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Application Possibilities of the Single Digital Gateway within the Intellectual Property Rights Framework

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Abstract

The paper contains a legal analysis of the Single Digital Gateway within the intellectual property rights framework. Intellectual property rights are analyzed from two perspectives – the first one deals with providing information on the application possibilities by citizens and businesses in a foreign country and the second one presents an analysis of solutions required for establishing and functioning of the Single Digital Gateway regarding individual subjects of intellectual property rights.

Key words

Single Digital Gateway, intellectual property rights, information and communication technologies

1. Introduction

Nowadays it is evident that in the absence of possibilities to meet face-to-face the cyberspace provides the only solution for communication with public authorities. Although cross-border movement between EU member states was restricted and tightened, the restrictions did not include data. Even though during the coronavirus crisis the administrative processing at relevant offices slowed down, it is possible to process everything as before by means of online communication. Life cannot stop and businesses continued to operate, sometimes even under the restricted regime, but continued anyway. This is related to the issue of the economic progress linked to the subjects of intellectual property.¹ It is necessary to register certain rights before the possibility to register them ceases to exist, particularly industrial property rights which are established upon their registration in the relevant register. The right of priority cannot wait, therefore the crisis may restrict the development or shift its direction into the areas of social life that dominate the world of industrial property rights, but only to a certain degree.

Connecting the Single Digital Gateway with subjects of intellectual property rights is the result of the aim to

¹ For more information, see: FUNTA, R.: Economic and Legal Features of Digital Markets, Danube Law and Economic review, Issue 2, 2019, str. 173-183, Brno, online: <https://www.eaco.eu/danube-journal-archive/issue-2-2019/and> FUNTA, R.: Internet Platforms and Digital Economy. In. EU Law Journal, No. 1. 2020, online: <http://www.eulawjournal.eu/index-4.html>

identify rights to intangible chattels which are necessary for functioning of this gateway or their application may raise some legal questions in the future which did not have to be fully or partially taken into consideration at the time when the SDG was being created.

Despite the fact that certain subjects of intellectual property rights are already regulated by the European Union legislation – sometimes by means of uniform legislation contained in the European Union regulations, it does not necessarily mean that there are not situations to which the given regulations would not be applicable. This means that we have to apply national law of individual member states. In other words, if it is not possible to apply uniform European legislation, it is necessary to use legal institutes which will have a similar unifying effect for the SDG.

2. Single Digital Gateway

The idea behind the existence of the Single Digital Gateway is to strengthen rights of citizens and businesses in the internal market with the purpose of facilitating movement, settling down, trading, and expanding across member states. It is a means of providing information due to which the communication between citizens and business, of the one part, and relevant public authorities in individual EU member states should be more effective which aims to reduce administrative burden and administrative costs.² The SDG is a single point to access information, or a single entry point through which citizens and businesses should acquire access to information on national and EU rules and requirements that have to be met.³ The SDG provides

² For more information, see: MESARČÍK, M.: Výkon verejnej správy prostredníctvom údajov - výzva digitálnej ekonomiky a štátu? In: Mílniky práva v stredoeurópskom priestore 2018 [electronical document]. Bratislava: Právnická fakulta, 2018. - S. 271-275

³ Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (hereinafter referred to as 'regulation') justifies in the recitals the need to adopt the regulation with the aim of improving the position of citizens and businesses in the internal market especially when settling down in a different member state. For this reason the regulation provides the subject-matter jurisdiction in Article 2(2) to give access to:

access to the relevant contents which involve information areas listed in Annex to the regulation.⁴

The SDG is available in every language of the Union to meet the requirement of user-friendliness. The aim to establish a user-friendly and interactive gateway to guide the users to the relevant online services of public administration⁵ in individual member states demands language policy due to which the SDG user-friendly requirement will be implemented in practice. In the ideal case, each member state would provide information on their online services of public administration in all official languages of the Union. This requirement is utterly idealistic but currently absolutely impossible.

Nevertheless, the establishment of the SDG can be considered a positive attempt to create a legal information system to provide legal information from individual member states that are necessary for exercising their rights and legitimate interests. The fact that it is a legal information system is supported by the technical solution based on which legal information is available to citizens and businesses.⁶ The SDG's portal solution in the form of web portal represents user interface with the purpose of providing information online. It is necessary to mention that single user interface of the online webpage Your Europe (the Slovak version is 'Vaša európa') already exists⁷, therefore it is possible to say that the SDG

a) information on rights, obligations and rules laid down in Union and national law that are applicable to users exercising or intending to exercise their rights derived from Union law in the field of the internal market in the areas listed in Annex I;

b) information on online and offline procedures and links to online procedures, including procedures covered by Annex II, established at Union or national level in order to enable users to exercise the rights and to comply with the obligations and rules in the field of the internal market in the areas listed in Annex I;

c) information on, and links to, the assistance and problem-solving services listed in Annex III or referred to in Article 7 which citizens and businesses can refer to if they have questions or problems related to the rights, obligations, rules or procedures referred to in points (a) and (b) of this paragraph.

⁴ These areas involve: Travel within the Union, Work and retirement within the Union, Vehicles in the Union, Education or traineeship in another Member State, Healthcare, and more.

⁵ For more information, see: ANDRAŠKO, J.: Theoretical aspects of public administration electronic services. In: Bratislava law review. - Roč. 1, č. 2 (2017), s. 119-128.

⁶ For more information, see: RALBOVSKÁ SOPÚCHOVÁ, S.: Information systems as essential prerequisites for electrification of public administration in the Slovak Republic. In: CER Comparative European research 2017, iss. 2 [electronic document]. - London : Sciecee publishing, 2017 S. 121-124.

⁷ For more information, see: https://europa.eu/youreurope/advice/index_sk.htm. A similar systematic solution is presented by a legal information system Eur-Lex which offers online access to EU law and

provides new portfolio of services which fulfill the aim and purpose of the regulation.

3. Subjects of intellectual property in the SDG

It is possible to examine the SDG from two perspectives from the intellectual property rights point of view. The first one examines which information services are provided by the SDG with regard to the intellectual property rights. The information portfolio of the SDG offers an easier access to the already existing assistance services or problem-solving services established at Union level. Regarding the intellectual property rights, it is the Intellectual Property Rights helpdesk⁸. The current webpage of the Intellectual Property Rights helpdesk offers information on the protection of intellectual property rights in the Union, as well as outside the Union. Subsequently, after accessing this information, we obtain access to another webpage which is available only in English. If the role of the SDG is to offer access to information services, then the same services should be available in all languages. This requirement should be met at least when it comes to the information services offered by the Union. Then the connection with national institutions which would offer the given information should follow. In the Slovak Republic there are two such institutions: the Industrial Property Office of the Slovak Republic offering information on industrial rights and Ministry of Culture of the Slovak Republic as the central body of state administration of the Slovak Republic for copyright and copyright laws. The quest for information includes another stage where it is necessary to use the webpage of the Industrial Property Office of the Slovak Republic which contains the section Partners of the office (the Slovak version is 'Partneri úradu')⁹ which subsequently provides connection to institutions¹⁰ and professional bodies¹¹ through the web links.

Information areas that are important for citizens and businesses exercising their rights which are provided

contains also a webpage N-Lex which is a single portal for access to national laws. See https://n-lex.europa.eu/n-lex/index_sk

⁸ The Slovak version of The Intellectual Property Rights helpdesk is available at: https://ec.europa.eu/info/business-economy-euro/doing-business-eu/intellectual-property-rights_sk. The contents of this webpage involve a legal inaccuracy in the title stating 'Protection of intellectual property rights and copyright'. In this case, the term 'copyright' presents conceptual nullity.

⁹ For more information, see: <https://www.indprop.gov.sk/?partneri-uradu>

¹⁰ Particularly: Patent Libraries (PATLIB), Contact and information point of the office (KIM), Information-assistance points of the office for innovation (INNOINFO).

¹¹ Particularly: the Slovak Chamber of Patent Attorneys, the Slovak Bar Association, the Association of Slovak Scientific and Technological Societies, the Slovak Chamber of Commerce and Industry.

by the internal market are listed in Annex I of the SDG. Areas of information related to businesses contain an area 'Starting, running and closing a business' according to which the SDG should offer an access to the information regarding intellectual property rights, obligations and rules (applying for a patent, registering a trademark, a drawing or a design, getting a license for reproduction). The question is which particular information is necessary for businesses. For instance, registration of objects of industrial rights is connected to relevant legal effects linked to their protection, however there are individual regulations with unitary effect under the European Union law. An example of this is a European patent with unitary effect¹² as well as patent registration according to the European Patent Convention¹³ offer effective protection of technical solutions which businesses may consider patentable. The same applies to EU trademarks¹⁴ and Community design¹⁵. This revelation does not ipso facto exclude the possibility to communicate with a relevant office competent to protect intellectual property rights of individual member state since the purpose of the Single Digital Gateway is to offer access to public authorities of each member state and through them to legal options to protect the subject of intellectual property in all member states as easy as possible.¹⁶

Particularly when it comes to information duty of the Slovak Republic,¹⁷ it will be interesting to see Ministry of Culture of the Slovak Republic which should create institutional precondition for information on copyright and copyright laws. The document called Implementation of Regulation 2018/1724 of the European Parliament and of the Council establishing a single digital gateway in the Slovak Republic of 3 July

¹² For more information, see Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection.

¹³ For more information, see Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973 as revised by the Act revising Article 63 EPC of 17 December 1991 and the Act revising the EPC of 29 November 2000.

¹⁴ For more information, see Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark.

¹⁵ For more information, see Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

¹⁶ It is important to emphasize that there is an English version of the Industrial Property Office of the Slovak Republic webpage. Therefore, if we consider English as the language most widely understood among EU citizens, the Office is ready to provide access to information through the SDG.

¹⁷ For more information, see: MUNK, R.: Právo na informácie v SR. In: *Míľniky práva v stredoeurópskom priestore* 2013, 1. časť. - Bratislava: Univerzita Komenského, Právnická fakulta, 2013, MUNK, R.: Poskytovanie informácií na internete. In: *Bratislavské právnické fórum 2018 [electronical document]: ústava na internete a internet v ústave*. - : 1. vyd. Bratislava: Právnická fakulta, 2018. - S. 82-87.

2019 passed by the Government of the Slovak Republic as Resolution No. 335/2019 states that preparedness for offering cross-border services is low and so far has been ignored. At the same time, the Government of the Slovak Republic claims that the realization of all measures will require complex planning while taking into consideration technological, legislative and organizational conditions and requirements. Implementation of Regulation 2018/1724 expects effective and good collaboration between relevant public authorities. It can be assumed that Ministry of Culture of the Slovak Republic will be administrator of copyright and intellectual property rights. This area should start there, however it is inevitable to connect administrators of collective management; there are numerous administrators and each of them has their own procedures, but mostly internet information sources in the form of webpages of the administrators. I assume, or rather wish that Ministry of Culture of the Slovak Republic will (if not operate) be at least held responsible for one information source containing unified information on obligations of all administrators.

The second aspect of intellectual property rights looks inside the SDG. As was already mentioned, the SDG is technical and technological solution which makes information or sources of information from all member states accessible online through the Internet. From the perspective of intellectual property rights, it is crucial to explore which subjects of intellectual property will be used for functioning of the SDG. As for internet websites, the computer programs will be protected by intellectual property. The protection of computer programs as well as copyright works is established at Union level in Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (hereinafter referred to as 'Directive on the protection of computer programs')¹⁸. It will be difficult but not impossible to deal with a legal analysis of technical solutions that will be used when establishing and functioning of the SDG. The presumed difficulty stems from two facts: the first one is that currently the specific technical solutions are unknown, and the second one is more of a question to what degree we deal with solutions protected by intellectual property.

Should the only object of examination be technical solutions needed for connection with national, regional and local portals and information databases, the only expected technical solution is interconnection of

¹⁸ Article 1 par. 1 of Directive on the protection of computer programs defines the object of protection as follows: Member States shall protect computer programs, by copyright, as literary works within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. For the purposes of this Directive, the term 'computer programs' shall include their preparatory design material.

numerous information systems where not only protection of computer programs must be taken into consideration, but legal protection of databases to a certain degree as well.¹⁹

A high level of probability resulting from the current state of the already existing European portals (such as A common gateway to National Law, available at <https://n-lex.europa.eu/n-lex/>) justifies the conclusion that economic rights to subjects of intellectual property – the aforementioned intangible chattels – should be regulated at national level through license agreements. The owner of such rights can provide authorization to the European Union and member states through the license agreements if the rightholder of economic rights to intangible chattels is a different subject than the Union. The European Union and member states have a basic legal duty to ensure that online systems of public administration have contractual or other preconditions to function not only on the territory of the relevant country, but in the entire Union as well. This legal state is obligated to create options for citizens to access online system of public administration from one member state to another without obligation to deal with using the subject of protection during the access. This requirement legitimizes the need to use the entire territory of the Union as one legal territory from the point of view of the territorial jurisdiction of intellectual property rights protecting works and solutions in individual member states.

4. Conclusion

The Single Digital Gateway is a legal information system with technical solutions providing access to information and online services for EU citizens and business in order to easily exercise their rights in the internal market. The need for free movement of citizens and businesses will shift to online environment due to the use of the SDG services. The aim is to reduce time and costs which is determined by the functional legal information system which will provide application possibilities of online services of public administration in every member state through new technologies. In this regard, it is vital to examine the impact of the SDG on the subjects of intellectual

¹⁹ Under Section 131 Act No. 185/2015 Coll. Copyright Act as amended, copyright to a database commences only in case when a manner of selection or arrangement of content of database is a result of creative and artistic activity of author. The creative and artistic activity of author can hardly be expected when data collection and storage is regulated by special law. Even if legal protection of database was possible, Section 138 Copyright Act states exceptions and limitations of special right to database in situations when database is not an object of copyright. Extraction or re-utilisation in the extent necessary to ensure public security or due course of administrative proceedings, criminal proceedings or judicial proceedings is allowed even without authorization of maker of database.

property rights which were used upon the establishment and functioning of the SDG.

The establishment of the SDG is fully under control of the European Commission which is responsible for the implementation of this legal information system.²⁰ The European Commission states that member states will participate in the development of relevant information and communication technologies. Such cooperation is inevitable since it is necessary to connect a great number of information systems operating at national levels of member states. Therefore, the regulation imposes a duty on member states to be responsible for development, availability, monitoring, updating, maintenance and security of ICT applications related to the national websites and webpages which are managed and linked to common user interface.²¹

Formulated in this way, such responsibility leads to the issue of responsibility that the intellectual property rights of suppliers, such as copyright to ICT or other industrial rights, are observed as they are inevitable links in the chain of the functioning SDG. Legal protection of intellectual property rightholders towards the used ICT will depend on mutual contractual obligations for the territorial jurisdiction of the entire Union. Therefore, the Commission and member states will have a duty to set the scope and manner of using the intellectual property rights so that the subject of protection of rightholders will be protected in every member state and simultaneously their license agreements should describe the territorial jurisdiction for all member states.

5. Literature summary

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FUNTA, R.: Economic and Legal Features of Digital Markets, Danube Law and Economic review, Issue 2, 2019, str. 173-183, Brno, online: <https://www.eaco.eu/danube-journal-archive/issue-2-2019/>

²⁰ Article 21 lists responsibilities of the Commission; the Commission shall be responsible for the development, availability, monitoring, updating, maintenance, security and hosting of (a) the Your Europe portal, referred to in Article 2(1); (b) the common user interface, referred to in Article 18(1), including the search engine or any other ICT tool that enables searchability of web information and services; (c) the repository for links, referred to in Article 19(1); (d) the common assistance service finder, referred to in Article 20(1); (e) the user feedback tools, referred to in Article 25(1) and point (a) of Article 26(1).

²¹ According to Article 21(2), the Member States shall be responsible for the development, availability, monitoring, updating, maintenance and security of ICT applications related to the national websites and webpages that they manage and that are linked to the common user interface.

FUNTA, R.: Internet Platforms and Digital Economy. In: EU Law Journal, No. 1. 2020, online: <http://www.eulawjournal.eu/index-4.html>

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Some EU law requirements on Internet sales

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Abstract

Online commerce is becoming a more competitive for retailers. In the meantime, it has almost become part of the everyday life of a specialist retailer that a customer receives extensive advice from him in his retail store and then orders the article online because he can get it there cheaper. This is called as the so-called "free rider problem". Since a retail store is associated with considerable additional costs, an online retailer can offer the products cheaper online.

Key words

Competition law, EU law, Internet sales

1. Introduction

Online trade is becoming an increasingly competitive. Manufacturers are looking to increased online trading with mixed feelings. On the one hand, they benefit from doing business on internet. On the other hand, they are concerned about their brand image and the quality of customer service they can provide. However, restricting internet trading involves antitrust risks. The question therefore arises as to what extent there remain opportunities to restrict Internet sales.

2. Legal basis

Agreements between manufacturers and retailers are subject to vertical restrictions under the cartel prohibition of Art. 101 TFEU.¹ Something else applies if the shares of the manufacturer in the sales market and those of the retailer in the shopping market are

¹ 1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which: (a) directly or indirectly fix purchase or selling prices or any other trading conditions; (b) limit or control production, markets, technical development, or investment; (c) share markets or sources of supply; (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts. 2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

each not higher than 30%. Art. 101 (3) TFEU² in conjunction with the European Block Exemption Regulation exempts such agreements from the cartel prohibition, provided that the agreement does not fall under one of the provisions in Art. 4 Vertical Block Exemption Regulation. Online trading itself is not mentioned in the Vertical Block Exemption Regulation. However, the European Commission has published guidelines for vertical restrictions (Vertical Guidelines) that specify the Vertical Block Exemption Regulation. The vertical guidelines are administrative guidelines for the European Commission. In fact, the courts of the Union and the courts of the Member States comply with it, although they have no binding effect.³

3. Operation of a website as a form of passive sales

The EU Commission is pursuing the goal of promoting Internet sales in the interests of stronger price competition and a wider selection of products. It therefore states that, in principle, every retailer must be allowed to use the Internet to sell products so that more and different customers can be reached. The EU Commission classifies the operation of a website as a form of passive sale. Passive sale means that the seller acts upon the customer's request. In contrast, active sales exist when individual customers are targeted, e.g. by means of direct advertising. While certain forms of active sales may be prohibited, passive sales must always be possible.⁴ Restrictions on passive sales generally constitute a core restriction within the

² The provisions of paragraph 1 of Art. 101 TFEU may, however, be declared inapplicable in the case of: any agreement or category of agreements between undertakings, any decision or category of decisions by associations of undertakings, any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not: (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question. See also: SIMAN, M. - SLAŠŤAN, M. (2010): Primárne právo EÚ; SVOBODA, P. (2010): Úvod do evropského práva. ŠMEJKAL, V. (2012): Ochrana spotřebitele a jeho blahobytu v soutěžním právu EU; ŠMEJKAL, V. (2014): Výběr spotřebitele - nové paradigma pro globální antitrust?.

³ FUNTA, R. - GOLOVKO, L. - JURÍŠ, F. (2020): Európa a Európske právo.

⁴ JONES, A. - SUFRIN, B. (2016): EU Competition Law: Text, Cases, and Materials.

meaning of Art. 4 lit. b) of the General Vertical Block Exemption Regulation.⁵

4. Permitted restrictions on Internet sales

The EU Commission makes statements in its guidelines⁶ on measures which it generally considers to be permissible:

a) Absolute requirements for offline sales

According to the guidelines, the manufacturer may not limit the share of internet sales in regards to total sales of a dealer. A regulation "at least 80% of total sales are to be made offline" is inadmissible, since this specifies the relative relationship between Internet sales and sales through the retail store. The same applies, for example, if the dealer is obliged to sell 1.000 pieces offline, if he is only supplied with a total of 1.050 pieces. However, the manufacturer can, without limiting the Internet trade, agree with the retailer that he sells the product offline at least to an absolute extent, determined by value or quantity, in order to ensure effective operation of his physical point of sale. The scope of the required offline sales can either be identical for all retailers or vary based on objective criteria such as the size of the retailer in the sales network or its geographical location.⁷ The manufacturer may therefore require that the dealer not only maintain a shop pro-forma, but also actually generate sales in it and thus inevitably provide consulting services. For example, offline sales, which can be achieved in geographically appropriate locations with qualified staff without special efforts, may be permitted as an absolute minimum sales target (by value). In addition, online sales must be allowed without restriction.

b) Granting fixed fees

Agreements whereby a retailer pays a higher price to the manufacturer for products that he wants to sell online than for products that are to be sold offline (so-called double price system) are prohibited. Any price deterioration with regard to the products sold online is

therefore not permitted.⁸ Therefore, e.g. higher discounts are granted for products sold offline. An individual exemption from the prohibition of price splitting is only considered in narrow exceptional cases if online sales are associated with significantly higher costs for the manufacturer than offline sales. As an example, the Commission refers to the case where online sales do not involve on-site installation by the retailer, leading to more customer complaints and liability claims from the manufacturer than offline sales. However, the manufacturer is allowed to agree a fixed fee with the retailer to support offline or online sales efforts. It is important that this is a fixed fee. According to the Commission, a variable fee that increases with the offline sales achieved would indirectly lead to a double price system.⁹ The term fixed fee means that it is not a quantity based on sales or quantities, but a previously absolutely definite and concrete unchangeable (fixed) service. The manufacturer can therefore provide the retailer with a sales-independent fixed subsidy for his advisory staff or his other services (e.g. marketing initiatives) to support his offline or online sales efforts, unless this actually leads to a restriction of online trading.¹⁰

c) Qualitative requirements

The manufacturer can set quality requirements for Internet sales, provided that the requirements are equivalent to the requirements for offline sales and online sales. The criteria for online and offline sales do not have to be identical.¹¹ However, they must pursue the same goals and should achieve comparable results. Therefore, e.g. qualitative specifications regarding the design and usability of the website and the range of services offered by the retailer. According to the Commission guidelines, the manufacturer can also require his retailers to have one or more physical points of sale or showrooms if they want to become a member of the distribution system. Conversely, this leads to the conclusion that the exclusion of pure internet retailers is permitted as a quality requirement. The manufacturer can thus prevent the dealer from e.g. works only from a garage and selling the goods exclusively online.¹²

d) Requirements for the use of third-party platforms

According to the European Commission vertical guidelines, the manufacturer may require retailers to only use third-party platforms for online sales of the contractual products in accordance with the standards and requirements agreed between the manufacturer

⁵ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

⁶ Guidelines on vertical restraints 2010/C 130/01. Throughout these Guidelines, the analysis applies to both goods and services, although certain vertical restraints are mainly used in the distribution of goods. Similarly, vertical agreements can be concluded for intermediate and final goods and services. Unless otherwise stated, the analysis and arguments in these Guidelines apply to all types of goods and services and to all levels of trade. Thus, the term 'products' includes both goods and services. The terms 'supplier' and 'buyer' are used for all levels of trade. The Block Exemption Regulation and these Guidelines do not apply to agreements with final consumers where the latter are not undertakings, since Article 101 only applies to agreements between undertakings.

⁷ FUNTA, R. (2019): Economic and Legal Features of Digital Markets.

⁸ KINDL, J. (2005): Pojem narušení hospodářské soutěže – obecná východiska a konkrétní aplikace.

⁹ WHISH, R. - BAILEY, D. (2018): Competition Law.

¹⁰ KALESNÁ, K. – HRUŠKOVIČ, I. – ĎURIŠ, M. (2011): Európske právo.

¹¹ FUNTA, R. (2017) Politika hospodárskej súťaže EÚ a online platformy.

¹² FUNTA, R. (2011): Abuse of a dominant position in EU and US Law.

and retailers. For example, if the dealer's website is on a third-party platform, the manufacturer could require customers not to access the dealer's website through a website that bears the name or logo of that platform. It is unclear whether it can be concluded that, according to the Commission, the manufacturer can impose on the retailer not to sell its products via third-party platforms such as "eBay" or "Amazon Marketplace". There is currently a lot of debate as to whether such a platform ban is permissible. A decision by the European Court of Justice has not yet been issued about this question.

A ban on selling via third-party platforms is particularly worrying because it makes it especially difficult for smaller retailers to sell via the Internet, since the establishment of an equivalent online shop of this kind involves considerable time and financial investments. Therefore, outside of selective distribution systems, such a platform ban may be considered as inadmissible. This is assessed differently in the context of selective distribution systems. In such a case, the manufacturer could prohibit the dealer from offering the goods via online platforms such as "eBay". A selective distribution system is a distribution system set up for brand maintenance reasons, in which the goods are only sold through selected dealers.¹³ Selective distribution systems are not restrictive of competition if the following criteria of the European Court of Justice are met:

1. the selection of resellers must be non-discriminatory based on objective qualitative criteria,
2. the characteristics of the goods or services must require such a system to maintain quality or manageability and
3. the quality requirements must not go beyond what is necessary.¹⁴

The goal of preserving the prestige character alone is not enough. However, high-quality branded goods, especially if they are durable and technically sophisticated products that require sound advice and proper service, can justify a selective distribution system. However, non-discriminatory handling is always a prerequisite. Such is probably not the case, for example, if the manufacturer put the ban on platforms on the fact that this is necessary to maintain the quality image he has created and at the same time he sells his products via a discounter chain. Since both sales channels carry the risk of losing the image of the brands, the eBay seller is discriminated against the platform ban.

5. Selective distribution in an e-commerce

¹³ SVOBODA, P. - MUNKOVÁ, J. - KINDL, J. (2012): Soutěžní právo.

¹⁴ KARAS, V. - KRÁLIK, A. (2012): Právo Európskej únie.

Manufacturers use selective distribution agreements to protect their brand and to gain control over key parameters over their distribution system. Such parameters may include pre- and after-sales services that affect the value of the brand. The judgment of the European Court of Justice in Coty has given more light on the extent to which selective distribution systems can be used by manufacturers to restrict distributors in their use of (online) marketplaces.¹⁵ Coty, a supplier of luxury cosmetics in Germany, distributed products through members of its selective distribution system. Parfümerie Akzente (an authorised distributor under the selective distribution system) sold Coty's products through its brick-and-mortar shops, its own online shop, as well as through Amazon's marketplace (amazon.de). Coty required authorised distributors to make online sales of its products through an electronic shop window and to prohibit 'the recognisable engagement of a third-party undertaking which is not an authorised retailer' of Coty.¹⁶ The European Court of Justice considered that a restriction on sales through third-party platforms was not disproportionate. According to the European Court of Justice, the absence of a contractual relationship resulted in the fact, that Coty would be unable to require compliance with quality conditions from the third-party platform. The European Court of Justice found that a restriction on sales through third-party platforms did not amount to a restriction on customers. The European Court of Justice mentioned, that an absolute ban on internet sales does amount to a hardcore restriction of competition by object. This means, that restriction on sales through discernible third-party platforms was distinguishable from an absolute ban on internet sales, as it only restricts a specific kind of online sale.

6. Conclusion

In view of the European Commission's goal of reaching more and other customers via the Internet, restrictions on Internet sales by the manufacturer harbor high risks and uncertainties. In particular, on the question of the admissibility of platform bans, it remains to be seen how the higher judicial decisions will comment on this. It should be noted that in principle every retailer must be allowed to make sales over the Internet. Any disadvantage of online trading compared to offline trading is in principle not permitted. Restrictions to online trading are particularly critical if the manufacturer does not have a selective distribution system and if the products do not

¹⁵ C-230/16, Coty Germany GmbH v. Parfümerie Akzente GmbH, [2017] EU:C:2017:94.

¹⁶ These restrictions prevented authorised distributors from selling Coty's products on platforms carrying a third party's branding such as Amazon and eBay. Parfümerie Akzente refused to accept the revisions, and Coty brought an action to prohibit Parfümerie Akzente from selling through amazon.de. C-230/16, Coty Germany GmbH v. Parfümerie Akzente GmbH, [2017] EU:C:2017:94, para. 17.

have a high-quality brand image or are particularly advice intensive.

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Terrorism, developments and challenges

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Abstract

Since 2001, global terrorism has been one of the EU and international challenges. This paper outlines the main influences that have been relevant to the transformation of terrorism over the past three decades. The threat of Salafi jihadist terrorism, its development since the 9/11 attacks and the subsequent 'war on terror' will be highlighted in the following. In addition, other potential sources of future terrorism in Western societies such as the anti-globalization movement or right-wing extremists' groups are also revealed. In any case, governments' future anti-terrorism strategy should focus on strengthening resilience and combating terrorism through the rule of law. Domestically, it will be essential to rely on community and community-based policing and help Muslims integrate into Western society. Increased efforts in international cooperation are also important - either ad hoc or through multilateral institutions. Relations with Pakistan and Syria has to be deepened. In a broader sense, however, it is important to define one's own role and to establish it in the international fight against terrorism, especially with regard to Afghanistan and then to pursue it purposefully.

Key words

Terrorism, resilience, extremists' groups

1. Introduction

Terrorism is a method that can be used by any person or group following any motive. As a form of violence, terrorism says little about the people who are behind it. Nor does the tactic itself provide information about the reason for its use. Before a detailed analysis and the projection of trends Terrorism can only be understood in the light of the specific political and social conditions under which it occurs. Thus, all attempts to derive far-reaching insights into the causes and possible solutions to certain violent conflicts solely on the basis of their "terrorist" manifestations are doomed to failure.

In the 90s of the 20th century, it became apparent that terrorism had changed. Some analysts followed the term "new terrorism" to describe what they saw as fundamentally new ways for terrorists to operate and use force. In addition, they argued that the "new terrorism" resulted from the forces of late modernity, and globalization in particular.

First, terrorist groups are relatively small organizations, but their structures have become more diffuse and their scope has spread to the transnational sphere. In contrast to the more formalized organizations of "old" terrorism, "new" terrorist groups are often described as networks, as hierarchies. It is not the formal rank of a person that counts, but the kind of connections that they can create. Often these structures go beyond national borders. Unlike the old terrorism, which usually had well-defined geographic focuses that could relate all the activities of the group, some of the new terrorists have no sole permanent geographic reference. As the example of al-Qaeda¹ shows, the place where most operations of the group are performed may be different from where most of the new members come from or where the leadership of the group is stationed.

The second area, where significant changes have taken place, relates to the aims and ideologies of terrorists. By the end of the 1960s, there was not a single religious terrorist group. This changed for example with various groups in the Muslim world from Hezbollah to al-Qaeda. Nationalism undoubtedly remains a strong motivating force of terrorism. It is important to note, however, that in many cases where the nationalism inherited from terrorist groups was secular and/or left-wing, it is today confused with religious issues. In the Israeli-Palestinian conflict, for example, the (secular) PLO gave way to (religiously inspired) Hamas. Similarly, formerly secular groups in Chechnya have adopted religious themes and symbols. Ideologically, the rise of religiously inspired terrorism can be traced back to the so-called "religious revival" that began in the 1970s. It can be argued that the renewed interest in religion was a more or less consistent response to feelings of insecurity and uncertainty caused by the encounter with late modernity and globalization. In this sense, religious rebirth must be perceived as thoroughly modern in its genesis and manifestations. Indeed, the politicization of the revivalist movement has often been the result of the perceived failure of supposedly modern secular ideologies (especially in the Arab world) and/or the deepening split between "fundamentalist" ways of life and increasingly secular and liberal societies (especially in the West).

¹ BURKE, J. 2004): Al-Qaeda: The True Story of Radical Islam.

Third, terrorism has evolved as a method. However, in the age of new terrorism, attacks on the civilian population with high casualties seem to have become routine and intentional. For the first time, the use of weapons of mass destruction by terrorists became a reality. In fact, all the major databases on terrorist attacks document a significant increase in high-toll terrorist attacks. However, databases often do not reflect that the rising death toll is accompanied by an increase in brutality.

The spread and transnationalization of the structures of terrorist groups; the rise of religiously inspired ideologies; the higher number of fatalities and the increase in the brutality of terrorist operations usually refer to as "new terrorism". The term describes the most important developments of the last three decades. However, it does not suggest that the transformation has taken place uniformly and universally, and that all terrorist groups are now transnational networks causing high casualties. This does not mean that the new trends will become more important or continuously evolve in the coming decades.

2. Salafist jihadism and the war on terror

The greatest terrorist threat in recent years has come, among others, from the so-called Salafist jihadist movement, often called al-Qaeda. In their view, every Muslim has an individual duty to defend the community of believers (ummah) through violence or armed struggle - usually called jihad by Salafist jihadists. The goal of this jihad is to remove the obstacles to become a single Muslim nation (the Caliphate), which is governed by the Sharia, as well as by strict social practices derived from a literal interpretation of the Koran as Salafist or Wahhabi). Al-Qaeda² justifies violence against secular regimes in the Middle East, non-Muslim interests in the Muslim world and external influences that they believe prevent the emergence of the Ummah and symbolize or contribute to the ongoing oppression, exploitation and occupation of the Muslim world.

Al-Qaeda was founded by foreign, mainly Arab, fighters who were involved in the war against the Soviet occupation of Afghanistan in the 1980s. During the 1990s, al-Qaeda increasingly focused on the so-called "distant enemy", i.e. the western powers, which are believed to support oppressive regimes in the Middle East. Their series of terrorist attacks culminated in the September 11 attacks on the United States that killed 3,000 people - more than any other terrorist attack in recent history. The United States government saw the act of al-Qaeda as an act of war and promptly declared its own "war on terror".

The war on terror by America produced various results:

- there were no further attacks on the American "home country". The Salafist jihadists have carried out a series of terrorist attacks in Europe, the best-known examples of which are the Madrid 2004 and London 2005 attacks. These were shocking, but less extensive than September 11th. In addition, al-Qaeda's safe haven in Afghanistan was eliminated, and most of the pre-2001 al-Qaeda leadership were either killed or arrested.
- the two al-Qaeda leaders - Osama bin Laden and his deputy, Ayman Al Zawahiri have been killed by U.S. special forces.

At the same time, al-Qaeda had to face its own setbacks. Al-Qaeda had lost strongholds, including those in Iraq, Algeria, Egypt and Saudi Arabia. A real turning point was apparently al-Qaeda's attempt to trigger a civil war in Iraq. This was accompanied by many suicide bombings against Iraqi Shiites, which were sharply condemned by Muslims around the world.³

The European Union made concerted efforts to improve coordination of counterterrorism among the member states. Provisions for facilitating the expulsion of suspects and judicial cooperation in general were particularly important. However, many member states resisted measures to combine intelligence and other sensitive information, as well as far-reaching proposals for centralizing anti-terrorism policy at European level. The larger Western European countries in particular consider the EU too cumbersome and bureaucratically overloaded to act quickly enough to effectively combat terrorism. Some countries are also reluctant to share intelligence information about EU institutions such as EUROPOL.

The future path of the Salafist jihadist movement is difficult to predict. Although there is no doubt that al-Qaeda has lost support, it is too early to announce its departure. Without a doubt, Pakistan is the crucial location for the foreseeable future, since this is where most of the al-Qaeda activities come from.

3. Other threats

As noted earlier, terrorism is almost always related to radical popular movements that produce violent spikes that have decided to take actions to break the indifference of the population and/or force governments to take their interests into account and change their policies. In Western countries, including Germany, there are three of these movements that have been repeatedly associated with violent activities and whose activities could escalate in the future.

The first movement is the anti-globalization movement. For them, the current globalization is merely a continuation of imperialist practices, with the political and economic elites. Extreme environmentalists who belonged to this movement had

² WRIGHT, L. (2017): The Terror Years: From al-Qaeda to the Islamic State.

³ CORBIN, J. (2002): Al-Qaeda: The Terror Network that Threatens the World.

no scruples about breaking the right and used violence to convey their message on various occasions.

The second movement, the extreme right in Europe and North America, also emerged as a direct reaction to the pressure created by globalization but is specifically aimed at immigrants. Like opponents of globalization, it campaigns against neoliberal economic policies, in particular trade liberalization and immigration.

The third movement is non-Islamist⁴ religious groups, especially evangelical-Christian groups, which continue to pose a residual threat. This is certainly less relevant in Germany, but it plays a role in the United States, in which parts of the evangelical movement have merged with racist, anti-governmental rights. In the literature, these groups are often referred to as "millennial" because they believe in a final "showdown" before the arrival of a new Messiah. Therefore, it would be wrong to focus solely on Salafi jihadism with regard to future terrorist threats. Rather, the broader context in which terrorist threats arise must be understood.

4. Conclusion: Terrorism and the future

Designing scenarios for the future of terrorism is risky. Terrorist attacks, and particularly those like the one of September 11, are rare events.⁵ They are almost impossible to predict, but as we saw in 2001, they can change not only the dynamics of terrorism, but also the course of history. One of the biggest threat comes from the Islamic State of Iraq and al-Sham (ISIS), which also calls itself the Islamic State. ISIS is seen as the jihadist threat of greatest concern. ISIS' ideology, rhetoric, and long-term goals are similar to al-Qaeda's. But ISIS is not al-Qaeda. ISIS represents the so called post-al-Qaeda jihadist threat.

The US government represents a unique opportunity, but it also represents a major challenge. The approaches of the American government are closer to the strategy originally represented by many EU countries than that of the government under George W. Bush. This gives a unique opportunity to influence the "war on terror" - or whatever it is called - and to steer it in a more productive direction. The following measures should be considered in the next decade/s:

- Contributing to the development of a comprehensive plan for international engagement in Afghanistan. Together with the United States, EU countries should take the initiative and develop a positive, coherent plan that strikes a better balance between "soft" and "hard" measures.
- For a successful international agenda, EU leaders must be willing to play a clearer role in all aspects

of the global fight against terrorism. This means further investments in the capabilities of the armed forces and the secret service, which have been lagging behind for many years. Only through improved skills in these areas will the EU gain the necessary power to influence discussions on other aspects of policy making in this area.

- Securing support from the citizens in order to convey them why participation in missions like Afghanistan is useful and necessary.
- Deepening relations with Pakistan since Pakistan will be a focus in the fight against global terrorism in the coming years. The goal of all Western governments should therefore be to help the Pakistani government improve its counter-terrorism capabilities, stabilize its position vis-à-vis the Pakistani population as well as normalize relations with India.
- Coordination of joint measures by Pakistan and western and regional powers.
- Civic and community policing, meaning a greater focus on local issues, as the main threat here will come from local networks. This presupposes that governments have a better understanding of their societies. Investing in civic and community-oriented policing in the communities - including the recruitment of police officers from ethnic minorities - should have priority in addition to building social capital within minorities.
- Work in the fields of integration and citizenship, which means that European governments need to address issues such as citizenship and integration and develop a positive approach to what it means to be Muslim in the EU. Ultimately, the threat posed by Salafi jihadism will only disappear if the Western European countries will create better and more inclusive societies in which approaches to exclusion and alienation no longer resonate.

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M&A na Slovensku - Právnický a daňový sprievodca

(by Juraj Gyárfaš)

book review



C. H. Beck
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The primary focus in any M&A transaction is creating shareholder value or profitably exiting an investment. Thus, it is important to conduct a competition law assessment early in the M&A process. Obtaining competition clearance for a merger transaction is, from practical point of view, the most time- and resource-consuming regulatory approval that is required in order to get the deal done.

The ambition of this monograph is to offer Slovak readers the first guide to the legal aspects of M&A transactions, i.e. transactions referred to in Slovak as mergers and acquisitions, in which there is a change of control over business units, their merging and division. Here we speak about transactions that are a common part of every modern market economy and are handled by many entrepreneurs, lawyers, tax and other advisers in Slovakia. At the same time, it is possible to imagine various transactions, from large privatizations of state-owned enterprises to the sale of medium-sized and small family businesses.

A comprehensive discussion of the legal aspects of these transactions has been lacking in Slovakia so far. Thus, this monograph traces the main aspects of a standard M&A transaction from its structuring through due diligence, signing an acquisition contract, closing the transaction, the purchase price agreement and its adjustments to possible claims from various defects. The monograph also deals with the competition approval of concentrations, the labor law aspect, the risks of state aid in transactions with the state and the tax aspect of M&A transactions.

If you are an entrepreneur (or just a law student), this monograph would be helpful to you as it doesn't only talk about mergers and acquisitions; rather it also points out how to go for mergers and acquisitions from labour, tax and other aspects. In summary, there are so many books which can add to the knowledge of anyone practicing M&A during any part of the transaction. This book provides an excellent reference manual for anybody considering undertaking a transaction. There is undoubtedly something that can be learned from each part of this book.