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Transposition of the Directive on Crossborder Mergers into Slovakian Law

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Legislation adopted:	27 November 2007
Date of transposition:	1 January 2008
Name of legislation:	Act No. 657/2007 Coll. amending Act No. 513/1991 Coll. the Commercial Code
Trade Unions:	involved / no objections

The process of transposition of Directive 2005/56/EC on crossborder mergers of limited liability companies (hereafter referred to as 'the Directive') began in April 2006 when the government ordered the Minister of Justice to prepare and submit drafts of the legal acts which would transpose the Directive for the purpose of government debate by 15 September 2007 at the latest.

The Ministry of Justice decided to transpose the whole Directive by including it in Act No. 513/1991 Coll. the Commercial Code as amended (except for some provisions concerning issues related to the Commercial Register pursuant to Articles 11 and 13 of the Directive that were put into respective legal acts); that is, employee participation was fully included in the Commercial Code with no change to any of the labour law acts.

The Ministry of Justice submitted the draft of the Amendment to the Commercial Code to the interdepartmental comment proceedings which took place between 24 July 2007 and 13 August 2007. Transposition of the Directive did not give rise to any objections during the government's appraisal procedure. KOZ SR (Union Confederation of the Slovak Republic) was also involved in these proceedings, but it did not submit any comments.

Due to lack of time and the possible risk of failing to transpose the Directive by 15 December 2007, the government decided to submit the Bill on the basis of the short legislative procedure to Parliament on 27 September 2007. Finally, the Amendment to the Commercial Code transposing the Directive into Slovakian law was adopted on 27 November 2007, becoming effective from 1 January 2008.

Slovakia is a Member State without any opt-outs .

Directive on Crossborder Mergers in the Slovakian Commercial Code

In Slovakia, employee participation in the limited liability companies (joint-stock companies) is governed by a provision of **Article 200** of the Commercial Code.

Two-thirds of supervisory board members shall be appointed and removed by the general meeting and **one third by the employees** , provided that there are more than 50 full-time employees at the time of election. The company statutes may provide for a higher number of supervisory board members to be elected by the employees (however, this number may not be higher than the number of members to be appointed by the general meeting), and they may also provide that even if the number of employees is fewer than 50, the employees shall elect a member (several members) of the supervisory board.

Members of the supervisory board are elected for the term specified in the company statutes, but for no more than 5 years.

The elections of supervisory board members to be appointed by the employees shall be organised by the board of directors in cooperation with the **trade unions**. If there are no trade unions in the company, the elections shall be organised by the board of directors in cooperation with the employees who are authorised to appoint supervisory board members ('authorized electors'). A proposal to appoint or remove supervisory board members appointed by the employees may be filed with the board of directors by the trade unions or jointly by at least 10% of the authorised electors. The appointment or removal of such supervisory board members shall be valid only if the employees' decision is approved by at least half the authorised electors or their agents.

The rules of appointment and removal of supervisory board members to be appointed by the employees shall be prepared and approved by the trade unions. If there are no trade unions in the company, such rules shall be prepared and approved by the board of directors in collaboration with the authorised electors.

If the **company resulting from the crossborder merger** has its registered office in Slovakia, participation of its employees shall be subject to the rules in force pursuant to Article 200 of the Commercial Code *(Article 218la (1))*.

Article 200 shall not apply in the following three cases:

1. if at least one of the merging companies has, in the six months before publication of the draft terms and documents, **an average number of employees exceeding 500** and is operating under an employee participation system within the meaning of the relevant legal acts;
2. if the employee participation pursuant to Article 200 does not provide the **same level of employee participation** as operated in the relevant merging companies; the proportion of employee participation shall be measured according to the proportion of the employee representatives amongst the members of the respective organs of the merging companies;
3. if the employees of the establishments of the company resulting from crossborder merger that are situated in other Member States are not entitled to exercise the participation rights enjoyed by the employees of the company resulting from the crossborder merger with its registered office in the Slovak Republic. *(Article 218la (2))*

In such cases the crossborder merger shall be registered with the Commercial Register only on condition that:

- an agreement on employee participation has been concluded (see paragraph below); or
- the special negotiating body has decided not to open negotiations or to terminate negotiations already opened; or
- the agreement on employee participation is not terminated within six months (or max. one year if so agreed) of the special negotiating body being established. *(Article 218la (3))*

The special negotiating body comprises employee representatives of the merging companies and employee representatives of their subsidiaries or establishments and represents them in negotiations. The special negotiating body and the statutory bodies of the merging companies either **agree on an arrangement** for employee participation in writing or vote unanimously that the **standard rules for participation** shall apply without opening negotiations with the special negotiating body. *(Article 218lb (1)-(3))*

The statutory body of each of the merging companies shall, as soon as possible after publishing the draft terms of the crossborder merger, take the **necessary steps to start negotiations** with the employee representatives of the merging companies and their subsidiaries or establishments on future employee participation. It shall also provide the employee representatives with information on the identity of the merging companies, the affected subsidiaries or establishments, the number of their employees who are entitled to participate in creating the statutory bodies of the merging companies and the manner and extent of their involvement. *(Article 218lb (4))*

The Commercial Code lays down rules for determining the **structure of the special negotiating body**: for every 10% of the employees of the merging companies and employees of their subsidiaries or establishments employed in one Member State, calculated from the total number of employees of the merging companies and employees of their subsidiaries or establishments in all Member States, there shall be one member of the special negotiating body. However, if it should turn out that the employees of some of the merging companies are not represented on the special negotiating body, the number of members of the special negotiating body shall be increased, so that there will be at least one employee representative for each of the merging companies. If the total number of members of the special negotiating body after such an increase exceeds its original number by more than 20%, the final increase in the number of members of the special negotiating body shall be 20%, providing that the additional positions are assigned to the employee representatives of the merging companies in order according to the number of employees of the merging companies. *(Article 218lc).*

The special negotiating body may call on experts during the negotiating process. The number of experts that may be called on is not limited; however, the merging companies shall reimburse costs only for one expert for each subject. *(Article 218ld)*

The special negotiating body shall adopt its decisions by a majority of more than 50% of the votes cast, provided that the members represent more than 50% of the employees of all merging companies and their subsidiaries or establishments. Each member of the special negotiating body has one vote. To adopt a decision which would restrict employees' participation rights in comparison with a situation in which there is no agreement on employee involvement, a majority of more than two thirds of all members is required, provided that these members represent at least a majority of more than two thirds of the employees of all merging companies and their subsidiaries or establishments, in at least two different Member States. *(Article 218le)*

The negotiations on the agreement on employee participation shall commence on the day the special negotiating body is established. The duration of the negotiations shall not be longer than six months. However, the special negotiating body may agree with the statutory bodies of the merging companies to prolong the negotiations by up to one year. *(Article 218lg)*

Based on the results of negotiations on the agreement on employee participation, the employees of the resulting company are entitled to exercise their participation rights as stipulated in the company statutes. The agreement is concluded by the special negotiating body and the statutory bodies of the merging companies. The agreement shall be in writing, containing in particular a description of its scope, the extent of employees' participation rights (particularly the number of supervisory board members to be appointed and the election rules), the day when the agreement becomes effective and its duration, a description of cases when it is necessary to open new negotiations and the rules for such negotiations. *(Article 218lf)*

Standard rules for participation

The standard rules for participation shall apply if the agreement on employee participation so stipulates, or if the statutory bodies of the merging companies decide not to open negotiations with the special negotiating body and to apply the standard rules, or if the parties did not conclude the agreement on employee involvement within the relevant period of time. *(Article 218lh (1))*

The standard rules for participation shall not apply when employee participation before the merger existed only in merging companies which jointly employ less that **one third** of the total number of employees of the merging companies. *(Article 218lh (2))*

Pursuant to provisions on the standard rules for participation, employees are entitled to exercise their participation rights in conformity with most favourable extent of such rights in any of the merging companies. However, if the employees had no participation rights in any of the merging companies,

the employees of the resulting company shall have none, unless the company statutes provide otherwise. *(Article 218lh (3))*
The employee committee represents the employees. It comprises employees or employee representatives. It decides on the appointment of supervisory board members among employee representatives; alternatively, it decides on the manners of appointment or on objections to the appointment of supervisory board members made by employees. *(Article 218lh (4)–(5))*

Members of the special negotiating body who are employed in the merging companies or their subsidiaries or establishments and who are employed in the territory of the Slovak Republic shall have the same level of protection as employee representatives in the territory of the Slovak Republic. *(Article 218lj)*

The company resulting from a crossborder merger shall observe all the regulations concerning employee participation **for three years** after the merger is registered with the Commercial Register in case of a subsequent merger. *(Article 218lk)*

The new articles of the Commercial Code concerning crossborder mergers are complex and currently there is no official comment or application rule concerning how to implement them correctly. The first crossborder merger will show whether the Directive has been transposed correctly and whether the respective Articles of the Commercial Code need to be amended.