

Réponses au questionnaire sur la régulation économique  
*Responses to the questionnaire on economic regulation*

**Slovaquie**  
**Cour suprême**

***Slovakia***  
***Supreme Court***

**QUESTIONNAIRE ON ECONOMIC SECTORAL REGULATION IN EUROPEAN UNION COUNTRIES**

**I. Scope and purpose of economic sectoral regulation**

1. **Economic sectoral regulation mainly focuses on sectors submitted to European Union' secondary legislation (transport, energy, postal activities, electronic communication, audiovisual media). Are other sectors subject to such regulation in your country?**  
Besides the specialized sectoral regulation of the sectors mentioned above, the Slovak legal systems poses demands and restrictions aimed to protect free competition, which lately goes hand in hand with protecting the end consumer (e.g. prices and quality of the goods and services).
2. *Is the whole set of European Union' secondary legislation for economic sectoral regulation transposed into national law and/or practically implemented?*  
*n/a*
3. **Is economic sectoral regulation only aimed at introducing competition in sectors where there is State monopoly?**  
No.  
  
**If not, what are its other purposes (implementing an internal market, defining universal service obligations, consumer protection, etc.)?**  
Stability of the internal market while, free competition, consumer protection, public safety, etc.
4. **Is economic sectoral regulation an *ex ante* control, aimed at defining obligations for companies in the regulated sectors *a priori*, or an *ex post* control, aimed at upholding competition provisions in case of infringement?**  
Both.
5. **Has the implementation of an economic sectoral regulation prompted the emergence of competition in the relevant sectors?**  
Yes.  
  
**Did new entrants manage to fit in regulated markets?**  
Yes.  
  
**If not, why?**  
*n/a*
6. **Has the implementation of an economic sectoral regulation directly or indirectly lead to the total or partial privatisation of publicly owned companies?**  
It is unclear, as the regulation went on alongside (and was amended on the run) with the privatisation, that has been on since the 1990's.
7. *Which economic sectors would you like to address more specifically in terms of regulation?*

n/a

## **II. Organisation of economic sectoral regulation**

**8. Is economic sectoral regulation implemented by one or several independent authorities?**

There are several independent authorities working in the scope of the economic sectoral regulation, acting as administrative authorities.

**If so, on what grounds was this choice made and how is this independence guaranteed?**

The implementation is exercised by the ministries (e.g. Ministry of Economy, Ministry of Transport, Construction, and Regional Development; partially Ministry of Environment), central state authorities (e.g. Antimonopoly Office) , and administrative authorities with legal power for the whole area of the Republic (e.g. Slovak Trade Inspection, Council for Broadcasting and Retransmission, Regulatory Office for Network Industries, Regulatory Authority for Electronic Communications and Postal Services).

**9. Are these authorities independent of the regulated economic sectors?**

Yes, they are independent.

**If so, how is this independence guaranteed?**

Their independence is guaranteed by the law. They act independently from the government, and from the participants on the market.

**10. Do these authorities have a regulatory power? If so, is it a general regulatory power for the sectors concerned or a narrower regulatory power limited to certain specific aspects of regulation?**

They exercise a certain regulatory power within the scope of their legal power; they are entitled to issue sub-statutory acts (e.g. regulations, directions, orders etc.) where the law admits such a regulation.

**11. Do these authorities take part in drafting the relevant legislation for regulated sectors, through notice procedures for instance?**

Yes.

**12. Do these authorities have a sanctioning power toward companies of the regulated sectors?**

Yes.

**If so, what kind of sanctions can they adopt and under which procedure?**

Pecuniary sanctions, prohibition to undertake, cancellation or revocation of a license (permission), where such is required; under administrative procedure.

**Do these procedures guarantee compliance with provisions of article 6§1 of the CPHRFF?**

Yes, the administrative procedure comply with provisions of article 6§1 of the CPHRFF.

**13. Is every economic sector regulated by a specific authority, or are there some authorities exercising their powers in several sectors?**

The power of some authorities is defined with one sector in mind (telecommunication, TV and retransmission, energies, etc.); some are some are inter-sectoral, as their

scope of power is rather set according to protect a certain group of rights (free competition, consumer protection).

14. *How are economic sectoral regulatory authorities' competences articulated with those, when appropriate, of a transverse authority in charge of assessing compliance to competition law?*  
*n/a*

### **III. Judicial review of economic sectoral regulatory authorities' decisions**

15. **Are all economic sectoral regulatory authorities' decisions subject to judicial review? If not, which decisions are not subject to such checks and why?**

The judicial review focuses on protection of the individual right. Thus, s. c. individual decisions can be submitted to the judicial review as its primary object.

Nevertheless, following the decision of the Constitutional Court of the Slovak Republic of 22 January 2009 No.: I. ÚS 354/08-50, courts in administrative jurisdiction are entitled to review s. c. mixed administrative decisions, especially those concerning regulation of prices and energy distribution (e. g. general licence). These can only be reviewed from the point of lawfulness of the procedure, i. e. whether or not the participant's rights were or weren't harmed.

Under Article 46 para. 2 Constitution of the Slovak Republic, anyone who claims to have been deprived of his rights by a decision of a public administration body may appeal to the court for it to re-examine the lawfulness of that decision, unless specified otherwise by law. The re-examination of decisions concerning basic rights and freedoms must not, however, be excluded from the court's authority.

Under Section 244 para. 2, 3 Act on Civil Proceeding, (2) Courts in administrative justice review the lawfulness of decisions made by and procedures applied by the bodies of public administration, self-governments as well as self-government bodies of professional organisations and other legal persons should law assign them jurisdiction on the rights and duties of natural and legal persons in the field of public administration (hereinafter referred to as "decisions of administrative authorities"). (3) Decisions of administrative authorities shall mean decisions issued by them in administrative proceedings as well as other decisions that create, modify or revoke the entitlements and duties of natural or legal persons or by which the rights, legally protected interest or duties of natural or legal persons could be directly affected. Procedure applied by an administrative authority shall also mean the inactivity of such authority.

Under Section 248 para. 2 Act on Civil Proceeding, The courts shall not review decisions made by administrative authorities that do not have nature of decisions about the right or duty of natural or legal person, particularly generally binding (prescriptive) acts, decision of organisational nature and decisions governing the internal arrangements of the authority, which issued such decisions, and shall not review the procedure of administrative authorities that did not directly affect the rights, legally protected interests or duties of a natural or legal person.

16. **Which system of jurisdiction is competent to verify these decisions? When relevant, is the same system of jurisdiction competent to control the decisions of the authority in charge of assessing compliance to competition law?**

Unlike France, Germany, etc. the Slovak Republic only has one system of general judiciary, that conduct civil proceedings to hear and decide disputes arising from civil, labour, family, cooperative and commercial relationships (including business and

economic relationships), and review the decisions and proceedings of the administrative authorities; as well as hear and decide the penal matters.

While the Courts work as “general judiciaries”, the judges / chambers within courts specialise on civil (incl. labour, family), commercial, administrative, and penal matters, based on the internal organisation acts.

Matters concerning the competition law, unless the infringement constitutes a crime, fall into the jurisdiction of the administrative judiciary and commerce judiciary. While the administrative judiciary reviews the decision on breach of the competition laws (public laws) of the Antimonopoly Office, commerce judiciary hears and decides disputes between entrepreneurs concerning a breach of the competition law (private laws).

**17. Which kind of legal recourse is open against these decisions?**

a/ within the administrative proceeding itself:

- appeal against a decision; law can state where appeal is not allowed
- petition for an extra-appeal or an *ex officio* extra-appeal proceeding against final decision (no new evidence or facts can be taken to the consideration; only the legality of the decision is reviewed)
- petition for a re-trial (petition for a new trial in the same matter) or an *ex officio* re-trial (This is limited in substantiation, generally: a/ if there are facts, decisions and/or evidence that objectively could not be used in the original trial, provided this could result in a more favourable decision on the merits for participant; b/ decision depended on a preliminary question, and a competent authority decided it differently; c/ participant could not fully enjoy all his/her rights due to a wrongful proceeding of the administrative authority, provided this could substantially influence the decision and the remedy could not be reached by an appeal; d/ decision was made by an excluded authority, provided this could substantially influence the decision and the remedy could not be reached by an appeal; e/ if the decision was based on an evidence proven to be untrue, or the decision was taken as a consequence of a crime committed by the decision taking clerk.)

b/ review by a court in the administrative jurisdiction

**What are the relevant legal proceedings in this matter?**

- administrative proceeding and civil proceeding in administrative matters

**18. Which control does the judge exercise on these decisions? Does he monitor the formal requirements, legal proceedings and/or reasons for these decisions? For which kind of decisions does he have limited control? In contrast, for which kind of decisions does he exercise thorough control?**

Courts in administrative jurisdiction review whether or not a decision challenged and the procedure preceding, was carried out in conformity with the law; courts do not examine the factual side – i. e. court cannot take the decision in place of the administrative authority.

Nevertheless, certain exception is given in the section 250i, para 2 Act on Civil Proceeding, allowing courts to re-examine the facts ascertained by the administrative authority. These are the cases of the s. c. full jurisdiction.

Under Section 250i, para. 1, 2, 3 Act on Civil Proceeding, (1) When reviewing a decision, the terms of the judgement are determined by the facts existing in time when the decision contested was issued; fact-finding shall not be carried out. (2) In case the administrative body decided on the dispute or on any other legal matter

following from the civil law, labour law, family and commercial relations in accordance with a special legal act (Sec. 7, para. 1) or decided about imposing a sanction, the court, when reviewing this decision, is not bound by the facts ascertained by the administrative body. The court may proceed from facts ascertained by the administrative body, it can repeatedly render evidence already rendered by the administrative body, or it can carry out probation of evidence in accordance with the third part of Chapter Two. (3) The mistakes in proceedings before the administrative authority shall only be taken into account by the court if such mistakes could affect the lawfulness of the decision contested.

19. **While exercising his power of judicial review, how does the judge keep himself informed (appointment of experts, specialised and contradictory investigation, resort to universities, international sources consultation, etc.)?**
- Study of the already existing decisions of domestic, foreign, or international courts; study of jurisprudence, and specialised papers.
- As, in general, judges in the administrative judiciary do not re-examine the facts ascertained by the administrative authority, and only decide on the legal conformity of the administrative decision, appointing an expert is quite rare. Nevertheless, the law allows a judge, even in the administrative jurisdiction, to appoint an expert in cases where establishment of the facts necessary for the decision requires expert knowledge
20. **Which role does the administrative Supreme Court take toward these decisions?**
- Supreme Court (its Administrative Division) is competent
- a/ to review decisions and procedures of central authorities of state administration and other administrative authorities with jurisdiction for the whole territory of the Slovak Republic, in case it is stipulated by the law, (as the 1<sup>st</sup> degree court; any appeal or remedy is excluded),
  - b/ to act in accordance with Chapter Four (proceeding against inaction of a public administration authority) and Chapter Five (proceeding on protection against unlawful intervention of public administrative authority) of this part, in case the defendant is the central authority of state administration or another administrative authority with jurisdiction for the whole territory of the Slovak Republic (as the 1<sup>st</sup> degree court; any appeal or remedy is excluded),
  - c/ to decide on the appeals against the decision of regional courts in administrative matters (no further appeal or remedy possible).
21. **What are the major decisions of supreme administrative justice in economic sectoral regulation matters?**
- licences for TV broadcasting, licences for radio broadcasting;
  - licences for providing telecommunication services (mobile operators);
  - sanctions for not respecting the obligations set by the law or by the licence – TV and radio broadcasting, telecommunication services