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Zahir Jaan ZAHER

Kristína Králiková

Abstract: *The aim of this article was to outline the current trends in unification and coordination of legal orders of member states of the European Union regarding immigration. The authors deal with not only the legal aspects of immigration in the Slovak Republic, but they try to point out at several important economic and social aspects that trigger immigration and that are substantially connected with legal framework thereof.*

Keywords: *non-EU citizen, residency, permanent residency, temporary residency, asylum*

JEL Classification: K 37

1 INTRODUCTION

We have identified the reasons why immigration into the European Union (hereinafter only as the "EU") takes place. At this stage, we would like to pinpoint the reasons why non-EU citizens move to the Slovak Republic (hereinafter only as the "SR"). What is the material background for inflow of immigrants?

The SR is a landlocked state located in the middle of the Europe. Its population is relatively small in comparison to other countries – over 5 million people and its land are is also of small number. More importantly, the SR is a member of the EU, Eurozone, Schengen area, NATO or OECD. This makes *prima facie* from the SR a great destination for the non-EU

citizens. On the other hand, the SR has not achieved the level of western countries in terms of economic development or standard of living yet. If we take a look at GDP per capita, we were discussing above, according to the number of International Monetary Fund for 2011, the SR was on the 41st position in the world. In relation to HDI for 2011, the position of the SR according to the Human Development Report Office is slightly better - 35th in the world. Although, the SR does not belong to high-profile countries, its place among already developed countries is indisputable. Many experts on migration in the SR agree that, despite membership of the SR in the EU, immigrants do not currently consider the SR to be a primary country of destination. In spite of the recent pace of economic growth, the country is not a destination for immigrants when compared to other member states of the EU. However, the experience gained by the International Organization for Migration (hereinafter only as the "IOM") in operating its Migration Information Centre indicates a different scenario, namely that among potential migrants there is a growing interest in living and working in the SR, an interest so strong that it is essential for state institutions to provide financing for establishing and maintaining counselling centres for immigrants.[1]

Since joining the EU, the SR has to respect the EU law as such regardless of whether primary law or secondary legislation. As mentioned, the EU legislation consists of regulations and directives. A regulation is a legislative act of the EU, which has immediate legal effects, meaning that it is enforceable as law in all member states simultaneously with its effectiveness in the EU. This is of great importance when certain questions should be unified on the EU level. Regulations must be distinguished from directives. Directives need to be transposed into national law and therefore generally they have no immediate legal effect. If a directive of the EU has been adopted, the SR is obliged within a certain time stipulated by this directive to implement the objectives of this directive into the Slovak law. However, unlike regulations, the directives provide the member states with a certain level of independence in process of unification of laws of member states in order to respect national customs and differences.

[1] GULIČOVÁ, G., BARGEROVÁ, Z. 2008: *Organisation of migration and asylum policies in the Slovak Republic.* National Contact Point of the European Migrtaion Network in the Slovak Republic. 2008. p. 51

The SR has been therefore obliged to implement various directives that are to any extent associated with the immigration. For many, the most important piece of art of the EU is the Schengen Borders Code, which was adopted only couple years ago. On the basis of this regulation which has naturally direct legal effects on everyone in the SR including the state by itself, the Slovak legal order had to adjust to the content and terminology used in this regulation. There was a sort of inconsistency in terms and terminology used in the Slovak legislative acts and Schengen Borders Code, which resulted in adoption of essential amendments in the Slovak legal order. Since joining the EU, the SR has amended Slovak law numerous times. For example an adoption of Directive 2008/115/EC was a reason for amendments to the former Immigration Act from 2002 and to the amendments to the Asylum Act. Adoption of Directive 2009/52/EC amended the Slovak Act No. 82/2005 Coll. on Illegal Work and Illegal Employment, as amended. By this directive also a new reason for granting a tolerated stay in cases of illegal employment was amended to the Immigration Act. This Directive was also transposed into the Act on Labour Inspection, the Act on Public Procurement, and the Act on the Budget Rules for Public Administration. Obviously, the common EU policy is perspicuous and undoubtedly currently a key issue for the EU.

The most relevant Slovak provisions dealing with the issues of immigration are Act No. 404/2011 Coll. on Residence of Aliens, as amended (hereinafter only as the "Immigration Act") and Act No. 480/2002 Coll. on asylum, as amended (hereinafter only as the "Asylum Act"). We will pay a particular attention to these acts later on.

According to the statement of reasons to the Immigration Act, the commitment of the SR after joining the EU in a field of asylum policy, border control, stay of non-citizens, etc. is to fulfil the task and conditions of the common policy of the EU marked out in the TFEU. This is relevant especially, when we take into the consideration the fact that the SR remains a transit country for non-EU citizens on their way to the western EU countries. For this purpose, the old Act on stay of foreigners, which had been adopted in 2002 and numerous times amended, had to be replaced by a new law which would be able to effectively face modern immigration

challenges. According to the statement of reasons to the Immigration Act, following are the objectives of this act[2]:

- Unification of the issues regarding the control of external borders of the EU (Slovak-Ukraine border) for the purpose of its simplification and better use in practice;
- To respect other relevant international bilateral and multilateral treaties to which the SR is a party and have legal binding effect;
- To enhance the mechanisms of coordination of migration and immigration of foreigners with an particular emphasis on unification of policy within the EU;
- To secure unification of Slovak legal provisions with the valid EU legislation in a field of external border controls, stay of foreigners, etc. in order to achieve the highest level of compatibility with the EU law;
- To secure a terminology unification of Slovak legal provisions with the valid EU legislation;
- To participate in creation of an area of freedom, security and justice by enacting of relevant provisions aiming to regulate legal and illegal immigration of non-EU citizens; and
- To guarantee human rights of EU citizens, their family members and non-EU citizens when crossing Slovak borders and during their stay in the SR. This should be however in line with the Slovak public order.

The Immigration Act is fully compatible with the law of the EU. According to the Immigration Act, a foreigner should be understood as a person not being a citizen of the SR. An EU citizen should be understood as a person being a citizen of the SR or of any other member state of the EU. A non-EU citizen is a person who is neither a citizen of the SR nor a citizen of the EU or a person without citizenship. We will use these terms further when analysing the Slovak legal order.

[2] Statement of reasons to the Immigration Act. p. 2.

1.1 Temporary residence

Provided that a non-EU citizen seeks to acquire a permit to stay, exit and re-enter the SR during the specific time, he shall be obliged to obtain temporary residence permit by Alien police department. Such temporary residence permit may be obtained in cases when an applicant wants either to:

- do business meaning that he is at the moment conducting business or will be conducting business as a natural person or on behalf of a company or cooperative. Such person cannot be employed; or
- be employed. In this sense, a non-EU citizen may obtain a temporary residence permit provided that he has obtained an employment permit based on the Slovak Act No. 5/2004 Coll. on Employment Services, as amended. Such permit is limited and can be obtained maximum for two years. A temporary residence for the purpose of seasonal employment can be also granted; or
- study. A person opting for this option shall be either a student of a (i) secondary school, (ii) language school, (iii) university or (iv) he can attend language or other professional preparation for the study at university which must be organized by a university in the Slovak Republic. In any case, such permit may be granted for the assumed duration of study, however maximum for six years; or
- do special activity. Under this term, following activities shall be understood: (i) lecturing activity, (ii) artistic activity, (iii) sporting activity (iv) traineeship as a part of study outside the Slovak Republic territory, (v) activities which follow from the programs of the Slovak Republic government or from the programs of the EU, (vi) fulfilment of an obligation of the Slovak Republic which follows from an international, (vii) provision of health care or for the escort of a non-EU citizen who is provided health care, if necessary, (viii) volunteering activities; or (ix) activities of a journalist accredited in the Slovak Republic. Such permit may be obtained only up to two years.; or
- do research and development. An applicant shall be a non-EU citizen performing research and development on the basis of an agreement on hosting for the time period necessary in order to achieve the purpose, however, maximum for two years.; or

- unify his family. An applicant shall be a non-EU citizen who is (i) a family member of a non-EU citizen with temporary residence or with permanent residence in the Slovak Republic (ii) a relative in a direct ascending line of a person granted asylum younger than 18 years or (iii) a dependent person in accordance with a relevant international treaty.; or
- perform service obligations by civil unites of armed forces as a member of the civil units of the issuing state and who is in service of such armed forces, however such permit is limited up to five years.

In all of the above cases, general conditions must be also fulfilled. According to the article 33(4), Alien police department shall refuse an application for granting of temporary residence permit if:

- a non-EU citizen is an undesired person;
- there is a justified suspicion that a non-EU citizen would threaten the state safety, public order or public health during his/her residence;
- a non-EU citizen fails to fulfil the conditions for the granting of temporary residence;
- a non-EU citizen has closed the marriage of convenience;
- a non-EU citizen gives false or misleading data or submits falsified or counterfeited documents or a document of another person;
- the data in a travel document do not correspond with the reality;
- the granting of temporary residence is not in public interest; or
- it is obvious that the provided accommodation in the SR territory fails to fulfil the minimum requirements as per a special regulation.

Additionally, such permit may be granted also to a person who has a status of a Slovak living abroad according to the Slovak law or who has the statutes of a person with long term residence in another member state of the EU.

Note that pure submitting of an application does not establish the legal claim for temporary stay in the SR. And if permit for such stay is not granted within the time specified according to visa permit of a non-EU citizen, he has to leave the country.

A non-EU citizen may apply for a temporary residence permit at a Slovak representing authority located outside of the SR. In exceptional cases, a non-EU citizen may apply at another diplomatic mission or Alien Police Department competent according to the place of his residence in the SR. This residence must be, however, authorized, whereas the filing of an application does not make *prima facie* the residence of a non-EU citizen in the SR authorized beyond the conditions defined in a special regulation.

An authority (i.e. Slovak representation authority) after obtaining an application from a non-EU citizen performs an interview with the applicant for the purpose of granting him of temporary residence permit in order to preliminarily evaluate the application. The interview is performed in the Slovak language or in another language, which is comprehensible for both parties (very often English). The representing authority further prepares a written record about the interview. Unlike interview, such record must be prepared in the Slovak language and must be signed by the applicant. In most cases, the applicant does not speak Slovak language and therefore, he must provide for his representative who will be able to sign the record in his name and on his behalf. Afterwards, the representing authority sends its statement on the granting of temporary residence to Alien police department together with this record. In this statement it is specified, the representing authority recommends the granting of temporary residence permit whether or not.

Note that temporary residence is bound with a single purpose only. And hence if a non-EU citizen wants to perform other activities than those for which the temporary residence permit was granted, he must generally file a new application for the granting of temporary residence for other purpose.

1.2 Permanent residence

If permanent residency is granted, it permits a non-EU citizen to stay in the territory of the SR within the period for which this permit has been granted. Such person may perform activities in almost the same scope as citizens of the SR. On the basis of this permit, a non-EU citizen can for instance freely do business, study, and to have access to social security system in the SR.

According to the Slovak immigration Act, a permanent residency permit may be given for a period of 5 years or for an unlimited duration. In certain cases, if a non-EU citizen is acknowledged as a person with long-term residence in the EU, a permanent residence permit may be granted.

1.2.1 Permanent residence for 5 years

In order to be granted with permanent residency permit, a non-EU citizen must not be subject to any reason for the refusal of his application pursuant to the Article 48 par. 2 of the Immigration Act. Such reasons are similar to those in relation to temporary residency permit. For instance, a non-EU citizen must not be an undesired person or there are reasons to believe that such person would threaten the state safety, public order or public health during his residence. Above this, there are few new reasons therefore:

- A non-EU citizen has closed a marriage of convention;
- The marriage was not closed as per Slovak Act No. 36/2005 Coll. On Family, as amended;
- A non-EU citizen gives false or misleading data or submits falsified or counterfeited documents or a document of another person; or
- Data in travel document do not correspond with the reality.

A non-EU citizen fulfils conditions for being refused provided that he has not meet criteria for being granted of permanent residence permit.

In the abovementioned reasons for being refused on permanent residence, we can identify that granting of permanent residence permit is somehow in some cases connected with marriage of that person. In material terms, a permanent residence demonstrates a certain level of penetration of a non-EU citizen in the SR meaning that such person is already to a great extent domiciled and accustomed to living in the SR. This is, however only a material thing which if to be proved, must be demonstrate by formal means. According to the Article 45 of the Immigration Act, Alien police department grants permanent residence permit for a period of five years, if there are no reasons under the Article 48 par. 2 of the Immigration Act and a non-EU citizen is:

- is a spouse of the SR citizen with permanent residence in the SR territory or dependent relative in direct line of the SR citizen with permanent residence in the SR territory;
- is a single child younger than 18 years of age entrusted into personal care of a third country national who is a spouse of the SR citizen with permanent residence in the SR territory;
- is a single child younger than 18 years of age of a third country national with permanent residence for five years or child younger than 18 years of age entrusted into personal care of a third country national with permanent residence for five years; or
- is a dependent child younger than 18 years of age who cannot take care of himself/herself due to long term unfavourable health condition, third country national with permanent residence.

In some cases, a permanent residence permit for a period of five years can be granted if it is in interest of the SR. The process of evaluation of an applicant resembles the process in case of temporary residence permit. In order to prove the allegation stated in an application regarding the status of a non-EU citizen, this person must by himself demonstrate those facts and allegation by any means that are generally acceptable. Note that there are further conditions. Namely, an applicant must demonstrate his financial independence; financial resources. The material background therefore is that the SR does not wish to receive immigrants, which would mean a burden for Slovak social security system. Such prove must be demonstrated in a form of personal account statement or by a confirmation of his employer about the agreed salary; or any other document demonstrating his ability to financially take care of himself. Furthermore, a non-EU citizen must submit a medical report confirming that he does not suffer from any disease, which could threaten public health.

1.2.2 Permanent residence of unlimited duration

Permanent residence of unlimited duration may be granted to a person who has already acquired a permanent residence permit and has had permanent residence in the SR for at least 4 years. Also, a minor can acquire permanent residence of unlimited duration. There are exceptions from these general conditions. Namely, the Ministry of Interior of the SR can grant permanent residence of unlimited duration even when neither

of the conditions described above is fulfilled. This is due to the reason that in some cases, there are particular circumstances that may be sufficient for this purpose. The Slovak legislation leaves a legal gap for discretion of the Ministry of Interior of the SR if such special circumstances arise. This can happen:

- if necessary for the provision of protection and assistance to a witness according to the Act No. 256/1998 Coll. on the Protection of a Witness, as amended
- to a person without any citizenship;
- for reasons of particular concern;
- upon a proposal of the Slovak Information Service due to safety interests of the SR; or
- to a full aged person who has been granted a tolerated residence according to the Art. 58 par. 2(a) of the Immigration Act for at least three years of study at a school in the SR territory.

An applicant for permanent residence permit of unlimited duration must file his application together with a valid travel document and documents demonstrating his financial resources, medical report, valid health insurance and that his criminal record is clear at Alien police department which will confirm the receipt of the application. In some cases, Alien police department may require from a non-EU citizen – the applicant a document confirming that an accommodation has been provided to him. Alien police department decides about an application for the granting of permanent residence of unlimited duration within 90 days from the delivery of the application to Alien police department and upon its approval, the permanent residence permit becomes effective.

There is no free discretion of Alien police department when deciding whether an application for permanent residency permit will be given. There are several statutory issues that should be taken into the consideration by police department, mainly the issues of public interest, level to threat to state safety or public order or public health. This is necessary in cases when a police department is dealing with a non-EU citizen which sole by his nature represents to a great extent a potential risk for the SR. A police department takes into account also the immigration aspects, meaning that if such person

is not willing to adapt to way of living, customs and habits. The opinion of our representing body is also of great importance. The application for residency permit regardless of whether for permanent or temporary has to be filed in person, with the exception of immobile applicant and when waiving this requirement is in the interest of the SR.[3]

1.3 Tolerated residence

A non-EU citizen may be granted a tolerated residence; if he finds himself in such situation that he cannot travel back home from the SR and at that time he does not fulfil conditions for obtaining another type of residency permit. According to the Immigration Act, following should be understood as reasons for being awarded by a tolerated residence. This can for instance happen when a non-EU citizen is being provided by an institutional care. He cannot move back from the SR and at the same time he does not have meet the condition for being granted of any of residency permits. Similar can happen if a non-EU citizen is subject to certain quarantine measures. If there is a process of evaluation of applications for the granting of tolerated residence, prison sentence execution or period of imprisonment, a non-EU citizen may be granted a tolerated residence permit as a result thereof. Also a tolerated residency permit may be granted for a period of maximum 90 days from the filing of a written application by a non-EU citizen for assisted voluntary return until leaving of the country; or until taking back of this application or by a non-EU citizen who is the victim of human trafficking and at least 18 years old, decides whether he would cooperate with prosecuting authorities, when resolving criminal acts related to human trafficking.

On the basis of a tolerated residency permit, a non-EU citizen is permitted to stay in the territory of the SR; however, such person is not authorized to travel out of the SR. According to the Article 58 par. 1 in connection with the Article 58 par. 2, a non-EU citizen may be granted by tolerated residence permit if:

- There is an obstacle to administrative deportation in his case;
- Temporary shelter permit has been granted;

[3] GULIČOVÁ, G., BARGEROVÁ, Z. 2008: *Organisation of migration and asylum policies in the Slovak Republic.* National Contact Point of the European Migrtaion Network in the Slovak Republic. 2008.

- Departure from the SR is not possible at the moment;
- You are a minor who has been found in the SR;
- It is required in respect of his private and family life; and
- A non-EU citizen is a person older than 18 years old who has been a victim of human trafficking related criminal offence.

An application should be submitted at a competent police department.

1.4 Asylum

Asylum policies have undergone several dramatic changes during the existence of the SR as such. The country has been heavily criticized by non-governmental organizations and also international institutions that the asylum policy has been too restrictive. This has been often demonstrated on the basis of numbers of asylums that has been granted. According to the report from Mr. Divinsky, the assessment of criteria for asylum is too rigorous, asylum procedure too strict, and conditions for the successful integration of recognized refugees insufficient.[4] However, since joining the EU and since adoption of further common policy regarding immigration law on the level of the EU, the critics of the asylum policy has noticed that the implementation of the EU directives has left a positive impact on our law. *"Despite the fact that Slovakia usually enacts only the minimum standards required by the relevant directives, the adoption of even these minimum standards represents a positive contribution to the asylum and migrant system of the Slovak Republic."*[5] Also UNHCR has recognized changes in our law and has given a positive feedback. This positive growth, the report goes on to note, is reflected in "the improvement of the quality of accommodation facilities, fulfilment of basic needs, especially of asylum seekers, and in the initialization of employment activities of those asylum seekers who

[4] DIVINSKÝ, 2006. Zahraničná migrácia v SR: Potreba nových prístupov [online] [19.12.2012] Available on Internet : < http://www.euractiv.sk/socialna-politika/analyza/zahranicna-migraciav- sr-potreba-novych-pristupov >

[5] GULIČOVÁ, G., BARGEROVÁ, Z. 2008: *Organisation of migration and asylum policies in the Slovak Republic.* National Contact Point of the European Migrtaion Network in the Slovak Republic. 2008. p. 52

are allowed to work." The report also proposes specific solutions for the elimination of persistent shortcomings.[6]

The Slovak constitution provides basis for asylum protection in Article 53 by saying that the SR grants asylum to foreign nationals persecuted for upholding political rights and liberties. Under the Slovak constitution, it must not be understood as an absolute right. Asylum may be denied to those who acted at variance with basic human rights and liberties. Details regarding this are specified in the Asylum Act.

According to the Asylum Act, an asylum as term shall mean protection from persecution on grounds stipulated in the Refugee Convention or in the article 53 of the Slovak constitution. A person who declares his intention to apply for asylum in the SR is regarded as an applicant (hereinafter only as the "Asylum seeker") and if asylum is granted than such person is regarded as non-EU citizen who has been granted asylum. The Asylum Act sets out that asylum seekers and actually everyone who has been granted a temporary shelter or a supplementary protection has the right to a temporary or a tolerated residency permit in the SR. This is without prejudice to the review of their residence permit application and they do not have to meet any other legal conditions. According to the Asylum Act, if a non-EU citizen is granted asylum, he also gains a permanent residence permit.

According to the Asylum Act, the SR provides non-EU citizens with protection for reasons as stipulated in the Refugee Convention and in the Slovak constitution. It is important to note that according to the Asylum Act, the SR cooperates in this field with IOM in cases when non-EU citizens want to return on a voluntary basis to their country of origin or to any other non-EU country. Such people are granted a purpose-built donation from IOM in order to get back to their country of origin provided that their application for asylum has not been successful. Preparation and implementation of the return includes arranging of flight tickets, transport from the place of residence to the airport, airport assistance, providing of non-repayable financial allowance, providing the transit assistance at the airport(s)

[6] UNHCR: *Hodnotenie začleňovania žiadateľov o azyl a azylantov v Slovenskej republike s ohľadom na ich vek, pohlavie a iné odlišnosti* [online] [05.01.2013] Available on Internet: < http://www.unhcr.sk/slovakia/images/ stories/pdf/svgagdm07.pdf> p. 23-24.

and assistance from the airport in the country of origin to the place of residence[7].

According to the Act on Asylum, the SR provides foreigners with protection from persecution for reasons stated in Refugee Convention or in the Constitution of the SR.

1.5 Working in the Slovak Republic

Generally, employment of non-EU citizens in the SR is subject to different legal regime as employment of the EU citizens. There are different legal rules for the employment of asylum seekers, non-EU citizens with a tolerated residency permit or those who are provide subsidiary protection. Whether a non-EU citizen requires a work permit depends on many circumstances. Mostly, what kind of employment he wants to pursue and what kind of residency status does he have in the SR. For instance, if the provisions of the Slovak Act No. 5/2004 Coll. on employment services, as amended (hereinafter only as the "Employment Services Act") stipulate that a non-EU citizen is obliged to gain a work permit and residency permit; he needs to apply for both of them before commencing any employment activity. If he fails doing so, he might find himself in breach of law what is regarded worldwide as an illegal work. If a non-EU citizen has acquired a permanent residency permit, he must file an application for being granted a working permit if he wishes so. This is, however not that automatic. The relevant office may grant a non-EU citizen a work permit, providing that such vacant place cannot be filled by a job seeker, which is registered in the register of job seekers. The relevant Slovak authority is obliged to take into the consideration all the labour aspects at that time. From the legal point of view, there is no legal claim to the issuance of a work permit. According to the Employment Services Act, a relevant Slovak authority issues a working permit without taking into account the current labour market situation in the following specific situations:

[7] IOM: *Voluntary Return and Act No. 480/2002 Coll. On Asylum and on change and amendments of some acts.* [online] [19.01.2013] Available on Internet : < http://www.avr.iom.sk/index.php?option=com_content&view=article&id=14%3Adobrovony-navrat-v-zakone-o-azyle-c-4802002&catid=19%3Alegislativa&Itemid=68&lang=en>

- In accordance with an international agreement binding the SR, which was published in the Collection of Acts of the SR,
- A non EU citizen is going to be employed for a specific time period, not exceeding one year, in order to improve his/her qualification in the employment (stagier),
- A non EU-citizen is up to 26 years of age and is employed by performing occasional and time-restricted work within school exchange programs or youth programs, of which the SR is a participant,
- A non EU citizen is executing systematic educating activity or scientific activities in the SR as a pedagogic employee or academic employee of an university or research employee or as a development employee in a research,
- A non EU citizen is commissioned by a registered churches or religious societies to execute clerical activities,
- A non-EU citizen was granted supplementary protection according to the Immigration Act.

Further, a working permit is not required if a non-EU citizen:

- has acquired a permanent residence permit valid for the territory of the SR;
- was granted a temporary stay permit for the purpose of family reunification and he may enter a labour-law relation or similar legal relationship;
- was granted a temporary stay permit for study purposes and whose duration of employment in the territory of the SR does not exceed 10 hours per week, or the corresponding number of days or months in a year;
- is a foreign Slovak according to the Slovak law;
- is an asylum seeker and whose access to the labour market is permitted under special regulation or was granted an asylum status according to the Immigration Act;
- was granted a temporary shelter according to the Immigration Act;

- whose employment on the territory of the SR does not exceed seven consecutive calendar days or the total of 30 calendar days in a calendar year and who is
    - a pedagogic employee, academic employee of an university, scientific, research or development worker participating in a professional scientific event;
    - a performing artist, participating in an artistic event;
    - a person providing in the SR for supply of goods or services or supplying such goods or performing installation works on the basis of a commercial contract, or performing warranty services and repairs;
- was accepted in an employment, based on an international agreement binding the SR and published in the Collection of Acts of the SR; stipulating that acceptance of such a non-EU citizen in the employment is not contingent upon issuance of a work permit;
- is a member of the family of a diplomatic mission member, or of an employee of a consular office, or family member of the employee of an international governmental organization whose registered office is in the territory of the SR, providing mutuality guaranteed by an international agreement concluded on behalf of the Government of the SR;
- is a member of a rescue unit and provides assistance on the basis of an inter-state agreement on mutual assistance while eliminating the consequences of accidents and natural disasters, as well as in humanitarian assistance cases;
- is a member of the armed forces or of a civilian branch of the armed forces of the state having delegated the non-EU citizen;
- performing work within his systematic vocational preparation at a school or at a schooling facility that is included in the system of schools, schooling facilities or pre-school establishments;
- was assigned to perform activities in the territory of the SR within the framework of services of an employer whose domicile is in another member state of the EU;
- is a partner of a commercial partnership or the statutory body of a commercial partnership or a member of the statutory body

of a commercial partnership, performing the activity on behalf of the commercial partnership in the territory of the SR or who is a member of a cooperative or a member of the statutory body of a cooperative or of another body of a cooperative, performing the activity on behalf of that cooperative in the territory of the SR;

- is employed in international mass transport and was posted by his foreign employer to perform the work in the territory of the SR;
- holding a mass media accreditation.

There are further specific conditions and exemptions in case of employing of non-EU citizen in the Employment Service Act. For instance, an asylum seeker whose application for the granting of asylum has not been decided within one year is not required to hold a work permit unless his application has been dismissed as unfounded or impermissible. This rule has been adopted as a result of dramatically rigorous proceedings before Alien Police Department when deciding on the granting on asylum. For time being, the concerning asylum seekers are entitled to look for a work without the obligation to hold a work permit. However, in order to prove it when looking for a job, Migration Office of the SR issues a certificate conforming that such person is an asylum seeker who is authorized to work in the SR since the Slovak authorities have not come to conclusion whether an asylum will be granted or not within one year. Also, a non-EU citizen who has been provided with subsidiary protection can be awarded by a work permit without consideration for the labour conditions in the SR.

According to this act, a non-EU citizen who is a participant of legal relations pursuant to this act has the same legal status as a citizen of the SR, if the non-EU citizen:

- was issued a work permit and temporary residence permit for the purpose of employment;
- holds a blue card of the EU
- is an asylum seeker, whose access to the labour market is permitted by a special regulation.

The employer with its registered seat in the territory of the SR may accept in an employment only a non-EU citizen meeting the abovementioned conditions. However this formal approach hits against the practicalities associated thereto. Notwithstanding non-EU citizens are authorized to legally work in the SR and they are not in any other way restricted, practical integration of them, especially when there is a 14% unemployment rate in the SR, is highly complicated. This is often due to the reason that their command of the Slovak language is not sufficient for Slovak employers.

1.6 Doing business in the Slovak Republic

Generally, everyone can do business in the SR. However, there are certain limitations, but not only administrative. As mentioned in a part regarding temporary residence, a non-EU citizen may obtain a permit that authorizes him to pursue economic activities in a form of doing business. It can be either on the basis of temporary residence permit or permanent residence permit. Such approval from relevant Slovak authorities entitles such person to perform business activities as a natural person or through a company established in the SR as an executive director. Such approval may be given for a period not exceeding 3 years.

According to the Slovak Act no. 513/1991 Coll. Commercial Code, as amended, (hereinafter only as the "Commercial Code") as an entrepreneur is regarded a person:

- registered in the Commercial Register;
- conducting entrepreneurial activity based on a trade license;
- conduction entrepreneurial activity based on an authorization other than a trade license under special regulations; and
- undertaking agricultural production who is registered in the respective register under a special regulation.

We will not grasp all the relevant issues, as it is too complex. We will concentrate on two basics and most common forms of doing business in the SR.

In general, according to the act no. 455/1991 Coll. on Trade License, as amended, a person having its permanent residence outside of the SR possesses the same rights and is subject to same obligations as a person having permanent residency in the SR.

According to the Slovak Commercial Code, foreign person in general may conduct entrepreneurial activity in the territory of the SR under the same conditions and to the same extent as Slovak persons. On this note, a foreign person, irrespective of whether from the EU or not, may participate in the founding of a Slovak legal entity or become a shareholder or member of an already existing legal entity for the purpose of conducting entrepreneurial activity. A foreign person may be a single founder of a Slovak legal entity or become a single shareholder/member in a Slovak legal entity.

In this respect, it is necessary to distinguish between authorizations of foreign natural persons being shareholders of a Slovak legal entity in comparison to doing business in the SR as an executive director. As mentioned above, provided that a non-EU citizen seeks to conduct business activities as a statutory body of a Slovak legal entity; meaning that being authorized to act on behalf and in the name of this Slovak legal entity, there are restrictions; such person shall be granted either a temporary residence permit for the purpose of doing business or permanent residency permit. Pure disposal of a Slovak legal entity is not subject to any restrictions or limitations.

1.7 Studying in the Slovak Republic

Generally, there are no restrictions for non-EU citizens to study in the SR, provided that a non-EU citizen has already acquired a residency permit. Such residency permit may be acquired on the basis of the temporary residency permit as stipulated by the Immigration Act. According to the Immigration Act, it is required to obtain such permit in cases when a non-EU citizen seeks to study in the SR as a:

- student of a high school;
- student of a language school;
- student of an university; and
- student who takes part in pre-education necessary for being approved organized by any Slovak university.

As we mentioned above, an applicant may be granted a permit to study in the SR for a period not exceeding 6 years. In contrast to other permit on the basis of temporary residency permit, a person being entitled to study in the SR is also simultaneously entitled to do business. In the event that a non-EU citizen fulfils conditions for being granted an approval to stay in the SR for a period from 3 to 6 months pursuant to the Article 5 of the Schengen Border Code, such person, if studying in the SR, does not any temporary residency permit for this purpose.

A non-EU citizen can freely study in the SR on the condition that he has been granted a permanent residency permit.

In this sense, it is necessary to mention that according to the act No. 131/2002 Coll. on Universities, as amended, a vast majority of non-EU citizens may be subject to school fees. According to this act, universities have been statutory given a free discretion whether or not to impose school fees for non-EU citizens and in what amount.

In order to help non-EU students, among other students, bearing all the costs accompanied with the study in the SR, National Scholarship Program has been established. The idea to help foreign students coming to the SR for the purpose of their studies was supported by the Government of the SR. According to the National Scholarship Program, following are the eligible students[8]:

- university students whose second level of higher education is taking place at a foreign university and who are invited by a public, private or state university in the SR to an academic mobility for a purpose of study in the SR. The period for such scholarship lasts from 1 to 2 semesters.
- PhD students whose higher education or research preparation is taking place at a foreign university or research organization and who are invited by a public, private or state university or research organization eligible to carry out PhD study programs in the SR to an academic

[8] NATIONAL SCHOLARSHIP PROGRAM: *Scholarships for foreign students, Phd. Students, university teachers and researchers* [online] [14.01.2013] Available on Internet : < http://www.scholarships.sk/en/main/programme-terms-and-conditions/foreign-applicants>

mobility for a purpose of study or research in the SR. The period for such scholarship lasts from 1 to 12 months.

- university teachers from foreign universities who are invited by a public, private or state university in the SR to a lecture / research / artistic stay in the SR. The period for such scholarship lasts from 1 to 12 months.
- researchers or artists who are invited by a public, private or state university, research organization eligible to carry out PhD study programs or non-governmental organization in the SR to a lecture / research / artistic stay in the SR.

Granting of such scholarships is territorially limited. Only students from few non-EU countries may apply for this (countries that participate in the so called Bologna Process, Belarus, Canada, Mexico, USA, etc.).

Above this, there are other institutions providing financial help for students from non-EU countries. The government by itself provides scholarships for applicants from developing countries. The Slovak government has elaborated on a list of countries the students from are in a favourable position when granting scholarships.

BIBLIOGRAPHY

DIVINSKÝ, 2006. Zahraničná migrácia v SR: Potreba nových prístupov [online] [19.12.2012] Available on Internet : < http://www.euractiv.sk/socialna- politika/analyza/zahranicna-migraciav- sr-potreba-novych-pristupov >

GULIČOVÁ, G., BARGEROVÁ, Z. 2008: Organisation of migration and asylum policies in the Slovak Republic. National Contact Point of the European Migrtaion Network in the Slovak Republic. 2008.

IOM: Voluntary Return and Act No. 480/2002 Coll. On Asylum and on change and amendments of some acts. [online] [19.01.2013] Available on Internet : < http://www.avr.iom.sk/index.php?option=com_content &view=article&id=14%3Adobrovony-navrat-v-zakone-o-azyle-c-4802002& catid=19%3Alegislativa&Itemid=68&lang=en>

NATIONAL SCHOLARSHIP PROGRAM: Scholarships for foreign students, Phd. Students, university teachers and researchers [online] [14.01.2013] Available on Internet : < http://www.scholarships.sk/en/main/programme-terms-and-conditions/foreign-applicants>

Statement of reasons to the Immigration Act

UNHCR: Hodnotenie začleňovania žiadateľov o azyl a azylantov v Slovenskej republike s ohľadom na ich vek, pohlavie a iné odlišnosti [online] [05.01.2013] Available on Internet: < http://www.unhcr.sk/slovakia/images/ stories/pdf/svgagdm07.pdf>

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CHANGES IN SOVEREIGN RATINGS

ZMĚNY SOVEREIGN RATINGŮ

Radim Gottwald

Abstract: *The article is focused on sovereign ratings of 103 countries on 1st January 2012 and 1st January 2014. The objective of the article is to assess changes in these ratings granted of the Standard & Poor´s and the Moody´s rating agencies. Ratings on 1st January 2012 are compared with the ones on 1st January 2014. The letter grades are transformed into numerals. Changes in ratings are analyzed according to size and direction. Transition matrix of upgrades and downgrades is used. The dependence of number of upgrades and downgrades on number of grades is analyzed. The parameters of regression curves are estimated. These curves describe the dependence of the Standard & Poor´s ratings on the Moody´s ratings and vice versa. The contribution of the article is clear because of high importance of sovereign ratings. These benchmarks influence amount of money distributed in private and public sector of economics. Topic of the article is up-to-date and results are helpful to investors who invest in international markets.*

Keywords: *rating agency, rating assessment, transition matrix, sovereign rating, linear regression, investment-grade rating, speculative-grade rating.*

Abstrakt: *Článek je zaměřen na sovereign ratingy 103 států v rámci časového období 1.1.2012-1. 1. 2014. Cílem článku je vyhodnocení změn těchto ratingů, které jsou uděleny ratingovými agenturami Standard & Poor´s a Moody´s. Jsou srovnána ratingová hodnocení k 1.1.2012 s ratingovými hodnoceními k 1.1.2014. Jednotlivým ratingovým známkám jsou přiřazeny numerické hodnoty. Vývoj změn ratingů je analyzován podle objemu a směru. Je použita migrační matice upgrades a downgrades. Je zjištěn počet upgrade a downgrade v závislosti na počtu stupňů. Jsou stanoveny odhady regresních křivek vyjadřující závislosti ratingových hodnocení jedné agentury na ratingových hodnoceních jiné agentury a naopak. Přínos článku je patrný z důležitosti sovereign ratingů jakožto benchmarků, které mají vliv na cenu*

peněžních prostředků pro veřejný i soukromý sektor. Téma článku je aktuální a výsledky článku jsou přínosné pro investory, kteří investují na mezinárodních trzích.

Klíčová slova: *ratingová agentura, ratingové hodnocení, migrační matice, rating státu, lineární regrese, investiční pásmo ratingu, spekulativní pásmo ratingu*

JEL Classification: G 24

2 INTRODUCTION

We have identified the reasons why immigration into the European Union (hereinafter only as the "EU") takes place. At this stage, we would like to pinpoint the reasons why non-EU citizens move to the Slovak Republic (hereinafter only as the "SR"). What is the material background for inflow of immigrants?

The SR is a landlocked state located in the middle of the Europe. Its population is relatively small in comparison to other countries – over 5 million people and its land are is also of small number. More importantly, the SR is a member of the EU, Eurozone, Schengen area, NATO or OECD. This makes *prima facie* from the SR a great destination for the non-EU citizens. On the other hand, the SR has not achieved the level of western *and the transfer of risks and benefits associated with the lease to the lessee should be the result of the convergence activities in this area. The evaluation of the impact of the newly proposed methodological approaches to lease reporting in the field of operating leases into the financial statements of lessee and lessor that will be affected by this change of methodology. The impact into selected indicators of financial analysis with a focus on indicators, in whose construction are used items of statements that are significantly affected by the change of the methodological approach is evaluated as well.*

Keywords: *convergence, financial lease, operational lease, right to use, derecognition*

JEL Classification: M41

1 INTRODUCTION

Investors realize their investments in various countries. In order to find the right country in what to invest, these countries could be compared according to different criteria or indicators including sovereign rating. Sovereign rating belongs among important economic indicators, which are used to specify the risk level of investing in some country. Rating grades of various countries are announced and afterwards carefully monitored by many investors. The interesting question is, whether differences between countries at the present time are similar to differences in the past. The objective of the article relates to this question. The contribution of the article, further described in the Discussion, consists in the author's analysis of current and recent sovereign ratings, which are granted of Standard & Poor´s and the Moody´s rating agencies.

2 LITERARY SURVEY

Durčáková and Mandel (2007) present, that the sovereign rating is very important for investors. It is the instrument of the government or central bank used to manage the state debt or to create favourable conditions for domestic entities lending money on international markets. Sovereign rating indicates the risk level of the investing environment and it is used by investors looking to invest abroad.

Remolona, Scatigna and Wu (2008) analyse sovereign ratings of 27 countries provided by the Standard & Poor´s and the Moody´s during 2002-2006. These sovereign ratings are used to construct a measure of ratings implied expected loss. They also consider credit ratings to be commonly used as a general categorical indicator of country risk. Sovereign ratings of 69 countries provided by the Standard & Poor´s, Moody´s, Thompson and Fitch IBCA during 1973-2001 are analysed by Faff, Brooks, Hillier and Hillier (2004). They measure number of upgrades and downgrades and then market reaction to foreign currency sovereign rating changes. The downgrade reduces, as Klimaviciene and Pilinkus (2011) describe, the foreign capital inflow and it indicates possible beginning of a currency crisis. This relationship relates rather countries of speculative-grade ratings. Rating agencies try to grant sovereign rating for a whole economic cycle, so that they do not take into consideration current changes.

According to Cantor and Packer (1996), the downgrade causes the increase of return volatility. They focuse on the methodics how to grant sovereign rating. Countries are mostly assessed according to following criteria: gross domestic product per capita, real gross domestic product growth, inflation, fiscal balance, foreign trade, foreign debt and level of economic development.

3 OBJECTIVE AND METHODOLOGY

The objective of the article is to assess changes in sovereign ratings granted of the Standard & Poor´s and the Moody´s rating agencies to 103 countries on 1st January 2012 and 1st January 2014. These agencies are chosen because their market shares are the highest. ESMA (2014) presents, that each of them has about 35 %. Ratings on 1st January 2012 are compared with the ones on 1st January 2014. The letter grades are transformed into numerals. Changes in ratings could be considered to be favourable (upgrade) or to be unfavourable (downgrade).

Changes in ratings are analyzed according to size and direction. Based on the transition matrix of upgrades and downgrades, the dependence of the number of upgrades and downgrades on the number of grades is analyzed. The dependence of the Standard & Poor´s ratings on the Moody´s ratings and vice versa are also analyzed. Author uses regression analysis. The parameters of regression curves are estimated. Linear model is used:

$$Y = b_0 + b_1 \cdot X + d \tag{1}$$

whereas Y is the dependent variable (firstly the Standard & Poor´s rating), b_0 is the parameter (independent on X), b_1 is the parameter (firstly intensity of reaction of the Standard & Poor´s rating on the change in the Moody´s rating), X is the independent variable (firstly the Moody´s rating) and d is the standard deviation. Analogous to this, linear model where the Moody´s rating means the dependent variable is also used. Iyengar (2012) uses the same linear model to analyze ratings.

4 RESULTS

The letter grades by the Standard &Poor´s and Moody´s are transformed as follows. Table 1 summarizes the credit rating measures applied by the Standard & Poor´s and the Moody´s.

Tab. 1: A Comparison of Rating Agencies Credit Rating Measures

Standard & Poor´s (grades)	**Moody´s (grades)**	**Consolidated Rating Number**
AAA	Aaa	21 (the highest credit rating)
AA+	Aa1	20
AA	Aa2	19
AA-	Aa3	18
A+	A1	17
A	A2	16
A-	A3	15
BBB+	Baa1	14
BBB	Baa2	13
BBB-	Baa3	12
BB+	Ba1	11
BB	Ba2	10
BB-	Ba3	9
B+	B1	8
B	B2	7
B-	B3	6
CCC+	Caa1	5
CCC	Caa2	4
CCC-	Caa3	3
CC	Ca	2
C	C	1 (the lowest credit rating)

Source: Standard & Poor´s (2014), Moody´s (2014)

Similar transformation of the letter grades into numerals is used by Faff, Brooks, Hillier and Hillier (2004). Consolidated rating numbers from 12 to 21 belong to investment-grade, while the ones from 1 to 11 belong

to speculative-grade. Table 2 reports the comparison of the ratings on 1st January 2012 and 1st January 2014.

Tab. 2: A Comparison of the Ratings on 1st January 2012 and 1st January 2014

Difference	**Number of countries on 1.1.2012**	**Number of countries on 1.1.2014**	**Countries on 1.1.2012**	**Countries on 1.1.2014**
-3	0	2	-	Malta, Tunisia
-2	4	3	Bahamas, Costa Rica, Italy, New Zealand	Bahamas, Costa Rica, New Zealand
-1	27	26	Many countries	Many countries
0	54	46	Many countries	Many countries
1	15	19	Many countries	Many countries
2	2	2	Ecuador, Trinidad & Tobago	Ecuador, Trinidad & Tobago
3	1	3	Ireland	Cyprus, Greece, Ireland
4	0	1	-	Slovenia
5	0	1	-	Ukraine

Source: The Guardian (2014)

The differences are in grades. Table 2 shows that 54 countries on 1st January 2012 obtained the same grades by both rating agencies. 46 countries obtained the same grades on 1st January 2014. Rating agencies report together with grades also positive/stabil/negative outlook on the future. Only 39 countries obtained the same grades and outlook on 1st January 2012 and only 32 countries similarly on 1st January 2014. Nevertheless, total number of used countries is 103.

This comparison shows that structural changes in rating assessment increase in time. Rating assessments are still more sensitive to change of economic conditions. Structural changes relate to for example solving the European debt crisis. This fact is confirmed by average differences, which measure the differences in grades when the rating assessments are not the same by both rating agencies. Average difference on 1st January 2014 is 1.39, which is more than 1.16 on 1st January 2012. The highest difference in rating assessment is on 1st January 2014 by the Ukraine. In this case, the Standard & Poor´s assessment (BB) is about 5 grades higher than the Moody´s assessment (Caa1). However, on both dates, the Standard & Poor´s assessment is lower than the Moody´s assessment by more countries than on the contrary. The differences in just one grade in both rating agency assessments account for 42 %. AAA is the most frequent grade by the Standard & Poor´s, Aaa is the one by the Moody´s. They are also the highest grades in rating assessment. The same differences in rating assessment on both dates are found in case of the Bahamas, Costa Rica, New Zealand, Ecuador and Trinidad & Tobago.

Then, changes in ratings are analyzed according to size and direction. Table 3 presents the transition matrix of upgrades and downgrades, which describes the changes in ratings between 1st January 2012 and 1st January 2014.

Tab. 3: Transition Matrix of Upgrades and Downgrades

		Moody´s			
Standard & Poor´s		UP	=	DOWN	TOTAL
	UP	9	3	2	14
	=	2	65	5	72
	DOWN	1	9	7	17
	TOTAL	12	77	14	103

Source: The Guardian (2014)

The rating was upgraded simultaneously by the Standard & Poor´s and the Moody´s by 9 countries. The rating was upgraded by the Standard & Poor´s, but left the same by the Moody´s by 3 countries. The rating was upgraded by the Standard & Poor´s, but downgraded by the Moody´s by 2 countries. Overall, the Standard & Poor´s changed rating by 31 countries, specifically 14 upgraded and 17 downgraded. Analogical data could be deduced for the Moody´s. Rating was not changed by any rating agency

by 65 countries. Based on the transition matrix, the response of the second rating agency to increase, confirmation or decrease of the rating by the first rating agency is found. It is clear, that the differences between rating assessments were sometimes higher, but sometimes lower. Table 4 reports the dependence of number of upgrades and downgrades on number of grades.

Tab. 4: The Dependence of Number of Upgrades and Downgrades on Number of Grades

Difference	Number of Standard & Poor´s	Number of Moody´s	Countries by Standard & Poor´s	Countries by Moody´s
-9	0	1	-	Cyprus
-7	0	1	-	Slovenia
-5	1	1	Cyprus	Spain
-4	1	0	Spain	-
-3	2	2	Egypt, Tunisia	Egypt, Italy
-2	2	2	Argentina, Slovenia	Belgium, Ukraine
-1	11	8	-	-
0	72	76	-	-
1	10	10	-	-
2	2	2	Philippines, Ukraine	Philippines, Turkey
3	1	0	Latvia	-
4	1	0	Greece	-
5	0	0	-	-

Source: The Guardian (2014)

Table 4 shows, that the rating was neither upgraded nor downgraded by the Standard & Poor´s by 72 countries and by the Moody´s by 76 countries. So that, the 2012-2014 period could be considered to be rather stable than unstable. The highest difference in rating assessment is by the Cyprus. In this case, the Moody´s assessment on 1st January 2012 (Baa3) is about 9 grades higher than on 1st January 2014 (Caa). This fact together with presented changes of rating of the Slovenia and Spain could relate to solving the European debt crisis. The number of downgrades

is higher than the number of upgrades by more countries. The upgrades or downgrades about just one grade account for 19 %.

It is found, whether the changes in rating are the same by the same countries. The same differences in rating assessment by both rating agencies are found in case of the Egypt and Philippines. The dependence of the ratings of the first rating agency on the ratings of the second rating agency are analyzed by regression curves. Table 5 reports the dependence of the Standard & Poor´s ratings on the Moody´s ratings and vice versa.

Tab. 5: The Dependence of the Standard & Poor´s Ratings on the Moody´s Ratings and Vice Versa

Indicator	Y (Standard & Poor´s)	Y (Standard & Poor´s)	Y (Moody´s)	Y (Moody´s)
	1.1.2012	1.1.2014	1.1.2012	1.1.2014
b_0	0.56	1.01	-0.21	-0.31
b_1	0.95	0.93	1.03	1.02
Standard deviation b_0	0.22	0.31	0.24	0.34
Standard deviation b_1	0.02	0.02	0.02	0.02
Determination index	0.97	0.94	0.97	0.94

Source: The Guardian (2014)

The intensity of the dependence and the regression function quality are analyzed. Determination index close to 1.00 shows, that the regression function is appropriately chosen. Used model can explain almost 100 % of variability of dependent variable, which is the rating assessment. It is clear, that the change in rating by the first rating agency is mostly followed by equivalent change in rating by the second rating agency.

5 DISCUSSION

Rating assessments are important benchmarks, which influence the price of money for both public and private sector. Impacts of change in rating on stock markets and bond markets are also important. As for presented upgrades and downgrades, especially changeovers between investment-grade

and speculative-grade are important. These changeovers change the probability, whether the country will be able to pay back the debt.

The contribution of the article for the users of rating assessments is clear. Rating up-to-dateness is one of the requirements for its using by investors, who plan to invest in international markets. However, rating changes should not be too frequent in the short-time horizon. Livingston, Wei and Zhou (2010) present, that if rating agency is too much conservative in its assessments for a long time and if it does not sufficiently response to changes in economic indicators, then it loses the confidence of investors. Rating agencies should be sufficiently objective in their assessments.

Based on the results presented in the article, it can not be said that the changes in rating exactly depend on geographical classification or economical classification. In connection with recent financial crisis, the question, whether new rating grades should be used to assess different types of subjects, is discussed. There are several ways in which research in this up-to-date economic field can continue. Different time period, rating assessments by different rating agencies or different methodics analyzing upgrades and downgrades could be used.

6 CONCLUSION

Author focused in the article on the sovereign ratings of 103 countries on 1st January 2012 and 1st January 2014. Changes in ratings granted of the Standard & Poor´s and the Moody´s were assessed according to size and direction by means of the transition matrix of upgrades and downgrades. The number of countries with the same rating assessments by both rating agencies, the highest differences in rating assessments and the most frequent rating assessments were found. The dependence of number of upgrades and downgrades on number of grades was analyzed. The parameters of regression curves, which describe the dependence of the first agency ratings on the second agency ratings, were estimated. Found determination indexes showed on appropriate choice of the regression function. Based on results, important changes in rating were identified. Moreover, increasing differences between assessments by both rating agencies showed, that structural changes in rating assessment will increase in time.

REFERENCES

CANTOR, R., PACKER, F. Determinants and Impact of Sovereign Credit Ratings. *FRBNY Economic Policy Review*. 1996. vol. 2, no. 2, p. 37-53. ISSN 0147-6580.

DURČÁKOVÁ, J., MANDEL, M. *Mezinárodní finance*. 3rd issue. Praha: Management Press, 2007. 496 p. ISBN 978-80-7261-170-6.

ESMA. *European Securities and Markets Authority: CRAs' Market share calculation according to Article 8d of the CRA Regulation*. 2014. Available from Internet: <http://www.esma.europa.eu/system/files/esma_cra_market_share_calculation.pdf>.

FAFF, R.W., BROOKS, R.D., HILLIER, J., HILLIER, D. The National Market Impact of Sovereign Rating Changes. *Journal of Banking & Finance*. 2004. vol. 28, no. 1, p. 233-250. ISSN 0378-4266.

IYENGAR, S. The Credit Rating Agencies - Are They Reliable? A Study of Sovereign Ratings. *The Journal for Decision Makers*. 2012. vol. 37, no. 1, p. 69-82. ISSN 1878-5395.

KLIMAVICIENE, A., PILINKUS, D. The Impact of Sovereign Credit Rating Changes on the Stock Markets in Central and Eastern Europe. *Transformation in Business & Economics.* 2011. vol. 10, no. 3, p. 87-103. ISSN 1648-4460.

LIVINGSTON, M., WEI, J., ZHOU, L. Moody's and S&P Ratings: Are They Equivalent? Conservative Ratings and Split Rated Bond Yields. *Journal of Money, Credit & Banking*. 2010. vol. 42, no. 7, p. 1267-1293. ISSN 1538-4616.

MOODY´S. *Moody´s*. 2014. Available from Internet: <https://www.moodys.com/>.

REMOLONA, E.M., SCATIGNA, M., WU, E. A Ratings Based Approach to Measuring Sovereign Risk. *International Journal of Finance & Economics*. 2008. vol. 13, no. 1, p. 26-39. ISSN 1099-1158.

STANDARD & POOR´S. *Standard & Poor´s*. 2014. Available from Internet: <http://www.standardandpoors.com/>.

THE GUARDIAN. *The Guardian*. 2014. Available from Internet: <http://www.theguardian.com/>.

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FORWARDING CONTRACT, CONTRACT ON THE CARRIAGE OF GOODS, CONTRACT ON OPERATING A MEANS OF TRANSPORTATION[1]

ZASILATELSKÉ SMLOUVY, SMLOUVY O PŘEPRAVĚ ZBOŽÍ, SMLOUVA O PROVOZOVÁNÍ DOPRAVNÍCH PROSŘEDKŮ

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Abstract: *The development of trade in the modern economy has brought about an increased importance of transport. Multiplication of means of transportation and the quantity of goods transported has led to the fact that contracts governing the area of transport have become, especially since the beginning of the 21st century, the most common and widely used ones. The most frequently used one is contract on the carriage of goods, forwarding contract and often also contract on operating a means of transportation. In practice there are often situations when more than one of the aforementioned contracts is used for carriage in one "business case" (e.g. a forwarding contract and a contract on the carriage of goods), although comprehensive logistic solutions either under a forwarding contract or under an innominate contract have lately been increasingly required by contracting parties.*

Keywords: *law, civil law, forwarding, carriage of goods, operation of means of transportion*

Abstrakt: *Rozvoj obchodu v moderní ekonomice přineslo zvýšení důležitosti dopravy. Násobení dopravních prostředků a množství přepravovaného zboží vedlo k tomu, že smlouvy, upravující oblast dopravy se staly, a to zejména od počátku 21. století, z nejběžnějších a nejpoužívanějších. Nejčastěji se používá smlouva o přepravě zboží, zasílatelské smlouvy a často i smlouva*

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o provozování dopravních prostředků. V praxi dochází často k situacím, kdy více než jedna z výše uvedených smluv se používá k přepravě v jednom "business case" (například smlouva spedice a smlouva o přepravě zboží), u komplexních logistických řešení se v poslední době smluvními stranami stále více vyžaduje smlouva o předávání, nebo podinominátní smlouva

Klíčová slova: *právo, občanské právo, spedice, přeprava zboží, provozování dopravních prostředků*

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1 FORWARDING

„Under a forwarding contract, the forwarder undertakes in his own name to arrange transportation of goods for the sender at the sender's expense from one designated place to another designated place, and the sender undertakes to pay the forwarder a fee.

If it is agreed that, prior to issuing the consignment or documents facilitating disposal of the consignment, the forwarder collects a certain amount of money from the consignee or perform some other act of collection, the provisions on documentary collection shall apply as appropriate.

Forwarding (carriage of goods) is a subtype of consignment contract. The New Civil Code (NCC) incorporates, to a large extent, the applicable regulation of the Commercial Code (section 601 et seq. of the Commercial Code).

The development of trade and transport went hand in hand with the development of forwarding (spedition) – a field whose subject is the operation of the procurement activities in the field of transportation of goods (consignments). Forwarding as procurement of transportation branched off the actual direct execution of transport. In practice, however, we sometimes do not accurately distinguish between carriage and spedition and these two activities are confused, with possible negative consequences arising from it.

In assessing the nature of a contract, we see that this is a kind of procurement contract, a special kind of consignment contract. The essential feature is that

the forwarder acts in his own name on behalf of the sender. It is a contract for remuneration. Cases in which the contract will be concluded in writing, for example, for documenting the agreed content including the amount of remuneration, will not be exceptional.

In accordance with the arrangements in the forwarding contract, the forwarder has a responsibility towards the sender, mainly: for the timely provision of transport, for the granting of the right disposition to carry out the transportation (e.g. for loading of goods, use of a suitable vehicle, ensuring unloading), for informing the sender of an obvious incorrectness of their instructions, in the case of completion of instructions if requested to do so, in the case of the sender's incorrect decisions the case of risk of default (decision how to deal with the consignment), for the correct handling of the consignment, for neglect of care in negotiating the conditions of transport, in the case of averting damage on consignment received, in the case of neglect of the duty to inform the sender of damage threatening the consignment or already occurred on it, consisting in care upon the sale of a consignment threatened by a substantial loss.

The assumption is that the forwarder is a person familiar with the issues of forwarding. Such person should have the appropriate level of expertise with respect to the scope of their activity. Also, it is expected that the forwarder will act with due professional care.

It seems, however, that the Trade Licensing Act does not correspond with this. In the past, the Trade Licensing Act classified "national forwarding" as a permitted trade. "International forwarding", which is a more demanding activity in terms of professional qualifications, was not included at all in annexes to the Act; therefore, this activity was a free trade, which could be carried subject to a notification to the competent Trade Authority. The amendment to the Trade Licensing Act removed national forwarding from permitted trades, and forwarding is free trade as a whole, for which, within the meaning of the Trade Licensing Act, no special expertise is needed, only the general conditions of operation of the trade according to the Trade Licensing Act must be complied with.

It can certainly, in practice, cause problems in some cases because the operation of forwarding activities is now carried out by business entities with less professional expertise.

For comparison, in Austria, for example, forwarding is a trade whose operation requires, according to the Trade Licensing Act, a permission by the administrative authority and observance of the following conditions: after graduating from a 4-year apprenticeship in a forwarding store, successfully passed an examination with an apprenticeship forwarder certificate, if they operate the business in person; an officer of a forwarder, in the case of a legal person, has met the same condition as if he operated forwarding activities in person; or the operator or the head of the forwarding entity graduated from a vocational secondary school or university specializing in transportation and forwarding.

Professional organizations aim at developing expertise in the field of forwarding. Forwarders in the Czech Republic are associated in the Association of forwarding and logistics in the Czech Republic (founded under the original name Association of freight forwarding and storage in the CR), which has been a member of FIATA (Fédération Internationale des Associations de Transitaires et Assimilés International Federation of Freight Forwarders Associations) since 1992. It is a standard for the members of the Association to use of the General forwarding conditions issued by the Association.

However, the use of the above General conditions is probably not sufficient in the case of special consignments. Quite specific requirements and demands on forwarders and carriers arise in particular in connection with the transportation of goods of a higher value or in the event of requirements for specific technical conditions (e.g. anti-static environment). Abroad, transport of this type is called High-tech transport. In this case it will be necessary to negotiate the contract with regard to the individual characters of such transport.

Currently, more and more businesses are turning to professional forwarding companies, which are the guarantors of the transportation in the shortest possible time while taking over other formalities associated with the transportation of the consignment. The professionalism of their staff and technological advancement (this, inter alia, allows to monitor information about the entire movement of a consignment from the sender to the recipient) ensure high-quality services and, therefore, they become daily the forwarder of a lot of consignments requiring a speedy delivery, careful handling or customs clearance.

In today's modern concept, professional forwarder does not only fulfill the function of a procurer of transport, but it is also able to provide broader assistance. Such a position of the forwarder is gaining prominence especially for international shipments of goods, which are organizationally and professionally challenging and where the carrier can no longer provide the shipper with adequate services due to its specialization.

The task of the carrier is to transport the goods; the task of the forwarder is to arrange, in the transportation chain, for the sender everything that is necessary to ensure that the consignment is transported from the sender to the receiver.
The term "turnkey carriage of goods" has appeared, stressing the aforementioned comprehensive logistic solutions enabling producers or sellers of goods to fully concentrate on their business activities and leave all activities related to the flow of goods to the care of the forwarder.

If the contract is not concluded in writing, the forwarder has the right to demand that the sender delivers to it an order to procure transportation (forwarding order).

The forwarding order should specify the goods and the place of shipment and destination. However, a forwarding order is not necessary for the creation of a contract; forwarding order is not a security.

It is necessary to distinguish whether the forwarder undertakes to arrange the transportation of goods, or undertakes to carry the goods. In the first case they conclude a forwarding contract, in the latter case a contract on the carriage of goods and it is not decisive, whether or not they will carry out transportation using their own or someone else's means of transport.

In connection with correct determination of contract and the content of the contract, it has to be pointed out that the situation is similar in the case of issuing a forwarding order. If there is an inaccurate description of this order (often there are titles such as "carriage order" or "transportation order"), the content of the order is of essence.

A "carriage order" or "transportation order" will be a "forwarding order" only provided that it implies arrangement of transportation as the subject-matter of the contract entered into. If this is not clear, a different name of the order

may serve as a means to claim that the sender's intent was not to issue a "forwarding order", but that the intent was to enter into a contract of transportation.

There may be situations where the forwarder does not carry out transportation (which is not the purpose of a forwarding contract anyway), but when the forwarder uses another person in the procurement of transportation – another forwarder (the so-called intermediary forwarder). In such case the forwarder is liable as if they were procuring the transportation themselves. Use of another forwarder may come into consideration mainly in the case of subsequent kinds of carriage and in the event of transportation to destinations abroad.

A classic form of use of the services of an intermediary forwarder by the forwarder is groupage. This intermediary forwarder, as a contractual partner of the forwarder, undertakes to carry out for the forwarder certain activities, e.g. collection and distribution of goods from a terminal abroad, etc.

Unless it is not contrary to the contract or prohibited by the sender prior to the commencement of transportation, the forwarder may themselves perform the transportation which they are to arrange. Then they also have the function of the carrier. In the implementation of transport, here will therefore be a simpler functional arrangement. This procedure is referred to as selfentry.

Then, the relationships during transportation will not arise out of a forwarder contract but a contract on the carriage of goods.

The forwarder will arrange the mode and conditions for the transportation with due care so as to best suit the interests of the sender that the forwarder knows.

The forwarder is obliged to have the consignment insured only if stipulated in the contract. The forwarder's obligation to insure the goods is therefore not a statutory obligation, but only if it is provided for by the contract.

While maintaining due care, the forwarder cannot analyze all the sender's instructions in detail, however, they should normally assess them with due care. The forwarder alerts the sender only in the case of obvious errors.

In fulfilling their obligation, the forwarder is obliged to apply due care to arrange the way and conditions of transportation corresponding best to the interests of the sender arising from the contract and its commands or which are otherwise known to the forwarder. Their focus and specialization on the respective scope of activity applies. Due care does not apply only on the actual procurement, but also on goods. The forwarder is liable for damage caused to a received consignment while arranging for transport, unless it could not be averted despite exercising due care.

The forwarder should be a professional entity for the arrangement of transport, but may not have a good knowledge of the goods and his character, although the opposite would be their advantage. The do not know all the details of the consignment and the content of the consignment. For the provision of transport, however, they need to obtain this information from the sender, in order to proceed accordingly. Any inaccuracy could lead to damage.

Where the sender does not provide the forwarder with correct information on the content of the consignment and of all the facts necessary for the conclusion of the contract of carriage, they are to compensate damage occurred as a violation of this sender's obligation.

The sender is obliged to provide the forwarder with correct and complete information about the contents of the consignment and its nature, as well as about other facts necessary for the conclusion of the contract on carriage. In the case of breach of the obligations, the sender is responsible for the damage which the forwarder incurs. This applies, in particular, to hazardous goods and goods which are only conditionally accepted for carriage subject to meeting the conditions for the transportation of dangerous goods.

These conditions are also regulated by various international conventions (ADR for road transport, RID for rail transport, IMDG for sea transport).

The forwarder is obliged to inform the sender of any damage threatening the consignment as soon as they learn of it; otherwise they are liable for any damage thus incurred by the sender as a result of their failure to meet this obligation. This is a special provision in relation to the general preventive

and notification obligation in the framework of compensation. This applies to substantial as well as unsubstantial damage.

Special regulation applies to situations when there is an imminent danger of damage to the consignment and there is not time to ask the sender for instructions, or if the sender delays in providing such instructions. In accordance with section 2126 and 2127 of the NCC, in such situations, the forwarder may sell the consignment in an appropriate manner at the sender's expense.

In general, the forwarder is does not bear the risk of damage to the consignment. It is only liable for damage caused to a received consignment at time of arranging transportation. However, this shall not apply if they prove they were unable to avert it. This is a special provision to more general regulation of damage caused to a thing received.

However, damage is not to be compensated if the person who received proves that the damage would arise otherwise.

In this context, it should be noted that the forwarder is not liable for breach of contracts agreed with the carrier, therefore, is not liable to the sender for any damage incurred by the latter as a result of a breach of the contract on carriage by the carrier.

If the forwarder has violated any other statutory or contractual obligations, the general provisions on compensation will apply.

Upon receipt of the consignment, the consignee assumes liability for payment of the carrier's receivables towards the consignor from the contract concerning carriage of the received consignment, provided that the consignee knew or should have known of such receivables.

This is strengthening of the rights of the forwarder and a case of origin of statutory guarantee. However, this applies only if they knew about the receivable or should have known about it.

The forwarder is entitled to an agreed fee for arranging transportation or, if such fee has not been agreed, to fee which was customary at the time of concluding the contract for arranging similar transportation. Additionally,

the forwarder is entitled to compensation of the necessary and reasonable expenses which they incurred for the purpose of fulfilling their obligation.

At this point it should be noted when the forwarder fulfills obligation. In the forwarding contract, the forwarder promises to the sender to arrange, in his own name and on behalf of the sender, transportation of a thing from one place to another specified one. The forwarder carries out the arranging of transportation not only by looking up a suitable carrier and means of transport, but also by concluding the respective contract on the carriage of goods.

In practice, it is discussed whether the forwarder fulfills his basic obligation under the forwarding contract at the time of concluding the respective contract on the carriage of goods with the carrier and notifying the sender of this, or at the time of completion of transportation, i.e. by handing over the consignment to the consignee.

In our opinion, the sender should pay the fee and the costs incurred to the forwarder without undue delay after the forwarder arranged transportation by concluding the respective contracts with carriers, or intermediary forwarders, and notified the sender of this.

The forwarder is to monitor further "progress" of transportation and notify the sender with respect to the statutory preventive and notification duty (inter alia in the context of compensation of damage).

In addition to detailed negotiation of other issues, it is particularly appropriate to agree the issue of remuneration in detail in the particular contract. I can only recommend a more detailed agreement on the ways of accounting - invoicing and payment.

The forwarder has a lien on the consignment while it is held by them, or while the forwarder possesses documents which entitle them to dispose of the consignment, in order to secure sender's debts arising from the contract. The same applies where it is held by somebody else on the forwarder's behalf.

At the request of earlier forwarders, an intermediary forwarder applies all rights arising for them from their lien, and also has rights and obligations

to satisfy their rights. If they satisfy them, the rights pass on the intermediary forwarder together with the lien securing them.

In order to secure their claims towards the sender, the forwarder therefore has a lien on the consignment while it is held by them or by somebody else on their behalf, or while the forwarder possesses documents which entitle them to dispose of the consignment.

If requested so by earlier forwarders, the intermediary forwarder will apply all rights arising for them under their lien; they have the right and obligation to satisfy their rights. If they do so, the rights pass on the intermediary forwarder together with the lien securing them. This is a statutory assignment.

Forwarding contract is in fact a special regulation with regard to the use of the consignment contract with necessary modifications. In the NCC, forwarding is provided for in sections 2471 to 2481 and in other issues it is referred to the use on consignment, sections 2455 to 2470, which apply with necessary modifications.

2 CARRIAGE OF GOODS

P The basic provision of this type of contract stipulates that under a contract on the carriage of goods, the carrier undertakes to carry the goods (consignment) from a designated place (place of shipment) to another designated place (destination), and the consignor undertakes to pay them remuneration (carriage charge). This provision includes the essential elements of the contract.

The contract is formed by agreement on the essential elements of the contract.

The essential elements of the contract are:

- identification of goods to carry,
- carrier’s obligation to transport the thing,
- determination of the place of shipment and destination,
- consignor's obligation to pay remuneration.

A special manner of expiration of the contract is stipulated in this matter. The contract expires if the consignor has not asked the carrier to take over the consignment within six months from conclusion of the contract.

However, in the case of relationships with a foreign element, we will have to observe the regulation by international treaties, mainly the following conventions governing the carriage of goods:

- COTIF - JPP/CIM (for rail transport),
- CMR (for road transport),
- Warsaw Convention (for air transport),
- United Nations Convention on the carriage of goods by sea.

These international treaties are applicable to international transport. The provisions of international treaties are not only dispositive, but also mandatory. Where there provisions are mandatory the contracting parties may not, in their contracts, of course, agree on a different arrangement.

With respect to relationships with a foreign element, attention should be drawn to one neglected provision of the most commonly used international treaty, the Convention on the Contract for the International Carriage of Goods (CMR).

The Convention, in its article 1, stipulates that this Convention shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties.

This provision applies regardless of the permanent place of residence and the nationality of the parties. It follows from this that the Convention will also apply to contracts on carriage between domestic entities; a prerequisite for its use is that the place of taking over the consignment and the anticipated place of its delivery are located in two different countries.

It follows from this that if the consignor concludes a contract with a Czech carrier, if the place of shipment of the consignment in the Czech Republic and the place of destination of the shipment is outside the Czech Republic, for example in the Slovak Republic, they are concluding the contract o the carriage of goods according to the CMR Convention, not in accordance with the NCC.

This fact, however, is unfortunately sometimes forgotten in practice and on the part of the sender, the carrier or the consignee there are many problems in case of complaints, claims for damages, etc. The Convention regulates the rights and obligations of the consignor, carrier and consignee, their liability and claims for damages in a different way than the NCC does.

The contract on the carriage of goods does not require a written form, however, the carrier is entitled to require the consignor to confirm the transportation in the transport document, and the consignor is entitled to require the carrier to certify in writing receipt of the consignment. The confirmation therefore must be in writing.

If special documents are necessary for the carriage, the consignor is to hand them over to the carrier the latest when handing over the consignment for carriage. The consignor shall be liable for any damage caused to the carrier by failure to hand over such documents or their incorrectness.

The consignor is also obliged to provide the carrier with correct information about the contents and nature of the consignment. The same what applies to a breach of obligations in case of special documents applies also to a breach of this obligation.

Legal regulation of securities may also be closely related to transportation. A confirmation of receipt of the consignment may be replaced by a bill of lading. A bill of lading is a negotiable instrument to which is attached the right to demand delivery of the consignment from the carrier; it may be issued in somebody's name, to the order or to the bearer.

The bill of lading is a security. The carrier is not entitled to examine why the bill is held by the person presenting it. If the bill of lading does not state to whose order it was made out, it is presumed that it was issued to the order of the consignor.

The rights bound to a bill of lading to the order of the beneficiary may be assigned by a special or blank endorsement; rights bound to a bill of lading registered in somebody's name may be assigned to another party according to the provisions on the assignment of receivables.

Since the Czech Republic is bound by international treaties and international rules are used (e.g. FIATA), we are influenced by internationally used terminology and the term "bill of lading" is not always used. It is common to directly use the designation of a particular type of bill of landing.

However, "freight bill" (in CMR) has to be distinguished; it is a document accompanying the consignment, which is a proof of concluding a contract of carriage.

The minimum content of the bill of landing is stipulated by the law. The bill of landing must state as least the following:

- the name of the carrier and their residential address or place or registered office;
- the name of the consignor and their residential address or place or registered office;
- the designation, amount, weight or volume of the goods carried;
- the form of the bill of lading; whether it was made out to somebody's name or to the order, and identification of the person to whose name or order it was made out;
- specification of the place of destination; and
- the place and date of issue of the bill of lading and the carrier's signature.

If the bill of lading is issued in several copies, the number of copies must be marked on each copy.

After the bill of lading has been issued, only the entitled party under the bill of lading may suspend carriage. Only this entitled party has the right to be given the consignment. If several copies of the bill of lading were issued, several copies have to be presented.

In the event of destruction or loss of the bill of lading, the carrier is to issue the consignor with a new bill of lading. Since this is a security, the law stipulated that the fact that it is a substitute bill of lading must be stated. In the event of misuse of the original bill of lading, the consignor is to compensate damage incurred by the forwarder by this.

The contents of the bill of lading are decisive for claims raised by the party entitled. The carrier may object to such party by referring to the provisions of the contract concluded with the consignor only if such provisions are included in the bill of lading, or if these provisions are expressly referred to therein. The carrier may only raise objections against a party entitled under the bill of lading which follow from the contents of the bill of lading or from the relation between the carrier and the entitled party.

The carrier has a lien on the consignment as long as they have to right to dispose of it. If the consignment is encumbered by several liens, the carrier's lien takes precedence over previous liens, and the carrier's lien takes precedence over the lien of the forwarder.

The carrier is obliged to transport the consignment to the destination within the agreed deadline, or else without undue delay. Some deadlines are governed by rules of transportation.

In case of doubt, the deadline starts on the day following the day on which the carrier takes over the consignment. If the carrier knows the consignee, they are obliged to deliver the consignment to them. If the contract stipulates that the consignee is to collect the consignment at the destination, the carrier must notify the consignee of the arrival of the consignment. The CMR Convention mentions also situations where the deadline was not agreed, and stipulates time limits after which the consignment is considered to be lost.

In practice there are cases where the consignment is transported by several carriers, and a separate contract is concluded with each of them. This may be in cases of combination of various kinds of transportation (e.g. rail and subsequently road). In these cases, each carrier is liable individually.

Very often, however, transportation is provided in a way that the contract is concluded only with one carrier, and this one uses others to fulfill the task. This is because the carrier may fulfill their obligation by using the services

of another carrier. However, they bear the same liability as if they had performed carriage themselves.

In case where several carriers have joined to perform transportation, in may be stipulated in the rules of transportation which carrier and under what conditions is liable.

If the rules of transportation limit the carrier's obligation to compensate damage to health, this is not taken into account. Any limitation, in the rules of transport, of the carrier's obligation to compensate harm does not apply to cases of harm caused intentionally or through gross negligence.

The obligation to carriers operating the public transportation to compensate damage or other harm may by limited by rules of transportation only in particularly justified cases, when the need for such limitation for national transport necessarily follows from the principles applicable to international carriage.

The new Civil Code also regulates the issue of delay in collecting the transported goods. If the person entitled to pick up the luggage or the consignment in arrears with collecting the thing for more than six months, the carrier may sell the thing at the expense of such person. If it is a thing of high value and if the carrier knows the address of that person, they are inform the person in advance of the intended sale and provide them with an additional reasonable time limit to pick up the thing. A shorter period may be, in justified cases, determined by the rules of transportation. This applies in particular to things of dangerous nature or things that spoil quickly.

Bootstrap sale is possible in designated cases. If the consignment is under imminent danger of substantial damage and there is not time to ask the consignor for instructions, or if the consignor delays in providing such instructions, the carrier my sell the consignment in an appropriate manner at the consignor's expense.

The contract on the carriage of goods is a contract for remuneration. In practice, the contracting parties mostly agree on the use of the carrier's price lists.

The carrier is entitled to the agreed remuneration; if no remuneration has been agreed, they are entitled to the customary remuneration at the time of concluding the contract, taking into account the contents of the carrier's obligation. The carrier is entitled to payment of a carriage charge after completing carriage of the consignment to the destination, unless the contract specifies a different time as decisive. If the carrier cannot complete carriage of the consignment due to circumstances for which they are not liable, they are entitled to a proportionate part of the carriage charge, taking into account the carriage already completed.

The carrier is liable for damage caused to the consignment from the moment of its takeover by the carrier until its handover to the consignee. This does not apply if the carrier could not avert the damage even when exercising due care (section 2566 (1)).

However, the carrier is not liable for damage caused to the consignment if they prove that it was caused:

- by the consignor, the consignee or the owner of the consignment;
- by a defect or the natural properties of the consignment, including normal loss, or
- by defective packaging of which the carrier informed the consignor when taking over the consignment for carriage and, if a freight bill or a bill of lading was issued, this defect in packaging was recorded therein; and
- in the event the carrier failed to inform the consignor of the defective packaging, then if the defect was undetectable when the consignment was received (section 2566 (2) and (3)).

In connection with damage caused to the consignment, yet other obligations are stipulated for the carrier. The carrier must promptly provide a report to the consignor specifying any damage caused to the consignment prior to its delivery to the consignee. However, if the consignee has already acquired the right to delivery of the consignment, the carrier shall submit their report to the consignee. The carrier is liable for damage incurred wither by the consignor or the consignee through breach of this obligation. This is a special kind of obligation to notify.

If a consignment is lost or destroyed, the carrier is obliged to pay the price of the consignment at the time when it was received by the carrier.

If the consignment is damaged or devalued, the carrier is obliged to pay the difference between the price of the consignment when it was received by the carrier and the actual price of the damaged or impaired consignment.

As far as the carrier's liability for damages caused to the consignment is concerned, differences must be pointed out in provisions that can be found in the CMR Convention, because compensation of damage caused to a lost or damaged consignment is a frequent subject of disputes. The CMR Convention, in article 17, quite in detail specifies the exclusion of liability of the carrier; in article 23, it states limitations of compensation of damage which the carrier has an obligation to compensate.

Individual modes of transportation have their important specifics. This is reflected in special regulation of certain issues in the rules of transportation issued especially for rail transport, air transport, transportation by road and inland waterway transport, and maritime transport. However, the rules of transportation must regulate the individual issues within limits established by law.

3 OPERATION OF A MEANS OF TRANSPORTATION

D The basic provisions of this type of contract states that under a contract on operating a means of transportation, the operator undertakes to transportation cargo identified by the client ordering the operation of the means of transportation, and for this purpose to undertake one or more trips with the means of transportation as agreed in advance or to undertake trips within an agreed period according to the client's instructions, and the client undertakes to pay remuneration.

The obligations of the operator and the client, as specified in basic provisions, determine the essential elements of the contract.

The essential elements of the contract are:

- specification of the means of transportation,

- specification of transportation, i.e. specification of the journey(s) or times to make the journeys,
- operator’s obligation to provide carriage of cargo,
- client's obligation to pay remuneration.

The contract will find its application mainly in international relations (the International Trade Codes contained a contract on the operation of a ship in the past) but also in the territory of the domestic country, mainly in the operation of aircraft; it can also be used in the area of heavy traffic (i.e. in the transportation of turbines, bridge structures, fuel storage tanks, etc.).

In transportation practice, especially in maritime and air transport, this agreement is referred to as a charter (ship, aircraft).

In the operation of a means of transport, the obligation is specified either

- by specifying a the journey that the means of transportation has to execute (trip charter, voyage charter),
- or by specifying the period for which the means of transportation has to execute transportation (time charter).

The trip charter is similar to the contract on the carriage of goods, whereas the time charter has features similar to the contract of lease, namely or the contract of lease of a means of transport. The time charter may, however, become the basis of a trip charter or several trip charters if the client of transportation concludes another trip charter (a sub-charter) with a third party.

The operator must ensure that the means of transportation are suitable for the trips which are the subject of the contract, and usable for the transportation specified in the contract.

The operator must provide a trained crew, fuel and any other items as necessary to undertake the agreed trips.

The client may assign their right to demand the agreed operation of the means of transportation to another party.

If the means of transportation are not suitable, the operator must compensate the client for damage arising therefrom, unless they prove that this unsuitability could not be foreseen despite exercising due care.

If cargo is accepted for carriage, the provisions on the contract of carriage apply as appropriate to the rights and obligations of the parties, provided this is permitted by the nature of the contract on operating a means of transport.

The provisions on the contract on operating a means of transportation are relatively brief and there are only few but it has become obvious in practice that it is not a dead letter of law.

4 CONCLUSION

As obvious, the provisions relating to the forwarding contract, the contract on the carriage of goods and the contract on operating the means of transportation are to a large extent modified provisions of the Commercial Code (and in the case of operation of a means of transport they have their origin in the International Trade Code).

The provisions of the bill of lading are dealt with separately in a separate subsection of the NCC.

The dispositions for the rules of transportation are concentrated in common provisions on personal and freight carriage.

In practice, this is legislation that is well established and generally should not cause problems in implementation and application.

In specific cases, it is always necessary to assess whether it is a relationship with a foreign element, which could be subject to the respective international legislation.

In the individual types of transport, the rules of transportation must be also taken into account.

5 REFERENCES

BEJČEK, J.; MAREK, K.; KOTÁSEK, J.; ONDREJOVÁ, D. Nástin obchodního práva, II. 2nd edition. Brno: Masarykova univerzita, 2012. 111 p. Edition of multimedia teaching texts No. 78. ISBN 978-80-210-4978-9.

DĚDIČ, J. et al.: Obchodní zákoník, komentář, díl. IV., Polygon Praha 2002, p. 3269 et seq.

ELIÁŠ, K.; ZUKLÍNOVÁ, M.: Principy a východiska nového kodexu soukromého práva, Linde Praha, a.s., Praha 2001.

MAREK, K. K uzavírání smluv. Právní fórum, Praha: Wolters Kluwer ČR, 2012. 2012, issue 4, p. 138-143. ISSN 1214-7966.

MAREK, K.: Smlouva zasílatelská. Právní rozhledy, issue 11/1999.

MAREK, K. Smluvní obchodní právo, kontrakty. 4th edition. Brno: Masarykova univerzita, 2008. 477 p. ISBN 978-80-210-4619-1.

MAREK, K.: Smlouvy k zajišťování přepravy a se vztahem k dopravním prostředkům. Právní rádce, issue 8/1997.

MAREK, K.: Zasílatelství, přeprava a přepravní řády, Právo pro podnikání a zaměstnání, issue 10/2010.

POHŮNEK, M: Právní aspekty zasílatelství, Praha, 1997.

OVEČKOVÁ, O. et al.: Obchodný zákonník, Komentár, 2nd ed., IURA EDITION, 2005.

SUCHOŽA, J.; HUSÁR, J.: Právo, Obchod, Ekonomika II, 1st ed., Praha: Leges 2012, 624 p., ISBN 978-80-87576-33-5.

SUCHOŽA, J., HUSÁR, J.; MAREK, K.; RABAN, P. Česko-slovenské kontexty obchodního práva. 1st ed. Praha: Wolters Kluwer ČR, 2011. 544 p. ISBN 978-80-7357-707-0.

ŠTENGLOVÁ, I.; PLÍVA, S.; TOMSA, M. et al.: Obchodní zákoník, komentář, 12th edition, C. H. Beck 2010.

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STRATEGIC APPROACH FOR EVALUATION OF THE ENTERPRISE COMPETITIVENESS

STRATEGICKÝ PŘÍSTUP PRO HODNOCENÍ KONKURENCESCHOPNOSTI PODNIKŮ

Iryna Minchinska

Victoriya Derevyanko

Abstract: *This paper determines the importance to evaluate all the enterprise competitiveness components for competitive advantage. It shows a complex approach to assessing the competitiveness, using the statistical techniques and methods of strategic analysis. Stages of such an evaluation are defined, using a method based on the theory of effective competition; Matrix BCG; Balanced Scorecard (BSC). Offered to include SWOT-analysis to the stages of analysis using BSC.*

Keywords: *enterprise competitiveness; methods of the enterprise competitiveness evaluation; evaluation method based on the theory of effective competition; Matrix BCG; SWOT- analysis; Balanced Scorecard (BSC)*

Abstrakt: *Článek stanovuje, že je důležité vyhodnotit všechny součásti konkurenceschopnosti podniku pro konkurenční výhodu. Ukazuje komplexní přístup k hodnocení konkurenceschopnosti, na základě statistických metod a metod strategické analýzy. Etapy tohoto hodnocení jsou definovány pomocí metody založené na teorii efektivní hospodářskké soutěže; Matrix BCG; Balanced Scorecard (BSC), SWOT analýza.*

Klíčová slova: *konkurenceschopnost podniku; metody hodnocení konkurenceschopnosti podniku; metody hodnocení založené na teorii efektivní hospodářské soutěže; Matrix BCG; SWOT analýza; Balanced Scorecard (BSC)*

JEL Classification: L 21

1 INTRODUCTION

In the current context of rapid development of competition both on the domestic and foreign markets, ensuring the enterprises competitiveness acquires special urgency. Therefore the assessment of the enterprise competitiveness is important and necessary.

To the issue of evaluation and ensuring the enterprise competitiveness in modern economic research was paid enough attention in Ukraine; however, the strategic methods of analysis for assessing competitive advantage are not used a lot. Therefore, the aim of research is to define the possibilities of assessing competitiveness based on using strategic methods of analysis.

2 THEORETICAL ASPECTS OF ENSURING THE ENTERPRISE COMPETITIVENESS

To achieve long-term success, work to ensure enterprise competitiveness should be carried out in all spheres and in all aspects of its activities. Hence, the key components of ensuring enterprise competitiveness are: production, marketing, finance, innovation, management, human resources and organizational culture (December 2006). Let us examine in detail each of the components for determining its role in ensuring the enterprise competitiveness.

To the production component of the enterprise competitiveness belongs range, assortment of the goods and the size of production. The marketing component provides market research and advertising activity. Financial component characterizes the degree of liquidity and enterprise solvency. An innovative component determines the possibility of realization of scientific researches and engineering works (SREW).

However, on our opinion, the basis of all these components is human resources and organizational culture, which determines the quantitative and qualitative composition of the staff, the type of leader, communications and procedures. Along with human resources is placed management component, to which belong: style and management methods, adaptive capabilities of an enterprise (Minchinska, Derevyanko 2013).

In general, the success of an enterprise depends on all components of its activities. However, the underlying factor, on our opinion, is the staff. In particular, the availability of company staff and its efficiency influence on the amount and timeliness of all work, productivity of using technical and

technological base and as a consequence, the effectiveness of the activity in general.

Therefore, the analysis of the main components of enterprise activity allows drawing conclusions about the impossibility of an adequate assessment of the enterprise competitiveness taking into account only financial, industrial and commercial aspects of the activity. On our opinion, production, marketing, financial and innovative components are derivatives from human resources and management, since they will only result in the effective usage of human potential.

3 METHODOLOGICAL APPROACHES TO EVALUATION OF THE ENTERPRISES COMPETITIVENESS

Let us consider the classification methods for assessing competitiveness, which means their division into separate groups according to some criterion (Yatsura, Zamroz 2011). Often such sign is the form of presentation of the results of the evaluation, according to which secrete graphic, matrix, calculated and combined (cash-matrix, cash-graphic) methods.

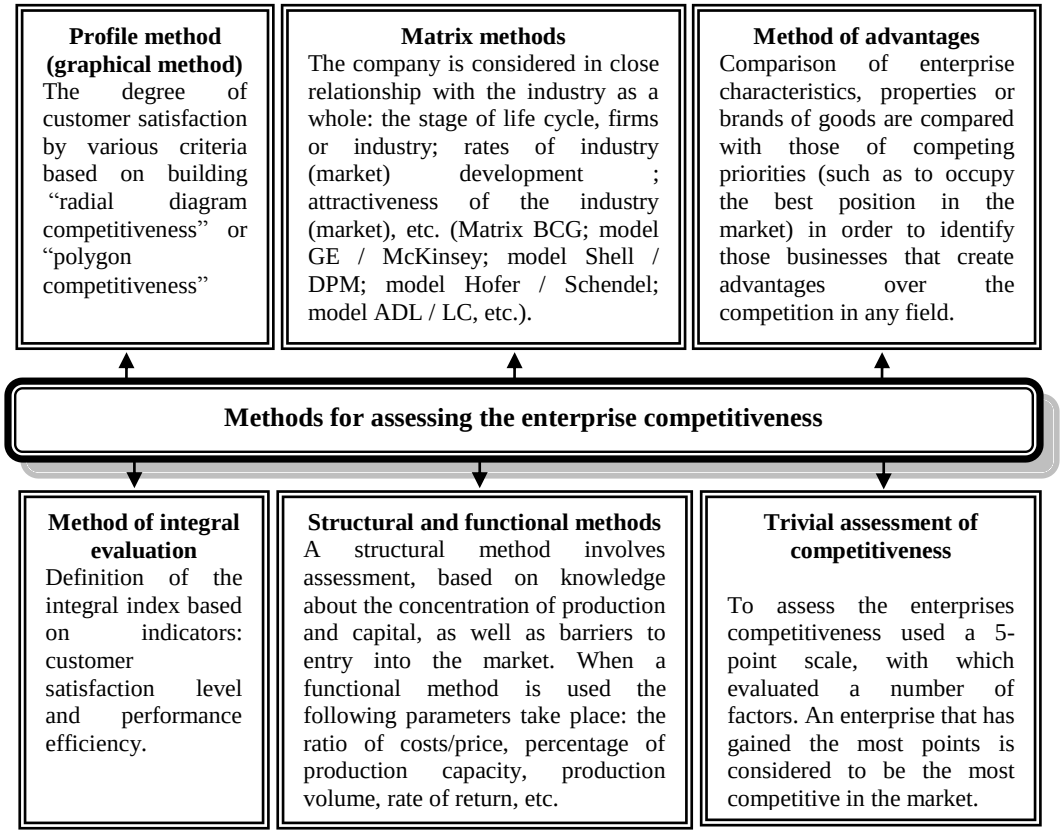
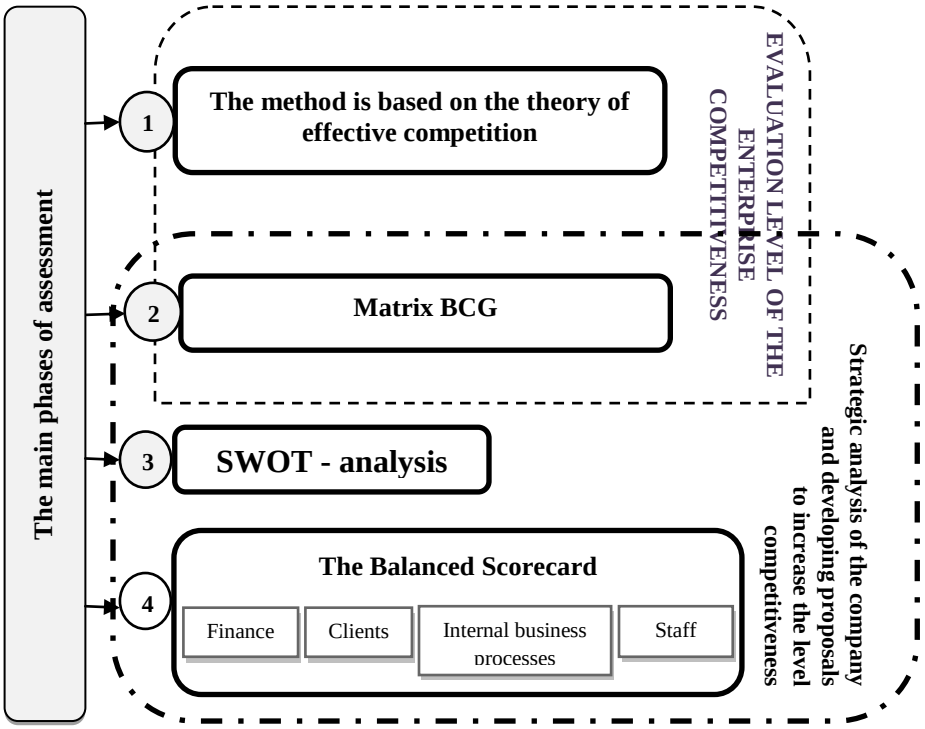


Figure 1: Classification of methods for evaluation of the enterprise competitiveness

Source: composed by the author according to the data КЛИМЕНКО, С.М. 2006. Управління конкурентоспроможністю підприємства: Навчальний посібник. К.: КНЕУ, 2006. 527 с. ISBN: 978-966-483-036-9; ЯЦУРА, В.В., ЗАМРОЗ, М.В. 2011. Аналіз методів оцінки конкурентоспроможності підприємств. Вісник Волинського інституту економіки та менеджменту, 2011, № 2, С. 45-53; PORTER, M.E. 1980. Competitive Strategy: Techniques for Analyzing Industries and Competitors. New York: Free Press, 1980. 396 p. (Republished with a new introduction, 1998). ISBN-10: 0684841487.

For the analysis of the evaluation methods (fig. 1), we've selected the matrix "Boston Consulting Group, which provides long-term analysis and strategic vision in competitiveness and ensuring competitive advantage. Also considered is the appropriate use of such methods of strategic analysis, as SWOT analysis and the Balanced Scorecard. Among the estimation methods of competitiveness that are not related with the strategic analysis, in research was used method based on the theory of effective competition, which involves the calculation of a competitiveness coefficient using expert estimates. Assessment of enterprise competitiveness offers to conduct the following phases (fig. 2).

Figure 2: Comprehensive approach for evaluation of the enterprise competitiveness



Characteristics of these estimation methods of competitiveness are shown below (Tab. 1).

Table 1: Methods of evaluation of the enterprise competitiveness, which were used during the analysis

Method names	Characteristic	Phases of assessment
The method based on the theory of effective competition	The most competitive are those enterprises, where all departments and services are organized the best. The efficiency of the activity of each structural unit affects resource completeness. Evaluation of the effectiveness of each of the units involves the assessment of the effectiveness of resources. The basis of the method is the evaluation of a group indicators (criteria of competitiveness): -the financial health of the enterprise; -production activities; -organization promotion and marketing of the products.	1. Calculation of individual indicators of the enterprise competitiveness and interpreting them into relative values (points). For interpreting indicators into relative values a 15-point scale is used. In this case, the 5-th points means that the indicator has a lower level than basic; in 10-12 points- the same level as basic; in the 15-th-highter than basic. 2. Calculation criteria of the enterprise competitiveness according to the selected indicators. 3. Calculation coefficient of enterprise competitiveness.
SWOT-analysis	Analysis of external and internal environment of the organization. Analysis of the subject strengths, weaknesses of the internal environment, opportunities and threats of the internal environment of the organization.	1. Identify the level of factors impact, which influence on the enterprise; 2. Determining the probability of use of opportunities and their influence (derivation of the matrix opportunities); 3. Determining the probability of threats and their influence (derivation of the matrix of threats); 4. Evaluation of the internal environment factors (method for determining the profile of the internal environment); 5. Defining links between the most influential weaks and strengths, threats and opportunities (matrix of SWOT-analysis).
Matrix BCG ("Boston Consulting Group")	Allows to categorize each Strategic Business Unit (SBU) by market segment against main competitors and the pace of annual growth in the industry; determine which SBU occupies a leading position on the market; a previous distribution of financial resources between the SBU.	1. Collection and analysis of data (attractiveness industry; competitive position of the enterprise; the opportunities and threats for the enterprise on external environment; the resources and staff qualification); 2. Composing and analysis of portfolio business matrixes for insight into current and future enterprise portfolio; 3. Determine the desired business portfolio according to options that would be the best to achieve the goals.
Balanced Scorecard (BSC)	Provides integration of financial and non-financial indicators with regard to causal relationships between them; detailed monitoring of the activity of the company in strategic focus; efficiency and effectiveness of management decisions; control of the most important financial and non-financial indicators of activity (business effectiveness in general, individual business processes, departments and personnel resources). Represents not only the system of measuring the efficiency of enterprise activity in strategic focus, but also full-featured management system.	1. Determining strategic goals 2. SWOT analysis and determining factors of success 3. Defining indicators and their target values 4.Determining methods of calculation indicators 5. Causal chain of strategic goals 6. Cascading strategic goals 7. Strategic activity plan 8. Supports, renewal and development of BSC

Source: composed by the author according to the data ЯЦУРА, В.В., ЗАМРОЗ, М.В. 2011. Аналіз методів оцінки конкурентоспроможності підприємств. Вісник Волинського інституту економіки та менеджменту, 2011, № 2, С. 45-53; ЄФРЕМОВ, В.С. 1998. Стратегия бизнеса. Концепции и методы планирования. Учеб. пособие. М.: Финпресс,

1998. 192 c. ISBN 5-8001-0014-4 ZANDER, R. S. 2005. SWOT Analysis I: Looking Inside for Strengths and Weaknesses, chapter 2, excerpted from: Strategy: Create and Implement the Best Strategy for Your Business. Boston, Massachussetts: Harvard Business Press, 2005. 17 p.; ZANDER, R. S. 2005. SWOT Analysis II: Looking Inside for Strengths and Weaknesses, chapter 2, excerpted from: Strategy: Create and Implement the Best Strategy for Your Business. Boston, Massachussetts: Harvard Business Press, 2005. 19 p.; THOMPSON , A.A., STRICKLAND A.J. 1995. Crafting & implementing strategy : Text and readings . Chicago : Richard D. Irwin, Inc., 1995. 539 p. ISBN: 0256150273; KAPLAN, R.S., NORTON, D.P. 1996. The Balanced Scorecard: Translating Strategy into Action. Boston: Harvard Business School Press, MA, 1996. 304 p. ISBN-13: 978-0875846514.

To assess the enterprise competitiveness taking into account all components we chose the Balanced Scorecard (BSC), but there are other methods of assessment (Tab. 2).

Table 2: Comparative characteristics of alternative methods of selection enterprise strategies that are based on more efficient use of staff

№ п/п	Name	Group factors of choice strategy	Goals	Strategy
1.	The Balanced Scorecard (BSC) Authors: Norton D., Kaplan, R. (1990).	1 – finance – clients; 2 – training and career growth; 3 – internal business processes.	Intended for the evaluation of innovation, training and education of staff, development of products and services, competence of employees and corporate culture.	Innovation in human resources strategy
2.	Method of management and motivation of staff ("Management by Objectives") Author: Peter Drucker (1954)	SMART: 1 – S - Specific 2 – M – Measurable; 3 – A – Achievable (Realistic); 4 – R - Results-focused; 5 – T- Time-bound.	Defining at the beginning of the period (month, quarter) for organizations, divisions, departments and employees clear goals will influence on the premium part of the wages of employees .	The strategy of improving labour productivity
3.	Method S5 Author: Kaoru Ishikawa (1960)	1 – sort-branch 2 – rational location 3 – cleaning 4 – S-standardization of 5- S-improvement	Focuses on ordinary workers and changing their attitude to their activity.	Staff development strategy
4.	TPS (Total Performance Scorecard)	1 - The Balanced Scorecard 2 - total quality 3 - performance management 4 - management competencies	Refers to maximum personal development of all employees and the optimal use of their ability to achieve the highest rates.	Innovative human resources strategy

Source: composed by the author according to the data АДУШКІН, А.Е. 2009. Эволюция и современное развитие концепции сбалансированной системы показателей. Аудит и финансовый анализ, 2009, № 4, С. 380-383.

However, they focused on the staff without consideration of its impact on the efficiency of enterprise activity as whole (method S5), limited the use of the current period of functioning of the organization (SMART) or take into account to a greater extent personality as workers can be identified only when conducting the detailed internal analysis (TRS).

4 EVALUATION OF THE ENTERPRISE COMPETITIVENESS IN COMPARISON WITH THE MAIN COMPETITORS ON THE MARKET

4.1 Evaluation of the competitiveness of enterprises using method based on the theory of effective competition

Pro For evaluation the level of competitiveness first, we used a method based on the theory of effective competition (applies to complex methods of estimation) (Klimenko, 2006). This evaluation covers all the most important areas of economic activity of the enterprise, eliminates duplication of individual indicators, allows quickly and objectively determination the position of the enterprise among the major competitors. Comparison of indicators in different time intervals gives the possibility to use this method as a variant of operational control. The disadvantage of the method is the complexity of the calculations and the difficulty of obtaining the necessary information.

Calculation method of competitiveness implies evaluation of three or four groups of competitiveness indicators or criteria with subsequent integral index calculation. First, we distributed competitiveness indicators and criteria of the company Agroholding "Kernel" and its main competitors – Agropromholding "Astarta-Kyiv" and "Bunge" on the market of sugar and oil-fat production (tab. 3).

Table 3: Indicators and criteria for the calculation of the enterprise competitiveness

Indicators of competitiveness	The place of the indicator in the evaluation	The way of calculating indicator
1. The efficiency of the production activity of the enterprise		
1.1. The production costs per commodity unit, UAH.	Shows the efficiency of production expenses.	Gross cost / Volume of production
1.2. The profitability of the goods	Characterizes the profitability of production of the goods.	Profit from sales / Total cost of production
1.3. The profitability of production	Characterizes the efficiency of enterprise operation.	Net profit / Production costs
2. Financial position of the enterprise		
2.1. Return on equity (ROE)	Measures the efficiency of equity.	Net Profit / Equity
2.2. The solvency ratio	Measure the ability of a company to meet its long term debts.	Equity capital / Total liabilities
2.3. Absolute liquidity ratio	Shows the means that there are sources covering current liabilities.	Cash / Current Liabilities
2.4. Current assets turnover ratio	Indicates how efficiently enterprise is using its current assets to generate revenue.	Sales revenue /Average current assets
3. The effectiveness of sales and promotion of products		
3.1. Profitability of sales	Characterizes the profitability of enterprises on the market.	Profits from sales / Sales

Source: composed by the author according to the data ЯЦУРА, В.В., ЗАМРОЗ, М.В. 2011. Аналіз методів оцінки конкурентоспроможності підприємств. Вісник Волинського інституту економіки та менеджменту, 2011, № 2, С. 45-53.

After distribution of indicators and criteria for calculating competitiveness, we have determined the level of influence of each of the individual indicators of competitiveness in production, finance and marketing groups, and defined on the basis of their performance in the group integral by the method of expert estimations (direct placement).

Target group functions competitiveness indicators will be as following:

$$\boldsymbol{C_{pe}} = \boldsymbol{f}(0{,}3K_{cost};0{,}35K_{gprof};0{,}35K_{pprof}) \rightarrow \max \quad (1)$$

$$\boldsymbol{C_{fp}} = \boldsymbol{f}(0{,}15K_{ROE}\ ;\ 0{,}28K_{\boldsymbol{solv}};\ 0{,}19K_{\boldsymbol{abs\ liq}}\ ;\ 0{,}38P_{turn\ ratio}) \rightarrow \max \quad (2)$$

$$\mathbf{C_{esp}} = \boldsymbol{f}(1K_{prof\ sales}) \rightarrow \max \quad (3)$$

Taking into account coefficients weights we have following target function integral index of the enterprise competitiveness (Cec):

$$\boldsymbol{C_{ec}} = \boldsymbol{f}(0{,}35C_{pe};0{,}35C_{fp};0{,}3C_{esp}) \rightarrow \max \quad (4)$$

According to this method we estimate level of the competitiveness of the agricultural enterprises that are leaders in the market of sugar, oil and fat

production: Agroholding "Kernel" Agropromholding "Astarta - Kyiv" and the company "Bunge". The calculations were made on the basis of financial reporting for the years 2007-2012 (Official sites Agropromholding "Astarte - Kyiv", "Kernel" and "Bunge").

The calculation of the group enterprises competitiveness indicators are presented in Tables 4, 5 and 6.

Table 4: Calculation of the competitiveness for Agropromholding "Kernel" using a method based on effective competition in years: 2007-2012

Indicators of competitiveness	The way of calculating indicator	2007	2008	2009	2010	2011	2012
1. The efficiency of the production activity of the enterprise							
The production costs per commodity unit, UAH.	Gross cost / Volume of production	0,76299	0,76090	0,69746	0,69516	0,75804	0,78776
The profitability of the goods, %	Profit from sales / Total cost of production	0,31158	0,31432	0,43379	0,43848	0,31921	0,26946
The profitability of production, %	Net profit / Production costs	0,07309	0,16496	0,18561	0,21428	0,15718	0,17028
2. Financial position of the enterprise							
Return on equity (ROE), %	Net Profit / Equity	0,25116	0,18899	0,37916	0,2513	0,22688	0,2374
The solvency ratio	Equity capital / Total liabilities	0,40991	1,39721	1,04441	1,16349	1,76638	1,40112
Absolute liquidity ratio	Cash / Current Liabilities	0,42736	0,47812	0,66274	0,16894	0,29342	0,19009
Current assets turnover ratio	Sales revenue /Average current assets	0,00402	0,00737	0,00973	0,00537	0,00596	0,00537
3. The effectiveness of sales and promotion of products							
Profitability of sales, %	Profits from sales / Sales	0,23773	0,23916	0,30255	0,30481	0,24197	0,21227

Source: composed by the author according to the data : Official site of "Kernel". [online]. Available from Internet: <http://www.kernel.ua/en/financial/reports/>.

Table 5: Calculation of the competitiveness for Agroholding "Astarta-Kiev" using a method based on effective competition in the years 2007-2012.

Indicators of competitiveness	The way of calculating indicator	2007	2008	2009	2010	2011	2012
1. The efficiency of the production activity of the enterprise							
The production costs per commodity unit, UAH.	Gross cost / Volume of production	0,76204	0,78019	0,64441	0,58505	0,63731	0,70989
The profitability of the goods, %	Profit from sales / Total cost of production	0,36792	0,35992	0,5247	0,71064	0,62474	0,41395
The profitability of production, %	Net profit / Production costs	0,3215	-0,07889	0,35636	0,62377	0,4524	0,50248
2. Financial position of the enterprise							
Return on equity (ROE), %	Net Profit / Equity	0,21699	-0,13182	0,2485	0,38287	0,28529	0,21774
The solvency ratio	Equity capital / Total liabilities	1,34573	0,4963	1,04962	1,45596	1,16476	1,35435
Absolute liquidity ratio	Cash / Current Liabilities	0,02576	0,01268	0,09258	0,0327	0,06075	0,10642
Current assets turnover ratio	Sales revenue /Average current assets	1,00664	1,37047	1,19213	1,15462	0,95288	0,5829
3. The effectiveness of sales and promotion of products							
Profitability of sales, %	Profits from sales / Sales	0,28037	0,28081	0,33812	0,41576	0,39815	0,29386

Source: composed by the author according to the data Official site of "Astarta-Kyiv". [online]. Available from Internet: <http://astartakiev.com/en/for_investors/financial-results.htm >

Table. 6: Calculation of the competitiveness for Agropromholding "Bunge" using a method based on effective competition in years 2007-2012.

Indicators of competitiveness	The way of calculating indicator	2007	2008	2009	2010	2011	2012
1. The efficiency of the production activity of the enterprise							
The production costs per commodity unit, UAH.	Gross cost / Volume of production	0,93354	0,92323	0,97128	0,94506	0,95356	0,95549
The profitability of the goods, %	Profit from sales / Total cost of production	0,07119	0,08315	0,02957	0,05813	0,0487	0,04659
The profitability of production, %	Net profit / Production costs	0,00614	-0,01543	0,01152	0,000045	-0,00034	0,00238
2. Financial position of the enterprise							
Return on equity (ROE), %	Net Profit / Equity	0,02731	-0,10073	0,04525	0,00016	-0,00157	0,00866
The solvency ratio	Equity capital / Total liabilities	0,54586	0,58121	0,94909	0,93359	1,07813	0,7223
Absolute liquidity ratio	Cash / Current Liabilities	0,11105	0,12435	0,08909	0,05778	0,1202	0,05955
Current assets turnover ratio	Sales revenue /Average current assets	2,60656	3,99013	3,55818	2,8901	4,47463	2,53957
3. The effectiveness of sales and promotion of products							
Profitability of sales, %	Profits from sales / Sales	0,06646	0,07677	0,02872	0,05494	0,04644	0,04451

Source: composed by the author according to the data Official site of "Bunge". [online]. Available from Internet: <http://www.bunge.com/>.

Table 7: Results of calculating the value of group competitiveness indicators for Agroholdingu "Kernel" Agropromholdingu "Astarta-Kyiv" and "Bunge" in the years 2007-2012.

Indicators \ Period	2007	2008	2009	2010	2011	2012
Agroholding "Kernel"						
The efficiency of the production activity of the enterprise, C_{pe}	0,363528	0,396016	0,426026	0,437012	0,394146	0,390236
Financial position of the enterprise, C_{fp}	0,235174	0,513208	0,478927	0,397612	0,586634	0,466081
The effectiveness of sales and promotion of products, C_{esp}	0,237728	0,239165	0,30255	0,304811	0,241973	0,212267
Agropromholding "Astarta-Kyiv"						
The efficiency of the production activity of the enterprise, C_{pe}	0,469913	0,332421	0,501693	0,642555	0,568191	0,533716
Financial position of the enterprise, C_{fp}	0,796771	0,64238	0,801768	0,910066	0,742565	0,653602
The effectiveness of sales and promotion of products, C_{esp}	0,280374	0,280811	0,338119	0,415757	0,398153	0,293859
Company "Bunge"						
The efficiency of the production activity of the enterprise, C_{pe}	0,307129	0,300672	0,305764	0,303881	0,302995	0,303783
Financial position of the enterprise, C_{fp}	1,168529	1,687507	1,641567	1,370647	2,024837	1,179893
The effectiveness of sales and promotion of products, C_{esp}	0,066461	0,076768	0,028717	0,054937	0,04644	0,044513

Source: composed by the author according to the data Official site of "Kernel". [online]. Available from Internet: <http://www.kernel.ua/en/financial/reports/>; *Official site of "Astarta-Kyiv".* [online]. Available from Internet: <http://astartakiev.com/en/for_investors/financial-results.htm >; *Official site of "Bunge".* [online]. Available from Internet: <http://www.bunge.com/>.

Summary on integrated indicators of enterprise competitiveness is presented in table 8.

Table 8: Integral indicators of the competitiveness for Agroholding "Kernel" Agropromholding "Astarta-Kyiv" and "Bunge" for 2007-2012.

Enterprise name	Years					
	2007	2008	2009	2010	2011	2012
Agroholding "Kernel"	0,280864	0,389978	0,407498	0,383562	0,415865	0,363391
Agropromholding "Astarta-Kyiv"	0,527452	0,425423	0,557647	0,668145	0,57821	0,503719
Company "Bunge"	0,536418	0,718893	0,690181	0,602566	0,828673	0,532641

Source: composed by the author according to the data Official site of company Bloomberg. [online]. Available from Internet: <http://www.bloomberg.com/>; Official site of "Kernel". [online]. Available from Internet: <http://www.kernel.ua/en/financial/reports/>; *Official site of "Astarta-Kyiv".* [online]. Available from Internet: <http://astartakiev.com/en/for_investors/financial-results.htm >; *Official site of "Bunge".* [online]. Available from Internet: <http://www.bunge.com/>.

The data of tab. 8 shows that leader among the investigated enterprises in the years 2007-2012, was company "Bunge", what can be explained by financial

indicators of activity. Company “Kernel” in terms of competitiveness took third place.

4.2 Evaluation of the enterprise competitiveness by means of a matrix “Boston Consulting Group” (BCG)

To clarify the results of the analysis of the enterprise competitiveness, we will use the most common matrix methods for strategic evaluation of enterprise competitiveness - matrix “Boston Consulting Group” (BCG) (Yefremov 1998).

To analyse the competitive advantages of Agroholding “Kernel” we have used the performance of its key strategic business units (SBU). To study the life cycle of each SBU, on the X-axis we postpone the place on market that is occupied by each SBU relatively to major competitor, on the Y-axis market growth.

To determine the growth rate of the market (GRi) for each SBU, we find the increase in demand that we express through changes in reported operating income in 2012 compared to 2009. These market share and growth rate of cash flows are shown in tab. 9.

Table 9: Calculations to construct BCG matrix for Agroholding “Kerne” for 2012 compared to 2009.

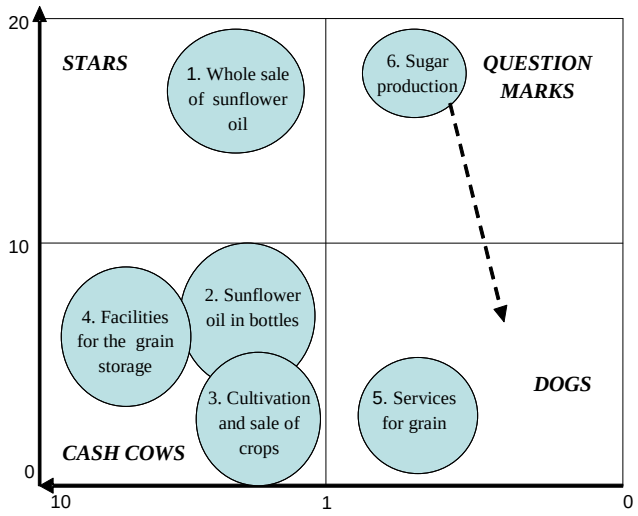
	Market share (MSi)	**The growth rate of the market (GRi)**
Whole sale of sunflower oil	$MS_1 = \frac{\text{"Kernel"}}{\text{"Cargill"}} = \frac{36\%}{14\%} = 2{,}57 > 1.$	$GR_1 = \frac{165{,}9 - 54{,}65}{54{,}65} \cdot 100\ \% = 203{,}57\ \%.$
Sunflower oil in bottles	$MS_2 = \frac{\text{"Kernel"}}{\text{"Cargill"}} = \frac{32\%}{22\%} = 1{,}45 > 1.$	$GR_2 = \frac{32{,}3 - 27{,}23}{27{,}23} \cdot 100\ \% = 18{,}62\ \%.$
Cultivation and sale of crops	$MS_3 = \frac{\text{"Kernel"}}{\text{"L.Dreyfus"}} = \frac{8\%}{7\%} = 1{,}14 > 1.$	$GR_3 = \frac{11{,}9 - 21{,}41}{21{,}41} \cdot 100\ \% = -44{,}42\ \%.$
Facilities for the grain storage	$MS_4 > 1$ (the company owns the largest network of silos for storing grain, with total capacity of 2,7 million. t. grain)	$GR_4 = \frac{26{,}1 - 27{,}23}{27{,}23} \cdot 100\ \% = -4{,}15\ \%.$
Services for grain handling	$MS_5 = \frac{\text{"TBT"}}{\text{"TIS-Grain"}} = \frac{4 \text{ million t.}}{4{,}5 \text{ million t.}} = 0{,}89 < 1.$	$GR_5 = \frac{12{,}5 - 28{,}79}{28{,}79} \cdot 100\ \% = -56{,}58\ \%.$
Sugar production	$MS_5 = \frac{\text{"Kernel"}}{\text{"Astarta"}} = \frac{250\ 000\ \textit{млн т}}{370\ 000\ \textit{млн т}} = 0{,}68 < 1.$	-*

* Since sugar production was initiated only in the second half of 2011, there is no basis for comparison of growth of demand and cash flows

Source: composed by the author according to the data Official site of "Kernel". [online]. Available from Internet: <http://www.kernel.ua/en/financial/reports/>.

In fig. 3 are shown growth rates of cash flows for the 20-point scale and data previously found by using the BCG matrix.

Figure 3: The Matrix "growth-share market", BCG for Agricultural Holding "Kernel" for 2012 compared with 2009



Source: made by the authors according to Table. 8

Analysis allows determining the development strategy for each strategic business unit that will result in increasing the enterprise competitiveness:

- Sugar production refers to the type of "Question mark". Because of recent problematic situations on the sugar market, for this SBU can be used the reduction strategy;
- Wholesale of sunflower oil (2.57, 19.52) is characterized by type of "stars". This strategy will be relevant for SBU supporting goods on the market;
- Sunflower oil in bottles (1.45, 5.82) is intended primarily for domestic sales. In this case the strategy costs would be optimal;

- A significant market share in the sale of crops means competitive advantage. It can be explained by the level of production costs which results of biases strategy;
- Opening a network of facilities for the grain storage and buying terminal - it results of cost leadership strategies;
- "Services for grain handling" after calculations referred to type of "dog". It means that reduction strategy is used.

The evaluation of the competitiveness of the investigated enterprise, based on the method of effective competition with combined indicator for assessing competitiveness, suggests that the company "Kernel" takes the third place with a level of 36.34 % compared to Agropromholding "Astarta – Kyiv" (50.37 %) and the company "Bunge" (53.26 %). Only the segment of wholesale of sunflower oil has a leading position (market share is 36 %), according to an analysis BCG matrix. The analysis indicates a relatively high competitive position of individual SBU.

5 PROPOSALS TO INCREASE COMPETITIVENESS OF THE AGROPROMHOLDING "KERNEL" ON THE BASIS OF BALANCED SCORECARD

Traditional approaches to evaluate company activity effectiveness are based, usually, on evaluation, exclusively, of financial indicators. Balanced Scorecard (BSC) supports measurement of financial performance, but also provides assessing management and other components of the activity. Thus, in particular, BSC takes into account the staff component in improving the enterprise competitiveness and provides integration of financial and non-financial indicators with regard to links between them. In addition, BSC represents not only a system of evaluation of enterprise activity effectiveness, but also long-term development strategy of the enterprise.

We have improved the method of calculation of the balanced scorecard by clearly defining the phases of analysis:

1. SWOT analysis and the determinants of success;
2. Identifying goals;
3. Identification of indicators and target values for the calculation of these indicators;

4. To Develop plan strategic initiatives and support its implementation, improving and development of the BSC.

According to certain phases of the research the analysis of the internal and external environment Agroholding “Kernel” using SWOT-analysis (tab. 10) was initially conducted.

Table 10: SWOT-analysis of the factors of internal and external environment for Agroholding “Kernel”.

	Strengths (S)	**Weaknesses (W)**
Internal environment	1. Production company enjoys stable demand 2. Implementation of ecotechnologies: a. protection of the environment; b. reduce the cost of fuel; 3. Strong position in the market segments, well-known leader. 4. High capacity of export terminals. 5. Prices available to all categories of customers. 6. Quick adaptation to customer needs. 7. Highly qualified staff. 8. Columna System Software – technology oil refining. 9. Elevator capacity.	1. Use of outdated technology, the focus is not on modernization but on the expansion of the company; 2. The high level of dependence on climate conditions; 3. Illiquidity of cultivation of sugar beets; 4. Limited market in the sugar segment.
	Opportunities (O)	**Threats (T)**
External environment	1. Purchase prospective capacities in Russia. 2. Competitive pricing in the grain sector. 3. Vertical Integration. 4. Favorable political situation for the company in Ukraine. 5. Adjusted social policy as a way of promoting the growth of the number of target consumer groups and increase their loyalty.	1.Unstable political climate in the country where the company has its activity. 2. Possibility of poor harvest of grain and sunflower. 3. Increasing competition. 4. Soy market attractiveness.

Source: composed by the author according to the data Official site of company Bloomberg. [online]. Available from Internet: <http://www.bloomberg.com/>; Official site of "Kernel". [online]. Available from Internet: <http://www.kernel.ua/en/financial/reports/>.

The SWOT-analysis of the functioning of the Agroholding “Kernel” has more strengths than weaknesses in the domestic environment and excess capacity over threats in the external, which explains the high competitive advantages of Agroholding “Kernel” on the market.

Table 11: Matrix SWOT-analysis for interrelation of the most influential relations between weak and strong factors and internal threats and opportunities of the environment functioning Agroholding "Kernel".

	Strengths (S) Solution: support? develop?	**Weaknesses (W)** Solution: liquidate? What exactly is it? in what order?
Opportunities (O) Solution: use?	Buying in Russia the grain terminal in the port of Taman for $265 million through an agreement a Ukrainian holding company will start to operate in the market as trader and expects to take about 9% of Russian exports. Grain terminal complex "Taman" has become one of the largest in Russia. It is located in the southwestern part of the Taman Peninsula and places grain elevators that operated 80 tons of grain extendable up to 220 tons, and two berths with a total capacity of handling 3 million tons (in terms - to increase to 5 million tons).	It is necessary to focus on the acquisition of competitors. This will improve the industrial base and increase company capacity, for the other competitor it will be less. Company "Kernel" acquired one of the largest players in the market of sunflower oil, its direct competitor - Allseeds company in 2010.
Threats (T) Solution: alleviate?	In this case it is advisable to begin to provide another service, or to increase their number, for example elevator's power. Since 2014, it is planned to build 6 elevators. Elevator capacity provides an opportunity to provide services to around two thousand Ukrainian agricultural enterprises. Such a step will increase competitiveness and, consequently, increase the number of clients.	Rejection of sugar business. Sugar factories acquired "Kernel" after buying one of the largest domestic producers of sugar "Sugar Union" Ukrros. "Verevskiy Andrii said he was willing to sell four sugar factories - Chortkivskiy sugar plant, sugar plant Palmirskiy, Orzhitsky Sugar Factory Ltd. and"Zukrovii "(sugar plant in Kharkiv region).

Source: composed by the author according to the data Official site of company Bloomberg. [online]. Available from Internet: <http://www.bloomberg.com/>; Official site of "Kernel". [online]. Available from Internet: <http://www.kernel.ua/en/financial/reports/>.

Then the table was formed where data analysis of previous phases was used, namely factors of internal and external environment and set strategic goals, which are reflected in the activities areas of the Argoholding "Kernel" (Kaplan RS, Norton DP, 1996): financial, client, internal business processes and prospects for training and staff development (Table 12). Each direction (right-hand side of the table) can have multiple purposes.

Table 12: Crosstab analysis of strategic goals, external and internal environment of the enterprise in terms of its main areas of the BSC methodology.

Factors		Strategic goals	Direction
External	**Internal**		
1. Competitive pricing in the grain segment. 2. Vertical integration.	1. The products of the company has stable demand. 2. Prices available to all categories of buyers.	Increase profitability of equity, net profit and sales volumes.	**Finance**
1. Purchase prospective capacities in Russia. 2. Adjusted social policy as a way of promoting the growth of the number of target consumer groups and increase their loyalty.	1. Strong position in the market segments, well-known leader. 2. Quick adaptation to customer needs.	Market Share: Russia (secure success in the Russian market for the further development of the company); Ukraine (improved maintenance of agriculture by using of gained experience).	**Clients**
1. Possibility of poor harvest of grain and sunflower. 2. Soy market attractiveness.	1. Illiquidity of cultivation of sugar beets. 2. Limited market in the sugar segment.	Development of its distribution network, load capacity, increase grain handling.	**Internal business processes**
1. Implementation of ecotechnologies: a. protection of the environment. 2. Highly qualified staff.	1. Use outdated technology, the focus is not on modernization but on the expansion of the company;	Staff professional development of customer relationship management.	**Staff**

Source: composed by the author according to the data ГЕРШУН, А.М., НЕФЕДЬЕВА, Ю.С. 2005. Разработка сбалансированной системы показателей. Практическое руководство с примерами. М. : Олимп-Бизнес, 2005. 128 с. ISBN: 978-5-9693-0105-4; Official site of "Kernel". [online]. Available from Internet: <http://www.kernel.ua/en/financial/reports/>.

Analyzing the efficiency of the company "Kernel" by BSC method 5 parameters were selected for each direction (Horvath, P., 2000). For further analysis, we have defined the weight of each indicator based on its impact on the enterprise (Table 13).

Table 13: The weight of key efficiency indicators in BSC direction for company “Kernel”

№ п/п	Indicators (X i)	The weight of indicator (M_i)
1. Finance		
1.1.	Absolute liquidity ratio ($C_{abs.liq.}$)	0,20
1.2.	Total liquidity coefficient (C_{tl})	0,18
1.3.	Long-term loans ratio (C_{lt})	0,14
1.4.	Return on Equity (*ROE*)	0,23
1.5.	Return On Assets (*ROA*)	0,25
2. Clients		
2.1.	The share of market segment «Whole sale of sunflower oil» (SM)	0,24
2.2.	Proportion of export volumes of transshipment terminals Kernel in comparison with Ukraine (PV_{abs})	0,22
2.3.	The level of unprofitable assortment groups in the total volume (P_{tot})	0,18
2.4.	The ratio of average product prices to average market prices for similar products of competitors (C_{ap})	0,20
2.5.	The weight of the normal receivable ($W_{norm.rec.}$)	0,16
3. Internal business processes		
3.1.	Proportion of main products in total output ($C_{p.t.out}$)	0,25
3.2.	Coefficient planned increase in sales ($C_{p.incr.s}$)	0,20
3.3.	Turnover ratio of current assets (C_{tr})	0,18
3.4.	The coefficient of profitability ($C_{c.prof.}$)	0,22
3.5.	Coefficient of production rhythm (C_{rhythm})	0,15
4. Training and development		
4.1.	Coefficient of staff training (C_{st})	0,26
4.2.	Return in Labour (*ROL*)	0,22
4.3.	The fate of the spending on staff training and development ($Fs_{tra.dev.}$)	0,16
4.4.	The actual amount of assets on the 1st worker (Aaa_{worker})	0,16
4.5.	The share of staff in the total personnel of Bunge competitor (SS_{tpbc})	0,2

Source: composed by the author according to the data ГЕРШУН, А.М., НЕФЕДЬЕВА, Ю.С. 2005. Разработка сбалансированной системы показателей. Практическое руководство с примерами. М. : Олимп-Бизнес, 2005. 128 с. ISBN: 978-5-9693-0105-4.

In the next phase of evaluation we calculated parameters for each of the enterprise activity components and compared their values with standard (Table 14).

Table 14: Results of the analysis of the enterprise activity indicators of the Agroholding "Kernel" by Balanced Scorecard (BSC) in 2012

Component	Name of indicator	Indicator’s score	
		calculated	standard
Finance	Absolute liquidity ratio ($C_{abs.liq.}$)	0,19	0,2…0,3
	Total liquidity coefficient (C_{tl})	2,63	More than 1
	Long-term loans ratio (C_{lt})	0,584	Slow growth
	Return on Equity (*ROE*)	0,1018	Not less than 1%
	Return On Assets (*ROA*)	0,1744	Optimal 10-20%

Clients	The share of market segment «Whole sale of sunflower oil» (SM)	0,36[2]	More than ¼ of market
	Proportion of export volumes of transhipment terminals Kernel in comparison with Ukraine (PV_{abs})	0,0147[3]	-
	The level of unprofitable assortment groups in the total volume (P_{tot})	0,1429[4]	More than 30 %
	The ratio of average product prices to average market prices for similar products of competitors (C_{ap})	1,0592[5]	More than 5 UHR
	The weight of the normal receivable ($W_{norm.rec.}$)	12,56%	Not more 40% assets
Internal business processes	Proportion of main products in total output ($C_{p.t.out}$)	43,29[6]	Near 50%
	Coefficient planned increase in sales ($C_{p.incr.s}$)	0,1127[7]	-
	Turnover ratio of current assets (C_{tr})	1,8991	Growth
	The coefficient of profitability ($C_{c.prof.}$)	12,51%	On a level 25%
	Coefficient of production rhythm (C_{rhythm})	25,67%[8]	Growth
Staff training and development	Coefficient of staff training (C_{st})	0,1765[9]	Growth
	Return in Labour (*ROL*)	12,57	Growth
	The fate of the spending on staff training and development ($Fs_{tra.dev.}$)	0,117[10]	Decrease
	The actual amount of assets on the 1st worker (Aaa_{worker})	127,602	-
	The share of staff in the total personnel of Bunge competitor (SS_{tpbc})	0,5667	-

Source: composed by the author according to the data ГЕРШУН, А.М., НЕФЕДЬЕВА, Ю.С. 2005. Разработка сбалансированной системы показателей. Практическое руководство с примерами. М. : Олимп-Бизнес, 2005. 128 с. ISBN: 978-5-9693-0105-4; ІВАКІНА,

[2] Kernel market share in Ukraine in different segments: wholesale of sunflower oil - 36%; the production and sale of sunflower oil in bottles with a market share - 32%; grain exports from Ukraine - 8.7%.

[3] Kernel increased handling volumes in the export terminals by 89.2% - up to 740.13 million tons, in Ukraine increased by 0.8% - up to 113.195 million tons, for export transportation was growth of 706.68 million tons (increase by 18.2%).

[4] Sugar segment

[5] For research were examined commodity prices of leading brands Kernel (December 2012): "Shedrii Dar", "Stozhar", "Chumak Domashnia" and "Chumak Zolota" (oil, refined, 1 liter) - 15.99; 15.89; 16.99 and 16.29 USD. For comparison oil was taken "Oleyna" of company "Bunge" - 15.38 USD

[6] Let us find share wholesale of sunflower oil and oil in bottles in total amount (main production)

[7] As published in 2012 fiscal year report "Kernel" it was planned to increase revenue in 2013FY from 2.157 to 2.4 billion.

[8] Processing of sunflower seeds increased in Q1 FY 2013 in comparison with the same period of 2012 FY by 60.2% - to 458.1 thousand tons. Refined oil production - 24.3 thousand tons, 26.7% less. Production oil in bottles - fell by 28.2% - to 20.3 thousand tons, increased selling liquid sunflower oil by 89.3% - up to 199 tons, sales of bottled oil was reduced to 26.34%. Sales of grain increased by 22.2% - to 509.6 thousand tons

[9] The share of workers who raised the qualification in terms of new working methods, in the total number of employees. At the end of FY 2012, the number of employees was more than 17,000 people. Training and development during this period concerned about 3000 employees.

[10] Training is the integration and support of organizational transition to a new level of managment. During FY 2012, the company "Kernel" spent about 0.2 million USD on training and development of its employees.

I. 2007. Збалансована система показників. Харків: Фактор, 2007. 176 с. ISBN 978-966-312-710-1; Official site of "Kernel". [online]. Available from Internet: <http://www.kernel.ua/en/financial/reports/>.

The integral group indicator of single activity direction can be calculated using the formula:

$$K_i = \sum_{i=1}^{n} (X\,i \cdot M\,i)$$

where: Mi - the weight of each indicator;
Xi- indicators that characterize each BSC direction within i-index.

After the calculation of integral indicators for each group, we obtained the total cumulative indicator of activity in all areas:

$$\mathbf{Itot} = I_{finance} \cdot I_{clients} \cdot I_{business\ processes} \cdot I_{staff} = \mathbf{0,7543}$$

To interpret the results we used the following evaluation scale:

- from 0 to 0.35-meets the basic strategies of change "reduction or withdrawal from the business" or "Restructuring". The company operates inefficiently.
- from 0.35 to 0.70-meets the basic strategies of changes "Adjustment" or "Optimization". Enterprise needs to review planning and management decisions.
- from 0,70 to 0.85-meets the basic strategies of change "Development" or "Optimization", i.e. the efficiency rates are high enough.
- from 0.85 to 1 corresponds to the basic strategies of change "Development" or "Advance", i.e. of high activities.

Calculated total integral index Agroholding "Kernel" allows us to draw conclusions about the feasibility to choose the strategy changes "Development" or "Optimization". Performance indicators in all 4 aspects of activity are quite high, they are close to the optimal value or even coincide with it. In this case, on our opinion, it is appropriate to implement an overall corporate strategy of concentrated growth, such as market development strategy.

6 SUMMARY

Methodological approaches to evaluate the enterprise competitiveness shall include in addition to statistical methods that assess only the actual activity of the company, also the methods of strategic analysis. Strategic methods make possible not only to assess the competitive position of the company on a specific date, but also to develop strategic measures to improve it. Thus, given sequence of evaluation phases gives opportunity to evaluate the enterprise competitiveness more accurately and to develop proposals to improve it.

7 REFFERENCES

АДУШКІН, А.Е. 2009. Эволюция и современное развитие концепции сбалансированной системы показателей. Аудит и финансовый анализ, 2009, № 4, С. 380-383.

ГЕРШУН, А.М., НЕФЕДЬЕВА, Ю.С. 2005. Разработка сбалансированной системы показателей. Практическое руководство с примерами. М. : Олимп-Бизнес, 2005. 128 с. ISBN: 978-5-9693-0105-4.

ЄФРЕМОВ, В.С. 1998. Стратегия бизнеса. Концепции и методы планирования. Учеб. пособие. М.: Финпресс, 1998. 192 с. ISBN 5-8001-0014-4.

ІВАКІНА, І. 2007. Збалансована система показників. Харків: Фактор, 2007. 176 с. ISBN 978-966-312-710-1.

КЛИМЕНКО, С.М. 2006. Управління конкурентоспроможністю підприємства: Навчальний посібник. К.: КНЕУ, 2006. 527 с. ISBN: 978-966-483-036-9.

МИНЧИНСЬКА, І.В. 2013. Персонал як визначальна складова забезпечення конкурентоспроможності підприємства. Економічний аналіз : зб. наук. праць, 2013, Вип. 14, частина 4, С. 185-196. ISSN 1993-0259.

Official site of company Bloomberg. [online]. Available from Internet: <http://www.bloomberg.com/>

Official site of "Astarta-Kyiv". [online]. Available from Internet: <http://astartakiev.com/en/for_investors/financial-results.htm >

Official site of "Kernel". [online]. Available from Internet: <http://www.kernel.ua/en/financial/reports/>.

Official site of "Bunge". [online]. Available from Internet: <http://www.bunge.com/>.

ПОНОМАРЬОВА, І.В. 2009. Реалізація стратегії розвитку підприємства за допомогою збалансованої системи показників. Економічний простір : зб.наук. пр., 2009, № 27, С. 202-210.

ХОРВАТ, П. 2000. Сбалансированная система показателей как средство управления предприятием. Проблемы теории и практики управления, 2000, № 4, С. 108–113.

ЯЦУРА, В.В., ЗАМРОЗ, М.В. 2011. Аналіз методів оцінки конкурентоспроможності підприємств. Вісник Волинського інституту економіки та менеджменту, 2011, № 2, С. 45-53.

ZANDER, R. S. 2005. SWOT Analysis I: Looking Inside for Strengths and Weaknesses, chapter 2, excerpted from: Strategy: Create and Implement the Best Strategy for Your Business. Boston, Massachussetts: Harvard Business Press, 2005. 17 p.

ZANDER, R. S. 2005. SWOT Analysis II: Looking Inside for Strengths and Weaknesses, chapter 2, excerpted from: Strategy: Create and Implement the Best Strategy for Your Business. Boston, Massachussetts: Harvard Business Press, 2005. 17 p.

KAPLAN, R.S., NORTON, D.P. 1996. The Balanced Scorecard: Translating Strategy into Action. Boston: Harvard Business School Press, MA, 1996. 304 p. ISBN-13: 978-0875846514.

PORTER, M.E. 1980. Competitive Strategy: Techniques for Analyzing Industries and Competitors. New York: Free Press, 1980. 396 p. (Republished with a new introduction, 1998). ISBN-10: 0684841487.

THOMPSON , A.A., STRICKLAND A.J. 1995. Crafting & implementing strategy : Text and readings . Chicago : Richard D. Irwin, Inc., 1995. 539 p. ISBN: 0256150273.

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