Republic of Bulgaria
ECONOMIC
AND SOCIAL COUNCIL

OPINION

OF

ECONOMIC AND SOCIAL COUNCIL

ON

" OPPORTUNITIES FOR REDUCING ADMINISTRATIVE OBSTACLES AND IMPROVING BUSINESS ENVIRONMENT IN BULGARIA"

(developed on own initiative)

The Economic and Social Council included in its Activity Plan for 2009 the development on its own initiative of an opinion on:
"**Opportunities for reducing administrative obstacles and improving the business environment in Bulgaria".**
The Opinion was assigned to the Standing Commission on economic policy.
Mr Vassil Velev – deputy-chairperson and member of ESC from group I-employers - was appointed rapporteur.
At its meeting on 06.03.2009 the Commission on economic policy approved the opinion.
At its Plenary session, held on 26.03.2009, the Economic and Social Council adopted this opinion.

CONTENT

ACRONYMS

APC	Administrative procedure code
EC	European Commission
EU	European Union
LEM	Law on Electronic Management
SAA	Supplements and Amendments Act
LAL	Legislative Acts Law
LRARACEA	Law on restricting administrative regulation and administrative control over economic activity
BRS	Better Regulation Sector
ESC	Economic and Social Council
MSAAR	Ministry of State Administration and Administrative Reform
MEE	Ministry of Economy and Energy
CM	Council of Ministers
LAIA	Legal Acts Impact Assessment
OECD	Organisation for Economic Co-operation and Development
PP	Public procurement
BRP	Better regulation programme (2008 – 2010)
WB	World Bank
WEF	World Economic Forum

1. Conclusions and Recommendations

1.1. One of the main tasks European Union members are facing and on which the Lisbon Strategy is grounded, is improvement of regulations in order to safeguard public interests in a way which can facilitate, not hinder the development of economic activity. It is in this context that the European Commission sets the goal to reduce administrative barriers for business by 25 percent by 2012[1]. The Economic and Social Council shares the opinion that the improved regulations and respectively the fewer obstacles to business are essential for the improvement of the country's competitiveness.

1.2. **With the aim of reducing administrative barriers and improving the business environment in Bulgaria, ESC suggests that within the shortest possible terms the state administration should undertake the following measures:**

1.2.1. To revise the existing regimes with reference to their **conformity with the law and their adequacy**, **as well as the licence and registration requirements and criteria the economic entities have to meet aiming at expanding** economic freedom and the opportunities for economic development. **To revoke the unlawful regimes. The remaining regimes:**

• should be reduced, including through assigning the most lax of them (at administration's discretion) to the sector organisations in compliance with the legally stipulated criteria, thus stimulating their consolidation by sector and/or branch;
• should be relieved through standardizing procedures and documentation and shortening administrative terms.

1.2.2. When government intervention becomes inevitable and results from the need for harmonization with EU requirements, regimes should be prioritized in the following way: **notification; certification / registration – permit/ licence** (it is a priority that the regime is 'lax')

1.2.3. **To shorten the list of economic activities** (under Law on restricting administrative regulation and administrative control over economic activity[2]), for which a licence regime can be legally imposed. The principle that licence and registration regimes are imposed solely by law should be strictly observed.

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[1] COM (2007)23 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Action Programme for Reducing Administrative Burdens in the European Union, p. 3.

[2] Promulgated, State Gazette, issue 55 of 17.06.2003 – enacted on 17.12.2003

1.2.4. **To delegate the implementation of LRARACEA and the Law on electronic management[3] to an executive body** and appoint the bodies that are to exert control over the execution of their regulations and their respective responsibilities at all levels and guaranteeing meeting deadlines for enacting the respective laws. **To set a specialized unit to conduct constant monitoring of the introduction and administering of regulatory regimes.** To this aim the capacity of the **Unit for better regulation** of the administration of the Council of Ministers should be utilized and strengthened through the introduction of the state-social principle along parity lines.

1.2.5. **To comply with the requirement that the size of fees for administrative regulation and control should not exceed the administrative expenses required for their execution.**

1.2.6. To further develop the Administrative register in its section on regulatory regimes[4] by creating an exhaustive list of the regulatory regimes, **conducted by the central administration and regional administration. To make it possible to track the deadlines for enacting administrative acts. The list should be interactive and should contain all necessary paperwork for acquiring the respective administrative act and it should be accessible on the Internet.**

1.2.7. **To regulate a common legal presumption for 'tacit consent' in case of administrative inaction and the presumption 'tacit refusal' is standardized as an exception in special laws.** 'Tacit consent' should exist when the administrative body has not sent the applicant a notification for refusal before the period for decision-taking has expired.

1.2.8. **To strictly observe the legal regulations under the LRARACEA and LEM which ban the administration from demanding from juridical bodies data, which has already been supplied under a regulation of the administrative bodies.** All administrative bodies should **exchange information officially** using electronic communication and/or have access to that data electronically under the regulations of LEM.

1.2.9. **To regulate a legal requirement for conducting preliminary and regular assessments of the impact as well as a standard (mechanism, methodology) for carrying out these assessments.** The standard must include an analysis of the alternatives of the regulation offered, the impact it will have on the business environment and the cumulative effect that will be achieved when it interacts with the already existing regulations and

[3] Promulgated, State Gazette, issue 46 of 12.06.2007, enacted on 13.06.2008

[4] Regulatory regimes in Bulgaria – state, tendencies, opportunities for development of administrative register, Bulgarian Industrial Association, 2006.

regimes. To comply with the legal requirements under the Law on legal acts and LRARACEA for conducting preliminary and regular assessment of the impact of legislative acts. To develop a standard (mechanism, methodology) for conducting these assessments, which include: analysis of alternative to suggested legal acts, the impact, which the legal acts will have on the business environment, including the amount of bigger/ smaller expenses on business and administration when enacting the act, the cumulative effect to be achieved when this act interacts with other legal acts and others.

1.2.10. **The executive power should carry out a thorough revision of the legal organization and address a proposal to the legislative power, which should make it in compliance with LRARACEA and LEM.** This will guarantee the implementation of the regulations of these laws in order to limit to a great extent the chances for irresponsible behaviour on the part of administration and prerequisites for corruption practices to arise.

1.2.11. The latest changes in Ordinance of the Council of Ministers 121[5], which harmonize the documentary requirements in it with the regulations in LEM, should be incorporated in the procedures for applications with projects for the adoption of finance from the EU funds and to signing contracts for project implementation.

1.2.12. Public Procurement Law[6] should be adapted to the regulations under LEM. Currently the PPL contradicts LEM and the elimination of the discrepancies would contribute to reducing the administrative burdens[7].

1.2.13. To undertake the **following concrete measures for removing the administrative barriers and improving the business environment[8]:**

• Making **changes in the Trade Law[9] to ease the regime of performance of Joint Stock Companies,** including changes concerning planning, convening and holding General Shareholders Meetings. To envisage the possibility for preliminary announcement to convene a General Shareholders Meeting 20 days before holding it, instead of 30 days, as well as simplifying procedures concerning declaring insolvency and liquidation.

• **Maximum simplification of all procedures and services, administered by the local or state authority** – for instance,

[5] Promulgated, State Gazette, issue 16 of 27.02. 2009, article 7, paragraph 6, point 2

[6] Promulgated, State Gazette, issue 102 of 28.11.2008.The main discrepancies are in Chapter Four

[7] Promulgated, State Gazette, issue 102 of 28.11.2008.The main discrepancies are in Chapter Four

[8] Based on the findings in Supplements 2 and 3.

[9] Promulgated, State Gazette, issue 48 of 18.06.1991.

placing all payments related to salaries (social security contributions, health insurance contributions made by the company, social and health security contributions, made by the employee) to National Revenue Agency in one banker's draft for bank transfer, and then NRA will distribute the payment in the regulated proportions.

• To discontinue the practice of **requiring from companies information about their current financial situation and from the members of their governing bodies certificate of conviction,** in compliance with the regulations of LEM and the Trade Register Law[10]

• **To remove the requirement for reporting on the part of companies the dividend paid to physical bodies**. This is to be reported by the physical bodies themselves in their tax returns, while the tax on the amounts paid is accrued and posted when actually paid.

• **To discontinue the practice when National Statistical Institute should require from companies to fill in complicated, long forms, where to enter information that has already been provided to the state.**

• **To ease the requirements towards the financial reports of micro- and small enterprises.**

1.3. Following the recommendations made by the ESC will lead to easing the administrative burden for business and will create tangible positive impact on economic growth and employment, attracting foreign investments and development of entrepreneurship in Bulgaria.

2. Introduction

2.1. The Bulgarian government has put in constant efforts to ease the administrative regulation since 1999 until now. The achieved results, however, are not satisfactory and the need for securing fairer and more competitive market environment and to improve the welfare and the security of citizens is becoming more and more obvious. A number of studies and research, carried out by international bodies (such as the World Bank, Organization for Economic Co-operation and Development, World Economic Forum[11]) also stress the necessity for creating better regulatory environment in Bulgaria.

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[10] Trade Register Law enforced on 01.01.2008, promulgated, State Gazette, issue 34 of 25.04.2006.

Regulation N1 of 14.02.2007 for recording, keeping, and securing access to the trade register of the Ministry of Justice, promulgated, State Gazette issue 18 of 27.02.2007, enforced 01.07.2007.

[11] Doing Business, The World Bank Groups - http://www.doingbusiness.org/;

Regulatory Management and Reform, OECD - http://www.oecd.org/department/0,3355,en_2649_34141_1_1_1_1_1,00.html;

The Global Competitiveness Report 2008-2009, World Economic Forum - http://www.weforum.org/en/initiatives/gcp/Global%20Competitiveness%20Report/index.htm

2.2. ESC is expecting that the government will secure and guarantee equal conditions for doing business and stimulate loyal competition by providing better legal acts and less bureaucracy. Good regulation is the key to responding to these challenges.

2.3. Despite the excellent grade, the World Bank gave for the tax reforms in the country[12], the inconsistent and inadequate regulatory environment and conditions for business affect adversely the opportunities for competitive growth of our economy. According to the report of the World Economic Forum on global competitiveness for 2008 – 2009 Bulgaria ranks 76 among 134 countries. Our country has the most unfavourable position in comparison with all other countries – EU members (including Romania). It has been overtaken also by countries in the region, which are not members of the EU – for instance, Croatia and Montenegro.

2.4. The main reason for the unfavourable position of the country is mainly related to the negative grade the institutions received. Along with indicators which negatively characterize the work of the judicial system (slow, ineffective, insufficiently objective) and the fight against organized crime come facts such as clumsy regulatory environment, lack of transparency and widespread corruption practices – i.e. indicators which directly point to the weaknesses of administrative regulation and control over economic activity.

2.5. Better regulation is one of the key priorities of the European Commission. In 2002 EC started a large-scale programme for the improvement of administrative regulation. The EU member-states started to work towards gradually improving the business environment and the quality of new legislation in order to stimulate the competitiveness of the European economy. Between 1999 – 2007 a number of initiatives were carried out to ease the administrative regulation. The most important among them was undoubtedly the passing of LRARACEA and LEM. The actual activities, however, were insufficiently effective and could not guarantee sustainable process of creating better regulatory environment.

2.6. A sad finding is arrived at based on 10-year experience of different governments to restrict administrative control and improve quality and transparency of administrative services. The major mistakes can be summarizes as follows:

2.6.1. LRARACEA is not actually applied. The law does not specify responsibilities at all levels for its enforcement and control over adherence to it.

[12] "Tax payments in 2008' Report of the World Bank, International Financial Corporation (IFC) and consulting company PricewaterhouseCooprs. The research encompasses 178 countries worldwide and defines Bulgaria as the most successful reformer over 2006/2007 with the reduction of the corporate tax from 15% to 10%; lowering the payments on salaries made by employers by 7% and promoting filing income tax returns and social security payments on the Internet.

2.6.2. Central and regional administrations do not take into account LRARACEA requirements.

2.6.3. The legal system often lacks mechanisms and ways to control bodies which do not perform their obligations, including meeting deadlines for issuing acts under certain regimes, as well as adequate and efficient sanctions for not keeping them.

2.6.4. We observe constant lack of defined terms for issuing respective acts for applying the regulatory regimes.

2.6.5. The legally established Register of administrative structures[13] is chaotic and does not serve as a reliable instrument for management and monitoring of regulatory regimes.

2.6.6. An assessment of the impact of legal acts is not carried out.

2.6.7. The legal possibility under the APC for standardization in special laws of the presumption for 'tacit consent' in case of inactivity on the part of governmental bodies is not applied.

2.6.8. LEM regulations are not put into practice which leads to considerable waste of time, funds and administrative capacity both when doing business and in the field of public procurement and absorption of EC finance.

2.6.9. All this creates conditions for irresponsible conduct of administration and serves as a prerequisite for the emergence of a wide scope corruption practices.

2.7. The Better Regulation Programme (2008 – 2010)[14] clearly prioritizes the efforts of government and public bodies, but unfortunately it is not a guarantee in itself that it will be carried out. Currently, too, a great part of the difficult areas in the process of regulating economic activity in the country are not the result of obvious mistakes in the laws, but rather in the lack of compliance with them.

2.8. Significant difficulties arise from the fact that the state administration would not adopt the 'tacit consent' principle despite the explicit statement in the BRP, the aim of which is its broader implementation. At the end of 2003, LRARACEA introduced the 'tacit consent' principle, but changes in the Administrative Procedure Code[15] of 2006 introduced 'tacit refusal' unless 'tacit consent' is explicitly specified in special laws.

[13] Regulation on the conditions and procedure of keeping a register of administrative structures and executive bodies' acts, promulgated in State Gazette, issue 44 of 30.05.2000.

[14] http://www.mee.government.bg/ind/doc_eco/Better%20regulation%20programme%202008-10.pdf.

[15] Promulgated, State Gazette, issue 30 of 11.04.2006 – enacted on 12.07.2006.

2.9. A positive aspect of BRP is the intention to set up a Better Regulation Unit. Unfortunately it is still being created and is not functioning fully.

2.10. An important element of the entire system for creation legal acts in this country, respectively improving the quality of laws, which regulate the business environment, is the intended change in the Legal Acts Law[16]. There is a developed concept about a new LAL, which was approved by the Council of Ministers on 18.12.2008. In 2006, two drafts for SAA and LAL were introduced for discussion – by the Council of Ministers and members of Parliament, which were combined. At the moment, a rough draft for LAL is being discussed. We are about to see whether it will stipulate clear obligations and a procedure for carrying out an impact assessment.

3. Law on Restricting Administrative Regulation and Administrative Control over Economic Activity

3.1. The main content of LRARACEA is in accordance with the understanding that rights and freedom are principles and their restriction should be an exception – understanding, which has been repeatedly confirmed by the Constitutional Court. To put it simpler, it is necessary to stipulate the need for regulation, not the right to free enterprise. The law specifies the general rules to restrict administrative regulation and the administrative control over economic activity and introduces the requirement that each bill which provides for the introduction of licence or registration regimes should have an economic analysis and an impact assessment with it. Experience over the past years, unfortunately, shows that this has not been done.

3.2. Preliminary and regular impact assessment should be carried out while consulting interested parties and this should be legally guaranteed. Further difficulties ensue from the strong resistance of administrative procedures to changes. LRARACEA does not stipulate almost anything concerning the way LAIA should be carried out, how to apply simultaneously the assessment and the consultations and how to create procedural and other incentives to fulfill these requirements. In essence the law refers to 'better regulation', but institutional and procedural reforms, which allow its putting into practice, have not been approved.

3.3. The underlying principles in LRARACEA for 1) restricting regulation only to cases when there is obvious need for that. 2) guarantees that where regulation is required, the lowest costs method is applied, and 3) compulsory assessment of benefits and costs are reasonable and in accordance with the European and world practices, recommended by OECD ever since 1997. Unfortunately their putting into practice in Bulgaria remains only in the sphere of good intentions.

[16] Promulgated, State Gazette, issue 27 of 03.04.1973,latest amendment in State Gazette ,issue 46 of 12.06.2007.

3.4. The administrative regulation of the economic activity and the administrative control over the economic activity are interrelated and interdependent notions. The administrative control turns legal requirements (bans and obligations), which regulate the economic activity, into administrative regulation. Applying rules introduced through administrative regulation can be guaranteed only through efficient administrative control at central and local level.

3.5. LRARACEA introduces and classifies types of regimes for regulating and controlling the economic activity – licence, registration, permit, notification and certification. The aim is to facilitate and stimulate business through restricting administrative interference and minimize the requirements towards business on starting and developing economic activity.

3.6. Administrative regulation which restricts economic activity is admissible only in order to guarantee the exceptional and sovereign rights of the state, rights and liberties of citizens and juridical bodies, protection of environment, national security and public order. This is the comprehensively limited scope of socially acceptable limits of public interest, which allow well-grounded government interference in the economy by administratively restricting free enterprise[17].

3.7. Under LRARACEA regulatory regimes which restrict the administrative regulation and administrative control over the entire economic activity (not only individual deals), implemented by bodies of central and local authority, are divided into two types – licence regimes and registration regimes. The law also specifies three types of regimes when conducting individual deals or activities – permit, certification and notification.

3.8. In itself LRARACEA provides the required legal framework and it should facilitate and stimulate economic activity. What actually happens, however, significantly differs from the idea about limited administrative interference and as a whole about the existence of some clear rules. In fact, a great number of legal regulations are not adhered to (i.e. they are violated) both at central and local level. Furthermore, we can add problems which arise even when the law is strictly observed, as well as some flaws in the law itself and thus outline the reasons for its ineffective functioning and the impossibility to achieve the set aims.

3.9. Although there is a clear definition of all regulatory regimes in LRARACEA, the administration, entirely against the law, has introduced a new type of regime – co-ordinating. Even today, there are nearly 200 co-ordinating regimes in the Administrative Register[18]. We issued warning about that as early as 2006[19], but almost no real actions were undertaken.

[17] How to understand better and implement more successfully LRARACEA (Handbook), http://www.ime-bg.org/pdf_docs/papers/ManualBG.pdf.

3.10. Even more worrying is the fact that despite the lack of legal possibility, local authorities keep on actively administering regulatory regimes, which are not legally regulated[20]. This situation has been confirmed by a recent example when for the first time the will of the central authority to fight this problem was observed.

At the beginning of 2009 the MSAAR suspended 57 municipalities from its programme for computerization of municipalities in Bulgaria. There, according to data, provided by the Prosecution Office, regulatory regime for stationary commercial sites is still illegally administered. This regime is named differently in the different municipalities – for example 'permit for performing trade activity', ' registration for performing trade activity', notification for performing trade activity' etc. In all its forms, however, it is not specified by law and it is not envisaged to delegate legal rights to municipal councils to settle the parameters of the specified trade activity with secondary legislation etc.

Another circumstance that contributes to the problem is the fact that the Law for the Local Government and the Local Administration broadly defines the framework of the rights of municipalities to determine requirements for the activity of physical and judicial bodies on the territory of the municipality, that is: in case there are ecological, historic, social or any other peculiarities of the town or village, as well as the state of the engineering and social infrastructure. This calls for an amendment to the law in that part aimed at clearer specification of municipalities' rights to introduce and administer regimes.

3.11. Analyses show[21] that among the existing regimes the most problematic are those which involve decision and judgement of the administrative body **on expedience** – **licence and permit regimes** since they create prerequisites for subjective attitude. Decision-taking on 'expedience' does not fit the context of restricting and facilitating business.

3.12. **Licence regime** is 'the toughest' of the regulatory regimes. That is why ESC believes that the possibilities for introducing this type of regime should be limited , only in case of absolute necessity, in case of efficient LAIA and when consulting interested parties and social partners. Licence regime should be introduced only in case of higher threat to national security or social order and citizens' individual rights when it ensues from the harmonization with EC requirements. It happens quite often, however, that legislature introduces regimes of this type without the necessary prerequisites

[18] ar2.government.bg/ras/.

[19] Regulatory regimes in Bulgaria – state, tendencies, opportunities for development of the administrative register, Bulgarian Industrial Association, 2006.

[20] See previous foornote

[21] See previous footnote

for that. The list of activities for which a licence regime can be introduced, added to LRARACEA, unfortunately introduces activities, which do not lead to higher risk for the country and its citizens.

3.13. Under **registration regimes**, most often problems are related to the great amount of required paperwork. In order to avoid them it is necessary to put into practice the following requirement of the LEM: '*Administrative bodies, people who have public functions and organisations who are in the field of public procurement cannot require from citizens and organizations to provide and prove data that has already been collected or created, but it is their obligation to collect officially that data from the initial administrator of that data."*

3.14. The great number of **permit regimes** that are introduced through special laws pose another problem. Their number should be reduced and it should be done after judging whether carrying out a certain deal or activity leads to higher risk for security and social order in the country, to personal or property rights of individuals or corporate bodies. The entire legislation, regulating permit regimes, should be in accordance with the principle that bodies of local authority **cannot conduct administrative regulation of economic activities and determine their expedience.** It is within their rights to use the expedience principle in individual deals or activities (not concerning the entire economic activity). Such examples "abound" in legislation but they are not in accordance with the LRARACEA regulations (Supplement 2).

3.15. Additional administrative burden is provided by the fact that very often special laws make no differentiation between regimes and in some cases two or more regulations are imposed on one and the same activity. Furthermore, big part of the legislative system, regulating the regimes, does not specify terms for issuing certain documents. The requirement that the amount of fees related to administrative regulation and control should not exceed the administrative costs on their execution is not always observed. (Supplement 3).

3.16. To solve the above mentioned problems the following **recommendations** can be made:

3.16.1. A thorough **review of the legal system** should be carried out by the executive power and a proposal should be addressed to the legislative power, which on its part should **bring it in compliance with LRARACEA**.

3.16.2. To abolish illegal regimes. The remaining regimes:

• should be reduced, including through delegating the most lax ones (at administration's discretion) to branch organizations following the

legally specified criteria by stimulating their unification in sectors and/or branches;

• to ease them through standardizing procedures and paperwork as much as possible and to shorten administrative terms.

3.16.3. To determine the bodies/individuals who will observe the enforcement of LRARACEA, and their responsibilities.

3.16.4. To set a **special unit** which will conduct constant monitoring on the **introduction and carrying out** of regulatory regimes (most likely The Better Regulation Unit with the CM).

3.16.5. To adhere to the underlying principle of the legal programmes of the European countries for as little as possible government interference, and when this intervention is inevitable – rank the regimes in the following way: **notification, certification / registration – permit / licence** (it is a priority to try and find a more lax regime).

3.16.6. **To revise the existing licence and registration requirements** and criteria, which economic entities should meet in order to expand economic freedom and opportunities for economic growth.

3.16.7. **To specify the list of economic activities through shortening it** (under LRARACEA), for which setting a licence regime is permitted.

4. Administrative register

4.1. A uniform place to enter the regulatory regimes, administered by all bodies of executive power, is the Register of administrative structures and the acts of the bodies of the executive power. Access to this Register is free through the Internet[22]. The responsibility for regular entry of reliable, comprehensive and authentic information lies with each individual body, administering the respective regulatory regime.

4.2. Analyses[23] show that the data entered by the central administration corresponds to the required information, but the greater part, referring to registration and permit regimes, is not updated. It is a common practice not to secure document samples in accessible and convenient form for downloading. There are no possibilities for electronic registration.

4.3. The information, available in the Register, concerning regulatory regimes, administered by the municipalities, is chaotic and the requirements for issuing acts under regulatory regimes are mixed up with issued administrative acts.

[22] ar2.government.bg/ras/.

[23] Regulatory regimes in Bulgaria – state, tendencies, opportunities for development of the administrative register, Bulgarian Industrial Association, 2006.

4.4. There is no information in the Register about the regimes which are applicable to individual deals and activities – certifying and notifying regimes. There is lack of any information concerning the control over procedures.

4.5. The Register cannot serve as control on efficiency of administrative procedures on individual units of executive power, nor serve as a source of information about the active management of regulatory regimes, nor to identify corruption practices.

4.6. The Regulation for keeping Administrative Register[24] stipulates that the obligation to enter data lies with each concrete administrative body, which administers the regime, including mayors of municipalities. The executive bodies are obliged to appoint officials by issuing an ordinance, who should enter any change in the Register within three days of the introduction of the new regime or an amendment of an existing one. The control over the observation of this duty lies with the Minister of state administration and administrative reform.

4.7. **The incorrect administering (broadly speaking) of regulatory regimes, no matter what fault they might have, turns them into a mighty tool for corruption practices and suppressing investment and entrepreneurial activity.**

4.8. On such grounds we can draw the conclusion that[25] "…*the register is not a 'reliable' source where business and society can find information about the regulatory regimes, administered by the central and regional authority. Data about a big number of regimes has been entered in it, but it is old, incomplete and inaccurate. Business is deceived, including foreign investors, and conditions for corruption practices at all levels of administration are created…"*

4.9. ESC proposes a **concept for development** of the Administrative Register in its part on regulatory regimes[26] along these lines:

4.9.1. A **comprehensive list of regulatory regimes**, carried out by central and regional administration should be created. It should be interactive and should contain all necessary documents for acquiring the respective administrative act. Every business area (for example, transportation, energy, communication) should have the respective licence, permit, registration, notification and certification regimes.

4.9.2. The Register should provide the possibility for compulsory public registration of incoming documents and the date when all

[24] Regulation N1 of MSAAR of 27.07.2006 for the Administrative Register (promulgated State Gazette, issue 66 of 15.08.2006), enacted on 01.05.2007.

[25] See previous footnote

[26] See previous footnote

applications for issuing acts under certain regime were filed. The information should be traceable, including the fulfillment of procedures according to their term and serial number. The Register should also contain information about the deadlines within which the executive body requires that mistakes in the papers filed should be eliminated. On issuing it the respective act under a regulatory regime should be registered by the date of issuance. In this way both business and public will have the possibility to exercise control over the activity of administration and to combat corruption.

4.9.3. To develop and introduce compulsory unified software about the regimes, administered by municipal and regional administration, which should prevent the introduction of regulatory regimes.

4.9.4. The Register should separately list the documents, required under individual regimes. In the cases when they exist in public registers, they should not be required, but a declaration about data authenticity should be filled, and information about the place where they were filed should be given, under LEM regulations.

4.9.5. In case the requirements and procedures for issuing an act under certain regime are not observed, it should be pointed out who to, on what grounds, and how physical and corporate bodies can file warnings and complaints.

4.9.6. Register administration in the part concerning regulatory regimes should be left for servicing on grounds of public and private partnership in order to guarantee higher efficiency along with achieving aims to relieve the business environment through better administrative regulation.

4.10. Functioning joint Register, created on the basis of leading European experience would present a **mighty tool for limiting corruption practices and the foundation for developing competitive economy.**

5. "Tacit Consent"

5.1. The revoked Law on Administrative Procedure stipulated the common 'tacit consent' presumption. In EC the 'tacit consent' within all or most registration regimes, including registration of companies and traders, is applied relatively actively. According to OECD the broad scale on which it is applied is a criterion for the quality of state bureaucracy.

5.2. By revoking the Law on Administrative Procedure, APC also specified a common presumption for 'tacit refusal' in the event of administrative inactivity and provided the possibility to apply 'tacit consent' should that be specified in any special laws. In LRARACEA the legislators did not accept the initial proposal in the project to apply the 'tacit consent' presumption to all registration procedures. The specified principle in LRARACEA which is contrary to the one in

APC ("*When issuing a permit and a certificate for conducting one-time deals or activities the tacit consent is applied, unless otherwise stipulated in a law'),* did not bring about an improvement in the business environment since laws do not define 'tacit consent'. **In future 'tacit consent' should be made broader.** If not, business in Bulgaria will face more obstacles than anywhere else (Supplement 4). That is why the impact of this principle should be considered in detail.

5.3. Aiming at applying identical risk concepts not only to economic activity, but also to its components (i.e. activities and deals), the legislators have considered a secondary notification on the part of the applicant and actions of the administrative body. With 'tacit consent' the applicant (irrespective of whether his activity is subject to licence or registration regime) "can undertake the deal or activity", if "*he has informed in writing the respective administrative body and it has not expressed an opinion".* While *"the administrative body can stop with a well-grounded order the completion of the respective deal or activity only if they result in serious violation of the legal requirements'.* The result is that the term becomes twice as long, up to 28 days (for the person interested in conducting the deal), and the administrative body receives limited rights for intervention, as it has to motivate its actions, i.e. to provide evidence that there is risk to damage national security or social order, personal or property rights of citizens or bodies corporate.

5.4. ESC proposes that common fundamental presumption for 'tacit consent' in case of administrative inactivity, be specified. **'Tacit consent' should be considered existing when the administrative body has not sent the applicant a notification for refusal within the legal term for expressing an opinion.**

6. Law on Electronic Management

6.1. The Law on Electronic Management[27] which came into force in June 2008 drew a legal framework for the activity of administrative bodies when working with electronic documents, providing electronic administrative services and the exchange of electronic documents between administrative bodies.

6.2. Administrative bodies, people with social functions, and organizations, providing social services are under the obligation not to require from citizens and organization to provide data or provide evidence for data which has already been collected or created, but they are obliged to collect officially this data from the primary data administrator.

6.3. The law settles the problem with official notification for available data with the primary administrator in cases when by virtue of

[27] Promulgated, State Gazette, issue 46 of 12.06.2007, enforced on 13.06.2008

legally set obligation for processing that data another administrator has requested it. In this way the need for providing repeatedly the same information to different administrators is eliminated.

6.4. Without revoking the established rules for dealing with paperwork (hard copies), LEM regulates the relations referring to providing and using electronic administrative services, access to those services and to data, related to them. Specific areas where the application of LEM could significantly improve the business environment are the public procurement system and the absorption of EU funds.

6.5. As LEM regulates in a modern way the opportunities to ease / unburden the unnecessary administration both for physical and corporate bodies, it can be seen as being a part of the improvement of the regulatory environment for business in Bulgaria. The major challenges are related to its efficient application. Along these lines the following **recommendations** can be made:

6.5.1. The executive power should carry out a thorough **review of the legal framework** and address proposals to the legislative power, which on its part should **bring it in compliance with LEM**.

6.5.2. To appoint bodies, which will **be in charge of the control** over the fulfillment of LEM regulations and their responsibilities and to set a **specialized unit**, which will carry out constant monitoring over the efficient application of LEM (most likely the Better Regulation Unit with the CM).

6.5.3. The latest changes in OCM 121 harmonize the documentary requirements for the absorption of finance from EU funds with the LEM[28] regulations, but the main challenge is their practical incorporation in the project application procedures and signing of execution contracts.

6.5.4. Public Procurement Law in its current form contradicts LEM and its adaptation along these lines would contribute to reducing administrative burdens.

7. Legal Acts Impact Assessment

7.1. One of the most important competences of the modern regulator, working in an open and competitive economy, is its ability to assess the impact on the market of a given legal act prior to its passing. Enhancing the capacity of regulators to select efficient regulatory decisions corresponding to market forces, reduces the risk of making costly regulatory mistakes and the level of indirect/hidden taxation of economic activities.

7.2. Administrative Acts Impact Assessment is an analytical approach to evaluating potential expenses, consequences and side effects, ensuing from future legislative changes (passing new laws,

[28] Promulgated, State Gazette, article 7, paragraph 6, point 2

regulations and statutes). The methodology should be used when conducting regular impact assessments. In both cases results will be used for quality improvement of political decisions and tools. All that is accomplished through evaluating the expected expenses and benefits related to alternative decisions aimed at achieving the same goal. These are usually medium- term and long-term assessments.

7.3. Bulgarian administration has already started improving LAIA technique which can simultaneously lower regulatory costs and raise benefits, as well as stimulate and guarantee participation of interested groups in the regulatory process. Focusing on LAIA as one of the priorities for Bulgaria is in accordance with and of key importance, given to the impact assessment in the Lisbon Programme.

7.4. LAIA has not been applied to a sufficient degree under the standards of the Lisbon strategy and OECD. Despite this fact a big part of the governmental bodies, participating in the process of setting out policies in Bulgaria believe that our country is already conducting impact assessment of the quality expected by Europe. This delusion is due to widespread inadequate understanding of the essence of impact assessment and the confusion between ideas, concepts and terms in this sphere.

7.5. Bulgarian institutions rarely conduct preliminary and regular legal acts impact assessment. This conclusion was drawn after an assessment carried out by different foreign experts and experts, working or not in the state administration in Bulgaria. The executive power experiences difficulties in assessing the economic ground or impact of the proposed acts. With quality control the focus is still on juridical issues such as the correct structuring and the relation with other legal acts. The same applies to the activities undertaken by the National Assembly. The explanation is formal, often one-page long and contains statements which are not supported by evidence. Of similar importance is the fact that there are no procedural requirements concerning the time required to work out the explanation and as a result it is always written too late when the analysis cannot influence the content of the bill. A weakness is also the lack of consultations with social partners and interested parties when preparing the assessment.

7.6. At the beginning of 2008 OECD found[29] that 'impact assessment is not sufficiently widespread which leads to unstable success when setting up policies on the part of ministries' and that 'the system works well in relation to impact on government budget and not satisfactory in other aspects. There is no good knowledge of the methodology of conducting the assessments and there is no

[29] OECD/SIGMA (January 2008)Regulatory management capacity assessment in Bulgaria, provided by SIGMA (joint initiative of OECD and EC, financed mainly by EC)

general check of the quality of the impact assessments that have been carried out.'

7.7. The same conclusions are shared by the World Bank[30], which noted that '*Despite the existing legal requirements for carrying out LAIE in Bulgaria, this evaluation is not applied to new legislative and by-law acts in such a way as to meets its purpose.'*

7.8. The Legal Act Law puts the mover of the legal act under the obligation to include as motivation financial and other instruments needed for the application of the new framework and the expected results from its application, including financial, if there are such. Decree N 883 regulates the obligations of the body in charge of enforcing the act to organize regular study of the results from its application. The bodies, which have been approached for information or cooperation in relation to the study, are obliged to send information or assist the body which has organized the study. A report is prepared on the results of the legal act application and changes to the framework can be proposed if necessary. The report is sent to the body which has adopted and then issued the act under consideration. LRARACEA stipulates that when a bill is introduced in the National Assembly which envisages the introduction of licence or registration regime along with the bill and motivation the mover provides a statement of motivation explaining the need for such a regulation, including an economic analysis and an evaluation of the impact which the regime has on the regulated economic activity. The statement should be published on the Internet or in other convenient way and should be available for discussion with the social partners and other interested groups.

7.9. The legal obligations to carry out LAIE in Bulgaria are efficiently and effectively fulfilled in terms of new legislative and by-law legal acts. The Bulgarian government has not developed LAIE standard yet, which is to be integrated with other reform activities and which should be in accordance with the needs for the development of the country. LAIE of specific legal acts is characterized by different, and in many cases – bad quality. Most ministries and public agencies lack institutional and administrative capacity to maintain the introduction of LAIE. Despite the obligation of all governmental bodies, engaged in regulatory activities, to carry out LAIE in order to improve the quality of their regulations, not many education activities have been performed to build up the capacity. Major operating requirements (such as strategies for collecting data to evaluate the impact, groups to review the level, consultative bodies on LAIE and LAIE networks in the ministries) are still unavailable.

7.10. **In order to end this pilot stage and proceed with the systematic application of LAIE, it is necessary to set up a body for central LAIE supervision** by assigning it to one concrete institution with

[30] Scott Jacobs (2007) - :Bulgarian policy on regulatory reforms in EC: converging with the best regulatory practices in Europe', prepared for the World Bank.

institutional term of office, resources and right to impose the LAIE programme. In the perfect case this task could be assigned to the Better Regulation Unit. The Law does not assign responsibilities related to LAIE to any one institution. This causes misunderstanding between the Ministry of Economy and Energy and the Ministry of State Administration and the Administrative Reform related to the term of office for managing LAIE.

7.11. **On the bases of OECD's and Europe's best practices Bulgaria has to develop a new standard and content of its LAIE system, consulting its social partners.** The existing comprehensive handbooks on good LAIE systems can be used. The most influential and most quoted standards remain the ten LAIE practices of the OECD from 1997[31]. These good practices could be applied in Bulgaria as standards for the fulfillment of the model and the functioning of the LAIE system.

8. Better Regulation Programme and Better Regulation Unit

8.1. The better regulation programme in Bulgaria (2008 – 2010) is part of the initiative for better regulation and for reducing the administrative burden at European level, which is carried out jointly between EU bodies and the national legislative bodies in each member-country. At the moment Bulgaria is lagging behind both EU-27 and the EU-10 (the ten new member-countries from 2004) in terms of the quality of the regulations according to the indicators of the World Bank for good management. The programme in itself is a set of good recommendations and aims, which, if fulfilled, have the potential to lead to significant improvement in the business environment in our country.

8.2. The programme's goals can be achieved only with appropriate structure for regulatory management. OECD draws a conclusion that a reform like that should be moved by central units with longer terms of office and the ideological participation of the entire government. It is not accidental that Europe has witnessed an expansion of the so called Better Regulation Units over the past years (including the new member-countries). It is the positioning of such central unit that is considered to be one of the main measures in the programme – '*creating and strengthening the capacity of the Better Regulation Unit in the administration of the Council of Ministers'.* This Unit is already functioning, but until now it has not been completed and has not been performing adequately.

8.3. **Bulgaria needs a focused mechanism, with adequate resources, expertise and rights in order to manage and**

[31] OECD (1997), PRIE; Best practices in the OECD countries, Paris.

coordinate the complex strategy for legal reform, to exert monitoring and report results. The body whose task is to perform this activity is most efficient when related to the central administration of the government where the rights of the intra-institutional supervision have already been well defined. The individual ministries are not appropriate for the management of such governmental programme.

Associate Professor Lalko Dulevski
President of the Economic and Social Council

Appendix 1.

Explanations about the types of regulatory regimes

The administrative regulation of the economic activity is the introduction of rules and administrative requirements which regulate the activity of the economic entities through development, adoption and application of legal acts following a legally established order and procedures. In a nutshell, the administrative regulation is the setting of legal requirements whose observation is secured through exercising administrative control.

Under LRARACEA the regulatory regimes through which restriction is laid on administrative regulation and administrative control over the entire economic activity (not only over individual deals), applied by bodies of central and local authority, are divided into two types – licence regimes and registration regimes. The law specifies three types of regimes when conducting separate deals or activities – permit, certification and notification.

1. On issuing a **licence** the administrative body checks if the application is in compliance with the law and within the framework set out by law, permits or rejects as it finds appropriate the performance of some economic activity. **A licence is issued only by a central administrative body**.

2. Upon **registration**, the administrative body checks the availability of clearly set out legal requirements and if it ascertains conformity, it permits without the right to judge as it finds appropriate the performance of the economic activity.

3. When issuing a **permit** the administrative body judges and decides as it finds appropriate within the framework provided by law, whether the respective deal or activity can be carried out as well as the scope of their content, time and place.

4. With **certification regime** for individual deals the body checks whether the legal requirements have been observed and if it is found that they are adhered to, it permits, without the right to judge as it finds appropriate, the deal or activity to be carried out.

5. **Notification regime** is closest to the idea for restricting administrative regulation and the administrative control over the economic activity, exercised by bodies of central and local authority. The notification is directed from business to the empowered administrative body – i.e. the person who is undertaking a deal or activity. This regime is applied when "*a law specifies an obligation of a person for preliminary or later notification of the administrative body".* The person, conducting a deal or activity, presents to the respective administrative body written evidence about their content, as well as the place, time and the way they are conducted. The 'tacit consent' presumption exists with this regime and it is applicable with permit and certification regimes for performing one-time deals and activities.

Regulatory regimes under LRARACEA	**What type of activity it refers to**	**Decision on expedience**	**Applicability of silent consent**	**Making it public**
LICENCE	Economic activity	yes	no	Public Register
REGISTRATION	Economic activity	no	no	Public Register
PERMIT	Individual deals and activities	yes	yes	Public Register is not considered
CERTIFICATION	Individual deals and activities	no	yes	Public Register is not considered
NOTIFICATION	Individual deals and activities	no	yes	Public Register is not considered

Source: IME, Law on Restricting Administrative Regulation and Administrative Control over Economic Activity (LRARACEA)

Appendix 2.

Discrepancies between LRARACEA and some permit regimes[32]

1. Permit for using a place to perform peddling
2. Permit for retail trade with tobacco products
3. Permit for transportation of people by taxi
4. Agreements in the field of transportation
5. Permit for installing temporary sites for performing trade and other services
6. Permit for installing billboards, information and decorative panels on buildings
7. Permit for cutting down and rooting out long-lasting decorative trees and trees with historical importance
8. Permit for cutting down and rooting out of up to five trees and vineyards of up to 1,000 m^2 on agricultural land and on the boundaries, as well as along rivers and roads
9. Permit for using medicinal plants
10. Permit for throwing out, collecting, transporting, overloading, making harmless and utilizing refuse and industrial waste
11. Permit for activity off-road and of special use of municipal roads

[32] When this supplement was prepared the following material was used: "Existing regulations on economic activity in Bulgaria – current review and proposals" provided by BIA, May 2007: http://www.bia-bg.com/print.php?id_news=1246.

12. Permit for construction
13. Issuing a legal certificate
14. Permits and agreements related to road safety in the municipality
15. Permit for temporary storage of radioactive substances,, which are the result of working with sources of ionizing radiation or related to such activities
16. Permit for partition of movable and immovable cultural sites
17. Permit for one-time transportation of radioactive substances
18. Issuing a permit for conducting duty-free trade by a duty-free operator
19. Permit for conducting brokerage on the commodity exchange
20. Permit for conducting activity on the commodity exchange
21. Permit for freelancing of foreign citizens in the Republic of Bulgaria
22. Permit for conducting activities for fire and emergency safety by traders
23. Permit for conducting activities under article 72, paragraph 1 of the Law on control over drugs and precursors
24. Permit for repairing guns and ammunition
25. Permit for building a temporary construction
26. Permit for concentration of economic activity
27. Permit for training candidates for acquiring driver's licence
28. Permit for organizing lotteries, raffles, pools, gambling.
29. Permit for organizing commodity market place
30. Permit for organizing gambling in a gambling hall
31. Permit for organizing gambling in a casino
32. Permit for opening a pharmacy
33. Permit for opening a bingo hall
34. Permit for printing company shares and bonds
35. Permit for printing tickets, slips and checks for organizing gambling games
36. Permit for printing securities
37. Permit for using first- and second-category buildings
38. Permit for moving explosives, weapons and ammunition

39. Permit for acquiring, storage and usage of explosives
40. Permit for acquiring, storage, carrying and use of weapons and ammunition
41. Permit for additional training of drivers for partial restoring of lost credits
42. Permit for conducting clinical tests of medicine on people
43. Permit for production and preparation of seeds and seedlings
44. Permit for production of veterinary medicinal products
45. Permit for manufacturing explosives, weapons and ammunition
46. Permit for processing tobacco
47. Permit for manufacturing tobacco products
48. Permit for manufacturing, import and distribution of slot machines and equipment
49. Permit for manufacturing, import, sale and maintenance of equipment and devices for disabled people
50. Permit for installing an item, source of ionizing radiation on a specific site
51. Permit for construction in small nonregulated villages or parts of them
52. Permit for construction on urbanized territories, issued by the chief architect of the municipality (region)
53. Permit for construction based on approved conceptual investment project
54. Permit for construction outside the boundaries of urbanized territory
55. Permit for storage and sale of medicinal products by doctors and doctor’s assistants
56. Permit for transit of nuclear substance, radioactive waste, exhaust fuel and other radioactive substances
57. Permit for wholesale trade of medicine
58. Permit for trade with explosives, weapons and ammunition
59. Permit for use of medical products
60. Permit for import and export of narcotic substances under Appendix N 1, 2 and 3 under the Law on control over narcotic substances and precursors
61. Permit for international transportation of people on regular bus routes

62. Permit for opening a veterinary pharmacy

63. Permit for wholesale trade of veterinary products

64. Certificate for aviation operators

65. Permit for construction in a forest

66. Permit for construction on arable land

67. Permit for construction under the conditions of a complex project for investment initiative

Specific problems under individual regimes:
Permit for transportation of people by taxi
Legal grounds: Law on automobile transportation
General characteristic of production
The procedure is directed to physical and judicial bodies, registered as traders and willing to perform transportation of people, as well as for drivers willing to perform that activity on behalf of registered carriers but at his expense, to receive a permit for transporting people by taxi.
Firstly, it is necessary to make a registration for transporting people by taxi with the Executive Agency "Automobile Administration". Certificate "taxi driver" is given to people who have knowledge in certain areas. The exams for acquiring a "taxi driver" certificate are held by the Executive Agency :Automobile Administration". The rules and ways of holding them are set by the Executive Director of the Agency and the Agency keeps a record of all drivers, who have received "taxi driver" licence.
Secondly, transportation of people by taxi is performed by traders, possessing a registration certificate and a permit for transporting people by taxi, issued by the mayor of the municipality for each separate car.
Discrepancies with LRARACEA:
In the Law on Automobile Transport the regime is defined as 'permit', but actually it is not as it does not refer to one individual deal, but to performing a business activity, i.e. in its essence and referred to the regimes under LRARACEA it should be specified as registration regime. The Executive Agency "Automobile Administration" is a central body administering a regime as provided for by the law.
Although LAT does not provide for the issue of "certificate" for the registration of performing transportation of people by taxi, the regime is not registration, because the central body takes a decision about the documents provided on expedience, not only based on compliance with the law.
LAT stipulates a validity period of the 'permit' issued by the municipalities – not shorter than 12 months, and under LRARACEA – registrations are valid through not less than 3 years.
The function of the municipality and the documents, which it issues, encompass neither the criteria of registration regime (there is judgement on expedience), nor those of a regulatory regime for individual or one-time deals (permit).
Issuing a permit for trade with tobacco products
Legal grounds: Law on tobacco and tobacco products (LTTP)

General characteristic of proceedings

Proceeding serves to receive a permit for trade with tobacco products. The term 'tobacco products' is legally defined in § 1, point 4 of LTTP – these are all product for smoking, chewing, sniffing and oral use even if they are partially produced from tobacco: cigarettes, cigars, pipe tobacco, tobacco for chewing, tobacco for sniffing, tobacco products for oral use.

The grounds for the production lie in article 30, paragraph 1, point 1 of the LTTP- the regime for trade with tobacco products is permit regime and the activity can be performed only after receiving an explicit permission. Locally produced and imported tobacco products are transported, moved, stored, offered or sold in stores and retail and wholesale warehouses only if they have excise band stuck on the consumer package, under article 28 of LTTP.

Production starts with filing an application to the mayor of the municipality (for towns with regional division – to the mayor of the region where the site is) to receive a permit for trade with tobacco products.

Discrepancies with LRARACEA:

The regime has been specified as 'permit' – a permit is issued for performing business activity (sale of tobacco products) and this permit is issued by the municipalities.

In fact, a registration of a trader is made and there is an element of judgement on expedience when checking for availability of 'self-contained premises or parts of them allowing the storage and sale of tobacco products on their own or with other good, adequate for joint storage and sale'.

Categorization of tourist establishments

Legal grounds: Law on tourism (LT)

General characteristic of proceedings

Proceeding serves to receive a category of hotels, restaurants and other catering establishments and accommodation, and aims at facilitating consumers by unifying requirements to these establishments. The categorization of tourist establishments aims to unify and standardize the description of places in order to apply unified methodology when setting the category of a specific establishment.

The categorization regime of tourist establishments is carried out in relation to the required category – by central or local administrative bodies. On the one hand, this is the minister of economy and energy through the Expert Committee on categorization of tourist establishments for the categorization of establishments with higher category, and on the other hand – mayors of municipalities on the recommendation of Municipal expert committee on categorization when categorizing establishments with lower category.

Proceedings start with filing an application by the trader, accompanied by the respective documents. Fees under certain rate are paid and they can vary depending on the establishments and two types of fees are collected – to consider the application and to issue the symbols referring to the category. The expert commission considers the application and conducts a field check and draws up a protocol with recommendations and findings, then a decision is taken for awarding the respective category.

Discrepancies with LRARACEA:

Categorization in its essence is a type of licence regime – there is a judgement on expedience concerning the performance of business activity and being such it should be carried out by the central administrative bodies. Filing of documents, certifying circumstances which have already been entered into a public register is requires, i.e. they should be confirmed only with a written declaration, presented by the applicant.

Registration of commercial outlet

Legal grounds: There is no law stipulating the matter on registering outlets.

Usually the regime is introduced through municipal regulations and quite often these are 'Regulation for performing business activity on the territory of the respective municipality' or with any other names.

Under the regulations of LRARACEA the registration regime is introduced only by law and as there is no such a law concerning the stationary outlets, it is obvious that bodies of local management have no right to 'introduce' such a registration regime with by-law acts thus the regime should be notifying or should be entirely abolished. The analysis brought about the conclusion that a registration like that is not necessary – control over requirements introduced with special laws, such as sanitary, anti-fire etc, are carried out by specialized controlling bodies such as Tax Administration, Ministry of Economy, Ministry of Health, Ministry of Internal Affairs, as well as the court. This suggests that the registration of an outlet repeats the procedures which have already been carried out and serves as a prerequisite for creating additional burden for business.

The lack of legal grounds and the discrepancy between the regime and LRARACEA is the reason why the registration of commercial outlets has not been introduces or revoked in some municipalities.

General characteristics of proceeding

The regime in the form it is administered in some municipalities provides for proving the observation of the requirements, set by other permit, licence or registration regimes, administered by different specialized controlling bodies.

Discrepancies with LRARACEA

In many cases the regime falls out of the framework of registration procedures and falls entirely within the permit regime where a judgement on expedience is made. Even if the procedure is observed, it is not within the expertise of the bodies of local authority, as the law 'keeps silent' on the matter of registering an outlet. In some municipalities, a municipal regulation has given the bodies of local administration the right to exercise control over observing requirements, imposed by special laws – for example, to exert control over observing sanitary-hygienic requirements and the checks in compliance with the law are carried out by the bodies of – RIPCPH. Duplicating control entirely contradicts LRARACEA and the respective special laws.

Registration of retailers and wholesalers of products made from grapes or wine and spirits

Legal grounds: Law on wine and spirits (LWS)

General characteristic of proceedings

Although the licence regime has been removed from LWS, some municipal administration still register traders where checks are made on expedience and fees are collected. With the amendments to the Law on Wine and Spirits the

licence regime for producers of wine, alcohol and spirits has been removed – the regime is registration, but in terms of trade with wine, alcohol and spirits there is no legal regulation in the quoted laws. The regime which has been applied by municipalities should be removed or, in case it changes into registration, only certificates for registration should be issued for a fee. But the legislators should explicitly regulate this regime with a legal act.

Problems

The regime has not been specified – there is no legal framework.

Some municipalities still apply the 'licence' regime, other municipalities have adopted the registration regime. When traders do not register and respectively do not pay fees, there are no administrative sanctions against not paying annual fees.

Permit for construction

Legal grounds: Law on structure of territories (LST)

General characteristic of proceedings

In order for an investment project to be approved and a permit for construction to be received the assignor has to present documents which are explicitly listed in article 144 of LST, however, their number is not big and they are not included in public registers, except for the ownership documents. After the amendments to LST many of the documents and activities of different administrations have been replaced by an assessment of compliance of investment projects with existing requirements to constructions (ACIP).

The actions of the assignor related to obtaining the necessary administrative acts at local level prior to starting construction can be grouped as follows:

Preliminary stage: preparing an investment project; carrying out of ACIP of the project; signing an agreement for execution with utility companies supplying electricity, water, gas etc.

Issuing a permit for construction: co-ordination and approval of the investment project; issuance of a permit for construction.

Subsequent activities necessary for starting the construction itself: signing contracts for the execution of construction supervision between the assignor and a consultant; drawing up protocols for opening the construction site and for setting a construction line and level; legalizing the order book.

LST prescribes the requirement for starting and keeping a public register of issued permits for construction. The regime is applied mainly at local level and practices in each municipality differ.

Problems

There are no unified rules for issuing permits for activities which accompany construction, for example, tearing up road surface or cutting down trees – the procedure for getting them is included in Regulations, issued by Municipal Councils. All this can lead to administrative chaos. Some municipalities require documents which are included in public registers. The deadlines for issuing permits for construction are not met – there are no sanctions for bodies of local administration when they do not meet deadlines. The requirement for single return of paperwork is not observed.

When order books are legalized the construction documents which have to be presented are not legally listed and this gives the administration the possibility to interpret them with bias. Practices in each municipality differ – there are no unified procedures. Frequently, working time is not flexible and does not facilitate the applicant. Although LST specifies the requirement for creation and keeping public

register of all issued permits for construction, such registers are not available to the public.
Most municipalities provide on their sites information about the regime – the fees due, qualified bodies, but the information is relatively general, sometimes out of date and the assignor cannot get a clear idea about the regime and the required documentation.
Although the work of the municipal administration is checked by the Directorate for national construction control, penalties are rarely inflicted – only in cases with multiple or severe violations.

Certificate for right of use of buildings

Legal grounds: Law on Structure of Territory – article 177

General characteristic of procedure

It is within the competence of bodies of local authority to issue certificates for right of use of building from fourth and fifth category. For buildings of first, second and third category there is another qualified body – DNCC.
The procedure starts with filing a request for issuing a certificate for right of use; both a documentary and field checks of the construction are carried out, and finally a certificate for right of use is issued – within 7 days from registering the request.
Regardless of its name, the issuance of a certificate for right of use is an example of conducting a permit regime, not a registration one under the meaning of LRARACEA as when issued the chief architect passes an expedience judgement in compliance with the law. The certificate is issued for a specific activity – putting the building into use and the rights that the certificate grants cannot be transferred to another building.

Problems

The law does not specify deadlines for eliminating irregularities and/or filing additional documents. The administration is given the right to decide and this often leads to unnecessary delay in procedure.
The deadlines for issuing a certificate for right of use are not kept and it often happens that the time it takes to receive the document can be as long as 101 days (according to a research carried out by “Vitosha Research”)
When holding a reception committee the chief architect should ‘require additional documents to be presented, which are specified by the law in accordance with the specification of the construction’.

Permit for installing movable installations on private land

Legal grounds: Law on Structure of Territory LST – article 56

General characteristic of procedure

The regime refers to installing on private land movable installations for trade activity and other services – booths, cabins, stalls as well as other items of urban furnishing (constructions at stops of public transport, benches, lamp posts, garbage containers, fountains, clocks etc), which are not permanently attached to the terrain.
The permit for right to use is issued by following adopted regulations of the municipal council, while for state and municipal property it is based on a scheme approved by the chief architect of the municipality. For state property the scheme is approved after coordination with the respective central administration which manages the property. In all other cases – with the district governor.

Problems

In many municipalities such regulations don’t exist and there is no information that they exist.
They are not accessible by the public.

There are differences in the procedures in every municipality, there are not unified requirements.

Permit for installing billboards , information and decorative panels on buildings

Legal grounds: Law on forestry (LF)

General characteristic of procedure

Indirect use of forests and lands from the forestry resources when considered to be business activity is allowed under rules and following regulations, specified in a written permit. Permits for municipal forests are issued after paying fees. The size of the fee for secondary use of municipal forests is set by the municipal council, but it should not be less than the amount set by a rate of the Council of Ministers concerning the usage of state forestry resources. A written application has to be filed for granting a right of use of forests and land, which are municipal addressed to the mayor of the municipality. He will appoint a committee which will consider all applications and will prepare a protocol with recommendations to the municipal council.

Discrepancies with LRARACEA

In the Law on Forestry 'licence' should be replaced by 'permit' as the regime entirely matches the characteristics of permit regime for carrying out individual **deals under LRARACEA.**

Permit for cutting down and rooting out of up to five trees and vineyards of up to 1,000 m^2 . Permit for cutting down and rooting out a large number of trees and vineyards of more than 1,000 m^2.

Legal grounds: Law on preservation of agricultural property – article 32

The permit is issued by the mayor of the region or the municipality in reply to a written request and when there are good reasons for that (up to 5 trees and vineyards of up to 1 m^2).

The permit is issued by the Head of 'Agriculture" Office with the municipal administration based on a written request and when there are extremely good reasons (a larger number of trees and vineyards over 1,000 m^2).

Problems

The regime entirely matches the characteristics of permit regime for carrying out individual deals under LRARACEA. Rejected applications can be appealed with the mayor of municipality.

In many municipalities no such regulations exist or there is no information about that.

They are not accessible by the public. There are differences in every municipality, there are no unified requirements.

Appendix 3.

Examples showing the non-observance of requirements that the amount of fees on administrative regulation and control should not exceed the administrative expenses on their exertion

- According to the Insurance Code "a fee to consider documents" is paid – for issuing an insurance licence; for enlarging the scope of the licence; for issuing an additional licence for new type of insurance or for supplementing the licence on a certain type of insurance against new risks; for entering an insurance broker and so on, and the fee to be paid for considering the documents on any individual case. It is another issue according to what criterion "the fee to consider the documents" is set at 500 levs.

- According to article 27 of the Law on the Financial Supervision Commission, the Commission collects fees for issuing licences, permits and licences for performing activity under the Law on public offering of securities, Law on markets of financial instruments. Law on companies with special investment aim, Insurance Code, Law on health security and Social security Code – for example, the fee for entry of an insurance broker in the Register is set at 5000 levs; the fee for issuing a permit for merging, dividing and separating an insurer making life and accident insurances is set at 30,000 levs and 2,000 levs for each type of insurance. For insurers who make property insurances the fee is 90,000 levs and 3,000 levs for each type of insurance.

- According to Tariff N 11 on fees which are collected in the structure of The State Agency on Metrological and Technical Supervision under the Law on State Fees for giving rights to people for conducting checks of measurement instruments, for considering documentation a fee is collected – 100 levs. (see above – for the same activity 5 times higher fee is charged)

- According to Tariff N 3 on fees collected for consulate services in the system of Ministry of Internal Affairs under the Law on state fees, the fee for issuing a temporary passport for returning to the Republic of Bulgaria is set at 120 euro, and the one for issuing a temporary passport – 50 euro. Apart from this discrepancy, both fees are higher than the one paid for issuing a 'regular' passport.

- According to Tariff on fees collected by the Patent Office of the Republic of Bulgaria for patent issued under § 5 of Transitive and final provisions of the Law on patents and registration of useful models the fee for 21st year is 2,000 levs, for 22nd year – 2,500 levs, and for 23rd year and for every next year – 3,000 levs (how come the 23rd and every following year is by 50% more resource consuming than 21st?).

- According to Tariff on fees collected under the Law on tourism the fee set for considering an application for registration of tour operator activity is 1,000 levs, while for the entry in the register of tourist agents – 4,000 levs.

Appendix 4.

'Tacit consent' principle in Bulgarian legislation

With the Law on restricting administrative regulation and administrative control over economic activity (LRARACEA) the Bulgarian legislators introduced this principle, but its application was limited. The new Administrative Procedure Code (APC – 2006) stipulates with priority the silent refusal. Not announcing a decision before the set deadline is considered to be 'acquiescence' only under the conditions and the cases specified in the law.

Other laws specifying 'tacit consent' (comprehensive list):

- Insurance Code – article 112 – 114;
- Law on Forestry – article 25;
- Law on Environmental Protection – article 110a;
- Law on Commodity Exchanges and Market Places – article 14;
- Law on Consumer Protection – article 143

Other laws specifying tacit refusal (open list):

- Tax security procedure Code – article 91, 131, 185;
- Law on the legal profession – article 6, 7,61;
- Law on excise duties and tax warehouses – article 27;
- Law on restoring ownership on state immovable property – article 4;
- Law on craftsmanship – article 25,65;
- Law on protection of personal information – article 176;
- Law on chambers of architects and engineers in investments projects – article 13;

- Law on credit institutions – article 151;
- Law on privatization and post-privatization control - § 17 of TFP;
- Law on foods – article 22v;
- Law on protection of agricultural land – article 20a;
- Law on administrative regulation of manufacture and trade with optical disks, matrices and other drivers containing objects of copyright and related rights – under the meaning of article 29 of the same law the rules for acquiescence are not applied, specified by the Law on restricting administrative regulation and administrative control over economic activity.

Appendix 5.

Better Regulation Unit – concepts

The idea is that in this country the Unit should be situated in the administration of the Council of Ministers (CM). It is within the framework of Europe's standard experience and is in accordance with OECD's recommendations. Situated in the CM, the Better Regulation Unit would work better if formed as an independent unit, with its own term of office, employees and head who is responsible for the fulfillment of the entire programme. The Unit should not be considered as a collective, intra-institutional function, servicing the everyday needs of the Council of Ministers, but rather as a function, fulfilling a programme with its own tasks. It is understandable that while fulfilling its task it will be accountable to the Council of Ministers, while the CM on its part will be able to assign new tasks which are not part of its duties, but in support of the governmental policy. In addition the Unit will have to get integrated in the political process of the Council of Ministers in a proper way. To guarantee sustainability, the remuneration of the people working in these Units should be entirely paid out of the annual government budget, based on the civil servants' rates.

No perfect practice for establishing the office of such units exists. Some countries create such units with laws, while others create them with Resolutions of the Council of Ministers or of the Prime Minister. As a whole, if established by law, the units are seen as more reliable and stable as their function goes beyond the short-term political and party interests.

The main functions of such units usually involve:

- **Strategic management:** evaluation of the regulatory challenges and new initiatives for legal reforms.
- **Programme supervision**: central co-ordination of the fulfillment of the legal reform, along with monitoring and addressing challenges to the ministries to accomplish the tasks.

- **Operating functions**: considering LAIE, conducting training, preparing handbooks, carrying out activities typical for services offices.

This Unit has to be supported by a network of Units in the entire public sector. Jacobs (2006) point out that the best performing countries create a vast network of supporting institutions in the sphere of legal reform. The better systems combine a central unit with a network of institutions in the ministries. A network like that could include (the respective better practices are shown in brackets):

- Bodies for a regulatory reform at political and ministerial level (special ministers in charge of the legal reform, in the United Kingdom; a special committee or council in Canada).

- Committees of active members and parliamentary bodies (European Parliament Committees).

- Top level committees (Competition Council at the European Commission).

- Intra-institutional working groups coordinating and advising on issues of major regulatory initiatives (Group of general secretaries on execution in Ireland).

- Intra-institutional working groups *ad hoc* coordinating and advising on issues of major regulatory initiatives (intra-institutional groups for management of better regulations in Ireland, coordinating inter-service groups for legal development at the European Commission).

- Ministerial units for legal reform, which are in charge of conducting regulatory policy and supervision over LAIE quality at ministerial level (in the United Kingdom a Minister of Regulatory reform is appointed at each key regulatory body, who is in charge of LAIE quality within the ministry. Ministerial units for better regulation are created at every ministry).

- Private business groups, consultative bodies, think-tanks or other research bodies supporting the programme on legal reform (Focus group for better regulation in the United Kingdom, Swedish board of the Swedish industry and trade for better regulation (NNR).

The scope of duties of BRU should be as follows:

- The Unit should set the formal criteria for regulation, for example, in carrying out acts of Parliament, to lower expenses on deals (including 'rectifying' market failures) and for applying common law rules.

- The Unit should *study the regulation substantiation* (in terms of formal criteria which it has set.

- The Unit should carry out regulation evaluation, for example, by using "expenses – benefits" techniques or "cost efficiency"

(frugality). It should also outline alternative ways for achieving the goals of regulation (analyses should be based on comparing alternatives).

- The Unit should publish a handbook on LAIE, which is expected from agencies. The Handbook should contain a formal list for checking the required components of each LAIE.

- The Unit should carry out an assessment of the quality of LAIE conducted by agencies. It is necessary to introduce a standard procedure for assessing the thoroughness of a given LAIE (see below).

Scope of legal acts considered by BRU

The future Unit for improving regulation will have to consider different types of legal acts and drafts. Among the main ones are:

Bills. In Bulgarian political tradition the Council of Ministers prepares and introduces in Parliament most bills. Within this framework it is an obligation of the respective ministry or institution which has initiated and prepared the bill to present motivation of the project. The Unit for regulation improvement will be obliged to consider the motives (LAIE in the future) that go with each project before introducing it in the CM for consideration and decision.

Drafts of rulings of the CM. The BRU will have two tasks: to make sure that the effects of the proposed regulation will not contradict to the pursued goals in the law and that LAIE meets the requirements of standards, discussed in the previous part of the report.

Drafts of other by-law acts (regulations, instructions, standards etc.), prepared by certain ministries and agencies. BRU will have two tasks: to make sure that the effects of the proposed by-law act will not contradict to the pursued goal in the substantive law and that LAIE meets the requirements and standards, discussed in the previous part of the report. Should these acts(regulations) become part of the scope of tasks BRU has, a problem might arise with political, legal and even technical nature. As it was mentioned when considering political restrictions, it is quite likely that ministers and heads of other institutions will not readily accept the intervention of external bodies when performing their specialized tasks. However, they might be forced to adopt the opinion of BRU with an act of Parliament or of the Council of Ministers (for example, a change in the work procedure of the CM and its administration). The other possibility is to provide some independence for BRU and at its discretion (self-apprise) to prepare statements on separate acts of administration which are to have only consultative character.

Bills, prepared by members of parliament. The Constitution of the Republic of Bulgaria stipulates “unlimited right of legislative initiative” of every member of parliament. Consequently to

enforce a requirement for compulsory participation of BRU in the introduction and discussion of projects of the members of parliament can be considered anticonstitutional. BRU's participation cannot be imposed for yet another reason – doubts will arise suggesting violation of division of power into legislative and executive. The only acceptable way in which BRU can participate is by sending opinion on some projects, chosen by the Unit and which have solely advisory character. On the other hand, Parliament gets the opportunity to ask for a statement by keeping its right to adopt or not the evaluation of the BRU.
The case of *legal acts of local authority* is a bit different. Under the constitution their competence on issues of local importance cannot be restricted to the central executive authority. Despite all that, it is recommended that the BRU have the opportunity at its own discretion to consider part of the acts of the local authority and their motivation and send its opinion to the respective municipality while making it accessible by the public. This would only contribute to strengthening the part of BRU as supervising and consulting structure.

Standard list for checking requirements for LAIE
Formal reasons for regulation, i.e. the aim of regulation. The regulative aim has to be explicitly set out by Parliament, for example, by law or it should be achieved by the regulation under discussion. In this way the aim will be considered legitimate according to the principles of representative democracy.
Evaluating the success. Setting the aim should explicitly include 'measurement unit' for success which determines when the aim has been achieved (for example, 'protection of local producers from foreign competition' can be a legitimately adopted, but what is meant by 'protection' has to be explained in a measurable way).
Standards of analysis of the effects of regulation. Since LAIE will refer to changes resulting solely from regulation, a marginal analysis should be carried out. Consequently, a clear differentiation has to be made between the situation ex post and the situation ex ante. The common practice of pre-assessment of the regulatory effects would be to use the status quo as a comparison for final analysis.