



American Chamber of Commerce in Macedonia response to the draft 2018-2020 National Economic Reform Program released for public comment on 28.11.2017

Comments on Subsection 4.3.1: Public Finance Management

Though not explicitly stated as a desired goal of neither proposed reform Measure 1 nor 2, we would welcome any and all reforms aimed at **increasing the transparency of the payment practices of budget users toward its private sector contractors, as well as their timeliness**. Late payment by budget users toward companies here contributes significantly to liquidity problems in the country. The Law on Financial Discipline applies fully to all budget users, however there is no evidence that institutional payment practices have improved. Given the State's obligation to monitor itself in this process (up to and including fines issued to the Minister of Finance itself), transparency of public payment practices is a key missing element that needs to be addressed.

Another important reform along this line would be to define a standardized methodology in the Enforcement Law by which municipalities' reserved "operational funds" are to be calculated in enforcement proceedings and introduce other measures that prevent blatant and long-term abuse of private contractors who have delivered public works in good faith. The current Enforcement Law lacks a methodology by which judges determine the minimum level of "operational funds" necessary for municipalities to continue normal operations (Article 218). In practice, this means that private contractors who have delivered public works and proven their right in court to be compensated for their work, sometimes cannot realize this right. In essence, this exception allows municipalities to operate above the law, avoid settling past debts and continue normal operations, including issuing new tenders.

Comments on Subsection 4.3.4: Business Environment and Reduction of the Informal Economy

We agree that Government efforts to reform various aspects of Macedonia's business environment in line with assessments of the *Doing Business Report* and, to a lesser degree, the *Global Competitiveness Report* have raised the country's visibility as an FDI destination in the region. This is proven by an increase in Brownfield and Greenfield foreign direct investment and increased employment in such newly established operations. A limited number of bureaucratic processes have been tangibly improved, which has helped the businesses that utilize them.

Unfortunately, the measures included in the draft 2018-2020 Program are limited to very small investment in a long talked-about e-government services portal. (While we would echo the need for continued investment in e-government systems these measures are insufficient and cannot be considered fundamental reforms.

Instead, concrete and tangible reform is needed in a number of fundamental areas that would create positive change in the business environment overall. These reforms should include measures to:

- Foster real, open and systemic dialogue with industry via proper use of the National Electronic Register of Regulations (ENER), placing a moratorium on the use of the “short procedure” in Parliament and extending the standard public comment period.
- Reduce the grey economy by ensuring enforcement institutions’ responsibilities are properly set, do not generally overlap with one another and that they are properly trained, equipped and motivated to tackle this problem systematically, throughout the territory of the entire country.
- Reduce regulatory confusion by ensuring official, consolidated legal texts are published more regularly, reducing conflicts between new laws and existing legislation, and requiring enforcement institutions to publish official, legally-binding guidance on the application of laws in concrete cases;
- General alignment of the tax (Corporate Income Tax and Value Added Tax) legislation with the requirements of the global digital transformation and alignment with the global taxation. This would contribute to the ease of providing electronic services and doing e-commerce in Macedonia, as well as to the overall transparency and revenue collection
- Increase the predictability, consistency, fairness of inspections by increasing the scope of the Inspections Council’s work, increasing the transparency of all State institutions that carry out inspections; increasing the transparency of fine issuance as well as instructional material to help companies increase their compliance, and eliminating incentives for inspectors to increase collections;
- Increase transparency and oversight of company appeal mechanisms; and
- Ensure para-fiscal charges, taxation and penalty policies are rational and fair

Fostering Real, Open and Systemic Dialogue with Company Representatives

Real, open and systemic dialogue with company representatives must be a cornerstone of future Government efforts to improve the business environment.

The Government’s introduction of ENER was a commendable move toward increasing public comment on proposed legislation that has been recognized by many. Unfortunately, the platform is only sporadically used by ministries to notify citizens of planned legislative changes and it will require further development and a systematic use of the tool to encourage open, two-way communication.

While selected companies and business associations are occasionally invited to action-oriented meetings with the highest government officials, the vast majority of companies operating in the country are systematically excluded from legislative and regulatory dialogue. This is because too many laws are being passed without any public comment period whatsoever. The so-called “short procedure” is meant to be used only when proposed changes are not “complex and large”. Given the vagueness of this definition, this procedure is being used for all kinds of changes, reducing the effectiveness of parallel efforts that government bodies make to conduct dialogue with select representatives of the business community. Meaningful public-private dialogue reform should begin with a moratorium on the use of the “short procedure” by Parliament.

Finally, even when it is respected, the minimum period of 10 calendar days for public comment confirmed by the government is simply too short to allow for thoughtful and constructive responses from company representatives. Thus, an impactful reform would be to set a minimum *15 working day* public comment period for all proposed legislation and a 20 working day public comment period minimum for public comment on legislation proposed in the summer and year-end periods.

Reducing the Grey Economy

We recognize significant government efforts since 2012 to decrease the operations of unregistered companies and particularly to punish those that fail to handle cash transactions and pay taxes in accordance with the law. However, we were surprised to see that the draft 2018-2020 Program did not include any reforms necessary to further reduce the grey/informal economy. We believe that reform is needed to ensure enforcement institutions' responsibilities are properly set, do not generally overlap with one another and that they are properly trained, equipped and motivated to tackle this problem systematically, throughout the territory of the entire country.

The State Market Inspectorate (SMI) should be one of the country's most important enforcement institutions when it comes to tackling the grey economy. However, SMI has virtually no budgetary resources for computers, software, vehicles, storage of seized items or other fundamental tools that would enable it to properly carry out its mission. Also, the law requires an in-person response to every citizen complaint, regardless of the issue in question or transaction size. Further, due to a Government order, an average of 70% of inspections SMI carries out are to enforce non-smoking legislation and closing times. All of these factors severely limit the SMI's ability to tackle the grey economy.

Similarly, while proposed Program measures outline Government programs to support private sector innovation, research and development and similar, the current State Office of Industrial Property struggles to perform even its most basic function of processing patent and trademark applications. In their 2015 annual report, SOIP reports receiving 5,357 applications for recognition and protection of trademarks in Macedonia, but issuing a total of just 614 decisions to recognize their rights (11%). In fact, this ratio has averaged about 20% in the 2003-2014 period. This means that a backlog of thousands of existing trademarks (many of them globally-recognized) have yet to receive basic recognition of their rights in Macedonia. We believe Government efforts to encourage innovation among local companies must begin by efficiently recognizing and protecting those that are already here.

Reducing Regulatory Confusion

In addition to a rapidly changing legislative and regulatory environment where companies are rarely involved in the policy-making process, companies working in Macedonia face a great degree of regulatory confusion caused by:

- The lack of Regulatory Impact Assessments (RIA) that consider impacts on the private sector as well as sufficient time for companies to adjust to new legislation;
- The lack of official, consolidated texts of all laws in force;
- Passage of laws that conflict with measures in existing legislation; and
- The lack of official information published by enforcement institutions on how laws are to be applied in specific cases.

Thus, we believe that reform targeting the reduction of regulatory confusion should include measures to address each of these issues.

It is common practice in Macedonia for Parliament to adopt laws that enter immediately into force upon being published in the Official Gazette. This means companies have virtually no time to adjust their systems, deliver training to their employees or take other measures to comply with the law before it officially enters into force. We believe this is at least partly due to the fact that government RIAs do not take impact on the private sector into account (only State budget impact). The "grey zone" regularly created by this practice is further compounded by implementing legislation that is delayed by several months. Thus, reform targeting the reduction of regulatory confusion should include measures that ensure companies are not held liable for complying with a new Law until its sub-laws have been duly published and a reasonable amount of time has passed, allowing companies to take measures to comply with those sub-laws.

Too often, companies are forced to work from unofficial versions of laws that are manually pieced together with amendments either by private service providers or company employees. This practice exposes companies to unnecessary legal risk and favors large organizations that have the resources to manage this difficult process. For example, the Law on VAT was not officially consolidated between the years 1999-2013, despite many amendments to it during that time. Thus, reform aimed at reducing regulatory confusion in Macedonia's business environment should include the creation of a process that ensures that the responsible Parliamentary Commission publishes official, consolidated legal texts for general public use within 1 month of any and all amendments.

While the Secretariat of Legislation is tasked with ensuring new laws do not conflict with existing measures, this is happening on a regular basis. Reform is necessary to ensure the Secretariat has the appropriate resources, authority and influence needed to reduce the confusion created when laws conflict with one another.

Finally, companies are often in need of reliable official guidance on the application of laws to their concrete situation. Today, institutions with the authority to decide how a given regulation applies to a concrete company situation do not publish these opinions in that official capacity. This encourages uneven application and means that companies are not aware how the law is applied to similar cases, except in rare cases when companies seek an "authentic interpretation" from Parliament. Given the slowness of response and privacy concerns, this measure is rarely used. Companies are also discouraged from going this route by Parliament's practice of rejecting such requests on the basis that the adopted laws are clear. Thus, reform should be made to require enforcement institutions to publish official, legally-binding guidance on the application of laws in concrete cases (excepting private entity data). This is particularly critical when companies have been punished for interpreting the application of the Law differently than enforcement institutions.

Increasing the Predictability, Consistency, Fairness of Inspections

Reforms targeting greater predictability, consistency and fairness of inspections would have a great impact on the local business environment. Such reforms would reduce unnecessary compliance risk for companies and increase their rate of proactive compliance. Specifically, reform is needed to:

- Increasing the scope of the Inspections Council to all government entities that carry out inspections;
- Requiring State institutions that carry out inspections to publish materials online relevant for companies to understand their role and how to contact them with questions;
- Increase the transparency of fine issuance as well as instructional material for companies to increase their proactive compliance; and
- Eliminating all incentives for inspectors to increase collections from companies.

The creation of an Inspections Council with the goal of standardizing the work of all inspectorates was an important step in the right direction. However, the Council should include all State institutions that carry out inspections (e.g., Public Revenue Office, Customs Administration). Also, it is critical that the Council work to identify and reduce overlap in the responsibilities of State institutions that carry out inspections.

Toward increasing general awareness of the number, type and responsibilities of the country's 28 State institutions that carry out inspections, each one must have a functional web site, where they will publish all relevant laws, sub-laws and internal procedures that are necessary for companies to understand their work and to be able to contact them with open questions. For example, today, the State Inspectorate for Agriculture doesn't have a single piece of information available online.

Another important reform would be toward increasing the transparency of the issuance of fines. If fines are to serve an instructive role to other companies, more data must be made available publically on which types of entities are being fined (e.g., size, sector, region) and for which types of offenses. Ideally, inspectorates

would regularly publish case studies and other instructional materials on issues for which companies are commonly being fined, to help increase compliance.

Finally, inspectors must not be incentivized in any way to increase collections from companies. For example, UJP annual reports from at least 2007 mention “25% of revenues from discovered and paid taxes and interest” as a source of financing of the institution itself. We believe this constitutes a formal incentive for inspectors to find ways to increase collections, rather than simply ensuring the law is consistently applied as it was intended.

Increase Transparency and Oversight of Company Appeal and Complaint Mechanisms

To avoid creating a business environment where companies are considered guilty before being proven innocent, complaint and appeal mechanisms must be consistent, transparent and efficient. Thus, reform is needed to prevent abuse of companies by individual inspectors by increasing the transparency of institutional handling of company complaints and ensuring best practices are being applied. Such measures would provide internal and independent oversight of appeal mechanisms and publishing of detailed data on complaints received from companies. Important questions to be answered include:

- What portion of appeals to institutional decisions are fully or partially accepted or rejected?
- How often does the Administrative Court overturn a decision by a State institution?
- What steps are taken to ensure decisions of the Administrative Court are respected? and
- Are the disciplinary actions taken for abuse of public positions consistent?

As part of this reform, it’s critical to increase the transparency of the work of the Administrative Inspectorate. In the absence of concrete information about the workings of this institution, companies doubt that it is carrying out its intended function.

Ensure Para-fiscal Charges, Taxation and Penalty Policies are Rational and Fair

A pillar of Macedonia’s strategy to attract FDI has included maintaining comparatively low tax rates and a simple taxation system. However, no measures have been taken to prevent a corresponding rise in the myriad para-fiscal charges companies must pay. At least anecdotally, they seem to be on the rise. Thus, an important reform would involve first assessing then rationalizing para-fiscal charges levied at the national and municipal level. We believe this reform would allow companies to make much more accurate investment and operational cost estimations and enable policy makers to view future cost increases in a holistic context.

Currently, a tiny portion of the business community bears an extremely high portion of the tax burden. The economy’s tax burden should be shared across all sectors in a more even fashion, to prevent reducing the competitiveness of certain sectors. Thus, AmCham recommends that the country’s tax structure be reviewed and reformed with the aim of spreading the country’s tax burden as evenly as possible.

The recent amendment to Misdemeanour Law that reduced fines across a great number of laws was a step in the right direction, since fines had been consistently raised over the past several years without regard to their impact on companies of all sizes. However, penalty policies must be reformed more fundamentally with the goal of ensuring they serve the function of encouraging compliance. Specifically, the severity of misdemeanour fines must correspond to the severity of the offense; human/machine error must not be punished; companies that voluntarily identify and correct errors should not be punished; and enforcement officials must offer warnings and education to companies and allow time for corrective action before punishment is levied.