



# COMPETITIVE SLOVAKIA

## THE TEN COMMANDMENTS FOR THE FAIR AND PREDICTABLE BUSINESS

Stability and predictability are key preconditions for the functioning of the business environment in every country. Entrepreneurs need to have rules that are fair and well known in advance. For their adjustment and subsequent adherence, the credibility of public institutions is important at national as well as local level.

In fact, Slovakia lags behind the world's most advanced countries in terms of the quality of public institutions and the ensuing law enforcement. According to the World Competitiveness Index, we are on the 61<sup>st</sup> position in this aspect. In recent years, the European Commission has been increasingly pointing to poor quality and predictability of legislation, high levels of perceived corruption, and insufficient improvements in the functioning of the judiciary. Since 2015, these three thematic areas have been actively highlighted, while proposals for improvement are being offered by the Rule of Law Initiative - a broad coalition of employers' associations and chambers of commerce.

A stable and predictable business environment in a country with functioning and trustworthy institutions is a prerequisite for the success of entrepreneurs and ordinary people in Slovakia. If we want to make full use of the potential of this country and provide space for the development of human talent (more in the document "The Ten Commandments for the Country of Talent"), fundamental improvements in all three areas mentioned above need to be adopted in the near future.

At the National Council in particular, laws should only be changed when it is really necessary and, in particular, after a bigger professional debate and careful consideration of all their effects. It is our duty to try to eliminate any space for non-transparent or even corrupt behaviour in every area. At the same time, we expect that honest entrepreneurs, who are unable to claim their rights, will not be intimidated by courts due to the length of court proceedings, but because of their predictable and impartial decision making will be a stable pillar of law enforcement.

As representatives of a broad business community representing Slovak or international companies - from micro-companies in the regions to the largest employers in the country – therefore during the election period we ask representatives of political parties across the spectrum to strive for such improvements as far as possible.



## ENACTMENT OF LEGISLATION IN THE NATIONAL COUNCIL OF THE SLOVAK REPUBLIC AFTER THE DISCUSSIONS / FORECASTABLE LEGISLATION

*In the modern state, the law is considered a form of social contract that everyone must respect. It is therefore inadmissible if serious changes with an impact on the whole society are made without discussion with the professionals and the general public. Unlike government bills at parliamentary bills (including amendments) there is no obligation to discuss the possibility of commenting by the general public or experts.*

### SOLUTION

**Introduction of mandatory commenting of parliamentary proposals (including amendments) of laws.** Applying the same principles as in government bills.



## END OF NON-TRANSPARENT CHANGES / ADDITIVES TO THE DRAFT LAWS/FORECASTABLE LEGISLATION

*Increasingly, we are seeing changes that have a major impact on the economy and the business environment through parliamentary amendments during the second reading debate. In addition to so-called gold plating, the transposition of European legislation is another way of adding non-transparent regulatory burdens. In fact, this is done by the Members voting and, usually by political agreement, approving the changes that were introduced just minutes before the vote. This procedure is highly non-transparent and undermines the stability of the rule of law. At the same time, it undermines the work of all public and private professionals.*

### SOLUTION

**Introduction of a reasonable period between the second and third reading in the National Council of the Slovak Republic.** The 2<sup>nd</sup> and 3<sup>rd</sup> readings could not take place during the same session of the National Council of the Slovak Republic - this would also give room for commenting on the "amendments".



## FAIR IMPACT ASSESSMENTS IN MEMBERS 'DRAFT LAW /FORECASTABLE LEGISLATION

*Unlike government bills for parliamentary bills, including amendments, the same requirements are not applied in terms of assessing the anticipated impacts, or these figures are only very superficially presented by deputies. Government bills must include a calculation of expected impacts on the budget, business environment, environment, family, informatisation, social impacts, or impact on public administration services. As parliamentary proposals do not need to include these elements, other Members, both in the vote and in the public, lack essential information on the possible consequences of their vote.*

### SOLUTION

**Members' proposals, including amendments, must include a detailed impact assessment** (as well as government bills under the Uniform Methodology for Impact Assessment. There is no reason to require a lower standard than government bills).



#### LOW FREQUENCY OF LAW CHANGES /FORECASTABLE LEGISLATION

*It is extremely difficult for an ordinary citizen or especially a small entrepreneur to be able to orientate in such frequent changes of laws. These are changing today without first assessing objectively whether and how the objectives for which regulation has been adopted have been achieved and whether regulation is still justified in the current version. The introduction of an ex-post evaluation would have two significant benefits - a reassessment of the justification for change / new regulation and a significant slowdown in the frequency of change.*

#### SOLUTION

- **Introduction of ex post regulatory impact assessments.**
- **Introduction of a rule on the effectiveness of legislation always on 1 January of the calendar year.**

Before the introduction of the new regulation, or the commencement of the amendment of the Act, the effectiveness of the last such change will have to be evaluated first.



#### REAL INDEPENDENCE OF REGULATORY INSTITUTIONS /FORECASTABLE LEGISLATION

*Independent supervisors (Public Procurement Office, Council for Budget Responsibility, National Bank of Slovakia, etc.) are key to maintaining fair competition, which are involved not only in setting up a fair legislative framework, but also in supervising. The same applies to sectors subject to stricter regulation (energy, telecommunications, etc.). The credibility of such institutions depends on the ability of impartial decision-making on the basis of facts and data, the avoidance of conflicts of interest, but also the method of selection of top representatives of these institutions, which until now often is subject to political or interest influence.*

#### SOLUTION

**Increasing the independence of regulatory institutions.** The way is, for example, the introduction of obligatory public hearings of the candidates for the executive functions of these offices, or the involvement of the widest possible range of relevant institutions in the selection process (as an example may be the selection of the head of the ÚOOPČ).



#### MORE EXPERTISE AND LESS POLITICAL NOMINATIONS IN PUBLIC ADMINISTRATION /FORECASTABLE LEGISLATION

*Quality and expertise in public administration are key to the stability of the*

*business environment. The problem is frequent changes in key professional positions, which are often unjustifiably subject to political nominations. This has a negative impact on the quality of the activities of central state administration bodies or public administration and thus expands the scope for non-transparent conduct, which more than the public interest pursues particular objectives of certain political or interest groups.*

#### SOLUTION

**Increase of independence and expertise in state administration.** Consistent application of the principle of expertise would limit traditional post-election political nominations to the minimum necessary and would also significantly limit the recruitment of politicians to independent regulatory institutions.



#### FAIR APPROACH TO CANDIDATES (ENTREPRENEURS) AND PUBLIC (CONTROL) TO TENDERS /FORECASTABLE LEGISLATION

*Public procurement makes sense when tender information is publicly available. Following the significant increase in low value contracts limits in 2018 and 2019, there was a significant decrease in announced invitations to tender. In practice, this means for local authorities that goods and services (up to EUR 84 000 with VAT) or construction works (up to EUR 216 000 with VAT) can be awarded directly without publication, competition and without adequate public scrutiny/control/monitoring.*

#### SOLUTION

**Mandatory publication of invitations to tender also for low value contracts.** This will preserve the necessary degree of flexibility and freedom for contracting authorities, fair competition among bidders and we would support small and medium-sized enterprises in Slovakia.



#### SHORTENING THE LENGTH OF COURT PROCEEDINGS /FORECASTABLE LEGISLATION

*Commercial disputes in Slovakia last on average 21 months, and this trend has an increasing character. In this category, Slovakia is at the tail of EU countries. This situation has a negative impact on the business environment and acts as a negative factor in the decision-making of potential investors. The length of proceedings is proportional to the costs or resources that could have been invested in the further development of companies and which the Slovak economy is unnecessarily losing.*

#### SOLUTION

**Implement measures to reduce the length of court proceedings more actively.**

- Thematic specification of specific courts.
- Increasing investment in the training of judges and bailiffs.



## AVOIDANCE OF DAMAGES IN CONFORMITY OF LAWS WITH THE CONSTITUTION /FORECASTABLE LEGISLATION

*It has been shown several times that the National Council of the Slovak Republic passed a law which later confirmed that it was contrary to the Constitution. This is assessed by the Constitutional Court. However, the average duration of such proceedings is more than 2 years, during which both citizens and entrepreneurs must comply with the approved law. Although the Constitutional Court later decides on unconstitutionality, it is not possible to claim retroactive compensation for damage or damage that occurred during the duration of the law. To prevent harm for citizens and businesses, we propose the adoption of a set of procedural measures to ensure the protection of public rights. This can be solved by a fixed decision period or by postponing the effectiveness of the legislation.*

### SOLUTION

**Admission of procedural measures to ensure the protection of the rights of individuals and legal persons when assessing the compliance of generally binding legal regulations with the Constitution of the Slovak Republic.** The possibility is to set a fixed time limit for the decision (270-360 days from the filing of the petition for non-compliance) or a compulsory postponement of the law if no decision on the matter is made within the fixed time limit.



## RELIEF OF COURTS AND STRENGTHENING CREDIBILITY /FORECASTABLE LEGISLATION

*Unlike more advanced European jurisdictions, in the Slovak environment the public authorities are not sufficiently accepted as an arbitration institute as a more efficient and time-efficient instrument for resolving commercial disputes. Nowadays, these last on average 21 months in Slovakia. However, if companies agree to resolve the dispute through an arbitration court, it can be settled in simpler cases within 3-4 months. In Western European countries, the commercial arbitration institute is a commonly used, effective and predictable alternative.*

### SOLUTION

**Supporting the credibility of commercial arbitrage.** State courts should accept and support the settlement of commercial disputes in arbitration and accept arbitration judgments. This would contribute to relieving the judicial system.