

## Normative Changes of the Slovak Trade Licensing Control – Pathway to the Favorable Business Environment

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### Abstract

*Trade Licensing Control provides an indispensable and useful source of feedback indications to the Trade Licensing Administration. This set of information can be used as an analytical support within an administration reform design. The paper deals with the latest changes in the Slovak Trade Licensing Control legislation (entered into force 01.10.2013) and with direct impact of those changes on business environment and Trade Licensing Act enforcement as well. The results and recommendations are based on the regulatory impact assessment method. The share of the Slovak Trade Licensing Act violations on controlled categorized provisions was 8.74% in 2013. General requirement is to reduce the number of violations. The share has a declining trend. However, there are some extreme findings within the Slovak Trade Licensing state administration territorial division in 2013 (for example District Office Piešťany: 16.74% share of violations – after changes, territorial scope of Trade Licensing Control unit in the seat of county Trnava). The highest number of the Slovak Trade Licensing Act violations has been identified within the controlled category – trade establishment (formation, designation, revocation) – the highest share on controlled provisions in county of Nitra 17.43%. The Trade Licensing Control has changed the functions, from repressive to preventive (advisory). Sanctioning is modified by administrative (public) deliberation. Under the changes of the Trade Licensing Control philosophy, the reform has changed number and territorial scope of the Slovak Trade Licensing Control sections (from 50 local units to 8 regional units). Current Trade Licensing Control actions are carried out under the thematic control methodics. In connection with the extension of the Trade Licensing Control units' material scope, we recommend strengthening of the sanctions and to modify the severity of sanctions according to economic size of entrepreneur while a preventive function of sanctions in the field of Trade Licensing Administration (obligatory sanction for repeated violation). Time-consuming of Trade Licensing Control has increased therefore careful attention must be paid to the control network. Recent Trade Licensing Control normative changes have the potential to bring a higher quality of business environment but they require an excellent way of administration.*

**Keywords:** Trade Licensing Control, normative changes, Trade Licensing Act violations, network of inspections, business environment

**JEL Classification:** K23

### 1 Introduction

Licensing profession has a long history and the reason for licensing evolution stems from its four major factors: legal factors, business factors, internationalization and knowledge management. [Goldscheider, 2001] Trade licensing is one of the more licensing models in Slovakia. Slovak trade licensing is based on the regulations of the Trade Licensing Act No. 455/1991 Coll. as amended. Feedback within the trade licensing process is ensured by the division of Trade Licensing Control (hereinafter „TLC”). The fundamental role of the trade licensing is to provide public services within the pursuit of trade activities and control of compliance respective normative regulations (during the trade licensing registration, trade

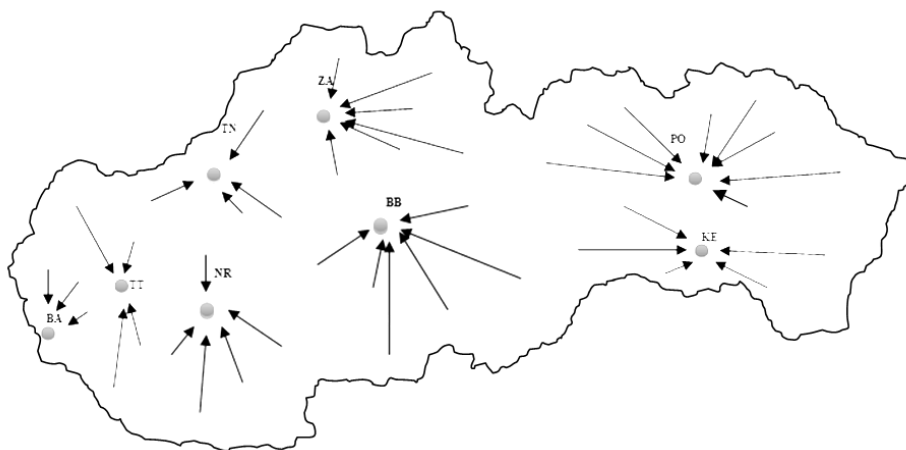
licensing register process, trade licensing control and added services) and to get higher quality of the business environment as well. Applicant has to meet all of the general conditions to obtain the Certificate of Trade Authorization to run the business legally. [Ministry of Interior, SR, 2014] Effective licensing regime has to be set up in accordance to needs of entrepreneurs and in accordance to public values that are created by the state administration in the field of trade licensing. The license can be defined as „a permit from an authority to own or use something”. [Oxford dictionaries, 2014] In the Slovak conditions, trade license is an official document giving permission to run the business and act in accordance with to trade licensing law. However, legislations and normative standards need to move with the time and develop to keep pace with public priorities, rapid changes of business environment and technology as well. [Webster, 2007] The trade licensing control oversees the compliance of valid and effective trade licensing legal norms. The paper deals with the Slovak trade licensing control system and the current normative changes across the trade licensing control regime and administration. We would like to point out results of trade licensing control performance within the last studying years 2011 – 2013 and the changes in legislation introduced by the state administration reform program. Based on the respective analysis and the assessment, we can recommend proposals for the state administrative policy in the field of trade licensing. We are trying to carry out an identification of impacts of the recent normative changes on the Trade Licensing Control Administration and business environment.

Regulations and legislation in general has a strong power to create positive and damaging effects on economic growth. Damaging effects stem mainly from excessive regulation. Therefore, various concepts and measures to improve the quality of both existing regulations and proposals for new regulation have been adopted around the world. [Kirkpatrick – Parker, 2007] We are trying to take a look at an impact of normative changes in the field of Trade Licensing Control caused by the latest reform activities in the state administration of the Slovak Republic.

## **2 Trade Licensing Control System in Slovakia**

Trade Licensing Control represents an important part of competence portfolio of the Departments of Trade Licensing which have been created within the District offices in the seat of county (8) in Slovakia. In addition to these, the Departments of Trade Licensing with only competence within the trade licensing registration, trade licensing register and PSC services (41) with territory scopes according the annex II. to the Act No. 180/2013 Coll. on organization of the local state administration. Ministry of Interior of the Slovak Republic is the central state authority in the field of trade licensing. The Departments of Trade Licensing carry out the general competence in the field of trade licensing registration, management of trade licensing register, trade licensing control and the competence of PSC services (Points of Single Contact – established as the point of the first contact with a purpose of information on possibilities to provide services within the internal market of the European Union as well as to simplify an access to providing such services). The implementation of the governmental reform program ESO (Effective, Reliable and Open state administration) has introduced changes in the field of trade licensing – Trade Licensing Control not excluding. The changes relating to territorial scope and advancement of the Trade Licensing Control functions. The main aim is to bring it more closer to entrepreneurs' needs while achieving higher efficiency performed control actions. Before the Directive of the Ministry of Interior of the Slovak Republic on internal structure of the District offices established by the Act No. 180/2013 Coll. (SVS-OMSZV1-2013/022320) entered into force, the Trade Licensing Control was carried

out by all of the former 50 Departments of Trade Licensing. With the legal force and legal effect of the Act and the Directive mentioned above (since 01.10.2013), a reduction of the territory districts has occurred (from 50 to 49) and relocation of Trade Licensing Control only to the Department of Trade Licensing in the seat of county (8). A significant expansion of territory scopes of the newly established trade licensing control sections has occurred. Based on these findings, the following question arises: what kind of impact will these changes have on the performance of the Trade Licensing Control? The Departments of Trade Licensing in the seat of county had to deal with personal, technical and material issues stem from normative changes introduced within the trade licensing control sections.



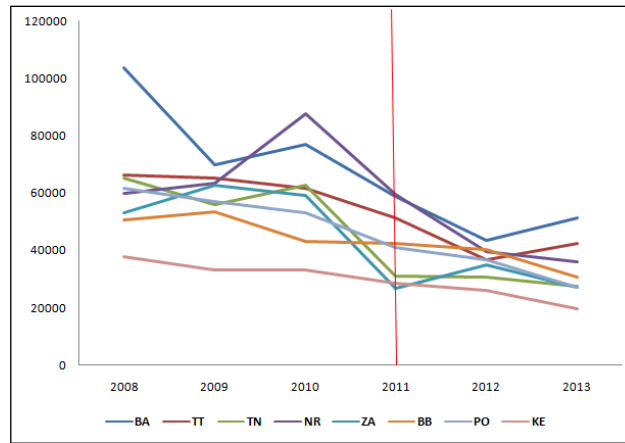
**Fig. 1 Changes in the Trade Licensing Control sections territorial scope since 01.10.2013**

Source: own processing, 2014

On the other hand, there is continuously shift in the philosophy and intention within TLC actions. Original repressive function of the TLC is replaced by preventive function. That can be rated very positive while current pressure on entrepreneurs. Administrative deliberation is affecting the process of fine imposing for violation of the Trade Licensing Act provisions. Obligatory imposing of fines is maintained only within the provision according the chapter II. of the Trade Licensing Act – unauthorized trading (natural or legal person pursuing activities subject to a craft or regulated trade without authorisation).

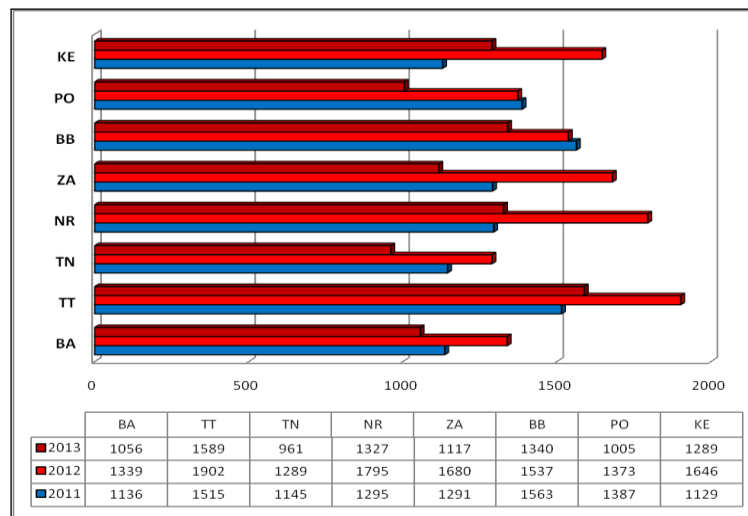
Facultative imposing of fines and administrative deliberation requires high level of professionalism and proficiency of individual assessment of the Trade Licensing Act rate infringement. The imposing of fines is provided by the Departments of Trade Licensing in the seat of county (according to § 63 – 65a, § 65c of the Trade Licensing Act) as well as by controller (according to § 65b of the Trade Licensing Act). The form of ticket fines, that may be impose by controller, is again with requirement of TLC section's staff professionalism. However, the form of facultative fine imposing allows to provide advisory information for entrepreneurs with the aim to consolidate unlawful state and to prevent this situation. The Departments of Trade Licensing in the seat of the county may decide to remove unlawful state by the form of consulting and guidance. According to the our opinion, this kind of normative regulation contributes to improvement of entrepreneurial environment from the point of entrepreneurs supervision. In the current time of dynamic change of trade licensing legislation, this form of the TLC provides more efficient services for entrepreneurs comparing to the obligatory form of fine imposing. How this normative changes have influenced the amount of imposed fines /€/ is shown in the following figure /2/. The facultative form of fine

imposing has been introduced in 2011. In general, we can observe persistent decrease of imposed fines represented by the obtained amount of financial resources.



**Fig. 2 The amount of imposed fines /€/ by the TLC in 2008 - 2013**  
Source: own processing, 2014

The dynamic change of found infringements of the Trade Licensing Act is shown in the figure /3/. The comparison of the regional administrative units points out the highest rate of infringement in 2012 and then slowly decreasing trend in 2013. Despite to the highest rate in 2012 the sum of imposed fines has decreased.



**Fig. 3 The dynamic change of found infringements of the Trade Licensing Act in 2011 - 2013**  
Source: own processing, 2014

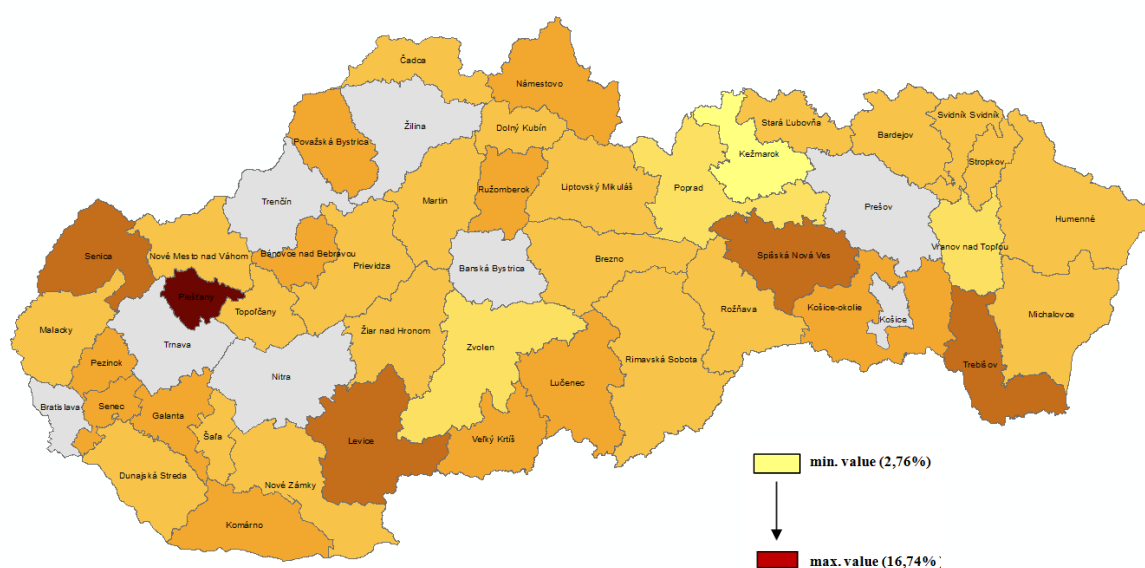
The normative changes within the TLC system also affect introduction of thematic planning of control and notification of TLC. These measures ensure prevention of absence of respective person at the site of control. The importance of these measures consists in the need of overcome distances between Trade Licensing Office and the site of TLC performance (in regard to the new territory scopes). The time consuming of TLC is increasing. It helps to prevent unnecessary „trip” of the TLC staff.

### 3 Controlled Aspects of Trade Licensing According to the Provisions of the Trade Licensing Act No. 455/1991 Coll. as Amended

Trade Licensing Control is focused on selected categorical provisions of the Trade Licensing Act, which are predisposed to contribute to consumer protection, the quality of the activities that are subject to a trade authorisation, but also to exercising trade license in a manner that is in the public interest. According to data on the activities of the trade licensing departments, following activities and circumstances fall under the scope of TLC:

- *specialized professional competence/qualification (§ 7a)*
- *trading through an authorized representative (§ 11 articles 1-10)*
- *establishments (premises) (§ 17 articles 5-7)*
- *obligations of the entrepreneur (§ 29 article 1 and § 30 articles 1-5)*
- *placement of the machines (§ 34 article 2)*
- *trade declaration requirements (§ 45 article 1)*
- *changes to data in the trade authorisation (§ 49 article 1)*

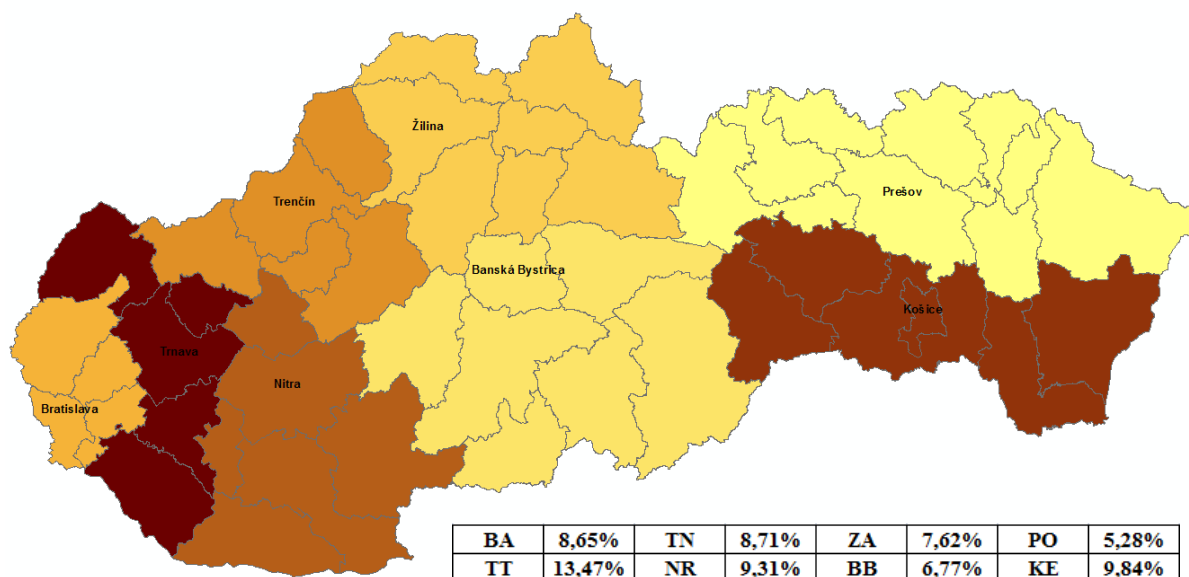
Listed provisions of the Trade Licensing Act are subject to the trade licensing control. On the basis of reports on the activities of trade licensing control departments, we can demonstrate the proportion of the detected infringements of provisions of the Trade Licensing Act to the total number of inspections carried out according to individual provisions. The following figure /4/ shows the proportion of infringements detected in the total number of inspections carried out in 2013. Data are based on reports on activities before controlling activities transferred to the trade licensing departments in the regional seats and are displayed in the structure of the territorial districts of trade license controlling before the recent reform intervention (the district of Štúrovo is joined with the district of Nové Zámky). On the account of the correct processing, data from trade licensing departments in regional seats were omitted, because these are grossed up since 01.10.2013 and include the data from the respective territorial district, from which the control was subsequently transferred.



**Fig. 4 Proportion %/ of found infringements of the Trade Licensing Act on the number of performed control actions**

Source: own processing, 2014

Within the maps we would like to point out the differences in rate of found infringements regardless of specific values. The figure /4/ points to the resistant need that the TLC should be focused on local particular problems. For the comparison, we introduced the evaluation within the regional administrative units as well. The data of the Department of Trade Licensing in the seat of county can be incorporated.



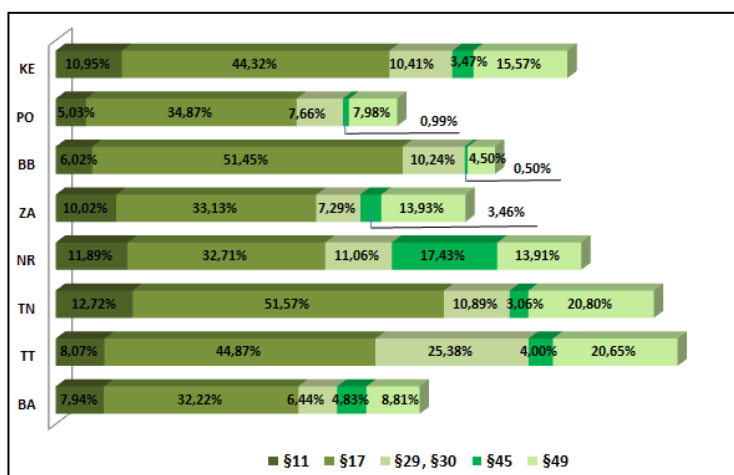
**Fig. 5 Proportion /%/ of found infringements of the Trade Licensing Act on the number of performed control actions, according to the regional administrative units**

Source: own processing, 2014

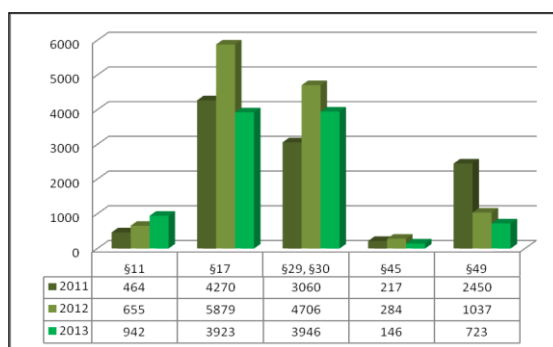
It is clear that the territory covered by the individual trade licensing departments that remained greatly expanded. At this point it should be noted that the changes in the trade licensing control are expected to reduce public spending on these activities while increasing their efficiency. Based on the activity statements, the individual trade licensing control action does not cover all of the respective controlled provisions of the Trade licensing. Hence, we are proposing conducting a comprehensive control of trade licensing and business, where each control action would cover compliance with all provisions of the Trade Licensing Act that are relevant to the controlled entity. We believe that this would promote efficiency in the field of trade licensing controls. Extensive territorial scope of trade licensing departments in regional seats can be compensated with thematic focus of control activities. On its basis, dispatching of staff of trade licensing departments can be scheduled in a way that ensures the most effective network of control actions with coverage of the entire relevant territorial scope. Given the proportion of controlled business entities – 2.56% (2013) and limits of trade licensing controls, which are not suggesting future progress in the number of controlled entities, institution of a fine can be used more effectively to ensure that the provisions of the Trade Licensing Act are followed. Here, we can highlight the increasingly more important preventive function of trade licensing controls. When awarded, a fine should adequately affect the entity that acted illegally and should force the businesses under threat of the fine to voluntarily comply with the requirements laid down by the Trade Licensing Act. However, in practice in the current setting of trade licensing legislation, there are cases where a normative determination of the amount of the fine does not contribute to that purpose. We suggest calculating fines by economic size of the entity that committed the infringement of the Trade Licensing Act, then depending on the severity, duration and consequences of irregularities, or

possible categorization of fines imposed under the Trade Licensing Act in this respect. Currently the Trade Licensing Act establishes the upper limit on fines. Facultative imposing of a fine would be left to the first detection of the infringement, while the second and any subsequent breach of the same provision of the Trade Licensing Act by the same entity would be sanctioned compulsorily. Such a model would require ensuring the awareness on the part of trade licensing departments, as well as setting clear normative criteria.

The following figure /6/ shows the types of the Trade Licensing Act controlled provisions, which were the most violated within the regional administrative units in 2013 and the figure /7/ shows dynamic change of number of the respective violated provisions in the Slovak Republic.



**Fig. 6 Proportion /%/ of found infringements of the Trade Licensing Act on the number of performed control provisions in 2013, according to the regional administrative units**  
Source: own processing, 2014



**Fig. 7 The number of violated provisions of the Trade Licensing Act in 2011 – 2013 in the Slovak Republic**  
Source: own processing, 2014

Based on the graphical representation, it is evident that the largest proportion of detected infringements falls under the control category of the provisions of the Trade Licensing Act concerning the establishment (formation, designation, revocation). The lowest proportion of detected infringements in 2013 was identified in the category concerned with the notification requirements of declaration of trade – declaration of operation of business under the Trade Licensing Act. For comparison, we deliberately omitted category of specific professional qualification, within which no representative data was available and category concerned with

the placement of the machines, which has not been inspected in 2013. We firmly believe that it is necessary to pay attention to and address specifically occurring problems. Such is certainly an evident and frequent violation of the provisions of the Trade Licensing Act governing the responsibilities of businesses in relation to the establishment and premises. A possible answer to this situation may be increased attention to this issue within consulting activities for entrepreneurs, precision of providing information during the establishment of trade, or adopting other effective preventive measures in order to achieve an improvement in the given area. Central coordination of the government administration in the field of trade licensing allows for specific guidelines to be issued for trade licensing departments in county seats, where illegal activities appear to be most problematic. Such procedures would continue to support the promotion of preventive function of the Trade Licensing Controls.

## 4 Conclusions

The Trade Licensing Control and its results are useful source of feedback information relating to the needs and problems of entrepreneurs in the field of trade licensing. State administration in this field is represented by the Departments of Trade Licensing with both section of trade registration and PSC services and trade licensing control section. Current normative changes, not just within the Trade Licensing Act, but also within the state reform program ESO caused new facts with the impact on entrepreneurial environment. There is a different territorial scope of those departments. The trade licensing registration section has 49 territorial units and trade licensing control 8 territorial units. The territorial scope of TLC is considerable extensive. It increase time consuming of TLC actions. According to that notification of TLC actions has been introduced. The TLC staff was in the first step displaced to the newly established TLC section at the Departments of Trade Licensing in the seat of county. There was a pressure on material and technical equipment. Despite to this fact, the function of TLC has changed from repressive to preventive and the normative changes of the Trade Licensing Act has introduced facultative way of fine imposing since 2011. There is a decreasing trend in imposed fines represented by the sum of obtained financial sources but still it seem like a number of violated provisions of the Trade Licensing Act is very turbulent. In the current time of permanent normative changes in the field of trade licensing, advisory character of TLC and guidance just because helps to get the state of violated provisions in accordance to the laws without additional load of entrepreneurs. However, the TLC section can provide more efficient state administration in the way of guidance and advisory information if still focused on local specific problems because as listed above, there are some extreme findings within the former local administrative units of TLC sections. According to our opinion the new normative changes have the potential to bring a higher quality of business environment but they require an excellent way of administration.

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