

***Recommendations for the Improvement of the  
Legislative Drafting Process in Slovakia.***

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Public Policy Process***

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## **I. Introduction**

Establishing principles, institutions and procedures of good governance is one of the greatest challenges facing the countries of Central and Eastern Europe (“CEE”). This challenge includes the development of professional policy making. . The concept of ‘good governance’ – not readily translatable to most of the languages in the CEE region – has become increasingly associated with the capacity to develop and deliver public policies based on participatory principles as well as respecting the principles of effectiveness and efficiency. In other words, professional and high quality public policy making is transparent and open to broad societal participation but, at the same time, addresses societal problems timely and with a minimum waste of available resources.

Both of the authors focused their research projects on the public policy process in the Slovak republic. The research project of the first author (Katarina Staronova) focuses on the analysis of the policy making process in Slovakia by examining the institutional arrangements, the formal and informal organization of the process, the division of the responsibilities within the central authorities, the availability of the incentive system and analysis of the existing outputs of the policy-making process. The project also examines the existing arrangements in the developed democracies and recommendations prepared by the international organizations, such as the UNDP, World Bank, OECD, and the EU. The ultimate goal of the examination is to reveal potential areas for change in the public policy process in Slovakia that would reflect the needs of this Central European country and would lead to a gradual change of the policy making practice (and culture) into a professional one, adhering to the principles of good governance. The research project of the second author (Katarina Mathernova) analyzes the public policy and reform decision making and legislative processes in three concrete areas (case studies) and identifies the main driving forces and main impediments to reforms, including the capacity constraint in policy making in the state administration. This policy paper builds on and distills lessons from the two research papers.

The recommendations contained in this paper are intended for decision makers in the Slovak Republic who expressed interest in the analysis and its outcome. It focuses primarily on the changes and amendments to the legislative process that constitutes a central part of the formal policy making process.

## **II. Background**

In the early years of transition from communism to a democracy and from a planned economy to a free market, public administration reform was viewed as a marginal element of the institutional reform process. The legacy of the previous regime was reflected in a highly politicized system with small or no trust in the legal system. As a result, the reforms in the initial period of transition largely focused on the enactment of new rules and regulatory frameworks. The transition is thus a period of great legislative activity in order to establish the rule of law, ensure the protection of individual rights and

freedoms, introduce political and public service reforms and lay the legal and regulatory foundations for a functioning market economy.

From the mid- 1990s, eight Central European countries have aspired to join European Union and, therefore, even increased the focus on the development of new legislation to harmonize local laws with the *acquis communautaire*. The pressure on legislative activity in these countries thus significantly increased which often resulted in large quantities of new legislation without the necessary quality of the adopted policies (predominantly in the form of laws).The “harmonized” laws are often not adapted to the needs of the particular country and even more often are not implemented. Where laws are implemented, their impact remains limited, as modern principles of public administration and market economy are imposed through an outdated public administration structure. New laws are also frequently amended due to deficiencies in their drafting.

The lack of attention paid to capacity building in administrative systems, and most importantly to the capacity to design and implement public policies represents a risk to the transformation process. Therefore, both the research papers and this policy paper try to address these challenges by analyzing the current status quo of policy making in the case of Slovakia, including specific case studies, and detect conditions for the development of an open, transparent, inclusive, effective and efficient system of governance. The case of Slovakia provides an illustration for the CEE countries that can be easily extrapolated to other countries in the region.

### **III. Current Situation: Problem Statement**

A close survey of the policy making processes in Slovakia revealed some strengths and weaknesses in the process. The following is the enumeration of the most profound problems that affect the either the final outcome, the quality of the public policy, or the efficiency of the whole process.

#### **1. Lack of Diversity of Policy Tools**

Legislation (legal acts) remains the key policy instrument applied in Slovakia (90% of all policies developed in the ministries have a legalistic nature). Only few programs and projects use other than legislative tools. This trend is apparent not only by the frequent use of legislative and administrative directives of various kinds, but also by the formalization of the legislative process and procedure. Thus, the only formal rules on policy making, the *Legislative Rules of the Government and Guidelines for Drafting and Presenting the Materials for Sessions of the Government of Slovakia* (“*Legislative rules*”), recognize only legal tools; do not recognize other public policy tools. Similarly, the civil servants in the line ministries are not acquainted with the variety of the tools available and of their use in the practice. The only support department in each Ministry is that of legislation drafting services.

Naturally, laws and legislation are needed for every government to set certain regulatory frameworks. Regulations generally operate through command and control: directives are given, compliance is monitored, and noncompliance is punished. Therefore, regulation is usually costly. Moreover, sometimes formal rules and regulations can produce policies that fail to take into account local needs and changing circumstances and that are highly unpopular and so carried out by use of force or directives. As a result, citizens may get alienated to the regime and its policy products may be undermined. Some solutions may include increased use of contracting out, delegated legislation, deregulation, decriminalization and creation of laws which deal with standards, conventions and guidelines rather than with precise rules. The use of mixed or voluntary policy instruments is a trend that can be observed not only in the countries with Common Law tradition but also in traditionally legalistic countries such as Germany, France, Italy or Sweden. Particularly, the OECD countries increasingly use a range of alternative mechanisms to formalizing every policy in legislation.

For transition countries, where governments change with each election cycle and coalitions are usually not very stable, one has no choice than to rely on legislation as the main instrument of public policy, in the hopes that legislation is more stable and has greater authority than alternative tools of public policy. Now, that the CEE will soon be joining the European Union, it is advisable to initiate the process of combining the traditional legislative tools of public policy with more innovative ones (such as information tools, economic measures for greater incentives, administrative action to increase efficiency and effectiveness, reliance on market forces and civil society, etc.). This process will also assist in the implementation of the laws. See appendix 1 for a brief overlook of the possible policy tools.

## **2. Inadequate Emphasis on Policy Development Phase**

There is currently no formal framework for the development of policies that underlie the drafting of legislation in Slovakia. There are no formal rules or guidelines on the broader policy process that encompasses the formulation of problem, design of concepts, strategies and policy analyses or design of action plans, regulatory impact studies, budgetary considerations, draft on implementation, monitoring and evaluation. Although individual ministries have internal methodologies on policy development, they consider the technical aspect of the final product in the formal legislative process as stated in the Legislative Rules (e.g. parts of the cover page, number of copies to be submitted) rather than techniques of policy analysis, concept drafting or drafting of non-legislative policies. The analysis in the research paper revealed that the understanding of civil servants of the policy development phase, i.e. analytical definition of the problem, reasoning and possible ways of tackling an issue prior to legal drafting is minimal. Most of the time, ministries do not even develop a concept paper or action plan informally prior to drafting legislation. Even if there is any reasoning present for a development of a certain pilot project or program it is rarely put on paper and it is usually discussed orally.

As a result, the empirical analysis found that 60% of the draft laws submitted to the Slovak Cabinet for approval do not rely on any concept paper or legislative intention. The

remaining part of legislation has a certain type of a concept paper or legislative intention preceding a draft law. These documents, however, lack any analytical reasoning and data. Moreover, there is no mechanism during the policy development phase that would facilitate reaching policy agreements among the individual ministries, let alone with outside stakeholders. In other words, there is no formalized process that would urge the line ministries to seek or build consensus on often controversial piece of legislation at the time when the process can be best affected – in the policy formulation phase. Formal “ok” from other ministries takes place at the end of the process when a law has already been drafted. At this stage it is often too late to settle major discrepancies and the following scenarios are not unseen: either the commenting line ministry does not have its valid (and often useful and important) concerns taken into account; or the commenting ministry blocks the passage of certain legislation. The lack of a consensus building mechanism in the policy formulation stage can backfire also in the parliamentary approval process because of the coalition nature of the government.

### **3. Low Quality of the Legislative Product**

The actual drafting of legislation needs more expertise than is usually recognized. First, the lack of the policy development and formulation phase where the philosophy of a policy should be set up and discussed has profound consequences. There is a tendency among ministries to concentrate on producing a legislative draft, with insufficient prior consideration of the policy which it should reflect. Thus, instead of converting a concept paper into legally enforceable normative rules, the law is being drafted from scratch without clear vision and picture what the law is supposed to tackle and in what way. Such an approach can lead to a completion of a draft that e.g. incorporates the policy choices of some expert lawyer (sometimes even from outside the public service as the process is done via working groups). Also, law drafting should be undertaken by officials at ministries who are principally engaged in legislative drafting work. However, the empirical evidence shows that the relations between the substantive departments and legislative departments within a certain ministry are often less than cooperative. As a result, law drafting is either done by substantive departments with no specialized law drafting practice or by legal departments who do not have the actual substantive knowledge on a particular subject. Moreover, formal specialist trainings are rarely available and the skills have to be learned on the job. On a related note, the time pressure of EU accession only magnifies these problems and it is not an exception when EU directives are directly translated into a local law without considering the context and contents of it and thus their suitability for local conditions. Finally, draft bills initiated by the MPs from the parliament or parliamentary committees skip the entire reviewing process and most often have lower quality, simply because they do not have administrative resources to carry out analysis or legal drafting on their own. Quite frequently MPs act on behalf of interest groups and if government wants to avoid ‘state capture’ it would be more than advisable to apply reviewing and checking mechanisms for these type of draft bills in the same manner as the ones initiated by the government and ministries.

A particular problem of law drafting in Slovakia is the low quality of drafts that are adopted through the accelerated procedure – in the Cabinet and the Parliament. This procedure has been designed to allow for an exception from the full Parliamentary procedure requiring three readings in the Parliament. The demands of the transition process combined with the need to adopt large amounts of EU legislation resulted in a much greater number of laws being adopted through the accelerated process than originally expected. This has had a negative impact on the quality of legislation.

This situation results in draft laws of various quality that vary in compatibility, uniformity (e.g. legal terminology) and applicability. Although the Legislative Council (advisory body to the Government) may improve the standard of the laws, it is not clear to what extent is this body supposed to deal with substantive or legislative-technical issues of the draft law. As a result, new laws have frequently severe inconsistencies and shortcomings and they need to be amended shortly after they come into force and sometimes even before. Inevitably, this increases the burden on policy development within ministries and the Parliament, but also makes the subsequent implementation phase difficult. Low quality laws are extremely difficult to interpret (the aim of the legislation is not clear or even contradictory) and thus to implement. Due to the internal lack of capacity, some ministries rely on external consultants to draft laws. However, this practice has a danger of ‘state capture’ as the consultants employed come from the interest groups and the low capacity of the state officials disables them to detect the wording that may be beneficial solely to this interest groups.

#### **4. Deficiencies in the Legislative Process**

Law making system must be a planned and coordinated process that is deliberately devised to provide adequate time for preparation, consultation inside and outside the Government and Parliamentary consideration. Although, the *Legislative rules* include requirements that support a more organized regulatory framework, still certain deficiencies can be identified.

It is clear that the processes for developing and drafting a piece of legislation must be planned ahead. This is the reason for the existence of a *Plan of legislative tasks* that is prepared annually on the basis of the Government program and that is followed by individual ministries in the creation of the draft bills. However, the Plan is not prepared in such a way that it can serve as a human management tool. The timetables and deadlines in the Plan are set separately for individual ministries and the schedules are set at random, usually towards the end of the year so that the ministries look good if they submit draft bills ahead of the time. If a ministry does not follow the timetable, there are no consequences or sanctions. Naturally, on the one hand serious delays occur, on the other if not sufficient time is granted the outputs lack the quality.

Law development and law drafting is usually undertaken by working groups at a particular ministry. Although this arrangement to a certain degree deals with the problem of low policy development capacity of the civil servants and has a consultative nature there are still lots of dangers and problems associated. First, too heavy reliance on outside

actors (many times representatives of interest groups) in policy and law drafting creates a potential risk of capture of the policy-making by special interests. This is particularly true if civil servants do not check (or do not have the capacity to check) the final output or its content. Second, it is unrealistic to expect the members of the working group to deliver high quality product while they are maintaining their main job and participating in several working groups. Often, participation in these working groups is not remunerated and it is a voluntary activity. Also, the process of creating of the working groups and their composition are often not transparent and effective enough. This has influence on the quality of the output (both in terms of contents and timeliness). Problems also occur because of poor workload distribution within the working group, poor cross-sectoral coordination which in turn results in time delays.

There are serious coordination problems in actual legal drafting of the draft bill. As noted above, there is little or no coordination among legislative and substantive specialists in separate departments of individual ministries of the department. Consequently, some laws are drafted only by the specialist in the substance of a particular area, with little input from the legislative drafters. Conversely, other laws are drafted by the law drafting experts who draft in a policy vacuum. In the first case, a draft law has difficulties to pass the Legislative Council due to its legal inadequacies and deficiencies, and major delays occur when the draft law is returned for rewriting for several times. In the latter case, the philosophy of the law and its purpose might be lost or compromised.

The above mentioned **inter-ministerial consultation** and review of new legislative projects that takes place once a draft law is prepared is a wide-spread practice in Slovakia. However, once a legislative text is in an advanced state of preparation, it is often too late to review the policy premises on which it has been structured. At the same time, a draft of legislation itself can be a valuable consultative instrument, since it sets out, in precise terms, the requirements with which affected persons will have to comply. But it is often much more difficult to make fundamental improvements when a draft policy has reached this stage.

The **Legislative Council** is extremely overloaded with legislative policy documents (legislative intentions and draft laws) that it cannot effectively absorb. The empirical evidence shows that some issues have to wait for 8 months or more to be placed on the agenda of the Council. The criteria for putting a certain issue on the agenda (i.e. to be dealt with in the Legislative Council) are not transparent and there is ample room for political bargaining. Moreover, it is not clear what is the exact role of the Legislative Council. Although technically it should check the technical-legislative drafting of the bill, the practice shows that it also affects the contents of the bill.

## **5. Inadequate Public Participation Provisions**

In 2000 major progress has been made in Slovakia with the adoption of Free Access to Information Law (Free Access Law) that came into effect from 1 January 2001. Free Access Law in Slovakia gives citizens greater access to documents discussed by the Government by provision that “the ministries, other central bodies of state administration



and bodies of local state administration shall disclose materials of programmatic, concept and strategic nature and the draft rules of law upon their release for inter-ministerial commentary period.” (§5 Mandatory disclosure of Information, Article 5).

Thus, Free Access Law in Slovakia provides a revolutionary framework for the participation of public in decision-making. This is particularly important, because certain interest groups (judges, teachers and others) have privileged access to decision-making process, being consulted at an early stage of the policy development or even initiating proposals. Decisions may be based on figures and data supplied by these interest groups but are withheld from others who may be able to identify weaknesses in the data. By the time proposals are formally announced it may be too late for such biases to be corrected or for others to make their voices heard. In addition, current provisions require a certain level of legal literacy in order to make any substantive comments as it is draft laws that are publicly available. Thus, although Free Access Law is a revolutionary step forward, the provision of information is still rather passive, difficult to understand for a non-lawyer and too late in the process as majority of the materials are ready for the governmental approval and the willingness of civil servants to deal with the public comments is low.

There is currently a lack of clarity about how consultations are run and to whom an authority listens. There are a lot of ad hoc consultation bodies, working groups and advisors on a wide range of policies. This unwieldy system should be rationalized to make the consultation more effective and accountable both for those consulted and those receiving the advice.

## **6. Inadequate Budgeting Procedures and Skills**

The issue of financial resources allocation in central government needs more attention than this paper allows. The following is only the enumeration of the most problematic areas. First, the official switch to output-based budgeting (“program budgeting”) and medium-term budget framework has not been given much attention by the ministry of finance and its relationship with the process of policy preparation has not been thought through by anyone. Second, at every stage budgeting is severely neglected and reduced to impact calculations on state budget only. Costs and benefits in total or even total income and expenditure are not taken into consideration. Consequently, a holistic picture about the benefits of a particular draft law (or project and program for that matter) is lost. Finally, responsibility for budgets rests with the administrative department rather than with substantive department, which seriously jeopardizes the successful development and implementation of individual policies.

## **IV. Policy Recommendations**

In the following section, we recommend certain concrete steps aimed at improving the quality of the policy and legislative process in the Slovak Republic. These recommendations are based on the research reports mentioned above and they also draw from the experience of the policy making processes reported in the OECD countries and from the recommendation of the international organizations, such as the UNDP, OECD, EU and the World Bank.

Naturally, cultural change can be achieved only by constant effort at improving human resources and the training and development of staff as well as by focused leadership and management of change. The following are the main strategies for improving policy making process that should be considered:

### **1. Formal Reform: Reform of the legislative process (law drafting)**

- a) improving the development of policies prior to law drafting;
- b) fuller use of consultation and consensus-building;
- c) introducing inter-ministerial reviewing process in the policy development stage;
- d) setting and maintaining law drafting standards;
- e) setting a clear role of the Legislative Council;
- f) applying equivalent law drafting standards to parliamentary initiatives;

### **2. Institutional Reform**

- a) improving the use of policy tools, communication strategy, implementation, monitoring and evaluation;
- b) improving the institutional arrangements of the substantive and the legislative departments of line ministries;
- c) audit and improvement of the financial flows, budgeting and responsibility assignments;
- d) audit and improvement of the records management system;
- e) use of working groups as a consultative body rather than drafting body;

### **3. Building Capacity**

- a) preparing handbooks on policy development stage, policy implementation and policy evaluation, handbook on policy tools and their application;
- b) introducing regular training and education on Free Access to Information Law, analytical tools, policy development techniques, project managements skills, etc.
- c) introducing regular meetings and trainings of the officials from legislative departments of all ministries to develop legal drafting skills;

## 1. **Formal Reform: Reform of the legislative process (law drafting)**

### a) **improving the development of policies prior to law drafting;**

The most important prerequisite to improve the policy development stage is the actual recognition that policy development is an essential part of law drafting. In doing so, the introduction of procedures and practices on the development of policies is essential and should be part of the *Legislative Rules*. It should be made obligatory for every department in a line ministry to prepare a policy in writing prior to starting the drafting of an individual piece of legislation. Certain type of studies (“concept” and “legislative intention”) already exist in the current legislative process and these are being carried out in certain cases. They, however, do not meet the criteria of an analytical paper. It is advisable to develop a new name for the paper/study that provides such an analysis to avoid the negative connotations associated with the existing types of studies which may make it more difficult for the adoption of the analytical policy development paper.

The **analytical study** should incorporate such basic elements as:

- a) the background of the current legal provisions and their main problems/shortcomings (what is the main problem, how it has been addressed up to now by legislative or by other means, what were the results)
- b) the reasons for adopting a new law and its objectives (the philosophy of the law, detailed structure of approaching the problem, how to get from current status to the set objectives)
- c) the anticipated results (regulatory impact analysis, assessment of potential economic, social and environment impact as well as overall costs and benefits of that particular approach)
- d) draft of implementation scheme (who is going to take implementation forward and what resources are necessary. It might be useful to prepare an action plan outlining how and when the proposed changes should be introduced together with the draft legislation, what administrative arrangements need to be done, what other policy tools are to be employed, including any public education and training efforts etc.) and
- e) possible problems to arise in implementation

### ***Manual on Regulatory Impact Assessment***

Errors in legislation can be expensive and can lead to a wide variety of problems in its future implementation. Through examining the consequences of legal provisions, the need for and impact of a regulation can be better covered and compared to alternatives. As part of the improvements in the legislative process, a Manual on regulatory impact assessment should be developed, together with guidelines for everyday user requirements should be developed and introduced into the everyday life. We recommend to pilot test the manual and guidelines on a selected sample of legislative projects in various departments prior to their obligatory implementation.

Currently, the Slovak civil servants are not trained in using most of the analytical methods regularly utilized in most of the OECD countries. Therefore, trainings,

workshops, handbooks and practice are needed to fully implement the above mentioned changes. Also, there is a problem in obtaining reliable statistical data and other quantitative and qualitative information to support the draft legislation. In the long term, special attention (and resources) needs to be provided for the collection and provision of the data necessary. In the short term, it is advisable to train civil servants in making the use of existing reports and analyses provided by the think-tanks and independent institutions. Also, the adoption of a checklist of the impacts that have to be examined by policy developers and reported in the study can be developed. Again, there exists a number of publications on the steps to be conducted in the policy development stage, on the methods and techniques for conducting relevant analyses and impact studies that should be consulted.

#### **b) fuller use of consultation;**

Consultation of the public and affected groups (both passive and active) should take place at each stage of policy making: development, adoption, implementation, monitoring and evaluation. There are many benefits of broad public consultation at an early stage. OECD, for example, lists among others the following<sup>1</sup>: a) it may broaden the range of policy alternatives; b) it may facilitate the collection of some categories of data needed; c) it may be used to verify the results of completed analyses; d) it may make the law-making process, and the reasons for policy choices, more transparent to affected groups; e) it may give rise to a better understanding of the activities to be regulated and the problems to be solved; f) it may result in more informed choices as to the appropriate legal mechanisms; g) it may result in legal solutions more likely to encourage compliance; h) it may lead to improvements in the legal text, ensuring clearer communication of requirements; i) it may enable government to be more responsive to the needs and interests of affected persons. These considerations suggest that in most respects consultation is likely to have its greatest impact if conducted while policy development is still under way.

Currently, if consultation is used, it is mostly *passive* (provision of information and passive reception of comments). This does not allow for the input of useful public comments into the draft policy papers. In order to generate inputs from the larger public, several improvements in the provision of information are recommended: a) providing abbreviated version for the public rather than full legal text – version that would summarize the main points of the prepared legislation; b) outlining of information in a systematized topical division rather than in chronological sequencing; c) advertising the provision of information, to encourage citizens to use the system; d) providing guidelines for the public on how the consultation will be carried out ; e) prior notification to affected citizens in order to voice opinion; and most importantly f) **avoidance of using formal rules of “reviewing”** with the public (e.g. not to require to use legal language, to categorize comments as “significant”, etc.).

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<sup>1</sup> OECD, *Law Drafting and Regulatory Management in Central and Eastern Europe*. Sigma Papers: No. 18.

*Active consultation* and provoking of public debate on all range of issues of concerns are still relatively rare. Each ministry should examine how to improve its consultative process. In this connection, there are several useful techniques and procedures that can be used and that are described in handbooks of OECD, UNDP and countries like United Kingdom, Germany, the Netherlands, etc. It is necessary to train the civil servants in both the philosophy of public consultation and in individual techniques. It is useful to adopt **minimum standards for consultation** and publish them in a code of conduct. This code of conduct would focus on what to consult on, when, whom and how to consult. Those standards will reduce the risk of the policy-makers just listening to one side of the argument or of particular groups getting privileged access on the basis of sectoral interests, which is a clear weakness with the current method of *ad hoc* consultation. These standards should improve the representative nature of certain interest groups. Also, the relationship between the ministries and the civil society should be reviewed and build on the minimum standards for consultation.

**c) introducing inter-ministerial reviewing process in the development stage;**

It is extremely important to include obligatory inter-ministerial and non-governmental (public) consultation in the preparatory (policy development) phase. This device will make it possible to obtain the informed views prior to the technical legal drafting. In addition, more communication and consulting among ministries should take place at this stage. Currently, the ministries are linked through a computer network, which allows a more comprehensive communication among the individual ministries without the need for any additional resources. Therefore, it is advisable to have a ministry's work plans, the related timetables and working groups accessible to all other ministries. This enables all ministries interested in a particular legislative or non-legislative project to signal their interest in it, with a view to being represented on the working group or being consulted. Of course, the prerequisite is careful maintaining and regular up-dating of material and databases available on the computer network. This would also allow the Office of the Government or any other central co-ordination body to monitor progress and to intervene, if necessary deadlines are not being respected.

**d) setting and maintaining law drafting standards;**

Currently, any draft bill is an anonymous product of a particular ministry and no acknowledgment to the author / group of authors is given. This may be a reason contributing to the reported low quality of the final product as the responsibility for it is lost and anybody can add or remove parts in it without the agreement of the author. Therefore, it would be advisable to **acknowledge the authors** of any document or draft. It will increase the transparency and restore 'ownership' that in turn increases responsibility, and thus quality of the product.

**e) setting a clear role of the Legislative Council;**

In order to increase the uniform standards of the new laws going for reviewing to the Government, it is advisable to set up a **two-tier Legislative Council** that would a) check the contents in respect to policy options and b) check the technical-legislative drafting. The former one (policy review) would consider: general regulatory requirements, review administrative requirements, review of costs and impact, efficiency review, practicability review, and implementation review. The latter one (technical-legislative review) would consider issues that are already set in the *Legislative Rules*: constitutional and legal compliance, review of approximation to EU law, review of compliance with international treaties, review of secondary legislation, review on the legal form, clarity, terminology and comprehensibility. Currently, the Legislative Council is not equipped for this purpose in terms of human resources. If time limits are to be followed and the burden that is put upon this body is to be lessened, additional human resources should be trained and added as a permanent staff in addition to the advisory bodies of the Legislative Council.

It is crucial to set transparent and **clear criteria for prioritizing** the incoming draft bills to the Legislative Council and the time order in which they are going to be considered. Therefore, procedures for registering the incoming legislation need to be put in place, so as to establish clear criteria for their selection. No room should be left for political negotiations among the heads of the ministries and the head of the Legislative Council.

**f) applying equivalent standards to parliamentary initiatives;**

The possibility of MPs or parliamentary committees to initiate bill is in accordance with the principles of the rule of law. This is the mechanism through which opposition may intervene. However, through the legislative process in the Parliament there is a considerable risk of ‘state capture’ and of low quality legislative products. Therefore, similar **considerations of evaluation or checking** both in terms of policy and technical-legislative drafting should be applied as for the bills initiated by the government/individual ministries.

**2. Institutional Reform**

**a) improving the use of policy tools, implementation, monitoring and evaluation, and communication strategy;**

Legislation is often only a part of a broader solution combining formal rules with other non-binding tools of public policy, such as recommendations, guidelines, etc. This highlights the need for a closer coordination and coherence between the use of different policy tools; more thought needs to be given to their selection. Section three of the recommendations deals in detail with instruments to be used for introducing and improving the use of policy tools.

It is crucial to **assign responsibility** to a particular civil servant for the implementation of a specific policy or a specific legislation; to form an **implementation team**. Ideally, this will be the same team that was set up for the development of a certain policy. It is of

paramount importance to ensure that momentum for change is sustained via this person or the team. In this way, if some budget constraints occur, the implementation team may on an on-going basis make changes into the implementation proposal or to prioritize specific implementation steps. Also, the implementation team should maintain continuous and close contact with both public and mass media. This would ensure transparency and communication with the public. It is however crucial to sustain a channel of communication open for the stakeholders and public to raise any concerns with the implementation. Thus, regular public discussion will enhance the credibility but also outcome focus. It is very important that *agencies responsible for the implementation* should be *involved and consulted* in the preparation of the particular public policy. Otherwise, it will not be realistic, and implementation is likely to be difficult.

Monitoring of the implementation should become a permanent strategic process focused on a regular observation and evaluation of its effectiveness and efficiency. Ideally, monitoring is carried out by the implementation team. It is crucial that the monitoring would reflect any changes in the conditions or environment that could affect the final outcome. Thus the monitoring should focus on:

- the implementation of the measures proposed;
- the impact of these measures upon the beneficiaries and other stakeholders;
- the level of satisfaction of citizens.

The implementation team or responsible institution should conduct (or let an independent institution to conduct) regular evaluation whether the public policy is achieving the set objectives, and, subsequently, whether these objectives are being carried out efficiently. A key element of the monitoring and evaluation is the **reporting system**. Thus, key figures gathered through the monitoring and evaluation, provide the necessary information for the analysis of strengths, weaknesses and permits comparisons with the original goals. The permanent comparisons of the actual situation with targets enables the implementation team and the developers to develop proposals for improvement measures.

The government and individual authorities also need to communicate more actively with the general public on issues of concern. The **communication policy** should promote efforts to deliver information and where possible information should be presented in a way adopted to local needs and concerns. Information and communication technologies have an important role. The aim should be to create space where citizens can find and discuss what they perceive as important. This should help policy makers to stay in touch with public opinion, and could guide them in identifying problems and mobilize public support. Thus, providing information and more effective communication are a pre-condition for a better governance.

**b) improving the institutional arrangements for substantive and legislative departments;**

Civil servants dealing with substantive issues (policy development) should be primarily concerned with the development of policies. Law drafters, on the other hand, should be

primarily concerned with converting policy into a clear and coherent body of normative rules. Thus, these two functions call for different backgrounds, skills and expertise, whether analytical or writing skills. At the same time it is beneficial for these two functions to cooperate at all stages of the preparation of a draft bill. The law drafter (usually from the legislative department) has to understand the philosophy (the “big picture”) of the policy if he/she is going to draft and follow a logical progression contained in the policy paper. Therefore, it is crucial that the law drafters are involved in policy development and, vice versa, the substantive officials are consulted during the drafting process. Thus, the legislative department has to be informed on the background data and information on the problem to be addressed by the draft legislation, on the intended and achievable objectives of the policy proposal, on the mechanisms selected to achieve those objectives, and on the foreseeable consequences of the future implementation. For that purpose it is advisable to create teams consisting of representatives of both substantive and legislative departments for each law drafting effort.

**c) audit and improvement of financial flows, budgeting processes and responsibility assignments;**

Modern management requires, among other things, a clear allocation of finances tied to the responsibility for a particular policy. All arrangements, such as accrual accounting, program budgeting, responsibility tight with budgeting decisions and programs must follow this principle.

**d) audit and improving records management system;**

As many cases of a lack of coordination and mismanagement occur because of the poor records management system, it is advisable to audit the current system of records management and take necessary steps for its improvement. Several countries are taking steps to use electronic databases for the purpose of records management. This system then can be used both internally and externally to improve the access to the documents. In both cases registers of all documents created should be available both to the civil servants internally and to public externally. Of course, considerations on the availability of the documents themselves will follow the principles of Free Access to Information Law.

**e) use of working groups as a consultative body rather than drafting body;**

External advisors in the process of both developing and drafting a certain policy are used all over the world. However, the civil servants in these cases act as a) providers of general direction and vision b) a final check and monitoring mechanism. Until this capacity can be built within the Slovak civil service certain guidelines should be prepared, particularly in regard to the set up of the working group (representation principle, selection mechanism, optimal size and structure etc.), facilitation of working groups (workload division; keeping records, effectiveness of the meetings, motivation of the members) as well as trainings in this regard. It is crucial to provide the information on



the existence of any working groups, advisors or consultative bodies at least internally in the network of central government authorities and in long-term also externally.

### **3. Capacity Building**

- a) handbooks / manuals on policy development stage, policy implementation and policy evaluation, handbook on policy tools and their application;**
- b) regular training and education on Free Access to Information Law, analytical tools, policy development techniques, project managements skills, etc.**
- c) regular meetings and trainings for law drafters from legislative departments of all ministries to develop legal drafting skills;**

Legislative handbooks that deal with formal and technical aspects of law drafting should be accompanied by handbooks on policy development stage. Thus, the essential elements of policy development should be regulated by law and be part of the legislative handbooks, accompanied by set of standards and practical examples. Even when basic standards are set by this instrument, there is a value in developing supplemental handbooks and manuals for civil servants on tools and techniques of analysis, monitoring and evaluation, implementation, etc. These documents can be made available not only for civil servants but also to inform external advisors working in the working groups and thus enable the creation of uniform standards. For this matter, external advisors and consultants should be employed who would help in preparing such a set of materials.<sup>2</sup> However, it is extremely important to balance the number of foreign and domestic external advisors with internal experts on legislative and policy making.

Another tool that can be usefully developed for use of both analysts and law drafters are checklists (on policy development, implementation, monitoring, etc.). These typically set out issues or matters that should be kept in mind during the whole process. It may be useful for both as a starting point for a systematic approach or as an aid in reviewing the work done. Some checklists have been developed by SIGMA (and by other OECD bodies and published) or other countries that can be used as model checklists to be adapted to Slovak circumstances.

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<sup>2</sup> There exist a number of programs by international donors who could at least partially cover the costs of external consultants (UNDP, Phare programs, Foreign Embassies, Civil society organizations, etc.).

## Appendix 1: A Brief Overlook of Policy Tools

Resources Used State Involvement	Legal	Economic	Information	Administrative
<b>Compulsory Tools</b> (Regulation)	Legal Framework (civil and criminal laws)	Regulation (control of price, quantity, production, entry and exit from an industry)	Direct information provision (disclosure requirements, copyrights)	Direct provision of services by the government
	Regulations (regulations, procedures, statutes)	Taxes, Tariffs	Indirect information provision (licensing registration and certification)	Development of infrastructure, human resources development
<b>Mixed Tools</b> (positive and negative incentives)	Quotas, positive discrimination	Subsidies (vouchers, loans, grants, tax incentives)	Active provision of information, communication strategy, campaigns	Indirect provision of services by independent organizations
	Discretionary power, guidelines, handbooks	Auction of rights	Exhortation	
	Standards, social norms, conventions	Tax, User Fees and Charges	De-marketing;	Outsourcing, Contracting
<b>Voluntary Tools</b>	Code of ethics, recommendations, informal norms, good practice		Awards	Independent organizations
			Quality ratings	Family, community
				Market

Source: "Policy Instruments", K. Staroňová in *Manual in Practical Policy-Making* (2002).