



WHITE PAPER

RULE OF LAW INITIATIVE

Summary of main points

In 2014, fourteen (14) business and employers' associations and chambers of commerce created a broad coalition of experts that has been focusing on issues related to the rule of law in Slovakia. The goal of this joint Rule of Law Initiative is to analyze and react to: existing problems within the legislative process; the high level of corruption; and the unsatisfactory state of the Slovak judiciary. Many of the groups listed above have individually commented on these challenges on a long-term basis. The unstable legal environment that complicates business activities and limits Slovakia's economic potential is a common feature of all these problems. This White Paper was prepared by various working groups consisting of experts representing the above-listed organizations and their members. Together, these experts have identified the main challenges and have outlined a set of recommendations and specific steps that we would like to discuss with representatives of the Government and Parliament. Additionally, we would like to actively participate in their implementation.

Main areas of the initiative:

1. Transparency and predictability of the legislative process,
2. Eliminating corruption as a negative and harmful factor for "Brand Slovakia",
3. A transparent and effective judiciary as the solid foundation for domestic and foreign investors.

1. Transparency and predictability of the legislative process

Slovak legislation has been subject to unprecedented change since 1989 and today it is fully compatible with the legal frameworks of democratic states and a market economy. This status, however, was achieved through a legislative process that favored a quick pace of the change rather than the quality and stability of individual legal norms and that of legislation as a whole. Even though such an approach was justifiable by profound social changes, the country's current situation requires a new approach and changes in the criteria for drafting legislation, emphasizing stability, quality and predictability. We are convinced that enforceable laws that protect public interests and support ethical and transparent entrepreneurship are a common goal for all stakeholders. The current rules governing the legislative process in Slovakia are principally good; however, their pitfall is in weak and improper implementation. Thus we propose to combine a systematic consultation process by the government and legislators with the business sector with high quality, in-depth impact analysis of drafted bills and by-laws. The general absence of these processes results in multiple amendments to legislation, thus not only weakening the stability and predictability of Slovakia's legal environment but also disrupting "respect for law" as the key prerequisite for its enforcement. For this reason, we have focused on issues related to a systematic approach to communication with representatives of the business sector, impact assessment studies and impact clauses on the business environment as well as the process of transposing European legislation and so-called indirect amendments to laws by amending proposals made by MPs.

Main recommendations:

- ✓ Systematically and transparently communicate with the business sector and employers' representatives about legislative proposals:
 - Introduce mandatory establishment of working groups and hold consultations well in advance of preparation of legislative bills (including their publication on the Portal of Legal Regulations);
 - Introduce regular cross-sectoral meetings with representatives of businesses where representatives of key ministries would inform about intended legislation planned legislative changes and the current status of drafted legislative norms. We also recommend enabling the representatives of businesses to submit proposals to change existing legal regulations.

- ✓ A systematic approach to impact assessment studies or impact analysis of legislation and regulatory measures:
 - Implement a revised, single impact assessment methodology so that regulatory impact assessment is actually introduced into practice. Regulatory Impact Assessment is to be the responsibility of the body submitting legislation. Ex ante impact analysis, along with an impact clause, should also be published on the Portal of Legal Regulations well in advance, e.g. before inter-departmental review.
 - Improve transposition of directives and drafting of the Slovak national position when transposing European legislation.
 - Implement a system for transposing European legislation and commitments of the Slovak Republic in international organizations that is fully comparable with the system of adopting national legislation. We propose that mandatory reviews and impact analysis are made even when transposing EU legislation. At the same time, there must be a timeline for implementing the rules – to start the transposition process early enough so that there is sufficient time for consultations with employers' representatives and entrepreneurs.
 - Introduce a publicly accessible “track-changes” system of the Slovak position during negotiations with the EU Council through the Portal of Legal Regulations.

- ✓ A transparent mechanism for review of MPs' amending proposals.
 - Ensure that the legislative process regulating MPs' amending proposals follows the same rules as for government bills, including the obligation to prepare an impact clause and impact analysis.
 - Create a separate section in the Portal of Legal Regulations where all proposals by MPs will be published (including MPs' amending proposals) to allow the public to comment on them; analogous to the standard inter-department review process.

- Establish an obligation to publish all principal MPs' amending proposals in the second reading well in advance and to inform the business community about them, ideally before the beginning of negotiations in the parliamentary committees, thus allowing for their review.

2. Eliminating corruption as a negative and harmful feature for "Brand Slovakia"

Slovakia's long-term ranking among countries with a high level of corruption has a substantial impact on the costs of doing business, negatively affects "Brand Slovakia" and deters potential investors. Corruption increases the cost of goods and services and negatively impacts economic growth and living standards of citizens in a significant way. Corruption is not only a social problem but also an economic problem. Its harmful potential is strengthened even more by bureaucracy, other barriers to business, and a lack of consistency in decision-making by state bodies. The absence of clear, precise and straightforward rules for investments permits corrupt behavior. A wide spectrum of measures must be adopted to achieve improvement in this area – starting from narrowing down the space for corruption in a systematic way (e.g. transparent selection procedures, eliminating companies that lack transparency from tenders) to introducing effective procedures aimed at identification of corrupt practices, to establishing a system of effective sanctions and to dissemination of information to the public. Special attention needs to be focused on those areas where the business sector perceives a higher level of corruption, namely public procurement, use of EU funds, the judiciary and the health-care system. We also believe it is necessary to strengthen coordination among respective sectors of the public administration such as courts, prosecution and police forces to effectively reduce the level of corruption.

Main recommendations:

- ✓ Transparency, expertise and continuity in civil service.
 - Amend the Act on Civil Service in line with the current EU criteria with the goal to introduce expertise and continuity into the civil service that would lead to elimination of opportunities for corruption and personal profit.
 - To eliminate biased assessments by civil servants in evaluating violations of law, we propose a clear scaling of penalties by the type of crime rather than by the size of the company.
 - Harmonize information publishing. This means interlinking public databases (the Business Register and gazettes) to allow a more transparent, more comprehensive and more effective search for information about self-governing authorities and their decisions so as to facilitate easier comparisons.

✓ Clear rules and criteria in drawing EU funds

- Establish a single site (such as a website under the Government Office) with an easy-to-search list of all operational programmes, sponsors and managing authorities of the programmes. This site will also keep updating all calls for projects using EU funds and public procurement (calls and results) that the public can apply for.
- Publish in the above-mentioned single website a summary of supported projects, their objectives and final reports with clearly described results of respective projects presented in an easy to understand and uniform way.
- Reduce the burden related to drawing EU funding, such as for submitting statements and reports, by introducing deadlines for managing state authorities regarding the drawing of money from EU funds.

✓ Accountability within the business sector

- The business community associated under this initiative is aware of its share of responsibility for combating corruption within itself because at least two parties are needed for corruption to occur. The business community is interested in initiating activities focused not only on optimization of its own environment in terms of its integrity but also on improvement of generally accepted ethical standards in the Slovak business environment. For that reason, we support implementation of ethical codes of conduct in companies as well as educating employees about the content of those codes, which must include clearly-defined responsibilities of employees and sanctions for corrupt behavior. We also are working on promoting the principles of business ethics in our own environment and in society at large. We expect support from state authorities in line with their responsibilities in activities of this type.

3. A transparent and effective judiciary as the foundation for domestic and foreign investors

The business community considers an effective and transparent judicial system to be the foundation for a stable and predictable business environment. In order to change the business sector's negative perception of the judiciary it is necessary to adopt systematic measures in all its components. Legal disputes that keep dragging on for far too long in Slovakia and frequent inactivity by courts and prosecutors have adverse effects on trust in the rule of law and have a negative impact on the business environment which, in certain instances, may result in liquidation of a company. Undue delays in court proceedings increase costs and the price of services, thus impacting economic growth and the standard of living of Slovak citizens. A survey by the European Commission shows that the time required for a ruling to be issued by the first instance court in Slovakia has grown longer. Civil and business disputes take more than 400 days at the first instance courts. Moreover, in 2010-2012 the number of resolved disputes decreased by 17% and the number of disputes in process has increased. We are

convinced that misuse of imperfect legal norms regulating bankruptcy and restructuring generate systematic malfunctions in economic mechanism; such as chained insolvency and conviction to protect own's investment in every possible way which is equally serious problem. Rulings by courts are unpredictable and frequently the rulings and crucial legal precedents are changed. We also consider arbitration to be an important part of the judicial system. Our goal is to achieve implementation of international standards, proven effective within the European Union, to the arbitration system in Slovakia.

Main recommendations:

- ✓ Shorten court proceedings:
 - When a lawsuit is initiated evidence of its basis should be furnished, i.e. presented or at least identified at the beginning of the proceedings. This measure could result in shortened court proceedings. We also recommend extending the deadline for submitting a statement of opposition to 30 days and to connect it with the obligation to properly justify the opposition (and the court should then actually take the justification into consideration when judging the statement of opposition) and to submit all evidence.
 - Increase incentives for judges to observe the maximum period for presenting a written court decision from the time the verdict was announced. When applicable, gradually introduce procedural periods for the courts that would apply to steps such as setting a hearing date and other procedural actions.
 - Invest funds in administrative and technical support for the judges to reduce their administrative burden and give them more time to actually judge the legal issues in disputes. We suggest strengthening the judges' auxiliary mechanisms to assist in tackling their excessive workload, permitting a significant reduction in the duration of court proceedings.
- ✓ Adopting legislative changes in bankruptcy and restructuring processes
 - We suggest adopting changes in both substantive and procedural law in order to prevent the efforts of intentional managerial failure of a company, thus protecting all creditors who pay the highest price when the processes of bankruptcy and restructuring are misused.
 - We suggest clearly dealing with the consequences of not submitting a timely proposal announcing bankruptcy and restructuring.
 - We suggest changing the amount of liability that can be written off as a tax-recognized cost without indicating a more specific reason for the write-off. Current legislation sets that threshold at €331. We suggest increasing this threshold to €1,000.

✓ Increase the predictability of court rulings

- We recommend that the courts, in line with their obligation, issue a preliminary opinion, with a detailed explanation specifying the provisions of law used by the judge to underpin his/her position during the proceedings.
- Courts should consistently adhere to the Civil Court Code, translated into timely identification of decisive/substantial, provable and disputable evidence, and a due justification by the court so as to allow the parties in the dispute to develop their defense and justify their claim/defense accordingly.
- Establish a system of ongoing evaluation of the activities and on-the-job results of judges and appropriate consequences for unsatisfactory results. We propose introducing an evaluation or a method of ranking based on objective indicators.
- Consistently publish court decisions on the website of the Ministry of Justice, something that is not currently done. We also suggest improving communication of decisions and positions of individual judges in order to make their legal deliberations more clear. Under current practices, a court is obliged to properly justify a deviation from its previous decision on similar merits, from judicial precedence or published judicature, decisions by higher instance courts or from opinions of jurisprudence, particularly when these arguments are presented by parties in the dispute. However, very often this is just a formality and the lines of reasoning stated by a court in its decision sometimes even contradict each other.