



## SIGMA

### Support for Improvement in Governance and Management

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# Workshop on “Consultation Practices within the Process of Public Policies - Challenges and Opportunities”

## Better Regulation in the Slovak Republic

### 1. Introduction

Success of market economy rests on the initiative of private owners who take independent decisions as to how they use their property and under which conditions they enter contracted relationships with others.

Although there is no precise definition of a favorable business environment, in a nutshell, it is everything that enhances free entrepreneurship, improves business environment or, seen from the opposite angle, every intervention or restriction in free entrepreneurship brings along a business environment decline.

From the economic point of view, a given institutional environment and its quality rank as the prime determinants of the performance of particular market players. The stress on the quality of the legislative and regulation environment is therefore a legitimate and critical requirement on the government on the part of business entities directly affected by the major part of the existing laws and regulations.

The quality of the regulation environment can become either an accelerator or, to the contrary, an obstacle in the business development, innovation, competitiveness of businesses and an overall economic growth.

Over the past 5 years, the Slovak government has achieved improvements in many areas of the business environment, ranging from new business creation, labor market legislative and tax regulations, to competition laws. This was, for example, characterized by the gradual improvement of the country's ranking in the World Bank's Doing Business report.

Table 1: Slovakia's ranking in the Doing Business 2009 report (by World Bank)

Ease of Doing Business Rank	Starting a Business	Dealing with Construction Permits	Employing Workers	Registering Property	Getting Credit	Protecting Investors	Paying Taxes	Trading Across Borders	Enforcing Contracts	Closing a Business
36	48	53	83	7	12	104	126	116	47	37

However, it would be too soon to declare that the quality of business environment has reached the optimum, that all processes and best regulatory practices from more experienced countries have been

implemented, and that, actually, the business environment has already fully passed the transition process.

In fact, several problematic areas continue burdening business operations with excessive or even duplicate administrative and financial requirements. Among them, the issues of good regulation, which include the processes of producing good regulations (impact assessments, consultations, ex-post evaluations – all of them being a topic of this workshop) are actually the weakest links, where more work still remains to be done that was actually carried out.

Results of the widest opinion survey among businessmen (in 2006) clearly show that entrepreneurs in Slovakia recognize the following two aspects of the legislative environment to be of a critical importance: the issue of regulation quantity and its frequent changes and the issue of regulation quality. In addition, there is a problem that has become a direct cause for other complaints coming from entrepreneurs. Legislative submitters seem to be ignoring the fact that regulations prepared by them have, in addition to a direct impact, many unforeseeable consequences and a far-reaching influence on different areas – from public finance, business environment, to social and environmental impacts.

Chart 1: Why is it sometimes impossible to do business without breaking the law?

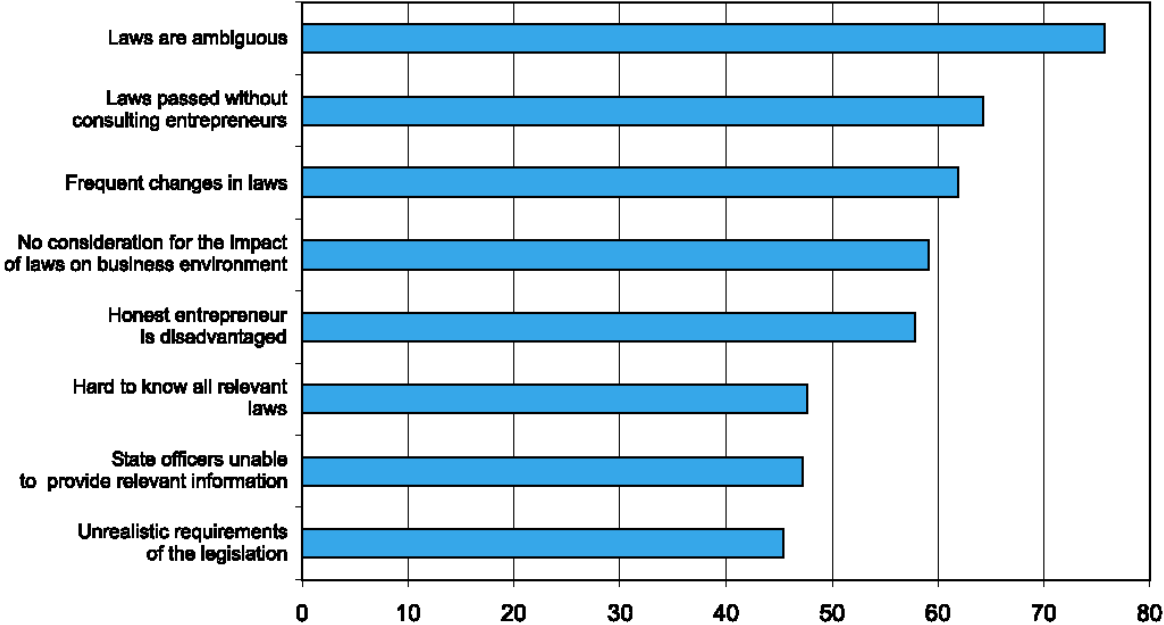
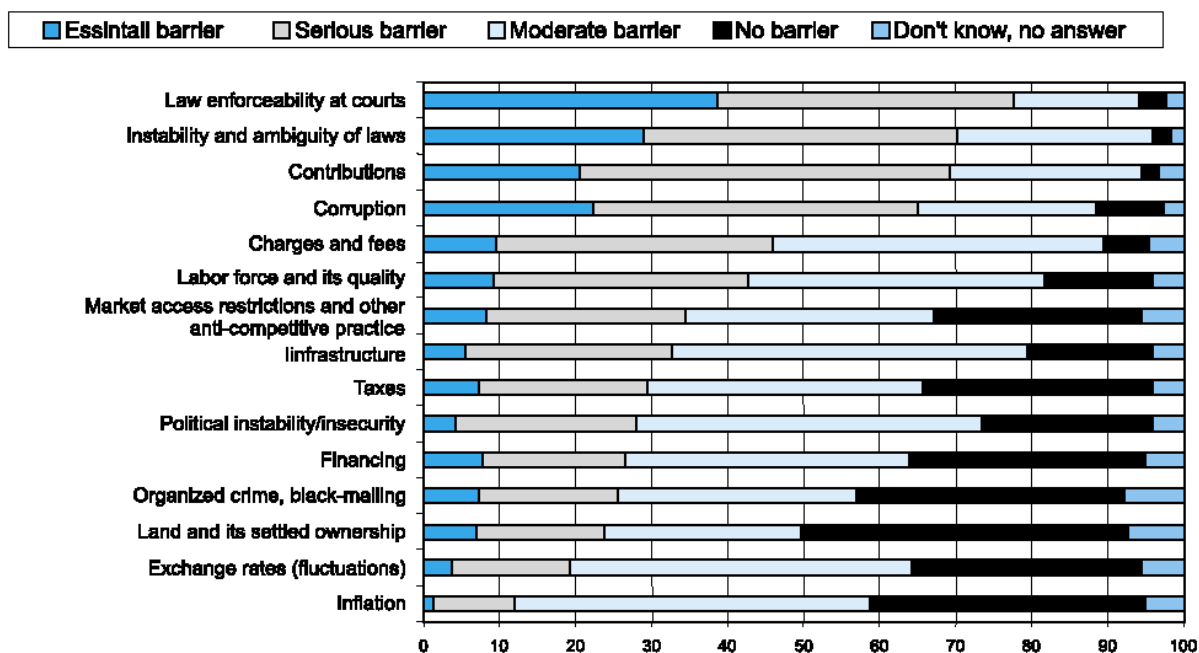


Chart 2: Barriers to doing business and development:



Source: A Comprehensive Audit of Barriers to Doing Business in Slovakia, 2006, [www.ruzsr.sk](http://www.ruzsr.sk)

## 2. A Historic Perspective

To fully understand the current situation in Slovakia, it might be of a good purpose to briefly describe the general historical periods, which shaped the business environment in the Slovak Republic. It is also worth noting that such a development was more or less similar in most other countries of the so-called "New Europe".

### 2.1 The Early Transition – Privatization vs. Rule of Law

The fall of socialism in 1989 became a milestone in the history of the country and marked the beginning of the transition period for the Slovakia's economy. The country's formal and informal institutions have changed dramatically since the falling of the metaphorical Iron Curtain. Since the "Velvet Revolution" 19 years ago, these changes have been accompanied by the joys, hopes, and disappointments.

During his visit to Bratislava in 2001, Nobel Prize winning economist James Buchanan noted that the market-economic and democratic system is composed of three types of institutions, not only political and economic ones, but also moral and cultural institutions. Therefore, three new and different social frameworks had to be developed after the fall of the Socialist regime: economic, political, and the so-called moral.

When Western experts came to Central and Eastern European countries to help build a free society, they started with the political framework; democracy, popular elections, the freedom of speech, religious liberty and the other civil and political rights. This was followed by building a free economy – mainly focusing on privatization of the "common" property. However, after their arrival in 1989 and poised with their blueprints for political reform and detailed plans for economic reform in their briefcases, Western experts neglected the most basic of the three systems of the free society, the moral and cultural system – including the respect for the rule of law.

Increasing the business efficiency and focusing on the quality of law and regulatory framework was a second-grade objective, if it was an objective at all, compared to the main task of privatization in the transition economies: to create a brand new group of private owners, whose activities will later enable the market forces to start functioning. Without private property, no real market can exist. Actually,

without a market providing the necessary information through its price mechanism, no business efficiency can be measured at all.

The damage that socialist period inflicted on the moral system of the people was incalculable. While Western countries were building their success on individualism and personal performance, and instead of active hand of state they focused on creating favorable business environment and good quality regulations, almost the whole regulatory and legislative framework for doing all kinds of business had to be newly built and introduced in the transition countries.

A changing country with a changing economy and completely changing legislative will never have a totally stable legal framework with perfect law enforcement. Keeping this idea in mind, and considering the main quick goal - to undermine and break the economic power of the communist state, and to achieve a fundamental change in the government's role in economy through privatization – the legislative framework created too many niches for breaking or bypassing the law by the new group of “businessmen”, who immediately took advantage of the poor rule of law.

Thus, problems with transparency went hand in hand with the privatization process in Slovakia, and then remained for many more long years, even after most of the assets in the country were in private hands.

One of the professors at the University of Economics in Prague described the transition period in the Czech and Slovak Republics with the following words: “Imagine we were all in one room, where all the furnishings, equipment, everything around was common, state owned, property. Then, suddenly, somebody says: we are now going to turn off the lights, everyone will take anything he will reach out, then we turn the lights on, and it will be privatized, and we will have a market economy. So this happened, they turned the lights off, and everyone started grabbing what he or she could. Then they wanted to turn the lights on, but suddenly realized, that somebody has also taken the bulb. So we were living for many years in the dark.”

Nineteen years ago, Nobel laureate Milton Friedman had just three words of advice for countries crawling out from under communism: Privatize, privatize, privatize. But ten year later he admitted to be wrong – that establishing the rule of law is probably more basic than privatization. In fact, in some countries, privatization without the rule of law is just stealing. Russia, for example, was able to create a democracy but no rule of law to protect private property. Corruption is prevalent and Russia's economy has imploded. This does not trivialize its democratization efforts, but rather emphasizes that without the rule of law – and by building the “moral institutional framework”, democracy by itself cannot bring automatic prosperity.

## **2.2 The pre-EU accession period**

The “living in dark” period after the fall of socialism, when the lack of rule of law and poor legislative framework led to many problems, took several years. Actually, the main awakening effect, which led to the improvement of the situation, came only some ten years later, when the vision of a next milestone in the country's history – joining the European Union – became the leading force of national politics in Slovakia.

Joining the European Union meant the need to “standardize” regulations and legislation with those of the European Union. Adopting the *acquis communautaire* was a long process (still not fully ended, given the few transitory periods in applying EU norms). It also meant that the New Europe could learn from examples and practices from the more developed western neighbors.

While generally not every piece of legislation coming from the EU is necessarily improving the legislative framework of a member country (in Slovakia, for example, the implementation of a common European corporate tax base is seen as a bad turn, given the current flat-tax system), implementing the *acquis* led to the end of most of the “business practices” based on misusing niches and drawbacks in legislation.

**Table 2: Number of legislative transpositions from the EU law (up-to-date)**

Capital goods	65
Chemicals	89
Consumers	18
Energy and Transport	136
Environment	96
Financial services	96
Food legislation	122
Free movement of persons	16
Intellectual property	11
Motor vehicles	217
Pharmaceuticals and Cosmetics	79
Public procurement	8
Social policy	73
Taxation	70
Veterinary and Plant health legislation	478
Others	113
<b>Total:</b>	<b>1687</b>

*Source: Internal Market Scoreboard (July 2008, No. 17, DG Internal Market & Services, European Commission)*

However, not undermining all the advantages of joining the European single market, implementation of all of the almost seventeen hundred legal EU norms in a very short period of time, led to another problem: nobody has actually read them all, some of the texts were not even translated into the Slovak language, and some of the transposition was done very poorly (while, in some cases, the local bureaucrats went far behind the requirements of the EU).

### **3. The Current State of Better Regulation Initiatives in Slovakia**

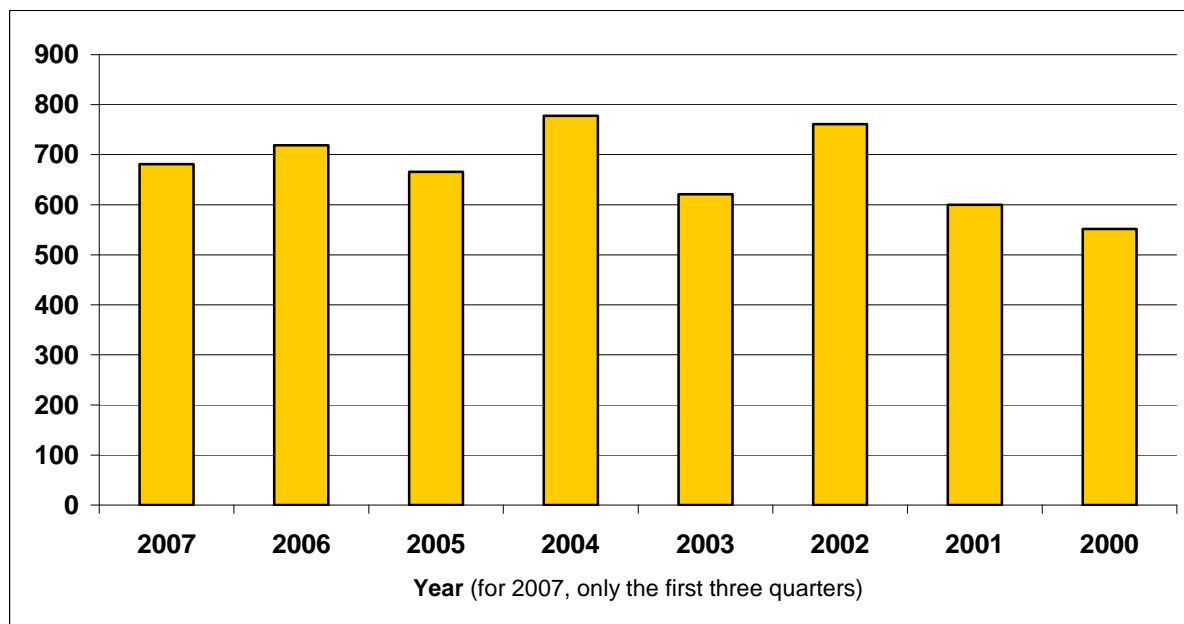
Nearly all legislative measures and regulations lead to unintended consequences and expenses. Market economy is a dynamic and interactive system responding to incentives resulting from regulations in many different forms.

The authors of legal provisions focus in many cases on direct impact of regulations and do not consider their secondary effects and subsequent consequences. Such approach, also known as a “regulate first, think later” approach, is not appropriate though, since instead of active prevention against negative impacts of approved legislative regulations, it takes a traditional path of subsequent elimination of such impacts by means of yet another legislative regulation. This is conducive to frequent legislative changes mentioned above, a lack of clarity, consistency and transparency of laws which is consequential for the business environment. It is therefore critical to focus on a high-quality analytical evaluation of all potential impacts at the early stages of legal provisions development.

In 2006 alone, 719 new laws, amendments, decrees, provisions, measures and other similar legislative regulations were published in the Code of Laws. In the first three quarters of 2007, this number already climbed to 681. Such high figures are not unusual even in comparison to the previous periods. The average number of the legislative measures published in the Code of Laws between 2000 and 2005 was 663. Although not all of them directly impact or intervene with the business environment, or in other words, many impact only a very specific group of enterprises, it is apparent that the main challenge of

entrepreneurs to keep up with the government red tape and other t rules stems from the over-production of regulations and laws.

Chart 3: Number of legislative acts published in Slovakia annually



Source: Collection of Laws; Authors' calculation

Between January 2000 and September 2007, ten most important laws impacting businesses were altogether changed, revised or amended 182 times. This means that over the past eight years, the ten most critical laws related to business were amended with the average frequency of one amendment in two weeks. Or, to put it yet another way, each of the ten most important laws affecting business environment in Slovakia was amended with an average frequency of 2.275 revisions per year.

### 3.1 The system and process of consultations in Slovakia

The process of consultations in Slovakia is regulated by two binding norms: *The Legislative Rules of Government*, which regulates the procedure of drafting, submitting and approving laws submitted to the Parliament by the Cabinet, and also the procedure of drafting, submitting and approving regulations that fall within the Cabinet's competencies. The other norm is the *Methodological Order for Drafting and Submitting Documents for the Session of the Cabinet of the Slovak Republic*, which concerns the formal procedures and arrangements for all draft laws and regulations.

There are no rules in Slovakia that would describe, allow, or ban formal or informal consultations in the process of preparing legislative proposals. However, there is no culture of submitting green papers<sup>1</sup>, white papers, or legislative intentions for public prior to the official publishing of the draft law. If some consultations among government bodies, or with institutions outside the government, take place, they are purely individually organized by the authors of a particular legislation or regulation, and they are not obligatory.

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<sup>1</sup> Green papers generally are policy papers that are not yet adopted as formal government policy whereas white papers are policy papers that express government policy. These are sometimes called green books and white books in languages which do not make the distinction that is made in English between different types of official publications.

The only widely open consultation process which is formal and mandatory for the authors of legislation is the so-called “Intra-governmental Consultation Process”. According to the Legislative Rules of Government, each and every piece of legislation or regulation, prior to be submitted to the Cabinet meeting, has to pass this review and has to be open to public consultations for at least 15 days. The author of the legislation has to consult (obligatory) the following bodies:

- All ministries and government agencies,
- The Office of the Cabinet of the Slovak Republic,
- The National Bank of Slovakia,
- The Supreme Court,
- The General Prosecutor’s Office,
- Organizations of employers and employees, if the draft legislation concerns social or economic issues (in such case, the draft law has to pass also the Economic and Social Council (Tripartite), which is an official advisory body to the government and consists of at least for Cabinet Ministers, representatives of employees – labor unions – and representatives of employers’ organizations).
- Any other institutions, if the Government decides to,
- Regional Governments, regional branches of the central government, government of the Capital of Slovakia, and the public.

Every author of legislation has to publish the draft legislation at its website. Currently, there is also a centralized web portal of legislative norms being tested out in Slovakia; this is described in the chapter 4.1 of this paper.

In case of an exceptional situation, the period for the Intra-governmental consultation can be shortened to seven calendar days.

All comments to the draft law can be sent in written form or electronically. All institutions can propose either modifications (technical changes or changes which do not modify the basic meaning or purpose of the law, or so-called *fundamental modifications*, which either represent a categorical disagreement with the draft law or with its part, or which are modifying the basic meaning of the law.

There is a formal procedure for solving fundamental disagreements among governmental institutions. If these disagreements are not solved, the draft law goes to the Cabinet session with a fundamental disagreement; the Cabinet than has the final word in the conflict.

General public can comment on the law and submit modifications or fundamental modifications. However, only if there are more than 500 hundred people signed under a petition with a fundamental modification, the author of the legislation has to meet them. In such case, the procedure similar to fundamental disagreements within different government bodies, applies. In such case, the author of the legislation has to develop a detailed written explanation for refusal of the public’s proposal.

There is no other additional formal consultation procedure in Slovakia in force, apart from the tripartite (Economic and Social Council). However, within the past, disagreements within the tripartite did never cause a law not to be passed if the government wanted so.

In Slovakia, there are no formal provisions for any ex-post consultations to legislation which is already adopted. Nor there is any formal process for consultations to amendments and legislative initiatives which come directly from the Parliamentary Committees or from individual Members of Parliament.

The whole chain of consultations and impact assessments, and a confrontation of the “ideal situation” with the actual situation in the Slovak Republic, is described in Chart 4 at the following page.

## 3.2 The system and process of business impact assessment in Slovakia

### 3.2.1 *The current situation*

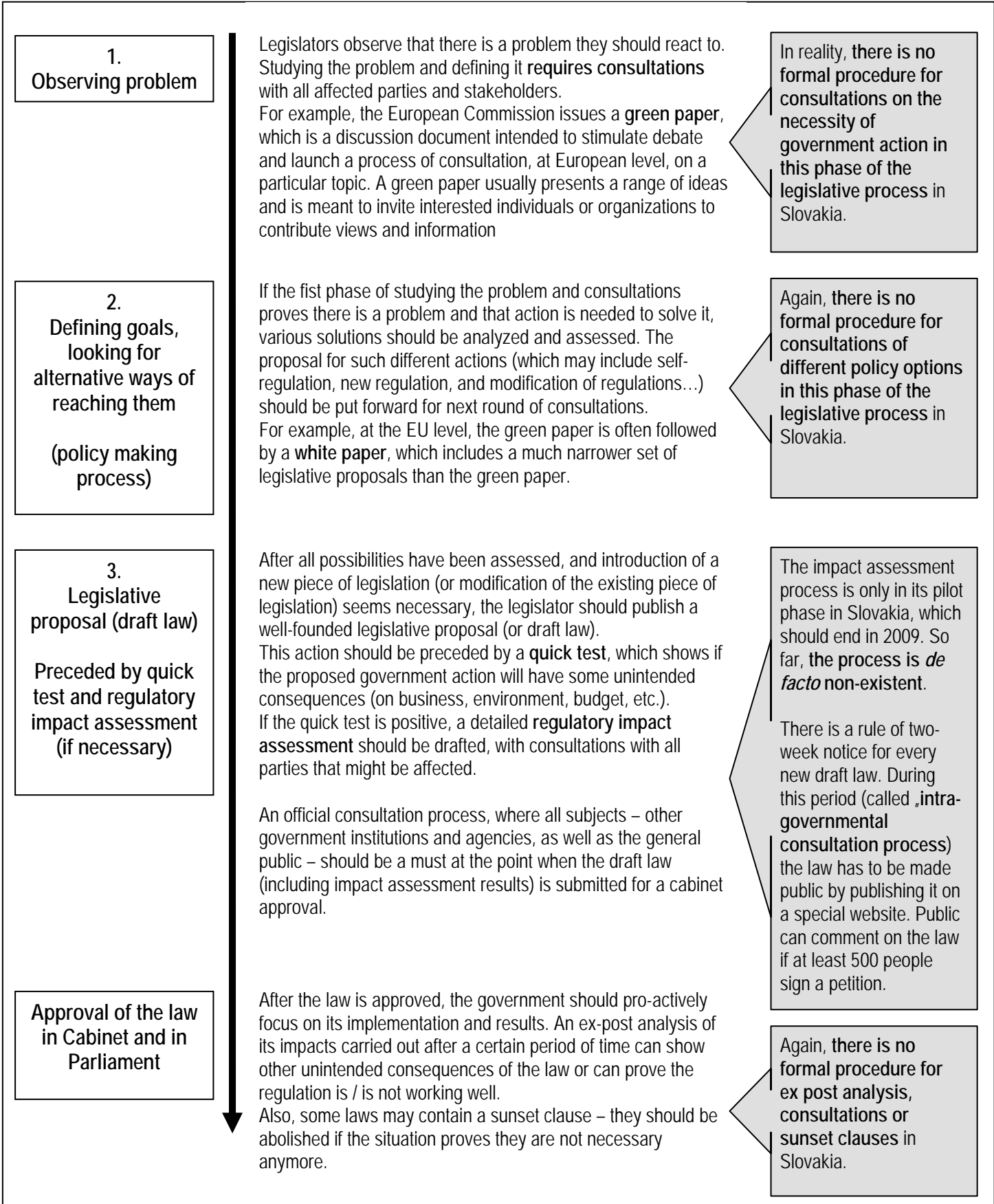
The process of reviewing possible impacts of legislation in Slovakia is, similarly to the consultation procedures, described in the *Legislative Rules of Government*, which are binding for laws and regulations that have to be adopted by the Cabinet. According to these rules, each law has to be submitted with a supplementary analysis of impacts on business environment, public finance, employment, environment, and citizens.

However, despite the existence of such a formal provision that makes it obligatory to evaluate possible impacts of all the newly adopted legislation in the form of an impact clause submitted together with all legislative drafts, it must be noted that the process does not work in practice in Slovakia. Concerning the impacts on business (BIA), there is no formal methodology in force for drafting the impact assessment.

The Slovak Ministry of Economy, which is in charge of business environment, the main problems in the process of evaluating business impacts of newly drafted legislation are the following:

- In almost all cases, the BIA was written only in the form of a short verbal commentary, without any actual analysis.
- The BIA supplement contained wrong or inaccurate data,
- The BIA supplement was just formally included, without any analysis,
- Sometimes, the BIA supplement was not included at all,
- Sometimes, all the data in the BIA supplement were completely pointless or inaccurate.

Chart 4: "The perfect" system of consultations and the reality in Slovakia



A simple review of the 234 laws approved by Slovak Parliament in third reading in 2006 and during the first three quarters of 2007 shows that in not a single of them a real analysis estimating the actual costs for businesses was provided by the authors.

Only in the case of 14 laws, there was a general mention of a potential negative impact on business entities. However, this is far from reality. The most conservative analysis of the provisions leads to assuming important impacts on the business environment in the minimum of one fifth of the laws approved during the period. The laws adopted in the given period included – for example – a law transposing the REACH directive which will impose huge costs on all companies working with chemicals; increases in different tax rates; a law setting an obligation to all companies to remove all environmental damages coming from the years of the socialist regime (mostly on their own costs, which can amount to hundreds of millions of euro); or the law on emissions trade system that.

Consequently, and without over-estimating the issues, Slovakia ranks as the only EU country with no real implemented evaluation of the impacts of submitted laws on its business environment.

### ***3.2.2 The pilot project of Regulatory impact assessment***

The situation with impact assessment process in Slovakia should improve somehow in 2009. In 2007, the Slovak government adopted a new *Unified Methodology for Legislative Impact Assessments*, which describe the process and methodology for assessing all impacts of new legislation in the five following areas:

- Public finance,
- Social situation and employment,
- Business environment (BIA),
- Environment (EIA), and
- Informatization of society

Studying the legislative impacts on informatization is an unusual measure, which reflects the priority given to this topic by the Slovak cabinet. In the case of EIA, the government will use methodologies which existed before the new system was adopted.

Each of the five areas of this new Regulatory impact assessment (RIA) has its own supervising agency, usually a Ministry. In case of Business impact assessment (BIA), the Ministry of Economy is the supervising agency.

The new system should become effective at the end of 2009. Until that time, the supervising agencies should test the operation of the new methodology in the so-called “pilot phase”. Currently (October 2008), the Slovak Economy Ministry is just in the phase of selecting four draft laws on which the new methodology will be tested.

The process of the new RIA will be the following:

- 1) As a first step, every legislator will draft in the so-called “Quick test”. Each drafter of every item of legislation will undertake the quick test himself. In the quick test, the legislator has to state whether the legislation he proposes has some expected impacts in the above mentioned areas, and whether alternative solutions were considered when writing the draft.

However, given the experience from the previous period, this step is the first weak link in the new RIA process in Slovakia. It can be expected that legislators will consider this procedure as just a formal step, and will not indicate any negative impacts of their legislation. In such case, the whole process could be effectively sabotaged.

- 2) If the legislation will have some expected negative impacts, the legislator has to submit a Regulatory impact assessment, based on the methodology. In case of BIA, the methodology is based on the Standard Cost Model, widely used across OECD countries. The Impact Assessment has to be submitted at least three weeks before the legislation will be submitted to the formal Intra-governmental Consultation Process.

The quality of the impact assessment will be monitored by the supervision agencies – in case of BIA, the Ministry of Economy. However, the supervising agencies are responsible only for a formal control (whether the RIA is drafted according to the methodology). In this phase, they are not allowed to comment on the content of legislation.

This is another weak link in the process: For example, if some legislator proposes a new regulation, which seems to be very inefficient and costly, the Ministry of Economy can only review whether the costs were formally correctly calculated – however, it is not allowed to comment on the proposed regulation and its quality itself.

When drafting the impact assessment, the legislator may invite all stakeholders and affected parties to consult on the impact assessment. However, the form of consultations is up to the legislator: the legislator, in fact, does not have to open any consultations in the process of drafting the impact assessment at all. This is another weak link in the process, as it can be expected (given the experience) that legislators will generally ignore the consultations in this phase.

- 3) If the RIA does not meet the standards required, the supervising authority cannot stop the law, but is obliged to open this issue during the formal Intra-governmental consultation procedure. In any case, the RIA is a part of the draft law which goes to the Cabinet meeting, and in case there are disagreements between the legislator and the supervising authority, the Cabinet has to resolve this at its session.
- 4) After the draft law is approved by the Cabinet, it goes to the Parliament. There is, however, no formal procedure of consultations or reviewing impacts of amendments, proposed to the draft law by the Members of Parliament during the Parliamentary Committees or the plenary session.

All-in-all, even if the pilot project of the new RIA process in Slovakia will be successful, there are too many weak links in its process chain to expect that the new Regulatory Impact Assessment process in full operation will bring its fruits in Slovakia.

#### **4. Lessons Learnt and Best Practices**

Although the business environment officially has been defined among the Slovak government's priorities, either through the Government's Program Manifesto, as part of the competitiveness development strategy (the Lisbon national strategy as one of the four main action plans), real steps towards a better quality of the business environment have not been taken in the actual policies.

The Ministry of Economy formally administering the sector has been, in its daily operations, dealing with policies that are not beneficial for the business environment, quite contrary to that, many of the said policies (the extensive subsidy and regulations system, regulations, etc.) are rather harmful.

In order to achieve a real improvement of the legislative and regulatory environment in Slovakia, it is therefore necessary to make sure the business environment becomes the government's priority. However, the resistance of the general bureaucracy may prove to be too strong to be defeated. Slovakia is falling behind all efforts and programs aimed to better regulation, even those ones coming from the European Union, which are usually dealt with as a kind of "sacred cows", i. e., undisputable. One example is that in March 2009, a deadline for measuring the administrative costs in the country (a part

of the Lisbon Strategy action plans to reduce the red tape by 25 % by 2010) will expire – so far, no initiative has been started by the Slovak government to meet this deadline.

However, there is one good practice and good example in Slovakia already existing that is worth presenting at an international scale: The Unified System of Legislative Processes Administration, which comes out together with the Single Legislative WebPortal.

#### **4.1 Best Practices - A unified system of legislative process administration and a Single Legislative WebPortal**

Both these new systems are currently being introduced and tested by the Slovak government. They should come into a full operation in 2009.

The Unified System of Legislative Processes Administration is a software and process system, which connects the following components:

- All government institutions and bodies
- Official Database of all legislation in the Slovak Republic (JASPI)
- The legislative system (and website) of the Parliament
- The system of “Digital Government”
- The website for public, used for the official Consultations

Within the new system, all new draft laws and regulations (apart from international treaties) have to be prepared using the new software, called “Legislative Editor”. All these draft laws are then published at the Single Legislative WebPortal ([it.justice.gov.sk](http://it.justice.gov.sk)). Through this portal, all institutions and public may provide their proposals and modifications to the draft legislation within the period of the official Intra-governmental Consultation.

The whole system is fully automatic and ensures that all draft laws and comments are formally correct.

#### **5. Conclusions**

Better Regulation and implementation of measures to improve the business environment has been a priority of almost every Slovakian government over the past ten years. However, the reality is quite different from the proclamations. Out of all the initiatives, only few have really been efficiently implemented. Thus, there is still a long way to go for Slovakia in this area.