Specificities of Corporate Governance and Financial Regulation of Companies under the Challenges of Sustainability

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Foreword

The issue of the sustainable development is a complex matter, even all-encompassing, by its nature. However, individual components of this concept are very concrete, having realistic contours within a certain context. Drawing from the activities of the Slovak Public Defender of Rights, we may point out, that even well-intentioned activities supported by policies applied across the European Union, built on the UN's framework, may lead to the detriment of the interests of sustainable development, unless these policies are sufficiently focused on comparable assessment of values, which they aim to protect.

Kyoto Protocol binds signatory states to gradually reduce greenhouse gas emissions to ensure protection of the environment. One of the consequences is, among others, the use of renewable energy sources in the states of the European Union based on the Directive 2009/28/EC on the promotion of the use of energy from renewable sources. One of the energy production methods, using renewable sources, is a hydropower equipment using hydro energy potential of the watercourse to produce electricity. Benefits, which are provided by natural ecosystems as ecosystems' services, are currently not taken into consideration within the decision-making processes conducted on small hydropower plants (hereinafter referred to as the "**SHP**"); however, they are considered within the EU Strategy 2020. This leads to an outcome, when financial and energy benefits of energy production produced by the SHP are detected and defined fairly accurately, while the negative consequences imposed on the environment is not available in comparable categories.

The above-stated conclusion is relevant in relation to the protection of biodiversity provided by the Directive 2000/60/EC establishing a framework for Community action in the field of water policy as well as the Directive 92/43/EEC - The Habitats Directive, which shall be assessed and evaluated by processes of EIA and SEA under the Environmental Impact Assessment Directive 2011/92/EU and the Environmental Strategic Assessment Directive 2001/42/EC.

In 2016, the Public Defender of Rights in Slovakia detected, by an exploration conducted on her own initiative, that the fundamental rights and freedoms related to the right to favorable environment and right to accurate and complete information on conditions of the environment, as well as, the right to judicial or any other legal protection had been seriously violated by the relevant administrative bodies. The conduct and practice of the state authorities were frequently formalistic, their offices have made decisions inconsistently and have ignored essential opinions and comments made in processes. They often authorized constructions only based on a need to reach objectives of energy production from renewable sources, while environmental

requirements were ignored. In the absolute majority of cases of the environmental impact assessment, the assessment of cumulative impacts of more SHPs on the same certain watercourse, as required by the SEA Directive, was completely absent.

Based on the background of these results, the operators of SHPs benefited twice – they used European funds for the construction of the SHPs (renewable resource), and followingly they received a guarantee of high purchase energy price (from the renewable resource) in the future. The seemingly green energy improperly prevailed over environmental interests that were simply underrepresented. The thorough comparison of benefits of energy production from renewable sources and losses of ecosystems' values caused by their constructions will be possible only after their real comparison in comparable categories. Only after such comparison will be conducted, we shall see whether the energy produced by the SHPs within certain territory is truly green. Conclusions of this exploration are significant not only for the improvement of the Slovak public authorities' approach, but also for the clarification of the formulation of individual policies and their legislative expressions applied across the EU.

The outcomes of the exploration of the Public Defender of Rights exploration signal the relevance and a need for complex examination of sustainable development. In this publication, we focus on mapping of fundamental regulatory frameworks of commercial law and financial market law in the Slovak Republic with regards to criteria and requirements of the sustainable development. Despite of the fact that the scope of the mapping is limited, we believe that the result will serve as an inspiration for other researchers dealing with intersections of the sustainable development and company law in a broader sense.

The research arises from the context of the Sustainable Market Actors for Responsible Trade project, led by the University of Oslo and conducted under the Horizon 2020 program. The aim of this project is to examine the barriers and drivers for market actors' contribution to the UN Sustainable Development Goals within planetary boundaries, with the aim of achieving Policy Coherence for Development.[5]

Prof. JUDr. Mária Patakyová, PhD.

[5] Available online at: https://www.smart.uio.no.

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Executive Summary

In this mapping, we provide an overview and analysis of the relevant national policies and legal instruments in Slovakia, with the objective of identifying and describing policy or legal instruments that have *a potential of introducing stronger sustainability within the corporate behavior, i.e., trade, investment, corporate governance instruments* or otherwise. We primarily assess company law, including assessment of various business and non-profit legal forms and social enterprises, financial markets law, public procurement law, tax law, transparency requirements, sustainable development policies, investment policies, and the implementation of the OECD Guidelines for Multinational Enterprises and the activities of the national contact point.[6]

We find that the country's constitutional framework touches on the topics of sustainability only marginally, through the protection of environment and human rights, while the Constitutional Court has not produced significant case law in the field of sustainability. Issues of sustainability are seen as within the discretion of the executive branch. Still, there is a constitutional framing of sustainable development and the protection of the rights of future generations within the domain of financial constitution, through debt ceilings as well as fiscal and transparency rules, although this does not relate to environmental law in any direct and meaningful way.

The review of environmental policies or policies related to the sustainability agenda shows that Slovakia remains a laggard in the implementation of sustainability considerations within company law, investment law or financial markets law. The government sustainability and environmental policies at large do not include any specific considerations or appreciations of the potential of changes to trade and investment policies. In fact, they are driven primarily by the need to tackle long-suffered problems of the business environment.

Slovak company law still struggles with fundamental issues, such as tunneling; strawmen/nominee structures of directors constructed to hide true controlling persons, often by abusing vulnerable persons; or illicit bankruptcy methods and chain mergers of indebted companies, structured to avoid correct liquidation procedures; etc. As a result, Slovak company law is currently undergoing a redefinition of its core theory of companies in order to eliminate these faults, through (i) legal transplants, such as piercing the corporate veil, vicinity of insolvency or shadow directors, which oftentimes fail to remedy the problem as they do not reflect the specific cultural framework they are introduced in, and (ii) specific national tools

[6] The mapping was conducted primarily by the review of Slovak and some European policy and legal documents, including statutory law, and, where applicable, we considered available case law. The report reflects the legal status as of 2018. Moreover, we consulted selected topics with public authorities either through direct consultations or freedom of information requests. The links included within references were reviewed as working as of July 2018.

created to eliminate the misuse of the corporate mask, such as the concept of the ultimate beneficiaries of companies.

Sustainable development considerations are not explicitly a part of the Slovak legal regulation of companies. Moreover, the implied recognition of sustainable companies is also problematic; even a "sustainability-aware" director could be held liable for damages caused by the breach of their duty of care (to act in the interest of the company and all of its shareholders), provided that the shareholders did not declare sustainability considerations as a part of the company's interest within the company's constitutional documents, such as articles of association or bylaws, or in other relevant documents, e.g., shareholders' agreements. This is a result of an absent stipulation as to what the interest of a company under Slovak company law is. Consequently, incorporating interests related to sustainable development into a company's decision-making processes through the company's constitutional documents must be based on the company's clearly defined interests within the legal regulation of the Commercial Code in favor of sustainable development. However, companies are currently free to choose any legal purpose of existence – including sustainable business conduct.

A legally constructed and prescribed purpose of achieving positive social impact is stipulated for registered social enterprises under the newly adopted Social Economy Act, which provides a legal framework for social enterprises and the social economy as a whole. The act is a part of a wider framework, including public (both refundable and nonrefundable) investments into the social economy. The main concept of the policy is the provision of various economic incentives (tax breaks, subsidies, direct investments, etc.) to registered, label-based social enterprises, irrespective of the enterprises' legal form. In order to reap the benefits provided by the policy, social enterprises would have to fulfill several criteria, such as (i) the purpose of an enterprise is to achieve measurable positive social impact – there must be a clear embeddedness of the purpose within the constitutional documents of an enterprise; (ii) an enterprise uses 50-100% of its profits on fulfilling its purpose; or (iii) an enterprise has a democratic governance feature, including stakeholders in the decision making. As the law and policy are in effect only from May 2018, it remains to be seen whether they produce significant impacts on the environmental or social performance of the economy.

The inclusion of sustainability issues and perspectives into company law is also to a large extent driven by the predominant shareholder structures; the capital market has rather small capitalization and low liquidity as the vast majority of large corporations are either privately owned companies or subsidiaries of foreign multinational corporations. The remainder of companies are mostly local micro, small and medium enterprises with close shareholders. Thus, standard proposals to use the capital market and related corporate governance mechanisms to

achieve sustainability are less relevant within the specific socio-economic (and legal) environment of the Slovak Republic.

The reporting requirements introduced through Directive 2014/95/EU have an impact on an omissible number of companies in Slovakia, given that many of them are subsidiaries of foreign corporations, which report on a group basis. Moreover, Slovakia lags behind in the adoption of related evolving norms into the legal system (e.g., UN Guiding Principles on Business and Human Rights or OECD Guidelines for Multinational Enterprises). The compliance with these norms is formalistic and in general can be summed up as a "box-ticking exercise." Moreover, the implementation of these norms and policies is heavily underfinanced and deprioritized by the government.

In the case of financial markets law, the policy making is driven primarily by the implementation of EU law, but also by the need to increase consumer protection and welfare. The state investment policies are oriented towards the improvement of the economic and social infrastructure, employment and labor conditions or other primarily social considerations. However, no structured sustainability approach to the investment policy is currently adopted in Slovakia; state fund managers, administering primarily EU-financed funds, are not mandated to specifically review the sustainability criteria when executing their investment policies. In some instances, when the financing of operational programs so requires, the investment policies take into consideration *some* sustainability criteria, but there is no overall framework.

The state trade supporting agency, the Export-Import Bank, deploys a due diligence policy according to the Recommendation of the OECD Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, although there were no supported projects reported by the agency in recent years.

Slovak financial markets law normally neatly implements EU financial markets law and does not provide any specific regulations or policies towards sustainability of investments. This is due to a change with the recent EU initiatives in green finance.

Under Slovak public procurement law, the government launched its green public procurement initiative already in the 2000s. Currently, public procurement law allows for the inclusion of environmental and social provisions within procurement conditions. As of recently, public procurement law also provides exemptions for social public procurements prepared exclusively for social enterprises (within certain thresholds). The results of the former policy are mixed, as the indicators used to evaluate the policy do not appear to be sufficient to evaluate the effectiveness of the policy and the adoption of the conditions has stagnated over recent years. Moreover, there is a significant risk that additional conditions would be abused to limit the

competition and increase the chances of domestic, often well-connected competitors, which is a common practice in Slovakia. The latter policy needs additional time to be evaluated due to its recent adoption.

We also reviewed policies indirectly related to the sustainability agenda within the domain of transparency, including corporate transparency and public spending: the register of public sector partners and the open public contracts register. The public partners register policy requires a vast majority (de minimis and NGO exemptions) of private sector organizations receiving public financial resources through public tenders, partnerships, investments or otherwise in order to register their ultimate beneficiaries within the register. This registration is not a pro forma registration, but is structured as a rather rigorous due diligence provided by attorneys, tax advisors and other similar professions who may be held personally liable for any wrongful information. As a result, numerous high-profile persons have had to be disclosed within the register as shareholders of vast tax-optimizing or transparency-obscuring holding structures, often located abroad. The implications for curbing this tax evasion may be significant – the register proves to be rather efficient, as few companies participating in public procurement continue to disclose professional nominees from secretive jurisdictions.

The open public contracts register requires the publication of all contracts of the public sector bodies and their metadata to be published prior and as a condition to the effectiveness of the contract. This policy strengthened the Freedom of Information Act significantly and is currently considered a corner stone of the Slovak transparency efforts.

1. Introduction and background

1.1. Background of corporate environment in Slovakia:

Slovakia has over 5.4 million inhabitants and a below-EU-average GDP,[7] with the export-based economy built on domestic and foreign SMEs and a smaller amount of foreign corporations. The country specializes in the automotive industry, being by far the No. 1 car producer per capita in the world.[8] Slovakia has been improving most of its environmental metrics since the fall of communism in 1989, followed by the deconstruction of heavy industries, replaced by high skilled manufacturing and services. Under the communist regime, private ownership and entrepreneurship were highly restricted, with the vast majority of production being done by state-owned enterprises or cooperatives with mandatory participation of producers (mainly farmers). The modern Commercial Code was adopted in 1991.[9] Most large, previously state-owned companies were privatized during several waves of privatization between 1991 and 2006. Many of these companies, including strategic industries, were acquired by foreign corporations, and many simply did not make it through the transition or were tunneled,[10] as was a recurring practice throughout the 1990s, partially as a consequence of weak corporate governance practices and company law. The remainder of companies are typically closely-held companies. The stock market is very limited, with only a few dozen traded titles in rather small volumes.[11]

Slovakia has been a member of the EU since 2004, having fully implemented the acquis communautaire. Slovakia adopted the euro as its currency in 2009. Currently, among the most important issues and concerns faced by businesses are red tape, lack of legal certainty and the unpredictability of the legal environment, protection of minority investors and creditors, corruption, state capture, the rule of law and enforcement of contracts.[12] In fact, Slovakia has on many occasions been described as a state captured by powerful local oligarchs' interests attached to political parties.[13] Slovakia ranks 54th out of 180 in the Corruption Perceptions Index 2017, among countries such as Italy, Croatia, Greece and Saudi Arabia.[14] Corruption is perceived as one

7 Slovak GDP is 77% of the EU-average. Eurostat, 2017.
8 Slovak Investment and Trade Development Agency: Automotive Sector in Slovakia. 2016.
9 Act No. 513/1991 Coll. the Commercial Code, as amended (in Slovak language: *Zákon č. 513/1991 Zb. Obchodný zákonník v znení neskorších predpisov*), (the "**Commercial Code**").
10 Tunneling was a widespread practice through which a company's management stripped the company of its assets through a series of illegal or legal actions, typically without proper legal remedies or sanctions at disposal of aggrieved shareholders.
11 Mere 28 titles were actively traded on the Bratislava Stock Exchange in the first 6 months of 2018. Traded volumes remain very low; the market is very illiquid.
12 The World Bank: Doing Business 2016.
13 Innes, Abby, Corporate state capture in open societies: the emergence of corporate brokerage party systems. East European Politics & Societies. 2016. ISSN 0888-3254 DOI: 10.1177/0888325416628957.
14 Transparency International. Corruption Perceptions Index 2017.

of the main barriers to doing business in Slovakia[15] and certainly negatively influences policy making.[16]

This has been a major factor determining public policies and their implementation, the priorities of public procurement as well as privatization practices. It is also one of the key drivers of the CSR policies of larger companies, especially those less dependent on state tenders. For instance, the American Chamber of Commerce launched the Rule of Law Initiative in 2014, which has become a widely supported initiative by companies and other interest-based business organizations.[17] Several other companies (including primarily larger corporations – members of foreign groups) have initiated CSR programs supporting anti-corruption and watchdog NGOs in reaction to the state of affairs.[18] In spite of these programs and initiatives, which can also be understood as a natural self-protective reflex of companies wishing to operate in a corruption-free and merit-based market environment, CSR programs and initiatives typically do not regularly go beyond corporate foundations programs or corporate volunteering.[19] Although CSR activities are well-recognized in Slovakia, at times it appears that corporate marketing represents a large part of these activities. Also, the legal doctrine has not yet moved towards a stronger embeddedness of CSR into company law.[20]

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15 European Commission, Flash Eurobarometer 457: Businesses' attitudes towards corruption in the EU. 2017. Available online at: http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLAS H/surveyKy/2177.

16 For instance, a long-term support to unsustainable mining and electricity production from low-quality brown coal and lignite has been controversial and fiscally unsound way of supporting miners' jobs. This policy has been widely criticized not only by opposition parties, but also by government analysts and some of the government parties. The support appears to predominantly favor a handful of the mine's shareholders. For a brief English summary, see: https://spectator.sme.sk/c/20645932/power-from-brown-coal-in-question.html. Accessed in July 2018.

17 For English reference see: http://www.amcham.sk/publications/connection-magazine/issues/2014-11/272288_the-rule-of-law-initiative . For details in Slovak: http://www.vladazakona.sk.

18 See the Fund for Transparent Slovakia, administered by the Pontis Foundation. Available online: https://www.nadaciapontis.sk/fond-pre-transparentne-slovensko.

19 For instance, see the Pontis Foundation, which not only runs several CSR corporate funds as well as the Via Bona Slovakia award for the most responsible companies, but also runs a network platform of companies with higher ambitions in CSR, the Business Leaders Forum, and organizes volunteering days for companies. Available online at: https://www.nadaciapontis.sk/via-bona-slovakia.

20 Patakyová, Mária, Grambličková, Barbora, Spoločenská zodpovednosť obchodných spoločností a trvalo udržateľný rozvoj [Corporate Social Responsibility and Sustainable Development] in *Conflicts of Interest in Company Law*, Ján Husár, Kristián Csach (eds.), Wolters Kluwer, Bratislava 2018.

1.2. Slovak Constitution as a basis for sustainable development in Slovak Law

The Slovak economy is constitutionally structured as a socially and ecologically oriented market economy pursuant to Article 55 of the Slovak Constitution.[21] According to the second section of this article, Slovakia shall protect and support competition on the market. Arising from the above, four fundamental principles can be identified: (i) principle of market economy, (ii) socially oriented economy, (iii) ecological protection, and (iv) principle of competition on the market.

Such orientation is also supported by the overall strategic objective of the state economic policy: securing intelligent, sustainable and inclusive economic growth.[22] The constitution vaguely provides that Slovakia protects and develops natural resources for its citizens and future generations; yet specific mentions of sustainable development are omitted from the constitution as an overarching principle of the environmental governance of the state, unlike certain other states' constitutions.[23] However, provisions of the Slovak Constitution capture and reflect the meaning and the idea of the sustainable development principle and may be considered as a cornerstone of the sustainability concept, even though the Slovak Constitution does not explicitly use this term.

Human rights are constitutionally protected in a standard European fashion. Articles 12 to 45 of the Slovak Constitution contain fundamental rights and freedoms that are granted to everyone regardless of gender; race; skin color; language; beliefs and religion; nationality and other aspects; political rights; rights of national minorities and ethnic groups; economic, social and cultural rights; and rights to the protection of environment and cultural heritage. Still, there are numerous problems related to realization of social or environmental rights; environmental concerns are often dealt with very formally, without a genuine appreciation of the purpose of these rights.[24]

In consonance with Articles 35 and 36 of the Slovak Constitution concerning social rights, everyone has the right to (i) free choice of profession, (ii) conduct business or (iii) conduct any

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[21] Art. 55, the Act No. 460/1992 Coll., the Constitution of the Slovak Republic, as amended (in Slovak language: *Zákon č. 460/1992 Zb., Ústava Slovenskej republiky, v znení neskorších predpisov*) (the "**Constitution of the SR**").

[22] Ministry of Economy of the Slovak Republic, Strategy of Economic Development of the Slovak Republic until 2030, 2018 (proposal). Available online at: https://www.slov-lex.sk/legislativne-procesy/SK/LP/2018/185.

[23] For instance, Art. 5 of the Polish Constitution.

[24] See the website of the Public Defender of Rights (in Slovak language: *verejný ochranca práv*) where the extraordinary news on environment is provided to the public. See, for instance, information on the absence of assessing cumulative effect of small hydropower facilities at the level of strategic documents and in relation to individual constructions provided in the Report of the Ombudsman for 2017, 4 part, Ownership and right to favorable development, page 42. Available online at: http://www.vop.gov.sk/files/vyrocna_sprava_2017.pdf. Accessed in July 2018.

other professional activity. Further, the Slovak Constitution grants the right to fair and satisfactory working conditions for employees.[25] Article 44 of the Slovak Constitution provides the right of everyone to a favorable environment and concurrently imposes the obligation on everyone to protect and enhance the environment and prohibits threatening or damage it beyond measures set by law. Section 4 stipulates that the state shall care about prudent use of natural resources, ecological balance, and effective care for the environment. It follows that Article 45 provides the right to information on the conditions of the environment and their causes and consequences. Numerous acts implement these constitutional rights.[26]

Also, the protection of future generations' rights and interests have made it into constitutional law, albeit through the financial perspective – in reaction to the recent EU debt crisis. The Constitutional Act on Budgetary Responsibility[27] is built on the premise of economic and social justice and solidarity between present and future generations, which justifies the introduction of elaborate fiscal rules on the constitutional level (debt ceilings, transparency rules, sanction mechanisms), as well as the establishment of a fiscal council – a fiscal watchdog.[28] Still, the constitutional act does not go as far as addressing sustainable development in a more holistic manner – in the environmental sense.

The Constitutional Court (the "**Court**") has traditionally been rather conservative in adjudicating economic, social and environmental rights, besides some decisions regarding social rights, or more specifically, social protection rights (e.g., pensions). The Court has not produced any landmark decision in relation to the core research topics of this analysis; it is understood that

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[25] Art. 36, the Constitution of the SR.

[26] Various legal acts are dedicated to environmental protection, society welfare, and human rights, which include: Act No. 17/1991 Coll. on Environment, as amended (in Slovak language: *Zákon č. 17/1992 Zb. o životnom prostredí v znení neskorších predpisov*), (the "**Environment Act**"); Act No. 543/2002 Coll. on Protection of Nature and Landscape, as amended (in Slovak language: *Zákon č. 543/2002 Z. z. o ochrane prírody a krajiny v znení neskorších predpisov*), (the "**Protection of Nature Act**"); Act No. 311/2001 Coll., the Labor Code, as amended (in Slovak language: *Zákon č. 311/2001 Z. z., Zákonník práce, v znení neskorších predpisov*), (the "**Labor Code**"); Act No. 365/2004 Coll., on Equal Treatment in Certain Fields and Protection Discrimination, as amended (in Slovak language: *Zákon č. 365/2004 o o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou v znení neskorších predpisov*), (the „**Anti-discrimination Act**"); Act No. 308/1993 Coll. on Establishment of Slovak National Center for Human Rights, as amended (in Slovak language: *Zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva v znení neskorších predpisov*), (the „**National Center for Human Rights Act**"); Act No. 112/2018 Coll. on Social Economy and Social Enterprises, as amended (in Slovak language: *Zákon č. 112/2018 Z. z. o sociálnej ekonomike a sociálnych podnikoch* v znení neskorších predpisov), (the „**Social Economy Act**"); and others.

[27] The Constitutional Act No. 493/2011 Coll. on Budgetary Responsibility, as amneded is built on a requirement of "economic and social justice and solidarity between present and future generations." The law is an important part of fiscal constitution, implementing debt levels and transparency rules, but does not deal with environmental aspect of sustainability at all.

[28] Constitutional Act No. 493/2011 Coll. on Budgetary Responsibility, as amended (in Slovak language: *Ústavný zákon č. 493/2011 Z. z. o rozpočtovej zodpovednosti v znení neskorších predpisov*), (the "**Budgetary Responsibility Act**").

the extent that these rights should be granted is in the domain of the legislative power and subsequently the executive power, i.e., the policy makers. Some lines of thinking can be drawn from the Court's previous case law. For one, the Court made it clear that the law on environmental protection and the exploitation of depletable natural resources had to lead the policy makers to "secure mutual close interrelatedness of energetic and environmental aspects in the area of energy planning and management, as well as in the practice of energy production, distribution and consumption."[29] The Court also states that ecological ethics must be viewed as representing the public interest on sustaining nature as a value.[30] Furthermore, the constitutionally protected right to a favorable environment must be understood as a realization of principles of ecological ethics. In this sense, the Court claims that sustainable development can be a valid reason to restrict market competition.[31]

Still, sustainable development was firmly embedded within the environmental law of the Czech and Slovak Federative Republic already in 1991 within the first post-1989 environmental laws. The Environment Act, still in effect today, provides within its preamble that the law was adopted under the assumption that "*man is together with other organisms an inseparable part of nature, remembering the natural mutual dependency of man and other organisms, respecting the right of man to adjust nature according to the principle of sustainable development, conscious of its responsibility for sustaining a favorable environment for future generations and stressing the right on favorable environment as one of the fundamental rights…*"[32] The act further embodies in Section 6 the legal definition of sustainable development, in the course of which it should be understood as "*a development that preserves the opportunity for present and future generations alike to fulfill their basic needs, while natural diversity is not diminished and the natural functions of ecosystems are preserved*." Despite the fact that sustainable development is defined by Slovak law only in relation to the environment, it must be considered in a much broader sense.

The law further requires that legal and natural persons conducting business activities are obliged to provide information on their environmental impact, subject to specific statutory obligations.[33] Unfortunately, the standards of environmental impact assessments are currently still too formal and not satisfactory; the research indicates that there is certainly space for improving the standards and procedures of EIA evaluations.[34]

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29 Decision of the Constitutional Court, case No. PL. US 1/06-35, p. 17.
30 Decision of the Constitutional Court, case No. PL. US 51/2015-94, p. 39, m. 101.
31 Decision of the Constitutional Court, case No. IV. US. 61/04-12.
32 Preamble to the Environment Act.
33 Sec. 18(2), the Environment Act.
34 Lenka, Zvijáková, Martina, Zeleňáková, Pavol Purcz, Evaluation of environmental impact assessment effectiveness in Slovakia, Impact Assessment and Project Appraisal, 32:2, 150-161, DOI: 10.1080/14615517.2014.893124, 2014.

In 2000, the term sustainable development was specified in the National Strategy of Sustainable Development as a targeted, long-term, comprehensive and synergic process affecting not only the environment but also conditions and all aspects of life (cultural, social, economic, environmental and institutional) at all levels (local, regional and global).[35]

1.3. Policies towards sustainability

The overall sustainability agenda of the Slovak republic is currently distributed among several ministries, most notably the Ministry of Environment, Ministry of Labor, Ministry of Social Affairs and Family (social economy) and the Deputy Prime Minister's Office for Investments and Informatization (which is tasked to deal with the planned Agenda 2030 for Sustainable Development).[36] The major policy documents that deal with sustainable development and could possibly be of interest to the research topic include primarily the National Sustainable Development Strategy of the Slovak Republic,[37] the National Investment Plan of the Slovak Republic 2018-2030,[38] Greener Slovakia – the Environmental Policy Strategy of the Slovak Republic,[39] the Agenda 2021,[40] the Strategy of Adaptation of the Slovak Republic on Unfavorable Impacts of Climate Change,[41] the Low-carbon Development Strategy of the Slovak Republic until 2030 (under preparation), or the Strategy of the Implementation of Voluntary Instruments of Environmental Policy in the Slovak Republic.[42]

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35 National Strategy of Sustainable Development approved by Government resolution No. 978/2001.

36 The law putting forth the division of policy making among ministries and other centralized state administration bodies does not directly mention sustainable development as a specific objective or policy area of any particular ministry (see Act No. 575/2001 Coll. on the organization of government activities and the organization of centralized state administration, as amended).

37 Ministry of Environment of the Slovak Republic, National Sustainable Development Strategy of the Slovak Republic, 2001. Available online at: http://www.minzp.sk/dokumenty/strategicke-dokumenty/, (the "**NSDS**").

38 Deputy Prime Minister's Office for Investments and Informatization, National Investment Plan of the Slovak Republic 2018-2030, 2018. The document also includes the Agenda 2030 for Sustainable Development, which recently merged with the NIP. Available online at: https://www.vicepremier.gov.sk/index.php/investicie/narodny-infrastrukturny-plan/dokumenty/index.html, (the "**NIP**").

39 Ministry of Environment of the Slovak Republic, Greener Slovakia - the Environmental Policy Strategy of the Slovak Republic (Greener Slovakia, currently still in its first draft), 2017. Available online at: https://www.minzp.sk/files/iep/x_2017_envirostrategia_20171214.pdf., (the "**Strategy of Greener Slovakia**").

40 Ministry of Environment of the Slovak Republic, Agenda 2021, 2011. Available online at: http://www.minzp.sk/files/dokumenty/agenda21-en.pdf, (the "**Slovak Agenda 2021**").

41 Ministry of Environment of the Slovak Republic, Strategy of Adaptation of the Slovak Republic on Unfavorable Impacts of the Climate Change, 2017. Available online at: https://www.minzp.sk/files/odbor-politiky-zmeny-klimy/strategia-adaptacie-sr-nepriaznive-dosledky-zmeny-klimy-aktualizacia.pdf.

42 Ministry of Environment of the Slovak Republic, Strategy of the Implementation of Voluntary Instruments of Environmental Policy in the Slovak Republic, 2007. Some of these voluntary instruments include environmental management and audit schemes, green public procurement (which has

The National Sustainable Development Strategy of the Slovak Republic (the "**NSDS**") is a rather outdated document from 2001 which outlines more concrete proposals for economic instruments that can be deployed to stimulate the shift towards sustainable development. Besides environmentally oriented fiscal policy, it suggests deploying tax breaks, soft and interest-free loans, subsidies, negative stimulation and taxation (incl. comprehensive environmental tax reform), introduction of alternative economic reporting and environmental and social auditing, accounting and investment, as well as pricing of economic services and supporting the local and community economy. These policies may be divided into separate groups: (i) environmental fiscal reforms and policies; (ii) environmental tax reforms and policies; (iii) sustainability-oriented state investment policies; (iv) sustainability-oriented reform of financial markets; (v) reporting, auditing and accounting reforms; (vi) support of the social and local economy. Unfortunately, almost none of these policy suggestions have been adopted within the Slovak legal framework in the past 17 years since the adoption of the strategy – some exceptions will be mentioned later in the text, such as the Social Economy Act and related tax and investment instruments. In terms of utilizing the sustainability potential of trade and production, the strategy merely refers to the International Chamber of Commerce's Business Charter for Sustainable Development from 1990 as a landmark document, which indicates that the connection with environmental and sustainability policy making is little connected to the sustainability of production, commerce and companies in general.[43]

The National Investment Plan of the Slovak Republic 2018-2030 (the "**NIP**") is a cross-sectoral and integrative strategic document defining priority topics and key programs to build a new economic and social infrastructure, which should be implemented by 2030. The plan cuts across most policy sectors, including transportation, energy, IT, research and innovation, environment, social inclusion and employment, etc. It also includes the UN Agenda 2030, although the plan states a significant delay in the implementation of the Agenda 2030 into ministerial development plans. The plan further mentions that these development plans are almost exclusively based on using European structural and investment funds 2014-2020.[44] Although such an overarching investment policy plan creates opportunities to involve the private sector in reaching the goals, as well as involving cross-cutting topics of sustainability into the economy through various means, the document merely provides 2030 objectives for specific areas related to the Agenda 2030 goals and the indication of projects that may lead to their fulfillment. Still, the document is inherently and predominantly the state's investment plan for public goods and

meanwhile become mandatory) and the investment support towards environmental technology. Available online at: http://hsr.rokovania.sk/12256/14-/.

[43] NSDS, page 98.

[44] NIP, page 4.

services. The plan does not specify any investment policy related to the state's refundable or equity investments, although the state is active in this field, as is described further below.

The Greener Slovakia strategy is the main document setting the framework of the environmental policy strategy of the Slovak Republic. It puts forth brave concepts such as green economy or circular economy, while making it clear that Slovakia is clearly a laggard in the adoption of ecological innovations in the EU.[45] Some of the instruments and reforms it proposes in relation to the research topic include green procurement (already underway in Slovakia), removal of environmentally detrimental subsidies and regulations (e.g., brown coal support), and the introduction of environmental tax reform (Slovakia currently raises only around 75% of the EU average for environmental taxes). Nevertheless, the implementation of these policies is very limited.

Some indications that the role of business and industry should be strengthened in order to attempt to achieve strong sustainability are included within the Slovak Agenda 2021.[46] The document lays out the investment initiatives, primarily sourced from European structural funds (such as the JEREMIE initiative) – the investment strategy shows a marginal retreat from investments into heavy industries; investments should primarily flow to innovative, knowledge-based sectors, smart specialization sectors, etc., although some industrial production sectors may be supported nevertheless. There are no special sustainability requirements for the investment targets mentioned within the Agenda 2021. As a result, we review the investment policies of the respective state instruments in order to assess whether any special investment requirements and criteria have been introduced into contracts with financial providers or other binding documents (see below). The Agenda 2021 further mentions other forms of support for environmentally friendly behavior of enterprises, such as the certification of management systems according to international standards, although no special Slovak instruments are identified.

Finally, the Strategy of Adaptation of the Slovak Republic on Unfavorable Impacts of Climate Change deals with certain cross-cutting concerns, including social and economic aspects of the climate change adaptation, but it does not go beyond merely claiming the prospects of positive impacts of the green economy in terms of employment and green growth. There is no specific plan to incentivize the transition.

[45] Strategy of Greener Slovakia, page 33.
[46] Slovak Agenda 2021, page 81.

1.4. Implementation of Sustainable Development Goals in Slovakia

The Sustainable Development Goals (the "**SDGs"**) represent the 17 goals of sustainable development specified in the United Nations agenda for sustainable development, Transforming our world: the 2030 Agenda for Sustainable Development (Agenda 2030). The SDGs were defined at a meeting at the United Nations Headquarters in New York in September 2015. The SDGs follow up the Millennium Development Goals from 2000 (the "**MDGs**") and should also be built on their achievements. The MDGs are goals for sustainable development in which the first common vision of global development – to eradicate extreme poverty – is defined and is addressed mainly to developing countries. The Agenda 2030 and its 17 goals is addressed to all countries, including developed ones, and therefore applies to the Slovak Republic as well.[47]

In 2016, the Slovak government commenced to implement SDGs in Slovakia by approval of the document: The Basis of Implementation of the Agenda 2030 for Sustainable Development.[48] The Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic ("**DPMOII**") was put in charge of the national SDGs' implementation. The entity accountable for the external implementation process is the Ministry of Foreign and European Affairs (the "**MFEA**"). These two authorities were also put under obligation to closely collaborate with the Ministry of Environment of the Slovak Republic (the "**Ministry of Environment**") in relation with the implementation process.[49] Moreover, in mid-2017, the government established the Council of Government for the Agenda 2030 for Sustainable Development (the "**Council for SD**").[50]

1.4.1. Functioning, structure and financing of the Council for SD

The Council for SD was established as an advisory and coordination body of the government for questions and issues concerning implementation of the Agenda 2030.[51] The main aim of the council is to ensure the implementation of SDGs and its tasks are as follows:

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47 Ministry of Environment of the Slovak Republic, The Sustainable Development – Agenda 2030, 2018. Available online at: http://www.minzp.sk/sekcie/temy-oblasti/udrzatelny-rozvoj/agenda-2030/; Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic, Agenda 2030 in International Context, 2017. Available online at: https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/agenda-2030-v-medzinarodnom-prostredi/index.html.

48 Government Resolution No. 95/2016, dated 2 March 2016.

49 Ministry of Environment of the Slovak Republic, The Sustainable Development – Agenda 2030, 2018. Available online at: http://www.minzp.sk/sekcie/temy-oblasti/udrzatelny-rozvoj/agenda-2030/; Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic, Agenda 2030 in International Context, 2017. Available online at: https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/agenda-2030-v-medzinarodnom-prostredi/index.html.

50 The Council for SD was established by Government Resolution No. 350/2017, dated 24 July 2017.

51 Art. 2, Statute of the Council for Sustainable Development (the "**Statute of the Council for SD**").

- coordinating activities of public authorities related to the preparation of strategic documents and drafts of legal acts concerning the Agenda 2030 implementation, including a national strategy of regional and territorial development of the SR by 2030;
- integrating all dimensions of the sustainable development;
- recommending to the government specific measures for the improvement of implementation processes and monitoring their progress;
- discussing and assessing the plan of implementation activities and controlling the fulfillment of individual tasks;
- monitoring relevant indicators and assessing the achievement of sustainable development goals.[52]

The Council for SD consists of a president, a vice president, permanent and non-permanent members and a council secretary. The total number of council members is 27. The membership is non-transferable. The president is the Deputy Prime Minister and the vice-president is the Minister for Foreign and European Affairs. Permanent and non-permanent members are composed from individual ministers and proxies of the government.[53]

The function of all council members, except the function of the council secretary, is honorary.[54] All costs of the council are covered by DPMOII's budget.[55]

The council secretariat ensures all council activities. Activities of the council are conducted on behalf of the council by the council secretary, who is an employee of the DPMOII and is not a full member of the council.[56]

Moreover, in March 2017, the Deputy Prime Minister for investment and informatization established a working body of the council. It is the Working Group for Agenda 2030's Implementation for Sustainable Development and for Preparation of a National Investment Plan of the Slovak Republic for 2018 – 2030 (the "**Working Group for SD**").[57]

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52 Ibid., Art. 3.
53 Ibid., Art. 14.
54 Ibid., Art. 4.
55 Ibid., Art. 7.
56 Ibid.
57 Art. 1, the Statutes Working Group for Agenda 2030's Implementation for Sustainable Development and for Preparation of National Investment Plan of the Slovak Republic for 2018 – 2030 (the "**Statute of the Working Group**"). Available online at: https://www.vicepremier.gov.sk/wp-content/uploads/2017/04/STATUT-Pracovnej-skupiny-pre-Agendu-2030-a-NIP.pdf.

The main aim of the Working Group for SD is to ensure collaboration between the DPMOII and representatives of involved stakeholders, which consists of the centralized state administration and public representatives. The Working Group for SD primarily:

- provides support to the Council for SD in relation to Agenda 2030;
- provides support to participating stakeholders with preparation of the Proposal of National Priorities of Agenda 2030 Implementation (the "**PNPAI**");
- assesses submitted relevant documents, including strategic documents which are the starting point of the PNPAI preparation.[58]

Members of the Working Group for SD comprise government members and public representatives. Membership is also honorary. Members are obliged to personally attend the meetings of the working group; comment on and discuss negotiated questions and documents; and initiatively propose measures, solutions, recommendations and opinions.[59]

1.4.2. Activities of the Council for SD

The Council for SD was established in mid-2017 by Government Resolution No. 350. By the same resolution, the government approved the Proposal of National Implementation Process of Agenda 2030. The aim of the document is to ensure the absence of negative impacts of national politics concerning sustainable development on other countries.[60] Since the council's establishment, two meetings have taken place, the first one on 12 December 2017 and the second one on 15 May 2018.[61]

The purpose of the first council meeting was to prepare grounds for the identification of long-term priorities which would reflect a success of Slovakia in achieving SDGs by 2030. At this meeting, the Council approved two documents: (i) the Basis for National Priorities Preparation of Agenda 2030 Implementation (the "**BNPPAI**"); and (ii) the Proposal for Participation Process of National Priorities Identification of Agenda 2030 Implementation (the "**PPPNPIAI**").[62]

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58 Ibid., Art. 2.
59 Ibid., Art. 5.
60 Proposal of National Implementation Process of Agenda 2030. Available online at: https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/dokumenty/index.html.
61 Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic, News on the Council for Sustainable Development meetings. Available online at: https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/rada-vlady-pre-agendu-2030-pre-udrzatelny-rozvoj/index.html.
62 Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic, News on the Council for Sustainable Development first meeting. Available online at: https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/rada-vlady-pre-agendu-2030-pre-udrzatelny-rozvoj/1-zasadnutie-rady-vlady-pre-agendu-2030-pre-udrzatelny-rozvoj/index.html.

The BNPPAI was drawn up by Slovak Academy of Sciences experts and represents the proposal of 5 key topics for Slovakia's development by 2030. The aim of the document was not to determine long-term priorities of the state, but to launch a debate on the national priorities of Agenda 2030 implementation.[63] The BNPPAI proposed and analyzed 5 key topics that were to be further assessed and modified within a participation process in which all interested stakeholders, including the public ones, were supposed to be involved. The 5 key points which were identified are as follows:

- Sustainable economic development accounting for an aging population and a changing global environment.
- Education for sustainable development.
- Good health and quality of life.
- Sustainable towns and country in the context of climate change.
- Poverty elimination and social inclusion.[64]

The BNPPAI should be considered only as a starting point for further wide public consultation. According to this document, national priorities of the Agenda 2030 implementation should be the result of a participation process.[65]

The PPPNPIAI focused on the proposal of the participation process. The objective of the participation process was to define approximately 5 key topics for the sustainable development of Slovakia by 2030 such that individual global sustainable development goals might be assigned to those identified topics.

The PPNPIAI also prepared the time schedule for the participation process. According to the proposal, the participation process was supposed to start at the beginning of 2018. The identification of interested stakeholders and the establishment of an Expert Group for Participation were planned for December 2017 and January 2018, respectively. Participative activities (an information campaign, a dialogue with interested stakeholders – conferences and seminars in different parts of Slovakia, participation process outputs) were set to be conducted between January and April 2018. The decision on the final form of the PNPAI and its approval by

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63 Pages 3 and 4, the Bases for National Priorities Preparation of Agenda 2030 Implementation (the "**BNPPAI**").

64 Ibid., page 5.

65 Proposal for Participation Process of National Priorities Identification of Agenda 2030 Implementation (the "**PPPNPIAI**"); Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic, News on the Council for Sustainable Development first meeting. Available online at: https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/rada-vlady-pre-agendu-2030-pre-udrzatelny-rozvoj/1-zasadnutie-rady-vlady-pre-agendu-2030-pre-udrzatelny-rozvoj/index.html

the Council for DS was scheduled for the end of April 2018. Finally, the final PNPAI should have been submitted to the government by the end of May 2018.[66]

Reflecting on these efforts, it may be concluded that the plan contained in the PPPNPIAI was almost fully completed and nearly on time. The participation process started on 20 February 2018. The Council for SD collaborated with a non-profit organization that has much experience with the participation processes.[67]

The first meeting within the participation process was conducted with key stakeholders' representatives with the purpose to provisionally establish the chamber of stakeholders and to make a schedule of participation process meetings. More than 10 meetings of stakeholders across Slovakia were planned during the following three months. The chamber of stakeholders was created from, for instance, non-profit organizations, interest associations, regions and municipalities, and others.[68]

After the incorporation of comments resulting from the meetings, the final proposal of national priorities of the Agenda 2030 implementation as a result of the participation process was made. Upon the proposal, the previously defined 5 national priorities were modified during the participation process and the 6th priority was added. Thus, the six Slovak national priorities for sustainable development are currently set as follows:

- Towards a knowledge-based, environmentally sustainable, and circulation economy concerning demographic change and the changing global environment.
- Education for dignified life.
- Sustainable seats, regions and country in the context of climate change.
- Poverty elimination and social inclusion.
- Democracy, rule of law, and security.[69]

Besides the six national priorities, the proposal also set the time schedule for further implementation of the process activities. In accordance with the time schedule, on 15 May 2018,

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66 Ibid.

67 Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic, Information on opportunities for participation on achievement of sustainable development goals. Available online at: https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/moznosti-participacie/index.html.

68 The schedule is publicly available together with minutes from the meeting at: https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/moznosti-participacie/index.html.

69 Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic, Which Slovakia do we want in 2030? Results of participation process, pages 7 - 13. Available online at: https://www.vicepremier.gov.sk/wp-content/uploads/2018/06/Navrh-narodnych-priorit.pdf.

the PNPAI should have been introduced to the council. Cross-report commenting was scheduled for May and June 2018. By June 2018, the PNPAI was supposed to have been approved by the government. The presentation of the implementation program and of the national priorities to the United Nations in New York was planned for July 2018. Consequently, the timetable laid out the elaboration of national priorities into the Slovak development strategy with measurable objectives and indicators for the second half of 2018 and 2019.[70]

The schedule contained in the PNPAI was entirely completed, from the approval of the PNPAI by the Council through the government approval to the national priorities presentation to the United Nations in New York, on time. The government approved the PNPAI on 13 June 2018 by its resolution No. 273/2018.[71] The presentation of the national priorities to the United Nations in New York was conducted in New York on 16 July 2018.[72] Moreover, the Council for SD performs other activities related to the sustainable development besides creating the plan for the Agenda 2030 implementation.[73]

1.5. Implementation of OECD Guidelines for Multinational Enterprises; OECD National Contact Point

The OECD Guidelines for Multinational Enterprises (the "**OECD Guidelines**"), adopted in 1976, represent the oldest standard containing a set of recommendations for multinational enterprises in relation to socially responsible business. The OECD Guidelines were adopted by the OECD members in collaboration with representatives of employers' and employees' associations and non-governmental organizations.[74]

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70 Ibid., pages 5 - 6.

71 Government Resolution No. 273/2018, dated 13 June 2018.

72 Deputy Prime Minister's Office for Investments and Informatization of the Slovak Republic, Agenda 2030: R. Raši will introduce 5 national priorities to UN. Available online at: https://www.vicepremier.gov.sk/index.php/agenda-2030-r-rasi-predstavi-6-narodnych-priorit-v-osn/index.html.

73 In April 2018, the Council for SD in collaboration with the Pontis Foundation awarded the Prize for Contribution to SDGs Fulfilment 2017. This prize was awarded for the first time as a special prize at the Via Bona Slovakia awards. The award condition of the Prize for Contribution to SDGs Fulfilment 2017 was to pursue one of the 17 SDGs or to contribute to their fulfilment trough companies' projects and solutions. The prize was awarded to Tesco for combating food waste. PURE JUNK DESIGN was honorably mentioned for creation its products from waste and recyclable materials. Via Bona Slovakia prizes have been awarded to companies for responsible business by the Pontis Foundation since 1998. See https://www.nadaciapontis.sk/clanok/pozname-najzodpovednejsie-firmy-zo-zodpovednych/2677 and https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/moznosti-participacie/firma/index.html, accessed in July 2018.

74 Ministry of Economy of the Slovak Republic, New on National Contact point. Available online at: https://www.mhsr.sk/obchod/multilateralne-obchodne-vztahy/oecd/narodne-kontaktne-miesto-pre-smernice-oecd-pre-nadnarodne-spolocnosti/rozhodnutie-o-zriadeni-nkm-1; Kapko, Martin, Profit, ecology and social dimension must not run against each other, in TREND.sk, 29.05.2002. Available

The OECD Guidelines serve to guide multinational enterprises in preventing and avoiding negative impacts of their activities on society. The OECD Guidelines set minimal standards which multinational enterprises should comply with regardless of the place of their operation.[75] Although the OECD guidelines are not binding – the enterprises' compliance with these guidelines is not legally enforceable, companies operating in Slovakia should follow them in their day-to-day operations.[76]

The specific feature of the OECD Guidelines lies in the states' obligation to establish a National Contact Point (the "**NCP**"). The main tasks of the NCPs are:

- to promote and disseminate the OECD Guidelines;
- to deal with questions concerning the OECD Guidelines;
- to provide a grievance mechanism to resolve cases (known as "specific instances") relating to the non-observance of recommendations of the OECD Guidelines;
- and to collaborate with other OECD NCPs to resolve specific situations and any other questions related to the OECD Guidelines.[77]

Chapter IV of the OECD Guidelines, focusing on human rights, was added to the OECD Guidelines in 2011 in order to align the OECD Guidelines with the United Nations Guiding Principles on Business and Human Rights.

The Slovak Republic established the NCP within the Ministry of Economy of the Slovak Republic (the "**Ministry of Economy**") on 18 January 2016.[78] The Slovak NCP was established for a specific period, through 31 December 2023. Consequently, the Ministry of the Interior of the Slovak Republic (the "**Ministry of the Interior**") applied for membership in the Slovak NCP, in order to apply Chapter VII of the OECD Guidelines containing provisions on combating bribery, bribe solicitation and extortion. On 10 April 2017, the Ministry of the Interior became a full member of the Slovak NCP.[79]

online at: https://www.etrend.sk/trend-archiv/rok-/cislo-Máj/profit-ekologia-a%C2%A0socialny-rozmer-nemusia-ist-proti-sebe.html

75 Ibid.

76 Ibid.

77 Ibid.

78 Ministry of Economy of Slovak Republic resolution No. 3/2016, dated 18 January 2016. Available online at: http://www.economy.gov.sk/uploads/files/AG3OUZd4.pdf.

79 Minister of the Ministry of Economy of Slovak Republic resolution No. 7/2017, dated 10 April 2017. Available online at: https://www.minv.sk/?smernice-oecd-pre-nadnarodne-spolocnosti-1.

1.5.1. NCP structure, functioning and budget

The Slovak OECD NCP is organizationally linked to the Slovak government – currently situated within the Ministry of Economy as its working body, in order to ensure the implementation of the OECD Guidelines.[80] However, according to the information provided in the National Contact Point Reporting Questionnaires of 2015 and 2016 ("the **Questionnaires**"), the Slovak NCP is neither attached to any of the export- or business-supporting agencies or organizations, nor is it an independent body with its own budget.[81]

The Slovak NCP was established as a collective body composed of representatives of relevant ministries,[82] banks, employees' and employers' associations and non-governmental bodies.[83] The Slovak NCP is headed by the president, who is director of the Ministry of Economy's Department of Bilateral Trade Cooperation.[84] The membership in the Slovak NCP is honorary.

The relevant part of the Slovak NCP's structure also includes the secretariat of the Slovak NCP, based in the Ministry of Economy. The Secretariat supports the NCP's functioning. The function of the secretariat is ensured by the Ministry of Economy's Department of Bilateral Trade Cooperation. The Slovak NCP secretariat is in charge of the following activities:

- controlling requirements of received interested parties' notifications for specific instances;
- making an initial assessment of whether the issues raised merit further examination or should be rejected;
- securing expert opinions for accepting or rejecting received notifications;
- drafting and submitting an announcement and a report on specific instances; and other activities.[85]

[80] Art. 1, the Statutes of the Slovak NCP. Available online at: http://www.economy.gov.sk/uploads/files/o6R6mBvu.pdf.

[81] OECD Guidelines for Multinational Enterprises - Slovakian NCP Report to the OECD, 2015. Available online at: https://www.mhsr.sk/uploads/files/gykoI7lZ.pdf; National Contact Point Reporting Questionnaire, 2016. Available online at: https://www.mhsr.sk/uploads/files/J448JHNJ.pdf., (the "**Questionnaire 2015**" and the "**Questionnaire 2016**" or together as the "**Questionnaires**").

[82] Representatives of Ministry of Economy of the SR; Ministry of Foreign and European Affairs of the SR; Ministry of Finance of the SR; Ministry of Labor, Social Affairs and Family of the SR; Ministry of Justice of the SR; Ministry of Environment of the SR; Ministry of Education, Science, Research and Sport of the SR. Art. 3, the Statutes of the Slovak NCP. Available online at: http://www.economy.gov.sk/uploads/files/o6R6mBvu.pdf.

[83] National Bank of Slovakia; Export-Import Bank of the SR; National Union of Employers; Confederation of the Trade Unions of the SR; Chamber of NGOs of the Slovak Government Council for NGOs.

[84] Art. 4, the Statutes of the Slovak NCP.

[85] Ibid., Art. 6.

Although recommended in the OECD Guidelines (and as established in other countries like the Netherlands, Denmark and the Czech Republic), within the structure of the Slovak NCP, no advisory body has been established. Likewise, no oversight body has been established either, and therefore, the Slovak NCP has neither a body for advice nor for oversight.[86]

The Slovak NCP's lack of independent advisory and oversight bodies may lead to potential accusations of the Slovak NCP of political and governmental influence, and conflicts of interest undermining the impartiality required of the NCP for complaint examinations and taking decisions in relation thereto. We assume that the current situation may give rise to stakeholder concerns with regard to the quality and effectiveness of the NCP's grievance mechanism, and therefore the establishment of either a multi-stakeholders advisory or oversight body ensuring the NCP's impartiality and independence is highly recommended.

Besides the above, the Slovak NCP's independence is threatened by the NCP's lack of financial independence as well; the situation could be described as critical. The Slovak NCP is financed from the state budget, specifically from the financial resources allocated to the department of the Ministry of Economy. However, during 2015 the NCP did not have any dedicated budget. No budget was dedicated to conduct the NCP's promotional activities and activities related to specific instances either. The financial resources for those activities were allocated only on an ad hoc basis upon request by the NCP. [87]

Currently, it is not entirely clear how many employees are dedicated to the Slovak NCP as full-time staff. Pursuant to the Questionnaires, no full-time or even part-time staff has been employed in order to perform the NCP's tasks. NCP activities are performed by employees of the Ministry of Economy along with their other tasks.[88] According to the information provided in the Questionnaires, the Ministry of Economy's employees responsible for conducting NCP activities have not undergone training in dispute resolution or problem solving and no professional mediators were engaged during 2016.[89] Moreover, any information on persons responsible for OECD Guidelines and potential notifications of their non-observance are not provided anywhere, not even on the website of the Ministry of the Economy or its subpages for the Slovak NCP.[90]

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86 Statutes of the Slovak NCP.

87 Questionnaire 2015. On the other hand, it must be said that the Slovak NCP was able to access funds for organizing promotional events; attending NCP meetings at the OECD, events organized by other NCPs, and events organized by other stakeholders; professional mediator fees or in-house mediator fees; fact-finding research into specific issues. The costs should have been covered ad hoc from the general budget of the Ministry of Economy, however, no such costs were incurred during 2016. See Questionnaire 2016.

88 Questionnaires.

89 Ibid.

90 The webpage of the Slovak NCP is available online at: https://www.mhsr.sk/obchod/multilateralne-obchodne-vztahy/oecd/narodne-kontaktne-miesto-pre-smernice-oecd-pre-nadnarodne-spolocnosti/narodne-kontaktne-miesto

As mentioned at the beginning of this subsection, the Ministry of the Interior is responsible for part of the Slovak NCP as well, being in charge of combating bribery, bribe solicitation and extortion. However, no specific information on the Ministry of the Interior and its tasks and activities related to the OECD Guidelines and the Slovak NCP are provided on their webpages. Currently, it is utterly publicly unknown what the role of the Ministry of the Interior within the Slovak NCP is and what its activities are, except for the mere fact that the ministry is structurally a part of it.

1.5.2. NCP's activities and its promotion of OECD Guidelines

The Slovak NCP's tasks, processes and practices are regulated by the Statutes of the National Contact Point for OECD Guidelines for Multinational Enterprises (the "**Statutes of the NCP**")[91] and the Rules of Procedure of the National Contact Point for OECD Guidelines for Multinational Enterprises (the "**RP of the NCP**").[92]

The Slovak NCP specific instance procedure

The Slovak NCP specific instance procedure is regulated by the RP of the NCP. The aim of the NCP specific instance procedure is to resolve an issue in case of alleged non-compliance with the OECD Guidelines by the stakeholders to which the guidelines are addressed. The implementation of the OECD Guidelines normally does not lead to disagreements, but in case disagreements arise, these "specific instances" can be notified and brought up with the NCP by interested parties.[93]

Individual stakeholders may call upon the Slovak NCP's office when they suspect an enterprise is having a negative impact or is otherwise not acting in accordance with the OECD Guidelines. In other words, in such a case, the stakeholders can request that the Slovak NCP assist

[91] Statutes of the National Contact Point for OECD Guidelines for Multinational Enterprises. Available online at: https://www.mhsr.sk/uploads/files/o6R6mBvu.pdf., (the "**Statutes of the NCP**").

[92] As was already outlined, the main tasks and activities of the Slovak NCP are to raise public awareness on the OECD Guidelines and to promote the implementation of procedures and processes; to respond to inquiries on the OECD Guidelines from other NCPs, employers and employees associations, other non-governmental organizations, and the stakeholders; to handle inquiries and contribute to the resolution of issues that arise in relation to the OECD Guidelines implementation concerning specific instances; to publish results of the specific instances procedures and reporting them to the OECD Investment Committee; to collaborate with other NCPs established in other countries to resolve specific instances and any further issues concerning the OECD Guidelines; to collaborate with the OECD Investment Committee and with other relevant OECD committees and annually submit report on its activities. Art. 2, Rules of Procedure of the National Contact Point for OECD Guidelines for Multinational Enterprises. Available online at: https://www.mhsr.sk/uploads/files/POdlxzAE.pdf.

[93] Art. 5, the RP of the NCP.

in finding a mutually agreeable solution to the alleged non-observance of the OECD Guidelines in a more constructive, effective and accessible manner than via the courts.[94]

Pursuant to the specific instance procedure set by the RP of the NCP, the Slovak NCP proceeds impartially, transparently, predictably, foreseeably, fairly and in compliance with the OECD Guidelines' principles and standards.[95]

As stated in the RP of the NCP, an interested party's notification on the non-observance of the OECD Guidelines must contain the following facts and adhere to the following circumstances:[96]

The notification can be sent by post or electronic mail to the secretariat of the Slovak NCP. In the case of sending the notification by electronic mail, the interested party is obliged to file the original of the notification or its written form with the identical content with the secretariat within five working days. The notifications must be filed only electronically, otherwise they are not considered.[97]

The secretariat of the OECD electronically informs the interested party on receiving its notification. If the notification does not contain all required facts and circumstances or is unclear, the secretariat calls on the interested party to correct or complete the notification because otherwise it will be not considered by the NCP.

Subsequently, the completed notification of the interested party is subject to the secretariat's initial assessment. Based on the initial assessment, a decision is taken on whether the questions that were raised merit a more detailed examination or the interested party's notification should be rejected. After the initial assessment made by the secretariat, the NCP as a collective body makes a final decision on the further examination of the notification.[98]

If the Slovak NCP decides on accepting the notification, the NCP offers to the parties its services to find a mutually agreeably solution. If the parties do not reach a solution, the NCP will

[94] Ibid.
[95] Ibid.
[96] The notification shall contain following facts and circumstances: a name and residence of a natural person or a business name and registered seat of a legal person; a business name and registered seat of a multinational enterprise which is accused of non-observance of the OECD Guidelines; email and phone number of the interested party that files a notification; OECD Guidelines' provision which are allegedly infringed by the accused enterprise; subject of the notification, including stating relevant facts and evidence supporting the interested party's statements; interested party's suggested solution; date and signature of an entitled person. Art. 5, the RP of the NCP.
[97] Art. 5, the RP of the NCP.
[98] Ibid.

release a statement on the specific instance describing the instance and reasons justifying why a mutually amicable solution could be reached.[99]

The information depicted above on specific instance procedure is publicly available on the Ministry of Economy's website within the published RP of the OECD, specifically in Article 5. The RP of the OECD represents practically the only source of information on the Slovak NCP's specific instance procedure. The Slovak NCP has not created any standardized form with which to file the notification. Moreover, the Slovak NCP has failed to provide any practical information on specific instance procedure, such as a guideline on how to file the notification, much less publish it on the NCP's website so as to ensure useful, understandable and easily accessible guidance on filing the notification on non-observance of the OECD Guidelines.[100]

Publishing the NCP's statements and reports

In consonance with the RP of the NCP, the Slovak NCP shall publish its statements and reports on its decision-making results on specific instances and inform the OECD Investment Committee on negotiated specific instances.[101]

Unfortunately, the information on the website does not include any statements or reports concerning any information on consulted and closed specific instances. According to the information provided in the Questionnaires, no final statements of the Slovak NCP are available on the website, and therefore not easily accessible to the public. It can mean either that (i) no notifications of the interested parties have been filed; (ii) raised specific instances are still pending; or that (iii) the Slovak NCP's reports and statements simply have not been published.

Thus, we assume that the current situation of public access to information related to specific instances may have a strong negative impact on stakeholders' trust of the availability of the Slovak NCP's mediation procedures. Parties interested in raising the issue of a breach of the OECD Guidelines by multinational enterprises may find it discouraging that even after two and a half years of the Slovak NCP's existence, there is no published information and acknowledgment by interested stakeholders of whether the Slovak NCP have been called upon to assist.[102]

The Slovak NCP's webpage

The Slovak NCP does not have its own website. The web presence of the Slovak NCP is a part of the Ministry of Economy's website. Information on the OECD Guidelines, the Slovak NCP

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[99] Ibid.

[100] The webpage of the Slovak NCP is available online at: https://www.mhsr.sk/obchod/multilateralne-obchodne-vztahy/oecd/narodne-kontaktne-miesto-pre-smernice-oecd-pre-nadnarodne-spolocnosti.

[101] Art. 5, the RP of the NCP.

[102] The webpage of the Slovak NCP is available online at: https://www.mhsr.sk/obchod/multilateralne-obchodne-vztahy/oecd/narodne-kontaktne-miesto-pre-smernice-oecd-pre-nadnarodne-spolocnosti.

and its tasks and activities can be found under section: Trade, subsections: Multilateral business relations → OECD → National Contact Point for OECD Guidelines for Multinational Enterprises.

Information on the OECD Guidelines and the Slovak NCP published on the Ministry of Economy's website is categorized into the following sections: (i) section *OECD Guidelines* under which the full text of the OECD Guidelines is available in Slovak and English; (ii) section *National Contact Point* where basic information on the Slovak NCP and its main tasks, including the NCP's reports for the OECD, is provided; (iii) section *Decision on the NCP's establishment and Statutes of the NCP* providing full text of the Slovak NCP's Statutes and of the Minister's decision on establishment of the NCP in the Slovak language; (iv) section *Rules of Procedure of the NCP* providing full text of the Slovak NCP's RP and resolution of its approval; (v) section *NCP News* under which information on the Slovak NCP's activities should be publicized (news items on the NCP's seminar related to the OECD Guidelines are the only currently available pieces of news published within this section); (vi) section *Members of the NCP* which contains a list of the Slovak NCP's members; (vii) section *Publication of the NCP* currently offers the following documents: Frequently Asked Questions in the English language, the full text of the OECD Guidelines in the English language, an English version of the flyer of the OECD NCPs, and an English version of the Brochure of the OECD Guidelines.[103]

As mentioned above, the Slovak NCP's website does not provide a lot of information. In fact, it may be said that the information provided on the website represents the necessary minimum and does not even include all documents and information that one may expect such as the NCP's own Annual Reports, all of the NCP's final statements, or information on upcoming and past events promoting the OECD Guidelines.[104]

Promotion of OECD Guidelines through Slovak NCP activities

The Slovak NCP's activities promoting the OECD Guidelines are similarly insufficient as the information available on its website. The Questionnaires have indicated that no promotional activities were carried out by the Slovak NCP in 2016. Pursuant to the Questionnaires, the Slovak NCP did not fulfill many of its requirements.[105]

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[103] Ibid.

[104] Questionnaires.

[105] Specifically, the Slovak NCP did not organize or co-organize any events promoting the OECD Guidelines; make a presentation promoting the OECD Guidelines in events organized by others; make use of social media to communicate on NCP promotional activities; promote the OECD Guidelines among the business community; carry out any training on the OECD Guidelines aimed at business; promote OECD Guidelines among non-governmental organizations, trade unions, government agencies, embassies abroad, investment promotion agencies; refer to OECD Due Diligence Guidance for Responsible Supply Chains of Mineral from Conflict – Affected and High – Risk Areas, OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector, OECD – FAO Guidance for Responsible Agricultural Supply Chains guidance reports in promotional activities; Questionnaires.

Besides the fact that the Slovak NCP did not carry out any promotional activities during 2016, according to the Questionnaires, the NCP also did not make any promotional plans for the following year either. However, in October 2017, the Slovak NCP did carry out training on the OECD Guidelines for multinational enterprises. The aim of the training was to promote and raise awareness of the guidelines. The NCP's secretariat presented experiences of foreign partners with the purpose to depict how to effectively build a system of mutual relations and how to resolve instances concerning non-observance of the guidelines. The foreign partners' sharing of experiences should have given them an opportunity to learn how to create suitable ground for collaboration among enterprises and other affected stakeholders. Unfortunately, more detailed information (for instance, speakers' presentations) on the conducted training is not available.[106]

Taking into consideration the frequency and range of the Slovak NCP's promotional activities – activities concerning specific instances and conditions of the NCP's website – we assume that the level of knowledge in Slovakia – both among businesses accounting for corporate social responsibility and average citizens – related to OECD Guidelines as such, remains negligible. We suppose that Slovaks are neither aware about the existence of the OECD Guidelines and the NCP, nor about the possibility to file a notification in the case of a multinational enterprise's non-observance.

In the Questionnaires, the Slovak NCP expressed a need to emphasize the importance of the Slovak NCP's tasks to the Slovak government by way of the OECD, in order to make the Slovak NCP able to fulfill its mandate and functions.[107]

From our point of view, the Slovak NCP's stakeholder learning activities are also critical. During 2017, the Slovak NCP not only did not take part in any stakeholder learning activities, but also did not show any interest in it. Specifically, the Slovak NCP neither hosted any stakeholder learning activities, cooperated with other NCPs in handling specific instances, nor mentored on the building of another NCP. Moreover, in the Questionnaires, the Slovak NCP expressed no interest in hosting an NCP learning/experience-sharing event or participating in the development of tools for use by NCPs.[108]

Despite the fact that the situation with the Slovak NCP is not in the best place, the issue of sustainable development in Slovakia is not absolutely lost. Questions concerning human rights,

[106] On the purpose to provide more detailed information on conducted training, we contacted and asked the Ministry of Economy to provide more information. Unfortunately, the answer with additional data on the training were not provided to us. The information on the training are available online at: https://www.mhsr.sk/obchod/multilateralne-obchodne-vztahy/oecd/narodne-kontaktne-miesto-pre-smernice-oecd-pre-nadnarodne-spolocnosti/rozhodnutie-o-zriadeni-nkm-1.

[107] Questionnaires.

[108] Ibid.

protection of environment and socially reliable business are covered by different individual legal acts such as the Labor Code, the Anti-discrimination Act, the Act on Establishment of the Slovak National Center for Human Rights, the Act on Environment, the Act on Protection of Nature and Landscape and others. The Act on Social Economy and Social Companies is the newest one that regulates various legal business forms of companies conducting social activities.

1.6. Implementation of the UN Guiding Principles of Business and Human Rights in Slovakia

There is no publicly available information on the implementation of the UN Guiding Principles on Business and Human Rights (the "**UN Guiding Principles on Business**") in Slovakia. With the purpose to access at least some information on the implementation of the UN Guiding Principles on Business in Slovakia, we contacted administrative authorities which are in charge of implementation of the OECD Guidelines for Multinational Enterprises and the Sustainable Development Goals. They were neither aware of any processes or activities regarding the UN Guiding Principles on Business nor were able to provide us more information. Arising from the results of the conducted research, it may be concluded that there are no efforts or activities being performed concerning the implementation of the UN Guiding Principles on Business in Slovakia.

2. Regulation of business and company law

2.1. Introduction and forms of businesses

In this part, we collect, present and evaluate the suitability of respective for-profit and not-for-profit legal forms with respect to sustainable development. We review the respective companies as regulated by the Commercial Code, as well as other business forms such as cooperatives and non-profits. We also describe the new social economy framework with label-based social enterprises.

Slovak law offers a wide range of legal forms for conducting business. Regulation of requirements and conditions of individual legal forms is embodied in various legal acts. The Commercial Code and Act No. 40/1964 Coll., Slovak Civil Code, as amended (the "**Civil Code**")[109] represent the legal basis of the legal forms. Moreover, the two codes denote a dual regime of carrying out business.

The legal framework of Slovak corporate law was established during the 19th century within the Austro-Hungarian Empire and, later, in Czechoslovakia. Therefore, Slovak law is rooted in Roman law, firmly based on the continental legal tradition, and is also influenced by Czech, German and Austrian law. Two years after the political change of 1989, Czechoslovakia introduced the Commercial Code to regulate business conduct and commerce. To this day, Czech jurisprudence and case law is still accepted in Slovakia, despite growing legal differences emerging within the two countries. Even though the possibility of re-codifying civil law in Slovakia has been discussed for years, its corporate law is still regulated by the Commercial Code, which covers the earlier-mentioned company law, as well as the law of commercial obligations. Regulation of contractual law is dual within the Slovak legal system; the law of obligations of commercial entities is regulated by the Commercial Code, whereas the general civil law of obligations is provided by the Civil Code. The currently discussed re-codification of the Civil Code and the Commercial Code should bring about a new joint Civil Code regulating the law of obligations and a separate Company Act regulating only company law matters.[110]

The legal definition of a legal person is set by the Civil Code; however, the legal basis of the general questions concerning companies and their functioning is covered by the Commercial Code. Besides that, there is a variety of other specific acts that stipulate specific regulations for specific processes and specific companies operating on specifically regulated markets.[111]

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[109] Act No. 40/1964 Coll., the Slovak Civil Code, as amended (in Slovak language: *Zákon č. 40/1964 Zb., Občiansky zákonník v znení neskorších predpisov*), (the „**Civil Code**").

[110] Similar changes of private law were approved in the Czech Republic already in 2012.

[111] For instance: Act No. 7/2005 Coll. on Bankruptcy and Restructuring, as amended (in Slovak Language: *Zákon č. 7/2005 Z.z. o konkurze a reštrukturalizácii v znení neskorších predpisov*), (the "**Bankruptcy Act**"); Act No. 566/2001 Coll. on Securities and Investment Services, as amended (in Slovak language:

There are also individual legal acts regulating other legal forms intended for non-profit organizations which are also allowed to conduct business activities alongside the main object of their activity, for instance: the Act on Association of Citizens No. 83/1990 Coll., as amended (the "**Association Act**"),[112] the Act on Non-profit Organizations Providing Services of General Economic Interest No. 213/1997 Coll., as amended (the "**Non-profit Organizations Act**"),[113] and the Act on Foundations and on the change of the Civil Code in the text of later amendments No. 34/2002 Coll., as amended (the "**Foundation Act**").[114]

Moreover, on 1 May 2018, the Act on Social Economy and Social Enterprises Coll., as amended (the "**Social Economy Act**")[115] entered into force. The Social Economy Act sets conditions for social economy and social enterprises. Besides that, this act modified the Commercial Code, specifically broadening the definition of entrepreneurial activity (business activity). According to the previous definition, business activity means "*continuous activities conducted by an entrepreneur in their name and on their own account for the purpose of making a profit*."[116] Concurrently, the business activity comprises activity conducted not only with an objective to make a profit but also "*in order to achieve measurable positive social impact when it concerns the economic activity of a registered social enterprise under a specific regulation*."[117]

The Commercial Code also legally defines an entrepreneur. Pursuant to Section 2(2), an entrepreneur is: "*(i) a person registered in the Commercial Register[118] (the "**company**"), (ii) a*

Zákon č. 566/2001 Z.z. o cenných papieroch a investičných službách v znení neskorších predpisov), (the **Securities and Investment Services Act**"); Act No. 483/2001 Coll. on Banks, as amended (in Slovak language: *Zákon č. 483/2001 Z.z. o bankách v znení neskorších predpisov*), (the "**Banking Act**"); Act No. 203/2011 Coll. on Collective Investment, as amended (in Slovak language: *Zákon č. 203/2011 Z.z. o kolektívnom investovaní v znení neskorších predpisov*), (the "**Collective Investment Act**"); Act No. 43/2004 Coll. on the old-age pension scheme, as amended (in Slovak language: *Zákon č. 43/2004 Z. z. o starobnom dôchodkovom sporení v znení neskorších predpisov*), (the "**Old-Age Pension Scheme Act**"). In the field of public law, the most important laws are established by Act No. 300/2005 Coll., the Criminal Code, as amended and Act No. 747/2004 Coll. on Supervision of the Financial Market, as amended (in Slovak language: *Zákon č. 747/2004 Z.z. o kontrole nad finančným trhom v znení neskorších predpisov*), (the "**Supervision of the Financial Market Act**").

[112] Act on Association of Citizens No. 83/1990 Coll., as amended (in Slovak language: *Zákon č. 83/1990 Zb. o združovaní občanov v znení neskorších predpisov*), (the "**Association Act**").

[113] Act on Non-profit Organizations Providing Services of General Economic Interest No. 213/1997 Coll., as amended (in Slovak language: *Zákon č. 213/1997 Z. z. o neziskových organizáciách poskytujúcich všeobecne prospešné služby v znení neskorších predpisov*), (the "**Non-profit Organizations Act**").

[114] Act on foundation and Civil Code Amendment No. 34/2002 Coll., as amended (in Slovak language: *Zákon č. 34/2002 Z. z. o nadáciách v znení neskorších predpisov*), (the "**Foundation Act**").

[115] Social Economy Act.

[116] Sec. 2(1), the Commercial Code.

[117] Ibid.

[118] The Commercial Register is the public register of all corporate entities existing under Slovak law (the law specifically sets out which legal persons and other entrepreneurs are obliged to register themselves in the Commercial Register). Associated to Commercial Register is the Collection of Deeds, which collects certain relevant corporate and financial documents of the entities registered with the Commercial registry. The law that regulates both the Commercial Register and the Collection of Deeds

*person conducting entrepreneurial activity based on a trade license (the "**freelancer**"), (iii) a person conducting entrepreneurial activity based on an authorization other than a trade license under specific regulations, (iv) a natural person undertaking agricultural production who is registered in the respective register under the specific regulation*."

Slovak company law recognizes two fundamental forms of business conduct: (i) companies; and (ii) freelancing by natural persons - entrepreneurs. In other words, any entrepreneur has two options how to structure a business: they may (i) establish a company; or (ii) apply for trade license, therefore becoming a freelancer.

Freelancing is regulated by Act No. 455/1991 Coll., Trade Licensing, as amended (the "**Trade Licensing Act**"). According to Section 2 of the Trade Licensing Act, the freelancing should be understood as "*continuous activity independently conducted by an entrepreneur in their own name and on their own account for the purpose of making a profit or in order to achieve a measurable positive social impact when it concerns the economic activity of a registered social enterprise under the specific regulation*." On the contrary, Section 3 of the Trade Licensing Act exhaustively stipulates activities that shall not be considered within the scope of a trade license and are regulated by specific legal acts, for instance, legal services, tax advisory, banking, etc.

The trade license is a formal state-issued document that is a prerequisite for any person, be it a freelancer or company, to conduct business. Only a natural person is capable of conducting business based on a trade license without establishing a business company. In such cases, their business activity is regulated by the Trade Licensing Act, under whose provisions they bear full liability for breaching their obligations with their entire personal property. On the other hand, the business may be conducted through companies as well. Entrepreneurial activities of business companies are regulated by the provisions of the Commercial Code. However, all business companies may be established and may conduct business under the condition of having obtained a trade license, either under the Trade Licensing Act or under other specific regulation similar to the act.[119]

Further in the text, we will focus only on companies as legal entities. As for freelancers, suffice it to say that a freelancer is a natural person who conducts business based on a trade license; business conducted by an individual with unlimited liability. The Commercial Code states that a company is a legal entity; however, the Commercial Code does not contain the definition of

is Act No. 530/2003 Coll. on the Commercial Register, as amended (in Slovak language: *Zákon č. 530/2003 Z.z. o obchodnom registry v znení neskorších predpisov*), (the „**Commercial Register Act**").

[119] Act No. 455/1991 Coll., Trade Licensing, as amended (in Slovak language: *Zákon č. 455/1991 Zb., Zákon o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov*), (the "**Trade Licensing Act**").

a legal person.[120] The only definition of the legal entity is embodied in the Civil Code. Under Section 18(2), a legal entity is an *"(i) association of natural or legal persons, (ii) a special-purpose association of assets, (iii) regional and local authorities, (iii) other subjects laid down by law."*

Taking into consideration the above, a company is a legal entity, specifically an association of natural or legal persons. The Commercial Code sets forth conditions and contains regulations of 5 legal forms of companies: (i) an unlimited company, (ii) a limited partnership, (iii) a limited liability company, (iv) a joint-stock company, (v) and a simple joint-stock company. The simple joint-stock company form has existed only since 1 January 2017.

In consonance with a publicly available statistic, 21,692 companies were established in 2017, which is the highest number in the last 4 years. In general, the most popular legal form of companies is a limited liability company, and not only for 2017. 19,142 limited liability companies were established in 2017, which represents 88.2% of all companies established that year. The joint-stock company holds the second highest popularity among legal forms of companies; however, the number of established joint-stock companies is considerably lower in comparison to limited liability companies.[121] In 2017, only 201 joint-stock companies were established, therefore merely 1% of all of them. The unlimited company and the limited partnership share third place with 0.3%, with 66 unlimited companies and 70 companies in the form of limited partnership having been established in 2017. Despite the fact that the simple joint-stock company is the youngest legal form of company, it is taking on the unlimited company and the limited partnership concerning popularity. During 2017, 54 simple joint-stock companies (0.25% of all enterprises) were established.[122]

The limited liability company and the joint-stock company are the most common forms of business association in Slovakia. The most possible reason justifying this fact is the limited liability, publicly well-known process of incorporation and, in the case of the limited liability company, low costs of establishment of the company and minimal registered capital.

It is also undoubtedly true that the simple joint-stock company seems to be an attractive legal form of business offering the lowest minimum registered capital requirements (the minimum amount is EUR 1), interesting options for setting relations between shareholders, and limited liability of shareholders.[123] However, the number of established joint-stock companies is

[120] Sec. 56(1), the Commercial Code.
[121] FinStat, Statistics on the number of companies which were established and winded up. Available online at: https://finstat.sk/analyzy/statistika-poctu-vzniknutych-a-zaniknutych-firiem.
[122] Ibid.
[123] Sec. 220t(2), the Commercial Code.

the lowest among all legal forms of business.[124] We assume that it may be attributed to the facts that the simple joint-stock company has existed only for 19 months and the process of incorporation is time consuming, complicated and expensive. Moreover, admittedly the simple joint-stock company is not well known to the general public.

2.2. Company forms

Unlimited company

Section 76 of the Commercial Code defines an unlimited company as *"a company in which at least two persons conduct entrepreneurial activity under their common business name and hold joint and several liability for the company's obligations with their entire property."* In other words, an unlimited company can be established by at least two founders who are liable for enterprise's obligations jointly and severally with their entire property. An unlimited company can be founded only for the purposes of profit making or to achieve positive social impact. In relation to register capital, it is not mandatory for an unlimited company to create it.[125] However, any monetary and non-monetary contribution of company's members shall become the company's property.[126]

The unlimited company is considered a personal type of company characterized as a partnership created on a contractual basis. The legal regulation does not require the creation of specific company bodies. The members of an unlimited company are obliged to act internally (conduct management of the company) as well as externally (to act on behalf of the company).[127] Given the described features of the unlimited company, the use of this business form is predetermined for small and medium-size enterprises and is typically used by professional service providers such as attorneys, tax advisors, etc.

Limited partnership

Under Section 93 of the Commercial Code, limited partnership means "*a partnership in which one or more members are liable for the partnership's obligations up to the amount of the unpaid parts of their investment contributions as entered in the Commercial Register (limited partners), and one or more members are liable for the partnership's obligations with their entire property (general partners)*." The limited partnership is a partnership of at least two persons, while at least one of them is liable for the partnership's obligations with all of their property ("**general partner**") and at least one of them is liable only up to the amount of their unpaid contribution ("**limited partner**"). A limited partner is obliged to make a contribution to the

[124] FinStat, Statistic on the number of companies which were established and winded up. Available online at: https://finstat.sk/analyzy/statistika-poctu-vzniknutych-a-zaniknutych-firiem.
[125] Sec. 58(2), the Commercial Code.
[126] Ibid., Sec. 80(1).
[127] Ibid., Sec. 81 and 85.

limited partnership in the amount determined in the agreement of association which shall not be less than EUR 250. In theory, limited partners' contributions are not considered as registered capital; however, in fact they are, whereas the contribution of at least one general partner is a requirement for the limited partnership's registration in the Commercial Register and the company shall not return contributions to general partners.[128]

In the same manner as the unlimited company, the establishment of the partnership's bodies is not mandatory. Unlike an unlimited company, not all of the partners of a limited partnership are entitled to act on behalf of the company and carry out the partnership's management; only the general partner(s) are entitled to manage the business of the limited partnership.[129] Other matters shall be decided jointly by the general partners and limited partners by majoritarian vote, unless the agreement of association stipulates otherwise.[130] Each general partner is entitled to act independently on behalf of the limited partnership.[131] The limited partners do not have an entitlement to act on behalf of the company as a statutory body, however, they can be entitled to act on behalf of the partnership as a partnership's proxy.[132] If a limited partner concludes a contract in the name of the limited partnership without being entitled thereto, they are liable for the obligations ensuing from the contract to the same extent as a general partner.[133]

Limited liability company

The limited liability company belongs to the group of capital companies such as the joint-stock company and the simple joint-stock company, which can be established also for other purposes than the purpose of profit-making entrepreneurial activities. The main features of the limited liability company are (i) the obligatory formation of registered capital, and (ii) company bodies.

The definition of a limited liability company is contained in Section 105 of the Commercial Code, according to which a limited liability company is "*a company whose registered capital is made up of its shareholders' previously determined investment contributions*." A limited liability company may be founded by one person and may have a maximum of 50 shareholders, while each of them is bound to make a monetary or non-monetary contribution into the company.[134] Moreover, Section 105a of the Commercial Code stipulates that (i) a single-shareholder limited

[128] Sec. 93(3), the Commercial Code.
[129] Ibid., Sec. 97(1).
[130] Ibid., Sec. 97(2).
[131] Ibid., Sec. 101(1).
[132] Ibid., Sec. 13.
[133] Ibid., Sec. 101(2).
[134] Ibid., Sec. 105(2)(3).

liability company may not be a single founder or a single shareholder of another company and (ii) a natural parson may be a single shareholder of no more than three companies.

The minimum value of the shareholders' contributions must be EUR 750. Liability of the company's shareholders is limited. A shareholder is liable for the company's obligations up to the amount of the unpaid proportion of their contribution registered in the Commercial Register.[135] In contrast to the unlimited company and the limited partnership, the formation of a limited liability company's registered capital in the minimum amount of EUR 5,000 is mandatory and represents a requirement for the company's registration in the Commercial Register.[136]

As was already stated, the establishment of limited liability company bodies is obligatory. A general meeting of shareholders, executive officers and a supervisory board represents the limited liability company bodies. The establishment of the general meeting of shareholders and the appointment of the executive officers are mandatory.[137] On the other hand, the establishment of the supervisory board is facultative and shall be determined in the agreement of association.[138]

Acting on behalf of the company is entrusted only to executive officers of the limited liability company and cannot be delegated to the general meeting of shareholders. The executive officers are also entitled to conduct the management of the company.

A limited liability company's shareholders are ex lege not entitled to act on behalf of the company and to manage the company's business. However, they can decide on business matters as members of the general meeting. Section 125 of the Commercial Code cogently states matters which belong solely to the general meeting's competence, for instance, decisions on increasing or reducing the registered capital, decisions on non-monetary contributions, decisions to wind up the company or change its legal form, decisions on the approval of a contract on sale of an enterprise or a contract on sale of a part of enterprise, etc. All of these decisions are considered to be important for the shareholders as residual owners of the company. Additionally, Section 125(1)k) of the Commercial Code stipulates that other issues may be entrusted to the powers of the general meeting by law, agreement of association or articles of association of the company and Section 125(3) of the Commercial Code specifies that the general meeting may reserve decision-making rights in matters which would otherwise fall within the powers of other bodies of the company. Both of the above-mentioned powers of the general meeting can have a substantial impact on the decision-making process within the company, which is, however, still

[135] Sec. 106, the Commercial Code.
[136] Ibid., Sec. 58(2).
[137] Ibid., Sec. 133 and 125.
[138] Ibid., Sec. 137.

heavily dependent on the executive officers of the company as the company body authorized to act on behalf of the company.

Joint-stock company

A joint-stock company is also defined by the provisions of the Commercial Code, specifically by Sections 154 – 220g. Section 154 of the Commercial Code defines a joint-stock company as a company "*whose registered capital is distributed into a certain number of shares with a certain nominal value*." According to the stated definition of a joint-stock company, the main feature of this business form is that the company's registered capital is composed of a certain number of shares. Pursuant to applicable law, the value of the registered capital of the joint-stock company, composed of the sum of the nominal values of all issued and/or subscribed shares, must be at least EUR 25,000.[139] A share represents the rights of the shareholder of the joint-stock company to participate in the company's management, its profit and in its liquidation balance after winding up of the company through liquidation.[140] A share of the joint-stock company may be issued in the form of a certificated security or a book-entered security.[141] Besides that, the joint-stock company may issue a type of share to which priority rights to dividends are attached.[142] These priority shares may also be issued as shares to which the right to vote at the general meeting is not attached. However, the owners of priority shares have all other rights attached to the shares. Moreover, the owners of priority shares shall have the right to vote, without restriction, at the general meeting which will decide on payment of the priority dividend.[143] However, Slovak law does not recognize a type of employee shares.

A joint-stock company may be a private joint-stock company or a public one. A public joint-stock company shall be considered as a joint-stock company whose shares have been accepted for trading on a regulated market.[144]

A joint-stock company may be founded by a single shareholder if the founder is a legal entity; otherwise there must be at least two founders.[145] Shareholders of a joint-stock company are not liable for obligations of the company. On the other hand, a joint-stock company is liable for breaches of its obligations with all of its assets.[146] Under applicable Slovak law, a joint-stock

[139] Sec. 162(3), the Commercial Code.
[140] Ibid., Sec. 155(1).
[141] Ibid., Sec. 155(2).
[142] Ibid., Sec. 159(1).
[143] Ibid., Sec. 159(3).
[144] Ibid., Sec. 154(3).
[145] Ibid., Sec. 162(1).
[146] Ibid., Sec. 154(1).

company may be established for the purpose of conducting entrepreneurial activities (involving profit making) as well as other purposes such as non-profit activities.[147]

In the same way as a limited liability company, a joint-stock company is also considered as a type of a capital company which is under the obligation to create company bodies: (i) general meeting, (ii) board of directors, and (iii) supervisory board. Unlike a limited liability company and its facultative creation of the supervisory board, a joint-stock company is under the mandatory condition to create all of the above-mentioned company bodies. The mechanism of acting on behalf of the company (company management) works similarly as with a limited liability company. Acting on behalf of the company and the management of business conduct are entrusted exclusively to the board of directors (and cannot be delegated to another company body).[148] The shareholder as an individual does not decide on questions concerning the day-to-day business of the joint-stock company. Shareholders may take part in the company's decision making/activities through their attendance at the general meeting. The general meeting decides on the most essential company matters defined by law which may have impact on the shareholders' residual ownership (for instance: deciding on the increase or reduction of registered capital, changing the articles of association, deciding on winding up the company and on change of legal form, deciding on transformation of shares form, and others).[149] Moreover, Section 191(1) of the Commercial Code stipulates that the board of directors decides on all company matters, provided these are not reserved by the Commercial Code or the articles of association to the powers of the general meeting or supervisory board. The company's supervisory board supervises the performance of the board of directors and the operation of the company's business activities. Unlike other legal forms of company, a joint-stock company is also under the obligation to ensure employees' participation in the company's supervisory board when the number of the company's employees exceeds 50.[150]

Simple joint-stock company

The regulation of another legal form – the simple joint-stock company – was introduced into the Commercial Code at the beginning of 2017. Taking into consideration the legal definition of a simple joint-stock company embodied in Section 220h(1) of the Commercial Code, a simple joint-stock company is a "*company whose registered capital is distributed into a certain number of shares with a certain nominal value*." Thus, it may be said that the simple joint-stock company is *de facto* a modified kind of joint-stock company with several specific discrepancies.

[147] Sec. 56(1), the Commercial Code.
[148] Ibid., Sec. 191(1).
[149] Ibid., Sec. 187(1).
[150] Ibid., Sec. 200(1).

In the same way as a joint-stock company, a simple joint-stock company is a company which has to create registered capital distributed into a certain number of shares. However, unlike a joint-stock company, a simple joint-stock company is under the obligation to create registered capital in the minimum amount of EUR 1, significantly lower than EUR 25,000 as is the case of a regular joint-stock company.[151] A dramatic decrease of the minimum registered capital requirement was justified by the need to open the market to startups by creating a new, more flexible and less demanding legal form. Besides that, a simple joint-stock company, differentiated from a joint-stock company, may distribute the registered capital only into book-entered securities (there is no option to issue certificated securities), while the entire value of the registered capital must be subscribed and all contributions must be paid up.[152]

A simple joint-stock company may be established only with the intention of the business being conducted by one person, regardless of whether it is a legal person or a natural person.[153] The Commercial Code does not prescribe a maximum number of shareholders for either a simple joint-stock company or for a joint-stock company. The shareholder is not liable for the company's liabilities either and the simple joint-stock company is liable for its obligations with all of its assets.[154]

The composition of a simple joint-stock company's bodies is the same as that of a joint-stock company. The only discrepancy between simple joint-stock company and joint-stock company bodies is the mandatory/facultative creation of the supervisory board. A joint-stock company must create the supervisory board mandatorily, while the creation of a simple joint-stock company's supervisory board is facultative.[155] Neither is a simple joint-stock company under the obligation to ensure employees' participation in the company's supervisory board when the number of the company's employees exceeds 50 as it is for a joint-stock company.[156]

The biggest benefit that the new legal company form – the simple joint-stock company – should have brought is leeway in issuance of different types of shares, including shares for employees and other natural persons performing activities for the company, and in a statutory option to conclude registered shareholders' agreements with registered special shareholders' rights.[157] Regulation of simple joint-stock companies also allows for the registration of shareholders' agreements, including specific rights, making them easily enforceable and more robust. By way of Section 220w of the Commercial Code, shareholders of a simple joint-stock

[151] Sec. 220t(2), the Commercial Code.
[152] Ibid., Sec. 220t(4).
[153] Ibid., Sec. 56(1) and 220t(1).
[154] Ibid., Sec. 220h(1).
[155] Ibid., Sec. 220ze(1).
[156] Ibid., Sec. 220h(4).
[157] Ibid., Sec. 220r.

company may agree on: (i) tag-along right (the right to join in a transfer of shares), (ii) drag-along right (the right to require a transfer of shares), and (iii) shoot out right (the right to require an acquisition of shares).[158]

Cooperative

Another type of legal entity covered by the Commercial Code is the cooperative. In compliance with Section 221(1) of the Commercial Code, a cooperative is "*an association of an unrestricted number of parties that is founded for the purpose of entrepreneurial activity or securing the economic, social or other needs of its members,*" thus explicitly providing that the conduct of entrepreneurial activities do not have to be the main purpose of cooperatives. Arising from the above, a cooperative is a group of an unlimited number of members who have established the cooperative for one or more of the listed purposes. A cooperative shall have at least five members or at least two members – legal entities. The membership shall neither preclude a cooperative's members from additional memberships or the termination of the membership nor affect the existence of the cooperative.[159] Members are not liable for the cooperative's obligation; the cooperative is liable for its obligation with all of its assets.[160]

The condition for establishing a cooperative is the formation of the registered capital from the membership participants – contributions, which is entered into the Commercial Register. The entered registered capital must be at least EUR 1,250.[161] The registered capital exceeding the amount registered in the Commercial Register is variable registered capital and it is also created from the cooperation members' contributions. The membership contribution is one of the requirements for creating membership in the cooperation. The nominal value of a cooperative's registered capital entered and variable registered capital must equal the sum of the nominal values of all membership contributions to the cooperative.[162]

A cooperative shall also create the following cooperative bodies: (i) the members' meeting, (ii) the board of directors, and (iii) the controlling committee.[163] Only cooperative members who are older than 18 years of age and the representatives of the legal entities that are cooperative members may be elected to the cooperative bodies. If a legal entity is a member of a cooperative, it is obliged to entitle a natural person to act on its behalf within the cooperative's body.[164]

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[158] Sec. 220w, the Commercial Code.
[159] Ibid., Sec. 221(3).
[160] Ibid., Sec. 222(1).
[161] Ibid., Sec. 222(3).
[162] Ibid., Sec. 223(2).
[163] Ibid., Sec. 237.
[164] Ibid., Sec. 238(1)(2).

Acting on behalf of the cooperative and deciding on all the cooperative's matters not reserved to another cooperative body belong to the powers of the board of directors. If it is required that a legal act must be undertaken by the board of directors in writing, the signatures of at least two members of the board of directors are required.[165] Section 239(4) of the Commercial Code stipulates the matters in the competence of the cooperative's members' meeting. The members' meeting also decides on other matters concerning the cooperative and its activity if stipulated by the articles of association or if the members' meeting has reserved the right to decide a certain matter.[166]

Applicable law regulates the bodies of a small cooperative – a cooperative that has less than 50 members – separately. A cooperative's articles of association may determine that the powers of the board of directors and controlling committee shall be executed by the members' meeting. In this case, the statutory body is the chairman or other members authorized by the members' meeting. Moreover, in cooperatives that have legal entities as members and which have less than 5 members, the articles of association shall determine the manner of decision-making process and the statutory body.[167]

Other legal forms

Besides the national legal forms, there are European legal forms of companies (supranational legal forms) as well as those regulated by special acts which stipulate the relevant European Union regulations.

As was already mentioned at the beginning of this chapter, there are also other legal entities – associations – regulated by the Civil Code and other specific legal acts, which, despite being entitled to perform business activities, are not considered to be companies and are not registered within the Commercial Register.

Sections 20f – 20j of the Civil Code define the main features and legal basis of an interest association of legal entities. In consonance with Section 20f of the Civil Code, legal entities may establish an interest association of legal entities with the purpose to pursue their interests or for other purposes, including entrepreneurial activities. An interest association of legal entities is considered a legal entity with its own legal personality which is liable for breaches of its obligations with all of its assets.[168] An interest association of legal entities is not obliged to create registered capital and any membership fee/contribution requirements are at the discretion of the association and its members. In other words, membership in an interest association of legal

[165] Ibid., Sec. 243(3).
[166] Ibid., Sec. 239(5).
[167] Ibid., Sec. 245.
[168] Sec. 20i(1), the Civil Code.

entities may or may not be dependent on the membership fee/contribution.[169] Other relevant sections of the Civil Code stipulate the fundamental legal framework for foundation documents, as well as the establishment and winding up of these interest associations of legal entities. On the other hand, the applicable provisions remain silent about the creation of bodies of the interest associations.

Other specific legal acts provide the legal framework for (i) civic associations, (ii) non-profit organizations, and (iii) foundations.

According to Section 2 of the Association Act, citizens of the Slovak Republic may establish a civic association and organize themselves within it. A legal person may also be a member of civic associations. However, no legal or natural person can be forced to join a civic association.[170] Despite the fact that a civic association can only be established with the primary purpose of conducting non-profit activities, the legal regulation does not prohibit entrepreneurial activities. However, the entrepreneurial activities of civil associations cannot be primary. The law concerning civil associations does not include provisions on association bodies and their governance.

The act on non-profit organizations provides the legal regulation for a non-profit organization. Under Section 2 of the act, a non-profit organization is "*a legal person [...] who provides services of general economic interests under a predefined level playing field for all users and whose profit cannot be used for the benefit of the non-profit organization's founders, members of bodies, or employees; the whole profit shall be used on securing the services of general economic interests*." As it arises from the definition of a non-profit organization, the organization must be established for non-profit purposes; however, Section 30 of the act stipulates that the organization's property is composed of, among other assets, earnings from its entrepreneurial activities, which means that a non-profit organization is also allowed to perform entrepreneurial activities.

In comparison with the legal regulations of interest associations of legal entities and civic associations, the legal framework of non-profit organizations is provided in broader details. The main discrepancy lies in the applicable legislation encompassing non-profit organization bodies and mechanisms of its governance, specifically financial management and accounting of the non-profit organization. Pursuant to Section 18 of the Act on non-profit organizations, bodies of a non-profit organization are: (i) the governing board, (ii) the director, and (iii) the supervisory board. The governing board is the highest body of the association. The first members are appointed by

[169] Sec. 20h(1), the Civil Code.
[170] Sec. 2(2) and 3(1), the Association Act.

the founders of organization. Its main tasks primarily include: approving the budget, approving financial statements, deciding on using the profit, appointing and dismissing the director and members of the supervisory board, and others.[171] The director is a statutory body of the non-profit organization who is entitled to act on behalf of the organization and decides on all the organization's matters that are not entrusted to other bodies of the organization.[172]

A foundation is a special-purpose association of property that shall support a public benefit purpose.[173] From the business point of view, the foundation represents the most specific form of legal entity which may perform entrepreneurial activities due to the fact that Section 29 of the Foundation Act exhaustively stipulates specific entrepreneurial activities which the foundation is capable of performing. The foundation may perform the following business activities: operation of a charity lottery; rental of real estate; organization of cultural, educational, social and sport events if the foundation property can be used more effectively and these activities are in compliance with the public benefit purpose of the foundation. Due to this restriction, foundations often create companies to conduct entrepreneurial activities to their benefit.

2.3. Corporate governance

Corporate Governance within Slovak company law in general

Corporate Governance under applicable Slovak company law focuses mainly on internal aspects of companies' governance and only in a very limited scope pays attention to other constituencies and stakeholders. Slovak company law deals with the establishment and incorporation of companies, their functioning and organizational structure, and the process of winding-up of companies. Besides that, Slovak company law deals primarily with issues linked to creditor protection, protection of business name, unfair competition, and matters concerning rights and obligations of the companies' bodies and their liabilities. However, the company law regulation does not specifically deal with the questions of sustainable development. Approaching the applicable law from the sustainable development point of view, it seems that the Slovak corporate governance model plays a rather limited role in promoting sustainable development within the business environment, but neither does it address this topic within the applicable and effective legal regulation.

Besides the above-mentioned regulation, in relation to the public joint-stock company, soft law plays an essential role as well. The Corporate Governance Code for Slovakia has an

[171] Sec. 19, the Act on Non-profit Organization.
[172] Ibid., Sec. 23(1).
[173] Sec. 2(1), the Foundation Act.

important place for the relevant applicable soft law.[174] In 2008, the Corporate Governance Code for Slovakia was introduced for the first time in Slovakia. Later, in 2016, the first and as yet the only amendment to the code was provided. The Corporate Governance Code for Slovakia covers the following sections:

- effective corporate governance of companies;
- rights of shareholders and their fair treatment;
- institutional investors, capital markets and other intermediaries;
- the role of parties involved in corporate governance;
- disclosure of information and transparency;
- liability of company bodies.[175]

The code operates in line with the "comply or explain" principle, which imposes on public joint-stock companies the obligation to comply with the principles embodied in the codex or to explain why the company breaches stipulated principles.[176]

Classification of the Slovak corporate governance model – two-tier vs. one-tier system in Slovak company law

The Slovak corporate governance legal regulation mainly recognizes a two-tier model of corporate board structure (joint-stock company),[177] even though the creation of a supervisory board is only optional for limited liability companies and simple joint-stock companies.[178] A one-tier system of corporate governance is possible only for the supranational form of a European company or European cooperative society.

Regarding the appointment and recall of directors, under Sections 133(4) and 194(1) of the Commercial Code, members of the board of directors of a limited liability company or joint-stock company are elected by the general meeting from among the shareholders or other persons for a period determined in the articles of association, not to exceed five years in the case of a joint-stock company (there is no term of office for members of the board of directors of a limited liability company).[179] The articles of association may determine that the members of a joint-stock company's board of directors be elected and removed by the supervisory board in the manner stated therein. On the contrary, members of the board of directors of a limited liability company

[174] Corporate Governance Code for Slovakia. Available online at: http://cecga.org/cg-code/?lang=en.
[175] Ibid.
[176] Ibid., page 7.
[177] Sec. 197, the Commercial Code.
[178] Ibid., Sec. 137 and 220ze(1).
[179] Ibid., Sec. 194(1).

must be elected and recalled exclusively by the general meeting and this power cannot be entrusted to the supervisory board.[180]

In connection with the joint-stock company, under Section 194(2) of the Commercial Code, the body that elects members of the board of directors shall also determine which member of the board of directors will be the chairman. If members of the board of directors are elected by the supervisory board, the persons elected as the first members of the supervisory board shall elect the first members of the board of directors before the application for registration of the company in the Commercial Register is filed.

Members of the board of directors (either of a limited public company or a joint-stock company) must be registered in the public Commercial Register (so-called de jure directors). In a joint-stock company, the board of directors is a collective body, whereas not all of the members must be registered within the Commercial Register as acting on behalf of the company. However, the duties of directors begin to apply as of the day of their election (if a later day is not stated). The registration in the Commercial Register has a merely declaratory character.

Until 2018, Slovak Commercial Code did not recognize the concept of a "shadow director" or a "de facto director." Only a formally appointed person was considered to be the director with all the attendant rights and obligations. The status of other persons who performed certain managerial and director-like tasks but who had not been formally appointed and registered was that of employees or contractors, depending on whether their relationship with the company was governed by an employment contract or a contract under commercial law.

However, a recent amendment to the Commercial Code brought about changes concerning the issues of directors of companies; specifically, the amendment incorporated the institute of shadow or *de facto* director into the Commercial Code.[181] The Commercial Code stipulates that "*a person who exercises the powers of the statutory body or member of the statutory body in actual fact without having been appointed or designated to perform such function also has the obligations of a mandatary. Such a person is particularly obliged to act with professional care in accordance with the interests of the company and all shareholders/members thereof. When breaching such obligations, they shall hold the same liability as the statutory body or member of the statutory body*."

Arising from the new legal regulation, a person who exercises powers of the director without having been appointed to the position of the company's director has the duties of a mandatory as well, namely to act with professional care in accordance with the company's

[180] Ibid., Sec. 133(4).

interests and all of the company's shareholders. In case of breaching those obligations, a shadow or *de facto* director is personally liable in the same extent as the formally appointed member of the company's statutory body.[182]

The explanatory memorandum to this amendment interprets the legislators' reasoning of this Commercial Code edition. Pursuant to the explanatory memorandum, the enactment of director duties and personal liability of the shadow or de facto director represents another attempt to combat the strictly formal appointment of directors , a dubious practice of "strawmen-like" directors of the company typically appointed to hide the true shareholders' interests and identity. The idea arises from the fact that the mere absence of being formally appointed to the function of director cannot eliminate the liability of a shadow or de facto director.[183]

At this point, we also provide a criticism of the lack of gender balance policies of the corporate boards. Currently, there are no national measures or policies in place or in preparation within Slovak company law that would attempt to address the unsatisfactory situation of women's underrepresentation. According to the data provided in the fact sheet of the European Commission dated July 2016, women represent only 14.3% of all members of Slovak companies' boards of directors. Some attempts to strengthen the voice of women – investors and business angels – take place through the projects of the Slovak Business Agency, a business-state administration platform organization set to improve the business environment.[184] Regardless, the situation is pitiful and missing any key stakeholder initiative that would drive a demand for policy change or at least open the discourse.

Interest of the company under Slovak law

A variety of stakeholders – shareholders, members of the board of directors and supervisory board, employees, customers, creditors and others – are active within and around a company. Every entity which is active within the company or cooperates within the company has certain interests which can differ or be the same as the interests of other entities involved within the company or the company itself.

A company as such cannot act for itself, hence the company acts through its statutory body, which is entitled to act on behalf of the company in all company matters. The statutory body's entitlement to act on behalf of the company is granted by law, while any limitation of the

[182] Mašurová, Angelika, Zodpovednosť štatutárov, faktických štatutárov a tieňových štatutárov kapitálových spoločností voči veriteľom spoločností podľa novej úpravy obchodného zákonníka a zákona o konkurze a reštrukturalizácii [Liability of directors, de facto director and shadow directors of capital companies against creditors of companies under new regulation of the Commercial Code and the Act on Bankruptcy and Restructuring], in *Miľníky práva v stredoeurópskom priestore 2018*, page 7.

[183] Explanatory Memorandum to Act No. č. 264/2017 Coll. amending the Commercial Code, special part, article I., point 15.

statutory body's power shall be ineffective and unenforceable in relation to third parties even if published in the Commercial Register.[185] In other words, the company shall be bound by the conduct of its statutory body exercising its authority even if the conduct of the statutory body exceeds the scope of the subject of company activities.[186]

Before the statutory body acts on behalf of the company externally, internal intent of the company must be created. Various stakeholders participate in the process of the company's internal intent creation – the board of directors, the general meeting, the supervisory board, other controlling bodies, employees and other stakeholders, which may have a relevant impact on the statutory body's external acting on behalf of the company.

However, as was stated above, the statutory body is the only company body which has the power to act on behalf of the company in all of its matters. From the sustainable development point of view, it is essential to identify whose interests the board of directors prioritizes in the conduct of legal acts in the name of company.

Pursuant to Sections 135a(1) and 194(5) of the Commercial Code, members of the company's statutory body are under obligation "*to exercise their powers with professional care and in accordance with the* ***interests of the company and all of its shareholders***." The company's directors must not give priority to their own interests, the interests of only certain shareholders or the interest of third parties over the company's interests. Legal diction of quoted sections of the Commercial Code defines a company interest as an interest of the company and of all its shareholders. Using an interpretation of these relevant sections, it may be asserted that in case of Slovak company law, company interest focuses on the interest of the company's shareholders.

As it was discussed, the above-mentioned sections 135a(1) and 194(5) of the Commercial Code impose two fundamental obligations on members of a company's board of directors: (i) duty of care (to act with professional care); and (ii) duty of loyalty (to act in accordance with the interests of the company and all of its shareholders). Sections 194(6)(7)(8)(9) and 135a(2)(3)(4)(5) of the Commercial Code stipulate the legal consequences of breach of duty on the part of a company's members of the board of directors. Members of the board of directors who breach their obligation while exercising their powers are under the obligation to compensate the damage that was caused to the company.[187]

[185] Sec. 13(4), the Commercial Code.

[186] Patakyová, Mária, Grambličková, Barbora, Spoločenská zodpovednosť obchodných spoločností a trvalo udržateľný rozvoj [Corporate Social Resposibility and Sustainable Development] in *Conflicts of Interest in Company Law*, Ján Husár, Kristián Csach (eds.), Wolters Kluwer, Bratislava 2018.; Sec. 13(3), the Commercial Code.

[187] Sec. 135a(2) and 194(6), the Commercial Code.

In order to establish a breach of a director's duties, it is sufficient to demonstrate that the director failed to exercise his or her powers with due professional care or in accordance with the interests of the company and all its shareholders.

However, while there is no generally accepted test for the breach of duty, the breach of the duty itself constitutes three main elements for establishing that a particular director is liable for damage: (i) damage; (ii) breach of duty of the director; and (iii) a causal link between the damage and the breach of duty. It must be noted that when analyzing the nature of breach of duty and liability, two distinct situations must be distinguished:

The company is the main entity which is entitled to enforce the liability claim against the director. There are certain exceptions – for example, under section 194(9) of the Commercial Code, the claims for damages that a company has against the members of the board of directors may be exercised by a creditor of the company acting in their name and on their own account, if they are unable to satisfy their receivable from the company's property.

When dealing with the matter of claims for damages against directors, the question of burden of proof arises. The prevailing opinion of academics is that the burden of proof in relation to directors' liability is borne by the director. In order to avoid liability, the director must be able to prove that he or she acted with due professional care and in accordance with the interests of the company and its shareholders.[188] The most frequent justification offered as to why the director should bear the burden of proof is that the liability regime for directors is special and stricter than the general regime.

However, as Ďuračinská has observed, there exist two rulings on claims for damages against directors of the Supreme Court of the Slovak Republic which are contrary to the prevailing opinion of the academics.[189] In both rulings, the Supreme Court confirmed that the basic principle of civil procedure, under which the claimant must prove their claim, also applies to cases concerning liability for damage, including the liability for damage of directors. In the context of litigation regarding the liability for damages, the obligation to prove the merits of the claim requires proving all of the elements that constitute liability for damages pursuant to the Commercial Code. Because the court decisions are not binding on the subsequent decision making of the courts, one cannot consider this issue settled, especially in the face of compelling arguments put forward by legal experts in academia.

[188] Patakyová, M. - Grambličková, B.: Country report: Slovakia In: Gerner-Beuerle, C. - Mucciarelli, F. - Schuster, E.P. - Siems, M.: 1. The Private International Law of Companies in Europe, Beck C. H., ISBN-13: 978-3406714573, will be published on 31 Oct. 2018.

[189] Ibid.

Sections 135a(3) and 194(7) of the Commercial Code set exemptions from the directors' liability for damages. The business judgement rule is applicable, and therefore a company's director shall not bear liability for damage if they can prove that they proceeded in exercising their powers with professional care and in good faith that they were acting in the company's interest and the interest of all of its shareholders. Members of the board of directors are also not liable for any damages caused to the company in executing a decision of the general meeting. However, these depicted exemptions shall not apply if the general meeting's decision is contrary to legal regulations, the agreement of association or articles of associations or if it concerns the obligation to file the petition in bankruptcy. Moreover, if the company has established a supervisory board, approval of the directors' conduct by the supervisory board shall not relieve them of liability.

Slovak company law also regulates any possible limitations of directors' liability for damages. The sections 135a(4) and 194(8) of the Commercial Code provide that agreements between a company and its executive officers excluding or limiting the company's directors' liability are prohibited. Neither the agreement of association nor articles of association may limit or exclude their liability.

The only way how the liability of members of a company's board of directors may be excluded or limited is for the company to (i) waive the claims for damages it has against its executive officers ex post, or (ii) conclude a settlement agreement with them three years after such claims arose, provided that the general meeting has consented to such waiver and that no shareholder or shareholders whose amount of investment contributions amount reaches 10% of the registered capital raise a protest against such decision at the general meeting within the minutes of the general meeting.[190]

Moreover, it must be mentioned that creditors of the company may claim damages that a company has against its directors if they are unable to satisfy their receivable from the company's property in spite of the fact that the company has waived claims for damages or concluded a settlement agreement with its directors. In such a case, creditors of the company claim their damages directly against the company's directors in their name and on their own account.[191]

Prospective incorporation of sustainability concerns into Slovak company law

As it arises from applicable Slovak company law, the issue of sustainable development does not have its own place within the legal regulation of Slovak companies. The question which remains to be asked is: How would it be possible to incorporate sustainable development into the

[190] Sec. 135a(4) and 194(8), the Commercial Code.
[191] Ibid., Sec. 135a(5) and 184(9).

decision-making processes of Slovak companies and whether there is a need to legally modify the duties of members of boards of directors.

By considering a model situation in which a company has appointed a director with a strong sustainability orientation, who takes sustainable development significantly into consideration, the possibility arises of a situation under which the company's director would be held liable for damages caused by the breach of their duty of care, provided that the shareholders had not declared such company interests (sustainable development) in the constitutional documents of the company (articles of association or bylaws) or in other documents.[192]

The depicted model situation highlights the fact that the current wording of the legal regulation concerning a company's decision-making process is not sufficiently effective from the point of view of sustainable development; in the case that the company's shareholders are not interested in sustainable development concepts, an action against the company's directors may be brought to court.[193] If the interests of sustainable development are not incorporated into the relevant company document (such as bylaws or the articles of association), then the matter of sustainable development is not a part of the interest of the company and its shareholders. Hence, if the company's director took sustainable development into consideration while acting on behalf of the company without it being embedded within the company's binding documents, the director's action would not be in compliance with the company's interests. Consequently, such action would represent a breach of duty of loyalty. In such a case, shareholders of the company are entitled to claim damages against the director.

On the other hand, this may open a discussion about incorporating interests related to sustainable development into a company's decision-making processes through the company's constitutional documents such as articles of association and bylaws. Taking into consideration the business environment in Slovakia, within which companies mainly follow legally enacted rules and principles, we believe that there is a need to clearly define the company's interests in favor of sustainable development, despite the fact that this concept did not succeed in Great Britain.[194]

[192] Patakyová, Mária, Grambličková, Barbora, Spoločenská zodpovednosť obchodných spoločností a trvalo udržateľný rozvoj [Corporate Social Resposibility and Sustainable Development] in *Conflicts of Interest in Company Law*, Ján Husár, Kristián Csach (eds.), Wolters Kluwer, Bratislava 2018.
[193] Ibid., page 43.
[194] Ibid.

2.4. Regulation of social enterprises and the social economy

We will not deal with the history of social entrepreneurship and the social economy at large in this report as the European Commission's country report on Slovakia from 2014 provides relevant and adequate information.[195] Suffice it to say that although an option to set up (or rather label) a social enterprise existed for many years following 2008,[196] the legal framework was unsatisfactory as the social enterprises setup under the framework lacked many of the social entrepreneurial features. Social enterprises were set up solely as WISEs (work integration social enterprises), thus extremely limiting their entrepreneurial potential. The original framework provided subsidies for employing disadvantaged jobseekers, often to the detriment of any market-based efforts to achieve sustainability of such enterprises (e.g., some reports claimed that subsidies covered up to 95% of the operational costs).[197] According to numerous published sources of information, these schemes were frequently fraudulent and misused for many years during the late 2000s.[198] As a consequence of these scandals as well as due to the lack of proper understanding of the concepts of social entrepreneurship, social economy and social enterprises have not had a good reputation.[199] There were no special infrastructure supportive schemes (such as social procurement), nor any substantial related public investment schemes. All in all, merely 96 registered social enterprises and another ca. 800 other entities active in social economy existed in 2014, a very small amount from the almost 451,000 companies, non-profits and other organizations established in Slovakia.[200] Moreover, very few social enterprises took the form of company, regulated by company law; the vast majority (750) of social enterprises took the legal form of non-governmental organization, which clearly limits the scalability and the market-based potential of social enterprises in Slovakia.[201]

In 2018, the new law on social economy and social enterprises has come into effect.[202] The law represents a substantial change to the previous, original framework of social economy.[203]

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[195] European Commission. A Map of Social Enterprises and Their Eco-systems in Europe. Country Report: Slovakia, 2014.

[196] Act No. 5/2004 Coll. on Employment Services and on Changes, as amended (in Slovak language: *Zákon č. 5/2004 Z. z. o službách nezamestnanosti v znení neskorších prepdisov*), (the "**Employment Services Act**").

[197] European Commission. A Map of Social Enterprises and Their Eco-systems in Europe. Country Report: Slovakia, 2014.

[198] Balogova, Beata, More strife over social companies scheme, *In SME.sk*, 2010. Available online at: https://spectator.sme.sk/c/20035893/more-strife-over-social-companies-scheme.html .

[199] CIREC, L'Économie Sociale dans l'Union Européenne, 2013 Available online at: http://www.eesc.europa.eu/resources/docs/qe-30-12-790-fr-c.pdf .

[200] Finstat database, 2018. Available online at: https://finstat.sk/databaza-firiem-organizacii.

[201] European Commission. A Map of Social Enterprises and Their Eco-systems in Europe. Country Report: Slovakia, 2014.

[202] Social Economy Act.

[203] The Act also provides a definition of social economy, which is understood as "*a set of productive, distributive or consumptive activities executed through the economic activity or non-economic activity independently on state bodies, with a primary objective to achieve positive social impact.*"

Although it maintains the labeling approach to registration of social enterprises as a formal indicator – a basis for exploiting economic benefits, it goes far beyond traditional WISEs and allows enterprises to provide socially beneficial services.[204] The list is exhaustible; other services would not be considered as socially beneficial under the definition of the law. Importantly, the Social Economy Act also indirectly amends the definition of entrepreneurship within the core company law code, the Commercial Code. Entrepreneurship was previously defined as a continuous activity performed independently by an entrepreneur on their own behalf and on their own responsibility for the purpose of achieving a profit. Currently, the additional purpose of a registered social enterprise to achieve a measurable positive social impact is also admissible.[205] The law also recognizes two types of generalized target groups, i.e., the public (publicly beneficial social enterprise) or the community (community-beneficial social enterprise). This division is relevant for the tax exemption policy, as is described below. This prescriptive approach is nevertheless limited as it does not allow individual entrepreneurs to decide on an impact in whatever domain they see fit, but only in the fields prescribed by law.

Enterprises, once registered in the registry of social enterprises administered by the Ministry of Labour, Social Affairs and Family, are allowed to reap multiple benefits such as tax breaks or easier access to public investment funding and grants. In order to qualify for registration, enterprises must be existing persons legally recognized in any legal form capable of providing goods and services on a market or non-profit basis.[206] A social enterprise must not be controlled (over 50% of voting rights) or financed (over 50% of financing) by the state and its bodies; however, this does not exclude other public law bodies, such as municipalities or regional governments, which are considered to be a part of the public administration but not a part of the state administration.[207] Such an entity must not perform economic activity exclusively for the pursuit of profit, but rather to achieve the objective of measurable positive social impact. In order to receive full benefits (incentives) of registration, a social enterprise must use 100% of its profit

[204] These services include healthcare provision, social help and humanitarian assistance, services related to spiritual and cultural values, protection of human rights and fundamental freedoms, education, upbringing and development of physical education, research, development, scientific-technical services and IT services, creation and protection of environment and protection of population's health, services supporting regional development and employment, and securing of housing, administration, maintenance and restoration of housing fund. See sec. 2(4) of the Social Economy Act. The Act also established the following types of social enterprises, according to their objectives: (i) WISE; (ii) social enterprise of housing; (iii) other social enterprise without any special considerations.

[205] Sec. 2(1), the Commercial Code.

[206] Civic association, foundation, non-profit organization, non-investment fund, purpose-oriented organization of church, company, cooperative, or natural person-entrepreneur who is an employer.

[207] This leaves an opportunity for a well-recognized and functioning models of social enterprises established by municipalities in Slovakia to reap the benefits of the law. See Zuzana Polackova. The Municipality as an Initiator of Social Entrepreneurship.

after taxation on achieving the social impact. Finally, social enterprises must include stakeholders within their governance structure.

The Social Economy Act requires changes to the governance structure typical for most companies in order to qualify for the registration; a social enterprise may decide whether to include stakeholders through the advisory committee or through democratic governance. An advisory committee is a special non-mandatory body composed of at least three members. Members must include an employee or a representative of the enterprise's target group and other members, such as consumers of goods and services provided by the enterprise, members of academia or other relevant stakeholder groups. The committee has the following rights, as put forth by the act: (i) the right to discuss any matters related to the enterprise's objectives, employees, decision making, change of control and governance structure, or other relevant and important issues; (ii) the right to information on the enterprise, its objectives and its financial and economic situation; (iii) the control rights, including the right to enter the enterprise's premises, gather information and documents, propose improvements or ask the management to rectify wrongdoings or implement improvements. Although these rights are rather strong, even in comparison to the control rights of typical supervisory boards under Slovak company law, there is no sanction and enforcement mechanism for the advisory committee and it is not clear how well these rights would be enforced. Nevertheless, the stakeholder-oriented approach represents a clear step towards sustainability.

The support of social economy takes form of two types of aid – investment aid and compensatory aid, whereas the extent of support is also dependent on the extent that the features of social enterprises, as described above, are adopted by a social enterprise. Only registered social enterprises which socialize 100% of their profits after taxation are eligible for all types of support, whereas other registered social enterprises and unregistered social enterprises have limited access to state support (e.g., they lack access to non-refundable financial contributions, direct subsidies and tax breaks).

Investment aid under the Social Economy Act is provided to social enterprises for the purposes of investment support or investment project preparation, as well as related advisory services. It takes the form of direct financial instrument (guarantees, loans or equity investments), support combined with financial instrument, conditionally refundable financial contribution, non-refundable financial contribution, subsidies for registered social enterprises, sale of public real estate property under market value and tax breaks.

Compensatory aid, on the other hand, is provided to a social enterprise if it is disadvantaged on the market as a result of its objective to achieve positive social impact. Compensatory aid under the act takes the form of financial instrument (guarantees, loans or

equity), support combined with financial instrument, non-refundable financial contribution and subsidies.

Finally, social enterprises receive easier access to public tenders under exemptions for social enterprises, as regulated by public procurement law (see below). Respective types of investment aid and compensatory aid are regulated by various separate laws.

The act also sets forth, besides formal prerequisites, certain substantial conditions for social enterprises in order to qualify for support. A social enterprise must not form a single undertaking, as defined by the de minimis regulation, with legal entities that are not registered social enterprises.[208] The act caps total labor costs as well as remuneration of individual employees; some exemptions can be provided by the ministry, although the conditions for such exemptions are not clearly mentioned in the law.[209] If an enterprise does not commit to utilizing 100% of its profits on social impact, it must report the list of ultimate beneficiary owners to the ministry. The act also provides certain obligations of social enterprises in credit taking, provision of services to related persons, or disposition of its property purchased by public support.

Although the new Social Economy Act clearly represents an improvement of conditions for social enterprises, its stringent conditions and occasional formalism may prove to be limited. It is too early to evaluate whether the law has helped to establish social economy as a significant segment of the economy.[210] To relate to the research object, companies have an opportunity to be set up as sustainable companies and even use the benefits of support provided by the Social Economy Act. However, the mere fact that an enterprise becomes a social enterprise does not guarantee sustainability of its production or operation, as the Act does not require any specific conditions to be fulfilled in terms of environmental sustainability from the enterprises. Unless the social enterprise decides to pursue environmental impact, which then becomes binding on it through the registration process, there will be not repercussions if it operates as a regular company – the freedom to choose a social impact does not guarantee that there will not be any conflicting negative and positive impacts.

Social enterprises are required to provide a method of measuring their positive social impact as a part of the registration application. There are no specifics or requirements for these

[208] Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.

[209] Labor costs must not exceed a sum equal to (i) 5 times labor costs of official minimum wage (~650 EUR/month on a cost basis) times the number of employees and (ii) 3 times labor costs of an average wage in Slovakia (~1350 EUR/month on a cost basis) times the number of employees. The highest salary for individual employee must not exceed 5 times the salary of the lowest salary paid to employees.

[210] There are no registered enterprises as of the time of writing, as the obligation to register arises on the 1st of January 2019.

methods; the ministry has the authority to review the method as a part of the registration process. The ministry also has wide discretion to review any precedent and consequent conditions for the social enterprises and eventually decide on revoking a registration if the enterprise repeatedly or grossly violates its obligations. Such principles-based regulation, without specifying conditions, is a double-edged sword. First, it allows for various methods of measurement to be deployed and trialed, especially if the ministry oversees the process in order to create methodological standards suitable for this market.[211] Second, it leaves an option for bureaucratic harassment and red tape, which is still the case within the Slovak public administration. Finally, social enterprises are obligated to produce financial reporting, just as other standard enterprises (primarily companies), and publish "*a measurable positive social impact*" within the register of social enterprises, administered by the ministry. Although the standards of financial reporting are rather high, as well as freely accessible to anyone online, it remains to be seen what standards of publicity will be provided by the register of social enterprises. The law is rather vague and thus the reporting on the social impact may be either very formal or uncontrolled. In any case, there is no obligation for registered social enterprises to report regularly on their social impact.

[211] Although, numerous standards have been developed abroad. The law does not refer to any standards methodologies.

3. Sustainability instruments and policies of financial law

3.1. Tax breaks

Slovakia has a rather well-developed tax administration, which represents one of the first and most important reforms that the country underwent in the late 1990s and early 2000s. The country is partially fiscally decentralized; although the competence to tax rests exclusively with the national parliament, and as Slovakia is a unitary state, municipalities and cities can, within statutory limits, regulate tax rates and certain tax exemptions with regard to local taxes. Centralized taxes include indirect taxes, such as VAT, and income tax, while decentralized taxes include primarily the real estate tax and several other, less prominent sources of revenue for municipalities.

Since 2004, the country has adopted a flat income tax rate of 19% for both natural persons and corporate income tax. The same rate was adopted for VAT. The flat-rate taxation was consequently revised for progressive taxation; currently the income tax rate is set at 19% for an income tax base of 176.8 times the sum of minimum living standard and 25% for the income tax base over this threshold.[212] The corporate tax rate is set at 21%. The tax system also includes special tax rates for separate tax bases, varying from 7% (taxation of dividends) up to 35% (withholding taxation of certain incomes).

In general, the taxation framework does not include any specific tax incentives in relation to environmental issues or sustainability considerations. However, there are certain socially-oriented tax breaks and a new set of tax breaks introduced under the umbrella of the Social Economy Act. We restrict this report to these special tax breaks and do not consider the rather widespread tax exemptions or tax reductions for social purposes, such as reduced VAT rates or various exemptions for non-profit organizations.

The Social Economy Act provides for certain tax breaks, both on income tax and optionally also on local real estate tax. The act allows municipalities to decrease or be completely exempted from taxation on any real estate (both land and buildings) owned by registered social enterprises. This exemption, however, is not very substantial as real estate tax is notoriously low in Slovakia.[213]

[212] The sum of minimum living standard is currently (July 2018) set at 205,07 EUR per month per person.

[213] See Act No. 582/2004 Coll. on local taxes and local communal waste and small construction waste charge as amended (in Slovak language: *Zákon č. 582/2004 Z. z. o miestnych daniach a miestnom poplatku za komunálne odpady a drobné stavebné odpady v znení neskorších predpisov*), (the "**Local Taxes Act**").

Furthermore, the Social Economy Act also puts forth a tax break on registered publicly beneficial social enterprises.[214] Tax breaks for this type of social enterprise allows them to reduce the tax on corporate income from economic activities (sale of goods and services) by the percentage of the enterprise's commitment to use its profits to achieve social impact, as prescribed in its charter or bylaws. The enterprise is obliged to use the sum of the tax break on achieving social impact within the year for which the tax break is applied; alternatively, if the enterprise fails to do so, it is obliged to transfer the "unused" proceeds to a separate bank account, and use it to procure tangible assets in the future.

3.2. Regulation of investors and financial markets

The Slovak capital markets are rather underdeveloped in comparison with other EU member states (especially the EU15, but also in comparison with other Visegrad countries – the Czech Republic, Hungary and more notably Poland), while the sound banking sector provides most of the finance to businesses. On top of banking, corporate bonds and other, mostly private financing provides the remainder of the corporate financing required by domestic firms.[215] In general, environmental concerns are usually taken into consideration by financing institutions only if mandatory, for instance as a part of an environmental impact assessment undertaken by projects requiring finance. There is no specific regulation of mutual banks, mutual insurance companies or social banking, although there is a social bank program of the largest foreign-owned bank, which claims to provide more favorable conditions to social projects, NGOs and social enterprises.[216] The program is realized as a part of regular banking services of the largest bank in Slovakia. CSR within the financial world is typically limited to smaller community projects and the support of community NGOs.

In this section, we consider the rules and regulations of investors and financial markets that are intended to support sustainability issues on the financial markets (both environmental and social objectives). We consider whether there are (i) any mandatory inclusions or exclusions of certain types of investments, (ii) special rules of transparency towards investors in relation to specific types of investments, and (iii) special rules of reporting the environmental, social and

[214] See Sec. 30d of Act No. 595/2003 Coll. on income tax, as amended (in Slovak language: *Zákon č. 595/2003 Z. z. o dani z príjmov v znení neskorších predpisov*), (the "**Income Tax Act**") effective as of January 1st 2019.

[215] National Bank of Slovak Republic, Statistics on issued securities, July 2018. Available online at: https://www.nbs.sk/sk/statisticke-udaje/financne-trhy/cenne-papiere/statistika-vydanych-cennych-papierov.

[216] See the webpage of Slovenská sporiteľňa, member of Erste group. Available online at: https://www.slsp.sk/sk/aktuality/2016/10/4/erste-group-spusta-krok-za-krokom-program-socialneho-bankovnictva .

governance aspects in relation to assets. We also pay attention to specific environmental, social and governance aspects, ethical rules and procedures where these are at least widely adhered to (e.g., as a result of market practice or sector self-regulation), and due diligence obligations. These research questions will be answered in relation to (i) private investors[217], (ii) mandated investment funds (regular collective undertakings and alternative investment funds)[218], (iii) pensions funds[219], (iv) banks[220], and (v) other financial institutions.[221]

The structure of the financial market of the Slovak Republic according to the ministry of finance:

1. Capital market, including securities dealers (investment firms under MiFID 2),[222] collective investment schemes (UCITSD and AIFMD) and pension schemes.
    a. MiFID firms (securities dealers in Slovakia) are entities providing investment services. Domestic regulatory framework is based on act no. 566/2001 Col. on securities and investment services (the "**Securities Act**"), which very closely reflects the requirements of MiFID, as well as other relevant capital market directives and regulations such as the Prospectus Regulation.[223]
    b. Collective investment schemes include three wide groups of investment schemes: (i) publicly available investment funds, investing into publicly traded assets, (ii) pension funds, mandatorily investing into publicly traded assets, and (iii) privately available alternative investment funds, typically investing into privately held assets.
2. Banking, under general banking regulation.

[217] This wide group of investors includes individual private investors, but also financial institutions dealing on their own account.

[218] As regulated by the Collective Investment Act which implements both Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the "**UCITSD**") and Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (the "**AIFMD**").

[219] As regulated by the following laws: the Old-Age Pension Scheme Act and Act No. 650/2004 Coll. on the Supplementary Pension Saving, as amended (in Slovak language: *Zákon č. 650/2004 Coll. o doplnkovom dôchodkovom sporení v znení neskorších predpisov*), (the "**Supplementary Pension Saving Act**").

[220] As regulated by the Banking Act implementing the relevant EU and international regulation of banking.

[221] Underwriters, securities dealers.

[222] Markets in Financial Instruments Directive No. 65/2014.

[223] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (the "**Prospectus Regulation**").

3. Insurance services.[224]
4. Other specialized services (such as exchange services) – *we do not pay attention to these services as they are mostly irrelevant to the research objectives*.
5. Intermediation of services (such as brokering banking contracts, etc.) – *we do not pay attention to these services as they are mostly irrelevant to the research objectives*.
6. Specialized financial market institutions (typically public entities, controlled by state bodies) – *we consider these institutions and their policies under the next section*.

3.2.1. Capital market regulation with regard to sustainability concerns

The Securities Act provides comprehensive regulation of the capital market in Slovakia, including the regulation of securities, investment services, securities dealers, central depositaries and public offerings.[225] Slovak securities law is traditionally very conservative in its regulatory approach and typically comports very closely with EU law, often disregarding the fact that EU securities law is often better suited for larger, more developed markets. Moreover, even the implementation is rather conservative, often in favor of stronger supervision of the market by the regulator, the National Bank of Slovakia. This approach can be partially explained by a very limited tradition of capital market investing in the past hundred years in general and no exposure to capital markets during the communist era. Moreover, privatization practices during 1990s did not help the population gain trust towards the system. Finally, a series of investment frauds during early 2000s once again jeopardized the fragile rejuvenation of public trust.

Slovak securities law does not specifically deal with any sustainability concerns and maintains a neutral position as to the investment choices of investors or offerings of the issuers, besides an implicit obligation to disclose a description of risks related to issuers of securities and investments into these securities, to be offered publicly within the EU. The Prospectus Regulation specifically states that "*environmental, social and governance circumstances can also constitute specific and material risks for the issuer and its securities and, in that case, should be disclosed.*"[226] MiFID-regulated investment firms and securities dealers in Slovakia – providers of investment services under the Securities Act – are currently not required to provide any specific information to their clients in terms of sustainability. However, this is likely to be changed in the future with

[224] Act No. 39/2015 Coll. on insurance and amending certain laws as amended (in Slovak language: *Zákon č. 39/2015 Z. z. o poisťovníctve v znení neskorších predpisov*), (the "**Insurance Act**").
[225] Bonds are regulated by a separate law, Act No. 530/1990 Coll. on bonds as amended (in Slovak language: *Zákon č. 530/1990 Zb. o dlhopisoch v znení neskorších predpisov*), (the "**Bonds Act**").
[226] Prospectus Regulation, rec. 54. See also ESMA. Consultation Paper. Guidelines on Risk Factors under the Prospectus Regulation. ESMA31-62-996, July 2018.

the upcoming European Commission initiative Financing Sustainable Growth. Under the initiative, the MiFID and IDD[227] delegated regulations shall be amended to require the investment firms to explain to clients the environmental, social and governance (ESG) implications of financial instruments in the selection (and recommendation) process used by firms, and to require insurance intermediaries and insurance undertakings distributing insurance-based investment products to take into account the ESG information of investment products and the ESG preferences of clients.[228] The Slovak regulation will thus have to follow the regulation set forth at the EU level.

Collective investment schemes, such as public investment funds or private alternative investment funds, do not have any specific obligations with regard to sustainability. Public investment funds mostly invest into assets traded on regulated markets, while some specific investment funds – special public funds (including alternative investment funds) – may invest into wider classes of assets, including precious metals, commodities or real estate. Private investment funds do not face stringent asset restrictions.[229] In any case, funds need to inform concisely on their risk exposure, although environmental risk exposure and social risk exposure are not specifically considered, except as a part of market or commercial risk. Moreover, no specific reporting rules of investment funds or their managers in relation to sustainability are prescribed by the law.

The pension scheme in Slovakia is based on three pillars. Under the first pillar, everyone mandatorily participates in the public social security system through the Social Insurance Agency, which is a statutory institution responsible for administering sickness insurance and pension security. This pillar is a pay-as-you-go pension scheme. The second pillar, introduced in 2004 as a part of a huge reform of the pension system, introduced a market-based system of partial privatization of pensions (fully-funded scheme). The second pillar has been a matter of heated political debate ever since and was at times unstable due to political struggles over the nature of the pension system. This pillar allows mainly younger insurees/savers to allocate a minor part of their social security contributions into privately managed pension funds which invest the funds into publicly traded stocks, bonds and other rather safe assets. The second pillar is voluntary – younger savers can opt into the system, but must not leave afterwards. The participation on the

[227] Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (the "**IDD**").

[228] European Commission. Communication from the Commission. Action Plan: Financing Sustainable Growth. COM(2018) 97 final, March 2018.

[229] Funds of qualified investors, as regulated by AIFMD; and the Collective Investments Act.

second pillar is rather widespread.[230] The third pillar is a mandatory addition for high-risk employees and a voluntary addition for other employees. It works similarly to the second pillar.

The regulation of the investment pillars of the pension scheme, the second and third pillars, is set forth in the Old-Age Pension Scheme Act and the Supplementary Retirement Savings Act, respectively. We reviewed the limitations and prescriptions of the investment policies of funds created under these acts and the information duties owed to the insurees.

Neither the second nor third pillars provide for limitations or prescriptions of investment policies that would lead towards considering sustainability issues beyond the fact that these funds have to be invested into regulated assets, with a majority of funds invested into publicly traded assets.[231] This situation is also reflected by the information duties, which include duties of the pension funds managers to provide publicly accessible information on funds' performance, including market risk, geographical risk, currency risk and other data, but do not include any mandatory disclosure of environmental or social risks.[232]

3.2.2. Banking, under general banking regulation

The vast majority of the banking market in Slovakia is owned by foreign-controlled banking groups, with only three smaller banks controlled by local financial groups and one state-owned and controlled bank specialized on development and guarantees.[233] The majority of the banks belong to larger, typically Central European banking groups such as the Raiffeisen, Erste or Intesa groups. Banks are regulated by the Banking Act, which includes the EU banking regulation requirements. Unlike the neighboring Czech Republic, with which Slovakia shared a legal regime for almost 70 years until 1993, the Slovak banking regulation only allows for a traditional commercial banking license. The Czech regulation allows the existence of credit unions, also supervised by the Czech National Bank.[234]

As of now, the banking regulation, including the industry self-regulatory codes,[235] does not impose any specific requirements on banks related to sustainability concerns, besides implicit

[230] Almost 1,5 million savers save within the second pillar (out of 5,5 million total population (including current pensioners)). The capitalization of the private-based second pillar is more than 8 billion euros. Data as of July 2018.

[231] Sec. 53, 53a and 53b, the Supplementary Pension Saving Act; and Sec. 80 and 81, the Old-Age Pension Scheme Act.

[232] Sec. 65, the Supplementary Pension Saving Act; or similarly Sec. 107, the Old-Age Pension Scheme Act.

[233] Data of the Slovak Banking Association and the National Bank of Slovakia (NBS). As of July 2018, there are 27 active banks, i.e. the banks with the NBS authorization in Slovakia (12), or foreign banks, i.e. banks active under the single passport rule (15).

[234] As of July 2018, there were 10 credit unions and 46 banks and foreign banks authorized to provide banking services in the Czech Republic. See the Czech National Bank database.

[235] We reviewed the Code of Ethics of Banks in the Area of Consumer Protection.

usage of environmental, social or governance concerns into their risk assessments. Similarly to the capital market regulation, this is likely to change due to the EC initiative Financing Sustainable Growth mentioned above. In relation to sustainability concerns, it is also noteworthy that banks active in Slovakia and their groups are typically not signatories of voluntary public initiatives such as the UNEP Finance Initiative[236] or the Equator Principles.[237]

3.2.3. Insurance services regulation with regard to sustainability concerns

There are no specific obligations of insurance companies with regard to environmental or social concerns, or sustainability issues at large, within Slovak commercial insurance law. Insurance companies must invest according to the rules of prudential investing, which mandate them to properly evaluate risks, which involves environmental risks, but only as far as they evaluate them as market or commercial risks. No specific reporting of such risk is required.

3.3. The role of the state as an investor

Slovakia does not have a sovereign wealth fund ("**SWF**") in the narrow meaning of the term, although it does have investment vehicles resembling and fulfilling some of the typical functions of an SWF.[238] The vehicles most resembling SWFs are the Slovak Guarantee and Development Bank, a.s. (joint-stock company with a specialized banking license) and its subsidiary, the Slovak Investment Holding, a.s. (the "**SIH**"), a licensed alternative investment fund manager which manages National Development Fund I, s.r.o. and National Development Fund II, a.s., as well as another licensed alternative investment fund manager, the Slovak Asset Management a.s. The SIH manages and distributes financial instruments from European funds, such as the European Social Fund, the Cohesion Fund and the European Regional Development Fund (the "**European Funds**"), as local manager, but it increasingly invests state funds.[239]

[236] As of July 2018, none of the banking groups active in Slovakia are signatories of the UNEP Finance Initiative. Available online at: http://www.unepfi.org/psi/signatory-companies/ .

[237] Only KBC group is a member of the Equator Principles Association. Available online at: http://equator-principles.com/members-reporting/ .

[238] For comprehensive overview see Simone Mezzacapo. The so-called "Sovereign Wealth Funds": regulatory issues, financial stability and prudential supervision. European Commission, Economic Papers 378, April 2009.

[239] Based on the publicly accessible sources, SIH is a fund of funds for investments of parts of several ministries' allocations of European Funds, such as the Ministry of Environment, Ministry of the Interior, Ministry of Agriculture and Rural Development, Ministry of Labor, Social Affairs and Family, and the Ministry of Education, Science, Research and Sport.

Based on our policy research as well as direct consultations with state authorities,[240] we conclude that Slovakia does not have a unified investment policy; the instruments operated in Slovakia have program-specific investment policies without any cross-cutting regulations. We understand the state investment policy as a coherent set of laws, regulations and practices deployed to reach specific investment objectives of public financial resources – in this section, we understand the state investment policy to concern refundable financial resources, to differentiate from general public investments into infrastructure and public services. The state investment policy informs respective investment policies of implementation of specific financial instruments and vice versa. A financial instrument's investment policy is a description of the investment objectives achieved by the fund property and the planned means of achieving them.[241] An investment policy should be distinguished from an investment strategy, which is understood as a strategic allocation of property within a fund and the investment techniques necessary for due and effective realization of the investment policy.[242]

The state investments take place as part of various policies, some related to the EU programs, some national. The main legal framework is set by the act on financial instruments financed from European structural and investment funds (the "**Act on Financial Instruments**").[243] The act is specifically related to the funding period of the 2014-2020 multiannual financial framework and the distribution of European Funds from this framework, but in the case of joint programs, also from the state budget.

The financial instruments deployed under the act represent refundable financial support provided on a complementary basis from the Union budget to address one or more specific policy objectives of the Union. These instruments take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and may, where appropriate, be combined with grants.[244] The instruments are distributed through state-owned asset managers (administering the holding fund of funds) and tendered financial intermediaries who operate individual specialized funds on a market basis (SMEs, social enterprises, etc.). Currently, in

[240] We undertook a series of freedom of information queries, addressed to ministry of finance, ministry of economy, ministry of agriculture, ministry of development and the office of the deputy prime minister for investments. None of the ministries or office had any knowledge about a coherent investment strategy of the state.

[241] Sec. 3(w), the Collective Investment Act.

[242] Ibid., Sec. 3(x).

[243] Act No. 323/2015 Coll. on financial instruments financed from European structural and investment funds, as amended (in Slovak language: *Zákon č. 323/2015 Z. z. o finančných nástrojoch financovaných z európskych štrukturálnych a investičných fondov v znení neskorších predpisov*), (the "**Financial Instruments Financed from European Funds Act**").

[244] Art. 2(p), the Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (the „**Regulation 966**").

Slovakia, the financial instruments take the form of venture capital, portfolio guarantees or portfolio risk-sharing loans, provided to Slovak companies – typically startup ventures, SMEs or social economy subjects.

The main concept of these financial instruments is to allow for meaningful and market-based combination of public and private capital investments. Such combination represents a useful form of leverage of private capital on publicly relevant investments and deployment of private expertise in identification of relevant investment opportunities. Moreover, market deformation with public investments is significantly reduced if the risk is shared by private investors. Finally, these investments are supposed to create a positive spillover effect on the capital market.[245]

As the law currently does not stipulate any specific environmental, social or sustainability features or conditions to be put forth within the investment policies of the intermediaries, we reviewed the financing agreements and investment strategies of these funds to learn whether any specific requirements regulate the investment decisions. Although the EU funds have their priorities – the investments should add to smart, sustainable and inclusive growth within the EU – and thematic ex ante conditionalities, the responsible state bodies, when preparing the programs, must account for any non-conformity of these priorities and conditionalities with any cross-cutting sustainability requirements, which can be considered a significant gap in sustainability efforts.[246] General ex ante conditionalities provide for anti-discrimination, gender, disability and EIA conditions of the programs, but only marginally translate into fund investment strategies.

The current funding priorities of the Slovak Investment Holding, based on the EU funds priorities, are energy and transportation, energy efficiency, waste management, urban development, SMEs and the social economy. Under the SME program, which provides refundable financing through direct equity or quasi-equity instruments and loan instruments, the investments are oriented towards supporting industrial production and services, including knowledge-intensive services and new progressive sectors. The fundamental logic of these investments is to provide venture capital where private venture capital typically does not have sufficient intrinsic motivation or incentives to invest and to mobilize private capital as co-investors with the public scheme.

[245] Government of the Slovak Republic. Procedure of implementation of financial instruments through the Slovak Investment Holding in the programming period 2014-2020. Approved material 2013. Available online at: http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=23125 .

[246] Annex XI Part 1, Regulation 966.

The investment policy and strategy of the SIH's respective funds differ based on the objectives of the financing program. For instance, a fund financed from the operational program Research and Innovation must be compliant with its specific objectives, i.e., it should primarily aim to improve the knowledge triangle – education, research and innovation – through a meaningful cooperation between the academia, research and business sectors. Sustainable development is mentioned only as an overall objective towards which Research and Innovation projects lead. The main issue with this approach is that there are no specific cross-cutting sustainability concerns included within the fund's investment policy and strategy. Moreover, measurable indicators set to evaluate the success of an investment and a program do not include any specific sustainability indicators. A similar approach is used in all of the reviewed Financing Agreements[247] – the situation is, somewhat expectedly, significantly different in the implementation of the operational program Human Resources, operated by the Ministry of Labour, Social Affairs and Family and the Ministry of the Interior, and the operational program Quality of Environment, operated by the Ministry of Environment.[248] The objectives of these programs are much more aligned with the overall objectives of sustainable development, which leads to subsequent alignment of the investment policies and deployment of indicators of the respective funds.

There are some limitations as to the portfolio of purposes for enterprises and projects; enterprises and projects established with the following purposes are repeatedly excluded from investments:

1. Nuclear power plant decommissioning or construction;
2. Investment into airport infrastructure (if unrelated to environment protection or unaccompanied by environmental impact mitigation investments);
3. Illegal economic activities;
4. Production and sale of tobacco products and alcohol distillates and similar products;
5. Financing of the production and sale of arms and ammunition of all kinds;
6. Operating a casino or other similar facilities;
7. Research and development or technical improvement related to electronic data applications focused on: (i) support of any of the above-mentioned activities; (ii) internet gambling or online casinos; (iii) pornography; or related to obtaining illegal (i) access to electronic databases; (ii) downloading of electronic data providing support for financing

[247] See footnote No. 239.
[248] Detailed structure of the funds can be viewed within the annual report of the SIH. Available online at: http://szrbam.sk/data/files/szrb-am-annual-2016-sk-14.pdf .

research, development or technical improvement related to (i) human cloning for research or therapeutic purposes or (ii) genetically modified organisms.[249]

Export-Import Bank of the Slovak Republic

The Export-Import Bank of the Slovak Republic (the "**Eximbank**") is a specialized government agency created to support foreign trade operations of exporters and importers with the objective of increasing the competitiveness of domestic goods and services as well as supporting mutual economic exchange of Slovakia with abroad.[250] The Eximbank is not a bank, insurance undertaking or reinsurance undertaking, but rather a public agency regulated by a specific law and its special corporate governance. It provides financing and insuring of export and import loans, as well as provides guarantees and other related services.

When providing its export/import support, the Eximbank is obliged to take into consideration employment support, regional development, environmental protection and the support of investments into new technologies and related infrastructure.[251] However, no specifics as to how this consideration is actually implemented are provided within the law. Although respective financing products are regulated differently, the Eximbank has a general policy on the evaluation of its investments' impact on the environment and human rights performance, based on the Recommendation of the OECD Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence.[252] The evaluation is related to export facilities with maturity over 2 years. The OECD Recommendation was implemented into the Eximbank's directive in 2016.[253] Under the directive, the Eximbank evaluates loan or insurance applications based on the following criteria:

1. Connection of the application to the existing operation;
2. Export to the location in proximity or within the sensitive area;
3. Human rights violation risk caused by the export;

[249] These exclusion criteria are repetitively occurring in various calls for financial intermediaries by the SIH. See, for instance, a recent call from 2018. Available online at: https://www.uvo.gov.sk/vyhladavanie-dokumentov/detail/934949.

[250] Sec. 1(3), Act No. 80/1997 Coll. on the Export-import bank of the Slovak Republic, as amended (in Slovak language: *Zákon č. 80/1997 Z. z. o Exportno-importnej banke Slovenskej republiky v znení neskorších predpisov*), (the "**Eximbank Act**").

[251] Ibid., Sec. 1(4).

[252] OECD. Recommendation of the OECD Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, 2016.

[253] The Procedure of Evaluating the Impact of Export on the Environment of the Target Country, as adopted by the Bank Board of the Eximbank on 14 July 2016. Available online at: https://www.eximbanka.sk/slovenska-verzia/medzinarodne-vztahy/ochrana-zivotneho-prostredia/zakladna-informacia-k-hodnoteniu-vplyvov-vyvozu-a-investicii-na-zivotne-prostredie-a-ludske-prava.html?page_id=447 .

4. The share of Eximbank is equal to or higher than 10 million special drawing rights (the "**SDR**");
5. The object of export is identified directly or indirectly within the list of sensitive areas and sectors.

The evaluation leads to classification into three categories A to C, whereas the classification is based on the environmental policies of the World Bank. Exports under category A can presumably have severe negative impact on the environment or negative social impact, whereas this impact typically goes beyond the area of export. Category B represents a less severe environmental or social impact which can be contained within a certain area – all applications that cannot be confidently categorized under A or C belong to this categorization. Finally, category C represents minimal or no negative impact.

Exporters whose applications classified as category A are required to provide an additional assessment which unequivocally concludes that the impact satisfies environmental limits and criteria established by joint rules. The assessment is published. Under category B, looser impact assessment must be provided to the Eximbank. Exports under categories A and B must provide regular reports to the Eximbank. Nevertheless, Slovakia did not report any projects within categories A and B during 2013 and 2015.[254]

3.4. The role of the state as a shareholder

In 2002, the government prescribed a special regime for the execution of shareholders' rights, composition of the articles of association as well as the reporting policy by line ministries acting as shareholders in state-controlled enterprises.[255] The objective of the model articles of association was to regulate specific characteristics of fully state-owned joint-stock companies in such a way that effective and transparent exercising of shareholder rights and effective and transparent asset management would be guaranteed.[256]

The common principle applied within the model articles of association are as follows:

- strong position of the general meeting in relation to the company's management;
- strengthening supervision of shareholders over the disposition of the company's assets;

[254] See OECD webpage. Available online at: http://www.oecd.org/tad/xcred/category-a-and-b-projects.htm.
[255] Model articles of association of fully state-owned joint-stock companies. Available online at: http://www.rokovanie.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=13880.
[256] Report to the proposal of model articles of association of the fully state owned joint-stock companies.

- strengthening personal liability of members of company bodies;
- transparency of financial management and of the company's property disposition;
- professionality of statutory board members and motivation of company bodies' members.[257]

The final version of the approved model articles of association sets specific regulation of powers of the general meeting, the supervisory board and the statutory body (board of directors). Moreover, the model articles of association also deal with questions concerning business plans of fully state-owned joint-stock companies and questions regarding registering company documents in the public register of company records, the Collection of Deeds.

The first point of the model articles of association stipulates the powers of the general meeting identically with the provisions of the Commercial Code for joint-stock companies (default statutory regime) with additional extended powers over certain matters.[258]

The second point of the model articles of association sets the powers of the supervisory board, which should be as follows:

- approving processes favoring the material status of members of the board of directors and persons close to them;
- deciding on the provision of any guarantee with a value from EUR 33,193 to EUR 165,969;
- approving any lease of the company's property exceeding a 1-year time period;
- approving the purchase and sale of the company's movable and immovable assets with the value from EUR 33,193 to EUR 165,969.

In relation to powers of members of the board of directors, the model articles of association determine what members of the board of directors should be prohibited from doing.

[257] Common principles for functioning of fully state-owned joint-stock companies applied within the model articles of association.

[258] The model articles of association extends the scope of powers of the general meeting in comparison to powers set by the Commercial Code. The model articles of association extends powers to following matters: approving management agreements of members of company bodies; deciding on remuneration of members of the board of directors and the supervisory board; approving statutes of the supervisory board; approving company's business plan and long-term concept of business development; approving a contract on the transfer of an enterprise or a part of an enterprise; approving monetary and non-monetary contributions into other legal entities; approving purchase and sale of movable and immovable assets with a value exceeding EUR 165,969; approving purchase and sale of shares of other companies with a value exceeding EUR 165,969; deciding on the provision of a guarantee to a third persons with a value exceeding EUR 165,969; and others.

However, the regulation does not significantly differ from the statutory regulation provided in the Commercial Code.[259]

The rather outdated policy framework has not been adjusted to current requirements and must be interpreted as a missed opportunity for the state as a major shareholder to realize its sustainability perspective. The prescription of execution of shareholders' rights does not deal with any specific sustainability concerns or objectives. Moreover, the reporting is limited to factual reporting and "*the evaluation of the companies' activities and analysis of their economical results, on the basis of which the personal involvement of the companies' management could be evaluated.*"[260] This indicates that besides economic performance, corruption and governance of state-owned companies are of main concern, which is in line with the overall levels of perceived corruption. However, it also points to the fact that no real sustainability in terms of environmental and social performance is required centrally from the government.

State enterprises

A specific regime of corporate governance is put forth for state enterprises, which are enterprises regulated outside the Commercial Code, by the act on state enterprises.[261] A state enterprise is a producer of goods and services which performs its business activity independently and at its own risk – there are currently only 21 active state enterprises and 145 in liquidation or in a long-term process of wind-up. State enterprises were set up throughout the communist regime and in the 1990s as a legal form of production enterprise. The form was taken over by state-owned joint-stock companies, which have clearly become the legal form of choice for the state. Although the legal form is not very relevant today, we mention a specific obligation of the state enterprises to protect the environment and the citizens' health as stipulated by the act on state enterprises. During their economic and social activity, enterprises are required, to the maximum possible effect, protect the environment and nature against any detrimental effects the enterprise's production may have. Enterprises must use their own resources to finance and realize measures oriented towards rectifying any damages they caused, as well as to undertake any available measures to prevent such damages to the environment and citizens' health to occur.

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[259] Pursuant to point 4 of the model articles of association, the director must not: conclude, in his or her own name or on his or her own account, business deals related to the company's entrepreneurial activity; mediate the company's business deals for other parties; participate in the entrepreneurial activity of another company as a shareholder; unless he or she is a shareholder or member of the cooperative and informs about it a person exercising rights of shareholder; perform activities as the statutory body or a member of the statutory body of another legal entity, unless it is a legal entity in the entrepreneurial activity of which the company in which they exercise the powers of executive officer participates.

[260] See the footnote No. 257.

[261] Act No. 111/1990 Coll. on State Enterprises, as amended (in Slovak language: *Zákon č. 111/1990 Zb. o štátnom podniku v znení neskorších predpisov*), (the „**State Enterprises Act**").

Enterprises must also build environment protection facilities and operate them at their own expense.

3.5. The role of the state as a public procurer

Public procurement is a notoriously problematic field of public policy in Slovakia.[262] Long considered a prime opportunity for corruption,[263] public procurement law has undergone numerous changes to tackle repeatedly occurring problems such as the prevalence of single-bidder tenders in some fields (e.g., healthcare); implicit collaboration of some transnational corporations with local bidders tied to political elites, artificial technical barriers to participation in tenders, lack of trust in public procurement from the public and businesses or, previously, lack of properly published data on public tenders. These issues in turn lead to additional red tape and over-bureaucratization, which necessarily increases the costs of the whole system, while not really curbing the problems. These problems indicate that the country is not able to properly use public procurement even for the primary function it should serve – provision of goods and services for the administration or to the public, under the principle of value for money. In turn, that means that public procurement can hardly be used as an efficient instrument for achieving other types of values, such as supporting environmental or social objectives, under green procurement concepts.

Nevertheless, the country has adopted a National Action Plan on Green Public Procurement,[264] as well as a recent change to public procurement law, introducing socially responsible procurement, connected with the Social Economy Act. Although the National Action Plan on Green Public Procurement achieved certain results, it is disputable whether the selected indicators and methodology proved a strong positive impact on environmental aspects. Green procurement was applied on about 8% of contracts and on 33.4% of contractual value on average

[262] For a comprehensive overview of the recent procurement policy strategy see: OECD. Development and implementation of a national e-Procurement strategy for the Slovak Republic, 2017. Available online at: http://www.oecd.org/gov/public-procurement/publications/slovakia-e-procurement-strategy.pdf .

[263] See, for instance, Vlach, Jiří, Nemec, Juraj, *Verejné obstarávanie vo väzbe na korupciu a transparentnosť* [Public procurement in relation to corruption and transparency], Transparency International Slovensko, 2018. Publicly available at: http://www.transparency.sk/wp-content/uploads/2010/01/030807_verej.pdf; or Furmas, Alexander, Transparency Case Study: Public Procurement in the Slovak Republic. Sunlight Foundation, 2013. Publicly available at: https://sunlightfoundation.com/2013/08/12/case-study-public-procurement-in-the-slovak-republic/. Both sources accessed in July 2018.

[264] The first action plan on green public procurement established policy framework for years 2007-2010, the second action plan for years 2011-2015. Current action plan is set for years 2016-2020. Available online at: http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-205132?prefixFile=m .

annually for years 2011-2015.[265] As will be seen below, these indicators do not really say much about achieving sustainability or environmental objectives, as the green procurement criterion is only very loosely defined and it suffices to add a superficial criterion into public tender conditions in order to claim the procurement was "green." This methodological shortcoming makes it difficult to evaluate the successfulness of the green procurement progress. Furthermore, even the third National Action Plan claims that a green procurement trend cannot be definitely confirmed as the performance does not have an increasing tendency for consecutive years.[266]

The green procurement initiative in Slovakia is based on the EU public procurement directives, namely Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors, as well as the repealing of Directive 2004/17/EC, the repealing of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and the repealing of Directive 2004/18/EC and Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts. These directives allow for integrating environmental, social and innovation characteristics into technical specifications, using environmental and social contractual conditions and criteria, as well as requiring economic actors to prove fulfillment of their environmental obligations.

Applying these additional considerations into public tenders unequivocally seems to be a positive solution. Yet, public procurement in Slovakia has developed, due to long-term problems with (perceived) corruption, to accept price as the main indicator and criterion for public tenders. The reason for this rests with the fact that public procurers have had a tendency to use additional and subjective criteria to exclude competition or justify their selection.[267]

Currently, the Public Procurement Act[268] provides for the following obligations of public procurers: (i) contracts for energetically significant goods must include requirements for maximum effectiveness and maximum class of energetic efficiency, based on specific laws; and (ii) contracts for large transportation vehicles must evaluate the energetic and environmental impact of the vehicles' operation through their life-cycle. Furthermore, public procurers are allowed to consider the following environmental aspects in their tenders: (i) applying the

[265] The third National Action Plan on Green Public Procurement – the data is the non-weighted average of annual performances over 2011-2015.

[266] The third National Action Plan on Green Public Procurement, page 28.

[267] Admittedly, the abuse of procurement criteria is still an ongoing and widespread practice in Slovakia, although the mechanism of exclusion of competition takes place *before* the selection through failure to meet the conditions of procurement as such. Such competitors are then disqualified from the tender and their offer is not even considered.

[268] Act No. 343/2015 Coll. on Public Procurement, as amended (in Slovak language: *Zákon č. 343/2015 Z. z. o verejnom obstarávaní v znení neskorších predpisov*), (the "**Public Procurement Act**").

conditions of environmental management or other valid environmental certification in showing technical and professional capacity; (ii) applying technical environmental specifications within the tender conditions; (iii) evaluation criteria may require specific branding as proof that goods or services correspond to specific environmental, social or other characteristics stipulated by the Public Procurement Act;[269] and (iv) specific contractual conditions may require environmental considerations. The act furthermore allows the evaluation of offers based on three methods, the best ratio of price and quality (including environmental characteristics), lowest price, or life-cycle costs under the cost-effectiveness method. Under the best ratio of price and quality method, various qualities may be considered, such as environmental or social perspectives, but mainly the technical additions, esthetical or functional qualities, accessibility, innovativeness and many other qualities.[270]

Some of these qualities do have specific definitions, such as innovation or social perspective, while some lack specific definition in the law. Importantly, social perspective is defined as an aspect related to the object of procurement, which may lead to positive social impact (as defined by the Social Economy Act), such as (i) creating or supporting jobs, or (ii) dignified, just and satisfactory labor conditions above the standards prescribed by law, (iii) inclusion of disadvantaged persons into social relationships and the labor market, (iv) increased availability of goods and services for disabled persons, (v) ethical and fair trade, (vi) securing of economic growth based on knowledge and innovation, (vii) sustainability of resources and social and territorial cohesion, or (viii) increase of suppliers' responsibility towards the interests of the society, especially by integrating socially beneficial activities into the activities of suppliers and cooperation with target audiences and stakeholders or mitigating the impacts of economic and social lagging of less developed regions.[271] Life-cycle costs include the costs of purchase, use, servicing, disposition of an item after the end of its life-time, as well as costs related to environmental externalities, including emissions.

The adoption of the Social Economy Act included an indirect amendment of the Public Procurement Act, which brought about a pack of exemptions for social enterprises to support their participation in the delivery of goods and services to the public sector. First, the Public Procurement Act does not regulate under-limit contracts and contracts of low value[272] in the

[269] Such a requirement must uphold the following criteria: (i) the brand criteria are suitable for the tender object; (ii) the brand criteria are objectively verifiable and non-discriminatory; (iii) the brand is a result of transparent process, open to all interested parties and stakeholders; (iv) the brand is accessible to everyone interested; (v) no conflict of interest between the brand holder and branded subjects.

[270] Sec. 44(4), the Public Procurement Act.

[271] Ibid., Sec. 2(5)p.

[272] The financial limits are regulated by sec. 5 of the Public Procurement Act and the ordinance of the Office for Public Procurement No. 118/2018 Col. stipulating financial limit for over-limit contract, financial limit for over-limit concessions and financial limit for design contest. For illustration, contracts of goods

provision of goods and services to public procurer by a (i) registered social enterprise, (ii) natural person with disability operating as a freelancer in a sheltered workshop, or (iii) by a protected workshop if at least 30% of its employees are disabled or disadvantaged persons.[273] Second, the act also does not apply on contracts of low value to provide construction works for a public procurer provided by the same providers as under the first exemption. This means that stringent, often time-consuming and price-competition-based procurement processes shall not apply on these specific tenders, presumably to support the social economy and social impact. Such exemptions have the potential to provide additional and necessary impetus to strengthen social economy, but they may also potentially lead to abuses. It is necessary that exempted cases be closely observed and evaluated in order to assess whether this risk is unsubstantiated.

Furthermore, the Public Procurement Act also allows public procurers to reserve the right to participate on public tenders only for registered work integration social enterprises, protected workshops or natural persons with disability operating as freelancers in sheltered workshops.[274] Other exemptions allow companies controlled by public bodies to provide goods and services to public bodies without public procurement procedures. This exemption is often used by municipal social enterprises – i.e., the well-functioning model applied in numerous small Slovak municipalities.[275]

3.6. Transparency, anti-corruption

Within this section, we describe and evaluate two notable instruments and institutions related to transparency, anti-corruption and anti-money laundering efforts. Issues considered under this point are related to the regulation of public procurement and certain issues of investment and financial law. As mentioned above, corruption is still considered one of the main

provision worth up to 144,000 EUR (for state bodies) or 221,000 EUR (for regional governments or municipalities) would be exempted from the public procurement rules. Other limits are even higher.

[273] Protected workshops are regulated by different law. Sec 55, the Employment Services Act.

[274] Sec. 36a, the Public Procurement Act.

[275] For more reference, see: Poláčková, Zuzana, The Municipality as an Initiator of Social Entrepreneurship. Available online at: https://ec.europa.eu/esf/transnationality/sites/esf/files/case_study_slovakia_fin.docx; or Škobla, Daniel, Kováčová, Lucia, Ondoš, Slavomír, *Sociálne podniky pracovnej integrácie na Slovensku* [Work Integration Social Enterprises in Slovakia], Slovak Governance Institute, 2018. Available online at: http://www.governance.sk/wp-content/uploads/2018/02/Publikacia-Socialne-podniky_Skobla-Kovacova-Ondos.pdf. Both sources acccessed in July 2018.

problems of the country[276] – the one that cuts across all policy areas, diminishing the administration's actionability and ability to deliver relevant policies in the best public interest.[277]

In spite of the continuous commitment of all of the governments since 1998 to fight corruption, the struggle has produced limited results in terms of corruption perception and investigation of sensitive or high-level corruption cases. The anti-corruption efforts have nevertheless strengthened transparency requirements substantially. Since 2011, a vast majority of contracts with public bodies have been required to be published prior to taking effect (mandatory disclosure of public contracts) – the impact of this measure must not be underestimated. As of 2018, more than 1.67 million contracts have been published within the central register of contracts with dozens of thousands more published on individual webpages of other public bodies (such as municipalities). Although the state at times attempts to limit the extent of disclosure of certain contracts or the legibility of the files, most of the contracts are available with the names of contractors, volumes and specific conditions.

Another major effort to significantly improve transparency in dealings with the state is represented by the publicly accessible register of the ultimate beneficiaries of public contractors or recipients of state aid or other material state support, which was deployed at the beginning of 2017. The register goes beyond simple provision of names of the ultimate beneficiaries by contractors (which has often produced names of shell companies with undisclosed owners or nominee structures) and requires professional services providers, such as notaries public, attorneys or tax advisors to execute extensive due diligence in investigating who the ultimate beneficiaries are and be materially liable for it. Slovakia also adopted the whistleblowers protection law in 2015, although the law has not yet proven to provide adequate safeguards for reporting corruption.[278]

We deal with two topics of interest in this chapter:

A. Transparency of public contracts

[276] European Commission, Commission Staff Working Document, Country Report Slovakia 2018 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, 2018. Available online at: https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-slovakia-en.pdf.

[277] Lessig, Lawrence, Republic, Lost, in *New York: Twelve*, 2011.

[278] European Commission, Commission Staff Working Document, Country Report Slovakia 2018 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011, 2018. Available online at: https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-slovakia-en.pdf .

B. Transparency requirements for companies doing business with the state such as public procurement participation, receiving state aid, receiving investments, etc. (the ultimate beneficiary registry)

Transparency of public contracts

One of the most important transparency policies, the Slovak legal regime provides for mandatory public disclosure of contracts concluded with public sector bodies as a precondition of the effectiveness of a contract – contracts of public sector bodies become effective on the day after the day of the publishing of a contract. Moreover, contracts are rendered void if they are not published within 3 months of their conclusion.[279] Public sector bodies are obliged to publish any written agreement that contains information procured for public resources or that is related to public financial means.[280] Basically any public sector body is obliged to comply with this requirement, including legal persons (companies) founded by public sector bodies and legal entities with exclusive participation of public sector bodies. The published information must include the contract itself and other structured information on the contract (metadata) in a searchable format.[281] At times, companies and public sector bodies attempt to avoid the obligation by claiming trade secret, although overall, the mandatory disclosure appears to be working rather well.

Transparency requirements for companies doing business with the state

The creation of the register of public sector partners was driven by a low-trust political and business environment and the widespread belief that much of public procurement is constructed to benefit persons in the background, often connected with political elites.[282] The main objective of the policy is therefore to increase transparency of the business relations between the private and public sector by providing reliable information on the ultimate beneficiaries. The stress on reliability of information cannot be underestimated since public procurement law included similar provisions even under the previous disclosure regime, yet the information was based on solemn declarations of companies and often included only rudimentary and incomplete information. Under the previous regime, only the first and often publicly

[279] Sec. 47a, the Civil Code.

[280] The register is publicly accessible. Available online at: http://www.crz.gov.sk (the register is available also in English language, although contracts and contractual metadata are in Slovak).

[281] Contracts are not required to be searchable, which poses a challenge to transparency efforts. To mitigate the problem, crowdsourcing initiatives were launched to deploy lay people to read and flag potentially problematic contracts. See, for instance: Mazúr, Ján Povinné zverejňovanie zmlúv – ako možno zlepšiť kontrolu nakladania s verejnými prostriedkami a čo sa zo zmlúv možno naučiť? [Mandatory Disclosure of Public Agreements – How Can We Improve the Control of Public Funds Disposition and What Can We Learn from Public Agreements?], Comenius University, 2016. Available online at: http://www.academia.edu/29079357/Mandatory_disclosure_of_public_agreements_SVK.

[282] The register is publicly accessible. Available online at: https://rpvs.gov.sk/rpvs (the register is available only in a Slovak language version).

accessible layer of shareholder structure was disclosed, with the true shareholders or ultimate beneficiaries being hidden behind shell companies, strawmen or foreign nominee structures. Moreover, the disclosure obligation was related to public procurement participants only, which was limiting in terms of the public control – only 20% of public expenditures are spent through public procurement.[283]

The policy is put forth by act No. 315/2016 on register of public sector partners (the "**Act on Register of Public Partners**"). Any natural or legal person becomes a partner of the public sector if they receive public funds above a certain threshold; consequently, any reception of public funds by such a partner of the public sector is conditioned by the registration of the partner within the register of public partners. Partners must include a list of their ultimate beneficiaries within their registration, which becomes publicly accessible on the register's webpage. The act uses the same definition of ultimate beneficiary as the AML Act (which transposed the AMLD into the Slovak legal regime), which is one of its weaknesses – shareholders with less than a 25% share do not have to be declared. Also, benefiting through subcontracting is also not properly addressed by the law.

The law's mechanics requires that the review of the ultimate beneficiaries be rigorous and not merely a box-ticking exercise. In order to achieve this, persons authorized to review the partners' ultimate beneficiaries, namely attorneys, notaries public, domestic and foreign banks, auditors and tax advisors, must execute an in-depth due diligence of the partner and their ultimate beneficiaries, including obtaining all accessible information. Authorized persons must act independently of public partners and are also materially liable for any incorrect information or for failure to execute due diligence.

Any person receiving financial means or property from the state budget, EU or other public funds, public entities or regional and local governments must be registered as a partner of the public sector. Moreover, health services providers, health insurance companies and other specific providers and partners must be registered as public sector partners as well.[284] The law contains de minimis exemptions for partners who receive public funds for one contract worth no more than 100,000 EUR/single delivery contract or 250,000 EUR over a calendar year for a continuous contract.

The Public Procurement Act prohibits public procurers and other procurers working with public funds from concluding a goods and services delivery contract or concession agreement

[283] Explanatory memoranda to Act No. 315/2016 Coll. on Register of Public Sector Partners, as amended (in Slovak language: *Zákon č. 315/2016 Z. z. o registry partnerov verejného sektora v znení neskorších predpisov*), (the "**Act on Register of Public Partners**").

[284] Sec. 2(1), the Act on Register of Public Partners.

with any person, with mandatory registration of the ultimate beneficiaries of the public sector partner or its subcontractors in the register until the registration duty is complied with.[285] Moreover, a public procurer is allowed to withdraw from a contract if the contractor or its subcontractor failed to be registered at the time of the contract conclusion or if the registration was withdrawn.[286]

In case of a partner's failure to register, provide correct information at the registration or update the information as required, the partner may be deleted from the register and the procedure to fine the partner starts.[287] The partners may be fined extensively – by the amount of public funds the partner received – and the members of the partners' statutory body may be fined in the amount of 10,000-100,000 EUR per each breach of their obligations.[288] Moreover, the authorized person can be personally liable in the same amount as the members of the statutory body and warrants for the statutory body's members. Finally, any members of a statutory body of a partner who breaches the above-mentioned obligations and is deleted from the register and fined cease to be members of the statutory body of the partner by law and become prohibited from acting as members of the statutory body for three years.[289]

It is clear that authorized persons perform varying levels of due diligence, potentially leaving some beneficiaries unaddressed.[290] Still, the law is considered to be a moderate success – numerous "big fish" businessmen have been forced to disclose their shares in dozens of companies.[291]

[285] Sec. 11(1), the Public Procurement Act.
[286] Ibid., Sec. 19(3).
[287] Sec. 12, the Act on Register of Public Partners.
[288] Ibid., Sec. 13.
[289] Sec. 14, the Act on Register of Public Partners in connection with Sec. 13a, the Commercial Code.
[290] Lacko, Pavol, Do akej miery zodpovedajú zápisy v registri partnerov verejného sektora skutočnosti? [To What Extent Do the Registrations of Public Sector Partners Match with Reality?], Comenius University, 2018.
[291] Šípoš, Gabriel, A veľkú schránkovú cenu Slovenska vyhráva… [And the Grand Shell Prize of Slovakia Goes to…], in *Transparency International Slovensko*, blog, 2018. Publicly available at: http://transparency.sk/sk/a-velku-schrankovu-cenu-slovenska-vyhrava/ .

4. Bibliography

1. Act No. 111/1990 Coll. on State Enterprises, as amended
2. Act No. 112/2018 Coll. on Social Economy and Social Enterprises, as amended.
3. Act No. 17/1991 Coll. on Environment, as amended.
4. Act No. 203/2011 Coll. on Collective Investment, as amended.
5. Act No. 213/1997 Coll. on Non-profit Organizations Providing Services of General Economic Interest, as amended.
6. Act No. 300/2005 Coll., the Criminal Coded, as amended.
7. Act No. 308/1993 Coll. on Establishment of Slovak National Center for Human Rights, as amended.
8. Act No. 311/2001 Coll., the Labor Code, as amended.
9. Act No. 315/2016 Coll. on Register of Public Sector Partners, as amended.
10. Act No. 323/2015 Coll. on Financial Instruments Financed from European Structural and Investment Funds, as amended.
11. Act No. 34/2002 Coll. on Foundations, as amended.
12. Act No. 343/2015 Coll. on Public Procurement, as amended.
13. Act No. 365/2004 Coll. on Equal Treatment Within Certain Fields and on Protection Against Discrimination, as amended.
14. Act No. 39/2015 Coll. on Insurance, as amended.
15. Act No. 40/1964 Coll., the Civil Code, as amended.
16. Act No. 43/2004 Coll. on Retirement Pension Saving, as amended.
17. Act No. 455/1991 Coll. on Trade Licensing, as amended.
18. Act No. 483/2001 Coll. on Banks, as amended.
19. Act No. 493/2011 Coll. on Budgetary Responsibility.
20. Act No. 5/2004 Coll. on Employment Services, as amended.
21. Act No. 513/1991 Coll. Commercial Code, as amended.
22. Act No. 530/1990 Coll. on Bonds, as amended.
23. Act No. 530/2003 Coll. on Commercial Register, as amended.
24. Act No. 543/2002 Coll. on Protection of Nature and Landscape, as amended.
25. Act No. 566/2001 Coll. on Securities and Investment Services, as amended.
26. Act No. 582/2004 Coll. on Local Taxes and Local Communal Waste and Small Construction Waste Charge, as amended.
27. Act No. 595/2003 Coll. on Income Tax, as amended.
28. Act No. 650/2004 Coll. on the Supplementary Pension Saving, as amended.
29. Act No. 7/2005 Coll. on Bankruptcy and Restructuring, as amended.
30. Act No. 747/2004 Coll. on Supervision of the Financial Market, as amended.

31. Act No. 80/1997 Coll. on Export-import Bank of the Slovak Republic, as amended.
32. Act No. 83/1990 Coll. on Association of Citizens, as amended.
33. AMCHAM SLOVAKIA, 2014. The Rule of Law initiative. Available at <http://www.amcham.sk/publications/connection-magazine/issues/2014-11/272288_the-rule-of-law-initiative>
34. BALOGOVÁ, B., 2010. More strife over social companies scheme. In *SME.sk*. Available at <https://spectator.sme.sk/c/20035893/more-strife-over-social-companies-scheme.html>.
35. BANK BOARD OF THE EXIMBANK, 2016. The Procedure of Evaluating the Impact of Export on the Environment of the Target Country. Available at <https://www.eximbanka.sk/slovenska-verzia/medzinarodne-vztahy/ochrana-zivotneho-prostredia/zakladna-informacia-k-hodnoteniu-vplyvov-vyvozu-a-investicii-na-zivotne-prostredie-a-ludske-prava.html?page_id=447>.
36. CECGA, 2016. Corporate Governance Code for Slovakia. Available at <http://cecga.org/cg-code/?lang=en>.
37. CIREC, A., 2013. L'Économie Sociale dans l'Union Européenne. Available online at <http://www.eesc.europa.eu/resources/docs/qe-30-12-790-fr-c.pdf >.
38. Commission Regulation 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid.
39. Constitutional Act 460/1992 Col., Constitutional of the Slovak Republic.
40. Decision of the Constitutional Court, case no. PL. US 1/06-35.
41. Decision of the Constitutional Court, case no. PL. US 51/2015-94.
42. Decision of the Constitutional Court, case no. PL. US 61/04-12.
43. DEPUTY PRIME MINITER'S OFFICE FOR INVESTMENTS AND INFORMATIZATION, 2018. National Investment Plan of the Slovak Republic 2018 – 2030. Available at <https://www.vicepremier.gov.sk/index.php/investicie/narodny-infrastrukturny-plan/dokumenty/index.html>.
44. DEPUTY PRIME MINITER'S OFFICE FOR INVESTMENTS AND INFORMATIZATION, 2017. Agenda 2030 in International Context. Available at <https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/agenda-2030-v-medzinarodnom-prostredi/index.html >.
45. DEPUTY PRIME MINITER'S OFFICE FOR INVESTMENTS AND INFORMATIZATION. News on the Council for Sustainable Development first meeting. Available at: <https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/rada-vlady-pre-agendu-2030-pre-udrzatelny-rozvoj/1-zasadnutie-rady-vlady-pre-agendu-2030-pre-udrzatelny-rozvoj/index.html>.

46. DEPUTY PRIME MINITER'S OFFICE FOR INVESTMENTS AND INFORMATIZATION, 2017a. Bases for National Priorities Preparation of Agenda 2030 Implementation. Available at < http://www.unia-miest.sk/assets/File.ashx?id_org=600175&id_dokumenty=4901 >.
47. DEPUTY PRIME MINITER'S OFFICE FOR INVESTMENTS AND INFORMATIZATION, 2017b. Proposal for Participation Process of National Priorities Identification of Agenda 2030 Implementation. Available at <https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/rada-vlady-pre-agendu-2030-pre-udrzatelny-rozvoj/1-zasadnutie-rady-vlady-pre-agendu-2030-pre-udrzatelny-rozvoj/index.html >.
48. DEPUTY PRIME MINITER'S OFFICE FOR INVESTMENTS AND INFORMATIZATION. Agenda 2030: R. Raši will introduce 5 national priorities to UN. Available at <https://www.vicepremier.gov.sk/index.php/agenda-2030-r-rasi-predstavi-6-narodnych-priorit-v-osn/index.html >.
49. DEPUTY PRIME MINITER'S OFFICE FOR INVESTMENTS AND INFORMATIZATION. Information on opportunities for participation on achievement of sustainable development goals. Available at <https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/moznosti-participacie/index.html >.
50. DEPUTY PRIME MINITER'S OFFICE FOR INVESTMENTS AND INFORMATIZATION. Which Slovakia do we want in 2030? Results of participation process, pages 7 – 13. Available at <https://www.vicepremier.gov.sk/wp-content/uploads/2018/06/Navrh-narodnych-priorit.pdf>.
51. Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.
52. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC.
53. Directive (EU) 2016/97/EU of the European Parliament and of the Council of 20 January 2016 on Insurance Distribution.
54. Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.
55. ESMA, 2018. Consultation Paper. Guidelines on Risk Factors under the Prospetus Regulation. ESMA 31-62-996.

56. EUROPEAN COMMISSION, 2014. A Map of Social Enterprises and Their Eco-systems in Europe. Country Report: Slovakia.
57. EUROPEAN COMMISSION, 2017: Flash Eurobarometer 457: Businesses' attitudes towards corruption in the EU. Available at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLAS H/surveyKy/2177.>
58. EUROPEAN COMMISSION, 2018. 2018 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011.Commission Staff Working Document. COM (2018) 120 final. Available at < https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-slovakia-en.pdf>.
59. EUROPEAN COMMISSION, 2018a. Communication from the Commission. Action Plan: Financing Sustainable Growth. COM (2018) 87 final.
60. EUROSTAT, 2017. National accounts and GDP. Available at: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=National_accounts_and_GDP/sk.
61. Explanatory Memorandum to Act 264/2017 Coll. amending the Commercial Code.
62. FINSTAT, 2018. Database of Slovak Firms and Organizations. Available at < https://finstat.sk/databaza-firiem-organizacii >.
63. FINSTAT, 2018a. Statistic on the number of companies which were established and winded up. Available at <https://finstat.sk/analyzy/statistika-poctu-vzniknutych-a-zaniknutych-firiem>.
64. FURMAS, A., 2013. Transparency Case Study: Public Procurement in the Slovak Republic. Sunlight Foundation. Available at <https://sunlightfoundation.com/2013/08/12/case-study-public-procurement-in-the-slovak-republic/>.
65. GOVERNMENT OF THE SR, 2001. Resolution no. 978/2001 on national strategy of sustainable development.
66. GOVERNMENT OF THE SR, 2013. Procedure of implementation of financial instruments through the Slovak Investment Holding in the programming period 2014-2020. Approved material 2013. Available at <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=23125>.
67. GOVERNMENT OF THE SR, 2016. Resolution no. 95/2016 dated 2 March 2016.
68. GOVERNMENT OF THE SR, 2017. Resolution no. 350/2017 dated 24 July 2017.
69. GOVERNMENT OF THE SR, 2018. Resolution no. 273/2018 dated 13 June 2018.

70. INNESS, A., 2016. Corporate state capture in open societies: the emergence of corporate brokerage party systems. In *East European Politics & Societies*. ISSN 0888-3254 DOI: 10.1177/0888325416628957.
71. KAPKO, M., 2002. Profit, ecology and social dimension must not run against each other. In *TRENDsk*. Available at <https://www.etrend.sk/trend-archiv/rok-/cislo-Máj/profit-ekologia-a%C2%A0socialny-rozmer-nemusia-ist-proti-sebe.html >.
72. LACKO, P., 2018. Do akej miery zodpovedajú zápisy v registri partnerov verejného sektora skutočnosti? [To What Extent Do the Registrations of Public Sector Partners Match with Reality?]. Comenius University.
73. LESSIG, L., 2011. Republic, Lost. In *New York: Twelve*.
74. MAŠUROVÁ, A., 2018. Zodpovednosť štatutárov, faktických štatutárov a tieňových štatutárov kapitálových spoločností voči veriteľom spoločností podľa novej úpravy obchodného zákonníka a zákona o konkurze a reštrukturalizácii [Liability of directors, de facto director and shadow directors of capital companies against creditors of companies under new regulation of the Commercial Code and the Act on Bankruptcy and Restructuring]. In *Miľníky práva v stredoeurópskom priestore 2018*.
75. MAZÚR, J., 2016. Povinné zverejňovanie zmlúv – ako možno zlepšiť kontrolu nakladania s verejnými prostriedkami a čo sa zo zmlúv možno naučiť? [Mandatory Disclosure of Public Agreements – How Can We Improve the Control of Public Funds Disposition and What Can We Learn from Public Agreements?]. Comenius University. Available at <http://www.academia.edu/29079357/Mandatory_disclosure_of_public_agreements_SVK >.
76. MEZZACAPO, S., 2009. The so-called "Sovereign Wealth Funds": regulatory issues, financial stability and prudential supervision. Economic Papers 378.
77. MINISTRY OF ECONOMY OF THE SR, 2016. Resolution no. 3/2016 dated 18 January 2016. Available at <http://www.economy.gov.sk/uploads/files/AG3OUZd4.pdf>.
78. MINISTRY OF ECONOMY OF THE SR, 2017. Resolution no. 7/2017 dated 10 April 2017. Available at <https://www.minv.sk/?smernice-oecd-pre-nadnarodne-spolocnosti-1>.
79. MINISTRY OF ECONOMY OF THE SR, 2018. Strategy of Economic Development of the Slovak Republic until 2030 (proposal). Available at <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2018/185 >
80. MINISTRY OF ECONOMY OF THE SR. News on National Contact point. Available at: <https://www.mhsr.sk/obchod/multilateralne-obchodne-vztahy/oecd/narodne-kontaktne-miesto-pre-smernice-oecd-pre-nadnarodne-spolocnosti/rozhodnutie-o-zriadeni-nkm-1>.

81. MINISTRY OF ENVIROMENT OF THE SR, 2001. National Sustainable Development Strategy of the Slovak Republic. Available at <http://www.minzp.sk/dokumenty/strategicke-dokumenty/>.
82. MINISTRY OF ENVIROMENT OF THE SR, 2007. Strategy of the Implementation of Voluntary Instruments of Enviromental Policy in the Slovak Republic. Available at <http://hsr.rokovania.sk/12256/14-/>.
83. MINISTRY OF ENVIROMENT OF THE SR, 2011. Agenda 2011. Available at <https://www.minzp.sk/files/iep/x_2017_envirostrategia_20171214.pdf>.
84. MINISTRY OF ENVIROMENT OF THE SR, 2017. Greener Slovakia – the Enviromental Policy Strategy of the Slovak Republic. Available at <https://www.minzp.sk/files/iep/x_2017_envirostrategia_20171214.pdf>.
85. MINISTRY OF ENVIROMENT OF THE SR, 2017a. Strategy of Adaption of the Slovak Republic on Unfavorable Impacts of the Climate Change. Available at <https://www.minzp.sk/files/odbor-politiky-zmeny-klimy/strategia-adaptacie-sr-nepriaznive-dosledky-zmeny-klimy-aktualizacia.pdf>.
86. MINISTRY OF ENVIROMENT OF THE SR, 2018. The Sustainable Development – Agenda 2030. Available at <http://www.minzp.sk/sekcie/temy-oblasti/udrzatelny-rozvoj/agenda-2030/>.
87. Model Articles of Association of fully state-owned joint stock companies. Available at <http://www.rokovanie.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=13880>.
88. NATIONAL BANK OD THE SR, 2018. Statistics on issued securities. Available at <https://www.nbs.sk/sk/statisticke-udaje/financne-trhy/cenne-papiere/statistika-vydanych-cennych-papierov>.
89. NATIONAL CONTACT POINT, 2016. Rules of Procedure of the National Contact Point for OECD Guidelines for Multinational Enterprises. Available at <https://www.mhsr.sk/uploads/files/POdlxzAE.pdf>.
90. NATIONAL CONTACT POINT, 2016a. Statutes of the National Contact Point. Available at <http://www.economy.gov.sk/uploads/files/o6R6mBvu.pdf>.
91. NATIONAL OCNTACT POINT, 2015. OECD Guidelines for Multinational Enterprises - Slovakian NCP Report to the OECD. Available at < https://www.mhsr.sk/uploads/files/gykoI7lZ.pdf>.
92. NATIONAL OCNTACT POINT, 2016b. National Contact Point Reporting Questionnaire 2016. Available at < https://www.mhsr.sk/uploads/files/J448JHNJ.pdf>.
93. OECD, 2016. Recommendation of the OECD Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence.

94. OECD, 2017. Development and implementation of a national e-Procurement strategy for the Slovak Republic. Available at <http://www.oecd.org/gov/public-procurement/publications/slovakia-e-procurement-strategy.pdf>.
95. Ordinance of the Office for Public Procurement 118/2018 Col. Stipulating Financial Limit for Over-limit Contract, Financial Limit for Over-limit Concessions and Financial Limit for Design Contest.
96. PATAKYOVÁ, M. - GRAMBLIČKOVÁ, B.: Country report: Slovakia In: Gerner-Beuerle, C. - Mucciarelli, F. - Schuster, E.P. - Siems, M.: 1. The Private International Law of Companies in Europe, Beck C. H., ISBN-13: 978-3406714573.
97. PATAKYOVÁ, M. – GRAMBLIČKOVÁ, B., 2018. Spoločenská zodpovednosť obchodných spoločností a trvalo udržateľný rozvoj [Corporate Social Responsibility and Sustainable Development] in *Conflicts of Interests in Company Law*. Bratislava: Wolters Kluwer.
98. POLÁČKOVÁ, Z., The Municipality as an Initiator of Social Entrepreneurship. Available at< https://ec.europa.eu/esf/transnationality/sites/esf/files/case_study_slovakia_fin.docx >.
99. Proposal of National Implementation Process of Agenda 2030. Available at: <https://www.vicepremier.gov.sk/index.php/investicie/agenda-2030/dokumenty/index.html>.
100. PUBLIC DEFENDER OF RIGHTS, 2017. Report of the Ombudsman for 2017. Ownership and right to favorable development. Available at < http://www.vop.gov.sk/files/vyrocna_sprava_2017.pdf.>
101. Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.
102. Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.
103. Report to the proposal of model articles of association of the fully state owned joint stock companies.
104. ŠÍPOŠ, G., 2018. A veľkú schránkovú cenu Slovenska vyhráva… [And the Grand Shell Prize of Slovakia Goes to…]. In *Transparency International Slovensko*. Available at: http://transparency.sk/sk/a-velku-schrankovu-cenu-slovenska-vyhrava/ >.
105. ŠKOBLA, D. – KOVÁČOVÁ, L. – ONDOŠ, S., 2018. Pracovné integrácie sociálnych podnikov na Slovensku [Work Integration Social Enterprises in Slovakia], Slovak Governance Institute. Available at: <http://www.governance.sk/wp-content/uploads/2018/02/Publikacia-Socialne-podniky_Skobla-Kovacova-Ondos.pdf>.

106. SLOVAK INVESTMENT AND TRADE DEVELOPMENT AGENCY, 2016. Automotive Sector in Slovakia.
107. Statutes of the Council for Sustainable Development.
108. Statutes of the Working Group for Agenda 2030's Implementation for Sustainable Development and for Preparation of National Investment Plan of the Slovak Republic for 2018 – 2030. Available at <https://www.vicepremier.gov.sk/wp-content/uploads/2017/04/STATUT-Pracovnej-skupiny-pre-Agendu-2030-a-NIP.pdf>.
109. VLACH, J. – NEMEC, J., 2018. *Verejné obstarávanie vo väzbe na korupciu a transparentnosť* [Public procurement in relation to corruption and transparency]. Transparency International Slovensko. Available at <http://www.transparency.sk/wp-content/uploads/2010/01/030807_verej.pdf>.
110. WOLRD BANK GROUP, 2016. Doing Business 2016. Measuring Regulatory Quality and Efficiency. ISBN 978-1-4648-0668-1. Available at < http://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB16-Full-Report.pdf >
111. ZVIJÁKOVÁ, L. – ZELEŇÁKOVÁ, M. – PURCZ, P., 2014. Evaluation of Environmental Impact Assessment Effectiveness in Slovakia. Impact Assessment and Project Appraisal. 32:2, 150-161, DOI: 10.1080/14615517.2014.893124.