



Position Paper No. 7

FOREIGN INVESTORS' COUNCIL IN LATVIA POSITION PAPER ON THE QUALITY OF LEGISLATION

08.09.2022

Executive summary

The Foreign Investors' Council in Latvia (hereinafter - FICIL) notes the work done to improve the quality of legislation, for example by creating draft legislation on lobbying, which is anticipated to be adopted in the second half of 2022, along with the creation of a special lobby register¹ and increasing the scope of the legislation on whistleblowing². However, according to the OECD, Latvia lacks in providing sufficient regulatory impact assessment, and *ex post* evaluation of regulations is still not broadly institutionalised³. There is still significant room for improvement to ensure good quality of legislation, since many new regulations are adopted without clear communication on each step taken during the policy cycle, there is a lack of policy impact assessment, and there is almost non-existent use of data and quantifiable analysis to determine the short to long-term impact of legislation. Also, FICIL still continues to see insufficient involvement of the industry when new regulations are being developed, and reminds of the importance of involving various stakeholders when any new far-reaching regulation is adopted, as well as any amendments to the market that directly affects the operations of businesses.

As in previous years, FICIL continues to emphasise the need for a transparent, predictable, and well-considered legislative process. Any new legislation needs to be thoroughly considered and based on the most up-to-date data available. FICIL also reminds of the impact that a fair and predictable investment environment can have on attracting foreign investments, and the negative consequences caused by abrupt legislative changes which significantly damage the position of investors and prevent further investments. The Position Paper puts forward recommendations that would strengthen the quality of legislation throughout the whole legislative process. FICIL continues to reiterate the need to ensure good practice when developing or amending legislation, ensuring that no drastic or unexplained changes to draft laws are made during the second or third reading in Saeima. Additionally, FICIL recommends adding preambles for statutes in new legislation to increase legal certainty and better implementation of the policy.

1 Interešu pārstāvības likums.

https://ec.europa.eu/info/sites/default/files/33_1_194053_coun_chap_latvia_en.pdf

2 <https://lvportals.lv/skaidrojumi/337427-stajas-speka-jauns-trauksmes-celsanas-likums-2022>

3 <https://www.oecd.org/gov/regulatory-policy/latvia-country-profile-regulatory-policy-2021.pdf>

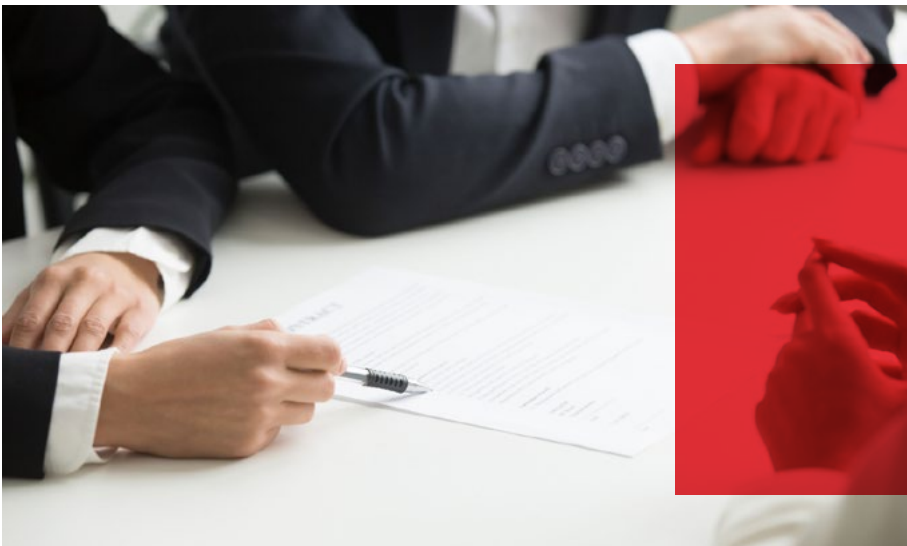




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Recommendations

Strengthen the quality of legislation throughout the legislative process.

- Good practice of the Saeima's Commissions must be identified and widely enforced; all indications from the Constitutional Court Law should be followed permanently and carefully to exclude any law level of parliamentary discussion, late proposals for the draft law, as well as incomplete draft law impact assessments (annotations). This would include limiting late proposals for draft laws, particularly for the third reading in Saeima, imposing an obligation to prepare written grounds for each proposal submitted before the second or third reading of the draft law, also including information on consultations that have taken place during preparation and the aim of the legal norm.
- Discussions on the need for implementing preambles for statutes should be continued. All responsible institutions for drafting legislative acts, such as the Office of Legal Affairs of Saeima⁴, ministries and other bodies should be involved in this matter.

4 Saeimas Juridiskais birojs.





Rationale for recommendations

Strengthen the quality of legislation throughout the legislative process.

Building a better legislative culture

In 2019, FICIL already suggested amending the Rules of Order of Saeima (*Saeimas kārtības rullis*)⁵ to limit late proposals for draft laws, particularly for the third reading in Saeima, imposing an obligation to prepare written grounds for each proposal submitted before the second or third reading of the draft law, also including information on consultations that have taken place during preparation of the proposals and the aim of the proposed legal norm. FICIL still does not see that this issue has been resolved and a clear written annotation for each law according to its final wording is still a matter that should be developed.


The admissibility and constitutionality of the proposals submitted for a third reading is an area where legal theory has set clear criteria. In FICIL's opinion, it is parliament's obligation to correctly follow and implement these criteria in practice. FICIL's recommendation includes clear recognition of the principle that only technical amendments are allowed to a draft law that is already in its third reading, which shall in no way affect the substance of the draft law or require a detailed assessment of its impact. Where a late proposal imposes a restriction on fundamental rights, parliament should have a procedure in place to ensure that members of the parliament and the respective stakeholders have sufficient time to become acquainted with the substance of the proposal, evaluate, and discuss

their effect on the constitutional human rights and the existence of other means that could have an effect on human rights.

A transparent and predictable legislative process not only provides for a high-quality outcome, but also forms an essential part of a rule of law state. FICIL firmly believes that the proposed recommendations would improve good practice and professionalism in the parliamentary review of the draft laws and provide for better consistency between the impact assessment papers and the final wording of the law. Likewise, these recommendations would ensure better implementation of the principle of good legislation and improve consequent interpretation of the law.

The Constitutional Court continues to recognise and disclose various elements of the content relating to the principle of good legislation. Since the majority of these elements are to be followed at the preparatory phase of the legislative process and during the review of the draft law, FICIL finds it particularly important to draw attention towards strengthening the legislative culture through ensuring strong ethics. Therefore, FICIL recommends that good practice of the Saeima's Commissions is identified and widely enforced, all indications from the Constitutional Court Law should be followed permanently and carefully to exclude any law level of parliamentary discussion, late proposals for a draft law, as well as incomplete draft law impact assessments (annotations). This would include limiting the late proposals for draft

⁵ FICIL's Position Paper by the Investment Protection and Court Efficiency Work Group published on 30 May 2019.



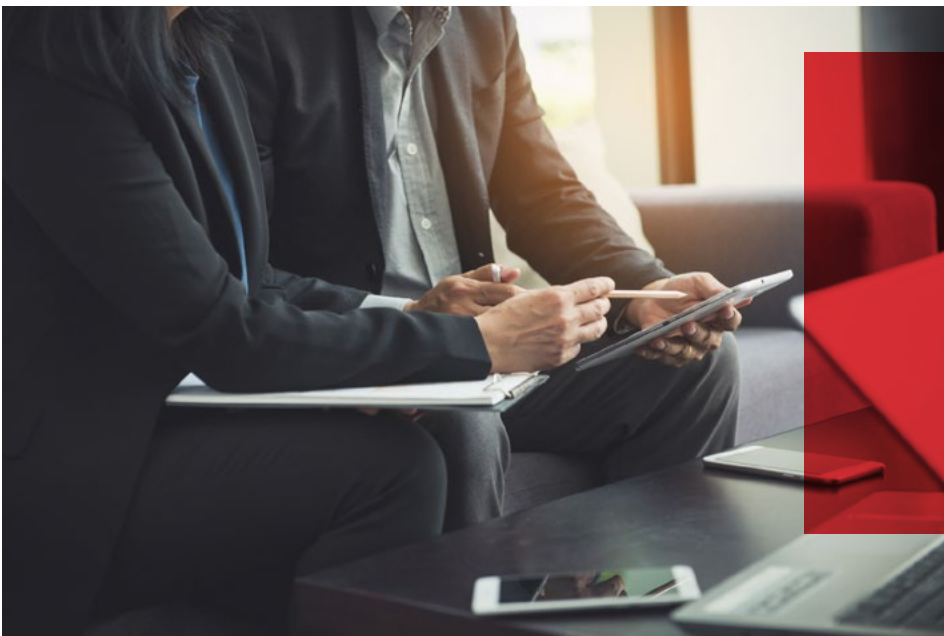
laws, particularly for the third reading in Saeima, imposing an obligation to prepare written grounds for each proposal submitted before the second or third reading of the draft law, also including information on consultations that have taken place during preparation and the aim of the legal norm.

Inclusion of preambles in new laws

Inclusion of preambles to statutes would increase legal certainty, reduce research costs, and enable more condensed, precise, and coherent drafting of the operational text (the provisions). Preambles provide more information to those interpreting or applying the law about the meaning of the expressions, the intended effect that the act would produce and more tools to support their argument. Inclusion of preambles in legal acts has been standard practice when drafting international and European Union legal acts. The track record shows that it helps interpreters to ascertain the legislative intent. In international law and, to a lesser extent, European Union law, methodology of legal interpretation integrates and even requires considering the text of the preambles. This has contributed to more certainty and traceability in legal interpretation and more results that is in conformity with the legislative intent.

Although legislation in Latvia already has a tool for helping persons to understand new regulations, namely, the annotation of new law, often annotations have been drafted before the beginning of the discussions about the draft law in Saeima. However, during those discussions, the course of the provisions of the new law may significantly change, or multiple new provisions could be added to the draft law. Therefore, FICIL believes insertion of a preamble would prove to be an efficient tool for helping all stakeholders better understand and interpret new laws.

FICIL notes the emerging discussion on the necessity and usefulness of implementing preambles for statutes. The purpose of the preamble is to allow the legislator to expressly indicate its legislative intent for an act as a whole and also give reasons and commentary for each provision of an act. A preamble has a track record of being an indispensable tool for legal interpretation. As a result, FICIL encourages further discussion on the need for implementing preambles for statutes. In addition, FICIL recommends bringing these to the attention of the Saeima Office of Legal Affairs, ministries and all other bodies and organisations that are responsible for drafting legislative acts.





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