klúčové. Zákazníci majú potenciál rastu a prechodu od substitútu na cirkulát, resp. produkt, obsahujúci cirkulát, čím môže vzniknúť nový trh/trhová štrbina.

Všetky ostatné piliere (prvky) modelu CANVAS sú dôležitou platformou pre úspešné podnikanie. Zdroje vytvárajú rezervu, klúčové aktivity sú zase nevyhnutné pre ich bezpečenie.

Model CANVAS môže byť pre startup užitočný z pohľadu jeho štartu a nábehu na jednotlivé fázy životného cyklu. Čiastočne vhodným spôsobom ho môžu dopĺňať aj iné z podnikateľských modelov, uvádzaných v tomto príspevku. Napríklad model od autorov Joustra et al., ktorý bol vyvinutý práve pre malé podniky, zachytáva informovanosť a pripravenosť všetkých relevantných partnerov na cirkulárnu ekonomiku. Prínosom je, že sa zaoberá tvorbou hodnoty pre zákazníkov, príležitosťami a tiež službami, ktoré vytvárajú tzv. rozšírený produkt a sú neoddeliteľnou súčasťou cirkulárnej ekonomiky. Práve informácie spolu s tvorbou hodnoty považujeme za najvýznamnejšie piliere podnikateľských modelov v rámci startupov v podmienkach cirkulárnej ekonomiky.

Domnievame sa, že aj ostatné viac či menej známe modely môžu prispieť k úspešnému štartu startupu a jeho nábehu do fázy zrelosti v podmienkach cirkulárnej ekonomiky. Ich overenie by si však vyžiadalo uskutočnenie relevantného výskumu/výskumov.

Napriek tomu, že problematike problémov a limitov, spojených s implementáciou cirkulárnych podnikateľských modelov sa venovali viaceré zdroje, s ich aplikáciou na podmienky startupu sa stretávame len ojedinele. Rovnako ojedinele sa je možné strettuť aj so skúmaním týchto limitov v podmienkach implementácie cirkulárneho podnikateľského modelu do aktivít už etablovaného podniku a startupu.

Záver

Podnikateľské modely predstavujú rámc pre realizáciu efektívnej podnikateľskej činnosti. Existuje niekol'ko prístupov ku chápaniu podnikateľských modelov. Autori im pripisujú viaceré funkcie a takisto účely, na ktoré môžu slúžiť. Bývajú označované aj ako forma spôsobu, akým podnik podniká a celkovo funguje. Ich význam spočíva najmä v tom, že sa zaoberajú tým najdôležitejším z hľadiska úspešného podnikania – zákazníkmi z rôznych uhlov pohľadu (segmenty, cielové skupiny, hodnota pre zákazníkov). V neposlednom rade sú to ďalšie piliere efektívneho podnikateľského modelu, akými sú produkt a konkurencia. Oba tieto prvky (piliere, nástroje) a ich cielené uplatnenie a riešenie sú bázou pre vytvorenie a udržanie dlhodobo priaznivého postavenia firmy na trhu.

Význam podnikateľských modelov a ich tvorby s určitosťou nadobúda na význame aj v prechodnom období na cirkulárnu ekonomiku. Tento nový ekonomický model prináša nielen rad obmedzení a limitov, ale tiež nových podnikateľských príležitostí v podobe myšlienok, výrobkov, služieb, materiálov, technológií či inovácií. Zároveň vytvára novu paradigmu spotrebiteľského správania, tvorby a dodania hodnoty a jej komunikovania zákazníkom. Cirkulárne podnikateľské modely sú tak v centre pozornosti tak teórie ako aj praxe. Vyznačujú sa množstvom prístupov k chápaniu, dizajnovaniu, tvorbe a implementácii a viac či menej komplexným obsahom.

Cirkulárna ekonomika sa rozvíja v turbulentnom prostredí, charakterizovanom informáciami, technológiami a inováciami. Jedným z formátov vhodných na podnikanie sú preto startupy, ktoré majú potenciál narásť a rozvíjať sa do etablovaných firiem. U týchto podnikateľských formátov je vhodnou formou podnikateľského modelu podobne ako pri zrelých firmách prístup CANVAS. Komplexnosť CANVAS(u) je bázou, ktorá môže eliminovať problémy a limity spojené s vytváraním startupov. Aj ďalšie podnikateľské modely, navrhnuté pre podniky a/alebo začínajúce podniky v podmienkach prechodu na cirkulárnu ekonomiku môžu byť pre startupy užitočné.

V záujme dosiahnutia čo najvyššej efektívnosti týchto podnikateľských modelov ako aj cirkulárnych podnikateľských modelov je žiaduce realizovať relevantné výskumy na základe vzájomnej súčinnosti teórie a praxe.

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Strategic Diagnostics of Transcarpathia Potential: Matrix and its Elements¹

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Abstract

The purpose of this study is to determine the strategic position of the organizational and economic potential of the Transcarpathian region, which gives opportunity to describe the main directions of the strategic development of the region and building the competitive advantages.

The research methods are: expert assessments, causal induction method, scientific abstraction method, matrix as a diagnostic method.

As the main evaluation mechanism, a matrix divided into four quadrants was used, which made it possible to see the position of the infant, the zone of the balloon, the quadrant of the locomotive and the position of the leader. A survey of experts indicated the location of the organizational and economic potential of Transcarpathia in the locomotive zone, that's mean with an economic potential above the average, but organizational potential below the average. In our Ways of strengthening the development potential of the region are proposed.

Key words:

potential, strategic analysis, matrix.

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Introduction

Current trends that have formed in Ukraine and its regions make it necessary to draw the attention of researchers and practitioners to the possibilities of sustainable development of territories, the prevention of crisis phenomena, the rational use of resources, and the increase in the effectiveness of economic activity, which is embodied in the process of strategic transformations of the regional economy.

One of the options that contribute to solving these problems in the process of long-term qualitative evolution of the regional economy is the formation and use of potential, which acts not only as an impulse for the development of the economic system of a certain territory, but also as a launching pad for the implementation of strategic management decisions.

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The basis of the strategic development of the regional economy is its potential, which consists of tangible and intangible components that reflect the abilities and capabilities of the economic system to achieve its goals. It is the potential that determines the basic conditions for the development of the region, and its effective management ensures the creation of decisive competitive advantages. The potential performs a wide range of functions; among which we consider the following to be the main ones.

First, the potential is a certain charge of development energy, so its strength and adequate management of it ensure the advanced development of the regional economy; that is, the main function of potential is to provide a basis for socio-economic growth. The function of the potential is not only to activate its obvious components, but also to identify latent opportunities, the involvement of which gives additional impetus to the development of the economic system.

Secondly, the potential performs an information function that provides the ability to manage using data on the past state of the system, its current state and prospects for future development.

Third, it is impossible not to note the stimulating function of the potential, which is as follows. Potential, representing not only a cybernetic but also a synergetic system, aimed at self-development and self-organization. In conditions of competition, the presence of the economic synergetic system, certain of its capabilities stimulates the carrier to their implementation and further dissemination.

In this regard, the study of the essence of potential and the possibilities of its manifestation during the strategic development of the regional economy contributes to the solution of specific tasks of regional management.

Organizational and economic potential is a source and driving forces of strategic development of the regional economy, which determine the momentum and at the same time form the vector of creating competitive advantages, which is the basis of strategic management of the territorial economic system. Acting as an integrated force of development, combining organizational factors with economic opportunities, the potential ensures the sustainability of regional economic growth, as well as creates opportunities to prolong the effects of existing competitive factors. At the same time, the effectiveness of the formation and use in the long run of organizational and economic potential depends on the state of strategic management of the region and its functional content.

Organizational and economic potential is a key condition for the strategic competitiveness of the region, which provides for the development of the economic system on the basis of development and implementation of innovations, strengthening human potential and cultural values, which can become the institutional framework for future radical change. This necessitates constant strategic analysis, which has two objectives:

- first, diagnosis of strategic opportunities for regional development,
- secondly - the formation of strategic guidelines for the functioning of the region.

In other words, one of the important components of long-term administration of regional development is strategic analysis, which allows to identify the position of the region in today's competitive world, outline ways of its development and provide regional and national management information that allows relevant and adequate strategic decisions.

A distinctive feature of strategic diagnostics is that it includes not only analysis, but also exposure, diagnosis, a description of the reasons that led to negative results, and also determines ways out of the negative situation of the region and its economic system.

Diagnosis involves a procedure that requires a comparative analysis, which is achieved by compiling a matrix. The quadrants of the matrix reflect the options for the state of organizational and economic potential, and their comparison allows us to identify potential weaknesses. This, in turn, serves to illuminate the causes of the negative state, which allows you to identify menra on their elimination. Thus, the diagnosis is aimed at positioning the object of study in the coordinate system, determining the area of the object, options (paths), moving to the leadership area and radical strategic advantages.

1 Methodology

The purpose of this study is to determine the strategic position of the organizational and economic potential of the Transcarpathian region, which gives opportunity to describe the main directions of the strategic development of the region and building competitive advantages.

To achieve the goal, the following tasks were solved:

1. To illuminate modern approaches to the diagnosis of the development potential of the regional economy.
2. Based on the coordinate system, a matrix is constructed whose quadrants reflect a comprehensive assessment of the level of organizational and economic development potentials.
3. A survey of experts who determined the level of economic and organizational development potential.
4. Based on expert evaluation, the position of the organizational and economic potential of the region in the diagnostic matrix is established.

Diagnostics begins with a justification of the methodological basis of the study. Extremely important in strategic analysis is the choice of methods that allow rational and efficient formation of the analytical base, determine diagnostic procedures and provide information for strategic decision making. In the process of field research, a survey of experts was conducted, in the role of which candidates and doctors of economics working at the Faculty of Economics of Uzhhorod National University were involved, and their research interests and practical results were focused on regional or national economies. The total amount of researchers is 50 people. With a given statistical accuracy of 95%, the electorate was 44 people. The statistical error is +/- 5%.

By gender, the general population consists of: 34% men and 66% women. By age, the general population is divided according to the requirements of the World Health Organization: 18-44 years - young age; 45-60 years - average age; 61-75 years - old age; 76-90 years - old age; and after 90 - long-lived. The general population of researchers of the regional economy of Transcarpathia is formed by age in proportion: up to 45 years - 50%, average age -39%, old age -11%.

The survey of experts is based on two principles: competence; pluralism of opinion.

In the process of diagnosis, it is recommended to take into account the elements of causal induction due to the following. Causal analysis in strategic management performs a wide range of functions.

First, in the process of this type of analysis is the study of the internal potential of the economic system, which is the source of its endogenous development. It is endogenous factors that act, the activation of which provides radical specific benefits. Endogenous factors, as a rule, are unique, inherent in this economic system and cannot be applied accordingly by other systems. Endogenous factors are the reasons that stimulate organizational, technological and production transformation of the economic system, which creates the necessary conditions for further development of the system. Both organizational and economic potentials are the result of a wide range of causes that have an internal origin and decisively affect the level of development.

Second, cause-and-effect analysis covers the external environment of the economic system in its variability, uncertainty and danger. On the other hand, certain factors of the external environment may be such that provide opportunities and provide the economic system with certain benefits due to its market positioning.

Third, cause-and-effect analysis serves as a method that allows you to identify alternatives to the future state of economic systems relative to competitors and within future economic, market or innovation processes.

Thus, when assessing the level of a particular phenomenon, it is advisable to determine not only the components of the assessment, but also the reasons that led to this: the causes (factors) are an element of potential. In the course of the research, the respondents were recommended to take into account how economic and organizational potentials contribute to the strategic development of the region and, accordingly, to the acquisition of systemic competitive advantages.

By systemic competitive advantages we mean those that provide a path of advanced economic development on the basis of coordinated continuous interaction of all regional components of organizational and economic potential. This confirms the importance of potential as a condition and factor in the development of the regional economy.

The formation and implementation of competitive regional advantages necessitates capacity management based on the created and adopted development strategy of the region, which is the core of strategic regional management.

In the process of diagnosing this phenomenon, it is advisable to consider that the following are highlighted as important features of the functioning of the organizational and economic potential of the region's strategic development:

1. Dynamism and adaptability. Socio-economic potential does not develop in isolation from the processes occurring in the region, country and the world, but in the conditions of those rules that exist in the external environment. Therefore, adaptability to changes in the outside world provides a reduction of obstacles to the development of organizational and economic potential.
2. Systematic. Organizational and economic potential consists of a set of elements that are interconnected and the development of each affects the other compo-

nents and the potential as a whole. Therefore, systematic approach as a principle for the development of organizational and economic potential involves a combination of cybernetic and synergetic approaches to management.

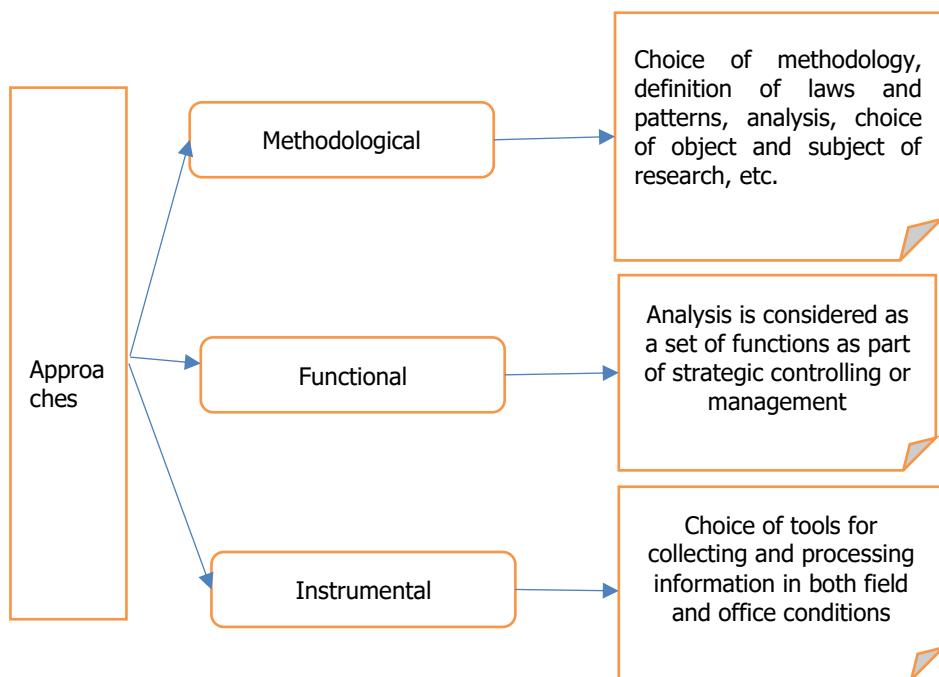
3. The elimination principle follows from the above and declares the need to cut off ineffective elements of the system of organizational and economic potential that create obstructions on the way to development.

The organizational and economic potential of strategic development includes active and passive elements that play a role in the strategic transformations of the territorial economic system.

2 Results and discussion

In modern research, all approaches to strategic analysis can be combined into three groups, which are covered in scientific publications: methodological, functional and instrumental, as shown in Fig.1.

Fig.1. Modern approaches to the strategic analysis of regional economic development and its potential (compiled by the authors)



An example of the first approach is the following perspective on strategic diagnostics: from the stand point of laws and patterns of development consider strategic analysis Andreev V. And Kovaleva I, believing that "the logic of strategic analysis of the region's economy is to accumulate empirical material on the basis of which to identify the relevant patterns"[4]. It is impossible to disagree with these scientists that "in developing theoretical and methodological aspects of strategic analysis of the results of

regional economic transformations should be based on the laws of social development, which determine changes in the content of processes of interaction of productive forces and production relations in the region." [4], but at the same time the authors do not prove how the methodological basis can be applied when choosing a practical research method.

The second group of scientists focuses on the essence of strategic analysis as a set of actions in the process of strategic management of the economic system, i.e. declare the legitimacy of the functional approach. Thus, I. Raikovska argues that "strategic analysis as a function of management helps to ensure such interaction... with the environment, which allows ha to maintain its potential at the level necessary to achieve the goals... and allows to survive in the long run" [12]. The next set of ideas that exist within the functional approach is to look at strategic analysis as part of a controlling function that combines planning and evaluation. According to O. Lebid, planning includes a study of the state of the economic system, as well as its subject is "all internal and external factors that provide favorable conditions for normal functioning and development." [7]. Similarly, A. Halachmi considers strategic planning as "a series of actions" that include research, data review, decision-making and evaluation, and the study of the consequences and adequacy of what decisions have been made in the past [15]. As part of controlling, strategic analysis is presented by O. Fedorovich, who believes that "in a market economy, each region should develop its own strategy to strengthen its position, overcome barriers to competition. The strategy is a generalized model of actions necessary to achieve the goals. An integrated system of strategic controlling is needed to support the implementation of the strategy. " [13]. Analysis of modern literature confirms that the functional approach to analysis as part of controlling is a priority of scientific thought, but its apologists ignore the relationship between specific methods of analysis, information base and the adoption of strategic plans.

The instrumental approach is distinguished, within which the emphasis is placed on methods and ways, tools for studying the services provided by the regional system and competing regions "; the level of development of the region, its strengths, prospects or shortcomings; factors that determine the strategic position of the region, etc. Among the main tools it is possible to distinguish the correlation method with trend extrapolation, simulation, Space-analysis and others. The most common today is SWOT-analysis, the use of which is actively used in regional management; this method is recommended for economic systems of a territorial nature, such as a city or region. For example, T.A. Filipova, D.A. Kurbatsky believe that "a comprehensive assessment of factors influencing development - is a very important area of action of the municipality, which allows you to objectively assess the conditions, environment and potential of the city and district" [14]. The SWOT-analysis analyzes the strengths and weaknesses of the triumvirate of culture, tourism and economy of Transcarpathia Zavadiak R. and his colleagues, which in turn allows to form strategic decisions for the development of the region in the future: "Regional development in the post-industrial economy, which is the future, is gaining growth under the influence of strengthening culture, tourism and the economy both as separate directions and as a result of synergy from their interaction and mutual support " [2].

Recently, matrix tools of strategic analysis have been actively used. Highlighting modern methods of strategic analysis at the micro level, Stein O. rightly believes that "at first glance, matrix methods are simple, but this simplicity is misleading, as they

require complete and reliable information about markets, strengths and weaknesses of the firm and its main competitors" [16]. In addition, matrix methods place high demands on the experts involved in the diagnosis, their theoretical training and practical experience.

The matrix method of strategic analysis is a combination of two sides, directions, forces, actions in a crossed form, which allows to create combinations of interaction of two different phenomena of economic life, which allow to position the region with a system of given coordinates. Two perpendicular axes on a plane with a common origin and the same scale unit form a Cartesian rectangular coordinate system on the plane [6]. Mathematicians argue that "solving a mathematical or physical problem by the method of coordinates, you can use different coordinate systems, choosing the one in which the problem is solved easier or more convenient in this particular case. Coordinate systems in geometry are quantities that determine the position of a point on a plane and in space. In the plane, the position of a point is most often determined by the distances from two straight lines (coordinate axes) that intersect at one point (the origin) at a right angle; one of the coordinates is called the ordinate, and the other - the abscissa" [11].

Diagnosis of organizational and economic potential, which is proposed in this study, is carried out using a matrix: vertically displays the assessment of organizational capacity by experts (axis B) and has a scale from 0 (lack of potential) to 10 (high potential); the level of economic potential (axis X) of the regional economy is determined horizontally by a similar method.

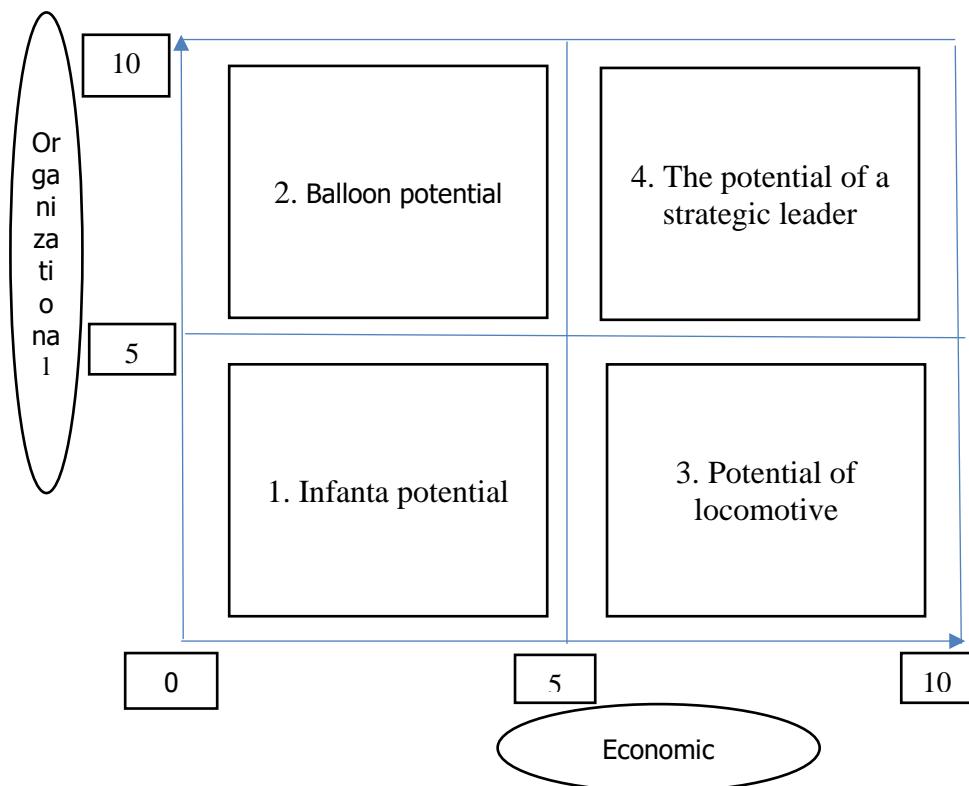
As a result of the intersection of a certain value of economic and organizational potential, four quadrants are formed, which is presented in Fig. 2.

Zone 1. Infant potential.

It is characterized by a low level of both organizational and economic potential of the regions. Requires large investments and government support. As a rule, this type of organizational and economic potential is characteristic of depressed areas and indicates not only the actual lack of strategic opportunities for the formation of competitive advantages, but also the lack of managerial competencies in the leadership of the region. In such circumstances, the logic of action involves the need for external intervention, ie public administration, aimed at performing the following tasks:

- a) formation of a system of strategic management in the region;
- b) providing a personnel management system of appropriate qualification;
- c) introduction of risk management methods, due to the fact that the location of the region in this area indicates the high dangers of its competitive operation. Risks, as a rule, cause a conflict of interest, which in turn reduces the level of trust in the region, which in this study we consider as an institutional and organizational basis and economic factor to increase the efficiency of economic activity in the region.

Fig.2. Matrix of organizational and economic potential of the region (compiled by the authors)



The risks are as follows: lack of inflow or outflow of investment, weakness of innovation activity, outflow of human capital, hopelessness of young people, which leads to a high degree of emigration. Solving these three tasks is the basis for strengthening the economic and organizational potential of the region.

Zone 2. Balloon potential.

Organizational opportunities are quite high, but there is no economic basis for strategic development. A region with this type can start to develop very actively, but due to low economic potential there are great risks in the development process. Rapid temporary growth is likely to turn into the same rapid decline.

The dangers of this type of capacity are also that the emphasis only on organizational capabilities causes the depletion of organizational capacity, which without proper support of the economic base loses its resources. The main tasks are to focus on building a development model based on knowledge, innovation and organizational capabilities. An example of such an approach is the Silicon Valley region, which was driven by weak economic potential and great organizational capacity at Stanford University.

Zone 3. Locomotive potential.

The potential that falls in its diagnosis in the third segment acquires the essence of the train: the economy is the locomotive of the movement, but the effectiveness of economic actions is not effective due to lack of support from organizational resources

Economic potential plays the role of a train due to the fact that the organizational aspects are not given the necessary attention, despite the fact that in conditions of high competition between regions "organizational potential becomes the most important source of economic growth and welfare. It also increases the region's contribution to the country's economic potential. This is due to the peculiarities of the functions performed by organizational capacity: management of economic and social resources of the region, the identification and use of organizational reserves at relatively low capital costs" [5].

A region with potential in this coordinate quadrant receives risks of reduced efficiency and increased irrationality of the use of economic resources; loss of time, which is an important factor in strategic actions, ensuring the creation of competitive advantages; lag of innovative development of the region, etc. With a low level of organizational capacity in the region, small business is inefficient, the importance of which for strategic competitive advantages is emphasized by Miklovda V. and his associates, who prove by "correlation model the impact of small business on the regional economy." [8]. The lack of organizational support also hampers the gazelle business, which is the basis of innovation, the importance of which for the development of the region and the country as a whole is emphasized by Slovak researchers: "Gazelles, as an important subgroup of HGE, make up only approximately 0.5%-1% of all newly established companies with 10 or more employees and with a growth higher than 20%" [3]. Thus, ignoring modern forms and methods of organizing regional economic life leads to a lag in competition with other regions.

Important areas for strengthening organizational capacity are:

- a) formation of innovation infrastructure, development of innovative entrepreneurship;
- b) engineering of the trust system as an institutional, organizational and economic resource to improve the quality of the regional economy.

Zone 4. Leader.

High organizational potential and high economic potential create a zone of strategic opportunities to seize competitive advantages and implement modern methods and levers of strategic development of the region.

The potential that falls into this segment creates a platform for strategic management, which uses both economic resources and a modern organizational set of tools of the regional economy. The region's inclusion in this zone testifies to the strategic position of the development leader.

The application of the proposed method provides an opportunity not only to examine the existing organizational and economic potential of the region, but also to justify the ways of its future development.

Based on the defined sample of respondents, gender and age structure of the general population, the representativeness of the sample is presented in table 1.

Tab.1. Indicators of the general and electoral population of experts in the field of regional economy of Uzhhorod National University

Totality	Number persons	Gender structure		Share by age		
		Male., %	Fe-male., %	Up to 44 years, %	45-60 years, %	61-75 years, %
General	50	34	66	50	39	11
Electoral	44	34	66	50	39	11

The questionnaire contained the following question:

Please evaluate the organizational and economic potential of the Zakarpattia region according to the ten-point school (10 - the highest grade, 0 - no).

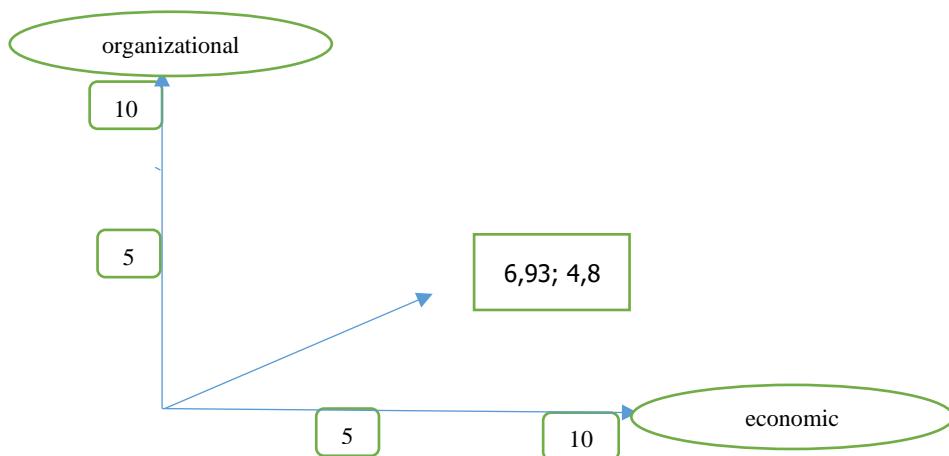
Organizational potential in this study consists of two parts: a) institutional - is a set of all organizational forms of economic activity and its management; b) process - organizational potential - as the ability to attract and activate economic potential to achieve a strategic regional goal.

Economic potential - a system of productive forces of the region, involved or having the prospect of being involved in economic activities.

The average assessment of organizational potential is 4.8, economic - 6.9. Based on this, the organizational and economic potential of the Transcarpathian region falls into the third quadrant - an area with high economic potential and, accordingly, low organizational potential.

The results of the survey are presented by the matrix shown in Fig.3.

Fig. 3. Positioning of the assessment of organizational and economic potential in the coordinate system (compiled by the authors)



The study shows that in Transcarpathia, the organizational potential received an average score of 4.8, which is below average. The reasons for this phenomenon are the following:

First, insufficient attention is paid to the strategic management of regional economic development. Although the strategy was adopted, it was not widely covered in the media, the population of the region was not informed about the strategic goals and ways to implement them.

Second, the lack of systematic action to build the organizational capacity of the regional economy. Thus, there are almost no consulting points in the region that can promote the formation of enterprises and organizations focused on creating business, including innovation, which would be financed by the state. An example of such organizational support is SMALL BUSINESS ADMINISTRATION in the USA. As noted on the website, "established in 1953, the U.S. Small Business Administration (SBA) continues to help small business owners and entrepreneurs realize the American dream. The SBA is the only federal agency at the cabinet level that is fully dedicated to small business and provides consulting, capital and contract expertise, as the country's only resource and voice for small business" [1].

Third, there is no focus of regional authorities on the formation of clusters that will integrate resources and create additional competitive advantages for participants in marketing, human resources, finance, management and other areas of activity.

Fourth, there is no innovative infrastructure. In addition, in the field of innovation Miklovda V. considers the following reasons for organizational backwardness: "1) the country has not created an effectively functioning national innovation system, an integral element of which will be regional systems; 2) there is no proper funding, which is a necessary condition for the implementation of innovation activity; 3) there are no levers of motivation of enterprises to implement innovative technologies or products in practice. 4) the lack of a risk management system at the level of the state, the region, and within most enterprises" [9].

Fifth, the issue of building regional trust has not received attention in the region, neither at the level of government, nor at the level of business, nor regional society, nor science.

In addition, it should be noted that the assessment of organizational capacity is a rather complex procedure due to the ambiguity of understanding the nature and complexity of this type of capacity.

In terms of economic potential, this type is rated much higher: the average score is 6.93 on a ten-point scale. The reasons for the rather high rating are as follows:

First, the region is located on the border with European countries, which provides additional economic opportunities not only in the manufacturing sector (established enterprises with foreign investment, working for Western consumers), but also in logistics, in the field of international trade.

Secondly, the availability of rich natural resources ensures the economic development of forestry, agriculture, tourism, recreation, etc.

Third, the region is actively moving labor to EU countries, the return of which brings financial investment in the economic potential of the region, as well as increases staffing

of economic development, contributes to the formation of regional competitive advantages.

Among the 44 people surveyed, 29 women rated the economic development potential higher than men on average. Thus, the average score given by women is 7.34, while men scored 6.8. The reason for this difference is that women are more active in using economic opportunities.

If we consider the answers of respondents grouped by age, the highest score was given to people belonging to young people - under the age of 44 - 7.27. The most skeptical about the assessment of the level of economic potential were respondents aged 61 and older, who rated this type of potential at 6.2. The reason for the relatively low score compared to other groups is that respondents of this age remember the economic development of the region in Soviet times and do not believe that the level of economic potential today is sufficient and possible.

It should be noted that in contrast to the organizational capacity, the maximum assessment of the economic opportunities of the region in 10 points was given by four people, ie about 1%. Five respondents gave a score of 9 points. The minimum level of this type of source of development of the region (3 points) was set by one person. This indicates a fairly high density of high estimates of the economic potential of the regional economy.

To assess the level of potential, it is advisable to use the method of variation. "Variation is the differences in the individual values of a feature in the units of the studied population. The study of variation is of great practical importance and is a necessary link in economic analysis. The need to study variation is due to the fact that the average, being equivalent, performs its main task with varying degrees of accuracy: the smaller the difference between the individual values of the feature to be averaged, the more homogeneous the set, and therefore more accurate and reliable average, and vice versa. Therefore, the degree of variation can be judged on the limits of variation of the trait, the homogeneity of the population on this trait, the typicality of the average, the relationship of factors that determine the variation" [10].

With the help of statistical calculations, it is proposed to assess compliance with the principles of the survey:

1. The qualification of experts is assessed on the basis of the dispersion indicator. The standard deviation can be considered as the degree of uncertainty of estimates, so the less scattering, the higher the level of qualification of experts.

The variance is calculated by the formula:

$$\sigma = \sqrt{\frac{\sum(x_i - \bar{x})^2}{n}} \quad (1)$$

X_i – the mark of each expert,

Xa - average mark

The processed indicators of expert estimates lead to the following calculations.

The sum of the squared deviations in organizational capacity was 105,16.

The number of experts 44.

The standard deviation of organizational capacity estimates:

$$\sigma = \sqrt{\frac{105,16}{44}} = 2,4 \quad (2)$$

The standard deviation of estimates of economic potential:

The sum of the squared deviations in organizational capacity was 151,52.

The number of experts 44.

$$\sigma = \sqrt{\frac{151,52}{44}} = 3,4 \quad (3)$$

The standard deviation means the range of scattering of the values of the respondents' answers relative to his mathematical expectation. According to the calculations, the range of scattering of responses to organizational capacity and the variance of estimates of economic potential prove a fairly high density, unity of opinion and estimates of capacity by experts and the reliability of the assessment.

2. Pluralism of opinion is assessed on the basis of the scope of variation and the coefficient of variation. The greater the value of these mathematical tools, the greater the level of pluralism.

The scope of variations is the deviation between the maximum and minimum (R) values of potential estimates

$$R = X_{max} - X_{min} \quad (4)$$

X max – maximum rating,

X min - minimum score.

Scope of variation in organizational capacity (R_1):

$$R_1 = 7$$

Scope of variation in economic potential (R_2)

$$R_2 = 7$$

The coefficient of variation is calculated by the formula:

$$v = \frac{\sigma}{\bar{x}} 100 \quad (5)$$

Mathematical statistics prove that if the coefficient of variation is more than 33%, it means the heterogeneity of the population, which in our case - the heterogeneity of opinions regarding the level of potential. In our case, this allows us to concentrate within the matrix a variety of expert assessments.

As noted in fig. 2., the average assessment of organizational capacity is 4.8.

The average level of economic potential noted by experiments is 6.9.

Coefficient of variation of organizational capacity assessment (vo):

$$vo = \frac{2,4}{4,8} 100 = 0,5$$

Coefficient of variation of economic potential assessment (ve):

$$ve = \frac{3,4}{6,9} 100 = 0,49$$

Calculations show that the opinions of experts are mixed and the principle of pluralism has been observed.

Strengthening the strategic focus of organizational and economic potential in the development of the Transcarpathian region and gaining competitive advantages is based on the introduction of innovative mechanisms, among which the leading role is played by innovative entrepreneurship and innovative regional cluster. Innovative entrepreneurship participates in the formation of the value chain in the field of innovation, provides a synthesis of science and practical economic activity, and the cluster allows you to focus on creating competitive advantages.

It was recommended to intensify work on the use of electronic communications in the management of the region. On the one hand, this is a huge reserve of saving time and other resources; however, it is important to take into account, as communications experts say, that distance communication reduces the level of understanding, and this increases management risks.

It should be noted that the organizational factors that make up the corresponding share of development potential are riskier than economic ones.

This is explained by the following:

Firstly, organizational factors are mainly subjective, and depend largely on the decisions of specific people. In this case, we recommended to introduce more actively innovative crowdsourcing, fundraising platforms, which are not an individual, but a collective mechanism; Being organizational collective mechanisms with appropriate transparency significantly strengthen the organizational basis for the development of the region.

Secondly, organizational factors depend on the quality of the region's human capital, on the investment of innovation. In this case, we observe the presence of mutual influence: human capital, being an economic resource, determines the level of organization, and the organization affects the development of human capital.

Thirdly, organizational potential implies continuous reengineering of regional authorities and regional business, both their frame and content, and most importantly, the transformation of organizational forms of interaction between business and regional authorities.

An important factor in strengthening the organizational and economic potential of strategic development of Transcarpathia is a set of cultural and institutional measures, including a system of trust, the construction of which is based on the principles of competence, methodological adequacy, feedback, transparency, and practical implementation - the imperatives of integrity and integrity.

The trust system includes a management subsystem, the effective operation of which involves the management of transformations; application of a brand of trust; ARIS modeling; deviance management.

An important way of strengthening the organizational component of the development potential is the involvement in the practice of regional management the methods of abstract modeling of strategic development options, and, accordingly, its potential.

Modeling allows in abstract-concrete form to outline the main components of organizational and economic potential of strategic development, to determine the rational links between them and to identify the most effective mechanisms of activation. The model describes the interaction of components, which include strategic elements, processes, factors, mechanisms and levers.

Conclusions

Strategic analysis of organizational and economic potential was conducted by the matrix method, which contains four zones: the potential of the infantry (low organizational and economic potential); balloon potential (organizational potential is higher, but economic - below average); train potential (high economic potential and low organizational); high organizational potential and high economic potential create a zone of strategic leader.

The principles of choice of respondents are defined by competence and pluralism of opinions. Adherence to the principle of high qualification of experts is determined by the indicator of variance of assessments of organizational and economic potentials. Pluralism of opinions is assessed on the basis of the scope of variation and the coefficient of variation of estimates of organizational and economic potentials of strategic development of the Transcarpathian region.

The study shows that in Transcarpathia the organizational potential received an average score of 4.8. In terms of economic potential, this type is rated much higher: the average score is 6.93 on a ten-point scale. So, the position of potential is zone 3 -Train potential.

The reasons of this situation is:

- insufficient attention is paid to the strategic management of regional economic development. In spite of adopted regional strategy, population of the region, business people were not informed about the strategic goals, plans and ways to implement them. In the current situation, the lack of complete and reliable information hinders the achievement of strategic goals;
- the lack of systematic action to build the organizational capacity of the regional economy;
- there is no focus of regional authorities on the formation of clusters;
- the attention is not paid enough to the innovative development of the region, there is no infrastructure for the creation of new ideas and their transformation into innovation.
- the building of regional trust as cultural and institutional factor of development has not received attention in the region.

In terms of economic potential, this type is rated much higher: the average score is 6.93 on a ten-point scale. We have reached an analysis of the strategic diagnosis of the potential of Transcarpathia, we fine that the reasons for the rather high rating are as follows:

1. The region is located on the border with European countries, which provides additional economic opportunities.
2. Rich natural resources ensures the economic development of forestry, agriculture, tourism, recreation, etc.
3. The region has a highly mobile workforce. Working at the enterprises of the European Union allows to bring to Transcarpathia modern technologies, both production, and administrative. This provides an additional resource for Transcarpathian enterprises to use the experience of Western countries.

Our analysis and comparison of the expert opinions we find that made it possible to formulate recommendations on strengthening the economic and organizational development potential. Among the main areas noted:

- a) Firstly, in conditions of digitalization of society, which the coronavirus has pushed to, it is advisable to switch to electronic forms of communication at the regional level management level, which saves decision-making time and execution time. This leads to an increase in the efficiency of administration on the basis of improving the organization of direct communication and feedback.

- b) Secondly, to intensify innovative activity in the region, for which to create conditions for enterprises, especially startups. In the region, there is a lack of consulting centers, centers for supporting innovative activity, and mechanisms for transferring ideas to innovations. In fact, in the region there is no regional isolation system.

We also recommend intensifying work on creating clusters that integrate organizational and economic resources, which significantly increases the efficiency of their use, and therefore create the conditions for obtaining strategic competitiveness. That is we mean that diagnostics of organizational and economic potential suggests that an important direction in the formation of regional strategic competitive advantages is cultural and institutional actions aimed at creating an atmosphere of support for innovation and trust in the region. Confidence in this context acts as an organizational-economic factor that helps to reduce transaction costs and at the same time improves the quality of communication between business, regional authorities and the population.

In conclusion, we would like to state our knowledge from the research, the outputs of which are the subject of this paper, that innovative culture and culture of trust are resources to increase the competitiveness of the regional economy and tools to manage the process of achieving regional development goals.

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Analysis of the Western Balkans Territories Using the Index of Economic Freedom¹

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Abstract

The aim of the paper is to assess the current state of economic freedom in the Western Balkans region using the Index of Economic Freedom. From the Western Balkans territories, the best rating in the observed period of 2010 – 2019 is achieved by the Republic of North Macedonia and the worst by Bosnia and Herzegovina. According to the 2020 Index of Economic Freedom, the region belongs to the group of moderately free economies. The investment and business environment of the Western Balkans is at a low level. The reason is poor law enforcement, corruption, organized crime, or the shadow economy.

Key words

Index of Economic Freedom, investment and business environment, region, Western Balkans

JEL Classification: F14, F19

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Introduction

Geographically, the Western Balkans region is an important trade and power crossroads between East and West. The common goal of the EU and the Western Balkans is strong, stable and united Europe based on historical and cultural, geographical ties and common political, security and economic interests [the Council of the European Union, 2020].

The Western Balkans territories are among the poorest in Europe and their pace of convergence with European standards is slow. Due to unfavourable historical development, the economies of the Western Balkans are struggling with several problems such as high unemployment, corruption in government institutions, organized crime and shadow economy. In recent years, the region has achieved significant progress in the process of economic transformation, democratization and implementation of reforms.

Unemployment, the overall economic situation and corruption remain the main concerns of residents of the region. Lack of adequate work and nepotism are specified as two main barriers to employment. It follows that confidence in employers, whether

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private or public, is at a low level. Job are created in low-income sectors. Unemployment is also considered to be a major cause of social exclusion. Almost half of the population is dissatisfied with the security situation in the region [Regional Cooperation Council, 2020].

1 Methodology

The aim of the paper is to assess the current state of economic freedom in the Western Balkans region using the Index of Economic Freedom. In order to achieve the set objective, several general theoretical methods were used, especially methods of analysis, synthesis, induction, deduction and comparison. The Abstraction method was also used to disregard a number of less significant factors, relationships and facts in order to examine more closely the essential characteristics of the region as a whole.

The paper also analyses Kosovo, based on UNSC Resolution no. 1244/1999, and the opinion of the International Court of Justice on the declaration of independence of Kosovo. The most comprehensive source of information on the Western Balkans is the reports and publications of the EU institutions, the World Bank and the International Monetary Fund. Ministry of Foreign and European Affairs of the Slovak Republic annually publishes economic information about individual territories. Statistical databases of EU and the Western Balkans territories were used.

The main source of data used for research was the Index of the Economic Freedom 2020. The Heritage Foundation in cooperation with the editorial staff of daily newspaper The Wall Street Journal has been compiling the Index of Economic Freedom for twenty-six years. The measurement of economic freedom is based on examination of twelve quantitative and qualitative components grouped into four pillars (Fig. 1).

Fig. 1 Index of Economic Freedom



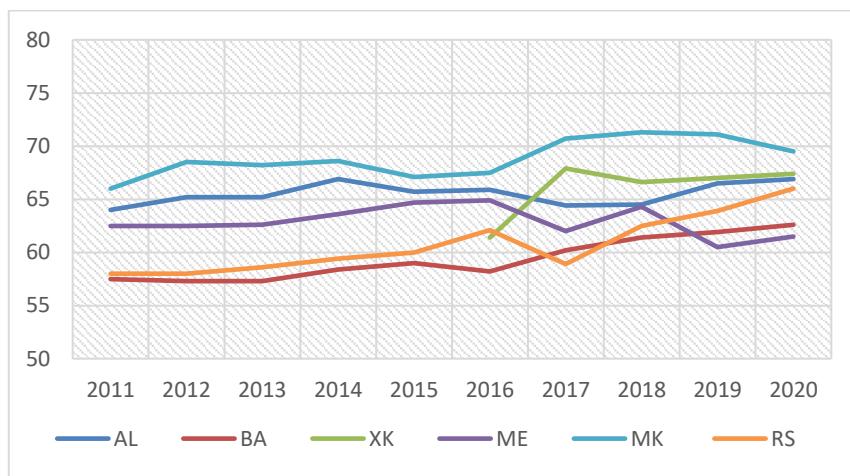
Source: own processing according to Index of Economic Freedom

Each of the twelve economic freedoms is rated on a scale from 0 to 100. The total score of a country is calculated as the average of the individual economic freedoms [Kittová & Steinhauser, 2018]. The Index of Economic Freedom is published at the beginning of a calendar year, the score for 2020 reflects the situation in 2019. In 2019, Hong Kong became the freest economy in the world, continuously at the first position since 1995. Singapore, New Zealand, Switzerland and Australia ranked in the top five in addition to Hong Kong.

2 Results and Discussion

Graph 1 shows the development of the 2011 – 2020 Index of Economic Freedom for Western Balkans. From the Western Balkans territories, the best rating in the observed period of 2010 – 2019 is achieved by the Republic of North Macedonia and the worst by Bosnia and Herzegovina. According to the 2020 Index of Economic Freedom, the region belongs to the group of moderately free economies.

Graph 1 Index of Economic Freedom 2011 – 2020



AL – the Republic of Albania, BA – the Republic of Bosnia and Herzegovina, ME – the Republic of Montenegro, MK – the Republic of North Macedonia, RS – the Republic of Serbia, XK – the Republic of Kosovo

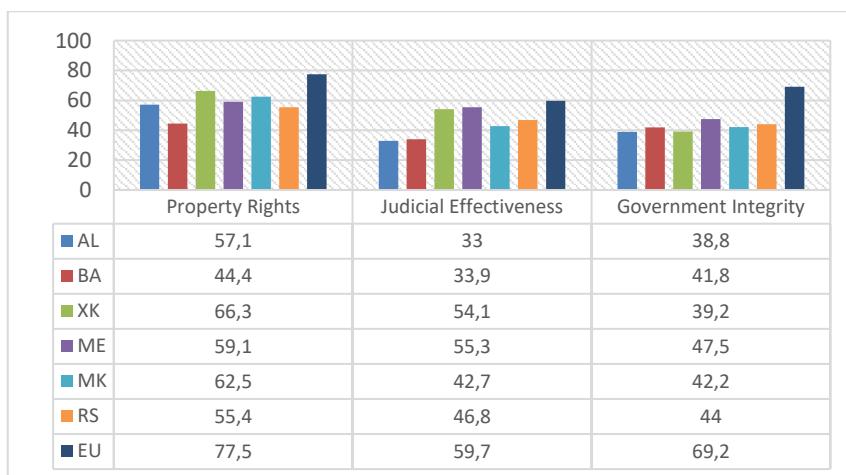
Source: own processing according to Index of Economic Freedom 2010 – 2020

According to the 2020 Index of Economic Freedom, the best score from the Western Balkans territories was achieved by the Republic of North Macedonia, ranking 51st out of 186 assessed economies. The total score of 69.5 decreased by 1.6 points compared to last year due to a decrease in the efficiency of the judiciary. Kosovo with the score of 67.4 became the 53rd freest economy. The score of the country increased slightly by 0.4 point year-on-year due to an improvement in the area of property rights. The economic freedom score of Albania is 66.9, making it the 57th freest economy. The overall score increased slightly by 0.4 point year-on-year due to improvement in fiscal

health. However, Albania fell by five positions in the ranking, reflecting the relatively better performance of other countries. Serbia is in the 65th place in the 2020 Index of Economic Freedom with the score of 66.0. The total score of the country increased by 2.1 points compared to last year. Bosnia and Herzegovina is in the 82nd place in the 2020 Index of Economic Freedom with the score of 62.6. In a year-on-year comparison, its overall score increased slightly by 0.7 point, which was helped by a sharp increase in the score for government integrity. The economic freedom score of Montenegro is 61.5, making it the 91st freest economy. Compared to last year, the country's overall score increased by 1.0 point, mainly due to the higher score of government integrity.

The "RULE OF LAW" pillar of the 2020 Index of Economic Freedom for Western Balkans is shown in Graph 2. This pillar assesses the protection of property rights, the independence and efficiency of the judiciary, and the integrity of the government indicators. According to the "RULE of LAW" pillar, the Western Balkans score is significantly below the EU average. Convincing progress regarding the rule of law in the Western Balkans remains a major challenge, often linked to the lack of political will, the continued existence of certain elements of state seizure, limited progress in the independence of the judiciary and increasingly challenging environment for civil society [European Commission, 2020a].

Graph 2 Index of Economic Freedom 2020 - RULE OF LAW



AL – the Republic of Albania, BA – the Republic of Bosnia and Herzegovina, ME – the Republic of Montenegro, MK – the Republic of North Macedonia, RS – the Republic of Serbia, XK – the Republic of Kosovo

Source: own processing according to Index of Economic Freedom 2020

Despite ongoing reform processes, protection of property rights in the Western Balkans remains weak. It is essential to ensure the independence, quality and efficiency of the judicial system [European Commission, 2018]. The judiciary is often under political pressure and has a great number of unfinished cases. Insufficient funding of the judiciary is also a problem. There is widespread political interference in the media and their

control. It is necessary to make an effort to ensure freedom of expression and the independence of the media throughout the region. Democratic systems in the Western Balkans are not functioning properly due to strong political polarization, limited democratic control function of the opposition in some cases and boycotts of elections and parliamentary work by the opposition [European Commission, 2020a].

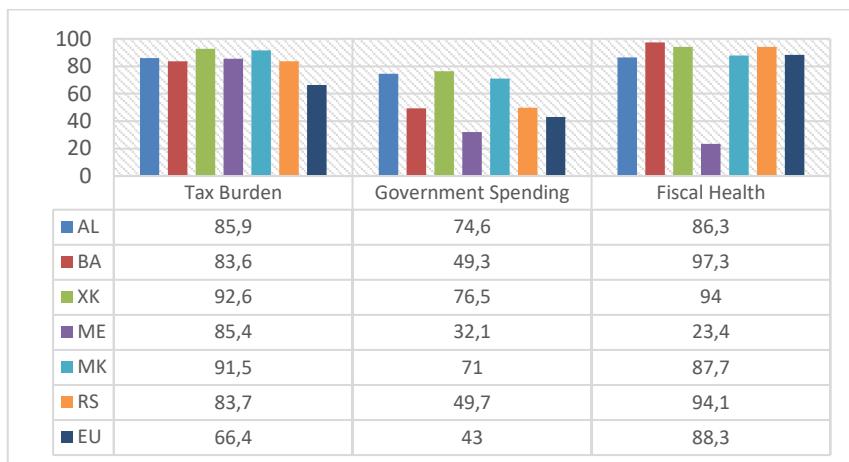
Public administration is plagued by inefficiency, corruption and nepotism. Corruption is one of the most significant threats to the region's democratic transformation and economic progress. In the Western Balkans, corruption is endemic, systematic, well-organized, rooted in government institutions, including the judiciary and the police. Public procurement is particularly prone to widespread corruption. High-level corruption and political corruption need to be tackled more clearly and consistently. As a part of the Euro-integration process, the Western Balkans territories have committed themselves to eliminating corrupt behaviour and manifestation of corruption in all areas of social life. They have confirmed their efforts by adopting a number of international law documents, such as the United Nations Convention Against Corruption.

The task of the Western Balkans is to strengthen prosecution structures specializing in the fight against corruption and organized crime. The spread of organized crime in the Western Balkans is linked to the period of the break-up of Yugoslavia. This was mainly due to economic stagnation and rapidly changing political situation. Growing poverty, the absence of the rule of law, inefficient justice and open fighting in some areas have fuelled the rise of organized crime. At present, the presence of organized crime in the Western Balkans is significant in terms of human, drug and weapon trafficking or the infiltration of crime into the political and economic system [European Commission, 2018]. Attention is also paid to cyber security and the fight against cybercrime.

Graph 3 shows the "GOVERNMENT SIZE" pillar of the 2020 Index of Economic Freedom for the Western Balkans. Within this pillar, the tax burden, government spending and fiscal health indicators are assessed. According to the "RULE of LAW" pillar, the Western Balkans score is approximately equal to the EU average. The exception is Montenegro, whose Government Spending and Fiscal Health scores are well below the EU average.

The tax burden for 2019 ranged from 23.3 to 37.9% of total domestic income, with Kosovo having the lowest and Bosnia and Herzegovina the highest. In Albania, the highest personal income tax rate is 23%, the highest corporate tax rate is 15%. In Serbia, the highest personal income tax rate is 10%, the highest corporate tax rate is 15%. The rates of personal and corporate income tax are the equal in Montenegro (9.0%). In the Republic of Northern Macedonia, Kosovo, Bosnia and Herzegovina, corporate and personal income tax is 10%.

The region's indebtedness gradually decreases. The average level of public debt in the Western Balkans territories was 48.08% of GDP in 2019. The region's indebtedness gradually decreases. In 2019, Montenegro had the highest public debt (72.1% of GDP), Kosovo had the lowest (17.0% of GDP). Table 1 provides an overview of public debt and inflation rate indicators in the territories of the Western Balkans in 2019.

Graph 3 Index of Economic Freedom 2020 - GOVERNMENT SIZE

AL – the Republic of Albania, BA – the Republic of Bosnia and Herzegovina, ME – the Republic of Montenegro, MK – the Republic of North Macedonia, RS – the Republic of Serbia, XK – the Republic of Kosovo

Source: own processing according to Index of Economic Freedom 2020

Tab. 1 Public debt and inflation rates in the territories of the Western Balkans in 2019

	Public debt (% GDP)	Inflation rates (%)
the Republic of Albania	68.6	2.0
the Republic of Bosnia and Herzegovina	37.0	1.4
the Republic of Kosovo	17.0	1.1
the Republic of Montenegro	72.1	2.6
the Republic of North Macedonia	39.5	1.5
the Republic of Serbia	54.3	2.0

Source: own processing according to Index of Economic Freedom 2020

Graph 4 shows the "REGULATORY EFFICIENCY" pillar of the 2020 Index of Economic Freedom for the Western Balkans. Within this pillar, the freedom of enterprise, labour market and monetary stability indicators are assessed. According to the "REGULATORY EFFICIENCY" pillar, the Western Balkans score is approximately equal to the EU average.

Graph 4 Index of Economic Freedom 2020 - REGULATORY EFFICIENCY



AL – the Republic of Albania, BA – the Republic of Bosnia and Herzegovina, ME – the Republic of Montenegro, MK – the Republic of North Macedonia, RS – the Republic of Serbia, XK – the Republic of Kosovo

Source: own processing according to Index of Economic Freedom 2020

The Western Balkans have significant untapped economic potential. The Western Balkans territories are sensitive to external influences, and the growth stimulation is based on significant international financial and technical assistance. Monetary and financial systems in the region are heavily dependent on the euro. Private sector development is essential for socio-economic development, regional integration, improvement of competitiveness and job creation. Small and medium-sized enterprises are extremely important, given that they account for 99% of all enterprises in the Western Balkans, generate around 65% of total added value in the business sector and account for 73% of total employment in the business sector [European Commission, 2020b]. In this context, it is appropriate to pay attention to the support of startups and small and medium-sized enterprises in strategic sectors of the Western Balkans, such as tourism and the digital sector.

GDP growth is not sufficient to reduce the high unemployment rate, to ensure formal jobs or to reverse the trend of large-scale migration. The main reasons for emigration include poverty, unemployment and lack of opportunities. Pessimism, hopelessness, corruption and a lack of structural change are currently important factors supporting emigration. Making the labour market more efficient is one of the biggest challenges for the economic and social development of the region. Getting a job is a matter of connections, not knowledge and skills [Zubal'ová, 2017]. The average unemployment rate of the six Western Balkans economies was around 17% in 2019 [Eurostat, 2020]. Kosovo had the highest unemployment rate (25.6%) and Serbia the lowest (10.5%).

In 2019, the employment rate in the Western Balkans region rose to a historic high of 45.6% for the 15-64 age group. Jobs were generated mainly in the service sector, followed by construction and industry. Employment continued to decline in agriculture. In 2019, Kosovo had the lowest minimum wage in the Western Balkans (EUR 130 for

workers under 35 and EUR 170 for workers over 35). The highest minimum wage in 2019 was in Serbia (EUR 344.4).

The "OPEN MARKETS" pillar of the 2020 Index of Economic Freedom for Western Balkans is shown in Graph 5. Within this pillar, the trade freedom, freedom of investment and financial freedom indicators are evaluated. According to the "OPEN MARKETS" pillar, the Western Balkans score is slightly below to the EU average.

Graph 5 Index of Economic Freedom 2020 - OPEN MARKETS



AL – the Republic of Albania, BA – the Republic of Bosnia and Herzegovina, ME – the Republic of Montenegro, MK – the Republic of North Macedonia, RS – the Republic of Serbia, XK – the Republic of Kosovo

Source: own processing according to Index of Economic Freedom 2020

Foreign trade holds an important position in the Western Balkans economy, largely contributing to the economic growth and production of gross domestic product, and also forms a substantial part of foreign exchange revenue [Kašťáková & Ružeková, 2019]. The EU is the Western Balkans' largest business partner, accounting for 69.4% to 82.9% of total exports and 61.8% of total imports in 2019 [European Commission, 2020a].

The major share of the Western Balkans economy is represented by agriculture, textile industry, energy and construction, which do not produce products requiring usage of advanced technologies and education of employees. Albania and Montenegro depend on tourism. Kosovo is an extremely complicated economic area, the business environment of which has discouraging parameters for investors despite the positive results in 2019 [Ministry of Foreign and European Affairs of the Slovak Republic, 2020].

The investment environment in the Western Balkans is characterized by a weak level of the rule of law, insufficient enforcement of state aid rules, shadow economy, insufficient access to finance and low levels of regional integration. EU companies are the biggest investors in the region, providing 73% of foreign direct investment. They are thus the main external driver of growth and jobs in the region. The growing business

and investment activity of third countries in the Western Balkans often does not take into account socio-economic and financial sustainability or EU rules for public procurement. The banking sector in Western Balkans remains relatively stable.

Conclusion

According to the 2020 Index of Economic Freedom, the best score from the Western Balkans territories was achieved by the Republic of North Macedonia. Montenegro had the worst score. All the countries scored 61.5 - 69.5, the global average was 61.6 and the European regional average was 69.8. The main obstacle to greater economic freedom in the Western Balkans territories is the very poor performance of the rule of law indicators.

The Western Balkans territories are criticized especially for the lack of austerity measures by the government and public institutions, the inflexible labor market and the slow implementation of necessary reforms. Emigration of young people and the "brain drain" are considered to be key problems for the region. The Western Balkans received weak rating also for corruption, which is still at a high level. Robust results in the fight against corruption are needed to mitigate the real threats to democratic structures and for a stable and transparent business environment. High level and political corruption need to be tackled in a clearer and more consistent way.

The Western Balkans territories have received high rating for their level of trade freedom and stable public finance. The EU is the largest trading partner, a source of incoming foreign investments and a major destination for external migration. These close economic relations have been supported by, inter alia, the Stabilization and Association Agreements between the EU and individual territories of the Western Balkans, which also include provisions on a deep and comprehensive free trade area. Implementation of these provisions means the removal of customs and non-tariff barriers, liberalization of trade in services, extensive harmonization of trade, investment regulations and institutions.

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Autorské právo a obchod pod prizmom európskej smernice o online prenosoch vysielateľov a retrasmisii¹

Marián Kropaj²

Copyright and trade under the prism of the European directive on online transmissions of broadcasting organisations and retransmissions

Abstract

The author draws attention to Directive (EU) 2019/789 of the European Parliament and of the Council laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC ("Online Broadcasting and Retransmission Directive"). The topicality of the paper is related to the obligation to transpose this directive into national law by 7 June 2021. The author points out the need to modify several definitions of copyright uses (eg broadcasting, retransmission) and to add new terms introduced by the directive (eg direct injection).

Key words

copyright, media, investment, cultural diversity

JEL Classification: K12, K19

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Úvod

S deklarovaným cieľom zlepšiť cezhraničnú dostupnosť televíznych a rozhlasových programov na jednotnom trhu EÚ, a to uľahčením vysporiadania autorského práva a práv súvisiacich s autorským právom na niektoré online služby vysielateľov a na retrasmisiu televíznych a rozhlasových programov inými prostriedkami než káblom, bola dňa 17. 4. 2019 prijatá tzv. smernica stanovujúca pravidlá výkonu autorského práva a práv súvisiacich s autorským právom uplatniteľná na niektoré online vysielania vysielateľov a retrasmisie televíznych a rozhlasových programov. Smernica prináša možnosť na rozšiaľetie programov s pôvodom v iných členských štátach v prospech používateľov v celej Európskej únii uľahčením licencovania autorského práva a práv súvisiacich s autorským právom k dielam a iným predmetom ochrany, ktoré sú súčasťou vysielania určitých typov televíznych a rozhlasových programov.³ Smernica nadobudla účinnosť 7. 6. 2019 potom čo bola predtým zverejnená 17. 5. 2019 v Úradnom vestníku EÚ.

¹ KEGA, no. 020EU-4/2019 - Publishing of a new textbook from the subject Basics of Law in English for international students and Slovak students studying in English.

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³ Smernica Európskeho parlamentu a Rady (EÚ) 2019/789 zo 17. apríla 2019, ktorou sa stanovujú pravidlá výkonu autorského práva a práv súvisiacich s autorským právom uplatniteľné na niektoré online vysielania

Smernica obsahovo pozostáva z 27 recitálov a zo 14 článkov. Možno ju považovať za jednu z tých rozsahom stručnejších, pričom je rozumne kategorizovaná do piatich kapitol – všeobecné ustanovenia, vrátane definícií pojmov (kapitola I), doplnkové online služby vysielateľov (kapitola II), retransmisia televíznych a rozhlasových programov (kapitola III), prenos programov prostredníctvom priameho vstupu (kapitola IV) azáverečné ustanovenia (kapitola V). Ku každému článku prislúcha jeden alebo viac recitálov.

Televízne a rozhlasové programy sú dôležitými prostriedkami podpory kultúrnej a jazykovej rozmanitosti, sociálnej súdržnosti a širšieho prístupu k informáciám.

Predmetnú smernicu je nutné transponovať v lehote do 7. júna 2021 do vnútrosťného práva prostredníctvom novelizácie zákona č. 185/2015 Z. z. Autorský zákon, čím je daná aktuálnosť zvolenej témy.

Príspevok sa zameriava najmä na podrobnejšie predstavenie tejto problematiky a bližšie analyzuje pravidlá pre programy vysielané prostredníctvom priameho vstupu.

Medzi hlavné klúčové oblasti smernice možno zaradiť tzv. „zásadu krajiny pôvodu“ a rozšírenie povinnej kolektívnej správy práv na retransmisiu rozhlasových a televíznych programov inými prostriedkami než káblom.

Aktuálny Autorský zákon bude potrebné prispôsobiť aplikačným požiadavkám na cezhraničné poskytovanie doplnkových on-line služieb vysielateľov, rozšíriť rozsah povinnej kolektívnej spravovaných práv a posúdiť možnosti vysporiadania práv pri nových technológiách prenosu programov – priamy vstup.

1 Metodika práce

Cieľom predkladaného článku je priblížiť novú smernicu Európskeho parlamentu a Rady (EÚ) 2019/789 zo 17. apríla 2019, ktorou sa stanovujú pravidlá výkonu autorského práva a práv súvisiacich s autorským právom uplatniteľné na niektoré online vysielania vysielateľov a retransmisie televíznych a rozhlasových programov a ktorou sa mení smernica Rady 93/83/EHS a uvádzat úvahy de lege ferenda vo vzťahu k zákonom č. 185/2015 Z. z. Autorského zákona.

Predkladaný článok je z hľadiska použitých metód spoločenskovedným, teoretickým príspevkom. Pri jeho spracovaní boli použité všeobecné vedecké metódy, najmä analýza a syntéza, ďalej metóda indukcie a dedukcie, metóda abstrakcie, metóda porovnávania a metóda zovšeobecňovania. Autor k dosahovaniu cieľov využíva najmä analytickú, komparatívnu a historickú metódu.

vysielateľov a retransmisie televíznych a rozhlasových programov a ktorou sa mení smernica Rady 93/83/EHS, bod. 1.

2 Výsledky a diskusia

2.1 Problémové aspekty cezhraničných doplnkových online služieb

Pokiaľ ide o doterajšiu ochranu nositeľov práv, tak tá je zabezpečená najmä v smernici EP a Rady 2001/29/ES a smernici EP a Rady 2006/115/ES. Cezhraničné sate litné vysielanie a kálovú retransmisiu uľahčuje najmä smernica Rady 93/83/EHS, ktorá je však obmedzená len na satelitné vysielanie a nevzťahuje sa na online služby, ktoré sú doplnkom vysielania. Okrem toho retransmisia z iných členských štátov sa obmedzuje na súčasné, nezmenené a neskrátené retransmisie kálovými alebo mikrovlnnými systémami a nevzťahuje sa na retransmisie šírené inými technológiami.

Z dôvodu požiadavky na uľahčenie cezhraničného poskytovania online služieb s pôvodom v iných členských štátov je potrebné prispôsobiť právny rámec pri súčasnom zohľadnení financovania a výroby kreatívneho obsahu najmä v prípade audiovizuálnych diel pri doplnkových online službách.

Namiesto tradičných kanálov sa postupne začalo čoraz viac využívať sledovanie programov cez tzv. on-line služby. Prispôsobiť sa tejto situácii sa musel aj právny rámec autorského práva a práv súvisiacich s autorským právom, a to úpravou vysporiadania práv s množstvom nositeľov práv k rôznym kategóriám diel a iným predmetom ochrany, ktoré sa nachádzajú vo vysielaní i v retransmitormi ponúkaných „balíkoch“ programov.

Smernica s cieľom uľahčenia vysporiadania práv na cezhraničné poskytovanie doplnkových služieb zavádzza tzv. zásadu krajiny pôvodu pri výkone autorských práv a práv súvisiacich s autorským právom. Na základe tejto zásady môže vysielateľ verejne prenášať alebo sprístupňovať verejnosti svoje programy pri poskytovaní doplnkových online služieb, vrátane vysporiadania nositeľov práv a ich zástupcov (napr. organizácie kolektívnej správy).⁴ Táto zásada sa však nemá vzťahovať na žiadny následný verejný prenos diel alebo iných predmetov ochrany po drôte alebo bezdrôtovými prostriedkami alebo na akékol'vek následné sprístupňovanie diel ani iných predmetov ochrany verejnosti, a to po drôte alebo bezdrôtovými prostriedkami, takým spôsobom, že k nemu jednotlivec môže mať prístup z miesta a v čase, ktoré si sám zvolí, alebo ani na akékol'vek následné vyhotovenie rozmnožení diel alebo iných predmetov ochrany, ktoré sú obsiahnuté v doplnkovej online službe.⁵

Na určité typy programov sa zásada krajiny pôvodu nevzťahuje. Konkrétnie ide o spravodajské a publicistické programy, programy vlastnej produkcie vysielateľov financovanej z vlastných zdrojov a/alebo aj zo zdrojov pochádzajúcich z verejných rozpočtov. Zásada sa nevzťahuje ani na televízne vysielanie športových podujatí. Na vlastnú produkciu vysielateľa sa zásada nevzťahuje a nebráni ani slobode nositeľov práv a vysielateľov dohodnúť sa na obmedzenom využívaní ich práv vrátane územných obme dzení. Zásada nezavádzza ani povinnosť vysielateľom verejne prenášať alebo sprístupňovať verejnosti programy v inom štáte ako je štát, v ktorom majú svoje hlavné sídlo.

⁴ Pozri ADAMOVÁ, Z., Kolektívna správa práv autorského práva a práv súvisiacich s autorským právom. In ŠVIDROŇ, J., ADAMOVÁ, Z., NÁVRAT, M., ŠKREKO, A. Právo duševného vlastníctva v informačnej spoločnosti a v systéme práva. J. Švidroň (ed.) Bratislava: VEDA, 2009, s. 157 – 285.

⁵ Smernica Európskeho parlamentu a Rady (EÚ) 2019/789 zo 17. apríla 2019, ktorou sa stanovujú pravidlá výkonu autorského práva a práv súvisiacich s autorským právom uplatnitelé na niektoré online vysielania vysielateľov a retransmisie televíznych a rozhlasových programov a ktorou sa mení smernica Rady 93/83/EHS, bod. 9.

Stanovovanie výšky platby za predmetné práva má zohľadňovať dĺžku trvania online dostupnosti programov zahrnutých v službe, potenciálne publikum a poskytované jazykové verzie. Prípustné sú osobitné metódy výpočtu výšky platby založené na príjmoch vysielateľa. Smernica nebráni tomu, aby v zmysle zmluvnej slobody nadálej dochádzalo k obmedzeniu využívania práv, ktorých sa týka zásada krajiny pôvodu, pokial' to nie je v rozpore európskym právom.

2.2 Doterajšia právna úprava ochrany nositeľov práv a potreba prijatia novej smernice

Pokial' ide o doterajšiu ochranu nositeľov práv, tak tá je zabezpečená najmä v smernici EP a Rady 2001/29/ES a smernici EP a Rady 2006/115/ES. Cezhraničné satelitné vysielanie a káblovú retransmisiu uľahčuje najmä smernica Rady 93/83/EHS, ktorá je však obmedzená len na satelitné vysielanie a nevzťahuje sa na online služby, ktoré sú doplnkom vysielania. Okrem toho retransmisia z iných členských štátov sa obmedzuje na súčasné, nezmenené a neskrátené retransmisie káblovými alebo mikrovlnnými systémami a nevzťahuje sa na retransmisie šírené inými technológiami.⁶

Z dôvodu požiadavky na uľahčenie cezhraničného poskytovania online služieb s pôvodom v iných členských štátov je potrebné prispôsobiť právny rámec pri súčasnom zohľadnení financovania a výroby kreatívneho obsahu najmä v prípade audiovizuálnych diel pri doplnkových online službách.

Smernica s cieľom uľahčenia vysporiadania práv na cezhraničné poskytovanie doplnkových služieb zavádza tzv. zásadu krajiny pôvodu pri výkone autorských práv a práv súvisiacich s autorským právom. Na základe tejto zásady môže vysielateľ verejne prenášať alebo sprístupňovať verejnosti svoje programy pri poskytovaní doplnkových online služieb, vrátane vysporiadania nositeľov práv a ich zástupcov (napr. organizácie kolektívnej správy).⁷ Táto zásada sa však nemá vzťahovať na žiadny následný verejný prenos diel alebo iných predmetov ochrany po drôte alebo bezdrôtovými prostriedkami alebo na akékol'vek následné sprístupňovanie diel ani iných predmetov ochrany verejnosti, a to po drôte alebo bezdrôtovými prostriedkami, takým spôsobom, že k nemu jednotlivec môže mať prístup z miesta a v čase, ktoré si sám zvolí, alebo ani na akékol'vek následné vyhotovenie rozmnožení diel alebo iných predmetov ochrany, ktoré sú obsiahnuté v doplnkovej online službe.⁸

Na určité typy programov sa zásada krajiny pôvodu nevzťahuje. Konkrétnie ide o spravodajské a publicistické programy, programy vlastnej produkcie vysielateľov financovanej z vlastných zdrojov a/alebo aj zo zdrojov pochádzajúcich z verejných rozpočtov. Zásada sa nevzťahuje ani na televízne vysielanie športových podujatí. Na vlastnú

⁶ K Ceste k novej legislatíve v oblasti vysielania a retransmisie pozri SLOVÁK, J. (2019). Analýza smernice o online prenosoch vysielateľov a o retransmisii programov. Duševné vlastníctvo, 23(4), 20.

⁷ Pozri ADAMOVÁ, Z. Kolektívna správa práv autorského práva a práv súvisiacich s autorským právom. In ŠVIDROŇ, J., ADAMOVÁ, Z., NÁVRAT, M., ŠKREKO, A. Právo duševného vlastníctva v informačnej spoločnosti a v systéme práva. J. Švidroň (ed.) Bratislava: VEDA, 2009, s. 157 – 285.

⁸ Smernica Európskeho parlamentu a Rady (EÚ) 2019/789 zo 17. apríla 2019, ktorou sa stanovujú pravidlá výkonu autorského práva a práv súvisiacich s autorským právom uplatnitel'né na niektoré online vysielania vysielateľov a retransmisie televíznych a rozhlasových programov a ktorou sa mení smernica Rady 93/83/EHS, bod. 9.

produkciu vysielateľa sa zásada nevzťahuje a nebráni ani slobode nositeľov práv a vysielateľov dohodnúť sa na obmedzenom využívaní ich práv vrátane územných obmedzení. Zásada nezavádza ani povinnosť vysielateľom verejne prenášať alebo sprístupňovať verejnosti programy v inom štáte ako je štát, v ktorom majú svoje hlavné sídlo. Stanovovanie výšky platby za predmetné práva má zohľadňovať dĺžku trvania online dostupnosti programov zahrnutých v službe, potenciálne publikum a poskytované jazykové verzie. Prípustné sú osobitné metódy výpočtu výšky platby založené na príjmoch vysielateľa. Smernica nebráni tomu, aby v zmysle zmluvnej slobody nadálej dochádzalo k obmedzeniu využívania práv, ktorých sa týka zásada krajiny pôvodu, pokial' to nie je v rozpore európskym právom. Zásada sa nevzťahuje ani na televízne vysielanie športových podujatí. Na vlastnú produkciu vysielateľa sa zásada nevzťahuje a nebráni ani slobode nositeľov práv a vysielateľov dohodnúť sa na obmedzenom využívaní ich práv vrátane územných obmedzení. Zásada nezavádza ani povinnosť vysielateľom verejne prenášať alebo sprístupňovať verejnosti programy v inom štáte ako je štát, v ktorom majú svoje hlavné sídlo. Stanovovanie výšky platby za predmetné práva má zohľadňovať dĺžku trvania online dostupnosti programov zahrnutých v službe, potenciálne publikum a poskytované jazykové verzie. Prípustné sú osobitné metódy výpočtu výšky platby založené na príjmoch vysielateľa. Smernica nebráni tomu, aby v zmysle zmluvnej slobody nadálej dochádzalo k obmedzeniu využívania práv, ktorých sa týka zásada krajiny pôvodu, pokial' to nie je v rozpore európskym právom.

2.3 Kolektívna správa práv pri uplatňovaní retransmisie online doplnkových služieb

Smernica zavádza povinnú kolektívnu správu práv s cieľom zabezpečiť dostatočnú ochranu proti neoprávnenému použitiu diel a iných predmetov ochrany. Nositelia práv by za retransmisiu svojich diel mali dostať primeranú odmenu v súlade so smernicou EP a Rady 2014/26/EÚ. Zohľadniť by sa mala ekonomická hodnota používania práv v obchode vrátane hodnoty prisudzovanej spôsobu retransmisie. Zmluvné vztahy medzi organizáciami kolektívnej správy a prevádzkovateľmi retransmisie by sa mali týkať aj nositeľov práv, ktorých organizácia kolektívnej správy práv nezastupuje a to bez možnosti nositeľov práv vylúčiť svoje diela z pôsobnosti tohto mechanizmu smernice. V prípade viacerých organizácií kolektívnej správy práv má členský štát určiť, ktorá organizácia, resp. viaceré majú mať možnosť udelenia/odmietnutia súhlasu na retransmisiu.

Prirodzene predmetom povinnej kolektívnej správy práv uplatňovanej v zmysle smernice nie sú žiadne práva vysielateľov týkajúce sa ich vysielaní, vrátane práv k obsahu programov. Obchodné vztahy medzi prevádzkovateľmi retransmisie a vysielateľmi sú vo všeobecnosti pretrvávajúce, preto aj vysporiadanie práv pre nich bude pomerne jednoduché. Pre prevádzkovateľov retransmisii je pomerne jednoduché získať licencie od vysielateľov, preto nie je potrebné tento proces nijako zjednodušovať. Naproti tomu získanie licencí priamo od nositeľov práv k dielam ako už bolo uvedené bolo veľmi komplikované a spojené s rizikom, že chránené diela sa použijú bez súhlasu autorov, producentov, či iných nositeľov práv bez ich súhlasu a bez vyplatenia primeranej odmeny. Pravidlá tejto smernice týkajúce sa práva na retransmisiu vykonávaných vysielateľmi, pokial' ide o ich vlastné vysielanie, neobmedzujú nositeľov práv v prevode buď na vysielateľa, alebo na organizáciu kolektívnej správy práv. Týmto spôsobom sa môžu podieľať priamo na odmene, ktorú vypláca prevádzkovateľ retransmisie. Členské štáty

majú možnosť uplatňovania pravidiel vyplývajúcich zo smernice aj na situácie, keď sa pôvodné vysielanie, ako aj retransmisia uskutočňujú na ich území. Osobitne smernica rieši aj situáciu kedy dochádza k prenosu programu len distribútorom signálu bez toho, aby dochádzalo k prenášaniu verejnosti. Pokiaľ vysielatelia prenášajú signál verejnosti, resp. vysielajú pôvodné vysielanie, a tiež prenášajú uvedený signál iným organizáciám prostredníctvom techniky priameho vstupu, ide o samostatný verejný prenos, ktorý je odlišný od prenosu vykonávaného vysielateľom.

Problematika priameho vstupu bola na úrovni EÚ predmetom značných polemík a diskusíi. Dišputovalo sa o tom, o aký autorskoprávny spôsob použitia diela ide, či ide o káblovú retransmisiu alebo za jeden iný verejný prenos, resp. dva rôzne samostatné verejné prenosy. V tomto súvise vznikali mnohé otázky súvisiace so zodpovednosťou, vysporiadáním práv s nositeľmi, vrátane adekvátneho získania ich súhlasu a úhrady odmeny. Spornosť priameho vstupu vyplývala z toho, že táto technológia sa často využívala na obidenie zachytania už verejnosťou prijímaného vysielania od vysielateľa a na následné vloženie signálu s vysielaním do káblovej siete. Až do priatia smernice neexistovala jednotná definícia priameho vstupu ani žiadna ucelená právna regulácia na úrovni celej EÚ. V zmysle smernice možno chápať priamy vstup ako špecifickú techniku prenosu signálu využívanú vysielateľmi, resp. dvojfázový technický proces, pri ktorom vysielateľ prenáša signál s programami inej organizácie, než je vysielateľ – distribútorovi, a to takým spôsobom, že signál s programami nie je počas tohto prenosu prístupný verejnosti.⁹ K prenosu signálu medzi vysielateľom a distribútorom dochádza po súkromnej línií z jedného bodu do iného bodu alebo cez satelit. Signál si následne prevezme distribútor, ktorý ho posúva na sledovanie divákom, resp. predplatiteľom určitej služby.

Smernica vymedzuje dva typy priameho vstupu.

Pri tzv. čistom priamom vstupe (z angl. *pure direct injection*) smernica klasifikuje oba akty prenosu ako jediný verejný prenos, na ktorom sa svoju časťou podielajú vysielatelia i distribútori signálu. Sporné zostáva určenie pomeru. Ako poukazuje Slovák (2019) v praxi v rámci tohto jediného verejného prenosu vysielateľ prenáša svoj signál s programami prostredníctvom priameho vstupu distribútorovi bez toho, aby vysielateľ sám súbežne prenášal tento signál s programami priamo verejnosti. Obaja musia na svoju príslušnú časť takéhoto jediného verejného prenosu získať súhlas od nositeľov práv. Spoločná solidárna zodpovednosť im nevzniká. Pokiaľ teda vysielateľ, resp. distribútor signálu nevysporiada práva k svojej časti verejného prenosu, tak druhý nie je automaticky zaviazaný ich vysporiadať namiesto neho. Členské štáty majú rozhodnúť ako si budú môcť vysielatelia a distribútori vysporiadať práva. Môže byť zakotvený mechanizmus povinnej kolektívnej správy práv na použitie predmetov ochrany prostredníctvom priameho vstupu.

Druhým typom priameho vstupu je tzv. paralelný priamy vstup (z angl. *parallel direct injection*). Vysielatelia paralelne popri svojom klasickom vysielaní pre verejnosť zároveň prenášajú signál aj distribútorom technikou priameho vstupu. V uvedenom prípade sa teda rozlišuje vysielanie vysielateľov a samostatný verejný prenos distribútorov, ktorý sa posudzuje ako forma (káblovej) retransmisie a riadi sa pravidlami retransmisie, vrátane povinnej kolektívnej správy práv. Z toho dôvodu smernica zmenila aj definíciu káblovej retransmisie v starej smernici tým, že ju spravila technologicky neutrálnejšou

⁹ SLOVÁK, J. (2019). Analýza smernice o on-line prenosoch vysielateľov a o retransmisii programov. *Duševné vlastníctvo*, 23(4), 24.

vo vzťahu k získaniu signálu s programami od vysielateľa na účel retransmisie (Slovák, 2019).

Organizácie kolektívnej správy práv sú povinné za účelom zabezpečenia efektívnej činnosti a presného rozdelenie získaných príjmov viesť riadne záznamy o členstve, licenciách a použití diel a iných predmetov ochrany.

Zásada krajiny pôvodu sa má uplatňovať aj na existujúce zmluvy, ale s prechodným obdobím. Uvedené je odôvodnené snahou zabrániť obchádzaniu uplatňovania tejto zásady napr. predĺžovaním platnosti existujúcich zmlúv o výkone autorského práva alebo práv súvisiacich s autorským právom týkajúcich sa poskytovania doplnkovej online služby. Prechodné obdobie má poskytnúť dostatočný čas na zosúladenie vzťahov v súlade s predmetnou smernicou. Prechodné obdobie má súčasne poskytnúť vysielateľom, distribútorom signálu a nositeľom práv dostatočný čas na prispôsobenie sa novým pravidlám.

Z cieľom posúdenia právnej regulácie pre spotrebiteľov, kreatívny priemysel, úroveň investícii do nového obsahu a snahy o zlepšenie kultúrnej diverzity má byť predmetná smernica podrobenná testu na vylepšenie právnej regulácie.

Kolektívna správa práv má byť zavedená cielene a obmedziť sa má na špecifické služby.

2.4 Transpozícia smernice do Autorského zákona

Na základe novej smernice vyplýva členským štátom povinnosť zosúladíť vnútrosťatnú legislatívnu s účelom smernice. Podstatne sa novelizácia dotkne viacerých ustanovení upravujúcich kolektívnu správu práv. Ustanovenie § 146 upravuje povinne kolektívne spravované práva. Bude potrebné rozšíriť povinnú kolektívnu správu práv na ďalšie spôsoby retransmisie, vrátane retransmisie cez internet v určitej obmedzenej kontrolovanateľnej forme. Zo smernice bude potrebné prevziať aj prenos programov prostredníctvom priameho vstupu – tzv. direct injection. Smernica upravuje viaceré nové definície, ktoré je potrebné vhodne vymedziť aj v Autorskom zákone. Ide napríklad o definícií autorskoprávnych spôsobov použitia diela vysielaním/retransmisiou v zmysle smernice. Vo vnútrosťatnej legislatívne je potrebné vymedziť aj viaceré nové pojmy – napr. priamy vstup, spravované prostredie, doplnková online služba, atď.

V zmysle smernice sa tak novelou Autorského zákona upravia určité definície autorskoprávnych spôsobov použitia (napr. vysielania, retransmisie) a doplnia sa nové pojmy, ktoré smernica zavádza (napr. priamy vstup). Novelizácia sa dotkne aj ustanovenia o spôsoboch použitia, ku ktorým možno uzatvárať rozšírené hromadné licenčné zmluvy, ako ustanovení o povinne kolektívne spravovaných právach.¹⁰ Vhodne bude nutné vymedziť v Autorskom práve aj tzv. zásadu krajiny pôvodu v kontexte povinne kolektívne spravovaných práv a určiť výnimky. Očakáva sa legislatívne vymedzenie kritérií pri sta-

¹⁰ K licenciam všeobecne a osobitne k licencnej zmluve k dizajnom pozri KROPAJ, M. Design license agreement. In Trends and Challenges in the European Business Environment. Proceedings of the 6 th. International Scintific Conference on Trade, International Business and Tourism. Vydavateľstvo Ekonóm. University of Economics in Bratislava. Mojmírovce, 2019, s. 260.

novovaní výšky platby za práva, na ktoré sa vzťahuje zásada krajiny pôvodu pri zohľadnení všetkých aspektov doplnkovej online služby – vlastnosti služby vrátane dĺžky trvania dostupnosti programov poskytovaných v rámci tejto služby, publikum a poskytované jazykové verzie. Precízne bude potrebné vymedziť spôsob výkonu práv na retransmisiu nositeľmi inými než vysielateľmi, tiež výkon práv na retransmisiu vysielateľmi. Pokiaľ ide o možnosť sprostredkovania dohody o udelení súhlasu na retransmisiu vysielania vo forme mediácie, tak treba pripomenúť, že práve ostatná novelizácia č. 306/2018 Z. z. zaviedla s účinnosťou od 1. 1. 2019 v rubrike s názvom Stážnosti a riešenie sporov nové ustanovenie § 176 ods. 2 upravujúce možnosť využitia na riešenie sporov s inou organizáciou kolektívnej správy, nositeľom práv, používateľom alebo právnickou osobou združujúcou používateľov mimosúdne spôsoby riešenia sporov, resp. postupy podľa zákona č. 244/2002 Z. z. o rozhodcovskom konaní v znení neskorších predpisov a rovnako zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov v znení neskorších predpisov. Organizácia kolektívnej správy iniciuje na riešenie sporov s právnickou osobou združujúcou používateľov mediáciu podľa zákona č. 420/2004 Z. z. o mediácii.

Transpozičná lehota do 7. júna 2021 má význam aj z hľadiska plynutia prechodných období a možnej budúcej revízie smernice. Analyzovaný princíp krajiny pôvodu sa viaže aj na existujúce uzavreté zmluvy na doplnkové on-line služby. Na základe smernice je zmluvným stranám poskytnutá dvojročná prechodná lehota počítajúca sa od uplynutia transpozičnej lehoty, počas ktorej musia zmluvy zosúladit' s novým princípom krajiny pôvodu. Uvedeným sa má zabrániť tomu, aby nedochádzalo pri existujúcich zmluvách k ich neustálemu predĺženiu bez súčasného zahrnutia princípu krajiny pôvodu. Na uplynutie transpozičnej lehoty sa viaže aj štvorročné prechodné obdobie na umožnenie vysielateľom, distribútorom signálu a nositeľom práv prispôsobiť sa novým pravidlám prenosu programov prostredníctvom priameho vstupu. Po štyroch rokoch od uplynutia transpozičnej lehoty dôjde k posúdeniu prínosu novej právnej úpravy pre spotrebiteľov, vplyvu na kreatívny priemysel a mieru investícií do nových programov. Toto neskoršie posúdenie môže byť súčasne podkladom pre budúcu revíziu smernice.

Záver

Článok komentuje novú európsku právnu úpravu a priblížuje nutné zmeny potrebné realizovať v autorskom práve v nadväznosti na predmetnú smernicu do 7. júna 2021. Predkladateľ smernice odôvodnil transponovanie predmetnej smernice do Autorského práva snahou pozitívne ovplyvniť kreatívny priemysel, zlepšiť investície do nového obsahu a predovšetkým podporiť kultúrnu diverzitu prostredníctvom vysielania a retransmisie televíznych a rozhlasových programov.

Privátať možno snahu viac podporiť širší prístup k informáciám na vnútornom trhu EÚ. Rozšírenie okruhu povinnej kolektívnej spravovaných práv nepochybne môže priniesť viac prostriedkov pre organizácie kolektívnej správy. Či to však povedie k zvýšeniu podpory kultúrnej a jazykovej rozmanitosti a vyššej podpore autorov, producentov a iných nositeľov práv je zatiaľ otázne. Samotná idea zjednodušenia vysporiadania práv s množstvom nositeľov práv je správna.

Záverom treba poukázať na ustanovenia Autorského zákona, ktoré bude nutné zosúlaďiť so smernicou. Predovšetkým bude potrebné venovať pozornosť definíciam.

Možno predpokladat', že sa na účel aplikácie princípu krajiny pôvodu na konkrétné programy detailnejšie vyšpecifikuje bud' verejný prenos alebo vysielanie. Zmenu definície možno očakávať aj u pojmov retransmisia, resp. káblová retransmisia, najmä s ohľadom na priamy vstup. Do Autorského zákona sa zavedú nové pojmy doplnkové on-line služby a priamy vstup. Prirodzene súlad pojmov by mal nastať aj so zákonom č. 308/2000 Z. z. o vysielaní a retransmisii a o zmene zákona č. 195/2000 Z. z. o telekomunikáciách v znení neskorších predpisov, ktorý obsahuje definíciu retransmisie. V nadväznosti na transpozíciu smernice treba venovať pozornosť aj zákonom č. 220/2007 Z. z. o digitálnom vysielaní v znení neskorších predpisov, ktorý reguluje vysielanie a programové služby. Ustanovenie o spôsoboch použitia diela organizáciou kolektívnej správy práv (§ 80 AZ) bude upravené, keďže medzi doterajšími spôsobmi je uvedená retransmisia a vysielanie diel. Možno predpokladať doplnenie ust. § 146 a § 147 o povinne kolektívne spravovaných právach.

V čase kedy ešte nová právna úprava ani nevstúpila do účinnosti by bolo predčasné zaujímať k novej právnej úprave kategorické hodnotové súdy. Až dlhodobejšie používanie novej úpravy v praxi ukáže či zavedenie nového inštitútu viedlo k deklarovaným (predpokladaným) cieľom. V každom prípade možno konštatovať, že pod tlakom digitálneho veku dochádza k neustálemu vyvíjaniu stále modernejšej technológie a zvyšuje sa snaha čo najrýchlejšie poskytnúť program širokemu obecenstvu. Legislatíva nestačí v tejto oblasti s dychom, hoci pretrváva snaha držať krok s rozvojom najmodernejších technológií. Legislatíva by sa mala pokúsiť upraviť súčasné, ale aj možné budúce spôsoby prenosu diel, resp. cezhraničného vysielania.

Nie je zrejmé, či prebieha k novej právnej úprave širšia odborná diskusia. Gestorom je Ministerstvo kultúry SR, ktoré má vypracovať aj návrh novelizácie Autorského práva. V dobe dokončovania tohto článku nebolo známe, že by bol pripravený návrh na pripomienkové konanie a teda sa nemohla uskutočniť ani diskusia za účasti jednotlivých rezortov, odborných inštitúcií i verejnosti.

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Development and Intensity of Mutual Trade between the Visegrad Group and the Russian Federation¹

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Abstract

Russian's position in the foreign trade relations of the Visegrad Group countries has a long history. Russian Federation is an important trading partner for them, especially in the import of energy raw materials. Poland is the most active trading partner for the Russian Federation within the Visegrad Group. In 2018, the three most exported items of the Visegrad Group to the Russian Federation were machinery and nuclear reactors, cars, and electrical machinery. Mineral fuels accounted for 85 % of the Visegrad Group imports from the Russian Federation. The trade intensity between the Visegrad Group countries and the Russian Federation in 2014 - 2018 was higher than one, except for the Czech Republic. That indicates that the Russian Federation has exported relatively more goods to Slovakia, Poland and Hungary than to the rest of the world.

Key words

foreign trade, trade intensity index, the Russian Federation, the Visegrad Group.

JEL Classification:

F21, F14

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Introduction

The Central European region plays an extensive role in the integration grouping, within the regional grouping of the Visegrad Group has been operating for almost two decades. The Visegrad Group was originally founded on the 15th of February 1991, by three states (Hungary, Poland, and the Czech and Slovak Federal Republic = CSFR) in the city of Visegrad to agree on the resumption of mutual cooperation. The group was named Visegrad Three. In 1993, after the establishment of two separate republics, the Czech Republic and Slovakia, the group was renamed the Visegrad Four and consists of four countries: Hungary, Poland, the Czech Republic and Slovakia (V4) (Ministry of Foreign and European Affairs of the Slovak Republic, 2014).

The position of the Russian Federation in the foreign trade relations of the Visegrad Group countries has a long history as well as it is an important trading partner for them, especially in the import of energy raw materials. The Czech Republic has a specific position among the V4 countries and achieves a positive trade balance with the Russian

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Federation, which is unusual in comparison with other EU countries. The Russian-Ukrainian crisis, which began in late 2013, has resulted in the imposition of sanctions between the European Union and the Russian Federation. That weakened the mutual trade relations between the Visegrad countries and the Russian Federation to some extent. The energy sector remains a matter of interest, both from the EU perspective but also globally. For the V4 countries, the energy sector is of key importance, which Slovakia felt notably in 2009 during the gas crisis. The Visegrad Group represents a necessary transit region for Russian energy raw materials heading west to EU countries.

1 Methodology

This paper aims to examine the development and intensity of mutual trade between the V4 countries and Russia. Several theoretical methods were used, in the form of general methods (Abstraction, analysis, synthesis, deduction and induction). Special methods were used to clarify foreign trade data, for explicit and graphical display. At the same time, empirical methods were used, predominantly the comparison approach for comparing countries, regions and achieved results and a one-factor indicator of mutual trade evaluation.

The potential of mutual trade relations can be designated by the intensity of trade, which is measurable in international trade through the trade intensity index (TII). Trade intensity index is the ratio of the share of exports of country i to country j to the total exports of country i and the share of exports to country j to the value of total world exports. (World Bank, 2016). The calculation is based on:

$$\text{TII}_{ij} = \left(\frac{x_{ij}}{X_{it}} \right) / \left(\frac{x_{wj}}{X_{wt}} \right) \quad (1)$$

where:

x_{ij} – expresses the value of the first country's exports to the second country.

x_{wj} – expresses the value of the first country's total exports to the world.

X_{it} – expresses the value of world exports to the second country.

X_{wt} – expresses the total value of world exports.

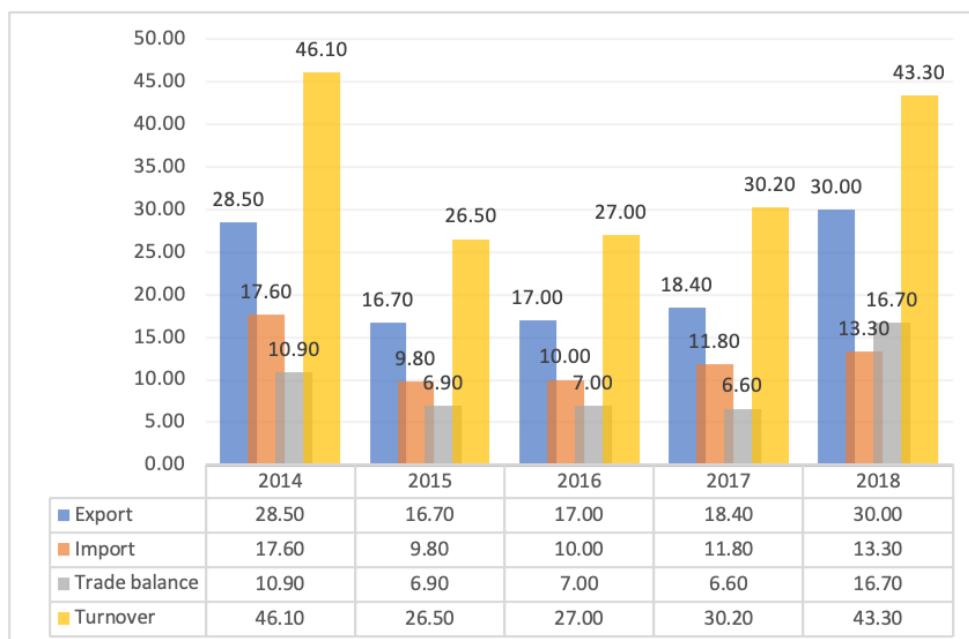
The values can reach three variations. $\text{TII} = 1$, when the exporting country i exports to the country j the same ratio that belongs to the country j concerning its share in world imports. Furthermore, $\text{TII} > 1$, when it comes to trade flows in higher values than might be expected given the importance of the country in the world economy, i.e. country i exports to country j in a larger proportion than to the whole world. Or if $\text{TII} < 1$, then the trade intensity is lower than might be expected.

The source of this research was statistical data based on the International Trade Centre, which provided data for the analysis of mutual foreign trade between the V4 countries and the Russian Federation. The commodity structure of mutual foreign trade was classified according to the nomenclature of the harmonized system. The research was limited to the period 2014 – 2018.

2 Results and Discussion

In the observed period from 2014 to 2018, mutual foreign trade had a fluctuating tendency. The highest values of goods exchange were reached in 2014. Subsequently, in 2015, there was a significant 42.5 % decline in mutual trade due to the Russian-Ukrainian crisis and gradually increased in the following years. The highest increase in 2018 was up to 43.3 % compared to the previous year, which was a result of higher world prices for energy raw materials. A significant part of mutual trade between Russia and the V4 countries was made of exports of Russian minerals, in the period under review it caused a positive trade balance from the Russian point of view. A detailed overview of the mutual exchange of goods in the years 2014 – 2018 is represented by graph 1.

Graph 1 Development of foreign trade of the Russian Federation with the V4 group in the years 2014 – 2018 (in bil. USD)



Source: Autor's own calculation according to International Trade Centre

However, it is also important to mention that the level of exports and imports is mutually influenced by the economic trend of preventing excessive imports and importing only necessary goods that countries cannot produce themselves or their production would be inefficient. At the same time, the size of the given business territory plays a certain role in terms of the sales market, consumer power, the economic situation and also the prevailing industrial focus of the country's economy (Jovanovic & Damnjanovic, 2014).

2.1 Territorial structure of the mutual trade

Within the Visegrad Four countries, Poland is the most active trading partner for Russia. Thanks to that, the V4 has a more significant representation in Russia's foreign trade from a territorial point of view. A detailed overview of the position of the V4 countries in the territorial structure of Russia's exports and imports in 2018 is shown in table 1.

Tab. 1 Position of V4 countries in the territorial structure of RF exports and imports, 2018 (in %)

	Export RF		Import RF	
	Share (in %)	Rank	Share (in %)	Rank
Slovakia	0.8	29	0.9	25
Czech Republic	1.1	19	1.6	14
Hungary	1.1	21	0.9	26
Poland	3.7	7	2.2	11
V4	6.7	-	5.6	-

Source: Autor's own calculation according to International Trade Centre

In terms of Russian export trade operations, Poland occupied 7th place with a share of 3.7 % and thus ranked among the TOP 10 export trade partners of Russia. The indicated proves Poland's stronger import activity and also its sharper trade dependence on Russia compared to the other V4 members. The aforementioned is broadly due to the disposition of a large consumer market. The Czech Republic followed Poland with a share of 1.1 %, then Hungary with the same share (1.1 %) and finally Slovakia (0.8 %). Hence, Slovakia plays the least level of significance for the Russia of all V4 countries in terms of the performance of export activities. Together, the V4 countries accounted for 6.7 % of Russian exports in 2018, which is still less than in Germany, the Netherlands and China.

As for Russia's import operations, in 2018 the Visegrad Group did not rank among the top 10 trading countries. Their share in Russian imports was 5.6 %. Russia exported the most to Poland (with a share of 2.2 %), followed by the Czech Republic (1.6 %) and Slovakia and Hungary with the same share of 0.9 %. Therefore, the V4 countries have the slightest significance for the Russian Federation in terms of import activities.

Poland dominated even in the case of Russia's position in the territorial structure of exports and imports of the V4 countries in 2018. Detailed overview of Russia's share and its rank in the territorial structure of V4's foreign trade is in table 2.

Tab. 2 The position of the Russian Federation in the territorial structure of exports and imports of the V4 countries, 2018

V4 Countries	Export V4		Import V4	
	Share RF	Rank RF	Share RF	Rank RF
Slovakia	1.9%	13	5.0%	6
Czech Republic	2.0%	13	3.2%	7
Hungary	1.5%	20	3.9%	9
Poland	3.1%	7	7.3%	3

Source: Autor's own calculation according to International Trade Centre

It can be seen from the above-mentioned table that in the area of exports of individual V4 countries, Russia had in 2018 the most important position in Poland, where it ranked 7th with a 3.1 % share. It was followed by the Czech Republic with a share of 2 % and the same placement as in Slovakia. In both cases, Russia reached 13th place, although the share of Russia in Slovak exports was slightly smaller and represented by 1.9 %. The last place within the V4 countries was taken by Hungary, whose share of Russia was only 1.5 %, with the 20th place of Hungary's export partners.

While analyzing imports, Russia's position was much stronger, in all V4 countries it was among the top 10 most important import partners. Russia had the best rank in Poland, where it placed 3rd with a share of 7.3 %. This was followed by Slovakia, the Czech Republic, and Hungary had the least dependence on Russian imports.

Based on the obtained data, we can state that in terms of the territorial structure of trade of Russia, there was a strong trade connection with Poland. The lowest level of business activities was recorded with Hungary and Slovakia. In Slovakia, however, it is important to take into account the size of the country and other factors that move it to a lower level compared to the other members of the V4. At the same time, a more significant trade dependence of the V4 countries in Russia was observed in terms of their imports of goods.

2.2 Commodity structure of the mutual trade

Commodity structure of trade of the V4 countries and Russia in 2018 sufficiently diverse. Commodities within exports and imports were also sufficiently different. Based on available data, in 2018 a significant share of V4 exports to Russia was made up of machinery and nuclear reactors, boilers (HS 84), which accounted for 27.7 %. In second place were cars (HS 87) with a share of 18.8 % and third place belonged to electrical machinery and equipment (HS 85) with a share of 12 %.

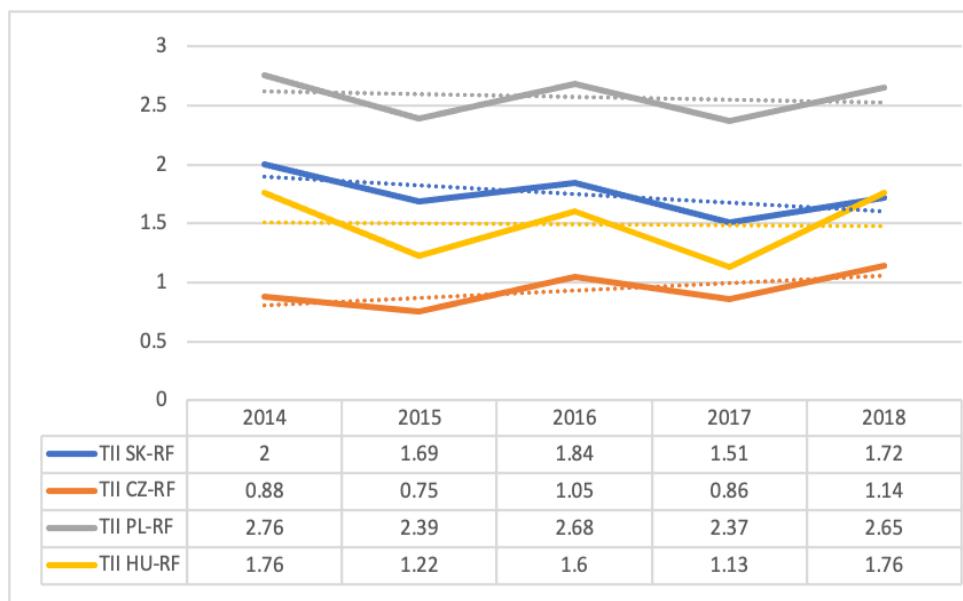
Together, these three established groups accounted for almost 58.5 % of V4 exports to Russia. Pharmaceutical products (HS 30) and plastics and plastic products (HS 39) followed, with the same share of 3.8% of total V4 exports to Russia.

In 2018, the V4 countries imported in value terms 30 billion USD from Russia. Mineral fuels (HS 27) accounted for the largest share of almost 85 % in imports of V4 from Russia. That indicates Russia's high dependence on exports, especially in terms of energy and minerals to these countries. The most important type of commodity were unspecified commodities (HS 99) with a share of 8 %, followed by iron and steel (HS 72) with a share of 4.7 %. Less significant items were inorganic and organic metal compounds (HS 28) and rubber and rubber products (HS 40), which accounted for less than 2 % of total V4 imports from Russia.

2.3 Intensity of the mutual trade

The degree of implementation of trade transactions between the V4 and Russia plays an influential role in mutual economic relations and their future development. A detailed overview of the development of the intensity of the Russian trade with the V4 countries in the years 2014 – 2018 based on the TII index is shown in graph 2.

Graph 2 Development of the trade intensity between the Russian Federation and the V4 countries in the years 2014 – 2018 with the trend line



Source: Autor's own calculation according to International Trade Centre

The values of the development of the intensity of trade relations between Russia and the Visegrad Group countries based on the TII index show that in the observed period Russia achieved a TII index value higher than 1 in each year examined with all countries except the Czech Republic. That means that Russia has carried out trade flows with a higher value than might be expected, given the importance of the country in the global economy. Russia has exported a relatively surpassing amount of goods to Slovakia, Poland, and Hungary than to the whole world, and thus these countries represent significant sales markets for Russia.

In terms of volatility of the achieved values, the most significant fluctuating tendency was observed in the examined period with Slovakia. With Poland, the TII index did not fall below 2 in the years under review. Therefore, we consider Poland to be Russia's strongest trading partner among the V4 members. With Hungary in 2014 and 2018, the achieved TII value completely coincided. With the Czech Republic, the intensity of Russian trade flows was significantly unstable. We can see that initially the value of the TII index, in 2014 and 2015 and also in 2017, was lower than 1 and thus the intensity of the business connection was at a lower level than could be expected. Only in 2016 and 2018, the TII exceeded the value of 1, when their mutual trade intensity visibly strengthened. Nevertheless, the Czech Republic was considered in this area as the country with which Russia has the weakest trade intensity within the V4.

The years 2015 and 2017 were comprehensively years of weakening foreign trade between the Russian Federation and the Visegrad Group. The indicated is connected with sanctions imposed on Russia, lower world prices for energy raw materials, which have caused a slowdown in the domestic economy, the devaluation of the Russian ruble, and a reduction in its exports to the European Union.

In addition to the development of trade intensity, the graph shows a prediction of the future possible values. Trend line representing the development with Poland and points to only a very slight decrease in trade intensity. The TII value should be around 2.5, which is considered positive. The trend line describing the intensity of the Russian Federation with Slovakia reached the steepest declining trend, with expected trade decline to the level of approximately 1.5. A similar situation took place in Hungary. Only with the Czech Republic, we can see a more significant increase and thus a positive development of trade intensity, from which we can assume the growth of mutual trade flows soon.

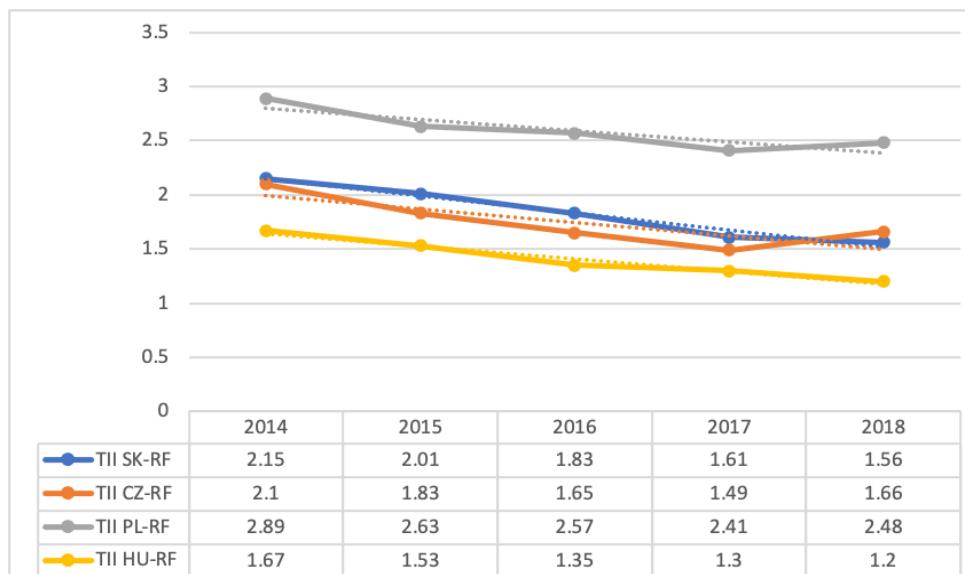
In the following section, we will examine the trade intensity from the perspective of the V4 countries with Russia. The detailed development is shown in the following graph 3.

The graph shows that all V4 countries, except Hungary, achieved a value of the TII index at least once higher than 2. A value lower than 1 was not reached in any of the studied countries. That indicates steady and more intensive trade flows compared to recorded data of Russian exports. Thus, selected V4 countries export a relatively higher amount of goods to Russia than to the whole world, and Russia acts as a valuable importer and their strong trading partner. The data from graph 3 does not show extreme fluctuations as in the previous data of trade intensity from the Russian point of view. The given development can be described as relatively stable.

The highest value of the TII index with Russia, which was higher than 2 during all studied years, was reached by Poland. That confirmed that in the period under review Poland was the largest trading partner among all V4 members. On the contrary, the lowest value of the TII index was in Hungary, which never reached the level of value 2.

All achieved values of TII of Hungary were lower in comparison with other V4 countries. Based on this fact, we can describe Hungary as the least intensive trading partner of Russia among the V4 countries. This also confirmed that the years 2015 and 2017 were accompanied by a weakening of international trade, which was also reflected in the relations between the Visegrad Four and Russia.

Graph 3 Development of the trade intensity of the V4 countries with the Russian Federation in the years 2014 – 2018 with the trend line



Source: Autor's own calculation according to International Trade Centre

Investors from the V4 countries have adapted to the crisis caused by the sanctions policy. In recent years, Russian investors have shown a steady interest in the V4 countries, which are geographically, culturally, politically and economically close. Russian companies are present in the V4 countries in the field of engineering, the financial sector, the energy sector, the fuel industry, metallurgy, and the chemical industry. (Kittová, 2020) Despite the trade policy restrictions introduced since the end of 2014, large Russian companies continue to invest in the V4 countries.

Conclusion

Based on this research on the development and intensity of mutual foreign trade between the V4 countries and Russia, we came to the following conclusions. Apart from significant participation in the foreign trade of EU countries, a certain dependence of the V4 countries' demand on Russia was demonstrated in the years 2014 - 2018. The ranking of the Visegrad Group countries in Russia's foreign trade is as follows: Poland, the Czech Republic, Hungary and finally Slovakia. From the point of view of the V4 countries, Russia had the most important position in Poland, then in the Czech Republic, Slovakia and Hungary. Within the framework of mutual trade cooperation, the V4 countries mostly exported machinery and equipment to Russia and imported energy raw materials.

The results of the research in the field of trade intensity also point to the existence of mutual intensity of foreign trade. From the point of view of the V4 countries a slight decrease in intensity is observed. On the contrary, Russia's intensity is slightly increasing. That can be explained by the fact that relations are sufficiently influenced by trade policy restrictions between the EU and Russia.

Trade and energy cooperation between the V4 countries and Russia is determined by the policy of ongoing sanctions between the EU and Russia. Nevertheless, we can state that cultural, economic, or scientific contacts between the V4 countries and Russia continue to take place regularly.

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The role of institutions in the fdi-growth relationship in a developing economy: a new evidence from Nigeria

Jonathan E. Ogbuabor¹ – Anthony Orji² – God'stme O. Eigbiremolen³
 – Charles O. Manasseh⁴ – Fidelia N. Onuigbo⁵

Abstract

Following the need for studies on the role of institutions in the foreign direct investment-economic growth relationship in Nigeria and the attendant challenges post by the global pandemic caused by Covid-19, this study investigated whether institutional quality enhances this relationship over the period 1981 – 2018. The study used institutional data from Freedom House, and the autoregressive distributed lag (ARDL) modeling framework. The results show that the role of institutions in enhancing the FDI-growth relationship in Nigeria is significant, both in the long-run and in the short-run. The results also show that trade is an important driver of growth in Nigeria. Among others, the study recommends the evolution of strong institutional framework that can create the enabling environment for inflow of investments into the Nigerian economy. Such institutional framework should entrench respect for the rule of law, property rights, civil liberties, transparency and accountability in governance. Furthermore, there is need to evolve policies that will continue to mitigate the adverse effect of the Covid-19 pandemic since FDI inflows and growth figures have been globally affected by the pandemic.

Key words:

Institutional Quality; Foreign Direct Investment; Economic Growth; ARDL Model

JEL Classification: N20; F21; F43; C22

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Introduction

One incontrovertible fact in economic literature is that economic growth is one of the fundamental objectives of every economy. In other words, every economy seeks to grow. But economies do not just grow; they require effective policies and appropriate institutional frameworks to grow. According to Kazeem (2014), attempts at explaining the drivers of growth in various economies have generated an avalanche of reasons

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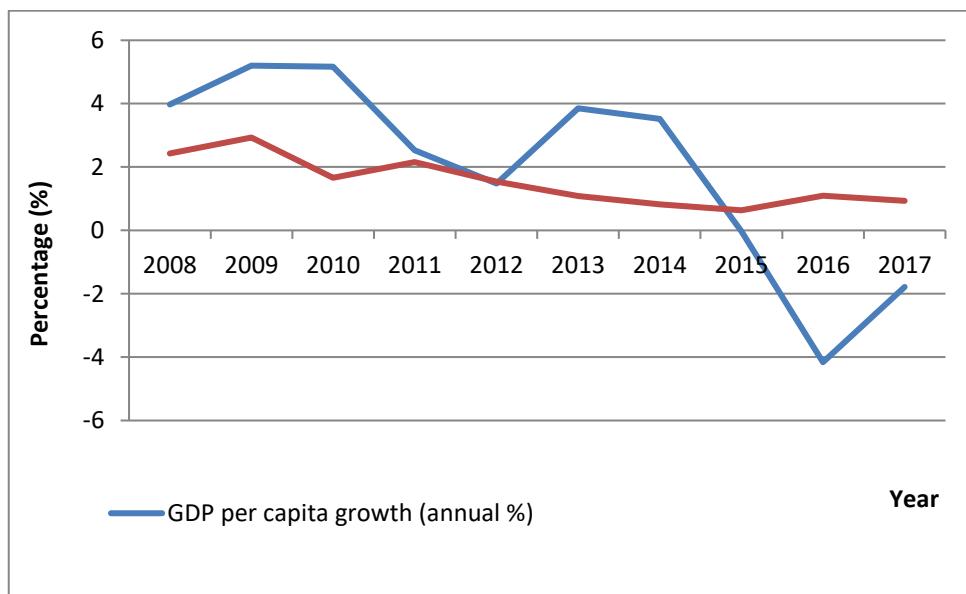
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such as economic, social, cultural, political and institutional factors. However, this study is particularly interested in the contribution of foreign direct investment (FDI) in Nigeria's growth process. This is consistent with some aspects of the extant literature, such as Peres, Ameer and Xu (2018), which have highlighted FDI not only as a key factor of globalization but also as an important stimulator of productivity enhancement, technological advancement, and job creation. Here, FDI is conceptualized as a direct investment in production or business in a country by an individual or company of another country, either by buying a company in the target country or by expanding operations of an existing business in that country (Adeleke, Olowe & Fasesin, 2014). Given the existence of some empirical studies on the FDI-growth relationship in developing countries, one may then wonder if this study is still necessary. Our response to such concern is that this study is very relevant at this time for several reasons. First, the underdeveloped nature of the Nigerian economy means that every effort aimed at increasing the pace and volume of FDI into the economy should be explored. This empirical evidence is one of such efforts which will provide evidence-based policy recommendations to drive the inflow of FDI into the Nigerian economy. Ugwuegbe, Okore and Onoh (2013) share this view. Second, the volume of FDI inflow into the Nigerian economy in recent years leaves so much to be desired when compared to other African economies. For instance, the inflow of FDI into Nigeria declined sharply to an 8-year low of \$981.7 million in 2017, while African countries like Egypt and Ghana recorded FDI inflow of \$7.4 billion and \$3 billion in 2017, respectively. In the same 2017, South Africa, which is the second largest economy in Africa after Nigeria, recorded \$150 billion FDI inflow. This shows that a lot of work needs to be done to enhance FDI inflow into Nigeria. According to Tokunbo (2018), Nigeria needs at least \$14 billion FDI inflow, but it has only obtained 7% of that requirement. This study contributes to the efforts towards driving FDI inflow to Nigeria.

Third, the decline in FDI inflow in Nigeria raises the important question about the role of institutions in the FDI-growth relationship in the country. Ozekhome (2017) pointed out that countries that have experienced rapid and sustained economic growth are those with sound institutional frameworks that sufficiently attract investment, technological innovation, and invariably make the business environment friendly for foreign investors. The quality of institutions in a country will go a long way in determining the willingness of foreigners to invest in the country. Countries with good institutional qualities are expected to attract more investors than others with poor institutions. Arshad (2016) noted that institutions and different institutional quality variables like corruption, rule of law, political rights, and civil liberties are consistently found to be significantly affecting economic growth. This view is supported by Rodrik (2007), which explained that good institutions are those institutions supporting economic growth in the best possible way. These institutions should be able to protect property rights, uphold the rule of law and rein in corruption, provide appropriate regulation and control market failure, support macroeconomic stability, and promote cohesion of social life of the society. Thus, the concept of institutional quality is of paramount importance in the FDI-growth nexus in Nigeria. Unfortunately, the extant literature has hardly paid any attention to the role of institutions in this relationship. This study fills this gap. Interestingly too, the recent challenges posed by the Covid-19 global pandemic has made it very pertinent to re-examine these issues and offer some economic policy prescriptions to guide policy makers in this post Covid-19 era in Nigeria and other similar economies.

The history of Nigeria's FDI inflow can be traced back to the colonial era, when the colonial masters sought to exploit Nigeria's abundant natural resources for the development of their economy (Adeleke, Olowe & Fasesin, 2014). The discovery of oil and coal in Nigeria among other natural resources attracted many investors from the globe, such as, the Shell Oil Company, Mobil, and Chevron. Following the Washington Consensus, the Nigerian government then privatized most of the government owned industries and corporation, thereby attracting more foreign investors into the country. Statistics from the World Development Indicators (WDI) published annually by the World Bank indicate that Nigeria recorded an average of 1.58% FDI net inflow to GDP from 1970-1979, and from 1980-1989, it declined to 0.73%. Even though this index rose to 5.79% in 1994, it has witnessed a continuous decline since then. Figure 1 plots these statistics for the decade ending 2017. Figure 1 also shows the poor performance of GDP per capita over the last decade. Inadequate infrastructural facility, poor business environment, and poor institutional quality, among others, may have contributed significantly to the fall in FDI inflow into the country, and this in turn may have fueled the poor output growth performance of the Nigerian economy in recent years. This paper therefore investigates the role of institutions in the FDI-growth relationship in Nigeria in order to provide evidence-based policies options that can drive FDI inflow and economic growth in the country. Specifically, the paper will: examine how FDI impacts on economic growth in Nigeria; examine how institutional quality impacts on economic growth in Nigeria; how institutional quality influences the impact of FDI on economic growth in Nigeria; and determine the direction of causality between FDI and economic growth in Nigeria.

Figure 1: FDI Inflow and GDP Per Capita Performance in Nigeria (2008 – 2017)



Source: Authors, with data from WDI (2018)

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Against this background, this paper therefore investigates the role of institutions in the FDI-growth relationship in Nigeria in order to provide evidence-based policies options that can drive FDI inflow and economic growth in the country. Specifically, the paper examines how FDI impacts on economic growth in Nigeria. It also examines how institutional quality impacts on economic growth in Nigeria; how institutional quality influences the impact of FDI on economic growth in Nigeria; and determines the direction of causality between FDI and economic growth in Nigeria.

1 An Overview Of The Literature

Several theories of FDI abound in the literature, such as the internalization theory and the eclectic theory, among others. According to Dunning (2008), the internalization theory explains FDI as an organizational hierarchy, which internalizes the market for cross-border intermediate products. The theory is essentially directed to explaining why cross-border transactions of intermediate products are organized by hierarchies rather than determined by market forces, and why there is a strong presence of high-technology industries among multinational corporations. The notion of internalization implies that firms aspire to enhance their internal markets as soon as the cost of business activities within the firm becomes minimal. Thus, foreign firms are prompted to engage in FDI whenever they perceive that the net benefits of their common ownership of domestic and foreign activities, and the transactions arising from them, are likely to exceed those offered by external trading relationships. Thus when these foreign firms perceive the chances of higher profitability from affiliate firms, they become eager to make their investment decisions. Asogwa (2014) amplified this theory by pointing out that FDI takes place only if the benefits of exploiting firm-specific advantages outweigh the relative costs of the operations abroad.

The eclectic theory of Dunning (2008) encompasses various explanations of the activities of enterprises engaged in cross-border value-adding activities. The theorist emphasizes on the extent to which the parent firm possesses unique and sustainable ownership-specific advantages than firms of other nationalities in the production of a particular product or service for particular markets or groups of markets. The theory can be expressed in terms of ownership, location and internalization advantages. Ownership advantages refer to intangible assets possessed by the parent firm and may be transferred within transnational companies at low costs to bring about higher incomes or reduced costs. Such ownership advantages may be in the form of monopoly, technology and economies of scale. Location advantage refers to the business environment and business characteristics of the location in countries where the parent firms would operate or site their affiliate firms and it plays a major role in determining who will become host country for the activities of this parent enterprise (Hanson, 2001).

Theories of institutional quality can be classified into the old institutional theory, the methodological individualism, and the new institutional theory. According to Hodgson (1993), the 'old' institutionalism established the importance of institutions and proclaimed the need for a genuinely evolutionary economics. However, it proceeded in a more and more descriptive direction, leaving many of the core theoretical questions unanswered. Proponents of this theory believe that the neoclassical idea of the rational utility maximizing agent is inadequate and erroneous. Thus, this institutional theory does not take the individual as a constant variable; instead, individuals are shaped by institutional and cultural arrangements.

The theory of methodological individualism takes the individual, along with his or her assumed behavioural characteristics, as the elemental building block in the social or economic system (Hodgson, 1993). The theory emphasizes that in trying to understand the institutional features of a society, it is necessary to study the individual characteristics since the individual characteristics make up the society or institution. According to Agassi (1960), methodological individualism views the national interest, public policy, and similar expressions either as empty or as mere expressions that represent a fragment of many individuals' interests and policies. Thus, methodological individualism holds that subjective individuals' preferences explain the nature of institutions and social phenomena. The new institutional theory holds that informal and immaterial institutions (such as norms, beliefs, and routines) can better explain the relation between individual actors and organizations. Institutions must be seen as structuring forces that need to be maintained over time to preserve relevance. Institutions can reproduce action as actors fall back on previous experiences and react similarly or identically in similar situations. In this way, routines can lead to similar action despite conditions having changed. In addition, norms as moral elements have to be seen both as constraining or obligating and as enabling or awarding (Lang, 2018).

A large chunk of empirical studies have recently emerged in the literature dealing with the FDI-growth relationship in Nigeria and in other economies. However, the fact remains that the role of institutions in this relationship is yet to be comprehensively understood in Nigeria. This is the gap that this study seeks to fill. In what follows, we present the findings of some of these recent studies. Ozekhome (2017) investigated the impact of democratic institutions and foreign direct investment on economic growth in Nigeria, and found that democratic institutions and foreign direct investment have significant impact on the economic growth in Nigeria. The results also show that weak institutions have a destabilizing effect on economic growth, while the impact of FDI on the other hand was found to be positive and significant. Emmanuel (2016) also found that FDI impacts positively and significantly on economic growth in Nigeria. In a study of institutional quality and FDI in Nigeria, Esew and Yaroson (2014) established that political stability and corruption are major determinants of FDI inflows to Nigeria, while human capital and trade openness are also significant determinants of FDI inflow to Nigeria. Okonkwo, Egbunike and Udeh (2018) found that FDI increased Nigeria's exports in the period 1990 to 212; while Akanegbu and Chizea (2017) established a positive relationship between FDI and output growth in the Nigerian economy. Izilien and Mohammed (2017) found that democratic institutions and FDI are significant variables for driving rapid economic growth in Nigeria. Both Aguda and Oladuwa (2017) and Adeleke, Olowe and Fasesin (2014) found that FDI largely promotes economic growth, while Ona-

kayo (2012) found that even though FDI has a significant impact on output of the Nigerian economy, the growth effects of FDI differ across sectors. Other studies for Nigeria are Akinlabi, Hamed, and Awoniyi (2011) and Umoh, Jacob and Chuku (2012).

In other economies across the globe, the FDI-growth relationship has also been investigated. Some recent findings are presented here. Ochara, Onono and Meah (2016) found that in Kenya, FDI affects economic growth positively and institutional quality has a growth-enhancing effect on FDI. Hidayet, Emmanuel, and Abidin (2017) studied two groups of economies: a group of five rich natural resources and underdeveloped countries (DR Congo Ghana, Liberia, Zimbabwe, and Nigeria) and a group of five poor natural resources but developed countries (Denmark, Germany, Ireland, Finland and Switzerland). The findings show that institutional quality matter in the group of underdeveloped countries, whereas the group of developed countries was more concerned about political instability and government effectiveness. The findings show that all the indicators of institutional quality are averagely positive in the developed countries while the same indicators are negative in the underdeveloped group of countries. Najabat and Hamid (2017) found that FDI has a positive impact on the economic growth of Pakistan. Arshad (2016) explored the role of institutional quality on economic growth and more specifically the role it plays through foreign direct investment in a group of 106 countries. The results show that besides a strong direct positive effect on economic growth the aggregate institutional quality variable as well as all individual variables except for the rule of law have a small but significant indirect impact on economic that takes place through boosting FDI.

Tun, Azman-Saini and Law (2014) studied the importance of institutions for the growth-enhancing effect of FDI in a panel of 78 countries. The study used interaction term between FDI and institutional quality to capture this mediation effect. The findings revealed that the coefficient on FDI is statistically insignificant which implies that the impact of FDI on growth is transmitted through institutional quality and it has no direct impact on growth. Furthermore, the coefficient on institution was found to be positive and statistically significant at the 1% level. Thus, the study highlighted the complementary relationship between FDI and institutional quality, whereby the impact of FDI on growth actually depends on the quality of institutions in the host countries. Nguyen, Su, and Nguyen (2018) studied the impact of institutional quality on economic growth for 29 emerging economies using the System GMM estimators. The study found that the coefficient of the interaction between institutions and FDI was negative, while trade openness and FDI have the expected positive impacts on economic growth. Furthermore, the interactions between institutional quality and trade openness also have significant negative coefficients. Brahim and Rachdi (2014) studied the role which institutions play as regards the relationship that exists between FDI and economic growth in the MENA region. The major contribution of the study centered on the analysis of how institutional quality affects the FDI-economic growth nexus. The results show that the effect of FDI on economic growth was largely dependent on development of institutions in MENA countries such that only countries with good institutions can exploit the advantages of FDI on growth.

Overall, we find that the role of institutions in the FDI-growth nexus in Nigeria has largely remained unexamined. This study therefore contributes to the extant literature by investigating whether institutions have been enhancing or impeding the FDI-growth relationship in Nigeria.

2 Methodology

2.1 Theoretical Framework

The new growth theory indicates that growth of labour supply and growth of labour productivity are important factors in the economic growth process. Growth in labour productivity generally emanates from growth in human capital (i.e. accumulation of skills and knowledge), growth in investment (i.e. accumulation of physical capital), and technical progress (i.e. use of new and better production techniques). Following Tumwebaze and Iijo (2015), we assume a Cobb-Douglas production function combining capital and labour with constant returns to scale so that aggregate output can be expressed as follows:

$$Y = AK^\alpha L^{1-\alpha} \quad (1)$$

where: Y = real economic output measured as real per capita GDP, A = technical progress, K = capital (measured in this study by gross fixed capital formation in constant US\$), and L = labour (measured by total adult population aged 15 – 64 years). The annual real per capita GDP growth is obtained from equation (1) as:

$$y = a + \alpha k + (1 - \alpha)l \quad (2)$$

where: a , y , k and l denote the growth rates of A , Y , K and L , respectively. By assuming non-diminishing returns to the accumulation of both human capital and physical capital, the new growth theory is able to predict the long-term growth effects of FDI. Indeed, the extant literature has identified FDI as an important driver of growth in various economies.

2.2 Model Specification:

To model the growth effect of FDI in Nigeria, we extend the economic growth function in (2) by including the FDI variable and other standard variables in growth regressions that are specific to the Nigerian economy on the right hand side of the equation. Thus, we include the following explanatory variables: foreign direct investment inflow (FDI_t), trade openness measured as $(Exports + Imports)/GDP$ (% of GDP) ($TRADE_t$), nominal official exchange rate of local currency per U.S. dollar ($EXCH_t$), and institutional quality ($INST_t$). Even though these selected regressors are specific to the Nigerian economy, they are nonetheless consistent with some established studies in the literature such as Mankiw et al. (1992), Alexiou et al. (2014), and Tumwebaze and Iijo (2015). The institutional quality variable used in this study is as defined in terms of political rights and civil liberties, which reflects perceptions of freedom to participate in the political process and rights to free expression, to organize or demonstrate, and to freedom of religion, education, travel, and other individual rights. The institutional quality data was taken from Freedom House, which monitors political freedom across the globe on an annual basis. The Freedom House institutional quality dummy variable takes the value of 2 for the classification free, 1 for partly free, and 0 for not free. Studies like Alexiou et al. (2014) and Ogbuabor et al. (2019) have used the Freedom House institutional quality data with great success. The period covered by this study is 1981 to

2018, based on data availability for the variables in the study. The entire data for this study is taken from the World Development Indicators published by the World Bank, except for the institutional quality variable, which was taken from Freedom House.

For the econometric analysis, we express the model for this study in its implicit form as follows:

$$PGDP_t = f(PGDP_{t-1}, K_t, L_t, FDI_t, TRADE_t, EXCH_t, INST_t) \quad (3)$$

where: $PGDP_t$ is real per capita GDP growth; $PGDP_{t-1}$ is the one lag of real per capita GDP growth; and t represents the time index. Furthermore, equation (3) is expressed as an ARDL model in its unrestricted ECM form as follows:

$$\begin{aligned} \Delta PGDP_t = & \beta_0 + \beta_1 PGDP_{t-1} + \beta_2 K_{t-1} + \beta_3 L_{t-1} + \beta_4 FDI_{t-1} + \beta_5 TRADE_{t-1} \\ & + \beta_6 EXCH_{t-1} + \beta_7 INST_{t-1} + \sum_{i=1}^p \lambda_i \Delta PGDP_{t-i} + \sum_{i=0}^q \alpha_i \Delta K_{t-i} + \sum_{i=0}^q \gamma_i \Delta L_{t-i} \\ & + \sum_{i=0}^q \eta_i \Delta FDI_{t-i} + \sum_{i=0}^q \psi_i \Delta TRADE_{t-i} + \sum_{i=0}^q \delta_i \Delta EXCH_{t-i} \\ & + \sum_{i=0}^q \phi_i \Delta INST_{t-i} + \varepsilon_t \end{aligned} \quad (4)$$

where: β_0 is the constant term; ε_t is the stochastic error term; and all the variables are logged prior to estimation. In what follows, we provide some explanations on how each variable in equation (4) is expected to influence real per capita GDP growth.

In line with economic theory, the parameters of labour, capital, FDI and trade are expected to have positive signs since these variables are expected to engender growth, though some studies have established that FDI may not enhance growth sometimes (Iheonu, 2016). Some studies provide empirical support for expansionary effects of devaluations, but the contractionary effects have became more prominent in recent large number of studies, though mixed results and insignificant effect have also been reported by few studies (Razzaque et al., 2017). Thus, the parameter of exchange rate may be positive or negative. Some recent empirical studies in the literature have provided evidence suggesting a positive relationship between institutions that promote economic freedom and economic performance (Iheonu et al., 2017; Wanjuu and Le Roux, 2017); while other recent empirical studies have also documented that weak and poor institutional quality are growth retarding (Diop et al., 2010; Ajide and Raheem, 2016). Hence, the coefficient of institutional quality is expected to be either positive or negative.

3 Results

The descriptive statistics of the variables in this study are shown in Table 1. The statistics indicate that all the variables show considerable levels of variation. All the variables follow the normal distribution, except for capital and FDI. More importantly, the variables do not show any case of outlier based on the mean, minimum and maximum values.

Table 1: Descriptive statistics of the variables

	CAPITAL	EXCH	FDI	INST	LABOR	PGDP	TRADE
Mean	56,500,000,000.00	88.54	1.76	0.84	66,796,959.00	1,758.61	32.26
Median	54,000,000,000.00	97.02	1.63	1.00	64,607,846.00	1,548.29	33.95
Maximum	105,000,000,000.00	306.08	5.79	2.00	105,000,000.00	2,563.90	53.28
Minimum	37,700,000,000.00	0.62	0.26	0.00	39,845,097.00	1,324.30	9.14
Std. Dev.	13,200,000,000.00	87.14	1.25	0.49	19,383,381.00	439.88	12.56
Skewness		1.49	0.80	1.32 (0.35)		0.33	0.66 (0.35)
Kurtosis		6.33	2.97	4.88	3.54	1.92	1.83
Jarque-Bera		31.74	4.08	16.64	1.25	2.53	4.89
Probability	-	0.13	0.00	0.53		0.28	0.09
Observations	38	38	38	38		38	38

Source: Authors, with data from WDI and Freedom House.

Table 2 reports the unit root test results for all the variables based on the Augmented Dickey-Fuller (ADF) test procedure. The results indicate that the variables are overwhelmingly integrated of order one. Interestingly, none of the variables is integrated of order two, which means that they have all satisfied the condition for inclusion in the ARDL model. The results however suggest that the variables may be cointegrated. This study therefore conducted ARDL bounds cointegration test, and the results are shown in Table 3.

Table 2: ADF Unit Root Test Results

Variables	ADF Stat at level	5% critical values	ADF stat at 1st Diff	5% critical values	Order of Integration
pgdp	-1.510514	-3.544284	-3.74212	-3.540328	I(1)
capital	-6.639963	-3.544284	-	-	I(0)
labor	-0.707503	-3.562882	-3.82059	-3.562882	I(1)
fdi	-2.304648	-3.536601	-10.9743	-3.540328	I(1)
trade	-1.984335	-3.536601	-7.26054	-3.540328	I(1)
exch	-1.282763	-3.536601	-5.52571	-3.540328	I(1)
inst	-4.002047	-3.536601	-	-	I(0)

Source: Author

The results in Table 3 indicate that the value of the test statistic is greater than all the upper bounds, even at the 1% level. This shows that the variables are cointegrated, that is, they have a stable long-run relationship. This study therefore proceeded to investigate the long-run relationship between the variables. The results are shown in Table 4.

Table 3: ARDL Bounds Cointegration Test

Test statistic	Value	K	Level of Significance	Critical Value Bounds I(0)	I(1)
F-statistic	9.379184	7	10%	2.72	3.77
	9.379184	7	5%	3.23	4.35
	9.379184	7	1%	4.29	5.61

Source: Authors' computation

Table 4: Long-run regression results, ARDL (1,1,0,1,0,0,0,0)

Variable	Dependent Variable = PGDP			
	Coefficient	Std. Error	t-Statistic	P-value
C	6.7969	1.9123	3.5543	***0.0017
PGDP(-1)	0.9623	0.0599	16.0732	***0.0000
CAPITAL(-1)	-0.1834	0.0467	-3.9266	***0.0007
LABOR	0.1270	0.1153	1.1012	0.2822
TRADE(-1)	0.0717	0.0200	3.5827	***0.0016
INST	-0.0782	0.0248	-3.1547	***0.0044
FDI	-0.0817	0.0175	-4.6752	***0.0001
INST*FDI	0.0853	0.0193	4.4246	***0.0002
EXCH	0.0195	0.0147	1.3277	0.1973
R-squared	0.9934			
Adj. R-squared	0.9900			
F-statistic	290.5642			
Prob(F-stat)	0.0000			
DW stat	2.2072			

Source: Authors' Computation from Eview. Note: *** denotes significant at 1% level

The results in Table 4 are quite interesting. We find that both FDI and institutional quality impact negatively and significantly on economic growth in Nigeria. But when the two regressors are interacted in the model, we find that institutional quality plays positive and significant role in enhancing the influence of FDI on economic growth in Nigeria. This shows that institutional quality is important in explaining the role of FDI as a driver of growth in Nigeria. These findings are contrary Nguyen, Su, and Nguyen (2018), which found that the interaction between institutions and FDI was negative among 29 emerging economies. The results are however consistent with Tun, Azman-Saini and Law (2014), which found that the impact of FDI on growth is transmitted through institutional

quality, suggesting the existence of complementary relationship between FDI and institutional quality. The results of this study are also consistent with Brahim and Rachdi (2014), which showed that the effect of FDI on economic growth was largely dependent on development of institutions so that only countries with good institutions can exploit the advantages of FDI on growth.

The results further show that trade is an important driver of growth in Nigeria, while the roles of labour and exchange rate remained muted. This is consistent with the trade-led growth hypothesis, which emphasized the role of trade in the economic growth process. The impact of capital is negative, suggesting that more efforts are needed in mobilizing capital for the real sectors of the economy. However, the immediate past level of growth was found to be an important contributor to economic growth in Nigeria. Thus, efforts should be intensified towards achieving sustainable economic growth in Nigeria. The above results are consistent with the short-run estimates shown in Table 5. The results show that the coefficient of interacting institutional quality and FDI is positive and significant, even at the 1% level. This reaffirms the long-run results, which showed that the positive impact of FDI on economic growth in Nigeria is transmitted through developments in institutions.

The diagnostic checks on the results are reported in Table 6. These checks indicate that the problems of autocorrelation and heteroskedasticity are absent from the model. The checks also indicate that the residual is normally distributed as expected, while the cumulative sum (CUSUM) test and cumulative sum (CUSUM) of squares test indicate that the model is stable. Overall, we find that the model for this study meets the criteria for policy formulation.

Table 5: ARDL-ECM result - ARDL (1,1,1,0,1,0,1,0,0,1)

	Dependent Variable = D(PGDP)			
Variable	Coefficient	Std. Error	t-Statistic	P-value
C	0.1626	0.0743	2.1894	**0.0400
D(PGDP(-1))	0.9245	0.1534	6.0267	***0.0000
D(CAPITAL)	-0.1338	0.0368	-3.6404	***0.0015
D(LABOR)	-0.0462	3.4321	-0.0135	0.9894
D(TRADE)	0.0590	0.0146	4.0344	***0.0006
D(INST)	-0.0494	0.0143	-3.4602	***0.0023
D(FDI)	-0.0592	0.0137	-4.3263	***0.0003
D(INST*FDI)	0.0564	0.0164	3.4480	***0.0024
D(EXCH)	-0.0042	0.0136	-0.3113	0.7586
ECM(-1)	-1.1054	0.2511	-4.4026	***0.0002
R-squared	0.8057			
Adj. R-squared	0.6855			
F-statistic	6.7003			
Prob(F-stat)	0.0001			
DW stat	1.5870			

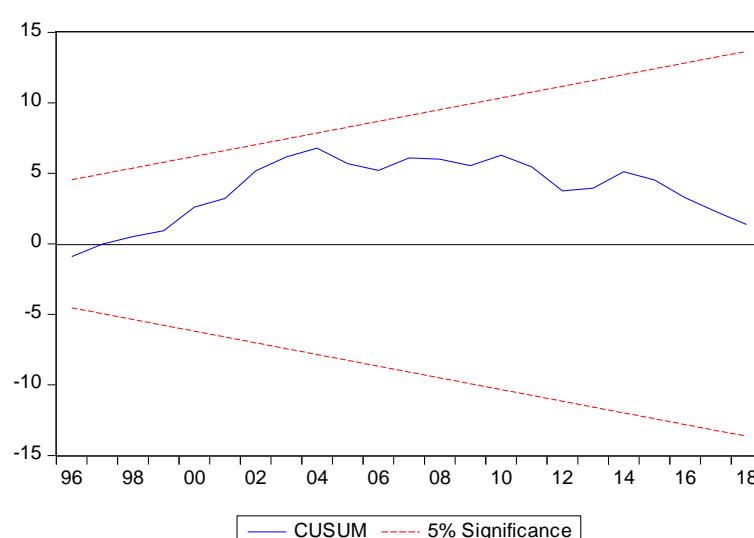
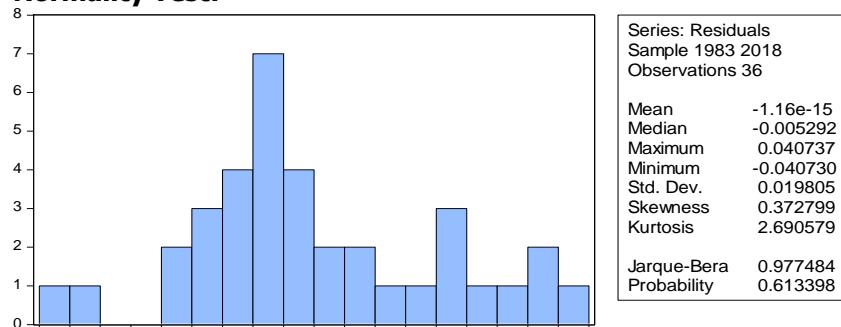
Source: Authors. Notes: *** and ** denote significance at 1% and 5% levels, respectively.

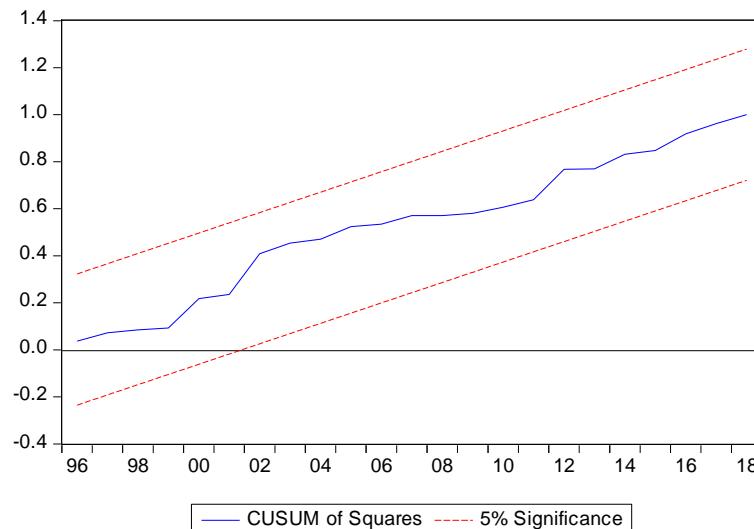
Table 6: Diagnostic Checks on the Long-Run Results**Breusch-Godfrey Serial Correlation LM Test:**

F-statistic	0.707821	Prob. F(2,21)	0.5041
Obs*R-squared	2.273550	Prob. Chi-Square(2)	0.3209

Heteroskedasticity Test: Breusch-Pagan-Godfrey

F-statistic	0.453352	Prob. F(12,23)	0.9219
Obs*R-squared	6.886311	Prob. Chi-Square(12)	0.8650
Scaled explained SS	2.375980	Prob. Chi-Square(12)	0.9986

Normality Test:



Source: Authors

Conclusions and Policy Implications for a Post Covid-19 Nigeria

Following the dearth of studies on the role of institutions in the FDI-growth nexus in Nigeria, and the attendant challenges posed by the Covid-19 pandemic, this study investigated whether institutional quality enhances this relationship or otherwise. The results show that the role of institutions in enhancing the FDI-growth relationship in Nigeria is significant, both in the long-run and in the short-run. The results also show that trade is an important driver of growth in Nigeria; however, the roles of labour and exchange rate remained muted all through. An important policy implication of these findings is the need for government to evolve strong institutions that can create the enabling environment for investment, which will then drive growth in the economy. This means that policymakers and governments across the country should lead the way in entrenching sound institutional framework in terms respect for the rule of law, property rights, civil liberties, transparency and accountability in governance. These will in turn ensure that the domestic environment is devoid of corruption and lack of accountability in governance. Thus, the drive for more FDI inflow into the Nigerian economy will largely remain a pipe dream if the efforts of the government in this regard are not supported by strong institutional framework. Another policy implication of this study comes from the significant role of trade as a driver of growth in the economy. This means that policymakers and governments should work towards export diversification in order to take advantage of trade to grow the economy. Again, the negative roles of labour (in the short-term) and capital (in both the short- and long-term) calls for increased investment in human capital development and in domestic resource mobilization. Furthermore, there is need to evolve policies that will continue to mitigate the adverse effect of the Covid-19 pandemic since FDI inflows and growth figures have been globally affected by the pandemic.

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Konatel' spoločnosti s ručením obmedzeným, vykonávajúcej činnosť samostatného finančného agenta (vybrané právne aspekty použitia informácií z pracovného e-mailu)

Andrea Slezáková¹

Managing Director Of A Limited Liability Company, Performing The Activity Of An Independent Financial Agent (Selected Legal Aspects Of The Use Of Information From The Work E-mail)

Abstract

Neither the currently valid legal regulation nor the court's decisions give an explicit answer to obtaining information from the electronic mailbox after the termination of the function of the manager of a limited liability company, which performs the activity of an independent financial agent. The paper focuses on the analysis of court's decisions, from which the conditions for the use of the data in question can be derived by a logical interpretation.

Key words

limited liability company, managing director, independent financial agent

JEL Classification: K2, K29

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Úvod

Spoločnosť s ručením obmedzeným ako jediná z foriem kapitálových spoločností nie je produktom prirodzeného vývoja, ale výsledkom teoretickej konštrukcie, ktorú vytvorili nemeckí právni teoretici s cieľom vyplniť medzera medzi rýdzou osobnou, verejnou obchodnou spoločnosťou a rýdzou kapitálovou spoločnosťou, ktorou je akciová spoločnosť (Veterníková et al., 2017). Využíva výhody osobnej spoločnosti, ale súčasne zohľadňuje volanie praxe po obmedzenom ručení spoločníkov, ktoré je známe z akciového práva (Štenglová et al., 2017). Základné charakteristické znaky spoločnosti s ručením obmedzeným sú nasledujúce:

- spoločnosť povinne vytvára základné imanie z vkladov jednotlivých spoločníkov, pričom celková hodnota vkladov musí súhlasiť s hodnotou základného imania spoločnosti,
- základnou povinnosťou spoločníkov nie je osobná účasť na podnikaní spoločnosti, ale povinnosť vniest určitý kapitál (vklad),
- vklad sa stáva majetkom spoločnosti a spoločník nie je oprávnený žiadať vrátanie vkladu a disponovať ním,

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- pohľadávky veriteľov spoločnosti sa môžu uspokojovať len z majetku spoločnosti,
- spoločníci ručia za záväzky spoločnosti len v obmedzenom rozsahu, a to do výšky nesplateného vkladu zapísaného v obchodnom registri,
- spoločnosť s ručením obmedzeným môže založiť fyzická alebo právnická osoba, pričom založenie jednoosobových obchodných spoločností predpokladá splnenie zákonom stanovených požiadaviek (Patakyová et al., 2010).

Predmet činnosti spoločnosti s ručením obmedzeným je definovaný v spoločenskej zmluve a zapisuje sa do obchodného registra. Ide o spoločníkmi dosiahnutý konsenzus (Bork, Schäfer et al., 2012). K výkonu podnikateľskej činnosti musí spoločnosť s ručením obmedzeným disponovať zodpovedajúcim podnikateľským oprávnením (Filip, Fyrbach, 2016). Predmetnému oprávneniu zodpovedá povolenie na vykonávanie činnosti samostatného finančného agenta, ktoré udeľuje v konaní vo veciach dohľadu Národná banka Slovenska. Vzhľadom na možnosť samostatného finančného agenta uskutočňovať svoje podnikanie aj prostredníctvom podriadených finančných agentov a na zákonodarcom uloženú povinnosť vynaložiť všetko úsilie, ktoré možno od neho požadovať, na to, aby nedochádzalo k porušovaniu povinností podľa zákona č. 186/2009 Z. z. o finančnom sprostredkovávaní a finančnom poradenstve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov, osobitných predpisov alebo iných všeobecne záväzných právnych predpisov, ktoré sa vzťahujú na vykonávanie finančného sprostredkovania podriadeným finančným agentom, s ktorým má zmluvný vzťah, sa javí ako opodstatnené, aby jeho pripravenosť na vykonávanie činnosti bola preverená (Slezáková et al., 2020). Povolenie na vykonávanie činnosti samostatného finančného agenta predstavuje individuálny správny akt; ide o rozhodnutie Národnej banky Slovenska, ktoré je udeľované subjektu žiadajúcemu o tento druh povolenia spĺňajúcemu všetky zákonom stanovené podmienky (Slezáková et al., 2020).

Z hľadiska možností ponúkaných zákonodarcom na podnikanie v oblasti finančného sprostredkovania, predstavuje samostatný finančný agent klúčovú kategóriu, pre ktorú je príznačné vstupovanie do zmluvných vzťahov s finančnými inštitúciami (Slezáková et al., 2020). Prvkom činnosti samostatného finančného agenta je oprávnenie ponúkať vzájomne si konkurujúce finančné produkty, *ergo* má potenciál zaujať klienta širokou škálou finančných služieb, keďže má možnosť uzatvárania písomných zmlúv s viazerími finančnými inštitúciami pôsobiacimi v príslušnom sektore v tom istom čase (Slezáková et al., 2020). Na základe príslušného povolenia udeleného Národnou bankou Slovenska je oprávnené vykonávať činnosť samostatného finančného agenta fyzická aj právnická osoba. Ako vyplýva, z hore uvedeného, pozornosť zameriavame na právnickú osobu, obchodnú spoločnosť. A to spoločnosť s ručením obmedzeným.

Konateľ alebo konatelia predstavujú štatutárny orgán spoločnosti s ručením obmedzeným (Pokorná et al., 2014). Konajú v mene spoločnosti navonok, do ich pôsobnosti patrí aj podielanie sa na obchodnom vedení spoločnosti, a to v otázkach, ktoré nie sú Obchodným zákonníkom alebo spoločenskou zmluvou zverené valnému zhromaždeniu (Kubiček et al., 2018). Obmedziť konateľské oprávnenia môže len spoločenská zmluva alebo valné zhromaždenie, takéto obmedzenie môže mať právne dôsledky len dovnútra spoločnosti, voči tretím osobám je neúčinné (Kubiček et al., 2018). Konatelia sú povinní vykonávať svoju pôsobnosť s odbornou starostlivosťou a v súlade so záujmami spoločnosti a všetkých jej spoločníkov, predmetná povinnosť zahrňa najmä povinnosť zaobstaráť si a pri rozhodovaní zohľadniť všetky dostupné informácie týkajúce sa predmetu

rozhodnutia, zachovávať mlčanlivosť o dôverných informáciách a skutočnostiach, neuprednostaňovať pri výkone svojej pôsobnosti svoje záujmy, záujmy len niektorých spoločníkov alebo záujmy tretích osôb pre záujmami spoločnosti (Kubíček et al., 2018).

Konateľovi (resp. konateľom) prináleží kľúčová úloha, vzhľadom na skutočnosť, že prejavujú vôle spoločnosti s ručením obmedzeným navonok. Rôznorodosť dejov odohrávajúcich sa v praxi so sebou prináša situácie, v ktorých dochádza k odvolaniu konateľa. Následne v prípade sporu vzniká otázka, či možno použiť informácie z pracovného emailu konateľa, resp. bývalého konateľa.

1 Metodika práce

Individuálny právny akt predstavuje výsledok procesu aplikácie práva, rozhodujúci o právach a povinnostiach, resp. o ich autoritatívnom potvrdení (Gerloch, 2013). Na poznanie judikatúry bola použitá analýza, umožňujúca zistenie obsahu príslušných súdnych rozhodnutí, ktoré boli rozložené na jednotlivé prvky. Následne boli relevantné časti syntézou zložené do celku.

2 Výsledky a diskusia

V súčasnosti platná a účinná regulácia, ani judikatúra slovenských súdov nedáva priamu a úplnú odpoveď na používanie emailu bývalého štatutárneho orgánu obchodnej spoločnosťou (spoločnosťou s ručením obmedzeným). Je potrebné vychádzať z tendencie slovenských súdov, ale aj Európskeho súdu pre ľudské práva, v maximálnej možnej miere zachovať súkromie osoby zamestnanej alebo vykonávajúcej funkciu v obchodnej spoločnosti. Aj pre kontrolu alebo prípadné monitorovanie emailov je v zásade potrebné dotknutú osobu vopred upozorniť, že jej pracovné emailové správy budú kontrolované alebo monitorované, čo však neznamená, že obchodná spoločnosť, prípadne zamestnávateľ môže nahliaľať a používať akékoľvek súkromné emaily z pracovnej emailovej adresy konateľa, prípadne zamestnanca. Okrem toho je potrebné bráť na zreteľ osobitosti každého prípadu pri nahliaľaní do pracovnej emailovej adresy.

2.1 Spoločník v spoločnosti s ručením obmedzeným a právo na informácie

Pre vzťah konateľa a spoločnosti s ručením obmedzeným je potrebné prihliadať na § 122 ods. 2 zákona č. 513/1991 Zb. Obchodný zákonník v znení neskorších predpisov (ďalej len „Obchodný zákonník“), § 138 ods. 1 písm. b) Obchodného zákonníka, § 138 ods. 2 Obchodného zákonníka, ako aj na Uznesenie Najvyššieho súdu SR sp.zn. 3Obdo/21/2019 zo dňa 29.5.2019² a na Uznesenie Najvyššieho súdu ČR sp.zn. 29Cdo/3704/2009 zo dňa 27.11.2014.³

² Dostupné na www.epi.sk [cit. 2020-10-23].

³ Dostupné na www.epi.sk [cit. 2020-10-23].

Podľa § 122 ods. 2 Obchodného zákonníka: „Spoločníci majú najmä právo požadovať od konateľov informácie o záležitostiach spoločnosti a nahliadať do dokladov spoločnosti.“

Podľa § 138 ods. 1 písm. b) Obchodného zákonníka: „Dozorná rada nahliada do obchodných a účtovných kníh a iných dokladov spoločnosti.“

Podľa § 138 ods. 2 Obchodného zákonníka: „Členovia dozornej rady majú právo požadovať od konateľov informácie a vysvetlenia o všetkých záležitostiach spoločnosti a nahliadať do obchodných a účtovných kníh a iných dokladov spoločnosti.“

Najvyšší súd ČR sp.zn. 29Cdo/3704/2009 vo svojom rozhodnutí zo dňa 27.11.2014 uviedol, že právo spoločníka na poskytovanie informácií a sprístupnenie dokladov nie je úplne neobmedzené, ale zahŕňa iba tie doklady a informácie, ktoré sú potrebné na to, aby spoločník získal rozumný prehľad o záležitostiach spoločnosti. Podľa rozhodnutia má spoločník nárok hlavne na informácie o rozsahu a základnej štruktúre majetku spoločnosti, ako aj o významnejších zmluvách, týkajúcich sa nakladania s týmto majetkom. Podľa súdu je zakázaný výkon tohto práva šikanujúcim spôsobom, kedy by bola obmedzovaná činnosť spoločnosti alebo by jej boli spôsobené neprimerané náklady. V prípade, ak konatelia odmietajú poskytnúť spoločníkovi požadované informácie, môže sa spoločník domáhať svojho práva súdnou cestou.

Súd sa zaoberal aj právom na informácie ku skutočnostiam, ktoré tvoria obchodné tajomstvo podľa § 17 Obchodného zákonníka. Keďže § 122 ods. 2 Obchodného zákonníka výslovne neobmedzil právo spoločníka na prístup k dokumentom, ktoré podliehajú obchodnému tajomstvu, majú spoločníci spoločnosti s ručením obmedzeným právo aj na takéto informácie a sprístupnenie dokladov podliehajúcich obchodnému tajomstvu (tu je rozdiel oproti akciovej spoločnosti, kde akcionári takéto právo nemajú). Na svoje náklady môže spoločník získať aj kópie uvedených dokumentov.

Najvyšší súd SR taktiež rozhodoval o právach spoločníka na informácie a na nahliadanie do dokladov spoločnosti s ručením obmedzeným. Podľa Uznesenia Najvyššieho súdu SR sp.zn. 3Obdo/21/2019 zo dňa 29.5.2019

I. V spoločnosti s ručením obmedzeným, ktorá nemá zriadenú dozornú radu, neprechádzajú pri výkone práva podľa § 122 ods. 2 Obchodného zákonníka na spoločníka oprávnenia, ktoré zákon zveruje dozornej rade ako kontrolnému orgánu spoločnosti podľa § 138 ods. 1 Obchodného zákonníka alebo jej jednotlivým členom podľa § 138 ods. 2 Obchodného zákonníka.

II. Súčasťou práva spoločníka na informácie a na nahliadanie do dokladov spoločnosti je aj jeho právo požadovať od spoločnosti, ak disponuje potrebným technickým vybavením, aby mu umožnila vyhotovenie kópií jednotlivých dokladov spoločnosti za náhradu vzniknutých nákladov.

Je zrejmé, že Najvyšší súd SR rozlišuje práva na nahliadanie do dokladov vykonávané spoločníkom spoločnosti s ručením obmedzeným a ďalej práva na nahliadanie a kontrolu vykonávanú dozornou radou. Zatiaľ čo právo dozornej rady na nahliadanie a kontrolu dokumentov súd kvalitatívne ani kvantitatívne nezužuje, spoločníkovi spoločnosti s ručením obmedzeným priznáva iba obmedzené práva na získanie informácií o spoločnosti a nahliadanie do dokladov spoločnosti.

Z odôvodnenia predmetného rozhodnutia Najvyššieho súdu SR je možné poukázať na nasledovný názor súdu:

- Právo spoločníka na informácie o záležitostiach spoločnosti a právo spoločníka na nahliadanie do dokladov spoločnosti tak predovšetkým sleduje, aby mal spoločník pri využívaní oprávnenia podľa § 122 ods. 1 Obchodného zákonného k dispozícii relevantné informácie o záležitostiach spoločnosti (jej majetku a záväzkoch, ich predpokladanom vývoji, prípadne o budúcom podnikateľskom zámere spoločnosti, na ktorej podnikaní sa ako spoločník zúčastňuje svojim vkladom) a aby tieto informácie mohol využiť predovšetkým pri hlasovaní na valnom zhromaždení, resp. pri hlasovaní mimo valného zhromaždenia podľa § 130 Obchodného zákonného.⁴
- Právo spoločníka na informácie o záležitostiach spoločnosti je späť aj s jeho oprávnením uplatňovať v mene spoločnosti nároky (spoločnosti) voči konateľom na náhradu škody (prípadne iné nároky), resp. s jeho oprávnením uplatňovať v mene spoločnosti nároky na splatenie vkladu proti spoločníkovi, ktorý je v omeškaní s jeho splatením, prípadne nároky na vrávanie plnenia vyplateného spoločníkovi v rozpore so zákonom.⁵
- Aby mohol spoločník uplatniť v mene spoločnosti nároky uvedené v § 122 ods. 3 Obchodného zákonného, je nevyhnutné, aby mal preukázané, či zo strany konateľa (konateľov) spoločnosti došlo k porušeniu povinnosti podľa § 135a Obchodného zákonného (pozn. konanie konateľa s odbornou starostlivosťou a v súlade so záujmami spoločnosti a všetkých jej spoločníkov). Na to je nevyhnutné, aby sa spoločník oboznámil s účtovnými dokladmi spoločnosti, prípadne s inými dokumentmi spoločnosti, z ktorých je zrejmé, akým spôsobom konateľ nakladal s podstatným majetkom spoločnosti, napr. či nedošlo k zjavne nevýhodnému predaju majetku spoločnosti, či spoločnosť nenadobudla majetok za neprimerane vysokú sumu, či nedošlo k neprimeranému zaťaženiu majetku spoločnosti, alebo či spoločnosť neprebrala na seba neprimerané majetkové riziká.⁶
- Z § 122 Obchodného zákonného však nemožno vyvodíť právo spoločníka nahliadať do všetkých dokladov spoločností. Toto právo zákon zveruje členom na to povolaného orgánu spoločnosti s ručením obmedzeným – t. j. členom dozornej rady – ktorí sú oprávnení žiadat' od konateľov informácie a vysvetlenia o všetkých záležitostiach spoločnosti a nahliadať do všetkých obchodných a účtovných kníh a iných dokladov spoločnosti (k tomu vid' aj § 138 ods. 2 Obchodného zákonného).⁷
- Uvedené znamená, že do obsahu práv spoločníka vymedzených v § 122 ods. 2 Obchodného zákonného nepatrí právo dožadovať informácií (alebo sprístupnenia dokladov), ktoré sa týkajú bežného chodu spoločnosti. Pod bežným chodom spoločnosti treba rozumieť tak nielen obstarávanie bežného spotrebného materiálu, resp. bežné, každodenné úkony, ku ktorým dochádza v rámci činnosti spoločnosti, ale aj personálne zabezpečenie spoločnosti, aby mohla vôlem vykonávať

⁴ Dostupné na www.epi.sk [cit. 2020-10-23].

⁵ Dostupné na www.epi.sk [cit. 2020-10-23].

⁶ Dostupné na www.epi.sk [cit. 2020-10-23].

⁷ Dostupné na www.epi.sk [cit. 2020-10-23].

činnosť (t. j. uzatváranie pracovných zmlúv so zamestnancami spoločnosti, prípadne udeľovanie splnomocnení splnomocnencom, na podklade ktorých sú oprávnení konáť v mene spoločnosti).⁸

- Zároveň však platí, že v rozsahu, v akom je spoločník oprávnený nahliadať do dokladov spoločnosti, je spoločnosť povinná umožniť nahliadnuť mu do nich, prípadne mu umožniť, aby si z nich vyhotobil výpisy, odpisy prípadne ich kópie.⁹

Ak sa má nahliadanie do pracovných emailov konateľa spoločnosti s ručením obmedzeným uskutočniť až po ukončení funkcie konateľa musia byť nevyhnutné dané vázne dôvody. Ak napríklad konateľ pri ukončení funkcie nespolupracoval so spoločníkom, prípadne dozornou radou. Takúto situáciu je možné považovať za vázny dôvod na to, aby nahliadanie do pracovných emailov bývalého konateľa mohlo byť pri dodržaní určitých zásad dovolené. V prípade možnej škody spôsobenej konateľom obchodnej spoločnosti je pre spoločníka alebo dozornú radu nevyhnutné získat' relevantné informácie.

Hoci sa nám nezdá úplne správne obmedzenie spoločníka informovať sa iba na niektoré, dôležité záležitosti spoločnosti, čím je okruh možností spoločníka zúžený, bude zrejme z opatrnosti vhodnejšie, aby nahliadanie do dokladov, prípadne relevantných pracovných emailov bývalého konateľa, prípadne urobenia skenov alebo kópií, realizoval poverený člen dozornej rady, ktorý s tým môže oboznámiť nového konateľa prípadne inú zodpovednú osobu na účely ochrany práv a záujmov spoločnosti, a to či už voči bývalému konateľovi, ale aj vo vzťahu k tretím subjektom, ak ide o dôležité informácie pre chod obchodnej spoločnosti.

2.2 Právo na súkromie

Pri ochrane súkromia konateľa ako používateľa emailu môžeme analogicky vychádzať zo zákona č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov (ďalej len „Zákonník práce“) a rozhodnutia Európskeho súdu pre ľudské práva (ďalej aj ako „ESLP“).

ESLP v judikáte 62617/00 Copland proti Veľkej Británii¹⁰ dospel k záveru, že komunikácia z pracovného emailu spadá pod ochranu práva na súkromie zamestnanca. Konštatoval, že používanie internetu a e-mailovej komunikácie môže mať aj súkromný charakter. Získavanie údajov o tejto komunikácii bez vedomia zamestnanca je zásahom do jeho súkromného života, nakol'ko zamestnanec dôvodne očakáva, že kontrolovaný nebude, keďže na to nebol vopred upozorený.

Z hľadiska európskym súdom deklarovaného práva na súkromie, či už zamestnanca alebo funkcionára obchodnej spoločnosti bude vhodné, ak si spoločnosť s ručením obmedzeným sprístupní iba tie pracovné maily, z ktorých označeného predmetu je zrejmé, že ide o pracovný mail a zároveň to vyplýva a z označenia adresáta a odosielateľa.

⁸ Dostupné na www.epi.sk [cit. 2020-10-23].

⁹ Dostupné na www.epi.sk [cit. 2020-10-23].

¹⁰ Dostupné na http://ictjudikatura.law.muni.cz/wiki/62617/00_-_Copland_proti_Velk%C3%A9_Brit%C3%A1nie [cit. 2020-11-09].

Podľa § 13 ods. 4 Zákonníka práce: „Zamestnávateľ nesmie bez vážnych dôvodov spočívajúcich v osobitnej povahe činností zamestnávateľa narúšať súkromie zamestnanca na pracovisku a v spoločných priestoroch zamestnávateľa tým, že ho monitoruje, vykonáva záznam telefonických hovorov uskutočňovaných technickými pracovnými zariadeniami zamestnávateľa a kontroluje elektronickú poštu odoslanú z pracovnej elektronickej adresy a doručenú na túto adresu bez toho, aby ho na to vopred upozornil. Ak zamestnávateľ zavádzza kontrolný mechanizmus, je povinný prerokovať so zástupcami zamestnancov rozsah kontroly, spôsob jej uskutočnenia, ako aj dobu jej trvania a informovať zamestnancov o rozsahu kontroly, spôsobe jej uskutočnenia, ako aj o dobe jej trvania.“

Z vyššie uvedeného vyplýva, že spoločnosť s ručením obmedzeným môže do pracovnej emailovej komunikácie nahliať, prípadne si z nej robiť kópie vtedy, ak uvedené má podložené väzonymi dôvodmi a zároveň má oprávnený dôvod, ktorý spočíva o osobitnej povahe činností zamestnávateľa. Zamestnávateľ zrejme nebude môcť bez väzneho dôvodu uviesť, že u zamestnanca hľadá napríklad dôležitú informáciu k nominátnej zmluve uzatvorenej podľa Obchodného zákonníka, s ktorou tento zamestnanec nikdy neprišiel do styku. Naopak u konateľa môže obchodná spoločnosť oprávnene predpokladať, že v jeho pracovnej emailovej schránke sa nachádza mnoho informácií, o ktorých môže a majú byť dozorná rada alebo spoločník informovaní.

Ochrannu právnych záujmov zamestnávateľa pred právom na súkromie zamestnanca prezentoval Najvyšší súd SR v rozsudku sp. zn. 3 Cdo 233/2015.¹¹ V tomto prípade bol zamestnanec upozornený vo forme vnútorného predpisu o zákaze používania pridelenej výpočtovej techniky na súkromnú účely. Pre takýto prípad súd skonštatoval že zamestnávateľ musí mať aj možnosť kontroly tohto zákazu.

Najvyšší súdu SR skonštatoval, že je logické, ak zamestnávateľ v niektorom prípade pristúpi k vykonaniu kontroly, tak dôvodne vychádza z predpokladu, že komunikácia z pracovného e-mailu zamestnanca, s ktorou príde pri kontrole do styku, je pracovnej povahy. Pokial' pri vykonávaní takejto kontroly zamestnávateľ zistí, že ide o komunikáciu zamestnanca súkromnej povahy, treba na prípadný „zásah“ do súkromia zamestnanca hľadiť ako na vedľajší (sekundárny) poznatok z kontrolnej aktivity zamestnávateľa. Na to aby Najvyšší súd SR považoval kontrolu emailovej komunikácie za legálnu, je potrebné splniť dva základné predpoklady, a to:

- c) zamestnávateľom vopred vyjadrený zákaz používania pracovného emailu na súkromné účely,
- d) upozornenie o možnosti kontroly pracovných emailov.

U konateľa možno analogicky vychádzať z hore uvedeného a konštatovať, že pre kontrolu pracovných emailov mu musí byť jasne vopred vyjadrený zákaz používania pracovného emailu na súkromné účely a zároveň musí byť upozornený na možnosti kontroly pracovných emailov.

¹¹ Dostupné na www.epi.sk [cit. 2020-10-23].

Záver

Pre zodpovedanie otázky, či použiť pracovné emaily konateľa, ktorý už nevykonáva funkciu v spoločnosti s ručením obmedzeným (realizujúcej finančné sprostredkovanie ako samostatný finančný agent) v súdnom konaní, pri zachovaní jeho práva na súkromie, je potrebné zvážiť nasledovné skutočnosti:

- spoločnosť s ručením obmedzeným by mala byť spôsobilá preukázať vážny dôvod nahliadania do pracovných emailov (máme za to, že vážny dôvod daný najmä tým, ak konateľ bol z vážnych dôvodov odvolaný z funkcie),
- či do pracovných emailov nahliadla oprávnená osoba, napr. poverený člen dozornej rady alebo nový konateľ,
- či bolo nahliadané iba do pracovných emailov a nie súkromných (to by sa malo dať zistíť z predmetu emailu a označenia adresáta, odosielateľa),
- či bol konateľ pri zániku funkcie upozornený na to, že spoločnosť prevezme všetky pracovné doklady a informácie, vrátane pracovnej emailovej komunikácie z pracovnej emailovej adresy, konateľ by mal mať možnosť zobrať si všetky svoje osobné veci vrátane informácií súkromnej povahy, ktoré by mal mať možnosť si z pracovného emailu nahráť alebo vymazať,
- použitá emailová komunikácia sa musí týkať práv a povinností obchodnej spoločnosti, činnosti obchodnej spoločnosti, jej orgánov, zamestnancov,
- či použitím obsahu pracovného emailu bývalého konateľa nebude zasiahnuté súčasne aj do jeho osobnostných práv vzhľadom na obsah emailu.

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Zmeny zákona o ochrane spotrebiteľa v súvislosti s pandémiou koronavírusu a ďalšie zmeny týkajúce sa problematiky spotrebiteľského práva

Lenka Vačoková¹

Changes in the act on consumer protection related to the pandemic of coronavirus and other changes regarding consumer law

Abstract

The paper focuses on the last changes in the Act No. 250/2007 Coll. on Consumer Protection and amendments to Act of the Slovak National Council No. 372/1990 Coll. on Offences, as amended related to the spread of the pandemic COVID-19 and on the legislation of sale events according to Act No. 102/2014 Coll. on consumer protection in relation to sales of goods or provision of services based on distance and off-premises contracts and amending certain laws. The result of the examined research is the solution of consumer law de lege ferenda, adopting the new consumer protection act.

Key words

consumer protection act, not handling the complaint within the period of the 30 days, sale event

JEL Classification: K 39

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Úvod

Dňa 21. júla 2020 nadobudol účinnosť zákon č. 198/2020 Z.z., ktorým sa menia a dopĺňajú niektoré zákony v súvislosti so zlepšovaním podnikateľského prostredia zasiahnutým opatreniami na zamedzenie šírenia nebezpečnej nákalivej ľudskej choroby COVID-19 (ďalej novela). Týmto zákonom došlo aj k novelizácii zákona č. 250/2007 Z.z. o ochrane spotrebiteľa a o zmene zákona SNR č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov (ďalej zákon o ochrane spotrebiteľa). Uvedená novela zaviedla viaceré zmeny, niektoré z nich pre predávajúcich aj spotrebiteľov dosť podstatné. V príspevku sa zameriame najmä na zmeny týkajúce sa reklamácie, a to jednak reklamačného poriadku, a reklamačnej doby. Zároveň sa pozastavíme aj pri problematike nevybavenia reklamácie predávajúcim v zákonom stanovenej lehoty, ako aj pri ostatných zmenách zákona o ochrane spotrebiteľa.

Príspevok sa zameriava aj na problematiku právnej úpravy predajných akcií, na novelu, ktorá predchádzala zavedeniu tejto právnej úpravy ešte do pôvodného zákona č. 108/2000 Z. z. o ochrane spotrebiteľa pri podomovom predaji a zásielkovom predaji

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v znení neskorších predpisov a ktorým sa dopĺňa zákon č. 128/2002 Z. z. o štátnej kontrole vnútorného trhu vo veciach ochrany spotrebiteľa a o zmene a doplnení niektorých zákonov v znení neskorších predpisov, jej východiská, ako aj na aktuálny právny stav.

S vybranými čiastkovými problematikami slovenského spotrebiteľského práva autorka súčasne rieši aj otázku nielen potrebnej novelizácie zákona o ochrane spotrebiteľa, ale najmä nevyhnutnej unifikácie spotrebiteľského práva v Slovenskej republike, ktoré považuje za značne roztrieštené vo viacerých samostatných zákonoch, a tým pádom pre spotrebiteľov nejasné, nejednoznačné, či komplikované.

1 Metodika práce

Cieľom predmetného príspevku je poukázať na nedávno uskutočnené, ako aj niektoré staršie zmeny zákona o ochrane spotrebiteľa. Ide o zmeny týkajúce sa podnikateľov súvisiace s opatreniami proti pandémii koronavírusu zavedené novelou, a to najmä o zmeny týkajúce sa reklamačnej lehoty a zavedenia tzv. druhej šance pre podnikateľov v prípade menej závažného porušenia ustanovení zákona o ochrane spotrebiteľa. Čiastkovým cieľom tohto príspevku je aj zhodnotenie právnej úpravy predajných akcií na Slovensku, ktorá bola zavedená do zákona o ochrane spotrebiteľa poslaneckou novelou ešte v roku 2013.

Na splnenie stanovených cieľov sme zvolili vedeckú metódu analýzy pri skúmaní aktuálnej právnej úpravy účinnej od 21. júla 2020, metódu komparácie, kde sme porovnávali slovenskú a českú právnu úpravu, najmä pokial' ide o problematiku predajných akcií, ako aj otázku nevybavenia reklamácie v zákonom stanovej lehote. Na zhrnutie poznatkov sme využili metódu syntézy a dedukcie. Zároveň sme pri písaní príspevku realizovali dotazníkový prieskum u študentov posledného ročníka denného inžierskeho štúdia Obchodnej fakulty Ekonomickej univerzity v Bratislave, ktorý nám poslúžil ako podporný prostriedok pri formulovaní záverov tohto článku. Jednotlivé čiastkové ciele sme konzultovali aj s predsedom občianskeho združenia S.O.S spotrebiteľov Poprad Ing. Michalom Fáberom.

2 Výsledky a diskusia

V zmysle poslednej novely zákona o ochrane spotrebiteľov reagujúcej na zhoršenie postavenia podnikateľov v súvislosti v priatými opatreniami v boji proti koronavírusu COVID-19 zostáva povinnosťou predávajúcich mať na predajni kalibrovanú kontrolnú váhu iba v prípade, že predávajú tovar „na váhu“, prípadne ak predávajú tzv. vážený tovar, ako aj tovar na kusy. To znamená, že predávajúci, ktorí ponúkajú iba tovar na kusy, ktorí si zákazníci vyberajú vizuálne, už nie sú povinní mať k dispozícii kalibrovanú kontrolnú váhu. (Dôvodová správa)

Ďalšou zmenou oproti predchádzajúcej právnej úprave je zrušenie povinnosti zverejňovať reklamačný poriadok na viditeľnom mieste dostupnom spotrebiteľovi. Uvedené povinnosti vyplývajú predávajúcemu jednak z ustanovenia § 10a zákona o ochrane spotrebiteľa o predzmluvnej informačnej povinnosti, ako aj z ustanovenia § 18 odsek 1 zákona o ochrane spotrebiteľa o reklamáciách. (Dôvodová správa) V zmysle § 18 odseku

14 zákona o ochrane spotrebiteľa: „*Povinnosť mať reklamačný poriadok sa nevzťahuje na zariadenia spoločného stravovania.*“ Zariadeniami spoločného stravovania sa v zmysle § 26 odsek 1 zákona č. 355/2007 Z.z. o ochrane, podpore a rozvoji verejného zdravia a o zmene a doplnení niektorých zákonov v znení neskorších predpisov rozumejú „*zariadenia, ktoré poskytujú stravovacie služby spojené s výrobou, prípravou a podávaním pokrmov alebo nápojov na pracoviskách, v školských zariadeniach, školách, zariadeniach sociálnych služieb, zariadeniach sociálnoprávnej ochrany detí a sociálnej kurateli, zdravotníckych zariadeniach, v prevádzkach verejného stravovania, v stánkoch s rýchlym občerstvením a v iných zariadeniach s ambulantným predajom pokrmov a nápojov a na zotavovacích a iných hromadných podujatiach.*

Rovnako tak došlo k úprave momentu, od ktorého plynne reklamačná lehota. Reklamačná lehota neplynie iba od momentu uplatnenia reklamácie spotrebiteľom, ale v prípade, že je reklamácia uplatnená napr. emailovou komunikáciou a tovar bude v dispozícii predávajúceho neskôr, plynne až od momentu prevzatia výrobku predávajúcim, čiže reálneho kontaktu predávajúceho s reklamovaným výrobkom.

Ako uvádza Vargicová (2020) zaviedla sa aj tzv. druhá šanca pre podnikateľov za menej závažné porušenie povinnosti v zmysle ustanovenia § 24 odsek 6 zákona o ochrane spotrebiteľa, podľa ktorého môže orgán dozoru, napr. Slovenská obchodná inspekcia alebo Štátna veterinárna a potravinová správa Slovenskej republiky, či Úrad verejného zdravotníctva Slovenskej republiky atď. pred uložením pokuty vyzvať povinného, aby upustil od protiprávneho konania a v určenej lehote vykonal opatrenia na nápravu. V prípade uposlúchnutia výzvy orgán dozoru nevydá rozhodnutie o uložení pokuty, naopak v prípade jej neuposlúchnutia pokutu uloží.

Súčasťou vládneho návrhu zákona, ktorým sa menia a dopĺňajú niektoré zákony v súvislosti so zlepšením podnikateľského prostredia zasiahanutým opatreniami na zamezenie šírenia nebezpečnej nákažlivej ľudskej choroby COVID-19 bolo aj doplňujúce prechodné ustanovenie § 29d zákona o ochrane spotrebiteľa. V zmysle predmetného ustanovenia reklamácie uplatnené a nevybavené v čase do vyhlásenia mimoriadnej situácie (na území Slovenskej republiky bola vyhlásená uznesením vlády č. 111 z 11. marca 2020 z dôvodu ochorenia COVID-19 spôsobeným koronavírusom SARS-CoV-2), teda do 12. marca 2020 nemusia byť z dôvodu okolností vybavené v lehote 30 dní odo dňa uplatnenia reklamácie, ale až v lehote do 30 dní odo dňa skončenia mimoriadnej situácie. (Dôvodová správa)

K tomuto uvádzame, že uznesením vlády Slovenskej republiky č. 147/2020 bol uplynutím 13. júna 2020 ukončený núdzový stav na území Slovenskej republiky. Vláda zároveň konštatovala, že mimoriadny stav vyhlásený na Slovensku od 12. marca 2020 aj po ukončení núdzového stavu trvá. Predmetné ustanovenie vládneho návrhu zákona nakońec do novely zákona o ochrane spotrebiteľa zapracované nebolo a povinnosť predávajúceho vybaviť reklamáciu najneskôr do 30 dní odo dňa jej uplatnenia zostala tak nezmenená. Zachovanie práva spotrebiteľa na vybavenie reklamácie v lehote stanovej zákonom o ochrane spotrebiteľa aj v čase pandémie koronavírusu považujeme za správne rozhodnutie smerujúce k zachovaniu základných práv spotrebiteľa.

2.1 Nevybavenie reklamácie v lehote 30 dní odo dňa uplatnenia reklamácie

V súvislosti s mŕtnym uplynutím 30-dňovej lehoty na vybavenie reklamácie zo strany predávajúceho a z toho vyplývajúcou možnosťou spotrebiteľa odstúpiť od zmluvy alebo požadovať výmenu tovaru v zmysle § 18 odsek 4 in fine zákona o ochrane spotrebiteľa poukazujeme na rozhodnutie Najvyššieho súdu Slovenskej republiky z 11. októbra 2018, sp. zn. 3 Cdo/220/2017. Podľa výroku rozhodnutia: „*Nevybavenie reklamácie v zákonnej 30 dňovej lehote nezakladá spotrebiteľovi bez ďalšieho vznik práva na odstúpenie od zmluvy podľa ustanovenia § 18 ods. 4 zákona č. 250/2007 Z. z. o ochrane spotrebiteľa; odstúpenie od zmluvy prichádza do úvahy len vtedy, ak namietaná vada skutočne existuje a je takej povahy, ktorá umožňuje spotrebiteľovi od zmluvy odstúpiť.*“ (Čentík, 2018) V uvedenom prípade prvostupňový súd (po vrátení veci odvolacím súdom), rovnako tak odvolací, ako aj dovolací súd spájal možnosť spotrebiteľa odstúpiť od zmluvy v zmysle § 18 odsek 4 zákona o ochrane spotrebiteľa s preukázaním zodpovednosti za vady, a to konkrétnie zodpovednosti za neodstrániteľné vady v zmysle § 623 odsek 1 Občianskeho zákonníka, z ktorých vyplývajú rovnaké nároky ako z ustanovenia § 18 odsek 4 zákona o ochrane spotrebiteľa.

S rozhodnutím Najvyššieho súdu SR sa nestotožňujeme, a to z viacerých dôvodov. Ako uvádzá Čentík (2018) právna norma § 18 odsek 4 in fine zákona o ochrane spotrebiteľa má sankčný charakter, čo znamená, že „jej zmyslom je „iba“ sankcionovať pasivitu predávajúceho v procese reklamačného konania. Hypotéza tejto právnej normy vyžaduje naplnenie iba jediného predpokladu, ktorým je oneskorené vybavenie reklamácie, resp. nevybavenie reklamácie v zákonom stanovenej lehote na vybavenie reklamácie.“ Podobne sa k uvedenému rozhodnutiu stavajú ďalší autori, Alušíková, J. a Oslacký, M. Argumentujú aj tým, že odvolací, a rovnako tak dovolací súd vychádzali pri posúdení skutkového stavu jednak z dôvodovej správy k zákonom o ochrane spotrebiteľa, ktorá vykladala § 18 odsek 4 zákona o ochrane spotrebiteľa ešte v pôvodnom znení („... *Vybavenie reklamácie však nesmie trvať dlhšie ako 30 dní. Po uplynutí tejto lehoty má spotrebiteľ rovnaké práva, akoby išlo o vadu, ktorú nemožno odstrániť.*“) a jednak z českej právnej úpravy § 19 odsek 4 zákona č. 364/1992 Sb. o ochrane spotrebitele v znení neskorších předpisů (ďalej zákon č. 634/1992 Sb.), ktorá sa ale k 1. 11. 2008 zmenila. Súčasná česká právna úprava § 19 odsek 3 zákona č. 364/1992 Sb. považuje nevybavenie reklamácie v lehote 30 dní za podstatné porušenie zmluvy, následkom ktorého je v zmysle nového českého Občianskeho zákonníka právo spotrebiteľa odstúpiť od zmluvy. (Alušíková, Oslacký, 2018)

2.2 Prieskum u študentov

V rámci povinnej voliteľného predmetu Spotrebiteľské právo, ktorý navštievujú študenti posledného ročníka denného inžinierskeho štúdia na Obchodnej fakulte Ekonomickej univerzity v Bratislave a ktorí už majú za sebou predmety ako Spotrebiteľské správanie, či Spotrebiteľská politika sme uskutočnili vlastný prieskum vo forme dotazníka. V otázke č. 2 sme sa ich pýtali na ustanovenie § 18 odsek 4 in fine zákona o ochrane spotrebiteľa, teda či považujú odstúpenie od zmluvy alebo výmenu výrobku za nový výrobok za dostatočnú sankciu v prípade nevybavenia reklamácie predávajúcim v zákonom stanovenej lehote. Odpoveď u všetkých dopytovaných študentov bola áno. Zaují-

mavé ale je, že v diskusii k vyššie spomínanému rozhodnutiu Najvyššieho súdu Slovenskej republiky sa prevažná väčšina študentov vyjadrila pozitívne, teda že predmetné rozhodnutie schvaľuje a iba malé percento študentov si dovolilo s rozhodnutím Najvyššieho súdu Slovenskej republiky nesúhlasiť.

2.3 Ochrana spotrebiteľa pri uzaváraní zmlúv na diaľku alebo mimo prevádzkových priestorov predávajúceho

Ďalším zákonom, ktorému venujeme pozornosť je zákon č. 102/2014 Z.z. o ochrane spotrebiteľa pri predaji tovaru alebo poskytovaní služieb na základe zmluvy uzavretej na diaľku alebo zmluvy uzavretej mimo prevádzkových priestorov predávajúceho a o zmene a doplnení niektorých zákonov v znení neskorších predpisov (ďalej zákon č. 102/2014 Z.z.). Konkrétnie problematike predajných akcií, ktoré boli do pôvodnej právnej úpravy zásielkového a podomového predaja zavedené zákonom č. 367/2013 Z.z., ktorým sa mení a dopĺňa zákon č. 108/2000 Z.z. o ochrane spotrebiteľa pri podomovom predaji a zásielkovom predaji v znení neskorších predpisov a ktorým sa dopĺňa zákon č. 128/2002 Z.z. o štátnej kontrole vnútorného trhu vo veciach ochrany spotrebiteľa a o zmene a doplnení niektorých zákonov v znení neskorších predpisov (ďalej zákon č. 108/2000). Predmetná novela z poslaneckej dielne promptne reagovala na uvedenie dokumentárneho filmu Šmejdi českéj režisérky a scenáristky Sylvie Dymákovej, pričom bola prijatá len niekol'ko mesiacov pred transpozíciou smernice Európskeho parlamentu a Rady č. 2011/83/EÚ z 25. októbra 2011 o právach spotrebiteľov, ktorou sa mení a dopĺňa smerница Rady 93/13/EHS a smernica Európskeho parlamentu a Rady 1999/44/ES a ktorou sa zrušuje smernica Rady 85/577/EHS a smernica Európskeho parlamentu a Rady 97/7/ES a prijatím nového zákona č. 102/2004 Z.z. Už v tom čase bola spomínaná novela predmetom kritiky (Lazur, 2013), a to aj z dôvodu rozporu s uvedenou smernicou. Problematica predajných akcií v upravenej podobe bola prevzatá aj do nového zákona č. 102/2004 Z.z.

V porovnaní s aktuálnou českou právnou úpravou tzv. organizovaných akcií v zmysle ustanovení § 20 – 20c zákona č. 634/1992 Sb., je slovenská právna úprava predajných akcií podrobnejšia. Povinnosťou organizátora alebo predajcu je vopred písomne oznamovať predajnú akciu Ústrednému inšpektorátu Slovenskej obchodnej inšpekcie (ďalej SOI), ako aj inšpektorátu SOI príslušnému podľa miesta konania predajnej akcie najneskôr 20 dní pred uskutočnením predajnej akcie, zákon č. 634/1992 Sb. upravuje rovnakú povinnosť predávajúceho v lehote najneskôr 10 pracovných dní pred uskutočnením organizovanej akcie. Písomné oznamenie musí v porovnaní s českou právnou úpravou obsahovať aj presné označenie zmlúv a určenie všetkých predávajúcich oprávnených na uzavretie zmlúv so spotrebiteľmi, a v prípade, že súčasťou predajnej akcie je aj doprava spotrebiteľov na predajnú akcie a späť, tak aj miesto, dátum, čas a podmienky dopravy v zmysle § 11 odsek 4 písm. a) zákona č. 102/2014 Z.z. Rovnaké náležitosti musí obsahovať aj pozvánka na predajnú akciu v zmysle odseku 6 predmetného ustanovenia. Prílohou oznamenia sú okrem písomného vyhotovenia pozvánky, aj návrhy zmlúv, ktoré spotrebiteľia budú môcť na predajnej akcii uzavrieť.

Povinnosťou Ústredného inšpektorátu SOI je zverejniť na svojej webovej stránke úplne znenie písomného vyhlásenia najneskôr 5 dní pred konaním predajnej akcie v zmysle § 11 odsek 5 zákona č. 102/2014 Z.z. Písomné oznamenie organizátora alebo

predávajúceho nezverejní, ak písomné oznamenie nie je doručené v rozsahu a s náležitosťami podľa odseku 4, alebo ak štatutárnym orgánom, členom štatutárneho orgánu alebo spoločníkom organizátora alebo predávajúceho je nedôveryhodná osoba. „...*Za nedôveryhodnú osobu sa považuje osoba, ktorá bola v čase konania predajnej akcie, počas ktorej došlo k osobitne závažnému porušeniu tohto zákona, za ktoré bolo predávajúcemu alebo organizátorovi predajnej akcie zrušené živnostenské oprávnenie, štatutárnym orgánom, členom štatutárneho orgánu alebo spoločníkom v spoločnosti, ktorá túto predajnú akciu organizovala alebo na nej vystupovala ako predávajúci.*“ (§ 11 odsek 5 druhá veta zákona č. 102/2014 Z.z.)

Inkriminovaným ustanovením, podľa nášho názoru, súčasnej právnej úpravy predajných akcií je ustanovenie § 11 odsek 8 zákona č. 102/2014 Z.z. podľa ktorého, zmluva uzavorená na predajnej akcii, vrátane zmluvy od nej závislej, nevznikne, ak:

- a) si organizátor alebo predávajúci nesplní oznamovaciu povinnosť voči Ústrednému inšpektorátu SOI, ako aj inšpektorátu SOI príslušnému podľa miesta konania predajnej akcie v zákonom stanovej lehote,
- b) ak Ústredný inšpektorát SOI nezverejní na svojom webovom sídle úplné znenie písomného oznamenia z dôvodu nedôveryhodnosti štatutára, člena štatutárneho orgánu alebo spoločníka spoločnosti, ktorá predajnú akciu organizovala alebo na nej vystupovala ako predávajúci, pričom spoločnosti bolo zrušené živnostenské oprávnenie z dôvodu osobitne závažného porušenia právnych predpisov,
- c) sa predajná akcia uskutoční, ale v rozpore s písomným oznamením zaslaným Ústrednému inšpektorátu SOI alebo
- d) ak je na predajnej akcii prezentovaný, ponúkaný a predávaný tovar alebo poskytnuté služby, ktoré súčasne boli oznamené, ale za cenu prevyšujúcu cenu v písomnom oznamení.

Podľa Lazura, J. je otázne, či spotrebiteľia v prípade uzavorenia kúpnej zmluvy na predajnej akcii budú dodatočne zistovať, či spotrebiteľská zmluva vznikla alebo nie, a rovnako je nepravdepodobné, že budú hromadne podávať žaloby o vydanie bezdôvodného obohatenia v prípade absolútnej neplatnosti uzavretých zmlúv. Súhlasíme s autorm, že oveľa vhodnejším nástrojom je inštitút odstúpenia od zmluvy. Rovnako tak navrhujeme predmetné ustanovenie predajných akcií vymáhať prostriedkami verejného práva napríklad sankcionovaním nedodržania povinností organizátorov alebo predávajúcich zo strany SOI. (Lazur, 2013)

2.4 Realizovaný prieskum a Záverečné zhrnutie

Už spomínaný prieskum realizovaný u študentov sa týkal aj problematiky predajných akcií, novely zákona č. 108/2000 Z.z. upravujúcej predajné akcie a reagujúcej na uvedenie dokumentárneho filmu Šmejdi v kinách v Českej republike a v Slovenskej republike. Výsledky prieskumu nás trochu prekvapili. Z celkového počtu 14 dopytovaných študentov sa s pojmom predajná akcia v zmysle zákona č. 102/2014 Z.z. doteraz nestretlo 43% študentov, zvyšok študentov sa s týmto pojmom už stretol. Na otázku č. 4, či počuli o filme Šmejdi odpovedalo iba 5 študentov áno, ostatní študenti (64%) o filme nepočuli. Na súvisiacu otázku č. 5, či vedia o čom je tento film a aký mal dopad na zmeny v našej právnej úprave, odpovedali všetci piati študenti viac-menej správne, ale iba jeden z nich prepojil odvysielanie filmu a následnú verejnú diskusiu k nemu s novelou

zákona č. 108/2000 Z.z. Z uvedeného môžeme sekundárne vyvodiť, že predmetná novela zákona mala pozitívny vplyv na boj proti tzv. šmejdovi. Ide najmä o povinnosť ohlásiť predajnú akciu najneskôr 20 dní pred jej uskutočnením, ako aj o náležitosť písomného oznamenia a jeho prílohy. V rovnakom duchu vyjadril svoj názor aj predseda spotrebiteľského združenia S.O.S. Poprad Michal Fáber v rámci našej spoločnej komunikácie. Podľa jeho slov, tzv. predávajúci, ktorí predávali a organizovali predajné akcie takmer v pôvodnej podobe vymizli, pričom veľkú rolu zohrala aj oznamovacia povinnosť. Oznamovať orgánu dozoru, kedy, kde a v akom poňatí má byť predajná akcia organizovaná, bolo značnou brzdou pre nekalé obchodné praktiky. (mailová komunikácia s Michalom Fáberom zo dňa 30. 10. 2020)

Po kontrole oznámení predajcov zverejnených na webovej stránke SOI môžeme konštatovať, že jediným predajcom využívajúcim predajné akcie v rokoch 2019 a 2020 bola spoločnosť ZEPTER SLOVAKIA, spol. s.r.o., pričom posledné opatrenia zo strany SOI v súvislosti s porušením zákona č. 102/2014 Z.z. boli uložené v júni roku 2015. (SOI.sk, 2020)

Záverečnými otázkami v rámci realizovaného prieskumu boli dve otázky venované celkovému charakteru spotrebiteľského práva na Slovensku. A teda, či je právna úprava spotrebiteľského práva obsiahnutá vo viacerých právnych predpisoch jasná, zrozumiteľná, dá sa v nej orientovať, a či je potrebné venovať sa otázkam čiastočného zjednotenia právnej úpravy spotrebiteľského práva napr. do jedného právneho predpisu. Na základe odpovedí dopytovaných študentov môžeme konštatovať, že právnu úpravu spotrebiteľského práva považuje 50% študentov za jasnú a zrozumiteľnú, jeden študent vyjadril skôr negatívne stanovisko a zvyšní respondenti uvažovali nad možnosťami jej vylepšenia, zjednodušenia, či zjednotenia. Prevažná väčšina študentov by privítala čiastočné zjednotenie právnej úpravy do jedného právneho predpisu, jeden z nich vidí v zjednotení nielen výhody, ale aj nevýhody (neprehľadnosť v množstve informácií).

Záver

Súhlasíme s názormi študentov, podľa ktorých by problematike spotrebiteľského práva, ktorá je pre väčšinu z nich súčasťou súčasnosti, ale pre osobitné skupiny obyvateľov napr. pre seniorov, sa taká javiť nemusí, pomohla aspoň čiastočná unifikácia právnych predpisov. Súhlasne sa k potrebe zjednotenia a úpravy spotrebiteľského práva, ktoré považuje za nezrozumiteľné a komplikované vyjadruje aj predseda S.O.S. Poprad Michal Fáber. Podľa posledných informácií Ministerstvo hospodárstva Slovenskej republiky pripravuje návrh zákona o ochrane spotrebiteľa, ktorý zjednotí problematiku zákona o ochrane spotrebiteľa, zákona č. 102/2014 Z.z. (o ochrane spotrebiteľov pri uzatváraní zmlúv na dial'ku alebo mimo prevádzkových priestorov predávajúceho) a zákona č. 395/2015 Z.z. o alternatívnom riešení spotrebiteľských sporov v znení neskorších predpisov, a to prioritne za účelom transpozície troch nových smerníc EÚ. (Predbežná informácia MH SR, 2020)

Posledná novela zákona o ochrane spotrebiteľa bola aj z dôvodu opatrení ukladaných v súvislosti so šírením pandémie koronavírusu orientovaná v prospech podnikateľov, a to najmä pokiaľ ide o úpravu plynutia reklamačnej doby, ako aj o možnosť orgánov dozoru v prípade menej závažného porušenia povinností v zmysle zákona o ochrane spotrebiteľa umožniť podnikateľom vykonať opatrenia na nápravu v prípade upustenia

od protiprávneho konania, a to pred uložením pokuty. Pevne veríme, že pripravovaný zákon o ochrane spotrebiteľa z dielne Ministerstva hospodárstva Slovenskej republiky prinesie nevyhnutnú, aspoň čiastočnú unifikáciu právnej úpravy spotrebiteľského práva, ale aj jej zjednodušenie, a to v prospech slabšej strany spotrebiteľského vzťahu, spotrebiteľa.

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Data Sources and Data Typology for Audience Research in Performing Arts Institutions¹

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Abstract

Data is a basic prerequisite for successful and effective audience research - for both theoretical and practical marketing research. In this conceptual paper, we explore the data generally used for research in terms of their sources and types. In addition to the analysis of the available literature, we observe common processes performed by institutions of performing arts. Subsequently, we describe the basic entities of the ecosystem of data from the perspective of their origin and identify their sources. We represent the entire data ecosystem with a model of data sources and data types. Then we present a practical application of the model on a specific example of working with data and the use of data for strategic analysis of the audience.

Key words

classical music audience, classical music, audience data, customer lifetime value, marketing research

JEL Classification: M

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Introduction

The word "audience" is the spell of any performing artist and cultural institution. But it is also the focus of an entire research industry. The audience also plays a critical role in the field of arts marketing, in the vocabulary of which the audience equals the customer.

According to Kotler and Scheff (1997), marketing is defined as a process by which an organization relates creatively, productively, and profitably to the marketplace, with the goal of creating and satisfying customers within the parameters of the organization's objectives. The essence of this definition is the fact that it is based on the exchange between customers (market) and organizations. However, the exchange will only take place if the customer (target audience) performs an action. Then the goal of marketing is to influence this audience behavior. Of course, these general principles can also be applied in the field of arts marketing, where the attention paid to the audience is one of the key topics.

The work with the audience is crucial for every cultural institution. During the 20th century, various techniques for working with audiences were developed, however, with

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the rapid development of digital technologies and their massive spread in the 21st century, it is necessary to think about new possibilities and a new approach to working with audiences (Walmsley, 2019).

It is claimed, that since the 1980s, there has been a shift in artistic marketing from product development to audience development, but despite this development little attention has been paid to cultivating relationships with existing audiences to support the long-term viability of performing arts organizations (Rentschler et al., 2002). The basic prerequisite for cultivating relationships and working with the audiences from the marketer's point of view is data - as much quality customer data as possible. Once we are engaged in audience research and working with audiences, we primarily need information about customer behavior in a relation to the product offered. According to Kotler (2016), customer behavior studies are about how individuals, groups, and organizations select, buy, use, and dispose of goods, services, ideas, or experiences to satisfy their needs and wants. This brings us to a detailed research of the audience's shopping behavior and the factors that influence this behavior and decision-making. A customer's buying behavior is influenced by cultural, social, and personal factors (Keller & Kotler, 2016). Information and data on these aspects can be obtained from a variety of sources and, of course, also through audience marketing research. In practice, not only cultural institutions are typically exposed to the problem of how to obtain quality customer data without additional costs, especially costs for traditional research using questionnaires, focus groups or other methods leading to the acquisition of primary data. Unfortunately, it is often not possible to spend money on such research at all. The question therefore remains whether quality results can be achieved in audience research without the need to apply these costly traditional methods of marketing research and whether the data already owned by cultural institutions cannot give even more accurate information about the audience than the data obtained in the questionnaire survey, when it is always necessary to take into account a certain bias. To answer these questions, we must first thoroughly examine the sources of data that are held by cultural institutions and that are suitable for audience analysis. Based on this, we create a general theoretical model of data sources and data types in a cultural institution, which will be widely applicable for further research and practice.

1 Methodology

The common approach by conceptual work is to start from a focal theory by arguing that a particular concept, theory, or research domain is internally incoherent or incomplete in some important respect and then introducing other theories to bridge the observed gaps (Jaakkola, 2020). Our approach is based on the key finding that the available literature lacks a theoretical framework regarding data needed for research in the field of strategic analysis of audiences of performing arts institutions. The main output of this paper is then a newly created conceptual model that demonstrates data sources for audience research and audience management in performing arts institutions.

For the purposes of our research, we understand the conceptual model as a representation of the structure of a section of reality. The conceptual model models reality using objects and their properties at the logical level and the selection of entities and

attributes for the description of objects. It is thus a graphically represented structure of entities or classes and relationships between them (Kaluža & Kalužová, 2012).

The model describes the relationships of the individual elements as originators of data and information and identifies mutual interactions and relationships. We then identify specific types of data. When creating the model, we primarily drew on two theoretical approaches: 1) the resource-based theory, which is a popular theoretical foundation in marketing and provides important framework for explaining and predicting the basis of a firm's competitive advantage and performance (Kozlenkova et al. 2014), and 2) the Methodology for Modeling and Analysis of Business Processes (MMABP) that is based on hierarchical Abstraction. The principle of modeling assumes that the objective basis for the implementation of business processes must be real facts that exist outside and independent of the organization (Svatoš & Řepa, 2016). The resulting model according to this methodology should respect the basic goals, status and characteristics of the organization and further respect external influences, independent of the organization, which may affect the organization in its activities. We took advantage of these two approaches and adapted them to the needs and specifics of our research area. This resulted in the following model creation process in several steps:

1. identification of model elements - individual entities
2. hierarchization of model elements
3. identification of interactions and relations between entities
4. identification of interactions in which data is generated
5. specification of data types - origin of data typology

Our arguments are based on assimilation and combination of evidence in the form of previous concepts and theories (Hirscheim 2008), as well as on the data analysis of two diverse performing arts institutions. These two institutions were selected as typical representatives of certain types of performing arts institutions: a small non-profit organization based in a large art center that offers an alternative art program competing with the program offerings of large central (public-supported) organizations and a regional symphony orchestra as a typical main organizer of performing arts in the region.

2 Arts marketing and audience research literature review

In academic literature, issues related to the marketing of culture first appeared in 1967. In his still very popular book on marketing management, Kotler (1967) states that cultural organizations such as libraries, museums, concert halls or universities create cultural goods. Since then, cultural marketing has undergone great development and, as in other industries, cultural marketing research has specialized in many topics.

In her two studies, Ruth Rentschler (1998, 2002) summarized the development of the research in the field of arts marketing, resulting in academic publications and marketing articles as follows in the chronological classification that includes the following periods:

(1) The Foundation period (1975-1984), during which the character of museum and performing arts marketing articles focused on educating audiences, raising the awareness among organization staff of the benefits of studies on audiences and occasionally the economic impact of the arts on the community; (2) the Professionalization period

(1985-1994), during which changes forced the recognition of the applicability of marketing to nonprofit arts organizations and marketing departments started to be added; and (3) the Discovery period (1995-2000): In this era, a marketing orientation has begun to be embedded in arts organizations.

Rentschler (1998) identified three major thematic categories: Marketing as Culture, Marketing as Tactics, and Marketing as Strategy. In 2002 Rentschler analyzed 171 articles published over a twenty-five-year period in seven journals which were selected as they are considered representative of mainstream arts marketing research. Her analysis also demonstrates that audience research is an important topic in all of these periods and is undergoing continuous development. Marketing as Culture literature discussed the ability of an organization to assess market attractiveness by analyzing customer needs, Marketing as Strategy papers focused on positioning and defining how an organization is to compete in its chosen businesses, while using a customer-oriented approach (Rentschler, 2002).

Colbert & St-James (2014) evaluate the research in the field of arts marketing from another point of view - on the one hand from the point of view of art consumption, on the other hand from the point of view of the theory and practice of art marketing. They identify cultural participation, cultural capital, arts consumption and consumer experience as key topics. In the part of their study dedicated to the theory and practice of art marketing, they explore three central themes in the arts marketing research: an emerging challenge to the traditional "supply-side marketing" assumption underlying arts marketing, the role of consumers as co-creators of artistic experiences, and unique aspects of arts marketing management — that is, branding of artistic products, pricing of artistic products, cultivating customer loyalty, and incorporating unique funding sources such as fundraising and sponsorships. Colbert and St-James (2014) confirm a gradual shift from a product centered approach to a customer centered approach in the arts marketing literature.

2.1 The role of marketing research in cultural organizations

Keller and Kotler (2016) state that marketing research is all about generating insights. Marketing insights then provide information about the market and consumer behavior, and also what this behavior means for the marketer and his organization. Gaining marketing insights through marketing research is crucial for marketing success.

In the 1990s, the field of marketing research developed greatly as the demand for information needed for effective marketing planning increased. In this decade, for the first time, the Internet began to spread around the world, and new information technologies became available even to smaller organizations. Marketing segmentation strategies became more sophisticated and organizations needed more detailed information about their target groups (Kotler & Scheff, 1997). The shopping behavior of the audience has also changed - consumers have become more selective and demanding. It has become increasingly difficult for sellers to predict the reaction of consumers to various offers (Kotler & Scheff, 1997). With the development of the new information technologies, the way of communication has also changed and therefore marketing tools such as advertising, public relations, product differentiation and its positioning needed to have changed.

Bernstein (2006) identifies three common barriers that prevent cultural organizations from conducting marketing research: first, marketing managers have limited budgets, and assign higher priorities to other expenditures. Second, marketers are constrained because of their technical knowledge of the correct use of marketing research and its technical aspects is typically limited. Third, marketers are often discouraged from conducting research by the arts organization's top-level managers who do not adequately understand the uses and value of marketing research. Bernstein (2006) also points out that there is concern among some managers and artistic directors that audience research will compromise the artistic mission and integrity of the organization. Nevertheless, marketing research plays a critical role in understanding customer attitudes and behavior (Bernstein, 2006). Without data obtained through research, it is not possible to make an objective decision on the suitability of the offered product, its price, method of its presentation or sale. Nor is it possible to objectively assess the consumer's behavior and the audience's reaction to the offered product (artistic performance).

2.2 Audience research methods and data

Previous research on the audience of performing arts in any consistent and coherent way has been hampered by the significant fragmentation that characterizes the wider field of audience study (Walmsley, 2019). The breadth and diversity of the researched subject results in the obvious application of interdisciplinarity. Walmsley (2019) argues that this can be perceived as a positive trend, however it can cause a methodological dispute between fields that are not very compatible with each other. Audience research is plagued by countless methodological challenges, from positive audience bias and memory problems, to poor understanding of methods by researchers and their own bias of confirmation. Walmsley (2019) also points out that quantitative analyses of audiences tend to dominate and qualitative research is often dismissed as narrative and anecdotal.

Here we name some selected studies to demonstrate what are the typical sources of data for audience research and what methods of data collection can be found in audience research articles. Using the information contained in the Survey of Structure, Conscience and Biography of Class, Prieto-Rodríguez & Fernández-Blanco (2000) estimate a bivariate probit model to characterise the audience for each kind of music, they quantify the influence exerted by various socioeconomic features on the demand for these goods and they describe the average profile of consumers of Spain. Hand (2011) focuses on three established empirical 'laws' of consumer behaviour: repertoire buying, double jeopardy and duplication of purchase. All three of these patterns emerge from a national survey of arts participation in the UK. For the analysis of patterns of music consumption in Flanders, Roose and Vander Stichele (2010) used data from the survey Cultural Participation in Flanders 2003-2004, a large-scale survey of a representative sample of the Flemish population ages 14-85. Favaro and Frateschi (2007) verify whether musical tastes in Italy are diversified, with the presence of a group of 'cultural omnivores'. They employ micro data from the Italian Survey on Households, Citizens and Leisure (ISTAT, Indagine Multiscopo sulle Famiglie. I cittadini e il tempo libero) for the year 2000.

Tong et al. (2016) focus on classical music concert attendance and older adults. Data for their research were collected in the collaboration with several organizations including both large symphony and philharmonic orchestras and smaller chamber and youth orchestras, which distributed a link to a copy of the questionnaire through their customer databases. Survey data were collected from patrons at the Cheltenham International Jazz Festival in order to establish the demographic profile of the jazz audience and distinguish between two broad categories of jazz fan (modern and hybrid) (Oakes, 2010). The data collected by surveying 1,170 respondents attending the opera house in an East German city were used in the study focused on modes of cultural consumption in the opera audience (Rössel, J. (2011)). As we can see, secondary data obtained from nationwide comprehensive surveys and through targeted data collection in a specific target group are often used for audience research. Such data are then typically analyzed using quantitative research methods.

Crawford et al. (2014) interrogate the potentials of social media engagement for audience development work through participatory media and networked publics. This study is based on a mixed-methods approach involving a primary sample group of 18–25-year-old university students. The key method of data was post-concert focus groups. Wilson et al. (2014) engaged in an ethnographic qualitative research approach in the study, in which the researchers were engaging in gaining a greater understanding of classical music audience culture and how this may be impacting participants that are of a “marginalized” or nontraditional classical music audience group. Focus groups are a popular method of data collection employed in the majority of existing qualitative studies on classical music audiences, including Kolb (2000), O’Sullivan (2009) and Dobson (2010).

There are also studies that use a combination of qualitative and quantitative approaches. In the case study of the Music in the Round (chamber music festival), Pitts and Spencer (2008) used data from questionnaire survey of audience members and interviews data. Crawford et al. (2014) presented the research project focusing on the audience of the London Symphony Orchestra and their introduction of a new mobile telephone ('app') ticketing system. A mixed-method approach was employed, utilizing focus groups and questionnaires with over 80 participants, to research a sample group of university students.

As we can see above, data from both primary and secondary sources are typically used for audience research, but they are external sources. To the best of our knowledge, there are no studies that describe a theoretical framework of data sources for audience research. Kotler and Scheff (1997), Bernstein (2006) or Colbert (2007) generally describe data sources for marketing research in a cultural institution, and especially in connection with the need for low financial demands of research they mention internal data sources. However, none of the authors discuss these data sources and the potential of their use for further research in more detail.

3 Results and Discussion

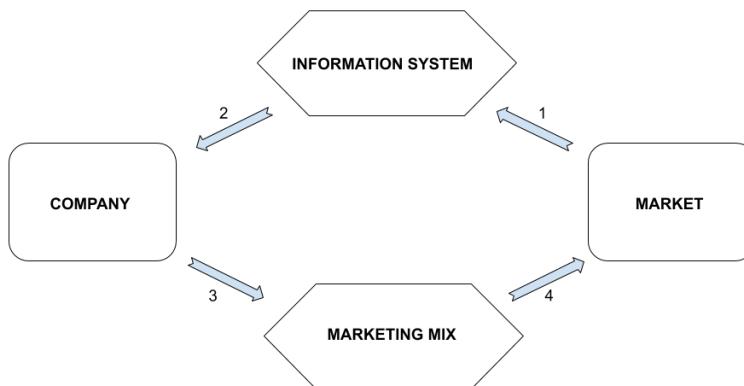
In addition to the analysis of the available literature, the creation of the model was based on the observation of common processes performed by institutions of performing

arts. Subsequently, we were able to describe the ecosystem of data, identify their sources, and represent the entire ecosystem using a model of data sources and data types. Then we present a practical application of the model on a specific example of working with data and the use of data for strategic analysis of the audience.

3.1 Origin of the audience data

Colbert (2007) uses the traditional marketing model (Fig. 1) that illustrates how a company strives to meet existing customer demand (shown as a market, in figure). Using data provided by the company's marketing information system, the company evaluates existing need, given current resources and the corporate mission. Subsequently, the company will use the elements of the marketing mix to achieve the desired effect for potential customers. It is a simple, constantly recurring cycle that begins and ends in the market.

Fig. 1 The Traditional Marketing Model



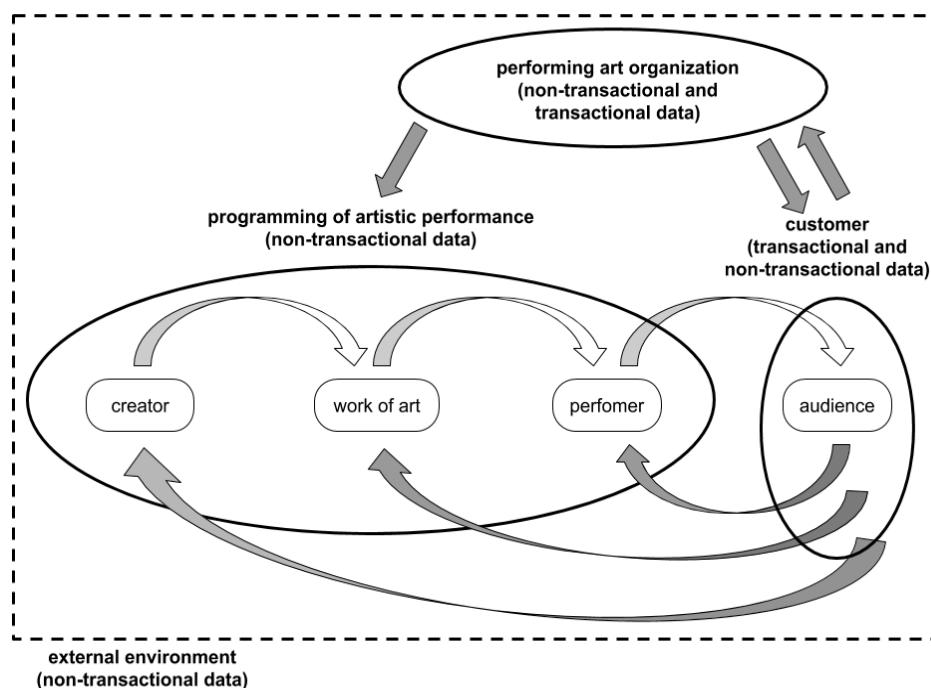
Source: Adjusted according to Colbert (2007)

However, Colbert (2007) further specifies that this model may not always accurately reflect the situation of cultural institutions, whose starting point is often not the market but the product. According to Colbert (2007), this product-centered approach is more appropriate for the field of arts than the customer-centered approach, because the business objective of cultural institutions (especially in the field of high art) is very often not only the financial gain. The mission of these organizations is mainly educational, cultivating, integrating and is in the interest of the whole society, so these organizations are non-profit and often subsidized by the state. Then the whole process can be described as follows: company - information system - market - information system - marketing mix - market. The initial impulse is given by the company, which through its information system presents its product to the customer (market). The subsequent process takes place according to Figure 1. - The customer responds through the information system and the company then uses the elements of the marketing mix to achieve its goal, i.e., the application of the product on the market. The starting point is therefore the company (in our case, the performing arts institution) and its product (the artistic performance) and the end point is the market.

According to Colbert (2007), the marketing information system is a fundamental part of the marketing process, since it provides the information needed to make enlightened decisions. The marketing information system consists of three types of data: internal, secondary and primary. Primary data are typically newly collected for a specific purpose, using various marketing research techniques. Secondary data is information that already exists somewhere, often collected by someone else for another purpose. Nevertheless, they can often be used for audience research. Internal data are usually derived from six sources (Colbert, 2007): the accounting system, sales reports, the client list, a Web site "hits" report, company stuff and previous studies. These reported internal data sources are very diverse, however Colbert does not go into further detail. Keller & Kotler (2016) cite also three sources of data on which the marketing information system relies on: internal company records, marketing intelligence activities, and marketing research.

The works of other authors are empirical studies that work with data from various sources, whether secondary or primary, but do not place the data itself in context in terms of interrelationships and interactions.

Fig. 2 Model of Data Sources of Performing Arts in Terms of Data Origin



Source: author

The first step in creating our model was to identify the individual elements. These individual elements were identified in terms of the possible emergence of some specific data that may have useful value in audience analysis. Then, the basic elements of the model are, of course, the audience itself and the artistic organization. Another key element is the offered artistic performance (i.e., the product) and its individual components

- work creator, work of art and performer. All these parts of the art program are important in terms of the origin of the data and play an important role in the individual decision-making of the customer. The last basic element of the model is the external environment.

After identifying the components of the model, it was necessary to represent the individual elements in a structure that corresponds to their mutual position in practice. The artistic organization, the audience and the artistic performance in the model figure as separate entities, while the artistic performance is further structured into its three basic components. The external environment provides a framework for all of these entities.

In the next step, we identified the interactions between the individual elements of the model. These interactions are indicated by arrows. It is important to note that in some cases the interaction takes place in both directions, but in some the action is only one-way. For example, the creator and the work itself do not affect the audience directly, but only indirectly through the performance by the artist.

The penultimate step in creating the model was the identification of those interactions between the individual elements of the model, in which specific data are created that can be used in the analysis and management of the audience. In the model, these interactions are indicated by fully colored gray arrows. First of all, there is an interaction between the audience and the artistic organization - the purchase of tickets. When making a purchase, a customer decision is e.g., made on the basis of the information available about the program, price and location. If the customer purchases a ticket, data is generated on which program (creator, work or performer), when and at what price the customer purchased the ticket. Another situation where data important for the analysis and management of the audience is created, is the programming process. An artistic institution typically creates its program offer based on its experience, expertise and in accordance with its mission. Dramaturgs typically strive to create a program that is valuable and attractive to the audience. In addition to the content of its program, the organization also decides when, where and at what price the performance will take place. In all these creative and decision-making processes, data is created.

The last step in creating our model of data sources is the classification of data according to parameters that are significant or decisive for the analysis of the audience. Looking at data sources in detail, we conclude that we can identify two basic (elementar) types of data: transactional and non-transactional. Transactional data provides detailed information about the customer's purchasing behavior, and we can monitor this behavior at a specific time. So we can track how often the customer bought, how much money he spent and when he last bought. In addition to transactional data, however, the artistic institution also has a large amount of non-transactional data at its disposal - that is, data about the program and its composition. As an example, let's mention a classical music concert: His program consists of specific compositions (work of art) from specific authors (creator) and performed by specific performers (performer). In addition, the author and composition represent a certain musical style (baroque, romanticism, contemporary music, etc.). Also, the artist person generates non-transactional data such as the artist's popularity rate. So we can see here a relatively large group of non-transactional data, which, however, have a major impact on the audience's decision whether to attend the concert or not. Another group of non-transactional data is related to the technical realization of an artistic performance. The capacity of the venue or the day of the week when

the performance takes place can serve as an example. Not insignificant are also non-transactional data coming from the external environment - even here come a number of factors that affect the behavior of the audience: weather, geographical availability of the concert venue, the possibility of parking, but also various legislative or hygienic restrictions. All this data can then be used for audience analysis.

3.2 Application of the model of data sources

We applied our data sources model in the research of the audience of two contrasting institutions: a small non-profit organization and a regional symphony orchestra. As we have identified transactional and non-transactional data types, we have applied methods that are commonly used in customer analysis using these types of data or at least some of them. Examples of such a method are customer lifetime value prediction and RFM analysis. These proven traditional approaches are based on the use of transactional data. However, in addition to transactional data, a cultural institution also has a large amount of non-transactional data at its disposal, and therefore the question arises as to whether current approaches using transaction data to analyze customers (in our case audiences) can also be enriched with non-transactional data. The first answer to this question is given by Potančok et al. (2020). These authors applied an approach that utilizes recency, frequency and monetary (RFM), and combines this data with other relevant non-transactional attributes about the audience behavior and about the concerts. The implementation of the non-transactional data draws on the assumption based on a long-term observation of customers' behavior that specific properties of the concerts might influence the decision of the audience member whether to attend a concert in the future.

Conclusion and further research

Being able to identify customer wants and segment markets for increased personalization is a difficult task, but the growth of the Internet and availability of data allows organizations to locate and target audiences more efficiently. The use of data has boomed with the wholesale adoption of computers and the Internet.

In our paper, we intended to outline the direction of the possible use of information sources that are most accessible to cultural institutions - their own internal data sources. Such data sources are typically readily available and do not incur additional costs.

First, we analyzed the available literature on audience analysis and we focused on the data sources used for research, or how to collect these data. It is interesting for us to find out that the studies do not use internal data of institutions, which are available without the need for further collection through marketing research - whether in the case of the application of qualitative or quantitative analyzes. We examined the data of two different institutions and identified typical sources of internal data. Subsequently, we generalized our findings into a widely applicable model of data sources and classified the data into two basic types - transactional and non-transactional. The model monitors data sources in terms of their origin - where and what data is generated.

We used the resulting model to research the audience of two different institutions, we applied standard methods using transaction data for CLV prediction. This raised further questions and possible topics for further research - implementation of non-transactional data into existing methods, development of new methods using data mining and machine learning approaches in customer data analysis - these technologies are widely used in other domains (banking, telecommunications, online shopping), but not yet in culture.

Other directions of future research could follow the process of data management in cultural institutions, the removal of managerial barriers to research and the use of this data for marketing practice.

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