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INTRODUCTION AND FUTURE ACTIVITIES

The Regulatory Governance Initiative (RGI) was launched in Thessaloniki 2001 at the seminar *Foundations for Investment: Progress and Challenges in Regulatory Reform in South East Europe*.¹ The RGI is part of the *Investment Compact* of the *Stability Pact*, which is a framework agreement on international co-operation among 40 countries, organisations and regional groupings to develop a shared strategy for ensuring stability and growth in the countries of South East Europe (SEE).

The RGI aims at strengthening the institutional, knowledge and process capacities for developing and implementing efficient and effective regulation, supportive of sound and competitive markets. The RGI builds on the central concept of *Regulatory Quality*, which is the backbone of the OECD *Regulatory Reform Programme*.² Adopted in the 1997 *OECD Report to Ministers on Regulatory Reform*, the *Regulatory Quality Concept* is built on two pillars: (1) economic development through liberalisation, privatisation, selective de-regulation and re-regulation, and (2) good governance through efficient, transparent and accountable government policies and institutions to protect consumers and achieve social and environmental goals.

Importance of the Regulatory Governance Initiative in South East Europe

The fundamental objective of regulatory governance is to improve the efficiency of national economies and their ability to adapt to change and to remain competitive. Regulatory reform that enhances competition and reduces regulatory costs can boost efficiency, bring down prices and stimulate innovation. Reform that reduces business burdens and increases the transparency of regulatory regimes supports entrepreneurship, market entry and economic growth. In sum, regulatory reform is an active government initiative that attracts and supports foreign and domestic investors.

But regulatory reform is a long term and complex endeavour requiring capacity building and the setting up of new institutions. To overcome vested interests in both public and private sectors, which benefit from the status quo and resist beneficial change, successful regulatory reform depends on the strength and consistency of support at the highest political level. Regulatory reforms need thus to be guided by coherent and transparent policy frameworks with concrete objectives, a clear path for implementation and well-functioning institutions will support private investment and achieve credibility and predictability. Open dialogue, communication and consultation involving all major stakeholders on the benefits and costs of reform will improve the understanding of impacts, increase regulatory transparency and reduce transition costs. It will also improve the legitimacy and credibility of government actions.

¹ On a special request from the Office of High Representative, a seminar on *Regulatory Governance and Network Industries* was arranged in Sarajevo (April 2002) to advance the discussion and point out policy options for regulatory reform in Bosnia & Herzegovina. Additional information on the Initiative and the proceedings from RGI seminars are available at www.oecd.org/regreform.

² Since 1998, the OECD *Regulatory Reform programme* has been documenting reforms efforts that boost sectoral efficiency and innovation, enhancing economy-wide flexibility and potential growth, increasing consumer choice and welfare, and increasing government effectiveness in maintaining high standards of environmental, consumer and safety protections.

The RGI provides such a forum for international co-operation and co-ordination promoting regulatory governance. Putting reform into the international arena attracts higher levels of political attention, peer pressure enhances transparency of the reform process and can help countries to sustain momentum, and regional co-operation and common principles for reform will stimulate reform at national levels and harmonise regional efforts.

The RGI Work Programme 2003

The importance of regulatory governance was acknowledged by governments in SEE through the adoption of the *Ministerial Declaration Attracting Investment to South East Europe: Common Principles and Best Practices*.³ The 2003 RGI Work Programme has been designed to assist the signing countries in implementing “economic, legal and administrative reforms and to provide for good governance structures, which are essential for creating confidence in public administration and the efficient functioning of markets and enterprises”.

In the framework of the Investment Compact, representatives of SEE countries have agreed to prepare *Action Plans* for their regulatory reform efforts by answering a *Self-Assessment Questionnaire* and identifying *Top Policy Priorities*. Accordingly, the forthcoming edition of the Monitoring Instruments⁴ will include a review and assessment of regulatory governance initiatives in SEE. The implementation of Action Plans will be monitored by the OECD Secretariat in co-operation with local consultants.

Peer review and policy dialogue are key words in the RGI. Seminars will provide a forum for multidisciplinary discussions, where speakers and participants will share their policy expertise in topics addressing a set of prioritised themes in the regulatory governance agenda. Three RGI seminars will be arranged in 2003:

- The Use of Regulatory Impact Analysis to Foster Economic Efficiency and Policy Coherence
- Building and strengthening Sectoral Regulators in Network Industries (i.e. telecommunication, electricity, gas, railways, etc.)
- Reforming Business Licences and Permits

The first seminar will take place in Sofia 23-24 January 2003 with the support of the Bulgarian government. Regulatory Impact Analysis — the systematic assessment of positive and negative impacts of regulation and alternatives— has helped many countries reduce regulatory costs on businesses, while maximising the effectiveness of government action in protecting public interests. It has been instrumental in improving transparency and communication with concerned interests. RIA is particularly useful to countries undergoing major reform to their legal frameworks, as it helps explore alternatives and provides relevant information to select the best option.

³ The full Declaration can be found at www.oecd.org/regreform.

⁴ The Monitoring Instruments of the Investment Compact chart ongoing progresses in implementing reform across the policy areas of the Investment Compact, and set short- and medium-term priorities for reform. The Monitoring Instruments point to five stages of every reform process: (a) strategic planning and policy review, (b) adoption of legislation, (c) institutional reforms, (d) capacity building, and (e) regulation/enforcement of laws.

II. SUMMARY REPORT

As one of the key strategies for regulatory quality, the seminar focused on how public consultation can contribute to regulatory transparency, which in turn strengthens the regulatory foundations on which investment depends. Particular emphasis was given to how consultation can be used to (1) identify impacts on business and investment; (2) support the development of institutions and tools where domestic and international investors are consulted; and (3) identify how to make the law-making and consultation process more effective and efficient. The seminar was hosted and co-organised by the Greek Government. The event brought together almost 50 representatives from 16 countries. Invited speakers included a well-balanced combination of business, academics, OECD Member countries and countries in Central and South Eastern Europe.

Mr. Ilias Liakopoulos, Secretary General for the Region of Central Macedonia (Greece), opened the seminar stressing the benefits of implementing regulatory reform at both the national and local level. *Mr. Cesar Cordova-Novion*, Deputy Head of the Regulatory Reform Programme (OECD), introduced the Regulatory Governance Initiative and highlighted the increased attention given to regulatory governance by governments in South Eastern Europe. *Mr. Panagiotis Karkatsoulis*, Scientific Counsellor to the Ministry of Interior (Greece), chaired the seminar drawing on the Greek regulatory reform experience, asking insightful questions and contributing to the smooth flow of the discussions.

Session 1: Why is regulatory Transparency Important for Investment and Economic Growth?

The session discussed how a transparent and non-discriminatory regulatory environment can reduce burdens on entrepreneurship and facilitate a more dynamic business sector, how regulatory transparency decreases the risk of regulatory capture, and how transparency improves accountability and reduces corruption through a better control of administrative discretion.

Mr. Cesar Cordova-Novion, Regulatory Reform Programme (OECD), stressed that the benefits of an open and transparent regulatory environment are universally accepted. The opposite case – opacity, abuse, capture by special interests, and unpredictability – is a serious barrier to investment, economic growth and good governance. However, transparency measures are never costless, and in some cases may involve drawing substantially on scarce public and human resources. Implementation can also create unintended results. Thus, as with any other area of government policy, the design of all transparency proposals needs to be accompanied by a benefit/cost assessment adapted to each case, and their implementation be accompanied by a strong monitoring process. Rather than focusing on increased regulatory transparency in a quantitative sense, the quality (consistency, coherence and integration) of the different elements of regulatory transparency should receive more attention.

Mr. Georgi Nikolov, Bulgarian International Business Association (Bulgaria), described the Bulgarian regulatory environment which has been subject to dynamic changes during the last decade. On the one hand, the rapid changes in legislation have caused instability in the regulatory environment. In light of the limited number of law-making experts, the result has often been laws of poor quality and the need for amendments to the legislation. On the other hand, the government is speeding up the law making process in order to reach certain milestones agreed with its counterparts (World Bank, European

Commission) or determined by the political programmes of the party in power. In response to this, the Council for Economic Growth was created as an advisory body to the Council of Ministers. Representatives of the business sector and the Minister of Economy, Minister of Finance and Minister of Transport and deputies are members of the Council.

Ms. Jacqueline Coolidge, Foreign Investment Advisory Service (USA), circulated a background paper on the studies of administrative barriers to investment carried out by FIAS over the past several years. While virtually every emerging market country has liberalised its economy to some extent in recent years, significant deterrents often still remain. The maintenance of overly complex business registration procedures, combined with a lack of institutional capacity, often translates into major obstacles to investment. This situation has raised the need for more comprehensive reform efforts, combined with radical overhauls of how government agencies operate.

Session 2: Access and communication of regulatory information

Access to regulatory information is a precondition for a well-functioning market. Investors base business decisions on the formal and informal regulatory framework as well as the predictability of regulatory changes. Also, lack of clear knowledge of the existing framework can foster non-compliance by businesses and create possibilities for unethical behaviour. Different transparency tools and mechanisms, including new information and communication technologies (e-governance) are available. The session discussed governmental capacities to provide access to regulatory information and communicate governmental decisions to national and foreign partners including foreign traders and investors.

Ms. Carine Bernard, Commission for Administrative Simplification (France), defined two main concepts applied in initiatives of administrative simplification in France. The first is the rights of citizens to access administrations and services. The second is the modernisation of administrative structures and modes of operation by an extended use of new technologies (with a special focus on SMEs). Each ministry is responsible for the administrative simplification policy in its sector and must prepare an annual programme for simplification of administrative formalities and procedures. Ministries submit their plans to the Commission for Administrative Simplification (COSA), which is in charge of reviewing of the plans and submitting them to the Prime Minister. COSA is assisted by the Committee to Improve Administrative Language (COSLA), which assists administrative bodies in redrafting forms and procedures.

Ms. Angeliki Maniti-Papadimitriou, Ministry of Interior, Public Administration and Decentralisation (Greece), described the programme of administrative reform called *Politeia*, which was implemented in Greece two years ago. One of the most important pillars of the programme was the establishment of the *Citizens' Service Centres*, which is considered to be fundamental in the provision of qualitative services to the citizens and businesses. In this framework, the *Simplification of Procedures* programme that is being implemented aims at reducing administrative burdens on citizens and businesses and promoting regulatory transparency in public services. Finally, many initiatives are undertaken by the Ministry of Development to simplify the regulatory, fiscal and administrative environment where SMEs operate, to support entrepreneurship and innovation among young entrepreneurs, and to enhance incorporation of new technologies to enhance the competitiveness of small enterprises.

Ms. Elena Petkanovska, Ministry of Local Self-government (Former Yugoslav Republic of Macedonia), described Macedonian capacities to provide access to regulatory information. Macedonia faces serious problems with incomplete legal regulations, insufficient institutional capacities on both the central and local level and within the civil society, disintegrated information systems, lacking mechanisms to co-operate among the municipalities and the government, and insufficient consultation and transparency provisions. However, several initiatives are currently being undertaken to involve citizens and the private sector in all stages of policy making and to make public information to citizens and business on work

conducted at all levels of the government. In March 2003 there will be a National Conference with the intention to adopt a declaration recommending open governance as being a national priority.

Session 3: Country experience roundtable

To foster inter-regional discussion, peer review and information sharing, a *Country Experience Roundtable* was organised. The roundtable permitted all SEE country delegates to report on the current level of regulatory transparency and communication of the regulatory framework, major recent developments in this area, and reforms planned for the next two years. Discussions showed that significant efforts are currently being undertaken to improve the regulatory environment conducive to foreign and domestic investments. While important results have been recorded, future attention should be directed towards creating a more transparent, stable and non-discriminatory regulatory framework for investment and economic growth.

Session 4: Consultation in rule making

The session explored tools which can encourage consultation with business groups, private sector representatives, social partners and civil society to foster the development of investment opportunities and to provide input to administrative procedures affecting investment policies, laws and regulations. Regulatory issues differ greatly in impact and importance, scope and number of affected groups, information needs, timing of government action and resources available. The design of public consultation methods must recognise cultural, institutional, administrative and historical dimensions specific to every country.

Mr. Robin Clarke, Cabinet Office for Public Service Reform (United Kingdom), represented the Better Regulation Task Force, which was established in 1997 as an independent advisory body to ensure that regulations are transparent, accountable, proportionate, consistent and targeted. To support the Task Force, the Regulatory Impact Unit (RIU) was established to ensure that regulations are fair and effective. One of the RIU's main policy tools is the Regulatory Impact Assessment (RIA), which compares the costs, benefits and risks of any proposed regulation for businesses, charities and the voluntary sector. An important element of RIA is consultation. Good approaches to consultation tend to recognise the increased value of consulting at the early stages of policy making and of considering what approach will work best in achieving its aim rather than using the same approach each time. Often one of the least well-planned aspects of consultation is the actual use of the results produced.

Mr. Christian Vergez, Public Governance and Territorial Development Directorate (OECD), discussed issues of engaging business in policy-making. Government-business relations cover a broad spectrum of interactions at each stage of the policy-making cycle: from policy design, through implementation to evaluation. In reviewing this complex relationship, the OECD uses the following working definitions. *Information* is a one-way relation in which the government produces and delivers information to business. It covers both 'passive' access to information and 'active' measures to disseminate messages to stakeholders. *Consultation* is a two-way relation in which businesses provide feedback to the government. *Active participation* is a relation based on partnership, in which businesses actively engage in the policy-making process. It acknowledges a role for business in proposing policy options and shaping the policy dialogue – although the responsibility for the final decision or policy formulation rests with the government.

Ms. Giola Valatsou, Ministry of the Interior, Public Administration & Decentralisation (Greece), described a recently established institution to improve transparency: the National Council of Administrative Reform (NCAR). The NCAR was established two years ago to discuss administrative

reforms, as well as other small-scale reform propositions, with internal and external stakeholders. Based on this consultation, the draft law was introduced to the Parliament and implemented by the Ministry of the Interior, Public Administration & Decentralisation. The most important result of the consultation procedure is the creation of a climate of co-operation between the public and the private sector and the civil society. A second institutional improvement is the introduction of collective negotiations in public administration, which relies upon the acceptance that a change in administrative culture is a precondition for changes in administration. Two main benefits have been observed. First, the relationships between the government, its administration and public servants are to a larger extent characterised by consensus and co-decision. Second, the fact that both sides have committed themselves to the content of a general regulation as well as to the minimum time of its validity has created the preconditions for a further amelioration of their responsibility and commitment to the output.

Mr. Dobrosav Milovanovic, Ministry of International Economic Relations (Serbia), described the main purposes of consultation in rule making, which are to improve the quality of regulation, introduce transparency to the law making process, enhance the efficiency of the drafting procedure and implementation, and ensure accountability of the government. Consultation with different stakeholders (state institutions, the business community, expert associations, commercial banks, chambers of commerce, etc.) is necessary in all phases of the rule making process (including regulatory impact analysis, cost-benefit or cost-effective analysis). The method of participation (advisory boards, public debate, workshop, operative and broad working groups) selected by the government should be adapted to the particular case.

Ms. Bettina Hagerup, Danish Commerce and Companies Agency (Denmark), described the use of Business Impact Assessments, which was established as a pilot project in 1996 and is now mandatory for several ministries. The procedure means that the Danish Commerce and Companies Agency identifies relevant proposals to be tested when consulted on the government's Law Programme, and the Business Test Panels are then activated. The Panels have proven useful in many ways: as a tool to measure actual consequences in order to make good cost-benefit analyses, as a consultation method to improve communication between business and ministries, and as a means to increasing the legitimacy of final proposals.

Session 5: Transparency in privatisation and public procurement systems

Simplification of privatisation and public procurement procedures is central to the regulatory reform agenda. Problems in these areas not only have an impact on the success of structural and regulatory reforms but also on the credibility of these reforms and the trust the general public and investors have in the government. The session discussed different transparency procedures and institutions supporting the design of privatisation and public procurement programmes.

Dr. Jan Winiecki, European University (Germany), discussed issues of transparency in the privatisation process. During the huge privatisation programmes launched in transition countries after 1998, transparency issues have started to gain importance only in recent years. Introducing transparency into the privatisation process might have carried significant costs to the reforming government. First, more openness made it difficult to shield privatisation deals from political attacks. Second, to a very large extent privatisation was an exercise in shrinking the state, which spurred very difficult employment repercussions. The labour force, both insiders and outsiders, felt the pressure of uncertainty, incurred transaction costs of job search, felt the stress of adapting to the new environment, etc. However, the short-term costs of lacking transparent privatisation processes, reduced long-term benefits in terms of better public and private governance of privatised firms. Opacity in the privatisation process reduced the welfare gain of an improved and sustainable functioning of markets. They perpetuated private interests of some producers and ingrained corruption practices. Nonetheless, privatisation has ensured the emergence and expansion of the

private sector in post-communist countries. Today the national investors are increasingly demanding more transparent regulatory processes.

Mr. Tom Annikve, Public Procurement Office (Estonia), explained that new public procurement regulations are currently being established based on a series of general principles, definitions and transparent administrative procedures. Previous rules and procedures often lacked coherence, clarity, legibility and comprehensibility. While taking into consideration local peculiarities (low value thresholds), the new rules are also harmonised with EC directives and the WTO Government Procurement Agreement. In particular, the government takes special care in the implementation of the new rules, the obligation to use evaluation criteria for improving the transparency on awarded contracts, the possibility to arrange electronic public procurements, establishing an effective dispute resolution mechanism, and strengthening responsibilities for violations of the public procurement act. Electronic systems are increasingly being used to disseminate information on procurement contracts (English version will follow shortly).

Representing the Authority for Privatisation and Management of the State Ownership (Romania), **Mr. Lucian Goj** described the preparation of a global plan aiming at integrating companies in a coherent assembly of measures and provisions that will enhance economic growth and social stability. Based on detailed analysis, the Authority has concluded that it is necessary to reform the existing legislative framework on which the privatisation process is based in order to accelerate the process. Accordingly, new elements have been introduced in recent laws to provide more precision, correctness and efficiency to the privatisation/restructuring/liquidation process and by increasing transparency and reducing bureaucracy. It is meant to lead to the harmonisation of the entire legal framework for the privatisation of companies by creating more flexible and coherent procedures and by completing the implementation of privatisation policies in line with agreements with international financial bodies.

Session 6: Country action plans and the review questionnaire

The session launched the *Self-Assessment Questionnaire* prepared by the Secretariat, which will form the basis for *Action Plans* in which Governments identify *Top Key Priorities* for future regulatory reform initiatives in 3 main pillars: (1) Regulatory transparency, public consultation and communication of the regulatory framework; (2) Regulatory Impact Analysis; and (3) Reforming business licences and permits. The seminar supported the reform process in the first pillar, and the Action Plans will help sustain commitment and monitor progress. Completed Action Plans will be assessed and reviewed by the OECD. A review of regulatory reform initiatives in South Eastern Europe will constitute an integral part of the updated edition of the Monitoring Instruments, which will be published in March 2003.

Mr. Constantine Palicarsky, Advisor to the Bulgarian Council of Ministers (Bulgaria), invited participants to the upcoming RGI seminar on *The Use of Regulatory Impact Analysis to Foster Economic Efficiency and Policy Coherence*, which will take place in Sofia 23-24 January 2003 with the support of the Bulgarian Government.

III. AGENDA

Thursday 21, November 2002

9:00 – 9:30

Registration

9:30 – 10:00

Welcome and opening remarks by Mr. Ilias Liakopoulos, Secretary General of the Region of Central Macedonia (Greece).

Introduction by Mr. Cesar Cordova-Novion, Regulatory Reform Programme (OECD).

Statement by the Chairman Mr. Panagiotis Karkatsoulis, Ministry of Interior, Public Administration and Decentralisation (Greece).

10:00 – 12:00

Session 1: Why is regulatory transparency important for investment and economic growth?

The session will explore the benefits of creating a transparent, stable and non-discriminatory regulatory framework for investment and economic growth. National and foreign firms, individuals and investors seeking access to a market must have updated information so they can base decisions on the existing and evolving regulatory environment. This knowledge will permit them to assess potential costs, risks and market opportunities. Policies and institutions supporting regulatory transparency reduce search costs and increase confidence of consumers and market players in the well-functioning of the rule of law.

The discussion will discuss different dimensions and relationships between investment and transparency such as:

- How a transparent and non-discriminatory regulatory environment can reduce burdens on entrepreneurship and facilitate a more dynamic business sector.
- How regulatory transparency decreases the risk of regulatory capture.
- How transparency improves accountability and reduces corruption through a better control of administrative discretion.

Speakers:

- Mr. Cesar Cordova-Novion, Regulatory Reform Programme (OECD)

- Mr. Georgi Nikolov, Bulgarian International Business Association (Bulgaria)

12:00 – 13:30

Lunch

13:30 – 16:00

Session 2: Access and communication of regulatory information

Access to regulatory information is a pre-condition for a well-functioning market. Investors will base business decisions on the formal and informal regulatory framework as well as the predictability of regulatory changes. Also, lack of clear knowledge of the existing framework can foster non-compliance by businesses and create possibilities for unethical behaviours. Different tools and mechanisms can provide this type of transparency, including new information and communication technologies (e-governance). This session will discuss governmental capacities to provide access to regulatory information and communicate governmental decisions to national and foreign partners including foreign traders and investors.

Speakers:

- Ms. Carine Bernard, Commission for Administrative Simplification (COSA)
- Ms. Angeliki Maniti-Papadimitriou, Ministry of Interior, Public Administration and Decentralisation (Greece)

Discussant:

- Ms. Elena Petkanovska, Ministry of Local Self-government (Former Yugoslav Republic of Macedonia)

16:00 – 16:30

Coffee break

16:30 – 18:30

Session 3: Country experience roundtable

In line with the *Monitoring Instruments* of the Investment Compact, the RGI aims to develop regulatory reform *Action Plans* for the adoption and implementation of criteria, processes, and well-structured institutions conducive to investment and economic growth. Based on a *Self-Assessment Questionnaire*, the roundtable will permit all SEE country delegates to report on the current level of regulatory transparency and communication of the regulatory framework, major recent developments in this area and reforms planned for the next two years.

18:30

Cocktail

Friday 22, November 2002

9:30 – 12:00

Session 4: Consultation in rule making

The session will explore issues on how to consult business groups, private sector representatives, social partners and civil society in order to foster the development of investment opportunities and to provide input to the administrative procedures affecting investment policies, laws and regulations. Regulatory issues differ greatly in impact and importance, scope and number of affected groups, information needs, timing of government action and resources available. The design of public consultation methods must recognise cultural, institutional, administrative and historical dimensions specific to every country. Understanding these factors is thus crucial in determining the effectiveness of particular public consultation tools developed and applied by OECD and SEE countries.

The following are some of the issues to be discussed:

- Setting up feedback mechanisms (one-way) such as creating registers, bulletin boards of regulations and setting up public notice-and-comments.
- Organising in-depth consultation (two-way) such as advisory boards, target groups and test panels.
- How to improve responsibility of consulted parties and their commitment to the outcome.

Speakers:

- Mr. Robin Clarke, Cabinet Office for Public Service Reform (United Kingdom)
- Mr. Christian Vergez, Public Governance and Territorial Development Directorate (OECD)
- Ms. Giola Valatsou, Ministry of the Interior, Public Administration and Decentralisation (Greece)

Discussants:

- Mr. Dobrosav Milovanovic, Ministry of International Economic Relations (Serbia)
- Ms. Bettina Hagerup, Danish Commerce and Companies Agency (Denmark)

12:00 – 13:30

Lunch

13:30 – 15:30

Session 5: Transparency in privatisation and public procurement systems

Privatisation and public procurement procedures are central to the regulatory reform agenda. However, they have often tended to be highly complex, opaque and sometimes duplicative practices, imposing significant delays and costs on commercial operators. The increased importance of these procedures has also raised awareness in the political agenda. Problems in these areas will not only have an impact on the success of structural and regulatory reforms but also on the credibility of the reforms and the thrust in the government by the general public and investors. The session will discuss different transparency procedures and institutions supporting the design of privatisation and public procurement initiatives.

Speakers:

- Dr. Jan Winiecki, European University (Poland)
- Mr. Tom Annikve, Public Procurement Office (Estonia)

Discussant:

- Mr. Lucian Goj, Authority for Privatisation and Management of the State Ownership (Romania)

15:30 – 16:00

Coffee break

16:00 – 17:00

Session 6: Country action plans and the review questionnaire

Based on the *Self-Assessment Questionnaire* and the information obtained from the seminar, each SEE Member will be encouraged to prepare a regulatory reform *Action Plan* for the next two years. The *Action Plan* will help sustain commitment and monitor progress in order to ensure that investment takes place in a transparent regulatory environment in which stakeholders are being heard. Completed *Action Plans* will be assessed and reviewed by the OECD and will form an integrate part of the *Monitoring Instruments*.

The session will introduce the upcoming seminar on Regulatory Impact Analysis, which constitutes the second pillar of the regulatory monitoring process.

17:00

Closing of the seminar

Mr. Nikolai Malyshev, Head of Russia, South East Europe and New Independent States Unit (OECD)

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Jacqueline Coolidge (United States), *Draft Terms of Reference – Study of Administrative Barriers to Investment Using Self-Assessment*

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Angeliki Maniti-Papadimitriou (Greece), *Administrative Reform*

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Assuring Regulatory Transparency

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What is regulatory transparency?

The OECD has defined regulatory transparency in the following way:

“Transparency is the capacity of regulated entities to identify, understand and express views on their obligations under the rule of law”

Regulatory transparency is both a means and a goal of regulatory policies. As a key core governance value it needs to be an integral part of all regulatory activities undertaken by the government. The concept itself has very rapidly gained prominence in many countries. In the past ten years, many OECD countries have made substantial investments in improving regulatory transparency and have reaped important gains in terms of regulatory quality, legitimacy and accountability.⁵

From a regulatory perspective, transparency involves both the *accessibility and intelligibility* of laws (access to regulatory information, responsiveness and accountability to regulated parties, codification and organisation of regulation, and plain language drafting) on the one hand, and the *openness and consistency* of the processes by which they are made (clear procedural requirements, opportunities to be heard and appeal rights), on the other. That is, regulatory transparency is about both the law-making process and the implementation and enforcement of the resulting laws.

Benefits of fostering regulatory transparency

In purely economic terms, regulatory transparency raises investor’s confidence in the government, reduces trade frictions, increases compliance (and thereby regulatory effectiveness), prevents corruption, supports democracy (right of information), and minimises the risks of regulatory failure.

Transparency also reveals likely *compliance stresses* by highlighting where a proposed regulation lacks acceptability (that is, where it conflicts with widely held public attitudes as to what constitutes reasonable behaviour), or where it lacks perceived proportionality (that is, where the proposed regulation is not regarded by the public or stakeholders as a reasonable response to the identified problem).

Main strategies and tools to enhance regulatory transparency

Among the tools to enhance regulatory transparency, consultation occupies a pre-eminent position. A basic distinction can be made between *active* (advisory groups, committees, public hearings, panel tests, informal consultation and peer reviews) and *passive* (circulation for comments, notice and comments, prepublications and internet publications) consultation. Consultation is a cost-effective means of gathering data – which supports Regulatory Impact Analysis, a key regulatory quality tool based on objectively weighing the benefits and costs of different policy options in a comparative context. Also, a range of communication tools (guidance and training, official gazettes and federal registers, regulatory registers and internet sites) is available to policy-makers.

5. OECD, 2002, *Regulatory Policies in OECD Countries. From Interventionism to Regulatory Governance*. Paris.

Challenges for transparency initiatives

While substantial progress is being made on regulatory transparency issues, a number of broader regulatory trends pose substantial new problems and risks undermining the gains being made. Some of the more important problems that have been recognised in many OECD countries are: the role of regulatory inflation and cumulative effects of regulation, breaking information monopolies, dealing with the insider vs. outsider question, taking into account transparency cost capacities (time and money), the increased use of “quasi-regulatory” instruments, increasing regulation at supra-national levels, increasing use of alternatives to traditional regulation (in particular, self-regulation), and “emergency” regulatory processes.

In addition to these specific issues, transparency requirements, considered in general terms, raise a number of strategic trade-offs when they are implemented. Indeed, the design and implementation of transparent regulatory processes needs to not only follow general principles but be tailored to each concrete situation. The following set of issues indicates the potential for tensions between transparency and other aspects of regulatory quality: transparency vs. urgency, “formal” vs. “informal” transparency, “formal” (de jure) vs. “real” (de facto) transparency, predictability vs. flexibility, transparency vs. confidentiality, and consultation vs. lobbying (the democratic obligation to govern for all).

Some broader issues that policy-makers must take into account when choosing the appropriate transparency and consultation tool is the risk of capture through consultation, the emergence of consultation fatigue, mandating transparency for private agents, choosing specific mechanisms for key policies (privatisation, public procurement, etc.), achieving an independent review of regulatory decisions, and the fact that different models of consultation have different transparency implications.

Conclusion

Benefits of an open and transparent regulatory environment are universally granted. The opposite stance – opacity, abuse, capture by special interests and unpredictability - are clear barriers to investment, economic growth and good governance. However, transparency measures are never costless, and in some cases may involve drawing substantially on scarce public and human resources. Implementation can also create unintended results. Thus, as with any other area of government policy, the design of all transparency proposals needs to be accompanied by a benefit/cost assessment adapted to each case, and their implantation be accompanied by a strong monitoring process. In a more general sense, good regulatory transparency practices are not simply about having “enough” transparency – in a quantitative sense – but rather about the quality of the different elements of regulatory transparency. This includes the extent to which they are integrated with each other (and the regulatory process more broadly) and that they are consistent and mutually supportive of each other.

Transparency in the Law Making Process – The Experience of the Bulgarian International Business Association

Georgi Nikolov

BIBA – Chairman of the Legal Committee (Bulgaria)

The Bulgarian International Business Association (BIBA) is a non-profit organisation of the foreign investors in Bulgaria. Its main objectives are to provide the government with the opinions of the foreign investors for the development of the business climate in Bulgaria, to establish common position of the members on various topics of the economic environment and the regulatory framework and in general to be one of the channels of communication between the business and the government. Every year BIBA prepares and presents to the government the so-called "White Paper", which is an analysis of the economic situation in selected branches and provides recommendations for improvement including in respect to the legal framework.

The Bulgarian regulatory environment is subject to dynamic changes during the last decade. New legislation was introduced practically in all spheres of political, social and economic life. The process is not completed. In the light of its expected accession to the EU in 2007, Bulgaria needs to harmonize its legal framework with the requirements of the EU directives. It is foreseen that during next 3-4 years more than 2000 acts of legislation (laws, regulations, standards, etc.) must be adopted or completely re-written.

The rapid changes in legislation though needed have one serious negative effect - instability in the regulatory environment. This is considered as a risk, which is an obstacle for the investors especially for those who come from abroad and generally impedes economic growth.

On the other hand the government is pressed by the time framework and is speeding up the law making process in order to reach certain milestones agreed with its counterparts (World Bank, European Commission) or determined by the political programs of the party in power. The result is often laws with poor quality and need for amendments in the legislation.

Law making is a rather complicated and exhaustive process. It requires the involvement of many experts in different fields who must also have a certain expertise and experience in the drafting of laws. Normally the number of such experts in every government is limited. As a result of the overload this task, not surprisingly, is shifted to public servants that are not qualified enough.

These problems have been identified by BIBA and the association has expressed its opinion for the need of practical improvements in the law making process, bringing more transparency and involvement of the private sector. In brief the requirements for a better and transparent process are:

- information about the government agenda on legislation;
- clear procedures;
- consultation with the stakeholders at an early stage of the law making process;
- collecting and analysing the feedback, preparation of cost/benefit analysis;
- public discussions on drafts of law.

A transparent law making process will have several effects:

- reduced risks for legislation, surprises for the investors;
- the government will have direct feedback;
- increased trust between the business and the government;
- involvement of experts who work in the private sector and better quality of the drafts;
- reduced risk for corruption and unfair lobbying practices.

A good example for introducing transparency in the law making process in Bulgaria is the creation of the Council for Economic Growth (CEG). The Council is created by a resolution of the Bulgarian government as an advisory body to the Council of ministers. In this council seats are granted to representatives of the business (BIBA, Bulgarian Chamber of Commerce, Bulgarian Economic Chamber, Employers' Union and Vazrajdana Business Club). On the side of the administration participate the Minister of Economy, Minister of Finance, Minister of Transport and Deputies. The council holds its sessions on a regular basis (at least twice per month).

The major objective of this body is to become an institutionalized channel for discussions between the government and the business. During the discussions opinions are exchanged on various economic issues, government policies and regulatory framework.

A very significant part of the activities is focused on the discussion on all drafts of laws in the economic sphere prepared by the government. The business associations provide the government with their official statements on the drafts with argumentation and proposals. The council does not take decisions, which are binding but if consensus is reached on certain issues the government acts accordingly.

An important detail of the work of CEG is the fact that it does not deal with individual cases. In this respect the council cannot be used for lobbying of a private interest and this fact is highly appreciated by BIBA and the Bulgarian government.

In BIBA's opinion, CEG is a unique example of co-operation between government and business and this initiative must be developed. The plans now are that the council should have its own administrative staff to deal with the increasing number of issues put on the agenda and volume of data received. The fact that the government is requesting and expecting feedback from the business on various policies and law drafts on the other hand increases the pressure on the business association to consult with their members and prepare professional statements using their own qualified experts.

It is true that the discussions in CEG do not always lead to consensus and respective changes in the government policies or drafts of law. However 100% success is neither the target of BIBA's participation in CEG nor can it be possible. Much more important is that at this forum both government and business present their positions and arguments. The business knows at a relatively early stage what changes in the regulatory framework can be expected. This brings a higher level of predictability of legislation and policy changes and creates trust.

Draft Terms of Reference: Study of Administrative Barriers to Investment Using Self-Assessment

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Background

Virtually every “emerging market” country has liberalised its economy to some extent in recent years. To varying degrees, attention has been focused on areas such as: creating a more stable macroeconomic environment; liberalisation of controls on foreign exchange transactions; trade liberalisation; rationalising tax structures; liberalising investment laws and restrictions; actively promoting foreign investment and exports.

Despite these and other improvements, the formal investment response in many countries that have been competing fiercely for new investment has been disappointing. As a result, scepticism over the effectiveness of economic liberalisation is becoming more widespread; particularly as many senior level officials believe that the reform process has been largely completed.

In countries that have addressed many obvious constraints to private investment and exports, significant deterrents often still remain. In particular, countries with a long history of government intervention and administrative direction in economic decisions typically have complex and overlapping controls beyond those easily identified as constraints on investment. The maintenance of overly complex registration procedures, combined with lack of institutional capacity, often translates into a situation where these mere procedural tasks become major obstacles to investment. These difficulties can only be overcome by extraordinary payments or long delays, and become a serious deterrent to potential investors who may have made a preliminary decision to commit to a country. This situation, all too common in emerging markets, has raised the need for more comprehensive reform efforts, combined with radical overhauls of how government agencies operate.

Similarly, in countries that have taken steps to liberalise trade and promote exports, there still persist obstacles at an operational level for firms. Ending import licensing, liberalising foreign exchange, and reducing tariffs are all necessary steps to improving the policy environment for exports. Their impact can be easily blunted, however, by cumbersome procedures for duty-free importation, the persistence of second-tier licensing requirements, ineffective Customs and VAT administration, etc.

At an implementation level, government officials are often still distrustful of private businessmen. Alternatively, they are simply viewed as a source of supplemental income generation. Both motivations can mean the persistence of otherwise lower-level irritants to business formation and operation, often elevating them to the point of constraints in an overall investment climate that remains only partially reformed. These factors can be particularly negative for foreign investors who may not be politically connected, operate under strict internal corporate guidelines, or who do not have local partners to take care of a multitude of procedural obstacles and associated payments. Accordingly, countries may lose the “good” foreign investors they all attempt to attract.

FIAS has carried out studies of administrative barriers to investment in over 30 countries over the past several years. A standard “Admin. Barriers Project” examined all the steps an investor had to go through in

order to start up a new business, plus several of the most routine interactions between business and government agencies during normal business operations, as follows:

- *Start-up Procedures*: (e.g., registration and licensing)
- *Locating Procedures*: (access to premises, construction permits, and utilities)
- *Operating Procedures* and reporting requirements, (e.g. tax, inspections)

The reports include a detailed *description* of each of the procedures (as an investment guide), an *analysis* including the problems experienced by investors, inter-regional and international comparisons, and the strengths and weaknesses of the current procedures. The report also contains many detailed *recommendations* for improvement.

FIAS is now moving in the direction of a “self-assessment” approach to reviewing administrative barriers to investment in client countries. Under this approach, a counterpart team in the government will utilise FIAS-developed templates to collect the basic “institutional ” information on administrative procedures for business establishment and operation in the country, following the existing norms and regulations. The outputs from the self-assessment will be analysed in conjunction with the outputs of a business survey of administrative costs in order to identify specific areas that require more in-depth review and analysis along the lines of a more traditional administrative barriers study. The use of the self-assessment approach will also provide a mechanism for effective capacity building by involving government counterparts in the initial analysis and providing training for continued monitoring of the investment environment.

In this approach, FIAS will collaborate closely with an inter-agency committee of local counterparts throughout the project. The nominal head of the committee should usually be a Deputy Prime Minister, but he may appoint a specific individual to be in charge of the day-to-day activities of the counterpart team. There should also be high-level representatives of two or three other relevant ministries or agencies. The active counterparts should be a team of committed and knowledgeable individuals who are willing, with the commitment and support of the government, to get the templates filled out and to take on the significant task of monitoring changes in the business and regulatory environment in the country. The initial tasks of this committee would be to conduct the “self-assessment” of the administrative barriers and to collaborate with FIAS in conducting the more in-depth review of the areas identified through the self-assessment and the cost survey. This role would then be translated into a continuing policy and procedure review and change advocacy role. It is expected that the members of this team will be charged with identifying issues and problems in the business environment and taking steps to propose policy changes and implementing appropriate reforms on an ongoing basis.

The project will consist of four distinct components, in three phases:

Phase 1: Identifying the problem areas

Phase 2: Analysis and recommendations

Phase 3: Prioritisation of recommendations and preparation of Action Plan

The objectives of the administrative barriers study (self-assessment and detailed study) are to provide:

- *A Roadmap of administrative procedures*. The preparation of an Investor’s Guide or “roadmap” based on detailed identification and documentation of current procedures for the formal establishment and operation of businesses.

- *A policy and regulatory review.* The outputs of the self-assessment templates and the survey of regulatory and administrative costs will be used to identify problem areas (e.g., areas that cause complaint among investors; areas that seem significantly more costly or time-consuming than in other countries, etc.). The analysis will be carried out by international experts, who will also make recommendations for improvement, to be included in the Study of Administrative Barriers to Investment.
- *An agenda for dialogue between the public and private sectors on administrative reforms* with a public-private sector consultative mechanism to bring together the two principal stakeholders. These discussions should establish which reforms are highest-priority from the private sector's point of view; which are feasible from the Government's point of view, and concrete proposals for implementation.
- *Monitoring and Evaluation:* Both the self-assessment and the business survey will form the baseline against which agreed reforms (as contained in the Action Plan) will be evaluated. They should be repeated at intervals (e.g., once per year) to assess progress, to identify which reforms are on track and which aren't on track, and to adjust the reform strategy accordingly (possible future project not included in budget below).
- *Capacity building.* The project will include a strong capacity building component, aimed at developing the institutional capacity for an ongoing review of the business environment and assigning the responsibility for follow-up and policy recommendations to an appropriately-mandated entity, with the full support of the Government and stakeholders in the public and private sectors.

Methodology: The study will examine key administrative procedures, including the following:

- *Start-up Procedures:* General approvals, permits, and licenses required by the business registration authority, central bank, immigration services, fiscal authority, and regional or municipal governments, plus a sample of sectoral business licenses;
- *Locating Procedures:* Key aspects of site development including land allocation, building permits, utility provision, and environmental standards;
- *Operational Procedures* and reporting requirements, the bulk of which are related to labour issues, transport, tax, import/export procedures, foreign exchange procedures, labour relations, product certification and government inspections.

The *self-assessment templates* will be based on the legally required steps that investors have to go through to become legally operational, and to fulfil basic operating requirements such as paying taxes and getting products certified. In addition, for purposes of longer term monitoring, the templates should include, for each agency: the volume of transactions (e.g., number of new company registrations), the average processing speed (total elapsed time from the date an application is received until it is completed), number of line staff, number of appeals, and outcome of appeals.

The Administrative and Regulatory Costs Survey is intended to (1) provide feedback from enterprises on the constraints faced by the private sector in the country; (2) assess the types and magnitude of costs and time requirements imposed on private enterprises by administrative and regulatory procedures, and to pinpoint areas of excess or unnecessary cost or delays that might benefit from reform or streamlining; (3) establish baseline indicators.

Administrative Simplification in France: State of Action

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Government approach to administrative simplification in France has changed considerably over time, and it has been a key factor in public policy. For the different governments simplification of the relationship between administrations and citizens has been a constant concern. The Prime minister, Jean-Pierre Raffarin has recently recalled this concern in his General Policy Address to the members of the French Parliament last July: “The first objective of my government will therefore be to simplify the lives of French citizens. The civil service of our future must be service-oriented and this service-oriented administration is first and foremost simplified administration.”

- To carry out this policy, two main concepts stand out. The first one is observance of the rights of citizens and their rights to access administrations and services. The second one is about modernisation of State structures and modes of operation by an extended use of Information and Communication Technology.
- For the citizens, action is focused on reaching the most vulnerable population groups. Similarly, in the economic sphere, special attention is being paid to small and medium-sized enterprises.
- These various provisions have in particular been an expression of the will to fight administrative secrecy and at the same time to make the work of the administrations more open to the public. This policy and the administrative reforms that will be implemented are essential for creating confidence in public administration.

Institutional Framework

The Prime Minister considers administrative simplification to be a challenge vital enough to need every civil servant to make a contribution. The general method is to mobilise everyone: “The new system will only work if all administrations give it their best efforts on a continuing basis.”

As a consequence, each ministry is responsible for the administrative simplification policy in its sector and must prepare an annual programme for simplification of administrative formalities and procedures.

Ministries submit their plans to the Administrative Simplification Commission (COSA). COSA is in charge of the review of the plans and submits them to the Prime Minister. This method was defined in a Prime Ministerial circular in 2000, titled, *Achieving Administrative Simplification and Modernisation of the State: From Promoting Action to Concerted Action*.

Since 1999 the **Administrative Simplification Commission (COSA)** is the leading body responsible for co-ordinating measures to simplify administrative procedures for users (citizens and businesses).

During these last 2 years COSA:

- has reduced the number of forms from more than two thousand two years ago to nearly one thousand today;

- 80% of administration forms have been digitalized. The users can access them by the French public portal: www.service-public.gouv.fr;
- has changed legislation to remove the right of French administrations to require documents that must be supplied by other administrations;
- At least another task for COSA is to certify the list of supporting documents required for each procedure and COSA is now authorised to cut it down.

COSA is assisted by the **Committee to Improve Administrative Language (COSLA)** which assists administrative bodies in redrafting forms in widest use.

COSLA has undertaken at COSA's request two main tasks:

- The first task is to redraft the most used forms in order to make them understandable for users. During the years 2002 this was focused on identity documents, social assistance, retired pensions, individual tax returns;
- The second one is to provide, for the use of public servants drafting letters to users and an electronic glossary and rulebook giving everyday language equivalents of technical and legal terms.

Results of administrative simplification efforts

Between 2001 and 2002 several measures applicable to citizens and to businesses were approved. Burden-reduction measures for **users** included elimination or simplification of 25 million procedures. The time saved, which was calculated to be 10 million hours of procedures and waiting at public access points.

In the case of **businesses**, several groups of simplification measures were decided:

- Online access to public contracts and achievement of eprocurement for 2005,
- The general use of on-line notification and procedures in the tax field (on-line VAT returns and notification of trade in goods).
- Introduction of single access points for administrative procedures and administrative notification.
- simplification of social and tax procedures by use of the "net-enterprises" gateway managed by the public interest group on the modernisation of social notifications (GIP-MDS – see above).

Use of Information Technology to Improve Public Services Access

The use of information technology to improve public services access is now acquired and will become widespread. Already nearly 200 online services are now available. The French government has decided in November 2001 that all the procedures will be online by the year 2005. These are the major online services which are already available for the business sector.

www.legifrance.gouv.fr

Since 2000 a database accessible through the Légifrance website gives on-line access to the Codes, laws and regulations published after 1994. Since 2002 the entire consultation is free of charge.

www.impots.gouv.fr/e_services/tele_tva/accueil_teletva.htm

Business can now pay their taxes online. This is the first completely online payment on a secure website with electronic signature. During the year 2002 there were fifty thousand memberships:

- more than three hundred thousand online procedures
- 130 000 online payments which represents an amount of 51 billion euros.

<http://www.entreprises.minefi.gouv.fr/>

This web site is a single access to create business. The government aim is to see 200 000 new companies created every year. A future bill will define a simplified procedure to create easily a new business online from a single access in one day instead of four months today.

www.netentreprise.net

Net-enterprises is a service provided by all the social welfare agencies enabling companies to perform online social contribution statements and returns. It's a free and voluntary service. Each company can use it to make any social contribution return of its choice. These improvements of the administrative formalities are especially sensitive for small and medium sized enterprises. Over 130 million paper forms are filled in every year by firms in order to submit their social contribution statements and returns. 8 statements are available today (November 2002) at the end of 2004, 12 statements on line will be available which represents 100% of the target.

Conclusion

French simplification and burden-reduction policies are long term commitments. Methods and means have evolved with Government priorities.

The current approach is pragmatic and brings ministries, ministerial departments, their local services, and users in order to find the most practical simplifications that can be brought into action rapidly. Priorities for modernisation of the State sector focus on the introduction of information technologies.

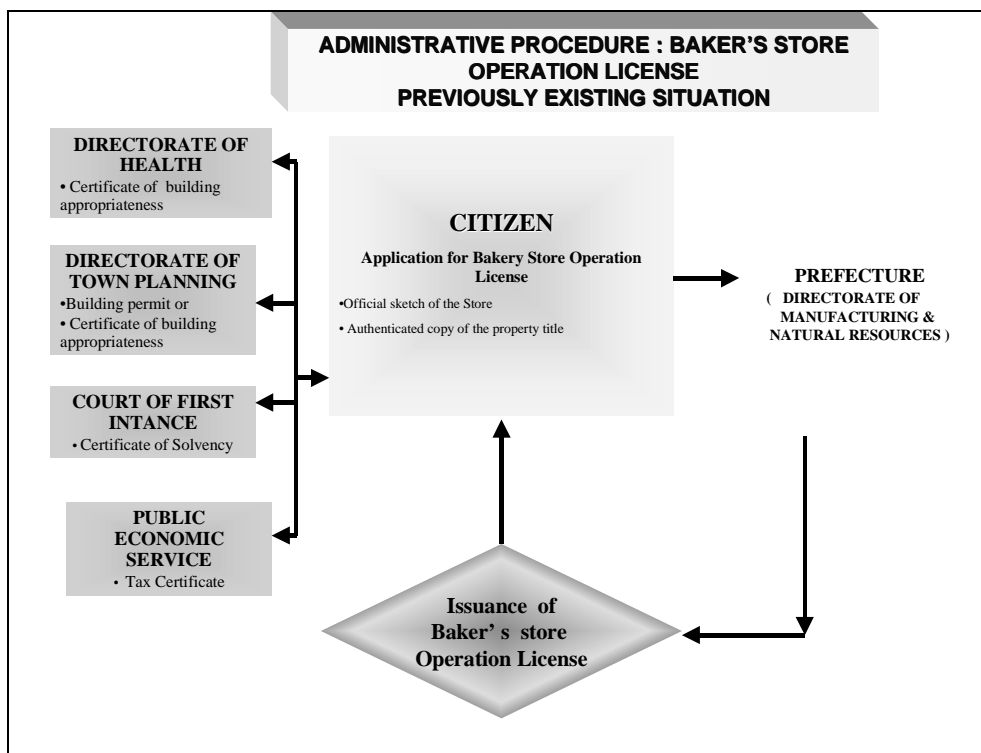
Although COSA holds to the idea that simplification should not be undertaken without the assistance of administrations or against their interests. We must build a real win/win strategy that will convince both users and administrations that procedures can in fact be simplified for the common benefits of citizens and administrations.

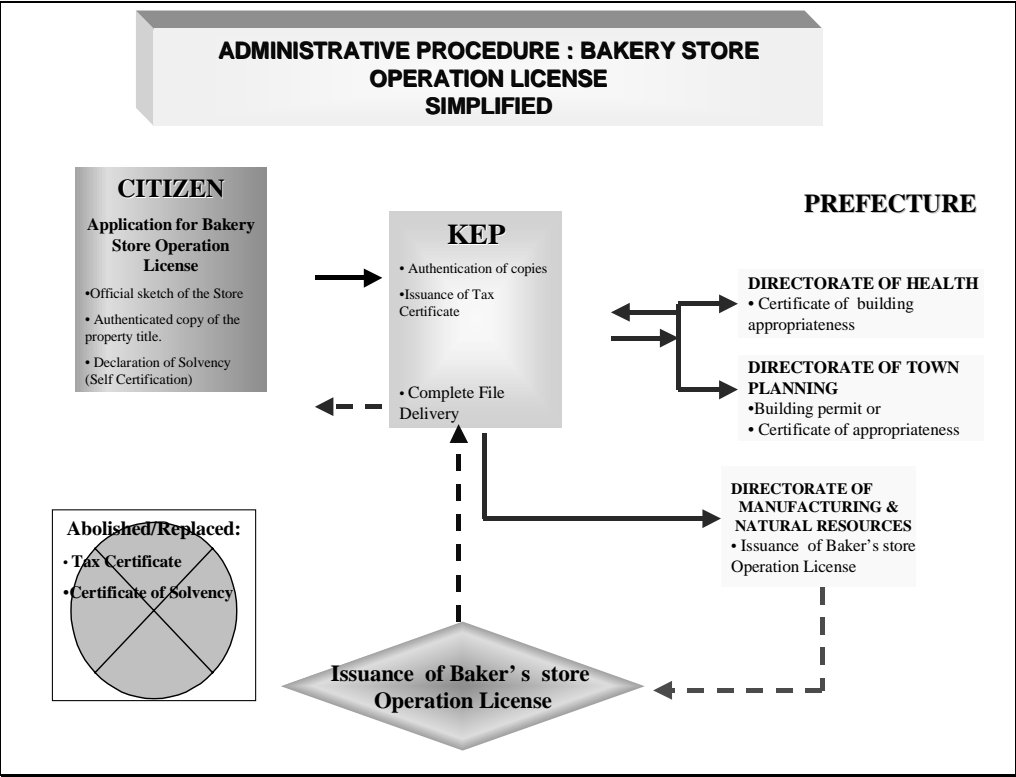
Administrative Reform

Angeliki Maniti-Papadimitriou

Ministry of Interior,
Public Administration and Decentralisation (Greece)

In Greece, a comprehensive programme of administrative reform has been implemented for the past two years. One of the most important pillar of the programme is the establishment of the *Citizens' Service Centres* which is considered to be a fundamental measure in order to provide qualitative services to the citizens and businesses. In this framework, the “*simplification of procedures*” programme that is being implemented aims at the reduction of administrative burdens for citizens and businesses and at the promotion of regulatory transparency in their interaction with the public services. Finally, many initiatives and actions are being undertaken by the Ministry of Development, so as to provide the right environment for the growth of the Greek SMEs, while most attention is directed to the simplification of the regulatory, fiscal and administrative environment where small companies operate, the support of entrepreneurship and the strengthening of the spirit of innovation among young entrepreneurs, and the incorporation of new technologies (especially ICT) in order to enhance the competitiveness of small enterprises etc.





**Macedonia's Implementation of the Reform of Local Self-Government as a
Basis for Providing Structures for Good Governance – The
Case of the Republic of Macedonia**

Ms. Elena Petkanovska
Ministry of Local Self Government
(Macedonia, The Former Republic of Yugoslavia)

The reform of local self-government in the Republic of Macedonia started in 1999, very modestly, as part of the reform of public administration. In November 1999, the Strategy for reform of local self-government was adopted. The Strategy is a basis for reconstruction of the relations among different level of administration.

In the meantime, due to the special political and economic conditions, this reform developed into a first national priority, which should provide:

- Peace, stability and economic prosperity;
- Administrative structures for good governance; and,
- Trust for the citizens.

This reform actually “opened” all questions about:

- The relations between institutions on a central and local level, as well as
- The relations with the citizens and the private sector as far as their role in the implementation of the relevant policy is concerned.

In a situation where transition is in progress, and further complicated by a political and economic crisis, it is necessary to perform overall political and economic change.

For successful implementation of the reform process, besides the need for strong political leadership and strategic planning, the involvement of the citizens and the private sector is also necessary, not only for the initial identification, definition, and framing of problems and solutions but also during their implementation and monitoring.

We are trying, now, to establish a stable system of public consultation in order to be able to ensure political and social consensus for all the reforms that are on truck and are going to be undertaken.

This will enable the process of decentralisation to be implemented in a way that will ensure building up of the total regulatory framework, with respect to effectiveness, competition, transparency and innovation. Implementing local self-government reforms in this way, we will be able to boost the economy and to secure protection of health and safety, environment and consumers. This way consists our approach for a connection between local self-government reforms and regulatory reform.

The Role of Consultation: UK Perspective

Mr. Robin Clarke

Cabinet Office, Office of Public Services Reform
(United Kingdom)

The main aim of this presentation was to look at the UK experience of making regulation more transparent. It particularly highlighted the role that consultation plays in this process. The presentation began by setting out some of the recent policy developments in regulatory policy and then looked at how consultation sits within these frameworks.

In 1997, the incoming Labour administration established the Better Regulation Task Force. This is an independent body that advises government on action to ensure that regulation and its enforcement is in line with the five principles of good regulation: transparency; accountability; proportionality; consistency and targeted.

The Government also established the Regulatory Impact Unit (RIU) to work with government departments, agencies and regulators to ensure that regulations are fair and effective. The RIU's work involves a number of elements. It promotes the principles of good regulation and supports the work of the Better Regulation Task Force. It also looks to identify risk and assess the options for dealing with it. In addition, it seeks to remove unnecessary, outmoded or over-burdensome legislation.

One of the RIU's main policy tools is the Regulatory Impact Assessment (RIA). This looks at the costs, benefits and risks of any proposed regulation for businesses, charities and the voluntary sector. One of the main elements of this tool is consultation. The RIU has set out some good practice guidance for consultation:

- Allow enough time: build consultation into the planning process from start. Sufficient time should be allowed for responses from all those affected.
- Be focused: be clear about why you are consulting, who you are consulting and what you are consulting on and over what time scale.
- Appropriate: use the most appropriate methods.
- Accessible: consultation should be easy to respond to.
- Joining-up consultations: try to avoid the problem of consultation fatigue.
- Be transparent: consultation documents should be clear, concise and focused with a summary of up to two pages of questions on which views are being sought.
- Reporting back: responses should be carefully analysed and results made available giving the reasons for the decisions that have resulted.

The presentation then looked at some of the theory behind the idea of consultation.

There are three main reasons why consultation is seen as a good thing. First, policy making is not a technocratic science but an art. This means that non-experts can bring valuable information to the policy

making process thereby increasing the quality of decisions. Second, by involving a wider range of people in policy making, the decisions that result are more likely to be in the public interest. Related to this, if people are consulted they are more likely to feel some ownership of decisions and then trust decision making organisations more.

Looking at a normative policy making model, there are a number of opportunities for consultation, right from problem identification through evaluation of alternatives to the monitoring of outcomes. Good approaches to consultation tend to recognise the increased value of consulting at the early stages of policy making. Consultation that happens only at the end of the process can lead to people feeling shut out of decision making.

There is no set rule for what types of issues organisations should seek to consult on. A good guide would be to look at whether an issue is of great interest to those who are likely to be affected by it. Second, is it an issue where the appropriate policy response and impact is uncertain? If these two factors are in place it is likely that consultation would be advantageous.

Consultation is often a costly and time-consuming activity. This means that to be effective it needs to be carefully targeted ensuring that only those who will want to voice an opinion on an issue are consulted. Organisations undertaking consultations should be aware of understanding the differences between and within commonly used terms such as: the public; users; stakeholders; and representatives.

One of the golden rules for carrying out consultation is that method should be matched to purpose. There are many different possible consultation tools of a quantitative and qualitative nature. And within each of these there are choices to be made about whether consultation should be carried out using face-to-face, written, postal or ICT approach. Those looking to undertake a consultation should think carefully about what sort of approach will work best in achieving their aims rather than just use the same approach each time.

The outcomes from consultations require careful analysis. Depending on whether people have a good understanding, or not, of the issue(s) they are being asked about will influence the type of responses that are collected. If people do not have much or any real understanding of the issue, then the opinions heard are 'free floating' and uninformed. They give policy makers a snap shot of what consultees think based on how little they currently know. This type of outcome is very different from that which is heard when people are consulted on issues about which they are well informed. An informed outcome is less 'free floating' and often of more direct use to policy makers.

Often one of the least well-planned aspects of consultation is the use of the results produced. How these are going to inform decision making should be planned from an early stage. Ideally, consultation should be aligned so that it directly links to organisational policy making and budgetary cycles. Consultation that does not feed information into decision making serves no purpose and should be avoided as it will result in the consultees becoming disillusioned with the decision makers.

Citizens as Partners : Engaging Citizens in Policy-making Information, Consultation and Public Participation

Mr. Christian Vergez

Directorate of Public Governance and Territorial Development (OECD)

Strengthening relations with citizens, business and civil society is a sound investment in better policy-making and a core element of good governance. It allows government to tap new sources of policy relevant-ideas, information and resources when making decisions. Equally important, it contributes to building public trust in government, raising the quality of democracy and strengthening civic capacity. Such efforts help strengthen representative democracy, in which parliaments play a central role.

This presentation is built on the results of the work carried over by an OECD working group on “Strengthening Government Citizen Connections” and an expert group on “Government Relations with Citizens and Civil Society”. The results of over two years of the efforts of the working group were published in the OECD report “Citizens as Partners : Information, Consultation and Public Participation” and in a policy brief identifying the main findings and suggesting ten guiding principles for strengthening government relations with citizens which can be easily extended to business and civil society. The text below is an excerpt of this policy brief, adapted to the Thessaloniki meeting objectives.

Why engage citizens, business, civil society?

Several driving forces have led OECD countries to focus attention on strengthening their relations with citizens, business and civil society including the need to:

- Improve the quality of policy, by allowing governments to tap wider sources of information, perspectives, and potential solutions in order to meet the challenges of policy-making under conditions of increasing complexity, policy interdependence and time pressures.
- Meet the challenges of the emerging information society, to prepare for greater and faster interactions with citizens and ensure better knowledge management.
- Integrate public input into the policy-making process, in order to respond to citizens’ expectations that their voices be heard, and their views be considered, in decision-making by government.
- Respond to calls for greater government transparency and accountability, as public and media scrutiny of government actions increases, standards in public life are codified and raised.
- Strengthen public trust in government and reverse the steady erosion of voter turn-out in elections, falling membership in political parties and surveys showing declining confidence in key public institutions.

Defining government-citizens, business and civil society relations in policy-making

Government-citizens, business and civil society relations cover a broad spectrum of different interactions at each stage of the policy-making cycle: from policy design, through implementation to evaluation. In reviewing this complex relationship between government and citizens, the OECD used the following working definitions:

- **Information: a one-way relation** in which government produces and delivers information for use by citizens. It covers both ‘passive’ access to information upon demand by citizens and ‘active’ measures by government to disseminate information to citizens.
- **Consultation: a two-way relation** in which citizens provide feedback to government. It is based on the prior definition by government of the issue on which citizens’ views are being sought and requires the provision of information.
- **Active participation: a relation based on partnership** with government, in which citizens actively engage in the policy-making process. It acknowledges a role for citizens in proposing policy options and shaping the policy dialogue – although the responsibility for the final decision or policy formulation rests with government.

Building legal, policy and institutional frameworks

Access to information requires sound legislation, clear institutional mechanisms for its application and independent oversight institutions and judiciary for enforcement. Finally, it requires citizens’ to know and understand their rights - and to be willing and able to act upon them. **Information is a basic precondition.**

Consultation which is **central to policy making** has only recently been recognised as an essential element of public policy-making in the majority of OECD countries, and legal, policy and institutional frameworks are still under development.

Active participation recognises the capacity of citizens to discuss and generate policy options independently. It requires governments to share in agenda-setting and to ensure that policy proposals generated jointly will be taken into account in reaching a final decision. Only a few OECD countries have begun to explore such approaches and experience to date is limited to a few pilot cases. **Active participation is a new frontier.**

Governments must invest adequate time, resources and commitment in building robust legal, policy and institutional frameworks, developing appropriate tools and evaluating their own performance in engaging citizens, business and civil society in policy-making. Poorly designed and inadequate measures for information, consultation and active participation in policy-making can undermine government-citizen and civil society relations. Governments may seek to inform, consult and engage citizens in order to enhance the quality, credibility and legitimacy of their policy decisions...only to produce the opposite effect if citizens discover that their efforts to stay informed, provide feedback and actively participate are ignored, have no impact at all on the decisions reached or remain unaccounted for.

Guiding principles

A survey launched by the OECD Working Group suggests the following guiding principles for successful information, consultation and active participation in policy-making:

1. Commitment

Leadership and strong commitment to information, consultation and active participation in policy-making is needed at all levels - from politicians, senior managers and public officials.

2. Rights

Citizens’ rights to access information, provide feedback, be consulted and actively participate in policy-making must be firmly grounded in law or policy. Government obligations to respond to citizens when exercising their rights must also be clearly stated. Independent institutions for oversight, or their equivalent, are essential to enforcing these rights.

3. Clarity

Objectives for, and limits to, information, consultation and active participation during policy-making should be well defined from the outset. The respective roles and responsibilities of citizens (in providing input) and government (in making decisions for which they are accountable) must be clear to all.

4. Time

Public consultation and active participation should be undertaken as early in the policy process as possible to allow a greater range of policy solutions to emerge and to raise the chances of successful implementation. Adequate time must be available for consultation and participation to be effective. Information is needed at all stages of the policy cycle.

5. Objectivity

Information provided by government during policy-making should be objective, complete and accessible. All citizens should have equal treatment when exercising their rights of access to information and participation.

6. Resources

Adequate financial, human and technical resources are needed if public information, consultation and active participation in policy-making are to be effective. Government officials must have access to appropriate skills, guidance and training as well as an organisational culture that supports their efforts.

7. Co-ordination

Initiatives to inform, request feedback from and consult citizens should be co-ordinated across government to enhance knowledge management, ensure policy coherence, avoid duplication and reduce the risk of 'consultation fatigue' among citizens and civil society organisations. Co-ordination efforts should not reduce the capacity of government units to ensure innovation and flexibility.

8. Accountability

Governments have an obligation to account for the use they make of citizens' inputs received through feedback, public consultation and active participation. Measures to ensure that the policy-making process is open, transparent and amenable to external scrutiny and review are crucial to increasing government accountability overall.

9. Evaluation

Governments need the tools, information and capacity to evaluate their performance in providing information, conducting consultation and engaging citizens in order to adapt to new requirements and changing conditions for policy-making.

10. Active citizenship

Governments benefit from active citizens and a dynamic civil society and can take concrete actions to facilitate access to information and participation, raise awareness, strengthen citizens' civic education and skills as well as to support capacity-building among civil society organisations.

Public Consultation Institutions in Greece in the Context of a Coherent Administrative Reform for the Market and Society

Giola Valatsou

Ministry of Interior

Public Administration and Decentralisation (Greece)

As a member state of the European Union, Greece is respecting its international role in the sensitive area of the Balkans, and finds itself continuously improving its model of governance, with regard to the redefinition of the relationship between public administration and the market.

For the first time in the year 2000, a collective organ of consultation for the administrative reform was introduced, namely the National Council of Administrative Reform. In this organ the plan of administrative reform is discussed, as well as other small scale reform propositions, with representatives from social and economic institutions, labour unions, scientific institutions and representatives from political parties and the Parliament.

The plan of administrative reform, which will subsequently constitute a means of consultation in the framework of the above mentioned organ, based on its decisions, is introduced to the Parliament as a draft law from the Minister of the Interior, Public Administration & Decentralization, and will afterwards be planned and implemented as an operational plan by the Ministry of the Interior, Public Administration & Decentralization (YPESDDA).

Within the framework of this organ's operation, the government consults for the first time with all social partners and representatives of the private sector, as well as with the institutional representatives of the civil society for the whole plan of administrative reform.

The government, through the consultation procedures of the National Council of Administrative Reform, is committed for the plan and the priorities of administrative reform for three years (2000 -2003).

After two years of application of this institution of consultation, the conclusions are positive. The government and more specifically the Minister of YPESDDA implements the reform programme, through the operational mechanism of Ministries and Prefectures, based on the priorities decided within the consultation framework of the National Council of Administrative Reform.

The most important result from the two years' function of this organ is the fact that this consultation procedure creates a climate of co-operation between the public and the private sector, and the civil society too. The institutional provision of the co-decision procedure for the plan and the priorities of the administrative reform, which is verified with the implementation, created the conditions for the development of a sense of duty on both sides for the decisions which are taken in the framework of this organ's function.

A second institutional improvement is the introduction of collective negotiations in public administration aimed at breaking the isolation of the Greek public administration from the demands and the needs of society.

The establishment of collective negotiations for the public sector's employees derived from the need to conform to the country's international obligations.

The institution of collective negotiations relies upon the acceptance that the real changes in administration influence directly and change in a determining way the administrative culture.

For this reason, through the institution of collective negotiations, both the reinforcement of political commitment and communication and collaboration between government and administration as well as with the public sector's employees are being ensured.

Both the government and the administration started the implementation of the institution, accepting that the reform of public administration will succeed more easily and at a lower social cost if it is going to be on an agreed basis between government and the public servants.

The government initiating the first proceedings of collective negotiations put as the basic target of its administrative propositions, the legitimisation of public servants corps through the accomplishment of the reform, choosing the reach of consensus as a strategy.

There were two benefits to this consultation procedure: a) the relationship between government, administration and public servants was re-defined through the consultation procedure, which was based on consensus and co-decision. This fact is considered to be the solid base for a sincere effort of "close" administration aimed at redefining its relationship with society and the market, and b) both sides committing themselves, for a first time, to the content of a general regulation as well as to the minimum time of its validity, thus creating the preconditions for a further amelioration of their responsibility and commitment to the output of the consultation procedure.

As a conclusion of all mentioned above, one could say that Greece, trying to ameliorate its model of governance through the redefinition of the public administration's relationship with the market and civil society, is constantly proceeding with the institutionalisation of organs and procedures for public consultation.

Greece, for the first time, through these consultation institutions, is trying to connect the whole plan of administrative reform with the needs and expectations of the market and civil society, successfully for the moment.

The Importance of Consultation in the Rule Making Process

Dobrosav Milovanovic

Ministry of International Economic Relations (Serbia)

The main purposes of consultation in rule making are to provide:

- Quality of regulation through reducing possibility for making mistakes and getting ideas about need for regulation, costs and benefits of different alternatives of regulation, scope of regulation, methods of regulations, ways to avoid possible risks, monitoring of the implementation and proposals for amendments.
- Transparency of the whole process as a precondition for democracy and reflection of the different interests.
- Efficiency of the drafting procedure and implementation as a result of better understanding of the problems and initial involvement of all different interests.
- Higher accountability of the government through whole process of drafting and implementing of regulation

Consultation of different stakeholders is necessary in all phases of the rule-making process

- a) In (re)defining public policy issues related to the area that has to be regulated
- b) In comparative analysis of relevant laws and regulations
- c) In organizing workshops, public debate, comments and suggestions about the draft of the regulation
- d) In finalizing proposal of the regulation
- e) In monitoring of implementation

Stakeholders besides relevant state institutions (e.g. ministries, courts, central bank. etc.) that should participate: business communities, experts associations (e.g. lawyers, accountants, auditors, economists etc), commercial banks, chambers of commerce, international financial and other organisations.

Methods of participation: advisory boards, public debate, workshop, operative and broad working groups.

Participation of all relevant stakeholders provide overall co-ordination, avoidance of overlapping, reaching a general consensus for the reform. The objective is to make a consistent legal system.

Involvement of international organizations and foreign experts who provide their advisory role in accordance with best practices, and in line with European Union and World Trade Organization perspective.

Quality of regulation means that:

- a) It presumes that “public” (in the sense of this paper: business community in general, business associations related to the topic of regulation, interested individual companies or entrepreneurs

and consumers or customers) is involved from the beginning in different aspects of regulatory impact analysis, cost-benefit or cost-effective analysis.

- b) covering all necessary public policy issues with an approach that will allow optimal short, medium and especially long-term fulfilment of all determined purposes. At the same time implementing costs in general, and especially for the business community, particularly the SME sector, which is necessary for getting licenses, consuming fees, and the time related to inspection work should be as less as possible. Public should be in position to propose public policy issues that should be covered, to give ideas (from technical, economic, legal and other relevant aspects). Government officials should be open to any creative and innovative suggestion that can improve regulatory environment. Drafting of regulation should be done in operative (small) working groups that comprise representatives and experts of all relevant ministries (interministerial coordination) but also representatives of business theory and practice that are well known with their knowledge and skills. There could also be a wider group based on the same principle which could organize workshops or public debates in different phases of the drafting process. On the other hand, public should be constantly informed (through website or media) about development of basic principles or key solutions of the regulation. Those methods allow public influence and raise its awareness about main problems. It is a more democratic way of drafting the regulation and it helps accountability. Through this approach, parliamentary procedures could also be much more efficient without jeopardizing the quality of regulation and democracy. After adoption, regulation should be published and kept in updated version in official register. It should be presumption that only valid regulation appears in the official register. On the other hand, public participation contributes to the efficiency and effectiveness of implementation.
- c) Some local specifics. A high level of local and workers self-government for almost four decades have introduced a decentralized decision-making process in our mentality.

Business Impact Assessments – The Danish Model

Ms. Bettina Hagerup

Danish Commerce and Companies Agency (Denmark)

Mission : To make it easier to run a business in Denmark

History

1996 First Business Test Panels are established as a pilot project

1998 Business Impact Assessments become mandatory in some cases

2001 Business Impact Assessments become mandatory for several ministries

What is the overall procedure?

- The DCCA spots relevant proposal to be tested when consulted on a draft for the Government's Yearly Legislative Programme (Law Programme)
- The DCCA recommends which proposal this BTP should test to the Group of Permanent Under-Secretaries
- Ministries contact the DCCA in due time to set up a BTP for the proposal in question

Why are Business Impact Assessments important?

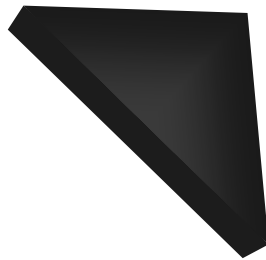
- Appropriate way to measure actual consequences in order make good cost-benefit analyses
- Direct consultation of businesses provides valuable knowledge
- Increase legitimacy of final proposals

Putting Businesses First

- three approaches

Test Panels

Focus Panels



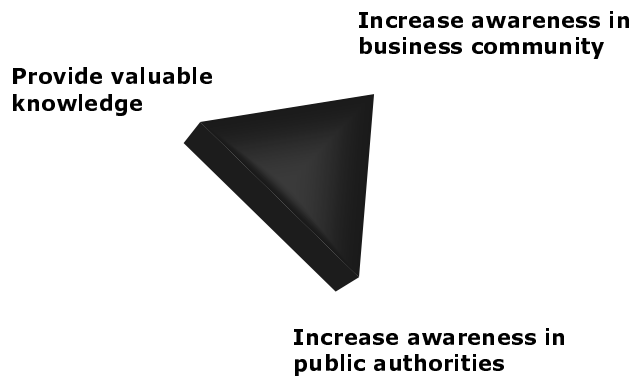
Focus Groups

When do we use panels?

- Usually during general consultation
- In few cases during consideration in Parliament

...both ways may be too late

Learning Points



Future challenges

- A difference that makes a difference?
- Communication improved
- Can we do better?

Post-Communist Privatization – Facing the Transparency Issue

Jan Winiecki

European University-Viadrina (Germany)

In the new democracies in South Eastern Europe, the political acceptability weighed heavily on the minds of the ruling transition-oriented elites – and the whole emerging political class. Accountability to the electorate has certainly been perceived as an asset in gaining that acceptability. Transparency, however, was rarely taken into consideration. Rather, it was seen as a measure aimed at accomplishing an intermediate policy goal of accountability while the final goal, political acceptability, has remained of paramount importance.

Introducing transparency into the privatisation process might bear significant costs to the reforming government. Privatisation deals are complicated legal arrangements, involving more often than not various interested parties and intermediaries. The multiple goals of privatisation add to the complications (investment levels, employment conditions, environmental liability etc.). In addition, it is difficult to weigh the cash inflow today against a better restructuring offer to be implemented tomorrow in precise quantitative terms. By the same token, it is also difficult to shield privatisation deals from political attacks, which are aimed at convincing the population that unethical behaviour has perpetrated political adversaries. Scandals may reinforce the already harboured suspicions toward privatisation, its negative connotations, or offer new ammunition to that hostile to privatisation from the start.

Any inquiry about sources of public support for or, conversely, public disapproval of (or even hostility to) privatisation should necessarily start with the evaluation of what privatisation, and to be more precise: the very large-scale post-communist privatisation really is. Policy makers should establish how it affects specifically the labour force and the population at large – and, in turn, how those affected react to privatisation.

It has rarely been stressed strongly enough that post-communist transition is to a very large extent an exercise in shrinking management. Going private means ensuring the dominant role of a strategic investor, restructuring, and imposing proper governance structures. However, many state dinosaurs simply will not survive the transition. Thus, the inherited, old sector of the economy is inevitably going to shrink. On top of the shrinking, resulting from closure of non-adaptable dinosaurs, those state enterprises that adapt will have to shrink as well. It is the rule of thumb in transition that a restructured enterprise, taken over by a strategic investor, usually requires about half of the labour force from the communist past.

But even those who are lucky are going to feel the pressure of uncertainty, incur transaction costs of job search, the stresses of adaptation to the new environment, etc. People are generally risk averse and they more often than not will resist privatisation of the state firm they work in. More transparency means more knowledge of the likely consequences of the prospects of a particular set of privatised enterprises, and the more resistance privatisation will meet.

Two criteria have to be satisfied at the same time so that:

- privatisation becomes an economic success (i.e. efficiency criterion), and
- privatisation at least does not become a losing issue with the electorate in future elections (i.e. political acceptability criterion).

To sum up the story, the transparency issue has largely been ignored for post-communist privatisation so far. Other issues overwhelmingly determined the concepts, the process, and even the political acceptability of privatisation. Transition-oriented elites have been evaluated less on their accountability and more on the perceived fairness of their privatisation proposals and procedures. However, even if the transparency has been largely ignored in post-communist privatisation, it has recently entered the agenda on how to ensure the emergence and expansion of the private sector in post-communist countries.

Two streams of private firms support the emergence and expansion of the private sector. The first is the stream of privatised state enterprises, while the second is the stream of new private firms, which have been created after the start of transition.

For the new private firms a light regulatory regime and transparency of procedures affecting the establishment and conduct of firms are enormously helpful. They reduce the costs of doing business in many ways, including those stemming from corruption. And the new private firms, overwhelmingly small (sometimes even one-person operations), are so numerous that the political acceptance of the regulatory regime by their owners becomes of importance.

Public Procurement in Estonia: Legislative Basis, Transparency and Problems

Tom Annikve

Public Procurement Office (Estonia)

In the field of Public Procurement the main principle “Non-discrimination” is understood and divided into two sub principles: 1) the principle of Transparency and, 2) the principle of Equal treatment. Transparency requirements are achieved and fulfilled by the Estonian State procurement Register (announcement of notices – that is Electronic Bulletin, declarations, records and statistical information) and also by the open and free consultation services, given to all subjects in the field of public procurement by the Public Procurement Office. Equal treatment means that all candidates and tenderers should be treated equally, in a non-discriminative way.

Legislative Basis

The next law, which has a totally new structure, elaborated general principles, definitions and procurement procedures resulting primarily from EC directives and WTO GPA, was enforced from 1 April 2001. On the one hand, corresponding in its better part to the requirements set out by the EU and GPA and on the other hand, taking into consideration local peculiarities (low value thresholds) and political will, the law could be characterized as a mixed-version one, which is not the best for clarity and legibility. Procedure rules of classical and utilities sectors, the use of different procedures and other provisions are rather often located in different parts of the law which makes its comprehensibility quite difficult. Despite that, it could be said that the law of 2001, as regards general principles, concepts (including definitions), and methodology, is ready for accession with the international associations and organizations concerned. The law is in need of single principal changes (specification of the definition of a contracting authority, changing of some exceptions and amendment of some rules).

It should be noted, being one of the essential shortcomings of the law, that a difference must be made between the regulation resulting from local and international value thresholds (different principles for calculating public procurement values, terms for submission of applications and submission of tenders, etc.).

The positive side of the law is, in spite of existing ambiguities, its level of harmonization pursuant to the requirements of the EU and GPA: relatively good implementation, the obligation to use evaluation criteria (either the cost only or also other essential indicators in relative correlation) for improving the transparency on contract award, obligatory use of the CPV, possibility to arrange electronic public procurements, effective remedies system, and from 1 September 2002 in addition to legal persons, physical persons shall also be made responsible for essential violations of the public procurement act.

State Procurement Register and Electronic Bulletin

The State Procurement Register (hereinafter Register), an essential part of which is the Electronic Bulletin, is open for a period of twenty-four hours to all the interested persons via Internet, and established pursuant to the Public Procurement Act, which was enforced from 1 April 2001 with the aim to fulfil the procedures and proceedings concerning the Act. The Register is kept as an info-technological database, the chief processor of which is the Public Procurement Office (that checks the correctness and correspondence to the requirements of the inserted data, guarantees the data processing, protection, preservation and

records keeping, and also, in exceptional cases, the amendment of inserted data if the contracting authority has applied to do that).

It is essential to point out that it is obligatory in the Register to publish the data on all the public procurements, the estimated annual value (together with value added tax) of which is 100 000 kroons (6 500 Euro) upon purchasing of goods or contracting for services, and 500 000 kroons (32 260 Euro) upon contracting for construction work.

The Register has been gradually improved, first and foremost with the aim to fulfil the needs of local subjects on the market to obtain different kind of information. The parallel English environment is on the way, which hopefully will be financed from the budget for 2003. [At the moment the English version is applied to prior notices which can be found in the Register using the following order: "Data entered into Register", "Prior notices"- specifying the period of interest, then clicking on "Show"- all the active prior notices at the moment will be shown (NB! The English version is at the end of the prior notice)]. It is envisaged to start using by the year 2004 at the latest the new standard forms in the publication of public contract notices which are already obligatory in the EU from 1 May 2002.

The transition of the paperback *Public Procurement Bulletin* to the electronic version from 1 April 2001 did not bring with it any major problems. At first it was not quite clear whether all those interested in public procurements had access to Internet and thus also to the database of the Register. Likewise, it was not a problem for contracting authorities to register themselves in the Register and to fill in the forms (the Register does not publish the forms which are poorly filled in). Problems usually arise from the substantial aspects: from the provisions of the law, which are not uniquely understandable or interpreted differently, especially on identification of qualification conditions for tenderers. It seems that many a time, contracting authorities have prescribed the conditions restricting competition, which is a problem in itself. Contracting authorities also tend to forget that within ten days after the end of a tendering procedure and the date of expiry of a procurement contract, the declaration and the report shall be electronically submitted to the Register, which is qualified as an infringement of the law and is punishable.

Hopefully the Register will be developed in Estonian as well as English and available to all those interested by the end of the year 2003.

Strategy for Accelerating the Privatisation Process: Future Means Development

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The entire privatization program carried out within the Authority for Privatisation and Administration of the State Ownership (further called, as in Romanian, APAPS) aims to satisfy the economic principles and criteria regarding the adherence to the European Union. Substantially, it is maintaining the macro-economical stability and mainly it is implementing the economy structural reform. The arising problem that constantly changes with each and every case, irrespective of the size or financial status of the company under privatization, is to find the optimum solution to bracket together both the company's own interest and the national macro-economic interest, in order to generate the positive economical and social effects: in the long term, indefinitely, the real economy, mostly private, needs an expansion enabling environment. In this context privatization is just the trigger determining the later economical expansion, therefore APAPS privatises not only the companies, but the prospectives these companies have within the new frame offered to them.

This is the reason why privatisation, according to our strategy, has to define a new concept: *to render viable the economical areas* where the respective companies operate. In a nutshell, the revival of the general macro-economical frame, via a future orientated strategy that APAPS intends to implement within the negotiations held with the investors for the privatization of each company. While the latter ones, obviously, go for the particular interest strictly related to the company they intend to purchase, APAPS follows a global plan aiming to integrate each company in a coherent assembly of measures and provisions that will enhance, at the national level, both the general economic growth and the social stability.

From the graphs shown it can be seen that Romania, due to an increase of its macroeconomic indicators, i.e. GDP, has an outstanding record in the matter of privatisation in the last year mostly. The share capital privatised increased in comparison to the last years. A lot of foreign investors are present on the Romanian market, either by acquiring shares from APAPS or by direct investments. No matter how, they invest because of the prospectives offered to them by the Romanian economy and the dynamic of their presence, increased year by year, proves the existence of the conditions for profitable business. The domains they invest in are various, as shown in the chart and it can be seen that they invest both in large companies as well as in SMEs. I do not want to bother you with boring statistics, but only to underline something obvious: that the speed for participation in privatisation increased in the last 1½ years, since APAPS managed to privatise in this period over ¾ of the share capital privatised in the last four years. The accelerated privatisation was, from the very beginning, a commitment of the Nastase Government, in order to create in Romania a real economic environment in which every investor should move freely, according to its managerial capacity. This is the only way Romania can join successfully the European Union and will succeed in fulfilling the economic standards and norms which govern today's Europe.

With respect to 2001 – year of the global measures for macro-economical growth, 2002 is the year these are implemented through micro-economical growth. Each company must reach certain performances, so that the achieved macro-economical growth continues to substantiate and to generate the whole group of direct and collateral benefits. We refer both to social or cultural benefits, which are a side effect of the welfare, and to regional economical benefits, like the development of the economical area by the subsequent attraction of small and medium-sized investors that generate need for activities not required up to that moment. As a rule, the presence of strategic investors determines also the secondary developments in the respective region, deriving straight or indirectly from the development of the basic entity and that,

via an economical feedback, in time will impulse and develop the main business. Often, these "secondary" investors are not to be disregarded in terms of size and importance, for in time, aggregately, they perform major investments, comparable in size with the main investment along which they settled, mainly with a view to cut the supply and transportation costs and to create a real labour culture. A set of laws is in force in order to allow the increase of investments, to approach investors to their areas of interest and to help them settle into the chosen locations.

All these intentions can be achieved only by accelerating the global privatization process, so to shorten as much as possible the time horizon for implementing the investments each buyer undertakes for growing the acquired company. For this reason a new set of legal norms, coherent with the foreseen macroeconomic strategy of the country's future economy, had to be enforced in order to give the investors the freedom to move according to their competence and the needs of the markets they operate on. The increase of the economical performances of the acquired company, its technical restructuring, keeping the traditional core business as well as developing a new product mix in line with the domestic and foreign demands, will enhance an accrued plus-value of the company itself and, obviously, will generate new perspectives for the business growth.

The fulfilment of the priorities of the Governing Program for 2001-2004, of the recommendations given by the International Monetary Fund and by the World Bank regarding the speeding up and completion of the privatization process imposed the adoption of normative acts, based on flexible principles that should accelerate this objective and make it more efficient.

In order to implement the Government's policy regarding the companies' privatisation, a specific legislation was enacted, aiming to accelerate the privatisation process and, as well, to unblock some malfunctions seen in the practical application of the existing legislation of privatisation. The most important of these is the Law 137/2002, comprising provisions dedicated to increase the companies' attractiveness with a view to their privatization.

These problems were analysed in detail by the Authority for Privatisation and Administration of the State Ownership, by view of the privatisation processes concluded until now. It was concluded that there are necessary legislative measures to complete the existing legislative framework with provisions targeting the competing of the theoretical and practical principles on which the privatisation process is based, in order to lead to the acceleration of the privatisation process by:

- Shortening the period for accomplishing the privatisation process, as well as the periods in which the procedures for merger, spin-off or liquidation can be fulfilled.
- Increasing the share capital of the company by addition in cash, by Romanian or foreign natural or legal persons, aiming at diminishing the state's involvement.

- The sale at the symbolic price of 1 Euro, under the conditions of firm and irrevocable obligations of the investors regarding investment programmes to be fulfilled, taking over of debts, social protection, environment protection, etc.; explicitly, for the first time in the legislation for privatisation there is provided the possibility of the sale at a symbolic price of the shares for a company with a bad economic and financial situation or which, in fact, is no longer active; the sale is conditioned by the relaunching of the economic activity and by the achieving of some firm and certain investment programmes.
- Financial incentives to be granted regarding the repayment of the companies' debts to the budgetary creditors.
- Enforcing the special administration on the period prior to the privatisation, based on the mandate of the implicated public institution, aiming at shortening the periods for preparing the documentation for privatisation.

Thus, the outstanding liabilities to the State and local budgets until the previous year will be totally or partially written-off, allowing the companies to depart on their new path with lesser burden of debts.

The Authority for Privatization launched during the last months a series of legal measures aimed at speeding up privatization and monitoring the companies trend in the post privatization period.

Moreover, the law comprises a new measure, that up to now did not exist in the legal framework. It is the introduction of a special administration in the companies undergoing privatization. By mandate granted by APAPS, a special administrator is appointed and the methods for administrating and managing the company are settled, as well as the measures to be taken with a view to accelerating the privatization. The main aim of this provision is to hinder the companies' devaluation during the privatization period.

The fundamental idea that generated the proposal for adopting some measures meant to improve the legal framework governing the privatization process originated in the realization that privatization represents a special period in the existence of a company. If we admit that privatization is a fundamental political objective (including the acceleration of the process), then this period should be "governed" by special provisions. These could give the state the possibility to intervene decisively and rapidly, so that a better organization and management of that company can be achieved. Also, cases encountered so far, created by some administrators and executive directors in the privatization period by stripping the patrimony, will be avoided. Using its decision making right in case it is a majority shareholder, the state can prepare and carry out, according to its interests, the procedures for transfer of ownership, in optimal conditions.

Therefore, the main attribution of the special administrator is to accurately and in due time perform the special mandate granted by the public institution involved, in view of preparing the company for the transfer of ownership to private hands. Once appointed, the special administrator shall draft and present to the public institution involved a report on the de facto status of the company, containing proposals for the exceptional measures to be implemented and shall endeavour to implement the mandate granted by the public institution involved, i.e. exceptional measures such as:

- drafting the required documents for splitting up, mergers, asset sales, drafting restructuring programs with/without redundancy, externalization/transfer of assets of a social nature;
- the swap into shares/social parts of some certain, payable and due debts;

- orders/measures to reschedule the overdue liabilities to the utilities suppliers and that will monitor the compliance with the negotiated rescheduling schemes, at the same time abiding by the principles of the economical and financial disciplines for the current month;
- any other measure that entails the increased attractiveness of the company for privatization.

During the special administration period, the special administrator shall ensure the implementation of the exceptional measures established by Law 137/2002 regarding some measures to speed-up privatization.

In this context, the legal framework for speeding up the privatization process is based on the following principles:

1. securing the transparency of the privatization process;
2. selling at the market price resulted from the demand and supply ratio, taking into consideration all elements included in the purchase bid;
3. providing equal treatment for all buyers;
4. implementing some restructuring programs prior to privatization, with a focus on externalizing some assets, especially the assets of a social nature;
5. reconsidering the debts of the companies in order to increase the attractiveness of the privatization offer;
6. hindering the companies devaluation during the privatization period by setting up the special administration during the privatization period.

The new elements introduced in Law 137/2002, detailed in the subsequent Methodological Norms approved by Government Decision 577/2002, are meant to provide more precision, correctness and efficiency to the privatization/restructuring/liquidation process, by increasing the transparency and implicitly, by reducing the bureaucracy. It is meant to lead to the harmonization of the entire legal framework for the privatization of companies, in view of correlating all provisions in the privatization field, by creating some flexible and coherent procedures and to fulfil the implementation of the policy of the Government of Romania and of the defining elements of companies' privatization included in the programs concluded with the international financial bodies.

In order to firmly implement the policy of the Nastase Cabinet, in whose view, in order to create in Romania a real economic environment, every investor should move freely, according to his managerial capacity. It is high time that the envisaged macroeconomic effects be implemented and they must do so early this year; the only way for achieving these benchmarks is to create an assembly of performant microeconomies at enterprise level, by fast privatisation. APAPS therefore manages and will continue to manage, in a more accelerated manner than until now, the privatisation process of the companies' from its portfolio, in order to allow the benefits estimated by the Government's policy to be quantified, where possible, starting even from this year, both for the investors and for the business environment, as well as for the state and the domestic economy.

Corruption or Widespread Administrative Malfunction? A Policy Failure Warning

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In 2001, the Romanian Government published its National Anti-corruption Strategy. Long prompted by international partners, the strategy was received with mixed feelings by an increasingly cynical public, despite the fact that, for the first time, it addressed the core of the issue. The media treated the Strategy lightly and sceptically, emphasising the stress it gave to petty corruption, which was interpreted as a lack of political will to go after the grand corruption. However, the stress on petty administrative corrupt behaviour makes a lot of sense. Evidence shows that personal negative experience in dealing with corrupt civil servants is feeding the public's perception of widespread administrative corruption.

How widespread is corruption?

Comparative data shows that Romania's situation is not unique in the region. Subjective perception of corruption, frequency of bribing and accountability of the administration are similar to other selected post-communist countries. Regardless of their other differences, it seems that CEE countries are similarly struggling with widespread malfunction of their administrations, which is translated in terms of their incapacity to provide a satisfactory service without bribes.

When we write or say corruption, we usually associate it with business. An important point of this article, however, is that the large-scale corruption in the post-Communist world is not the one correlated with business, but with the simple everyday functions of the public service.

Conclusion

1. Corruption is a diffuse post-Communist phenomenon grounded in the ineffectiveness of public administration as a provider of public services.
2. Corruption is only one consequence of the general lack of accountability and transparency, which is, again, rooted in Communist administrative culture and is enforced by bad and complicated regulations.
3. Corruption persists due to the lack of civic competence and self-assertiveness of the less educated and economically disadvantaged citizens. If these cannot be mobilised to act on their own behalf, someone else has to act for them. The private sector and NGOs have an important part to play here.

Recommendations

1. Regulate and criminalise conflict of interest

The Government's Action Plan highlights the need to take action to regulate conflict of interest. There have been previous attempts to separate business and politics in the last decade, and one should carefully

examine what made them fail before making promises on future moves in the same direction. The simple conclusion is this: previous moves were shipwrecked by the very same parties who initiated them.

Regulations should be simple and short framework-type acts, formulating clear principles and penalties, prevailing on previous legislation in every field.

- **Statutory prohibition.** An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter is likely to have a direct and predictable effect on that interest.
- **Notification.** An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to co-workers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified."

2. Tackle corruption of law and order agencies

A good start would be to acknowledge that regulation of conflict of interest and enforcement of pre-existing regulations have been constantly sabotaged by a lack of political will. Special care is needed in tackling corruption within law enforcement agencies and the judiciary system. The lack of effectiveness of these agencies in delivering law and order, which is badly needed by society, and the unpredictability of their actions, are a consequence of their general lack of transparency. The best way to attack corruption in these organisations is through long due structural reforms. The only way to make law and order impartial and fair is by ensuring transparency and accountability along horizontal, not vertical, lines.

3. Implement fully the Freedom of Information Act

This means that every record must be made transparent and published in the Official Gazette. It also requires that every non-classified piece of information should be made public ex-post.

4. Unify the existing regulatory framework in one Code of Conduct

Too many pieces of legislation compete and overlap already on corruption and accountability, and the administration needs one clear code of conduct to outline regulations and practices. Not only does such a Code need to be adopted, but an agency must be also created and empowered with its enforcement. This agency should be different from the Control Body of the Prime Minister, which can be suspected of political intervention and which has limited staff and resources. It could be a large autonomous body, with special status to protect agents from political interference and a head appointed by the Minister of Justice with the approval of Parliament.

5. *Regulate and criminalise speculation and banking activities of agents who are not authorised by regulatory agencies*

Poor regulations, poor enforcement of the existing banking regulations and absence of adequate penalties in the criminal code made speculation and embezzlement almost a risk-free enterprise. The regulatory framework of financial transactions must be completed, a powerful audit agency empowered, and companies compelled to adopt a unitary, clear and transparent records system at hand for eventual controls.

6. *Make some room for the consumer*

The majority of citizens who complain of abuse by the administration suggest that the philosophy “the public is our customer” is far from gaining acceptance in the administrative culture, not to speak of its implementation. Signals given by the new laws and old practices in the administration cannot but hinder a more accountability-based approach.

7. *Make representatives accountable*

Representatives deserve a special chapter, as they have managed to consistently maintain the lowest position in public trust, and they are the least regulated, if at all.

- Giving up political immunity for anything other than political acts. This would give the public the impression that the political class is more accountable and would stop the drive of tax evaders and embezzlers to seek refuge in the Parliament.
- Giving up both the practice and the regulation that make practically every important vote of a representative a secret. The main goal that the voting procedure must achieve now, is accountability to the constituents.
- Amend Parliamentary regulations, political parties law and local government laws, so as to automatically dismiss representatives who swing parties from any representative bodies, national or local.
- Adopt campaign-financing legislation, as proposed by civil society.