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European Union Law for Small & Medium Enterprises in Macedonia

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Foreword by
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Policy Support to the Ministry of Economy –
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Foreword

Macedonian small and medium enterprises, covering the overwhelming part of the country's economy, have already now more to do with European Law than often imagined. Following the seminar on 13./14. September 2004 on important aspects of European Law, organised by the SME Policy Support Project in the Ministry of Economy, this booklet on some basics of European Law for Macedonian SMEs and their advisors and of course the Ministries working on their issues will be of practical value for the readers. Already now, they should have a solid know-how about the SME policies of the European Union. Macedonia is directly concerned by most of the European SME legislation, because most of the SMEs conduct or will conduct trade in the EU, which is now enlarged to 25 Member States. Macedonia has signed a comprehensive Stabilisation and Association Agreement with the EU. Furthermore, Macedonia has applied for accession on 22nd March 2004, which means that the country wants to adopt the *acquis communautaire*.

In this context, Macedonian companies and SMEs will be able to profit very much of their knowledge of EU Law, which nevertheless will not be enough and must be completed by concrete micro-economic steps by the companies: how to work with EU institutions, how to work with the four freedoms of goods, services, capital and persons, what is the basis of EU competition and of state aid law, how to work with the Euro already now, how to live with the technical standards and the EU level of product liability, how to cooperate in EU networks, etc. Alone the integration into EU networks, which might consolidate many enterprises, would be such a step. Experience shows us that small countries can profit most of the EU, if they follow the right policies, as their companies are accustomed to foreign trade and international cooperation.

For the administration to have a very practical knowledge about EU Law means at the same time to go one further step in the direction of enforcement of laws. Above all in economic legislation, there will be a certain deregulation effect by the four freedoms of the EU Internal Market. But as this comes only step-by-step, there will not be an "economic cultural shock" for both businesses and administration.

I wish the readers of this book many suggestions for their companies or their administrative activity towards SMEs.

September 2004

Daniel Giuglaris

European Agency for Reconstruction
Head of Centre, Skopje

Introduction

The Policy Support to the Ministry of economy Project financed by the European Union and managed by the European Agency for Reconstruction is being realized within the Department of entrepreneurship promotion and competitiveness development in the Ministry of economy.

The Project consists of two components. The first component encompasses the strengthening of the capacity of the Department of entrepreneurship promotion and competitiveness development and of the new Agency for entrepreneurship promotion. It also refers to the improvement of the legislation affecting small and medium size enterprises (SMEs) and to the establishment of the SMEs Observatory which will monitor the SMEs operations and shall therein issue analysis and reports. The second component refers to various financial and non-financial programs and policies for SMEs support, as well as to the coordination of the existing mechanisms/agencies for SMEs support and their integration in the current strategy.

In addition, the Project regularly proposes administrative and policy-related measures with an aim of improving the macro-economic environment for SMEs creation and development. In this context, the Project organizes a seminar for achieving inter-ministerial approach with respect to administrative issues concerning SMEs, for general comprehension of the problems related to SMEs, fair judicial treatment of SMEs, as well as for the purpose of acquiring basic knowledge regarding the connection between the law and the SMEs. During the seminar, the participants will have the opportunity for exchange of their respective opinions, views and attitudes.

I hope that this seminar will attain the expected impact on the participants and that this book will represent a useful documentation for any person involved in supporting SMEs and EU membership.

Liesl Muench
Policy Support to the Ministry of Economy
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Short Guide Through the EU Institutions and Their Relevance for Macedonian SMEs

Hans-Juergen Zahorka

Macedonia has submitted in March 2004 an application for accession to the EU. Today – end of August 2004 – this application is examined in Brussels where the European Commission has, according to the EU Treaty, the task to elaborate an opinion. The Commission is right now compiling data and facts, and this will take its time. If the Macedonian institutions, Parliament and Government, take their work seriously, reform will have to continue, and this with a measurable pace.

There are calculations, by the Vienna based WIIW, an economic think-tank specialised on transition countries, which predict that Macedonia can do it:

2006/2007 - start of the negotiations

2013 - accession to the EU

This provides a hard task for the Parliament and the Government: Both will work at the limits of their absorption capacity, i. e. at their capacity to absorb the *acquis communautaire*, which is the whole of the EU legal and political rules. Se have to be adopted in national law, there is large space for own legislation and own policy development in every EU Member State, although belonging to the EU. In article IV-1 (on symbols of the EU) of the future EU Constitution the motto of the EU is defined: “United in diversity”. Therefore, Macedonia will remain Macedonia, and contrary to all voices fearing Macedonia to “disappear” within this big EU, there will be more than enough possibilities to develop a Macedonian view and to be viewed by the others, and to be considered by them. For if for example an Macedonian Member of European Parliament tables a motion, this **has** to be considered, and if the arguments are good also accepted. If Macedonia would stay outside of the EU, there would be less chances to make the country heard.

In this context a short ride through the jungle of the EU institutions is necessary, and above all the small and medium businesses should know what follows as a basic baggage in their voyage towards Europe, because the EU determines around 80-90% of all economic decision making for the Member States (and for smaller non-member states as well – this is why it is important to start this knowledge now!).

1. EU definitions

When the EU was founded in the Fifties of last century, it was clearly no national body, but somehow a supranational one. EU law is a law of its own, neither national nor “inter”national law, as “inter” means “between the states”. It is “supra”national law, for state institutions and views, and for everybody who acts e.g. in business it is “transnational” – so are some of the definitions.

Also the institutions are different:

- As any EU government is no (national) government, the executive of the EU is called “Commission”.

- There are no ministers in the EU as on national levels, but “Commissioners”.
- A ministry in the EU is no ministry, but a Directorate General.
- A permanent secretary or state secretary as head of the administration in a Directorate General is therefore a “Director General”.
- An embassy to the EU as it exists from about 150 countries is no embassy as for national governments, but a “Mission” (however its head of service is no missionary, but a normal ambassador).
- And an embassy of the EU, outgoing to third countries (like the USA, Mongolia etc.) is neither an embassy, but a “delegation”.

There is a lot of danger in these notions: if there is written in a newspaper about an EU delegation in China, it could be the permanent EU “embassy” or a temporary delegation of EU officials who came to China and will go home one week later.

2. The language question

When the founding fathers of the EU met, they spoke only in a few languages: French, Italian, Dutch and German. 4 languages for 6 countries – this could be mastered. Today, after the enlargements of 1972 (Great Britain, Ireland, Denmark), 1982 (Greece), 1986 (Spain, Portugal), 1995 (Austria, Finland, Sweden) and 2004, the big enlargement of 10 countries, the EU has 20 official languages. In simultaneous translated sessions, in big for a like the European Parliament, there must be translations from Estonian to Maltese or from Portuguese to Lithuanian. A lot of money is spent for the translation and interpreting service in the EU, about 20% of all the personnel costs – but this is clearly the price we have to pay in Europe for our unique culture which must not be abolished. And if a Member of European Parliament wants to insult his colleague, he should talk in the colleague’s language, for otherwise the interpreters will not translate exactly what he meant. On the other hand, very often the translations of the speeches are better than the original speeches held in the European Parliament...

The future (from 1.11.2004) Slovak Commissioner Jan Figl will be also Commissioner for languages – a premiere, and in art. III-12 EU Constitution will stand a phrase according to which any EU citizen has the right to address and obtain an answer from every EU institution, which is valid already now. In the Charter of Fundamental Rights, the part II of the EU Constitution, it is repeated in art. II-41 (4) that every person may write to the institutions of the EU in one of the languages of the Constitution and must have an answer in the same language. In art. II-22 there is clearly written: “The Union shall respect cultural, religious and linguistic diversity”.

That is good news insofar also smaller languages like Macedonian will survive. But the bad news is that e.g. in France, the French use to speak French, etc. That means, every business in Macedonia should think about its language “policy”; the resources should be woken up, staff should be given the possibility to go to language trainings, language training should be taken serious already before joining professional life, and there must be a life-long learning strategy for all people, above all in foreign languages. Not everybody in the EU speaks English, although this language makes at present a lot of sense as communication language in business, above all also outside of the EU. In a certain respect for the many languages in the EU this may be considered as regrettable, but with 20 official languages, pragmatically it is justified.

The EU also supports an office in Brussels, EBLUL (European Bureau of Lesser Used Languages), where minority languages are taken care of: Slovene in Italy, Danish in Germany, Welsh in Wales/UK, Ladin in Italy, Croatian in Italy and Austria, etc. Europe would lose a lot, if these languages would be forgotten. In the EU, more than 40 million citizens speak another language than the one spoken in their states. The website of this interesting office: www.eblul.org.

- If Macedonian SMEs want to succeed in the EU Single Market, it should be possible in some of the EU languages, e.g. of the target country of the economic efforts. Perfect knowledge of foreign languages is not necessary, but a few words and comments can create miracles!
- This means also a newly estimated sector, translators/interpreters, who as freelancers can be successful micro enterprises, and who if they work together can create a lot of synergy.
- In-house language capacities are a distinct advantage for every SME. At least in English, then German, Greek, French, Italian – depending with which country there are trade relations. The Slavic languages of Central and Eastern Europe may be a smaller problem.

3. The EU institutions

This text here can cover only some few fundamental aspects of EU institutions and their interfaces to SMEs. Its objective is not to be a learning kit about institutions, but to write about the interface between them and SMEs, in particular in Macedonia.

Macedonian SMEs and their advisors should get acquainted with the EU website: <http://europa.eu.int> . From there all institutions can be found. This website is one of the most frequented in the world, with more than 80 million hits per month, and in all 20 official languages. The website is so big that one can easily be lost in it. Searching machines cannot help with all details. So the only way is surfing and trying to find what is needed.

Council

The Council of the European Union, consisting of the sector ministers of the EU Member States, does not give an opportunity to lobby for Macedonian SMEs. As soon as Macedonia is in the EU, of course then the national ministers may be a primary address for lobbying. The same can be said about the European Council, the summit meeting of the heads of State and Governments of the 25.

Commission

The Commission is already now a very good address, for instance in the case of trade obstacles. However, information can also be obtained by the Euro Info Correspondence Centre (EICC). But also in case if any information is needed, the Commission can be approached. To very wide experience, the Commission is quite close to the citizens. However for Macedonia in the present situation the Commission's first address should be Skopje, not Brussels. Once Macedonia would be inside the EU, also Brussels officials can be approached. Very often, they are grateful for the hints from practice.

European Parliament

The European Parliament is the EU institution closest to the citizens. Very often, Members of European Parliament launch written or oral questions to the Commission or the Council, on the example of a SME within their electorate, and thus bringing SME problems forward to the public. This is valid not only for EU SMEs, an M.E.P. can also table questions concerning SMEs in third countries, or as to the Stabilisation and Association Agreement (SAA).

Whenever a Macedonian SME feels a big problem, even in Macedonian administration handling of the case, it can also tell this directly to the Delegation for Relations with the Countries of South-East Europe. This delegation has counterparts in all Balkan countries including Macedonia. If several SMEs together have a problem and write this to the Macedonian as well as to the EU members of this inter-parliamentary group, one can be sure that this problem is taken serious. Sometimes these delegations lack material for question time etc., and very often these question time is before the mass media. In order not to be discussed publicly, very often the governments of the states having these kind of parliamentary relations change their policies, when they are told before the meetings what will be discussed. Thus, the European Parliament could have even nowadays a certain influence in Macedonia.

The inter-parliamentary delegation for South-East Europe can be extracted from the Internet under www.euparl.eu.int, the homepage of the European Parliament. However, the problems the European Parliament should be confronted with should not be too small. But if there exist, for example, serious visa problems etc., this is a good opportunity to have them discussed.

There are some more EU institutions, which might be of interest for Macedonian SMEs. The European Central Bank in Frankfurt makes monetary policy; this is not accessible for Macedonian SME. The European Court of Justice can be called for by every EU citizen or inhabitant, and in case the SAA will be expanded most likely also Macedonian citizens even before the membership date, depending of the decisions of the SAA (or its successor agreement) council.

The European Investment Bank cannot be approached directly by Macedonian SME. But the many agencies of the EU, for brand protection, medicines, chemicals, food, safety at work, drugs, plant protection etc., can be further followed in their activities under http://europa.eu.int/agencies/index_en.htm (in English).

Not far from Macedonia there is an EU institution: CEDEFOP – European Centre for the Development of Vocational Training, in Thessaloniki. Macedonian vocational training officials, managers and stakeholders can easily get there and talk their problems with the people from this EU agency.

The European Centre for the Development of Vocational Training (Cedefop) is the European Union's reference centre for vocational education and training. It provides information on and analyses of vocational education and training systems, policies, research and practice. Cedefop was established in 1975 by Council Regulation (EEC) No 337/75, OJ L 39 of 13.2.1975. Cedefop's information, research and dissemination activities support vocational education and training specialists to develop and improve vocational education and training in Europe. In 2002, Cedefop's activities are grouped into four areas: research, reporting, exchanges, and information and communication.

Cedefop work programme 2002 and the latest Annual Report are available on <http://www.cedefop.eu.int>. Information is also available on Cedefop staff and management board as well as its organisation. Cedefop also operates an interactive web site European Training Village, <http://www.trainingvillage.gr>. Only some kilometres from its Southern border, much closer than for a big part of the EU itself, an EU institution near Macedonia. the EU is not an anonymous Leviathan somewhere in Belgium.

Official Journals of the EU

The Official Journals of the EU can be obtained free in the internet (the sub-portal is Eur-Lex, the EU law portal, under <http://europa.eu.int/eur-lex/en/index.html>, in English) - there you can choose between Treaties, the Official Journal, etc.:

OJ – C (for communications): - available in the Internet from 1998

OJ – L (for laws) - available in the Internet from 1998

OJ – S (= Supplement, or Annex, for all public tenders in the EU), free every day also under <http://ted.publications.eu.int>.

4. Conclusion

European Union law cannot be learned on one day. Even an expert will be surprised how often it can change, as hardly one lawyer can digest the whole legislation in one country as well.

Macedonian SMEs and their advisors should regularly keep themselves informed about the structure of EU law and the changes in their sector. Under “Activities” of the EU on the website <http://europa.eu.int>, they should click to “Enterprise”, then for example to “Sectors”, where a lot of industry sectors can be found – from construction to textiles.

Macedonian SMEs have an excellent chance, to play out their comparative advantage with labour-related costs, and can become a kind of “prolonged work bench” for the EU. Until now, this is only insufficiently the case.

Via the Internet or the press, one is alerted early on events like conferences etc., most of them without participation fee or with only a symbolic one. Macedonian businesses should show presence. There will be lots of further contacts in these events, and networking has an extreme high value for businesses. Business associations or the chambers should alert the businesses about these conferences and co-monitor them as well. This can bring new confidence into these associations and the chambers.

Access to Justice in the EU

Hans-Juergen Zahorka

The articles 220-245 EC Treaty deal with the Court of Justice, which is located in Luxemburg. Macedonian SMEs will ask themselves now, what is this good for us. The answer is, that in the EU there is a certain jurisdictional culture, and Macedonian SMEs that want and will soon take part in the EU Single Market should be aware as soon as possible what this legal culture is about. And this the more, as SMEs will have the possibility for access to European justice as soon as Macedonia will be a EU Member State, but also as EU law soon will be quoted and used as interpretation tool even for Macedonian court decisions, probably even before a full membership in the EU.

The Court of Justice and the Court of First Instance are not two different institutions, but they have **different rules of procedure** and a **different registry**. The Court of Justice registers its cases with a “C” (for Court), like C-15/04 (the 15th case in 2004), the Court of First Instance with a “T” (for Tribunal). The task of both is to ensure that in the interpretation and application of the EU Treaty (and all the secondary legislation) the law is observed.

The Court of Justice consists of one judge per Member State, while the Court of First Instance consists of “at least one judge per Member State” (art. 224 (1)). The exact number of judges is determined by the Statute of the Court of Justice. In general, the Court of First Instance sits mainly in chambers of a part of the judges nominated. The Court of Justice sits either as Full Court with all the judges, or as small plenum or in chambers. All the judges are nominated for **six years**, which can be renewed.

There is a very special person involved in the cases: the **Advocate General**. The office of the Advocate General is similar to the *Commissaire du Gouvernement* (Representative of the government) in the French Conseil d’Etat (Council of State). Not in all legal systems of the Member States does such a person exist; historically it is an import from French legal culture. Today in the European Court of Justice, the Advocate General has the task to submit opinions to the Court, as non-binding proposals for a judgment. The Advocate General has to be fully independent and absolutely non-partisan in the questions he is active. He can only influence a judgment by the quality of his arguments and takes not part in any vote on a decision.

The **Court of Justice** acts in these proceedings:

If it is failed to fulfil obligations

Commission versus Member State (art. 226)

Member State versus Member State (art. 227)

Legal action for annulment or legal action for failure to act as prescribed by the law:

EU institution or Member State versus EU institution or Member State, in context with an illegal act or the failure to act (art. 230, 232)

In 1985 the Council of Minister was sued by the European Parliament for failure to act: although it was written in the Treaty, the Council of Ministers had not been able to formulate a common transport policy, and this since long time.

The Parliament – above all the Chairman of its Transport Committee, the Greek M.E.P. Anastassopoulos - won this case. Since then the Council “makes” also transport policy, and in the framework of the Single Market now everything in transport policy goes smooth.

If cases are referred from national courts for preliminary rulings:

Citizen or undertaking versus administration or any institution who is said of wrong application of EU law (art. 234)

The **Court of First Instance** acts as follows:

In lawsuits of EU staff:

Civil servant or EU employee versus EU institution (because of promotion, personnel assessment, financial matters etc.), art. 236

Legal action for annulment of failure to act:

Natural or legal person versus EU institution (on the basis of an illegal act or in case of a non-issued EU legal act), art. 230, 232

In lawsuits because of liability of EU institutions:

If a EU institution is liable in a contractual or non-contractual sense, it has to be sued before the Court of First Instance (art. 235, 288).

For Macedonian businesses, only the following ways of legal protection are of interest, as they indeed will be able to go to the European Court of Justice:

- Legal actions for **annulment** (art. 230): by this procedure otherwise binding instruments of the Council, the Commission, the European Parliament or the European Central Bank can be declared null and void. **If a citizen or a legal person is involved, the case is dealt with before the Court of First Instance**, if EU institutions or Member States are involved, the Court of Justice is concerned. So, this gives access to single companies – something a Macedonian SME should know already now.
- Not only Member States, but also citizen or legal persons who suffer **damage for wrong or illegal decisions of EU staff** can start a legal action before the Court of First Instance (art. 235, 288). This again is of interest for SMEs, as it enables them to go to justice if they have any harm of EU actions. However, the Court of Justice has already set up some (quite severe – for both sides!) conditions for this kind of action.
- The most significant opportunity for access to justice is the **preliminary ruling** (art. 234): when the interpretation of the EU Treaty is concerned or the validity and interpretation of any secondary legislation, then an inferior **court (civil, criminal, labour, taxation, social or administrative court) of every Member State** can decide to pass this case to the European Court of Justice. The Court in Luxemburg will make a sentence, **pass the judgment to the national court and this one has to decide according to the European judgment**. Many cases, brought by single citizens to the courts, have been solved in this way, and they were all famous cases, often named by the **name** of the plaintiff and the defendant (e.g. “*Defrenne*” case, named after the plaintiff, Mrs. Defrenne who successfully sued the former Belgian airline SABENA for discrimination), or the **matter** in question (“*Cassis-de-Dijon*” case, named after a sweet fruit liqueur in French Burgundy,

*which has been wrongly refused to German consumers by German Customs Officials in 1978, and which has created the key phrase: **what is accepted on the market of one Member State cannot be refused on the market of another Member State***). If a court of first instance in a Member State does not want to pass a case to the European Court of Justice, then the highest possible court **must** do this (not necessarily always a Supreme Court).

For questions relating to the **European Economic Area** (EU Single Market + Norway + Iceland + Liechtenstein), there is an **EFTA Court** of Justice with 3 more judges from the EFTA countries, dealing exclusively with cases in the three mentioned countries. The legal principles found in this court are also valid in the EU.

The European Court of Justice has a **website** of its own: <http://curia.eu.int>, and everybody can order (for free) its **Weekly Bulletins** in any EU official language. After all, the European Court of Justice is a very transparent institution, which has high merits for the rule of law within the European Union. It has in general an excellent reputation for the quality of its jurisdiction, and many regional integrations in the world would love to introduce a supranational court system like the European Court of Justice.

The Macedonian Definitions of SME and the EU Practice

Marija Risteska

I. Introduction

In Republic of Macedonia the number of SME amounts up to 99.7 %¹ and therefore the development of the small and medium enterprises is a priority for the difficult economic situation in the country.

However, the Macedonian SME face the same particular difficulties as the EU ones. The EU and national legislation of the EU member states try to redress this situation by granting various advantages to SME. A legally secure and user-friendly definition is necessary in order to avoid distortions in the European Single Market. In Macedonia there are number of interventions which aim at promoting the SME sector, but when aiming at its development, one should start from the concept (definition) of the small and medium enterprises. Defining these entities is extremely important since it affects their status. The definition of the small and medium sized enterprises has to be unified, unambiguous and comprehensive.

II. The EU definition of small and medium enterprises

The EU undertook a revision of the SME definition only recently. The objective of such a revision was to ensure that enterprises, which are part of a larger grouping and could therefore benefit from a stronger economic backing than genuine SME, do not benefit from SME support schemes; to approximate the different definitions at Community level and at national level; and avoid the possibilities to create inconsistencies.

Following the logic of a single market without internal frontiers, the treatment of enterprises should be based on a set of common rules. The pursuit of such an approach is all the more necessary in view of the extensive interaction between national and Community measures assisting

- micro,
- small and
- medium-sized enterprises,

for example in connection with Structural Funds or research. It means that situations in which the EU focuses its action on a given category of SME and the Member States on another must be avoided. In addition, it was considered that the application of the same definition by the Commission, the Member States, the European Investment Bank (EIB) and the European Investment Fund (EIF) would improve the consistency and effectiveness of policies targeting SME and would, therefore, limit the risk of distortion of competition.

The new definition was introduced through an EC Recommendation released in May 2003. The changes in the definition were expected to stimulate entrepreneurship, growth, investment and innovation, by promoting co-operation and clustering among independent enterprises. The criteria on the basis of which the typology of SME was previously made, such as

¹ SEED Report 2003

- staff number thresholds,
- turnover and
- balance sheet total

was retained. Though staff number thresholds used to determine SME sizes since 1996 remained, other changes in respect to turnover and balance sheet total were introduced. Particularly the financial ceilings for turnover and balance sheet total were substantially amplified to take account of inflation and productivity growth.

Following the endorsement of the European Charter for Small Enterprises by the European Council of Santa Maria da Feira in Portugal in June 2000, the need for better defining of the micro enterprise increased. Therefore, among the other changes that the EC recommendation promoted was the introducing of the new category of enterprises - a micro enterprise. This type of a small enterprise is particularly important for the development of entrepreneurship and job creation.

The modifications made in the new definition of SME were to a large extent based on two rounds of intensive public consultation in 2001-2002. The key aims of this revision are the following:

- *Reduce administrative burdens and speed up procedures* - a single voluntary self-declaration form should replace the various forms currently used for differing administrative purposes.
- *Promote entrepreneurship and micro-enterprises* - the first specific financial thresholds for micro-enterprises should ease their access to national and regional support schemes. Social economy activities and craft businesses are recognised as enterprises.
- *Promote growth* - higher financial ceilings will not substantially increase the number of "SME", but will favour enterprises that invest. It should be easier for large firms to buy minority stakes in, but preserve the independence of, SME.
- *Facilitate access to venture capital* - by more favourable treatment for regional funds, venture capital companies and business angels.
- *Promote investment in innovation and research* – e.g. investment in spin-offs set up by universities and research institutes.
- *Promote clusters of independent SME and increase legal certainty* - enterprise types (autonomous, partner and linked), and the method used to calculate staff and financial thresholds have both been clarified, to give a more realistic picture of economic strength, and improve certainty as to the law.
- *Prevent circumvention* - aligning the concept of "linked" enterprises with the EU Consolidated Account Directive, in line with state aid verification practice, will make the definitions very hard to circumvent.
- *Promote professional training and work-life balance* - apprentices and students are not counted in the staff ceilings, so as to favour enterprises that provide vocational training. Likewise, parental or

maternity leave periods are not counted, in order not to penalise enterprises that promote the life-work balance.

EC recommendation on definition of SME (May 2003)²

Enterprise category	Headcount	Turnover	or	Balance sheet total
Medium-sized	< 250	≤ € 50 million		≤ € 43 million
Small	< 50	≤ € 10 million		≤ € 10 million
Micro	< 10	≤ € 2 million		≤ € 2 million

III. The EU criteria for determining the type of enterprise

The criterion of **staff numbers** (the 'staff headcount criterion') remains undoubtedly one of the most important, and must be observed as the main criterion; introducing a financial criterion is nonetheless a necessary adjunct in order to grasp the real scale and performance of an enterprise and its position compared to its competitors.

However, it would not be desirable to use **turnover** as the sole financial criterion, in particular because enterprises in the trade and distribution sector have by their nature higher turnover figures than those in the manufacturing sector. Thus the turnover criterion should be combined with that of the **balance sheet total**, a criterion that reflects the overall wealth of a business, with the possibility of either of these two criteria being exceeded.

The turnover ceiling refers to enterprises engaged in very different types of economic activity. In order not to restrict unduly the usefulness of applying the definition, it should be updated to take account of changes in both prices and productivity.

As regards the ceiling for the balance sheet total, in the absence of any new element, it is justified to maintain the approach whereby the turnover ceilings are subjected to a coefficient based on the statistical ratio between the two variables. The statistical trend requires a greater increase to be made to the turnover ceiling. Since the trend differs according to the size-category of the enterprise, it is also appropriate to adjust the coefficient in order to reflect the economic trend as closely as possible and not to penalize micro enterprises and small enterprises as opposed to medium-sized enterprises. This coefficient is very close to 1 in the case of micro enterprises and small enterprises. To simplify matters, therefore, a single value must be chosen for those categories for the turnover ceiling and balance sheet total ceiling.

² Please see attached in Annex 1 the text of the EC Recommendation on SME definition

IV. The Macedonian definition on small and medium enterprises

Currently in Macedonia there are three laws regulating small and medium enterprises:

- the Law on Accountancy,
- the Law on Establishment of the SME Agency and
- the Law on Trade Companies.

All of them define the small and medium enterprises in three different ways. The different definitions provoke confusion among the banks and other providers of special services to SME. They have difficulties in distinguishing which of the loans in their credit portfolio apply to small and which to medium enterprises. They even can't distinct medium from small because three different laws regulate them differently. What is more, the confusion is expected to grow because the new category of micro entities is introduced in the new Law on Trade Companies, while the micro size entities are not even mentioned in the two other laws that regulate SME.

For example the Law on Establishment of the SME Agency (Official Gazette no. 60/2003) states the following concept of small and medium enterprises:

“The legal and physical entities that are considered SME are the following:

-Companies that:

- 1) have less than 50 employees;*
- 2) make gross annual turnover not exceeding 1,5 million EURO in Denar currency or a total balance not exceeding 1,1 million EURO in Denar currency;*
- 3) are independent in their work*
- 4) are at least 51 % privately owned ;*
 - individual entrepreneurs;*
 - craftsmen and*
 - other service providers”*

The common definition of small and medium enterprises will only cause confusion and extensive problems to the Agency itself because it could not distinguish small from medium enterprises, though its main objective is to support them.

However the Law on Accounting (Official Gazette no. 42/93, 48/93, 6/95, Constitutional Court number 247/95, 248/95, 271/95,304/95, and in 3/96,32/98,39/99 and 70/2001) recognizes distinction between small, medium and large entities. This Law in its 4th article from the aspect of accounting records classifies the small, medium-size and large entities depending on the number of employees and the amount of funds under the annual financial statements in the last two years (accounting years).

A small-sized entity is considered the one, which, in any of the last two accounting years, i.e. in the first year of operation, has satisfied at least two of the following criteria:

- a) the average number of employees, based on hours of work, is not more than 50 employees;
- b) the annual income is less than 8.000 average monthly gross salaries per employee in the economy of the Republic of Macedonia, and

- c) the average value (at the beginning and at the end of the accounting year) of the assets is less than 6.000 average monthly gross salaries per employee in the economy of the Republic of Macedonia.

A medium-sized entity is considered the one which in any of the last two accounting years, i.e. in the first year of operation, has satisfied at least two of the following criteria:

- a) the average number of employees, based on hours of work, is not more than 250 employees;
- b) the annual income is less than 40.000 average monthly gross salaries per employee in the economy of the Republic of Macedonia, and
- c) the average value (at the beginning and at the end of the accounting year) of the assets is less than 30.000 average monthly gross salaries per employee in the economy of the Republic of Macedonia.

And the Law on Accountancy determines that the entities that are not classified into small or medium-sized entities will acquire status of large-sized entity.

Definition on SMEs in the Law on Accounting (1993, 1995, 1996, 1998, 1999, 2001)

Enterprise category	Headcount	Annual income	or	Average value of assets
medium-sized	< 250	≤ 40.000 average monthly gross salaries		≤ 30.000 average monthly gross salaries
small	< 50	≤ 8.000 average monthly gross salaries		≤ 6.000 average monthly gross salaries

The Law on Trade Companies is the basic law that should classify enterprises by its type but also by its size. The reason for this is two fold: the Trade Companies Law is an overarching legislative act (*lex generalis*) that by recognizing the existence of the SME provides a basis for special legislation addressing SME to be adopted; it also should make space for adoption of mechanisms that will create a more favourable environment for SME.

The recent revision of the definition of small and medium enterprises in the EU initiated a revision of the Macedonian SME definition. The newly adopted Law on Trade Companies classifies commercial entities as large, medium, small or micro-size commercial entities depending on the number of employees, the annual revenues and the average value of the total assets on the basis on the annual account statements in the last two years (accounting years).

The legislators, determining the SME definition, made direct transposition of the European Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC). The definition uses the following criteria: number of employees, amount of income/turnover and amount of average value of assets. The number of employees is not contested. The figures recommended in the EC Recommendation, in regard to turn over and assets value, are decreased for ¼

in an attempt to adjust the turnover/income and assets value to Macedonian reality. However, the figures determined in the definitions are far from realistic and are not based on a comprehensive analyses and estimations. These can be observed from the following definitions:

“A micro size commercial entity shall be a commercial entity that, in each of the last two accounting years, or in the first year of its operations, has met the first criterion and at least one of the second and the third of the following criteria:

1. *the average number of employees based on working hours is up to 10 employees and*
2. *the annual income is less than EUR 500.000 in Denar equivalent the total turn over is less than EUR 500.000 in Denar equivalent, or*
3. *the average value (at the beginning and at the end of the accounting year) of the total assets is less that EUR 500.000 in Denar equivalent.*

Small size commercial entity shall be a commercial entity that in each of the last two accounting years or in the first year of its operation, has met the first criterion and at least one of the second and the third of the following criteria:

1. *the average number of employees, based on working hours, is up to 50 employees and*
2. *the annual income is less than EUR 2.000.000 in Denar equivalent, and the total turnover is less than EUR 2.000.000 in Denar equivalent or*
3. *the average value (at the beginning and at the end of the accounting year) of the total assets is less than EUR 2.000.000 in the Denar equivalent.*

Medium size commercial entity shall be a commercial entity that in each of the last two accounting years or in the first year of operations, has met the first criterion and at least one of the second and third of the following criteria:

1. *the average number of employees, based on working hours, is up to 250 employees and*
2. *the annual income is less than EUR 10.000.000 in Denar equivalent*
3. *the average value (at the beginning and at the end of the accounting year) of the total assets is less than EUR 1.000.000 in Denar equivalent. “*

Definition of SME in the Law on Trade Companies (May 2004)

Enterprise category	Headcount	Turnover	or	Balance sheet total
Medium-sized	< 250	≤ € 10 million		≤ € 1 million
Small	< 50	≤ € 2 million		≤ € 2 million
Micro	< 10	≤ € 500.000		≤ € 500.000

V. Conclusion

The afore-mentioned definitions reveal several issues of concern. First of all they determine that annual income is equivalent to the annual turn over of SME; secondly the turnover and annual income doesn't correspond with the real economic situation in Republic of Macedonia. For example in a survey that SEED has conducted showing that 70,3 % of the small enterprises and 47% of the medium enterprises have annual income up to 810.000 EUR, which by all means is much less than the EUR 2.000.000 and EUR 10.000.000 that have been envisaged in the afore mentioned definitions.

It is obvious that the legislators transposed fully the EC Recommendation without taking into consideration the two criteria that are pertinent to defining the turnover: growth in productivity and changes in the composite price index (GDP deflator).

The micro, small and medium sized entities have to be correctly defined and the definition should be reflected in all the laws that currently regulate this area in order to facilitate the long-term Government strategy to support this sector. Therefore the following steps are recommended to be undertaken:

- The first step is to determine the first comprehensive and realistic definition of SME on the basis of these criteria:
 - **number of employees** (micro- up to 10 employees; small-up to 50; medium-up to 250)
 - **amount of income/turnover** (figures presenting the real economic situation in R.M.) and
 - **amount of average value of assets**
- It would be significant to compute the correct turnover by using the two criteria determined in EU as pertined for defining the ceiling for turnover:
 - **growth of productivity and**
 - **changes in the composite price index (GDP deflator).**The Statistical Bureau provides only the annual composite price index. Thus, the Ministry of Economy should initiate scientific analyses of the growth of productivity. These two criteria should be used as a basis for determining the turnover of SME.
- The definition, based on the number of employees, the correct turnover and the amount of average value of assets should be incorporated in the Law on Trade Companies.
- In order to provide an unified, unambiguous and comprehensive definition of SME complementing the Government's policy and the strategy for the small and medium-sized enterprises, the same definition should be approximated with other definitions of SME used in the Law on Accounting and the Law on Establishment of the SME Agency. Therefore the following amendments will be required:
 - Amend the definition of SME in the Law on Trade Companies
 - Amend the definition of SME in the Law on Accountancy
 - Amend the definition of SME in the Law on Establishment of the SME Agency

As a result of these efforts the SME definition will have the following content:

A **micro size** commercial entity shall be any commercial entity that, in each of the last two accounting years, or in the first year of its operations, has met the first criterion and at least one of the second and the third of the following criteria:

1. The average number of employees based on working hours is up to 10 employees and
2. The annual income is less than EUR ... in Denar equivalent, the total turnover is less than EUR ... in Denar equivalent, or
3. The average value (at the beginning and at the end of the accounting year) of the total assets is less than EUR ... in Denar equivalent.

A **small** size commercial entity shall be a commercial entity that in each of the last two accounting years or in the first year of its operation, has met the first criterion and at least one of the second and the third of the following criteria:

1. The average number of employees, based on working hours, is up to 50 employees and
2. The annual income is less than EUR ... in Denar equivalent, and the total turnover is less than EUR ... in Denar equivalent or
3. The average value (at the beginning and at the end of the accounting year) of the total assets is less than EUR ... in Denar equivalent.

A **medium** size commercial entity shall be a commercial entity that in each of the last two accounting years or in the first year of operations, has met the first criterion and at least one of the second and third of the following criteria:

1. The average number of employees, based on working hours, is up to 250 employees and
2. The annual income is less than EUR ... in Denar equivalent
3. The average value (at the beginning and at the end of the accounting year) of the total assets is less than EUR ... in Denar equivalent.

ANNEX 1

TITLE I

**DEFINITION OF MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES
ADOPTED BY THE COMMISSION**

Article 1

Enterprise

An enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity.

Article 2

Staff headcount and financial ceilings determining enterprise categories

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise, which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a micro enterprise is defined as an enterprise, which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

Article 3

Types of enterprise taken into consideration in calculating staff numbers and financial amounts

1. An 'autonomous enterprise' is any enterprise which is not classified as a partner enterprise within the meaning of paragraph 2 or as a linked enterprise within the meaning of paragraph 3.
2. 'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25 % or more of the capital or voting rights of another enterprise (downstream enterprise).
However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25 % threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the

meaning of paragraph 3, either individually or jointly to the enterprise in question:

(a) public investment corporations, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses ('business angels'), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000;

(b) universities or non-profit research centres;

(c) institutional investors, including regional development funds;

(d) autonomous local authorities with an annual budget of less than EUR 10 million and fewer than 5 000 inhabitants.

3. 'Linked enterprises' are enterprises, which have any of the following relationships with each other:

(a) an enterprise has a majority of the shareholders' or members' voting rights in another enterprise;

(b) an enterprise has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another enterprise;

(c) an enterprise has the right to exercise a dominant influence over another enterprise pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association;

(d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise.

There is a presumption that no dominant influence exists if the investors listed in the second subparagraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as stakeholders.

Enterprises having any of the relationships described in the first subparagraph through one or more other enterprises, or any one of the investors mentioned in paragraph 2, are also considered to be linked.

Enterprises which have one or other of such relationships through a natural person or group of natural persons acting jointly are also considered linked enterprises if they engage in their activity or in part of their activity in the same relevant market or in adjacent markets.

An 'adjacent market' is considered to be the market for a product or service situated directly upstream or downstream of the relevant market.

4. Except in the cases set out in paragraph 2, second subparagraph, an enterprise cannot be considered an SME if 25 % or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by one or more public bodies.

5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the ceilings set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Community rules.

Article 4

Data used for the staff headcount and the financial amounts and reference period

1. The data to apply to the headcount of staff and the financial amounts are those relating to the latest approved accounting period and calculated on an annual basis. They are taken into account from the date of closure of the accounts. The amount selected for the turnover is calculated excluding value added tax (VAT) and other indirect taxes.
2. Where, at the date of closure of the accounts, an enterprise finds that, on an annual basis, it has exceeded or fallen below the headcount or financial ceilings stated in Article 2, this will not result in the loss or acquisition of the status of medium-sized, small or micro enterprise unless those ceilings are exceeded over two consecutive accounting periods.
3. In the case of newly established enterprises whose accounts have not yet been approved, the data to apply is to be derived from a bona fide estimate made in the course of the financial year.

Article 5

Staff headcount

The headcount corresponds to the number of annual work units (AWU), i.e. the number of persons who worked fulltime within the enterprise in question or on its behalf during the entire reference year under consideration. The work of persons who have not worked the full year, the work of those who have worked part-time, regardless of duration, and the work of seasonal workers are counted as fractions of AWU. The staff consists of:

- (a) employees;
- (b) persons working for the enterprise being subordinated to it and deemed to be employees under national law;
- (c) owner-managers;
- (d) partners engaging in a regular activity in the enterprise and benefiting from financial advantages from the enterprise.

Apprentices or students engaged in vocational training with an apprenticeship or vocational training contract are not included as staff. The duration of maternity or parental leaves is not counted.

Article 6

Establishing the data of an enterprise

1. In the case of an autonomous enterprise, the data, including the number of staff, are determined exclusively on the basis of the accounts of that enterprise.
2. The data, including the headcount, of an enterprise having partner enterprises or linked enterprises are determined on the basis of the accounts and other data of the enterprise or, where enterprise is included through consolidation.

To the data referred to in the first subparagraph are added the data of any partner enterprise of the enterprise in question situated immediately upstream or downstream from it. Aggregation is proportional to the percentage interest in the capital or voting rights (whichever is greater). In the case of cross-holdings, the greater percentage applies.

To the data referred to in the first and second subparagraph is added 100 % of the data of any enterprise, which is linked directly or indirectly to the enterprise in question, where the data were not already included through consolidation in the accounts.

3. For the application of paragraph 2, the data of the partner enterprises of the enterprise in question are derived from their accounts and their other data, consolidated if they exist. To these is added 100 % of the data of enterprises, which are linked to these partner enterprises, unless their accounts data are already included through consolidation.

For the application of the same paragraph 2, the data of the enterprises, which are linked to the enterprise in question, are to be derived from their accounts and their other data, consolidated if they exist. To these is added, pro rata, the data of any possible partner enterprise of that linked enterprise, situated immediately upstream or downstream from it, unless it has already been included in the consolidated accounts with a percentage at least proportional to the percentage identified under the second subparagraph of paragraph 2.

4. Where in the consolidated accounts no staff data appear for a given enterprise, staff figures are calculated by aggregating proportionally the data from its partner enterprises and by adding the data from the enterprises to which the enterprise in question is linked.

TITLE II

SUNDRY PROVISIONS

Article 7

Statistics

The Commission will take the necessary measures to present the statistics that it produces in accordance with the following size-classes of enterprises:

- (a) 0 to 1 person;
- (b) 2 to 9 persons;
- (c) 10 to 49 persons;
- (d) 50 to 249 persons.

Article 8

References

1. Any Community legislation or any Community programme to be amended or adopted and in which the term 'SME', 'micro-enterprise', 'small enterprise' or 'medium-sized enterprise', or any other similar term occurs, should refer to the definition contained in this Recommendation.

2. As a transitional measure, current Community programmes using the SME definition in Recommendation 96/280/EC will continue to be implemented for the benefit of the enterprises, which were considered SMEs when those programmes were adopted. Legally binding commitments entered into by the Commission on the basis of such programmes will remain unaffected.

Without prejudice to the first subparagraph, any amendment of the SME definition within the programmes can be made only by adopting the definition contained in this Recommendation in accordance with paragraph 1.

Article 9

Revision

On the basis of a review of the application of the definition contained in this Recommendation, to be drawn up by 31 March 2006, and taking account of any amendments to Article 1 of Directive 83/349/EEC on the definition of linked enterprises within the meaning of that Directive, the Commission will, if necessary, adapt the definition contained in this Recommendation, and in particular the ceilings for turnover and the balance-sheet total in order to take account of experience and economic developments in the Community.

Some Principles of EU Law

The Difference between a Directive and a Regulation

Hans-Juergen Zahorka

Macedonian SMEs and their advisors should know some basics about EU Law, besides the different institutions. Of course, in the framework of this book, it cannot be written too much. Also, the vast spectrum of EU Law in almost all spheres of life makes it difficult to stop. This book can therefore not be more than an “appetizer” for more EU Law, or in general knowledge about European affairs – which will also be knowledge about the future of Macedonia and its economy.

It makes sense to surf through the European Union website. There one can concentrate on one’s own activity, or on the preferred institution. The entrance portal is: <http://europa.eu.int>

Among the principles of importance for Macedonian SMEs are the following facts³:

- The EU is quasi a federal being. However, in English language means “federalism” something like a central state system and is fiercely refuted, whereas in the other EU languages federalism is not anything negative what should not be applied in the EU, namely the distribution of powers to different political levels. The general trend goes to “devolution” (UK), “decentralisation” (France), to the same in a not yet precisely known Italian variant, and there are countries with a certain tradition of federalist or decentralisation principles: Germany, Austria, but also Spain, Belgium or Poland.
- Since the Maastricht Treaty from December 1991 there is also the principle of subsidiarity in the EU Treaty. Subsidiarity, coming as a principle originally from – but it cannot be exclusively deducted from this – Christian social teachings, means roughly that what cannot be managed on the level of the Member States must be solved on EU level, but that as much as possible should be solved as closest to the citizens.
- In contrast to a sovereign state the EU has no general competence, but a limited special competence: Art. 5 EC Treaty says: “*The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.*” But this is not a static limit for EU activities, as at least by the theory of the “implied powers” the EU can become active in sectors where it would be necessary, but which have not yet been accepted as EU activity fields. This of course needs

³ In order to concentrate on economic law, the EU Treaty has not been taken into account. It is recommended however to readers also to read this Treaty, and above all the new EU Constitution which of course will have first to be ratified of all EU Member States.

discussions: what is “necessary” in this context, and what powers are “implied”⁴ – as well as the question mentioned before, e.g. what cannot be solved on Member States’ level, and what means “as close as possible to the citizen”. This shows how dynamic EU Law is; it must permanently be discussed and adapted to new upcoming questions, like the European Monetary Union, which had to be launched after the EU Single Market has been completed.

EU Directive and Regulation

As in other fields of its work⁵, the EU has particular definitions for its laws. Macedonian SMEs and their advisors will for sure stumble very soon on these definitions, and then they should know what they are confronted with. Maybe this is together with a business partner from the EU, and the partner does not know as much as his Macedonian colleague. This might be possible as EU Law is not too well known in the EU neither. But of course more and more people know about the specificities of the EU.

- A law in the EU – not to be confounded with a law on the level of a Member State – is a “**regulation**”⁶. Later, in the future time of the EU Constitution, a regulation will be called “European Law”.
- The regulation shall have general application – in contrast to a decision⁷, which regulates a special case (i.e. a decision about state aid for a certain shipbuilding company). It shall be binding in its entirety and directly applicable in all Member States; that means that it overrules any Member State law, which is contrary to a regulation. A regulation cannot be changed by any of the Member States, and it may overrule even national constitutions, what has been confirmed by the European Court of Justice in 1972⁸. Normally regulations are legal acts, which clearly rule a central legal status, like e.g. free circulation for people, the introduction of the Euro etc.
- A law, which has been adopted in the EU institutions, binding only the Member States, but binding them only as to the result to be achieved, is a “**directive**”⁹. The Member States have the choice of transposing these directives of form and methods. In the future Constitution a directive will be called “European Framework Law”.
- The autonomous transposition of EU directives can e.g. be effectuated in the case of the EU Product Liability Directive by a proper law in Germany (*Produkthaftungsgesetz*), by a by-law within the French Civil Code, or within a Consumer Protection Act in Great Britain. The tradition of legal articulation is different from Member State to Member State, and a directive takes this into account.
- Whereas a regulation takes more time to be prepared in the EU institutions (most times 1,5-4 years in the Commission, in the European

⁴ The implied powers theory comes originally from the United States from the beginning of the 19th century, when the judge John Marshall had to make a sentence about the competences of the U.S. federal level.

⁵ See above chapter on EU institutions.

⁶ Art. 249 (2) EC Treaty

⁷ Art. 249 (4) EC Treaty

⁸ See case *Leonesio vs. Italian Ministry of Agriculture*, judgment from 17.5.1972, C-93/71.

⁹ Art. 249 (3) EC Treaty

Parliament 1-2 years, in the Council 1,5-5 years; but in some cases also shorter or longer!), a directive is usually prepared in shorter time.

- If a directive is not transposed in time or not at all or wrongly, then the relevant Member State is liable for any damages. Legal actions for this kind of compensatory damages must be launched before the courts in the Member States.

Of course, this is a very short and abstracted version of the difference between regulation and directive. What is important is that laws on EU level can be both of them, and that definitions like “directive” do not mean anything like in a speech of a company director to his staff: “We will introduce in our company as from next 1st January a general prohibition of smoking. Please take note of this new directive...” This is no directive under EU Law.

Macedonian SMEs and their advisors should know what “discrimination against one’s own nationals” means in EU Law. Normally, there must not be any discrimination against any other Member States’ nationals in the EU. Art. 12 EC Treaty states clearly: “*Within the scope of application of this Treaty ... any discrimination on grounds of nationality shall be prohibited*”. However, there are sometimes discriminations within the Member States, which may be possible, among others discrimination against the own nationals.

This is for instance often the case in access to professions and services. Other EU citizens than from one Member State must not be treated different than citizens from this Member State. But if the citizens from the Member State in question have special requirements for access to the profession or service (like examinations, probation periods, a previous stay in this country, payment of deposits etc.), and citizens of other states can profit of EU law based free circulation and admission to the profession, then there is a clear case of discrimination against the own nationals.

This is to a certain extent possible, but not recommended as it will leave the own nationals not in a favourable opinion about their administration. Although the prohibition of discrimination is directed not only towards the Member States and public administration, but also towards private (employers), professional chambers and/or associations etc., it can be circumvented towards the own nationals.

<p>There are some Macedonian legal provisions, which will have to be changed, once the country is approaching a possible accession date to the EU. Otherwise they will allow EU foreigners better conditions of exercising a profession.</p>
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Insofar EU Law is valid citizens of EU Member States have often more rights than as determined according to national law. But within the EU, there is also a certain “pressure from inside” within the single Member States to liberalize to a minimum standard, so that discriminations of own nationals are excluded. But Macedonian citizens should be aware that at least for a transition period there may be comparable discriminations for them as Macedonian citizens. As soon as the EU accession negotiations will come closer or start, then these discriminations will fade away.

The European Single Market – The Core of the EU

Hans-Juergen Zahorka

What means “Single Market” or “Internal Market”?

The main pillar of the EU is the Single Market, also called the Internal Market. This facet of the EU for sure is worth to be known to Macedonian SMEs and their advisors, as it contains as such a lot of business opportunities.

The steps of setting up the Single Market can be abstracted as follows:

Transition period (1958-70): When founding the EU in Rome, the six founding Member States of the European Economic Community (EEC) agreed to create between them a customs union and to establish a programme for the approximation of their national legislation in important fields of economic law. On 1 July 1968, 18 months before the end of the transition period laid down in the Treaty of Rome, the customs union became a reality with the disappearance of customs duties and quotas in intra-Community trade.

Early 1970s to the Single Market White Paper of 1985: The 1970s were marked by several problem settings of the international economy and EU failures (e.g. oil crisis etc.), and at the end of the 70ies, the atmosphere was qualified as "euro-pessimism".

But as the famous “**Cassis de Dijon**” judgment of the European Court of Justice from 1979 established or confirmed the principle of **mutual recognition of national rules**, it became clear that something had to be done. In addition, a group of EU and national civil servants, think tanks, universities and consultants had calculated that

- the waiting time and border expenses at the internal borders caused a macroeconomic damage of about 30 billion EUR (that easily could be replaced by a better cooperation between the police forces and by better controls at the outside borders of the EU),
- the not yet effectuated free circulation of participation in all public tenders led to a macroeconomic loss of about 80 billion EUR (because not opening the tenders to the whole EU would mean preferential suppliers),
- the technical helter-skelter in standards and norms costs the consumers every year in the EU more than 250 billion EUR¹⁰ (there was also a growing conviction among the major industrial powers in Europe that fragmentation of the Community market was an obstacle to their competitiveness at international level),
- that the fact that only tourists within the EU would have to change their money all the time, while the national currencies are pegged together, lose around 30 billion of EUR per year in changing operations.

There was an effective lobby group in the European Parliament at this time, the so called “Kangaroo Group” (“the movement for free movement” – jumping over

¹⁰ see hereto the article by Nikos Mouzopoulos in this book

border fences), which finalised together with the EU Commission, headed by president Jacques Delors, in 1985 to publish a White Paper on the completion of the internal market, and have it adopted by the Council. This document identified 279 legislative measures needed to remove obstacles to trade within the Community and put forward a schedule for the creation of the Single European Market on 31 December 1992.

Single European Act 1986 to Single Market 1993: The Single European Act was adopted in 1986 and came into force on 1 July 1987 as the logical result of the 1985 White Paper. The Single Act formally set up as target date the 31 December 1992 until which the Single Market should be created and defined it as "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty". The internal market had largely been set up within the Community by the end of 1992. Legally, the Single Act can be identified as "cosmetic correction" to the EC Treaty, imposing not any longer the principle of unanimity in Council decisions, but introducing the principle of "qualified majority" in the Council decisions for most of the Single Market decisions. Qualified majority means a majority of countries, but their votes are weighted (from 4 votes of the smallest to 10 votes of the biggest Member State).

Until the end 2002 European Union adopted almost 300 items of legislation. So for instance the member states agreed to exchange the laws and technical standards in order to avoid adopting new legislation. As result, the product can be sold legally in all member countries – according to the "mutual recognition" principle.

The EU Single Market was one big deregulation operation: Hundreds of directives and regulations have been adopted to replace thousands of national laws and to sweep away the technical, regulatory, legal, bureaucratic, cultural and protectionist barriers that suppressed free trade and free movement of goods, people, service and capital.

The Single Market created in its first 10 years 2.5 million new jobs and generated more than 800 billion EUR in extra wealth, and one of the deregulation results was for example that the price of national telephone calls has been brought down by 50% from 1998-2003. The Single market created a true competitive market: Under the pressure of competition, the prices of airfares in Europe fell by 41% between 1992 and 2000.

All in all, the results of the Single Market were for businesses that companies competed freely against each other, with lower consumer prices, higher quality, a bigger variety of goods and services. Business suddenly had free access to a market of more than 370 million consumers.

The Four freedoms

Art. 14 EC Treaty says: *"The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured..."*.

Free Movement of Goods: Since 1 January 1993 goods crossing the Community's internal borders were not any longer controlled. This is limited by the "*ordre public*", which means that e.g. goods bearing possible damages in themselves can be banned. However, the threshold is very high. For the "mad cow disease" and the possible health consequences it was possible to ban the intra-EU trade of beef.

The freedom for goods principle was also due to the harmonisation of taxation: For value added tax a framework was decided, between 15 and 25% for normal goods, and one or two reduced VAT rates for a nationally defined positive list of other goods (mostly food products, newspapers etc.). The “zero taxation” (e.g. on children shoes in UK) and the “luxury taxation” (33-35% in Italy, Spain, Belgium for big cars, furs etc.) were deleted.

Furthermore, there were minimum rates fixed for the excises (on alcohol, tobacco and mineral oil), and every country was free to exceed them (but very rarely did), and no country was allowed to introduce new border controls because of a difference in the excises.

Freedom of movement for persons: The freedom of movement for persons within the European Union provides all citizens of the Union by the right to move and reside freely within the territory of the Member States. The Treaty of Amsterdam took an important step bringing the provisions of the Schengen agreement within the framework of the European Union's institutions and in providing for the creation of an "area of freedom, security and justice". The United Kingdom and Ireland have decided not to participate in these new initiatives on the free movement of persons. In art. 17 et al. EC Treaty there is mentioned the „citizenship of the Union“, coming on top of the Member State citizenship (and not replacing it). Here the freedom of movement –among others – is mentioned as basic right within the EU.

@ More information:

<http://europa.eu.int/scadplus/leg/en/lvb/l23001.htm>

<http://europa.eu.int/scadplus/leg/en/lvb/l33020.htm>

Freedom of movement for services: Freedom to perform services allows nationals of the Member State or Community businesses to provide services in another Member State to the state of residence. The right of establishment includes the possibility for self-employed persons and Community businesses to establish and perform their activity or business in another Member State.

There were established certain limits by the Treaty, which exclude services linked to the civil service and which stipulates that restrictions on the freedom to perform services can be justified on grounds of public policy, public security and public health (“*ordre public*”). Also, certain sectors of transport, banking and insurance also have their own systems. But in these fields legal approximation has been effectuated and now e.g. a insurance enjoys the freedom of opening a branch office e.g. in the Netherlands, while having its central seat in Ireland; in this case it underlies the insurance supervision of Ireland.

@ More information: <http://europa.eu.int/scadplus/leg/en/s70002.htm>

Freedom of movement for capital: The EC Treaty prohibits all restrictions on capital movements (investments) and all restrictions on payments (payment for goods or services). The Member States may lay down procedures for declaring capital movements for administrative or statistical information purposes in order to measures associated with public policy or public security. These measures

and procedures must not be a arbitrary discrimination or a disguised restriction on the free movement of capital and payments.

In addition, this freedom also includes the freedom e.g. to acquire investment or real estate within the EU. However, the new EU Member States in Central and Eastern Europe have obtained some transition periods. In the case of Macedonia it might be the same.

@ More information: <http://europa.eu.int/scadplus/leg/en/lvb/l25001.htm>

Technical Standards

The “New Approach” and Macedonian Enterprises

Nikolaos Mouzopoulos

Introduction

Before the World War most standards in use in Europe and the world were national standards. National standards in Europe will probably always exist but it is believed that they will be reduced to below 10% of these in use.

International Standards especially those of ISO tend to deal with methods of test, glossaries of terms, sampling methods etc. Product specifications are difficult to agree at international level since the level of such specifications is often a function of market acceptability, which in turn may be based upon disposable income.

European Standards however focus on product performance and specifications.

There are three standards bodies on a Europe wide level:

1. The European Committee of Standardization (CEN)
2. The European Committee of Electrotechnical Standardization (CENELEC)
3. The European Telecommunication Standards Institute (ETSI)

When the development of a European Standard begins in one of those organizations development of national standards must stop.

The European Standards are based upon the following principles: **“Transparency, openness, consensus, independence of vested interests, efficiency and decision-taking on the basis of national representation.”**

European Standards are effective in three areas of work in EU.

- New Approach Directives
- Public Procurement
- Area of non-regulation

The EU member countries have decided to create a single market which involves not only the creation of new bodies, instruments, but also the replacement of well accepted and established national practices, processes and procedures.

The concept of the internal market, or single market was promoted through the European act of 1986, the target being the beginning of 1993.

The following basic freedoms are required to trade in a single Market:

- Free movement of goods
- Free movement of persons
- Free movement of capital
- Freedom of establishment and free movement of services

The barriers to trade are:

- Traditional barriers (tariffs and quotas)
- Technical barriers created by regulations, standards etc

The Technical barriers can be further specified as:

- Mandatory product requirements
- Conformity assessment procedures
- National standards.

The elimination of Technical barriers to trade can be achieved through:

- Mutual acceptance of non-harmonized product requirements
- Prevention of new barriers to trade
- Technical harmonization old approach / new approach
- Mutual recognition of conformity

The EU has adopted two different approaches to achieve its aim of harmonization to reduce TBT.

“Old approach” with regard to manufactured products

The replacement of technical regulations with regard to manufactured products in the EU member countries was conducted by civil servants. The detailed technical specifications formed as annex to the directives.

Because of the above highly technical and detailed directives were introduced resulting to difficult decision making which caused delays.

The “New approach”

The EC developed a new approach to technical harmonization and standards in May 1985 to overcome the difficulties of the old approach in certain sectors. These new approach directives now only contain the essential requirements, or desired outcome of the legislation, leaving the detailed technical specifications – harmonized standards – to be developed or approved by the appropriate European standards bodies – CEN, CENELEC and ETSI. Standards were introduced to define the appropriate technical specifications. Products conforming with harmonized standards are considered to conform with the directive. Output is technical legislation speeded up.

However the so-called “old approach” is still used in certain sectors.

New approach – Fundamental principles

Three fundamental principles were introduced within the new approach policy:

1. Essential requirements – The essential requirements state clearly and precisely the desired outcome which must be achieved, without specifying how it should be achieved.
2. Reference to standards – Standards organizations are entrusted with the development or approval of harmonized standards. These standards set out the technical specifications which will meet the essential requirements of the directives.
3. Conformity assessment policy – Standards are voluntary. Manufacturers do not have to follow harmonized standards to comply with product directives; they are free to choose any technical solution that will meet the essential requirements. However, if they do follow the harmonized standards, they have a ‘presumption of conformity’ to the essential requirements.

Manufacturers must indicate conformity to the directive by CE marking.

Each product directive establishes key objectives, usually with regard to health and safety, protection of property and the environment. The key objectives are the same for all EU Member States, and each member is legally bound to implement them. The directives do not specify how they are to be implemented, and they do not concern themselves with detailed technical specifications.

New approach product directives may also concern themselves with issues that have relevance to several products, rather than relating only to one product.

Benefits of the new approach:

- It is much easier for legislators to come to an agreement on essential principles rather than on technical details.
- Directives do not need to be regularly updated to meet changes in technology.
- Member States implement directives by appropriate legal means.
- Manufacturers are not confined to one solution in meeting the requirements of the directives.

The Macedonian standards are based so far to an old system of standardization having to do with planned economy.

The decision of the Republic of Macedonia toward accession to European Union membership means another approach to standardization and more specifically:

- Change from mandatory to voluntary standards,
- Privatization of Standardization
- Adaptation of the national system to conditions relevant to a market economy,
- Harmonization of national standards with the European and the international standards

Recent Survey of Producers needs within the framework of SMAQVa Project released the following conclusions:

- Companies and institutions showed strong need for harmonization of national standards with European
- Language and content are not problem for using international standards because the process of endorsement could be applied for the harmonization of the national standards
- In some areas could be problems with the contents of international standards versus present state of technological development of the country
- There is a high need among companies / institutions for organizing education, training and cross-sector panels about introduction of new principles of national standardization.

This survey shows the necessity for the advancement of standardization in the Republic of Macedonia and the harmonization of national standards with the European Union reality with the adoption of the new approach.

It is interesting that fulfilment of the above will support Republic of Macedonia become member of CEN / CENELEC organizations which will support the accession of the country to full membership of the European Union which financed the SMAQVa Project.

The Product Liability Law in the EU – and its Consequences for Macedonian Producers

Hans-Juergen Zahorka

Product liability has been a relatively new legal headline and became well known in Europe when US papers published reports about a legal action of an American housewife who had tried to dry her cat in a microwave oven. Whether these reports have been true or not: fact is that from a certain moment on the instructions for use of US-built microwave ovens had a clause that living pets should not be dried in these ovens.

Since the adoption on EU level of the Product Liability Directive from 25.7.1985¹¹ all EU Member States, in transposing this directive into their national law, have legislation on a more severe liability in the case of personal injuries and damages caused by defective products. This has been taken over by the EEA countries¹², but also Switzerland. All these national laws form together a unified system of product liability, although the transposed EU Directive is differently applied (e.g. in Germany it is a law of its own, in UK it is part of the Consumer Protection Act). All the different EU countries have also different legal background on contractual or tortuous liability. But the EU Directive concerns liability without fault – and therefore also without intention or negligence, it is just enough to produce a product with defective attitudes, i. e. with an objective fault.

Macedonia has likewise provisions in the Consumer Protection Law¹³, which are fully EU compatible and quite modern, as well as understandable drafted. Macedonia therefore has a symmetric liability on the domestic market, as well as on the EU markets. But the problem for Macedonia is that the economy can grow only if the market is perceived to be larger than the own country alone, i.e. comprising the full scale of the EU Internal Market. As well as in the EU, the product liability regulations concern only consumers, i.e. non-professional customers of a trader or importer.

By the Europe-wide product liability there is now a liability independent of the fault, in addition to liability for wilful or negligent wrongdoing. The new situation is now, that if e.g. the steering of a children bicycle breaks because of a bad construction material, in former times the damaged person would have had to prove that at least the producer should have known the bad construction material. Today it is enough to prove that there was a mistake.

It is evident that the possibilities to be a subject of liability are much larger now, and this might of course be deadly to SME, which are not really aware of this.

¹¹ Council Directive 85/374/EEC of 25.7.1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, OJ-L 210/pp. 29 et al. from 7.8.1985 (amended by Directive 1999/34/EC of the European Parliament and the Council of 10.5.1999, OJ-L 141/pp. 20 et al. from 4.6.1999)

¹² Norway, Iceland, Liechtenstein

¹³ art. 32-52, including among others also some provisions on product safety

By the new product liability law of the EU, the number of liable persons (companies, levels) has been enlarged:

- The producer of a final product
- or of a part product (quasi producer),
- or the importer,
- or with non-EU products also the supplier (seller)

are the possible liable parties.

Distribution companies which put their label on products assembled in non-EU countries (third countries), are liable for defective products, as well as companies who produce goods according to a licence, as well as companies who assemble prefabricated parts and sell them.

Importers are liable for goods, which were imported from non-EU Member States (the same is valid for re-importers, who import goods from third countries, which have been exported from the EU to these third countries first, but at a cheaper rate). If in such a case neither the importer nor the producer can be found, it is the supplier of these goods who is liable. This is exactly the same provision as in Macedonian law¹⁴ which imposes the liability on the importer or, if this cannot be identified, on the last trader.

In particular for SMEs it is quickly evident that if they produce or assemble anything, which is exported into the EU, they should adapt to product liability as fast as possible: This is at first a strategic objective – there must be awareness, and by no means reading this article would be sufficient,

- If there is a company third-party insurance, it should be checked with the insurance whether there are possibilities to include the risk of product liability (this should be talked through with the headquarters of an insurance, not only with the agents),
- If quality control within the company is optimal,
- If the products, according to the situation of a possible danger out of the product, have to contain warnings, these warnings must be examined at the best by third, independent people.
- If the products have instructions for use, even very simple ones, they should be understandable also in foreign languages. Saving little money with these translations can be really deadly for companies who might have to pay later large sums.
- If there are minutes within the company, with complaints and clients' proposals, these minutes should permanently be worked through,
- If Macedonian companies assemble different parts; then they should examine thoroughly the production of their sub-contractants, regarding quality, third-party liability insurance, raw materials etc.

Altogether, the product liability provisions of the EU are like in Macedonia, but with the difference that there is an established product liability jurisdiction, which could be called for very fast if there are mistakes. And if a company of a third country has problems on the market, as there were defective products, it might be swept off the market. Therefore, product liability is a serious cause for strategic dispositions in all responsible led companies, and in particular SMEs.

¹⁴ art. 41 Consumer Protection Law

A German lawyer bought at a gas station at the Motor Way in Bavaria, when filling up, also a bottle of mineral water, with gas. The second capsule of the bottle was in such a way that also bikers or joggers could drink from the bottle when pulling it up with the teeth. When opening the bottle, the first, cover capsule could not be removed. Therefore the driver took his teeth and indeed got the cover away – but as there was water + oxygen behind, the pressure in the bottle catapulted the cover capsule into the oesophagus. As its movements are determined by reflexes the capsule was swallowed. God thanks, it came out by “natural way”, although the capsule cover had the size of a one Euro coin! This might be a case of product liability.

Mediation - Alternative Access to Justice and Finance

Marina Spasenovska

Introduction

Macedonian Judiciary is currently undergoing reforms and synchronization of legislation, as one of the few necessary steps to become compatible with European Union. In the dawn of all changes and adjustments, increased business activity brings more work for the courts, and much of that work is of a new sort, there are new laws to interpret, new issues to be resolved, and a greatly increased workload, often with extraordinarily limited resources. Encountering those challenges, while facing lack of human and technical resources, Macedonian courts are struggling with backlog of cases and, as a result, are very unpopular among their clients, leaving impression of expensive but incompetent, slow and providing doubtful outcomes.

All of these issues make access to justice for the litigants slow and expensive, indirectly harming their access to finance by locking vast amounts of money with other litigant, court procedure costs and lawyers' fees. As a result, small businesses, not to mention individuals, are disadvantaged. From an SME perspective, such case may bring very unfavorable consequences to their liquidity, solvency and future existence on the market. By the same token, considering the obstacles and unfavorable business ambiance, investors, particularly foreign investors, are reluctant to invest and start business in Macedonia, particularly if they do not believe that business disputes will be fairly, honestly, and effectively resolved.

Consequently, establishing and maintaining effective, efficient systems for resolving day-to-day conflicts that arise in business, personal, and political affairs is of great importance. The economy depends on it, and the social fabric requires it, especially in transitional economies. Here, getting the process of conflict resolution right is essential. An efficient, effective, and trustworthy system for resolving business disputes is vital in helping an economy grow. A system that is inefficient, ineffective, or even untrustworthy can discourage investment, individual enterprise, and ultimately political stability. It is problem that cannot be left unaddressed and unsolved. The solution, or at least part of it, may be located within mechanisms of alternative dispute resolution (ADR).

What is Alternative Dispute Resolution - ADR?

The term ADR is often used to describe a wide variety of dispute resolution mechanisms that are alternative to full-scale court process, provided by third neutral party. The ICC¹⁵ developed another phrase to derive the abbreviation - Amicable Dispute Resolution, referring to the goal of ADR, which is to preserve and retain good (business) relationship between the parties. The term can refer to everything from facilitated settlement negotiations, where disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trial that resemble the courtroom process.

An effective alternative dispute resolution (ADR) system can support and complement ongoing judiciary reform, reduce delays in and decrease the costs

¹⁵ ICC - International Chamber of Commerce

of resolving disputes, and improve access to justice. It can also foster economic development by facilitating resolution of business disputes in a timely fashion. While ADR is not a substitute for the judicial system, it provides an alternative that reduces the time and costs of resolving disputes and helps promote greater certainty in business deals.

ADR techniques

Arbitration. The role of the third neutral party is to meet the parties and hear from them in order to make a final decision on the disputed issue. It is the task of the arbitrator, based upon the presented facts, is to decide what is the next course of action, required from each party. The decision can be either binding or non-binding, depending on previous agreement of the parties.

Mediation. The neutral party may meet each of the parties separately to help them find common ground for resolving the dispute amicably. The meetings are confidential and clear the way for negotiations. The neutral party is not called upon to pronounce on the merits of the dispute. Final decision is made by the parties.

Early neutral evaluation. The parties seek the neutral's non-binding opinion on such matters as:

- An issue of fact (*Did the maintenance teams do what was expected of them?*)
- A technical issue (*Were the girders supplied in accordance with stress specifications?*)
- An issue of law (*Did the floods that held up delivery of essential spare parts constitute force major?*)

Mini-trial. A panel is set up consisting of the neutral as facilitator and an executive from each of the parties. The executives selected should not have been directly involved in the dispute, but should have the authority to bind the parties they represent. Each party presents its position to the panel. Then the panel either seeks a solution acceptable to all the parties or expresses an opinion on the positions of each side.

Other techniques. The field is open - and different techniques may be combined. The neutral could be asked for an opinion on a specific issue in the course of mediation proceedings. The parties may agree contractually to abide by the neutral's opinion.

What is mediation?

Mediation refers to variety of processes, which can be employed at different times in the progress of a dispute. From pre-filing "facilitated good faith bargaining," to post-filing "managed discovery," to the wide variety of post-discovery mediation alternatives, mediation offers many options to traditional litigation. Certain mediation processes are most likely to be effective for particular disputes, or at specific times in a dispute. Different processes require different approaches, both by the mediator and lawyer. For a client's dispute resolution a lawyer helps determine whether a dispute is appropriate for mediation, when mediation might be most effective, and what type of mediator is needed. The lawyer must prepare a client for mediation and help the mediator bring the client's dispute to a rapid, successful resolution. It is a truism among mediators that nothing kills the prospects for resolution more surely than a lawyer who doesn't understand the process.

At the early stages of a dispute, mediation can help develop alternatives to a "zero sum" game. A mediator can help the parties identify their real interests.

Then, the parties may discover that there is a deal to be made, a contract to be written, property to be transferred. All of these generally require legal assistance. What might have been a dispute, in which a suit was filed and eventually dismissed, becomes an opportunity for the parties.

There are no rigid categories in mediation. Mediators try to be flexible in anticipating and meeting the needs of the parties to do what will work in resolving a particular dispute. But we can identify two broad categories of approach that are sufficiently different to merit an initial choice and require different lawyer approaches:

- Information Centered Mediation and
- Process Centered Mediation.

When business relationships go sour, there is often a unique opportunity for Mediation. The parties' real interests frequently cannot be satisfied through litigation, since the legal solution may be dissolution, resulting in the destruction of a productive enterprise or its forced sale. Sometimes, business people neither recognize nor act to further their economic self-interest because they have become deeply involved in a dispute. A mediator can help them re-discover their real interests and uncover options for mutually achieving those interests.

Advantages of Mediation

- It is the parties that reach conclusion and make a final decision. It is at nobody's loss/expense.
- The solution is permanent and relations preserved.
- The conclusion is reached at fast and timely manner, efficient and available to parties.
- ADR proceedings and related materials, settlement agreement or other outcome, are confidential. *Exceptions are those cases where parties are required by applicable law to disclose part of the proceedings.*

Mediation outcomes

There are three possible outcomes to a mediation session: resolution, further mediation, or termination. In the first instance it is easy to know what to do: get something written and signed. You need not draft the final documents, but you should at least sign an agreement in principle otherwise you risk new disputes caused by faulty memory.

When it is necessary to adjourn mediation for any reason, set a date and time for resuming. Try to make it as soon as possible. Mediations develop a "momentum of agreement" that helps the parties move toward resolution. The longer a second session is put off, the more likely that momentum will be lost. Moreover, too long a time between sessions may require the mediator to spend significant time re-establishing a relationship of trust with the parties.

In the third instance, a mediation session is terminated because the parties are deadlocked and unwilling to move. It is difficult for either party to know when mediation is truly deadlocked. Good mediators know when keeping discouraged parties at work a bit longer is likely to produce some needed movement.

Who can be mediator?

The success of Mediation hinges largely on the wisdom, tact, common sense and expertise of an individual known as a Mediator. His or her task is to create

trust and assist the parties in their quest for a settlement. The Mediator is a facilitator, not a judge or arbitrator.

The opinion does not itself bind the parties, but opens the way for them freely to agree a settlement that they are legally bound to carry out. Or they may simply act in line with the Mediator findings, without formal agreement.

According to the definition, Mediator is a professional serving as a neutral third party in efforts to achieve a settlement, compromise or agreement between disputants who are voluntary participants in mediation process.

He /she should possess thorough knowledge of the principles, practices and procedures of mediation and/or dispute resolution; ability to conduct impartial fact-finding mediation conferences and caucuses, identify disputed issues, determine solutions, prepare recommendations and develop compromise or settlement proposals; ability to communicate effectively and to prepare complete and concise reports; ability to establish and maintain effective working relationships with disputants and their representatives, state officials and the general public.

The mediator is responsible for facilitating the resolution of disputes between voluntary participants involving matters within his jurisdiction. Work involves researching files and databases for information; establishing and organizing the mediation agenda; identifying disputed issues and concerns; conducting mediation conferences and caucuses; and participating in the development of compromise or settlement proposals. Work also involves providing alternative solution recommendations, diffusing potentially volatile situations, maintaining an environment conducive to the negotiation process, and preparing proposed Memorandums of Understanding if mediation efforts are successful.

Mediation in the region

Southeast Europe Enterprise Development¹⁶ (SEED) initiated Alternative Dispute Resolution cross-country project in January 2003 with the idea of improving SME access to justice and finance. The objective of the project was to enable creation of adequate legal environment and positive business climate that will improve SMEs access to finance through introduction and implementation of mediation as an alternative to commercial dispute resolution and court procedure. Introducing mechanism that will provide faster and satisfactory settlement of business disputes will make business environment attractive for foreign investments and improve sustainability and growth potentials for SMEs. ADR is expected to have a great impact on SME business performance as well, by helping firms to unlock their assets caught up in lengthy and expensive court procedures.

The overall ADR project consists of several elements: Drafting legislation on mediation, Doing series of pilot trainings for mediators and judges, Conducting a pilot project within one court, Building capacities of the Association of Mediators, and Extensive public awareness campaign.

¹⁶ Southeast Europe Enterprise Development (SEED) supports the development of Small and Medium Enterprises (SMEs) as well as individuals and institutions that serve the needs of SMEs and will enhance the broader enabling environment in which all of these stakeholders operate. The Facility operates in Macedonia, Serbia and Montenegro, Bosnia and Herzegovina, and Albania, and implements its mandate through tailored, enterprise- and organization-specific technical assistance, capacity building programs, training courses and research/ policy interventions. SEED's mandate includes three major focuses: investment services to SMEs, capacity building of SMEs and of different type of service providers and enhancement of business enabling environment.

In addition to this, in the rest of Central and Southeast Europe, there are various initiatives to introduce and implement mediation in order to solve backlog of cases and/or to improve business and legal environment, regardless of the legislation treatment, whether there is separate law or mediation is treated within existing laws, whether operationalized as court-annexed or independent, mediation becomes a buzzword and hope for most of the cases, especially when forces are balanced and good will to preserve relationships exist.

The recent experience of mediation practice in Slovenia¹⁷ shows 54% success of the commercial cases resolved through mediation, mostly in either first or second session. Such figures reflect voluntary activity of judges in Ljubljana District Court, trained as mediators, provide optimism and encouragement to everybody that wants to take the advantage of utilizing such service.

Next steps

The courts, as always, will have to play the primary role, but strong, independent, well-run centers for mediation and arbitration should play an important role as well. All of the important work the courts must do is made all the more difficult when judges face deep backlogs, and when they are burdened by too many cases that could and should be heard elsewhere. Their ability to deliver the kind of justice they want to deliver is dependent on having resources adequate for the job they must do. If many of the people who now go to court can be persuaded to turn to a user-friendly, highly effective alternative, precious court resources can be focused on the cases that truly need them. The courts, certainly, have a lot to gain.

Many of the conflicts that wind up in court do not require the sophisticated fact-finding apparatus of the courts. The factual disputes between the parties often are not at the heart of the matter. The real problem is that the parties have worked themselves into a state of frozen positions and hardened heads. They do not need a judge or a jury as much as they need someone to help them sort things out. And while helping them sort things out is an honorable task, it is not one that requires the scarce resources of the courts. The people who turn to these new alternatives – mediation, arbitration, and other forms of ADR – will be winners, as well. They will enter a process that will be faster, less expensive, and more efficient than prolonged litigation in the courts. On top of that, most disputes are better resolved by agreement – through conciliation and mediation – than through hard-fought court battles. Litigation can destroy important business and personal relationships. Resolving disputes by means of an agreement framed by the parties can preserve those relationships, or even expand and build on them.

For foreign investors, this will be another proof that they can trust the system and invest in the country/region where access to justice and finance can be obtained in a fast, fair and friendly (amicable) manner.

¹⁷ Report on statistical data of the pilot programme of ADR with mediation at the District Court in Ljubljana, Jan-Oct. 2003

EU Competition Law, Treatment of Monopolies and State Aid

Julijana Dimovska

Introduction

The development of the EU internal market, one of the fundamental prerequisites for the establishment and functioning of the European Union, cannot be completely and successfully attained without the existence of adequate rules regulating the issues of competition and state aid. These rules prevent

- division of markets,
- distortion of competition by:
 - creation and strengthening of monopolies,
 - concentrations with dominant position on the market,
 - abuse of dominant position, as well as
- discriminatory granting of state aid by certain Member States.

The primary objective of the rules is thereof the elimination of the disadvantages deriving from anti-competitive market behaviour of business undertakings. Therefore, any monopoly agreement, abuse of dominant position or business concentration which aim is directed towards restriction, distortion or prevention of competition, can be considered as behaviour incompatible with the common market and as prohibited forms of market behaviour.

The EU competition and state aid related policy “firstly must enable competition to perform its traditional role in helping to improve the allocation of resources, increase businessman’s capacities for adjustment and better satisfy the requirements of consumers; secondly they must reinforce the unity of the Community market by eliminating obstacles to trade between Member States”.¹⁸ Stimulation of innovations and promotion of regional development are also considered as objectives that the competition and state aid related legislation seek to promote and ensure. In general, it can be stated that the fundamental objectives the competition related laws and policies have to pursue may be summarized to the attainment of the allocation efficiency, fair business behaviours and protection and advancement of the small and medium size enterprises.

The principal EU competition related rules of the EC Treaty¹⁹ that apply to undertakings are

- Article 81, which sets forth the prohibited forms of behaviour,
- Article 82 that prohibits the abuse of a dominant market position by any undertaking,
- Article 86 of the EC Treaty ensures the applicability of EC competition related rules and principles to state owned companies or companies with granted special or exclusive rights,

¹⁸ Report on Competition Policy

¹⁹ As treaty text is used the Consolidated Version of the Treaty Establishing the European Community, as in Official Journal of the European Communities C 325 from 24.12.2002

- Article 87 and 88 of the EC Treaty set general prohibition for the Governments to grant subsidies, which hinder market competition, affect trade and favour certain undertakings,
- Article 2 (3) of the “Merger” Regulation 139/2004 that prohibits concentrations which create or strengthen dominant positions which might impede effective market competition.

Prohibited Forms of Behaviours

According to Article 81 of the EC Treaty all agreements concluded between undertakings, decisions by associations of undertakings and concerted practices which may affect the trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, shall be prohibited as incompatible with the common market. This prohibition particularly refers to those agreements, concerted practice and decisions which:

- directly or indirectly fix purchase or selling prices or any other trading conditions;
- limit or control production, markets, technical development or investment;
- share markets or sources of supply;
- apply dissimilar conditions to equivalent or similar transactions with other trading parties, thereby placing them at a competitive disadvantage;
- make the conclusion of agreements subject to acceptance by the other parties of supplementary obligations, which, by their nature or according to commercial usage, have no connection with the subject of such agreements.

The Commission determines the incompatibility of certain agreement, decision or concerted practice with the EU rules and the common market, by applying the legal criteria incorporated in the rules and by assessing the notion of general interest of the producers and the consumers, which might be impeded, promoted and encouraged. In the procedure of determining the incompatibility with the stated rules and the principles, the Commission is empowered to undertake a wide scope of investigative actions, to request submission of data, information and documents by the undertaking/s, to conduct inspections. If the Commission discovers a violation or infringement of the rules and principles, it is authorized to render an adequate decision and impose sanctions in a form of fine. The EU effectuates strict penalty policies, by laying down the rules pertaining to sanctions according to which the fine for infringements of the rules may be imposed either in a certain amount or up to 10% of the undertaking’s annual turnover, depending on the type of the infringement, its duration and effects.

The aforementioned provisions however, do not apply to agreements, decisions of associations of undertakings and concerted practice that contribute to improving the production or distribution of goods and services or to promoting technical or economic development, while allowing consumers a fair share of the resulting benefit, and which do not impose on the undertakings restrictions, which are not indispensable to the attainment of these objectives and in addition afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

The exemptions from the general prohibitions, such as the application of the “*de minimis*” rule for the minor importance agreements²⁰ and the so-called “block exemptions” which pertain to the vertical agreements for exclusive right of distribution, selective right of distribution, exclusive right of purchasing and franchising, to horizontal agreements for research and development or specialization, to agreements on transfer of technology, license or know-how, distribution or servicing motor vehicles and insurance are frequently perceived as exemptions favourable to the small and medium sized enterprises. The exceptions have as their objective the harmonious development of economic activities and adjustment of the small and medium size enterprises to the developed market structure and conditions. The cooperation of the small and medium size enterprises is in principle desirable and should be encouraged, due to the reasons that it leads to entrepreneurship promotion, increased production and rationalized economy.

Monopolies, Dominant Position and Abuse of Dominant Position

The monopolization on the market may be principally attained in two manners: by an agreement or by a merger/concentration, provided that the term concentration is comprehended in its broad meaning, including thereof one undertaking’s investment in the other undertaking’s capital, acquiring property of other undertaking/s and mergers of two previously legally independent companies into a new undertaking, as well as acquiring control over undertaking or creating of joint venture which will in a long run act as a autonomous unit. The mere fact of creation or existence of a monopoly, i.e. of the undertaking with a dominant market position, regardless of the fact of the manner of its establishment, does not represent a prohibited notion. Even the Treaty itself does not prohibit the creation or existence of monopolies or companies with dominant position. The EU rules prohibit the abuse of any dominant position by one or more undertakings, which cause prevention, restriction or distortion of the competition on the relevant market, defining it as behaviour incompatible with the common market, to the extent that it may affect the trade between the Members States.

Article 82 of the EC Treaty does not define the dominance, but provides for frequently encountered practices of such abuse, which may usually consist of:

- directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- limiting production, markets or technical development to the disadvantage of consumers;
- applying dissimilar conditions to equivalent or similar legal transactions with other trading parties, thereby placing them at a competitive disadvantage;
- making the conclusion of agreements subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such agreements;

²⁰ According to the Commission’s “De minimis” Notice, the threshold for determining the minor importance agreement is 10% of the market share for the undertaking operating on the same level of production or distribution (horizontal agreements) or 15% of the market share for the companies operating on different level of production or distribution (vertical agreements). Note that the same criteria are applied in the Draft Macedonian Law Against Limitations of Competition.

The Macedonian Draft Law against Limitations of Competition, defines other practices of abuse of dominant position such as refusal to trade or encouraging and requesting from other undertakings or association of undertakings not to purchase or sell goods or services to certain undertaking, with an intention to harm that undertaking in a dishonest manner, as well as the often practice of refusal to allow access to its own networks or other infrastructure facilities to another undertaking ready to provide adequate remuneration, provided that without such concurrent usage of the network or the infrastructure the latter cannot operate, due to certain legal or factual reasons, as a competitor to the dominant undertaking on any market connected with that network or infrastructure.

There are several steps in determining the existence and consequently the abuse of a dominant position, the first step being the determination of the existence of a dominant market position.

It can be considered that the undertaking has a dominant position on the relevant market, if as a potential seller or purchaser of certain type of products and/or services either has no competitors on the relevant market or compared to its competitors, the undertaking has a leading position on the market, especially in relation to:

- market share and position;
- financial power;
- access to sources of supply or the market;
- connection with other undertakings;
- legal or actual barriers for entry of other undertakings on the market;
- capability of the undertaking to dictate the market conditions taking into consideration its supply or demand, and
- capability of the undertaking to exclude other competitors from the market by turning toward other undertaking.

In this respect, the Draft Law Against Limitations of Competition sets forth that two or more undertakings have a dominant position on the market, if there is no significant competition in relation to certain products and/or services between those undertakings, in general or only on specific markets, and when those undertakings together meet the previously stated conditions.²¹

The market share of the undertaking/s is one important but not a deciding element in the procedure of determining the existence and abuse of a dominant position, and one may not rely merely on the undertaking's market participation expressed in a certain percentage.

According to the Draft Law Against Limitations of Competition of the Republic of Macedonia, it shall be presumed that the undertaking has a dominant position, if it participates on the relevant market with at least 40%, unless the undertaking can prove the otherwise. It shall be in addition presumed that two or more undertakings have dominant position on the market if they have a joint participation on the relevant market of at least 60%. These thresholds have been incorporated in the law based on a comprehensive comparative study on the competition laws and practices, particularly of the countries in South-East Europe and according to the adequate market structure and practice experiences encountered during the implementation of the existing law.

²¹ Article 10 of the Draft Law Against Limitations of Competition

Considering the above, the mentioned thresholds represent merely a presumption, which can easily be refuted by conducting analysis of the market structure and existing competition-related features. The possibility to influence on the functioning of the market and other undertakings' behaviours, as well as the possibility of producing negative consequences on the trade have significant importance in determining of whether the dominant market position exists. Often, the legal and actual barriers for entry and the strategy of the undertaking for preventing entry of new participants on the market are perceived as significant criteria, which might be applied in evaluating the dominance of an undertaking on the market.

Recently the Macedonian Monopoly Authority allowed a concentration of three daily newspapers by acquisition of the majority participation of one company in the charter capital of the three companies - publishers of the newspapers. The total market share of the company that acquired the majority participation at the time of the concentration was approximately 90% on the market of publishing, distribution and sale of daily newspapers on the territory of the Republic of Macedonia. While evaluating the negative consequences on the market that the concentration will produce, as well as the effects from the dominance on the market, the Monopoly Authority assessed other elements, apart from the market share. The fact of existence of barriers for entry of new participants on the relevant market was also decisive element in the decision-making. It was decided that no such barrier exists, since in the same period of the concentration another daily newspaper with wide circulation appeared on the market and the brands of two other newspapers were sold to new owners which have expressed their readiness and commitment to continue pursuing the newspapers' publishing. The Monopoly Authority decided that the economic power and potential created by this concentration would not impede the market competition, but will on the contrary contribute to the improved competition, increased quality and retained level of the prices. Thus, the Monopoly Authority decided that the market is open and liberalized, that consumers have the possibility to choose and that competition on the relevant market, although dominant position exists, would not be permanently affected, restricted or eliminated.²²

Another basic prerequisite in the procedure of determining the abuse of the dominant position on the market is the determination of the relevant market, which comprises the relevant products market and the relevant geographical market. The relevant products market is extremely important feature in any instance the competition authorities are facing the procedure for determination of existence and abuse of dominant position. The relevant market of products, assumes identification of product that are considered as interchangeable according to the products' characteristics, intended use, price and consumers' perceptions. The products are typically considered interchangeable if they serve to the same purpose and if the consumers can easily replace one with another product without incurring excessive costs. Moreover, another important phase in determining the existence of dominant position is the determination of the relevant geographical market. It comprises the area in which the undertakings concerned are involved in the supply and demand of goods or services, in which the conditions of competition are sufficiently homogenous, and which can be differentiated from neighbouring geographic areas, since the conditions of competition are significantly different in those areas. The defining of the relevant product and geographical market requires thorough analysis and

²² Decision No. 17-77 from 16.04.2004

comprehensive understanding of the market structures and mechanisms. Without their exact determination, the further steps in determining the dominant position and its abuse cannot be conducted.

State Aid and its Compatibility with EU Rules and the Common Market

In the conditions of existence of strictly regulated competition policies, deregulation and liberalization of trade, there is an inevitable necessity of regulating also the rules governing the issue of state aid, by preventing thereof activities of the state which may have a certain discriminatory effect on the state economies and on the overall EU trade. The notion of state aid is not prohibited *per se*. However, it may represent a serious threat to the effective market competition, by enabling financial and other incentives to otherwise non-competitive undertakings.

Due to these reasons, the EC Treaty imposes general prohibitions of any form of state aid, which may cause distortion of the competition and which is incompatible with the common market, but also allows certain exceptions, which enable the states to ensure satisfaction of basic needs of the citizens and certain activities. The general prohibition encompasses the aid granted not only directly by the Member States, but also the aid which in basic pertains to the usage of state budgetary funds, which thereafter includes the state agencies, local government and public institutions, regardless of the form in which it is granted, which includes, but is not limited to non-reimbursable subsidies, favourable loans and loans with low interest rates, purchase of goods under favourable prices, tax and customs exemptions etc.

In principle, according to Article 87 EC Treaty, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market. Paragraph 2 of this Article provides for the automatic exemptions and defines the aid, which is considered as compatible with the common market, which is generally in a form of:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences;

In addition, Article 87 of EC Treaty sets forth the aid, which might be considered as compatible with the common market, which is actually narrowed down to:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- (d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;
- (e) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission.

In practice, any form of a state aid, regardless of whether it appears as a grant, soft loan, tax relief or exemption, procurement of goods below the market price... is subject to European Commission's control. The Commission prevents the granting of state aid, which is contrary to the clearly defined goals and legitimate objectives, as well as to prevent the high intensity of aid for one sector under various schemes of aid.²³

Pursuant to Article 88 of EC Treaty, the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those states. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a state or through state resources is not compatible with the common market having regard to Article 87, or that such aid is being misused, it shall decide that the state concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

Public Enterprises

The notion of effective market competition and its protection is particularly important concerning the public companies and state owned companies. Governments often guarantee exclusive rights and monopolistic positions to those companies, mainly operating in the sectors of utilities, energy, telecommunication, postal services, transport, funeral services etc. The state grants certain rights and privileges, which are used for the purpose of attaining economic, political and social objectives, applying therefore certain strategic policies. Exactly those privileges given to these companies may lead towards serious distortion of the competition and may cause disintegration of the market and disadvantages for the private business undertakings and to the consumers.

The operation of those undertakings should be particularly regulated and screened in specific situations in which a certain portion of the undertaking's activities are being pursued within a sector where effective competition exists due to liberalization of the market with respect to certain services. The abuse of the dominant position may arise granted to the undertaking with respect to the monopoly-related activities, by placing that undertaking (or in certain instances its daughter companies and related undertakings) in a more competitive position with respect to the activities and services pursued or offered by the undertaking, which are subject to market competition.

The Macedonian Monopoly Authority has recently passed a decision on abuse of dominant position by the Macedonian Telecommunication Company, which possesses a monopoly in the market of constructing and operating fixed public telecommunications network. Namely, the Monopoly Authority investigated the claim against the company's behaviour and concluded that it has abused its dominant position on the market by refusing to provide ADSL Internet access upon request for such service of three companies for provision of public telecommunication service and data transfer and by enabling such access merely to a company which operates as its business unit. The Monopoly Authority decided that by such behaviour and without existence of serious obstacles or reasons, which would justify it, the company has caused damages

²³ N.Moussis: Access to European Union (Law, economies, practices), issued by the European Study Services

to the competitors on the market, interested to offer the same service to the customers, and has therefore abused its dominant position.²⁴

The public undertakings and the undertakings with exclusive or special granted rights and authorizations cannot be exempted from the application of the competition and state aid related rules and principles. This basic principle is stated in Article 86 EC Treaty, according to which undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community. Furthermore, this Article states that in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaty, in particular to those rules provided Articles 81 to 89 of the Treaty.

Such solution is stipulated also in the draft Law against Limitations of Competition of the Republic of Macedonia.

With respect to this delicate matter, the state has to balance the notions of public and general economic interest and competition related policy and objectives, and has to identify and assess the positive and negative effects, arising thereof, both on a short and on a long run. The underlying principle is that all undertakings enjoy equal position on the market and no state intervention incompatible with the rules and the notion of the common market may be acceptable.

Current Situation in Macedonia

The transition of the Macedonian economy from planned into a market economy, from state-fixed into market oriented prices, from dominance of the public sector, existence of monopolies and extensive state interventions into a competitive environment and liberalized and deregulated trade regime, imposed the necessity for the Republic of Macedonia to commit itself to approximate the legislation and to harmonize it with the EU *acquis* and principles.

The basic provision which underlies the orientation of the Republic of Macedonia towards free market economy is Article 55 of the Macedonian Constitution that sets forth the market freedom and the entrepreneurship and states the obligation of the State to undertake measures to prevent the monopolistic behaviour and monopolistic position of the market participants. In addition, the requirements deriving from Article 68, 69 and 70 of the Stabilization and Association Agreement, signed in April 2001 compel the state to embark in the reform processes and to regulate the economic and business relations by adopting and implementing the EU standards.

One of the main priorities of the State reform processes should be the enactment of a transparent and comprehensible legal frame, harmonized with the EU legislation and principles and adjusted to the existing and developing

²⁴ Decision No. 17-13/06 from 15.03.2004

market conditions, strengthening of the independent, accountable institutional set up necessary for its effective implementation as well as facilitation of market economy environment, for the purpose of enabling and ensuring companies' competitive behaviour and effective consumers' protection.

The issues pertaining to competition policy are currently regulated by the Law Against Limitations of Competition from 1999 and its subsequent amendments from 2002. The Law itself and its practical implementation in the past indicated certain weaknesses since it was concluded that it represents an impediment to efficient protection of the market competition. Due to these reasons and taking into consideration Article 68 of the Stabilization and Association Agreement, a new Law against Limitations of Competition has been drafted and is in a process of enactment. The new Law is completely approximated with the EU competition-related legislation and is based on the protection of free competition from all possible methods of restraints, on transparency and equality of all natural persons and legal entities, on autonomy, collectivity and independence in bringing decisions, accountability in performance of activities and strict measures for law enforcement. The law provides a clear, unambiguous, comprehensive system for efficient and sustainable market competition and ensures increased legal security and liberal market entry.

The new draft Law incorporates the EU principles in defining the prohibited, anti-competitive forms of market behaviour, the prohibited agreements, concerted practices and decisions and in regulating the abuse of dominant position and concentration control. The Law applies the principle of equality to the private and public undertakings with special or exclusive rights in performing activities of general economic interest. The new Law sets forth a new institutional set up of the body authorized for implementation of the provisions of the law, i.e. the establishment of the Commission for Protection of Competition, which will be an independent, parliamentary-elected body, autonomous in its operation and accountable for its work before the Parliament. It entrusts the Commission for Protection of Competition with a wide scope of investigative and decision-making powers, necessary for the successful and effective protection of competition and implementation of the legal provisions. The law also regulates the fines for infringements and violations of the provisions, which according to EU regulations are expressed in percentages. Such solution will contribute to the more efficient protection from anti-competitive market behaviours.

Moreover, in 2003 the new Law on State Aid has been passed, which entered into force on 1st January 2004. According to the new Law on State Aid and the by-laws enacted pursuant to the Law, any state aid, irrespective of whether it is granted under an aid scheme or as an individual aid, which distorts or threatens to distort the competition by favouring certain undertakings is incompatible with the law, as long as it affects the trade between the Republic of Macedonia and the European Community. All state aid providers are obliged to submit their plans and projects for granting state aid to the newly established State Aid Commission, which will evaluate their compatibility with the prescribed criteria and will accordingly approve them. Any granted state aid that is not compatible with the prescribed conditions, or not approved by the Commission is subject to reimbursement.

The notions of incompatible and compatible state aid are also harmonized with the EU rules and principles, provided that Article 4 of the Law states that the compatible aid is an aid granted outside the sectors of transport, agriculture and aquaculture, which is not linked to export-related activities and is not

conditional upon the use of domestic products over goods imported from the Community, if the amount of the *de minimis* aid received by an aid recipient does not exceed 100.000 EUR over any period of three years, irrespective of the form of aid or the objective pursued. The Law on State Aid also defines the compatible aid granted to small and medium size enterprises, which is actually an aid with an aim of promoting the activities of SMEs by supporting investments in liquidity and non-liquidity part of the assets up to 30% of the favourable investments costs or the wage costs over a period of two years, provided that the total intensity of the aid does not exceed 75% of the investments costs. Moreover, the aid aiming at providing consulting services, as a non-continuous activity and aid supporting first participation of an undertaking in fairs and exhibitions may be considered compatible up to 50% of the participation costs.

The Law Against Limitations of Competition and the State Aid Law represent the basic framework for ensuring the competitive behaviour of the undertakings on the market, non-discriminatory behaviour of the state, prevention of any restriction and distortion of the competition, promotion and advancement of the small and medium size enterprises and implementation of the state competition policy in general. The harmonization of the mentioned laws represents a significant endeavour of the state and a significant element of its strategic determination towards EU accession. It ensures equal regulation and provides for a possibility for Macedonian business undertakings to successfully face the competition pressure when entering the EU market. In addition, it contributes to the attraction of new foreign investments in the state, which assumes new capital, technology and employment for the benefit of all concerned stakeholders.

Conclusion

While the EU competition and state aid related policy, principles and rules ensure the integration of the Common Market and prevent any distortion and restriction of competition, by prohibiting any form of anti-competitive behavior, they also encourage the business cooperation of the small and medium size enterprises and facilitate their adjustment to the developing market conditions. Concentrations are perceived as favorable feature, particularly for the small and medium size companies, since the advantages of such concentration enable decrease of the production costs and maximization of profit, as well as implementation of new technologies in the production process. Business concentrations (i.e. mergers, accessions, acquisitions) represent a legitimate form of a structural adjustment towards market needs, which are deemed as anti-competitive if they result in a creation or strengthening of the dominant market position that would severely limit competition, unless it results with improvement of the competition conditions which would thereafter overcome any shortcomings resulting from the harmful effects caused by a dominant position on the market.

The small and medium size enterprises as well as their legal and business advisors should be aware of the existing prohibitions and prohibited agreements and practices and of their entitlements to not accept the anti-competitive behaviour and to alert the national authorities whenever they encounter such behaviour by any undertaking that operates against their best interest. In addition, small and medium size enterprises should be familiar with the advantages that exists under the mentioned rules and should facilitate best manner of their exploitation.

It can be derived from the abovementioned that the open free markets and the unrestricted competition represent the source of welfare for the undertakings and the consumers, and for the economy in general, as they facilitate and ensure the advancement of the entrepreneurship, innovation and economy progress. The elimination of barriers for the competition and of strict state intervention contribute to the creation of transparent and free business environment, which is a significant step towards the creation of favourable conditions for foreign investments. Ultimately, it contributes to the satisfaction of the consumers' needs and interests and to the supply of increased quality, better choice and low prices.

EU Company Law

Julijana Dimovska

In many occasions it has been emphasized that the small and medium size enterprises (SMEs) represent the fundament of the EU economy, as their participation on the overall EU market amounts to approximately 99% of the total number of undertakings established and operating in the Common Market. In that respect SMEs can be considered as having the most significant role in ensuring competitiveness, economic growth, sustainable development and creation of new jobs. Therefore, the European Union undertakes continued endeavors in order to facilitate the development of the business undertakings and to create a framework designed to be sufficiently flexible and able to meet undertakings' needs.

The EU company law is basically comprised in twelve Directives, which are essentially focused on the protection of shareholders and third parties, by establishing an equivalent level of protection throughout the EU. The main objectives of the EU Company Law Directives are focused towards strengthening of the shareholders' and members' rights, protecting the employees and creditors and increasing the efficiency and competitiveness of business.

The following EU Directives pertaining to the company law have legal effect and represent the core of the EU company law and the direction in which all accession and candidate countries strive towards:

First Directive 68/151/EEC pertaining to announcement, validity of liabilities of companies and annulment dated 1968

The First Directive applies to the laws, regulations and administrative provisions of the Member States and primarily pertains to the publicity of the companies. It sets forth the public availability of the Commercial Registers and the obligation for publishing all data and documents in the national Official Gazettes.

According to the Directive subject to mandatory announcement are the instrument of constitution, and the statutes, their amendments, particulars about the persons who either as a body constituted pursuant to law or as members of any such body are authorised to represent the company or take part in the administration, supervision or control of the company. In addition the Directive prescribes that data about the subscribed core/charter capital, annual account statements, any transfer of the company's seat, company's termination etc.. must also be published and be made publicly available.

It is perceived that the disclosure and publicity requirement is a powerful regulatory tool since it facilitates the inspection in the company's insight, the company's core structure and activities and allows members, shareholders and third interested parties to take necessary actions in order to protect and attain their legally determined rights and interests.

The First Directive ensures protection of third parties also by provisions which restrict to the greatest possible extent the grounds on which obligations entered into in the name of the company are not valid.

It furthermore, for the purpose of ensuring legal certainty with respect to relations between the company and third parties, and also between members, limits the cases in which nullity of the company can arise and determines the grounds on the basis of which a request for nullity may be submitted to the courts.

Second Directive 77/91/EEC pertaining to the incorporation of and acquisition, maintenance and alteration of the charter capital of joint stock companies, dated 1976

The Second Directive contains provisions for acquisition, maintenance and change of charter capital of joint stock companies. The Directive sets forth the information which must be indicated in the company's foundation instruments, and which must be published and made publicly available, particularly with respect to the company's charter capital, including, but not limited to the nominal value of the shares, the number of shares, special conditions limiting the transfer of shares, information for each class and the rights attaching to the shares of each class, the amount of the subscribed capital paid up at the time the company is incorporated or is authorized to commence business, the nominal value of the shares or, where there is no nominal value, the number of shares issued for a consideration other than in cash, together with the nature of the consideration and the name of the person providing this consideration, the total amount, or at least an estimate, of all the costs payable by the company or chargeable to it by reason of its formation any special advantage granted to anyone who has taken part in the formation of the company.

The charter capital of companies is one of the important assurances for shareholders and creditors. The lowest amount of subscribed capital (charter capital) shall not be less than 25.000 EURO. The subscribed capital (charter capital) can be contributed in money and objects, i.e. "may be formed only of assets capable of economic assessment". The objects must be appraised by an external appraiser-expert. If the shares are issued for a consideration, it must be must be paid up at an amount which is not less than 25 % of the shares' nominal value or, provided that the total amount of the consideration must be transferred in full within five years.

The Directive further sets the rules applicable for allowed distributions, the criteria which the companies must adhere to in the process of increase and reduction of their charter capital and the rules pertaining to the acquiring of treasury shares.

Third Directive 78/855/EEC pertaining to merger of joint stock companies, dated 1978

The Third Directive regulates the issue of merger of joint stock companies with the primary aim of providing adequate information and protection of the shareholders' creditors' and third party's rights and interests,

The Directive makes a distinction between merger by acquisition and merger by incorporation of a new company. The Directive thereof defines the merger by acquisition as a situation in which one or more companies cease to exist without liquidation in that they transfer their property to another company, while a merger by incorporation of a new company is a case when more companies are terminated without liquidation and they transfer their entire property to the incorporated company in that the shareholders receive shares in exchange in the new company, and if need be, a difference expressed in money value.

The resolutions of the Third Directive avoid the complicated liquidation procedure before the fusion of joint stock companies, by providing for universal transfer of assets between companies.

The Directive determines the obligation of the management bodies of the merging companies to prepare the draft terms of merger and their content, which must be published as well as documents and information which should be made available to the concerned parties in the merger procedure, including but not limited to the draft terms of merger, the annual accounts and annual reports of the merging companies for the preceding three financial years, the reports of the administrative or management bodies of the merging companies on the draft terms of merger setting out the legal and economic grounds for them, the reports of the independent expert on the draft terms of merger etc.

Sixth Directive 82/891/EEC pertaining to division of joint stock companies, adopted 1982

The Sixth Directive which deals with the issue of division of joint stock companies also sets forth the minimum level of protection of shareholders, creditors and employees in such companies. It is recognized in the recital of the Directive that *".. it is particularly important that the shareholders of the companies involved in a division be kept adequately informed in as objective a manner as possible and that their rights be suitably protected.."* and *".. creditors, and persons having other claims on the companies involved in a division, must be protected so that the division does not adversely affect their interests."*

The Directive differs between division by acquisition or by incorporating new companies, or a combination of both. The Directive defines the division by acquisition as a situation where after the company is wound up without going into liquidation, it transfers to more than one company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the companies receiving contributions as a result of the division, while a division by formation of a new company is a situation in which after the company is wound up without going into liquidation, it transfers to more than one newly-formed company all its assets and liabilities in exchange for the allocation to the shareholders of the company being divided of shares in the recipient companies.

The Directive sets an obligation for the administrative or management bodies of the companies involved in a division to draw up and accordingly publish the draft terms of division in writing as well as defines the documents and information which should be made available to the interested shareholders.

Fourth Directive 78/660/EEC of 1978 pertaining to annual account statements of the different types of companies

The Fourth Directive pertains to the preparation, presentation and control of annual account statements and reports, the valuation methods used therein and their publication for the main purpose of accurate presentation of the company's assets and liabilities and of ensuring shareholders' rights protection.

The Fourth Directive sets forth a mandatory layout with respect to the annual account statements (including balance sheets, statement of profit and loss and remarks to statements) and prescribes the content of the annual operations report. They must be comprised in accordance with the general guidelines encompassed in the Directive and must be accordingly published.

The Directive provides for several derogations which may be granted in this area for small and medium-sized companies, such as exempting them from the obligation for a mandatory audit over the account statements

Seventh Directive 83/349/EEC of 1983 pertaining to the consolidated account statements

The Seventh Directive complements the Fourth Directive that covers the annual account statements of individual companies and its purpose is to enhance the financial transparency of the group of companies by providing a true and fair view of the assets and liabilities, the financial position and the profit and loss of all the undertakings consolidated taken as a whole.

The Directive sets forth that the consolidated account statements should be prepared and published in a situation when the parent undertaking has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking), has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking, has the right to exercise a dominant influence over an undertaking. In addition such obligation shall pertain to a situation when that undertaking is a shareholder in or member of an undertaking, and a majority of the members of the administrative, management or supervisory bodies have been appointed solely as a result of the exercise of its voting rights or if it controls alone a majority of shareholders' or members' voting rights in that undertaking.

The Directive sets the manner of preparation of the consolidated accounts and reports, methods used therein and the obligation for audit over these accounts and reports and their publication.

Eighth Directive 84/253/EEC pertaining to controllers of the annual account statements dated 1984

The Eighth Directive regulates the issues pertaining to the qualifications of persons entitled to carry out the statutory audits of final annual account statements and of consolidated accounts. The Directive recognizes the necessity of harmonization of those qualification and of ensuring professional independence and good standing reputation of the auditors.

According to the Directive the auditors must possess a high level of specific theoretical knowledge required for the statutory auditing of accounting

documents and the ability to apply that knowledge in practice. In addition it sets for a necessity of mandatory exam which the auditors must pass in order to be entitled to perform the audit.

Eleventh Directive 89/666/EEC of 21 December 1989

The Eleventh Directive pertains to the publicity of branch offices established in a member state of the Union of a company subject to the legal system of another member state. The lack of coordination, particularly with respect to disclosure and publicity requirements, lead to numerous differences in the systems of protection of the shareholders and third parties Therefore the purpose of the Directive is to set the requirements for disclosure of data and documents of the branches

The Directive recognizes the disclosure as an inevitable feature concerning the transparency of the companies' and branches' operation since it relates to a range of important documents and particulars. However, the Directive imposes the disclosure requirement to information concerning a branch itself together with a reference to the register of the company of which that branch is part since the register contains all relevant information on the powers of representation, the name and legal form and the winding-up of the company and of any insolvency proceedings and of other significant issues pertaining to the company's foundation and operation.

Pursuant to the Directive, documents and particulars relating to a branch opened in a Member State by a company which is governed by the law of another Member State shall be published in compliance with the legal system of the member state wherein the branch office was established.

Twelfth Directive 89/667/EEC of 21 December 1989 pertaining to single member limited liability companies

The Twelfth Directive has been introduced to enable the incorporation and existence of limited liability companies with a single member (single-member company). The limited liability company can have a single member since its incorporation, but also, when all parts are managed by a single person. It is perceived that the Directive's objective is directed towards encouragement of the creation and development of small and medium size companies.

Such objective of the Twelfth Directive is just a complementary feature of the overall resolution for development of small and medium size companies on the Community level, expressed implicitly by certain derogations granted to those companies and by the imposition of stricter requirements for the large companies, which can be certainly perceived as a passive promotion for the SMEs.

New Company Law of the Republic of Macedonia

"This law shall be a legal framework for every person and commercial entity that pursues commercial activities"

The previous Company Law enacted in 1996 and its subsequent amendments were perceived as a over-normative text which contains, non-functional, sometimes even conflicting solutions, which set complicated procedures for the registration of a company and imposed unnecessary burdens for company founders, shareholders and members.

It was therefore determined that a new company law should be drafted, according to the needs for harmonisation with the EU legislation, and taking into account the necessity of easy implementation by the persons, companies, foreign investors, business community and the public.

The drafting of the new law has considered the existing legal and economic system of the Republic of Macedonia, as well as the requirements for the necessary approximation and implementation of the solutions stipulated in the applicable EU Directives.

The new Company Law seeks to achieve the objectives of harmonization with EU Law and provides for favourable conditions for new start ups and for the existing companies by offering flexible, functional and harmonised solutions for the business community involved, including companies, their members and shareholders as well as creditors, employees and third parties. Some of these solutions and the main novelties introduced by the provisions of the law will be briefly presented.

Apart from the five main types of commercial companies, namely:

- general partnership;
- limited partnership;
- limited liability company;
- joint-stock company and
- limited partnership by shares.,

the Company Law defines two other legal forms:

- sole proprietors, being individuals registered as physical persons pursuing commercial activities and
- small scope commercial activity.

Both legal forms allow a faster and cheaper registration by emphasizing that the latter form enables legalization of pursuing small scope commercial activities.

Firstly, it should be mentioned that the law consists of clear definitions of terms and concepts used in the provisions. This enables consistency of the meanings

of terms used in the text, avoiding the possibility of different interpretation of the terms.

Due to necessity for increased protection of the creditor, member and shareholder rights, the law sets forth an increased charter capital which amounts to:

- 5.000 EURO for limited liability companies and
- 25.000-50.000 EURO for joint stock companies (depending on the manner of foundation)

With regard to the joint stock companies the law sets forth strict requirements relating to formation, disclosure, governance bodies and maintenance and alteration of charter capital and determines criteria to be observed for the formation of a joint stock company, as well as criteria to be observed for the increase and decrease of the charter capital.

Even in the phase of foundation of a company, the law sets a protective provision, by determining the prohibition for founding of a company by:

- person which was determined to have caused bankruptcy intentionally by a final court decision,
- person against which a bankruptcy procedure has been initiated,
- persons or members of the management body or the manager of these persons who failed to pay taxes and contributions for which they were obliged by law and
- persons or members of the management body or the manager of these persons whose account has been blocked in the agency for blocked accounts for the period of blockage.

This solution is triggered by numerous abusive practices that Macedonian economy has faced during the implementation of the previous law.

As another novelty, the law furnishes provisions, pertaining to both limited liability and joint stock companies, for simplification of the registration procedure. The first issue the law foresees in this respect, which would contribute to this aim is defining the strict content of the registration form for entry and the attachments submitted along with the registration form and determining the contents of the founding documents. Furthermore, the law sets an obligation for the authorised person for submission of the registration form within a determined time period, as well as prescribes strict deadlines for action of the registration courts upon filing of the registration form. It should be mentioned that the role of the courts in the registration procedure is reduced merely to the supervision of the fulfilment of the formal requirements for registration. According to the requirements from the First Directive, the law strictly defines the condition for annulment of the registration, preventing thereby any possible abuse.

The introduction of the one-stop-shop system is certainly one of the most advanced solutions of the law, which is perceived to lead towards increased simplification of the registration and of other administrative procedures related to company's establishment and functioning. The concept of one-stop-shop system entails unification of the court's decision in a standard form type and its electronic transfer from the court to the Central Registry, where the parties will obtain other numbers necessary for commencement of company's operation (such as the number from the State Statistical Office, Tax Revenue Office, Customs Directorate, Bank account number) and all other approvals and

licenses and issuing the final decision containing all previously stated particulars to the concerned party through the regional units of the Central Register.

For the purpose of attaining transparency and publicity of the companies' operation, the law provides for publicity and transparency of the Commercial Register, its uniqueness on the whole territory of the Republic of Macedonia and mandatory publication of each entry in the Commercial Register in the Official gazette. Merely after the publication, the data entered in the Commercial Register may produce effects upon third parties

Another feature comprised by the new law is the issue of disclosure of company's data and documents. The law achieves this objective by determining the data and documents that the company must keep on a permanent basis, determining the data and documents that the company must make available to the shareholders and members and by setting the data and documents that are subject to obligatory publication.

In line with the EU policy of providing the shareholders, and particularly the minority shareholders with the protection their rights guaranteed under the law, the new Company Law offers a wide spectre of mechanisms available to the minority shareholders. Pursuant to the law and the terms and conditions stipulated therein, these mechanisms include but are not limited to the:

- Right to court protection;
- Right to information on the company's activities;
- Right to inspect the company's documents;
- Right to control the company's documents;
- Right to request convening of the members/shareholders meetings;
- Right to propose items on the meeting agenda;
- Right to appoint auditors;
- Right to claim compensation of damages;

Another important step towards eliminating any possible abuse of the shareholders right and especially the minority shareholders' interest, particularly by the company managers or by the members of the management bodies, is the elimination of the shareholder agreements. Namely the law sets forth the representation of the shareholders at the general meeting of shareholders solely by means of legally issued power of attorney. The existence of the shareholders agreements under the previous law has lead to many irregularities and abuses, which often resulted in deprival of the shareholders of their basic rights.

The principles of transparency and accountability are also implemented and furthered by provisions pertaining to the annual account statements and financial reports. This chapter of the law provides harmonization with the International Accounting Standards and sets the methods and principles applied in preparation of the statements and reports and the data contained in the statements and reports with purpose of expressing the accurate condition of company's assets and liabilities. In addition, the conditions and requirements for preparation and submission of consolidated accounts and criteria of companies subject to their preparation and submission are also defined. The law also sets an obligation for publication of the statements and reports and for an independent auditors' control.

The law sets forth a provision favourable to the micro and small sized companies, by exempting them for the obligation for compliance with the International Accounting Standards while preparing and submitting the annual account statements and financial reports, which reduces the burden for these companies.

Ultimate Goal of the Law

Along with the endeavors of the European Union to facilitate the development of the business undertakings and to create a framework designed to be sufficiently flexible and able to meet undertakings' needs, the new Company Law contributes to the facilitation of favourable conditions for the establishment and functioning of new businesses and for attracting new investments. The development of small and medium sized enterprises is one of the main priorities for Macedonia's economic growth. The solutions stipulated in the Company Law along with the incentives comprised in other trade related laws should play a crucial role in providing support to this development. Such framework should also contribute to the foundation of stable and reliable market conditions, to which SMEs can easily adjust their operations and can further develop.

How the EU Facilitates Company Cooperation

The Example of the EEIG (European Economic Interest Grouping), a “Europeanised” SIZ – How Macedonian SME Can Participate Already Now

Hans-Juergen Zahorka²⁵

Why cooperation between SME is more important than ever

Not alone in the EU Single Market, cooperation between companies and above all SME is of extreme importance:

- A company may have the best product, but if they cannot be sold where there is a market, this company never can grow in the way it deserves. These advantages can be secured if the company cooperates with other companies who can take care of distribution.
- If companies want to develop new products or services, lots of synergy and creativity can be set free if they cooperate with other companies, or university research institutes etc.
- If several companies commit common purchasing for their own material or for resale, each of them will have advantages.

There are many reasons for cooperation²⁶, and there are all kinds of cooperation thinkable in companies. Companies throughout Europe will have to rethink their opportunities, recalculate their market participation, reassess their appearance – they will not be longer in the position to go alone in their markets. Of course they can try, but then they will not make the most of it. This is a challenge to the “I can do it alone” mentality, to “my business is mine”. Of course this will be case in the future too, but if SMEs work better together, if they change their mentality, they will have better results, and this throughout Europe.

The larger an economy is, the more cooperation is of importance for companies, above all for SME, as they do not have the “long arms” of big companies, who may have branch offices everywhere. This has been seen very clear for instance in France where in the 60s of the last century a new legal company form has been created, the G.I.E. (*groupement d'intérêt économique*). Until today there are about 15.000 G.I.E. in France.

It is clear that in the large EU Single Market the demands for any SME are higher than on national level, in particular if the SME wants to go on the European market, not only on its national one. This is even more of significance

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²⁶ See also: European Commission, Enterprise Publications, Observatory of European SMEs, 2003/5: SMEs and Cooperation, Luxemburg 2004; Helmut Quack: Internationale Kooperationen – Ein Wegweiser fuer mittlere und kleine Unternehmen, Frankfurter Allgemeine Buch, Frankfurt am Main 2000

for SME who are in smaller EU countries. An SME with a machine of a production capacity of 1 million units per year is not really employed to capacity, if it sells its products on the domestic market only in a quantity of 50.000 – a picture, which is only too well known in Macedonia.

The Macedonian SIZ

In Macedonia there exists a – not very well known – company form, the Stopanska interesna zaednica (SIZ). Although it was existing since years in the previous Company Law, only very few registrations took place in Macedonia, as it was first intended to set up business associations. The new Company Law²⁷ is better suited for company cooperation, and with the SIZ, Macedonia has a company form very much comparable to the French G.I.E., which has been imitated by most of the EU countries mostly between 1985 and 1990²⁸.

The SIZ is regulated by art. 553-566 Company Law, and it is a light, un-bureaucratic and flexible structure for company cooperation in Macedonia²⁹. Macedonian companies, above all SME, who have a possible business partner within the country, but also in the diaspora outside, should seriously think about the creation of such a structure. Above all, the SIZ is an excellent training field or cooperation example for a time when Macedonia will be in the European Union, for within the EU there is a company form, the European Economic Interest Grouping (EEIG). If the accession negotiations can start in 2006/2007, then the accession in 2012/2013 could be possible.³⁰

The European Economic Interest Grouping

The EEIG, which is regulated by the EU Regulation 2137/85 can normally be set up only between members from EU countries³¹. There are about 1600-1700 EEIG in the EU of the (previous) 15 countries, until now no EEIG has been set up in the 10 new Member States. The EEIG can have its seat also in the three countries of the European Free Trade Agreement (EFTA), which form together with the EU Member States the European Economic Area (EEA), i. e. Norway, Iceland and Liechtenstein. There is only one EEIG with a seat in these countries, a Lawyers EEIG in Liechtenstein. But in Belgium, Luxemburg, France, UK, Germany, Spain, Italy, Austria – just to name those countries with the biggest share of EEIG – there is a growing demand for this company form.

The EEIG exists since 1985, with 15 years (!) preparation phase, and can be founded since 1.7.1989. An EEIG must be registered like any national ordinary

²⁷ Adopted end of April 2004

²⁸ Prominent examples for the French G.I.E. are e.g. the aircraft manufacturer AIRBUS (until recently), or the French Visa Card organisation „Carte Bleue“, or the network of horse race betting “PMU”.

²⁹ See also Hans-Juergen Zahorka: Ekonomskite interesni grupi, pp. 105-119, in: Alexandre Cordahi (Ed.), Pristap kon Evropskata Unija – Izработка na ekonomskoto zakonodavstvo, Ministry of Economy, Skopje 2004

³⁰ see Vienna Institute of International Economics (WIIW), in: EU Observer, 20.8.2004

³¹ see publications in languages of the former Yugoslavia: in Slovene by Janja Bedrac: Evropsko gospodarsko interesno zdruzenje (EGIZ), and in Bosnian by Zinka Grbo: Evropska Ekonomska Interesna Grupacija I njen odnos sa Statusnim Formama u Pravnom Sistemu Bosne I Hercegovine. Both can be downloaded (free) at the website of the European EEIG Information Centre (www.libertas-institut.com, EWIV/EEIG/GEIE)

company. It is under direct EU law, with only some national regulations in implementation laws of the different Member States³².

For Macedonian SME most interesting is the fact that, although Macedonia is (not yet) a EU Member State there can be a member in an EEIG with the seat in the EU also from third countries, as “associated member”.

Before coming back to this possibility, the constitutive elements of an EEIG must be known:

Members: There must be at least two members in an EEIG, and from two different EU Member States. A Macedonian SME having the intention to engage itself in an EEIG must regard that this is possible only if there is an already existing EEIG. Most of the EEIG have on an average between 7 and 9 members, but there exist also 2-member or more than 10 (20, 30) member EEIG. In some countries (Greece, Ireland) EEIG can consist only of 20 members maximally.

Composition of the EEIG: There can be all kind of members – joint stock companies, limited liability companies, free professions, craftsmen, farmers, housewives who want to get into a business, but also public entities like towns or cities, public radio or TV stations, chambers of commerce, universities etc. An EEIG can be composed of any of them. The same is valid for associated members.

Registered office of the members: The normal members must have their seat in the EU; it doesn't matter if they have any of the EU nationalities, there can be also Chinese, Macedonian, US or what ever citizens. Associated members can, of course, be from any state in the world, if this is a third country, i.e. a non-EU state.

EEIG object: The object of an EEIG must be one of cooperation. If two companies from France and Denmark form an EEIG and both make plastic model cars, then it is not enough to write “The object of the EEIG is the production of plastic model cars”. The EEIG must have an auxiliary business activity, therefore it should be written like “The object of the EEIG is the cooperation of the members in development, production, marketing and sales of plastic model cars.”

Foundation: There must be a written statute for an EEIG, which not necessarily should be too long (8-10 pages are well sufficient). Associated members should not be mentioned in the founding documents. An EEIG must be, in most of the EU Member States, founded with the help of a notary who has to certify the signature of the Managing Director and pass all founding documents to the company register. The founding documents comprise a statute copy, which must be signed originally by all the members (but not by the associated ones), the minutes of a founding meeting where the Managing Director has been nominated and a declaration for the company register to be certified by the notary.

³² All language versions of the EU Regulation 2137/85 and all implementation laws of the EU/EEA Member States can be downloaded under www.libertas-institut.com (EWIV/EEIG/GEIE)

Prohibited for EEIG are:

- the membership of an EEIG as such in another EEIG (to avoid any non-transparencies),
- the employment of more than 500 people (this has been requested by the German delegation in the Council of Ministers of the EU, as they did not want to hollow out the worker codetermination in bigger companies),
- to hold shares in a member company (holding prohibition, but with some exemptions),
- to give loans (loan prohibition, but with some exemptions),
- to exercise control powers (control over personnel or management).

In the company law practice, these prohibitions are unproblematic and can easily be avoided.

Financial assets: EEIG can be founded with or without capital assets. Almost each EEIG, which is founded in the EU has no capital, at least at the beginning of its activity. This is a big advantage to limited liability companies, as there is no capital bound during the founding phase. This is also to the advantage of possible Macedonian associated members, for they can open a kind of presence in the EU, without any capital.

Change of EEIG registered office: As only company form in the EU, an EEIG can change its seat within the EU without major problems. So a “rotation” of the managing duties can be made possible.

Managing Directors and other EEIG organs: The competences of a Managing Director of an EEIG can be limited by a clause in the contract, according to which she/he must first obtain an approval of the members (by physical assembly, by fax, phone or e-mail) prior to expenses above a threshold (e.g. 500, 5.000 or 10.000 EUR).

There is no limit for the number of Managing Directors. In many EU countries, the role of the Managing Director can be played by a legal person, which can be from a third country (e.g. a Macedonian d.o.o. can be Managing Director of a Luxemburg based EEIG).

Besides the Managing Director, the EEIG has as compulsory organ the General Assembly, i.e. all members. They can meet, as indicated, physically, or virtually (online, per e-mail, in writing, by phone etc.). Once a year the approval of the last year’s balance sheet should take place.

Other organs like supervisory councils, scientific councils, steering committees etc. can be set up at the discretion of the members, and their competences can be defined according to the members. There is no compulsory organ like those mentioned.

Non-discrimination in public tenders: EEIG are protected of all discriminations in public procurement and public funded programmes³³. In the EU, EEIG can be, for instance, the single bidder in public tenders for all members, coming from different countries. This might, by the way, also be to a certain extent an indirect way for Macedonian SME to take part in public tenders.

³³ European Commission Communication 97/C 285/10 on Participation of European Economic Interest Grouping (EEIGs) in public contracts and programmes financed by public funds

Liability: The members of an EEIG have unlimited joint and several liability. If they are all limited liability companies (d.o.o.) they cannot be any negative surprise. On the other hand, there never has been a liability “accident” of none of the EEIG so far. Liability can also be limited by contractual provisions with clients, by limiting the competences of the Managing Directors or by a consequent financial controlling. All in all, EEIG are usually managed “by consensus” and therefore more likely to survive than any other company.

Taxation issues: EEIG in the EU only pay taxes on salaries (although only 15-20% of all EEIG have no personnel) and VAT, if they are obliged to. But they do not pay company profit taxes. Every profit has to be transferred to the members (not necessarily according to the heads, but also asymmetrically if so decided, i. e. for example 30% to the three members who were involved in a common project, and 10% to another member which did less). But all – or a part of – the profits can be left over for building up reserves, provided there is a decision of the member’s assembly for what purpose or project. No taxation office in the EU Member States has up to now dared to attach this practice, as they know exactly that an EEIG is under the regime of an EU Regulation, which as such can even break national constitutions.

EEIG are in most of the EU countries not set for company publicity, they can have a very simple accountancy (no double accountancy!) and they do not necessarily need a balance sheet. The taxation is a matter of the EU Member States, and at present it can be said that EEIG at least in the Netherlands, Great Britain, Germany, Austria, Luxemburg – this is a cautious enumeration – are attractive also to those who do not want to charge themselves with fiscal and other company bureaucracy.

Examples: As in all company legal forms, there is a lot of entrepreneurial creativity in EEIG. Some of the examples, as EEIGs with big or smaller members:

- The French-German TV broadcasting station ARTE is an EEIG with seat in Strasbourg/France.
- Several big nuclear power companies form an EEIG (EFET – EEIG) for nuclear fusion research in Europe.
- EDCTP EEIG is an EEIG of research centres of 14 EU countries plus Norway for clinical tests in vaccination against poverty-related diseases, like malaria, tuberculosis and HTV, with seat in The Hague/Netherlands. Their budget is several hundreds of millions of EUR.
- The Brenner mountain tunnel works between Austria and Italy are managed by BBT – EEIG, an EEIG with members of the regions in Italy, Austria and Germany.
- There is in the Netherlands the European Federation of Harley-Davidson Clubs EEIG.
- Horse breeders from Ireland and Belgium formed an EEIG with seat near Brussels.
- Many law offices, tax advisors, architects and engineers form free profession EEIGs.
- Feminists from Austria, Germany and France formed a Gender Consulting EEIG in Salzburg/Austria.
- A Scottish economist, a German agricultural engineer and an Italian chemist form together an EEIG, based in Berlin, in order to be better positioned for international consulting jobs from the United Nations or the European Union.

Association clause: This should be set up separately from the foundation agreement³⁴, must be accepted unanimously by the EU members and the Macedonian associated member, and should read – minimally - e.g. as follows:

1. The Macedonian enterprise ... takes part in the ... EEIG as associated member. The EEIG full members and the associated member will work together to their mutual best, as if the Macedonian member would be a full member.
2. However, the Macedonian associated member cannot be mentioned in the company register.
3. It has no full voting rights, but will always be consulted, when the other members are consulted. It has the right to give its votes to the minutes of the EEIG.
4. It is not liable towards the outside, but joins internally any liability of the full members.

Conclusion

The Macedonian SIZ will be a good opportunity for Macedonian SME to train their cooperation capacity, be it with members from inside the country or from outside. For outside members, the Macedonian diaspora, in particular from the EU or Switzerland, will be of significance. Altogether, the Macedonian SIZ is a good and interesting legal instrument for cooperation, in particular for the domestic market. Until now, only very few SIZ are registered in Macedonia.

The EEIG is, together with the possibility of a de facto accession for Macedonian SME by being associated, a possibility for Macedonian business to get a foothold in the EU economy – at least more than without. Until now, there is no organised movement for this, but if one observes developments in Switzerland it becomes evident that almost every new EEIG between companies is not without Swiss associated membership. The reason is that these Swiss companies are already deeply involved in European cooperation, and on the other hand they want to participate in growing European structures. As a rule, they are extremely well managed. Why their example should not be valid for Macedonian enterprises, too?

Macedonian companies, if they estimate their fate going better in the case of any international link, should actively try to cooperate with companies in the EU. There are lots of advantages for them herein, and for the EU companies as well, for Macedonia has a lot to offer – be it only the “prolonged workbench”, like Slovenia has been in the first years of its independence. They should make active use of the offers e.g. of the EICC and others who have the promotion of cooperation on their flags. Cooperation between companies cannot be imposed, but can be developed from the inside of undertakings. In this context it is astonishing that many Macedonian enterprises do not yet try to profit fully of the diaspora in Europe, be it with commercial contacts, with assistance in purchasing, selling or subcontracting. One very interesting alternative in this spectrum – not more, but not less – is being an associated member of an EEIG.

³⁴ According to the principle „What is not prohibited is allowed“ the EU Commission was never against associated members. However, due to the Member State competences in company registration, it is not advisable to make complicated constructions in founding agreements with associated members.

Challenges for SMEs Projects

Liesl Muench

Background Information on Macedonia

The Republic of Macedonia is a country in transition to become a market-based economy. Early 2001, Macedonia signed the Stabilisation and Accession Agreement with the EU and became a WTO member in April 2003. Both events have started a harmonisation process, in which many laws will be adapted to international standards. The process of liberalization of the economy and the loss of several traditional export markets created both positive and negative effects. During the privatisation process many firms have down-scaled their production dismissing many employees, while on the other hand, many new businesses were created.

In 2003, the GDP per capita was 1.675 USD, which was composed of approx. 11% agriculture, 58% services and 31% industry. The share of the private sector in the GDP is about 60%. The main export goods are textiles, industrial manufactured goods, food products, including tobacco, and chemicals. The major export partners were in 2003: Germany (30%), Serbia/Montenegro (25%), Greece (25%), and Italy (11%).

In 2001, the country was stroke by a political and security crisis, which had negative impact on the country's economy. Since the signing of the Ohrid Agreement, the overall political situation, including the business environment, has changed substantially. An institutional support structure has been developed both for the private and the public sector. The finance sector has improved. A diversified banking sector is developing and functional, although it is still lagging behind the development in other countries in the region.

SMEs – the Backbone of the Economy

In all countries in transition, small businesses play an important role. In Macedonia, the support of small businesses is therefore one of the priorities within the government's program for 2002 – 2006. In 2003, 99,7% of all active firms had less than 250 employees, counting for about 61% of the total employment in the country. Regarding sectoral distribution, 52% are active in trade, 13% in industry, 6% in craft and 4% in tourism.

The small business sector contributes in many ways not only to the economic, but also to the political and social development of the country. The major functions of small businesses in Macedonia are e.g. the following:

- *Job Creation:* While many big firms are downsizing, small businesses often offer job opportunities, in particular, when they operate more successfully on the market after having improved their performance.
- *Competition:* An increasing number of small businesses will increase the competition on the local market, thus reducing inefficiencies resulting from the former economic planning system.
- *Local Development:* Increasingly competent small businesses are expected to have a direct positive impact on the development of the local economies.

Benefits could be e.g. the contribution to local revenues, the allocation of new products and services on the market, the provision of new jobs and thus tax income from businesses and individuals.

- *Economic and Political Democratisation:* Increasingly competent small businesses have a positive impact on democratic structures in the region, since they could decentralise the economic power from a few big firms to many small ones. Small businesses can easier work on the market independently of their political orientation than big firms. In small businesses - in contrast to big firms - technical capacities may often be more appreciated than the membership of a party.
- *Supply of Goods and Services:* Small businesses often play the role of suppliers to bigger firms - or to other small businesses - in the region. By assuming this role, they can reduce the dependency on imported goods having a positive impact on foreign currency reserves.

Problems Faced by SMEs

The business environment of SMEs between 2000 and 2003 has improved substantially, but still shows several constraints, including the following:

- *General legal and policy environment*

A SME strategy was adapted late 2001; the implementation program for this strategy has passed parliament at the beginning of 2002. However, the SME policy adapted by the Government is unknown among the SMEs. The institutional framework for the implementation of the SME policy is only partly functional; a market-based enterprise support sector, comprising in particular local service providers offering services applying market conditions is just about to emerge and is still very much concentrated in the capital of the country.

- *Taxation and bureaucracy*

Although the corporate tax rate is one of the lowest in Europe (15%), labour taxes and social security contributions are very high (up to 70%) and constitute a major obstacle to employment expansion. Tax incentive systems are not applied.

- *Access to markets*

The market in the Former Yugoslavia was well organised assigning certain economic activities to certain regions. After the break-up of the common Yugoslavian market, the production structures did not manage to adapt to the new reality, adjusting their production scale and range to the rather small domestic market. Access to international markets remains difficult, although trade barriers have been lifted due to lack of international quality standards and missing international contacts.

- *Access to finance*

The banking sector of the country has substantially improved since 2000. At the end of 2003, there were 21 commercial banks active in the country. Through these banks, 14 foreign donor credit lines are managed. However, it is still difficult for small firms to get access to those credit lines due to the conditions and high collateral requirements needed to obtain a credit and other conditions set by the banks or donors. Those requirements do not comply with the needs of SMEs. This applies in particular outside of the capital Skopje.

➤ *Insufficient support structures or measures*

The situation of non-financial support measures, in particular the offer of business development services, has been improved, but does often still not meet the needs of the small firms, neither in their attempt to set up a business nor in their day-to-day struggle for survival or in their growth process. This applies equally to the national, regional and local institutional structure as well as to the support measures offered.

➤ *Insufficient entrepreneurial culture*

Many entrepreneurs are lacking an entrepreneurial mind-set and relevant business skills, in particular new managerial and marketing skills, in order to face the transition process from a planned (and political controlled) economy to a free market economy.

➤ *Insufficient interest and lobby groups*

Most Macedonian entrepreneurs are not properly organised. Well functioning business associations of SME – with a clear vision for lobbying – are still rare, but slowly emerging. The institutions traditionally existing in the country are often still very bureaucratic and do not respond to the needs of SMEs within the market economy.

➤ *Corruption*

Anecdotal evidence suggests that corruption negatively affects SMEs, although the extent of the problem is unclear. For example, loan applications are sometimes more likely to be successful, if a bribe is paid. Corruption in public service is noted by international independent experts to be a widespread problem.

Main Strategic Approaches to SME Support in Macedonia³⁵

The aim of SME support should be to strengthen capacity of small entrepreneurs to improve the performance of their businesses in order to become more competitive on the local, national and international market, in particular the single EU market. This should contribute to economic growth, to the privatisation process, to increased employment and income generation and to a general improvement of living conditions in the country.

The main fields of intervention are

1. Improving access to finance and business development services (BDS), including the awareness on their availability and benefits
2. Promoting cooperation between businesses through clusters and supply chains
3. Promoting local and regional economic development
4. Export promotion for SMEs
5. Promoting the dialogue between SMEs and the state
6. Improving the framework conditions and creating an enabling environment for SMEs

³⁵ The strategic approaches explained must be seen as general guiding principles and need to be adapted to the local reality of the country and the region, in which they are applied. It should be noted that there are other approaches applied which are not discussed in the framework of this paper such as e.g. all questions regarding organisation development, in particular support to business associations.

In order to implement SME support projects there is a wide range of approaches to be applied. The most important ones for Macedonia at present are introduced below.

Market Development Approach

The Market Development Approach is at present the most commonly applied approach in SME development. It is outlined in the "Guidelines for Donor Intervention on Business Development Services for Small and Medium Enterprises", published by the Committee for Donor Agencies for Small Enterprise Development³⁶. The guiding principle in this approach is that (a) efficient markets should lead to a better allocation of resources and that (b) SME can improve their performance by the application of Business Development Services (BDS).

The underlying assumptions for this approach are:

- A fundamental belief in the principles of the market economy, where the State has a role in providing an enabling business environment, in correcting or compensating market failures and in the provision of public goods, but not in the direct provision of private goods that can be more efficiently provided by the market.
- The assumption that the majority of BDS are private goods and are thus similar in nature to any other service. This implicates that market rules apply for BDS.
- The expectation that with appropriate product design, delivery and payment mechanisms, BDS can be provided on a commercial basis even for the lowest income segment of the entrepreneurial SME sector.

Project interventions concerning this approach are:

1. Creating favourable framework conditions and mechanisms to enforce commercial BDS
2. Strengthening the supply side for BDS
3. Developing the demand side for BDS
4. Matching demand side and supply side to allow interaction of and transactions between service providers on the one hand and service users on the other.³⁷

Cluster Approach

The cluster approach³⁸ is gaining importance in SME development. It was previously applied primarily in smaller EU member countries, but has proven to be also successful in EU Accession countries.

³⁶ Source: "Guidelines for Donor Intervention on Business Development Services for Small and Medium Enterprises", Committee for Donor Agencies for Small Enterprise Development, ILO/Worldbank/GTZ, February 2002

³⁷ Further information on this approach can be found on the web sites www.wiram.de and www.gtz.de as well as on the web sites of other donors like USAid, ILO, SDC, etc.

³⁸ This section is based on www.gtz.de/eu-clusters where further information can be found. For further information on the cluster approach, please see Michael Porter "The Competitive Advantage of Nations", published 1990.

Clusters are groups of (competitive) companies which have supplier relationships to each other, produce complementary goods or jointly use production factors / technologies. A cluster is thus a production network in which (a) firms at the same level of production or marketing (horizontal cooperation), and/or (b) subsequent production and marketing levels (vertical cooperation) and/or (c) different sectors / branches (lateral cooperation) collaborate in a value-added chain. Various kinds of cooperative relationships can be distinguished according to the type of jointly implemented activities.

The main characteristics of clusters are identified as:

- The competitiveness of a cluster is more than the sum of its parts: comparative advantage arises through network structures
- The networks include firms and organisations with supporting functions
- The relations in the network are characterised by features such as competition, cooperation and interdependence
- The geographic concentration of clusters and the related proximity to other economic entities gives rise to positive externalities.

The main intervention measures by different actors are

1. State (Macro Level)

- creating legal and administrative framework conditions promoting competitiveness;
- planning and implementing sustainable assistance concepts that support cluster development;
- promoting general national competitiveness through promotion of quality and innovation, adequate technologies, market access etc.;

2. Public and private institutions (Meso Level)

- simplifying administrative procedures;
- offering need-oriented training and upgrading and research / development services;
- supporting the self-help capacities of the business sector through the provision of commercial business-related financial services and BDS.

3. Business sector (Micro Level)

- increasing competitiveness in local, regional and international markets through suitable production processes, quality management, product innovation and orientation to target markets etc.;
- cooperation with other firms and related institutions in order to strengthen sectoral and regional competitiveness.

Local Economic Development Approach

The local economic development (LED) perspective is gaining importance in SME support in Macedonia, in particular after the legislation on decentralisation has been enacted. It is a very broad approach, combining not only the two approaches mentioned above, but also elements from skills development, investment promotion, start-up promotion, organisation development and other fields.³⁹ Moreover, the LED approaches emphasize inter-linkages and synergies to environmental development, urban planning and social development.

³⁹ A more detailed explanation of the method can be found under www.wiram.de, where further readings, including links, are available. For further information, see LED Toolkit on the mentioned web site.

The main aim of local economic development is to create opportunities with a local perspective, to overcome fragmentation of the local economic sectors by stimulating networking. In order to achieve this, LED initiatives need to create trust and social capital among local stakeholders and to develop a joint perspective for the local entity regarding economic development issues. Successful LED initiatives are aimed at making the local market more functional by removing entry barriers, increasing the access to information, amplifying supply and demand and improving the allocation of locally available resources and skills.

The overall objective of LED is to create employment and income generating activities at local level by

- Creating a favourable environment for business
- Promoting the competitiveness of firms, particularly SMEs
- Creating opportunities for new businesses (attracting investment / facilitating business start ups)

Guiding principles for launching modern LED initiatives are

- Looking at strengths instead of weaknesses by identifying the potential for a unique advantage
- Going for activities with a quick, visible impact, instead of struggling with strategy building and addressing biggest challenges, often difficult to implement.

The guiding questions regarding the implementation of LED measures concentrate around

- What is the basic economic structure of the locality (city, region)?
- What are the competitive advantages, assets, potentials and opportunities as well as constraints of the main sectors of the local/regional economy?
- What can realistically be done to strengthen strengths and to alleviate weaknesses?

Best results have been achieved in the past with participatory methods including all different stakeholders of a local economy , such as representatives from local public authorities, local public and private institutions, as well as from the business sector. One successful method for planning and implementing LED initiatives is the so-called Participatory Appraisal of Competitive Advantage (PACA)⁴⁰. It allows to quickly evaluating the strengths and the weaknesses of a local area in an action-oriented, participatory, bottom-up way identifying actions for immediate implementation.

SME Support in Macedonia

The Macedonian Government gives high priority to the development of the small business sector. The new Government has passed in 2002 the National Strategy for the Development of SME, the Act on SME Development Support, the Law on the Macedonian Guarantee Agency, the Law on Realisation of Handicraft Activities and the National Policy for Development of Technology. In 2003, the National Program for the Support of Entrepreneurship, the Law on the Establishment of an Agency for Entrepreneurship, the National Program for Foreign Investment, and the European Charter for Small Businesses was

⁴⁰ This method was developed by the German consulting company MESOPARTNER and is at present applied in over 15 countries world wide. Further information regarding this method can be found on the web under www.paca-online.de.

adopted. In 2004, the Company Law, the legislation on decentralisation and the revised Handicraft Law passed Parliament.

All those activities aimed at the facilitation of the establishment of a favourable institutional, legislative, administrative and financial environment for small businesses in Macedonia comparable with other states in the European Union.

The first steps into this direction were taken in 1996 with the support of the European Commission. An integrated program has been developed under which the National Enterprise Promotion Agency (NEPA) and five Regional Enterprise Support Centres – RESC (Skopje, Strumica, Veles, Kumanovo, Bitola) were founded; in 1999, the British Know How Fund opened their Enterprise Support Agencies (ESA) in Ohrid, Tetovo and Gostivar, and in 2000, the Swiss Development Co-operation established the Prilep Region Enterprise Development Agency, so that SMEs in 9 of the 11 economic regions of the country had access to decentralised business support facilities.

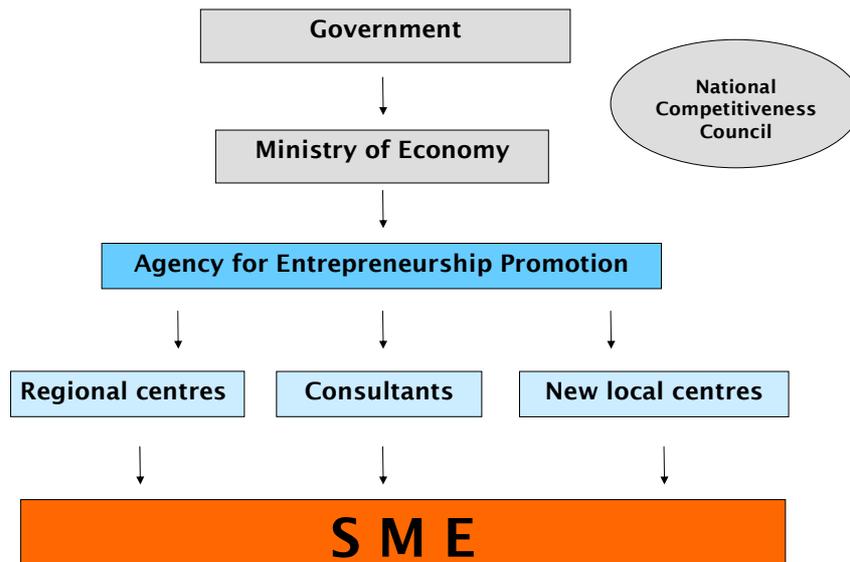
Governmental Support

At present, the support to small and medium-sized firms in Macedonia is ruled by the following documents:

- The National Development Strategy for Small and Medium Enterprises (SME),
further on: SME Strategy
- The Program on Measures and Activities for the Promotion of Entrepreneurship and Creation of Competitiveness of the Small and Medium-sized Enterprises in the Republic of Macedonia,
further on: SME Program
- The European Charter for Small Enterprises - National Report Republic of Macedonia,
further on: SME EU Charter

The SME Strategy defines the general direction within SME Development in the Republic of Macedonia, the SME Program rules the implementation of the SME Strategy, while the SME EU Charter sets the priorities in SME Development necessary to achieve EU Accession.

The following institutions are foreseen to implement the SME Program:



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The major player on national level for the implementation and coordination of national and international support to the SME Sector is the SME Agency, called “Agency for the Promotion of Entrepreneurship” (APE)⁴¹. The major functions of the SME Agency can be summarised as:

- Information Gathering and Processing
- Implementation of SME Policies and Programs
- Coordination of Activities
- Research, Monitoring, Needs and Impact Assessment
- Entrepreneurship Awareness
- Export and Import Promotion

In order to be able to reach SMEs in all parts of the country, the SME Agency is planning to work through a network of local and regional support institutions, such as Regional Centres, Entrepreneurship Centres, Business Incubators, Entrepreneurial Zones, Euro-Info Centres, as well as Local Consultants.

Donor Support

In addition to the decentralised business support facilities, there are several donor-funded projects targeting the development of the SME sector. (A list of projects can be found in the Annex to this article.) The major donors in SME support were in 2004 the European Union (EU), the German Development Co-operation (Deutsche Gesellschaft fuer Technische Zusammenarbeit GmbH, GTZ), USAID, the World Bank and the Swiss Development Cooperation (SDC). The approaches of all those institutions differ from each other. The main focus of the EU lies in the support of governmental organisations in particular targeting at a more favourable business environment facilitating the EU accession of the Republic of Macedonia. The main focus of the projects of GTZ, SDC and World Bank are typically the support of businesses and their associations with complementary measures targeting also the policy level. USAID has a mixed approach, directing their SME support programs on the one hand towards policy making and on the other hand directly to the private

⁴¹ This agency was established in 2004 according to the Law on the Agency for Entrepreneurship as successor of NEPA, which was abolished in May 2004.

sector. However, most projects apply today a more holistic approach covering measures on macro, meso and micro-level, so that a clear-cut separation between the different levels of SME support within projects is impossible. All donors active within Macedonia apply the market development approach to a certain extent; however, none of them strictu sensu. The cluster approach is applied by projects of the GTZ and USAID, while the local economic development approach can be found in several projects, for which the responsibility often lies not within the Ministry of Economy but within the Ministry for Local Self-Government. The question is now, whether those internationally funded project and its approaches applied respond to the needs and the functions of the small businesses in Macedonia, in particular in regard to the country's foreseen accession to the EU.

Policy Support Project at the Ministry of Economy

The Policy Support Project is taken as one example of donor-financed projects aiming at the support of small enterprises. It is located in the Ministry of Economy, financed by the EU and implemented by the EAR. It started its operation in October 2003 and is planned for the period of one year, with the option of a short-term extension. The project's wider objective is to develop an environment favourable to SME establishment and growth. The project's purpose is to enhance the capacity of the Ministry of Economy in order to monitor the SME sector, to propose and implement policies and programs aiming at the improvement of the current SME environment and to develop specific mechanisms and measures of high priority during the immediate project period. The project's major beneficiaries are the Ministry of Economy, the Agency for Promotion of Entrepreneurship and SMEs.

Project Description

The project has two major components

Component 1: Strengthening Capacity of Institutions

This component aims at transferring knowledge to the SME Department of the Ministry of Economy, assisting the Ministry of Economy to propose and amend changes to the actual legislation relevant for SMEs, supporting the establishment and operation of the SME Agency, establishing an SME Observatory, including the elaboration of two annual reports (2002 and 2003), and revising the SME strategy and its implementation structure.

Component 2: Design of specific SME support programs and coordination of activities

This component aims at evaluating the impact of existing SME support programs, designing new financial as well as non-financial SME support measures, targeting programs to national and international funding sources, including a coordination of donor activities in the country, and integrating existing SME support mechanisms and agencies into the current strategy in order to improve the entrepreneurship environment through better coordination.

Intervention instruments within the project are

- Policy dialogue
- Research
- Consulting and Advise
- Training

The major questions are now, what is the impact of the activities and achievements of the project and how beneficial are they for the small businesses in the country?

Achievements and their Relevance for SMEs

Institutional Level:

- The organisation structure of the SME department is revised and a training plan is elaborated
- The set up and operation of the Agency for the Promotion of Entrepreneurship is supported.
- Recommendations for financial and non-financial SME support programs were issued
- The SME support mechanisms and facilities have been assessed in order to improve their operations and their usefulness towards the SME sector.

Those measures might have an indirect or even a direct impact on small businesses, if the support to small businesses results in an institutional support structure in function of and beneficial for SMEs. This requires a permanent and open communication between institutions on all levels and private businesses. A policy towards the sector can only be as good as the knowledge of the policy makers is about its reality. The same applies to its institutional implementation. In order to increase the mutual understanding, projects could establish communication platforms or could at least make sure to openly listen to the final target-group before advising institutions.

Policy Level:

- The SME Observatory for Macedonia is established and the first annual report is issued
- The Ministry of Economy was supported to elaborate the SME EU Charter National Report 2004

Those measures have more an indirect, long-term impact on small businesses. Their aim is to provide policy makers with tools to create a favourable environment for SMEs. If and how those tools are used is beyond the scope of projects.

- A document on Leasing in Macedonia is produced.
- A concept for venture capital fund has been elaborated and was discussed with policy makers as well as potential founders.
- A concept on guarantee fund is elaborated to be discussed with policy makers and donors
- A concept for the establishment of a credit rating agency is elaborated to be discussed with policy makers and donors

Those measures are also tools for policy makers, but with a more direct focus towards businesses, hopefully producing tangible benefits for SMEs, if implemented in an appropriate way taking into consideration the socio-cultural and the economic reality of the country.

Business Level

- All laws relevant to SMEs have been identified, catalogued; some were translated; a CD ROM containing those laws is issued.
- All credit lines are evaluated and findings were processed to be published as a booklet as well as a CD ROM

Those products have the most tangible impact for SMEs providing them with information to start and/or manage their business better. Project interventions on this level are methodologically most problematic due to the constant danger of market distortion. According to the market development approach, it is questionable, whether projects should become involved in such activities. However, the project decided to make the collected and processed information publicly available, but both products could have also been produced by a private service provider on a commercial basis.

Conclusions and Recommendations

SME support has high priority within the Macedonian Government. An array of international projects address the business sector applying a range of different approaches., But are all those measures really responding to the needs of small businesses to improve their performance and to become more competitive on the single European Market? In general, the business environment for SMEs in Macedonia is improving: The legislation is in process to be adapted to EU standards, the access to finance is easier, the offer of non-financial services has increased, basically through the availability of commercial business development services by a growing consulting sector. However,

- there are hardly any tax incentives, such as or tax holidays for business start-ups.
- small firms are treated legally in the very same way as larger firms despite their specific needs.
- The SME Department, responsible to politically target more than 98% of all businesses in the country, still plays a subordinate role within the Ministry of Economy. It is not appropriately staffed and organised.
- Most of the SMEs are not aware about the existence of a National SME Strategy or a National SME Program; many have never heard about the Agency for the Promotion of Entrepreneurship. This applies even more to firms outside of the Capital Skopje.
- The institutionally decentralised support mechanisms are often not serving the needs of businesses.
- There are many SME support projects implemented by donors as well as national agencies, but only a fraction of the SMEs have access to them.
- Best Practice in SME support is often known by international and national SME advisors, but rarely implemented On the other hand, some donors try to apply theoretic approaches in the country without adapting them to the local socio-cultural or economic reality.

In the past, support projects have played a crucial role in the development of the SME sector in Macedonia, but they need to be better adapted to the reality and the needs of the small businesses. There is often a major communication gap between the project designers and implementers and the expected beneficiaries. Best practice should be applied when developing projects. This particular applies to theoretic approaches that need to be adapted to the national and local context paying particular attention to existing differences within the country. In addition, experiences made by other projects and institutions should be assessed and lessons learnt documented and published.

The challenge for project designers is to create projects appropriate for SMEs in the Republic of Macedonia. This requires an open and equal dialogue

between all stakeholders. This dialogue must be characterised by mutual respect of all parties, being policy makers, business people, donors, foreign experts or local project staff – and it requires to make small businesses aware of benefits they can realistically expect from projects! As long as SME support projects are not completely in function to SMEs and as long as SMEs are not recognising the benefits they are gaining from those projects, the design and implementation of SME projects remain a challenge.

The European Charter for Small Enterprises – the Situation of Macedonia in 2004

Igor Nikoloski

The development of small and medium sized enterprises (SMEs) is of crucial importance for Macedonia's economic growth. A dynamic SME sector is essential in providing the necessary impetus for restructuring and reinvigorating the national economy, resulting in growth, employment and higher standards of living for the population.

The European Union has recognised the need for a structured framework of support for small businesses. The European Charter for Small Enterprises (the Charter) recognises the importance of collaboration in enhancing support efforts and to study and exchange best practice between the countries that have signed up to the Charter.

The Republic of Macedonia has every interest in joining this European initiative because of the need to improve the small enterprise sector. Consequently, the Republic of Macedonia joined the Charter during the Thessalonica Summit in June 2003.

According to the provisions of the Charter, Macedonia recognises the obligation to continuously work on improving the SME environment and to regularly inform DG Enterprises and the other Charter countries about planned activities, progress made and the problems encountered in the ten areas covered by the Charter. The standard form for performing this activity is the annual submission of the National Report⁴². In the same time, workgroups were formed which worked for the accomplishment of the planned priorities defined by the National Report 2003.

Realisation of the priorities defined in the National Report from 2003

Priority 1: 2. Field of Charter - Cheaper and Faster Start-Up

Objective

To simplify the forms and steps required for the formal business registration process.

Benchmark

Publish a simplified registration folder and user friendly guide for founders of small businesses.

Priority 2: 3. Field of Charter Better Legislation and Regulation

Objective

To create user-friendly guides on the regulations and applied standards that has to be fulfilled when the operations in a particular business commence.

Benchmark

Four main guides to be published covering major areas:

⁴² See European Charter for Small Enterprises, Ministry of Economy, First working draft (as to 31.8.2004), NATIONAL REPORT 2004, August 2004

1. Construction and other standards compliance (premises, utilities, fire protection, environment protection)
2. Completed and updated personnel files according the Labour Law
3. Sanitary and safety requirements for particular businesses
4. Minimal technical conditions and equipment to run particular business

Priority 3: 4. Field of Charter Availability of Skills

Objective

To improve the practical management skills available in SMEs

Benchmark

300 trainees to attend state co-funded pilot projects

Priority 4: 7. Field of Charter Taxation and Financial Matters

Objective

To establish set of measures that will increase the utilization of existing credit lines for SMEs

Benchmark

Raise the level of funds borrowed by SMEs 10% above the current trend within one year.

Priority 5: 9. Field of Charter Successful E-Business Models and Top-Class Small Business Support

Objective

To raise the availability of information about market opportunities and quality standards implementation

Benchmark

Fully operational Euro Info Correspondence Centre

1. Education and Training for Entrepreneurship

Primary education

The national strategy for the education system highlights the Junior Achievement Programme (JA), as being particularly important – a programme that is now being implemented in 112 countries. In Macedonia, it is implemented through the National Foundation “Junior Achievement”. JA programme includes young students in primary and secondary education aged between 7 - 18 years. The programme combines market economy theory and practice, adapted to the age of the pupils. By participating in this programme, young people have the chance to become a part of the global community, sharing the same knowledge, views as well as ideas on how to run a business, including business English. There are currently 43 primary schools involved in the program, 25 of which are located in Skopje. The total number of pupils having already participated in this programme totals 11.000.

Links: www.jaintl.org, www.jamacedonia.org.mk,
contacts: jmaneva@soros.org.mk

Secondary and vocation education

There are several programmes in secondary high and vocational schools to foster entrepreneurship, e.g. the previously mentioned JA programme also targets 42 secondary schools with a special adapted curriculum, and all pupils in high schools are required to take the Management and Business course. Eight high schools in Macedonia are part of the “Vocational Education Program” – VET1 and VET2 PHARE Programme. The aim of the GTZ-VET project is to restructure vocational education system by reforming the teaching agendas and programs.

All programmes can be seen under the following links: www.jaintl.org, www.jamacedonia.org.mk, www.gtz.com.mk, www.mon.gov.mk
Contacts: gtz-vet@mt.net.mk, jmaneva@soros.org.mk

University education

University education focusing on entrepreneurship improved substantially in 2003, mainly due to the increasing in the number of private, often foreign, educational centres such as South East European University in Tetovo; New York College, MM College, Faculty for Social Science (FON), often specialising in business-oriented education courses.

There are not yet separate undergraduate programmes for entrepreneurship. Entrepreneurship is only taught in economics courses at university level.

Links: www.ukim.edu.mk, www.seeu.edu.mk, www.tfb.uklo.edu.mk

Post-graduate studies

The number of post-graduate schools is increasing. Higher educational institutions are increasingly attracting potential students with their programmes, however, only the Economics Institute has the option for becoming a Master level qualification in entrepreneurship.

Link: www.ek-inst.ukim.edu.mk, contact: pendev@ek-inst.ukim.edu.mk

Other initiatives

There are several other initiatives aiming at providing adult education programmes on entrepreneurial skills, mainly donor-driven and private ones. There is great potential for improvement of this sector, such as training the unemployed via adults education programmes driven by the needs of the labour market. A social partnership aiming at motivating more people to upgrade their education (life-long learning), could be the subject of a new law on vocational and adult education.

Link: www.soros.org.mk

2. Cheaper and Faster Start-Up

Registering a new company

The Company Law was adopted by Parliament in April 2004. Apart from the main types of companies there are two other legal forms: sole proprietors, being individuals registered as physical person and handicraft businesses, being firms with up to 10 people. Both legal forms allow a faster and cheaper registration.

Link: www.economy.gov.mk

Steps and forms to register a trade company

1. *Submitting the following registration documents to the court:*
 - *Statement from the founder(s) – (if the founder is foreign citizen the statement should be verified by a notary in the foreign country. If the statement is in a foreign language, a verified translation by an authorised legal translator and notary is necessary).*
 - *Authorisation for manager of the company.*
 - *Appraisal of the foundation capital value (if any), or transfer of the foundation capital to the private temporary bank account of the founder (minimum 5,000 Euros).*
 - *Announcing the company in the Official Gazette.*
 - *Company registration documents can be submitted to the court on Tuesdays and Thursdays. If all documents are correctly completed, the court decision for registration should take 7 days. According to the information received by the MoE the whole procedure would take two weeks, but according to information received by SMEs the process of registration takes around one month.*
2. *Obtaining ID number of the company in the State Statistic Agency.*
3. *Registering the company in the Public Revenue Office, obtaining a unique tax number as a legal entity.*
4. *Obtaining a unique customer number from the Customs Office, if the company is dealing with international trade.*
5. *Opening a bank account.*
6. *Obtaining working or residence visas, if a part of company founders, managers or workers are foreign citizens.*
7. *Registering the employees in the Employment Office as well as in the Health and Pension Fund.*
8. *Obtaining some additional permission, which may be needed (e.g. for technical issues, hygienic-sanitary issues, health and safety at work, etc.), from the relevant institutions in charge of these issues.*

Almost all steps require the personal presence of the actual founders. However, to accelerate the registration process, companies usually use authorized persons (e.g. advocates or lawyers experienced in this type of procedure). The average price for the registration of a legal entity, depending on the company type, varies between 150 - 200 Euros.

Links: www.worldbank.org.mk, www.stat.gov.mk, www.crm.org.mk

On-line registration

The idea of e-registration for businesses is relatively new. A law on e-signature has been passed, but many institutions are at present technically not in a position to process e-registrations. For the realization of this procedure, many changes are required, such as:

- 1) A network connecting the ministries and institutions involved in the process of registration needs to be established.
- 2) All relevant institutions need access to the database for company registration. For example, when a physical person wants to start-up a company but his dossier indicates that he already has one in bankruptcy,

registration will not be possible. Without improved connections, information exchange is not possible.

- 3) Software for all users of the institutional network has to be developed and introduced.
- 4) A banking system needs to be developed where utilization of non-cash payment is possible.

Once the above steps are implemented, the registration procedure of legal entities will be shorter, cheaper and more efficient.

Measures and tax exemptions for new registered companies

In order to stimulate entrepreneurship, new measures had been introduced to attract and motivate possible new enterprises (e.g. by the Law on Encouragement of Employment, applicable from April- December 2003). It is anticipated that the new Profit Tax Law will result in further measures and exemptions for newly registered enterprises.

Links: www.finance.gov.mk

3. Better Legislation and Regulations

Main elements of the national legislation related to SMEs

There are efforts for introducing new legal regulations promoting and easing the legal framework for SMEs, such as the Ministry of Economy's Programme for Stimulating Investment in the Republic of Macedonia (2003). However, the realization of this process is uneven due to delays in the implementation of legal reforms and the adoption of laws and regulations. FIAS reports have set out the obstacles in the business environment that need to be overcome (legal, administrative, bureaucratic, urban, court, banking, etc.). The relevant institutions need to recognise the importance of stimulating SME development and prioritise their activities accordingly.

Evaluation of effects from new business legislation

At present, there are no plans to measure the impact of the new business legislation, through initiatives such as Regulatory Impact Assessment (RIA). It is anticipated that the newly founded National Council for Competitiveness and Entrepreneurship will play a greater role in the development of draft legislation as well as the evaluation of its effects.

Evaluation of legislation on the business environment for small enterprises

The new Company Law includes the use of a "one stop-shop system" for company registration. However, the concept is not yet implemented. It should be implemented until autumn 2004. Other initiatives for simplifying administrative procedures, such as on-line registration and e-signature, which created a legal framework, were prepared by the Ministry of Economy.

Exemptions of SMEs from certain regulatory obligations

Generally speaking, there are no exceptions from legal obligations for enterprises concerning work concessions, registration, tax, etc. The most favourable conditions apply to the handicraft sector. The new Handicrafts Law has resulted in an even faster and simpler registration procedure, including the “silent consent” principle, compared with the sole proprietor and trade companies.

Involvement of business community in the legislative process

Entrepreneurs may participate in public debates on changes to the business environment through the Chamber of Commerce and various other business associations. However, the active participants in this forum tend to be primarily the largest companies. Small enterprises have limited scope to make their views known and thus to influence decisions and priorities in their favour. The establishment of new, voluntary professional associations should initiate more active participation of a wider range of firms.

In Republic of Macedonia function the National Economic Team (NET) and the National Council for Competitiveness and Entrepreneurship are focused specifically on dialogue and communication between the private sector and the government. The Ministry of Economy has recently established the Agency for Promotion of Entrepreneurship whose task is to ensure that the small enterprise sector is involved in the legislative process.

Links: www.covekovi-prava.gov.mk, www.apprm.mk

4. Availability of Skills

The situation in the country and progress achieved

Training and education measures for skill development are widely available, by international donors but also the business consultancy sector. This sector is developing in quantity and quality. Business support and skill development are increasingly being taken over by the private sector. If the training and skills are useful for the entrepreneur, they are generally willing to pay for them, such as in relation to ISO and HACCP certification. Many Macedonian entrepreneurs are not yet able to perceive the benefits from business services and demand remains depressed.

Links: www.haccpinfo.org.mk, www.usaid.org.mk

Contact: haccpinfo@zf.ukim.edu.mk

Significant Initiatives with a View to 2003 Recommendations

There are nine regional centres, five Regional Enterprise Support Centres (RESCs) promoting entrepreneurship, three Enterprise Support Agencies (ESA) and Prilep Region Enterprise Development Agency (PREDA). After 2002, the RESC centres continued functioning as independent units, providing similar services as in the past, but on a fee basis. The ESAs are now self-financing organisations, trying to survive by selling their services to SMEs, local and national authorities, as well as to international donors. Apart from basic training and consulting they offer demand-oriented services such as ISO and HACCP certification, regional fairs, business-to-business events, customised training and consulting services. PREDA is funded by the Swiss and acts mainly as a facilitator to support local service providers.

Other organisations exist, such as the Association of the Units of Local Self-Government of the Republic of Macedonia, of which the programmes are implemented in 13 municipalities. Other internationally funded initiatives functioning in Macedonia are the Southeast European Enterprise Development Programme (SEED), the Business Incubators of the World Bank, and Macedonian Enterprise Developing Foundation (MEDF). Apart from the lack of financial sustainability, a weak point of the above initiatives is that there is a lack of coordination and monitoring of their activities. As a result of this, data on the impact of these institutions is missing. A list of SME support projects can be found in the annex.

Link: www.mrfp.org.mk

5. Improving Online Access

Availability of on-line information to small enterprises

There is noticeable progress in this field. Many institutions, especially ministries and other governmental bodies, are publishing information of relevance to SMEs on their web sites. Entrepreneurs with access to the Internet can obtain information on the legal framework, legislation, taxes, customs, etc. In addition, several NGOs and other institutions are trying to make business information more accessible to enterprises. One of the best examples of this is the www.seebiz.net web site, a joint effort by SEED and GTZ.

Although online information for SMEs is available, this information is not yet reaching its target group effectively. Use of Internet and e-mail is still limited, compared to other countries. Some institutions do make online forms and documents available online, however, they still have to be delivered personally / by post since it is still necessary for them to be signed and/or verified.

Use of online services by SMEs

The number of SMEs using the Internet for promotion, advertising, communication with clients, etc. is increasing. Enterprises are beginning to sell their products and services, make reservations online, etc.

However, there are a number of constraints inhibiting online use of services, such as high prices for IT equipment, Internet access and telecommunications costs. It is anticipated that the level of competition will increase over time, exerting downward pressure on the constraints.

Significant initiatives and good practice to improve on-line access

The Government is promoting “E-Macedonia for all”, which aims at “improving and speeding up the transition activities of the country towards an informational society and a network economy”. The activities planned are connected with the preparation of the National Strategy for IT Systems, including pilot programmes for a regional model of the network economy.

Macedonia has to increase the awareness of citizens and businesses of the potential of online access. There is a lot of relevant information around, but it is not being adequately processed, exchanged and shared. The development of an electronic network among the different governmental organisations would be a beneficial investment into the future of Macedonia.

Links: www.masit.org.mk, www.dtk.gov.mk, www.emacedonia.com.au

6. Getting more out of the Single Market

Macedonian conditions for exporting and importing must be aligned with those of the international community. This assists Macedonian producers to avoid problems, for example regarding tax exceptions, ensures easier recognition of Macedonian products, etc. At the same time, easy imports enrich the offer of goods and services and increase competition in the market.

In order to enhance competitiveness, Macedonian products must comply with international quality standards such as HACCP, GMP, GAP, GHP, as well as ISO standards. The implementation of such standards is being supported with several programmes supported by the Macedonian Government and other donors, such as the EU, Netherlands, GTZ, USAID, etc. Of particular note is the role being played by the Macedonian Competitiveness Activities (MCA), a USAID-funded initiative grouping producers into clusters (tourism, lamb and cheese, wine, IT, and one which is not yet defined).

There are initiatives to promote Macedonian products, such as:

- ICE - Italian office for trade promotion
- SINTEF - Office for Norway-Macedonian business cooperation
- SIPPO – Office at the Swiss Embassy for supporting the Macedonian export in Swiss and other EU countries

However, there is further scope to develop a coherent image campaign for Macedonian products; develop customised marketing campaigns for the domestic market and abroad; raise awareness of other measures such as after sales support, etc.

Links: www.ice.it/estero2/skopje, www.sintef.no, www.sippo.ch, www.usaid.org.mk

Initiatives needed to improve the situation include:

- Promote Macedonian products within the country and abroad, e.g. through marketing and promotion campaign, fair participation etc.
- Transfer experiences from other countries to Macedonia (e.g. via business-to-business meetings, business forums, etc.
- Open “Macedonian Economic Offices” in other countries. This has been decided, for Italy and Germany (investment promotion) and Russia and Serbia (trade promotion).

7. Taxation and Financial Matters

Types of taxes and tax exceptions for enterprises

The existing tax system and policy is regulated by several laws:

- Personal Income Tax Law
15% or 18% depending on the income
- Profit Tax Law
Generally 15%; companies with more than 20% foreign capital enjoy tax exemption for the first years, if the company operates three more years. A new profit tax law is under preparation. It is not expected to change the tax rate and is likely to enter into force in 2005.

- **Property Tax Law**
First sale of property 0,10%; second sale of property 3%; third sale of property 5%.
- **Value Added Tax Law**
Generally 18%, food 5%. Tax exemption can be granted to enterprises with less than 20.000 Euro turnover. VAT can be recovered.

There are no special tax exemptions for business start-ups, but there is a tax exemption for production firms reinvesting their profit in fixed assets, if the value does not exceed 100.000 Euro.

Access to finance through banks and financial institutions

No new credit lines have been introduced since last year, most of the existing credit lines are realized through commercial banks and saving houses. An important development took place in 2003, when the first commercial micro credit bank – ProCredit Bank – started its business. The bank has at present about 10 branches all over the country and is expanding its operation so rapidly that it is already issuing the largest number of published credits to SMEs of all registered commercial banks in the country.⁴³

Although there are signs of improvement, the commercial banking sector is not ready to satisfy the financial needs of SMEs. Basic argument remains that they consider SMEs to be risky clients. Banks often complain also about the low quality of business plans and the risk of working with enterprises with limited or no track-record.

The banking sector as such is becoming more and more aware of the fact that SMEs can be good, profitable clients. In recognition that the commercial banks are not always able to deal with the risk of working with certain types of clients, there are initiatives in the pipeline to introduce different forms of risk sharing and insurance.

Links: www.seaf.com.mk, www.mbdp.com.mk

8. Strengthening the Technology Capacity of Small Enterprises

Programmes for technology transfer promotion

There are several initiatives for technology transfer promotion.

Within the Ministry of Education and Science, a department supports technology development via direct co-financing of project entailing technological innovations. The support covers up to 50% of the costs of the actual project, up to a maximum of 5,000 Euros.

The GTZ Transfer of Technology project covered 4 Technology Transfer Centres in Skopje and Bitola., but has terminated recently.

Obstacles to efficient technology transfer

Government and related state institutions could further facilitate better access to know-how, licences, patents and financial means in order to foster technological development and technology transfer. Foreign Direct Investment promotion programmes, venture capital fund programmes and Business Angel

⁴³ For more information on these questions, see the article on access to finance in this book (also covering guarantee funds)

Networks could have a positive impact on technology transfer. Financial tools available to stimulate technology transfer are practically non-existing

Steps for improving the situation

The starting point would be for the state institutions to better understand the significance of this issue. Learning from others, such as Scandinavian countries, as well as creation of investment promotion programmes for technological innovation can accelerate economic development. Such programmes could be financed either by international donors as well as national institutions. Good examples of such initiatives include the GTZ Technology Transfer Project and the MCA clusters project.

Links: www.gtztechno.com.mk, www.mca.org.mk, www.mon.gov.mk

9. Successful E-Business Models and High-Level SME Support

The legislation for e-signature and e-business has been adopted and a law regulating pirate and illegal software has been implemented. Thousands of electronic materials have already been confiscated and destroyed as a sign of the Government's determination to deal with this issue. Another step was introducing registered (fiscal) cash-bills and making their use compulsory.

The laws are difficult to implement, due to technical reasons. There are 7 Internet providers and recently ASDL access became available. All types of equipment and standards can be found on the market.

Training for Internet and IT use is relatively well developed in Macedonia.

Many SMEs are not yet computerized and the prices for computers and Internet access are comparatively high. Many firms do not have the necessary equipment to work according to the law on e-signature. Prices for computer equipment are higher than in other countries in the region.

Link: www.mt.net.mk

Contact: eicc_mk@ic.mchamber.org.mk

10. Stronger and More Effective Representation of SMEs

Representation of SMEs on national level

The promotion and presentation of SMEs within the state and abroad is realized through a number of different institutions and mechanisms. One of those institutions is the Chamber of Commerce. Since membership was until recently compulsory, it has the largest number of members. Within the Chamber there are a number of departments working on economic development, including SME development. Their activities centre around participating on fairs, business meetings and other kinds of business gatherings. It is important to stress that only a small number of SMEs use the services of the Chamber and it is not generally regarded as being an effective mechanism for meeting their business needs.

Another initiative is the National Council for Competitiveness and Entrepreneurship, established as a link between the government and the private sector. However, the interests of the SMEs are generally not fully reflected in the policy of the state towards the SME sector and small entrepreneurs are generally not involved in the preparation process for laws, regulations, strategies etc. focusing on economic development. This raises the issue of whether the Council can be adapted to better take into consideration the needs and priorities of the SME sector, or whether an alternative mechanism for Government - Small Business dialogue and consultation will

need to be established, perhaps linked to the Agency for Promotion of Entrepreneurship: This has been recently created as the successor of the National Enterprise Promotion Agency. The Agency was established and has recently appointed a Board of Directors and an Executive Director. It will increasingly be active on behalf of the SME sector and will be a key mechanism for ensuring stronger and more effective SME representation.

At the local level, certain RESCs and ESAs are increasingly representing the interests of their clientele in relation to SME activities. For example, by organizing local fairs, the ESA centres are making efforts to promote local enterprises, as well as enterprises from other regions.

In addition, there are several other business associations such as the Macedonian Association of Food Processors, the Association of IT Firms, the Macedonian Trainers' Association and other small and informal associations, often organised at the local level, covering mainly a specific sector of the local economy. The latter associations typically have good contacts to the local authorities, but have little or no relevance at the national level.

Links: www.esa.com.mk, www.mchamber.org.mk, www.apprm.mk

Participation in the policy-making process

The participation of Macedonian SMEs in the preparation of the sector policy and strategy is not yet optimal. A structured dialogue does not yet take place. SMEs are generally not aware of the existence of the SME strategy, the SME programme or the Charter. Entrepreneurs are critical of the current situation. In the future, the Ministry of Economy SME Department will seek to promote the policy elements before the final versions are passed on for Government approval, in order to allow the feedback from the target-group to be incorporated into the policy papers, e.g. by public events.

ANNEX: SME Support Projects in Macedonia

- **European Union (European Agency for Reconstruction)**
 - Technical Assistance for Banking Sector Reform aims to develop the banking sector in the country.
 - Establishment of a European Business Association tries to develop an association for better collaboration with companies from the EU
 - Euro Info Correspondence Centre will provide the access to information on EU legislation, enterprise policy from DG Enterprise, on standards, programmes and sources of finance for local SMEs.
 - Management of Human Resource Development Fund aims to develop and strengthen the critical part of the human capital in local companies.
 - Policy Support to the Ministry of Economy aims to support the SME Department of the Ministry of Economy and the newly established SME Agency.
 - Technical Assistance to the Institute for Standardization, Metrology, Accreditation, Quality Validation – SMAQVA tries to examine the current situation in the country and to propose recommendations.

- **Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH:**
 - Private Sector Promotion Project - providing technical assistance to associations of private firms.
 - Agro Promotion Project - providing technical assistance to associations of entrepreneurs in the agricultural sector.
 - Technology Transfer Project – focusing on an efficient technology transfer and on establishment of private centres for technology transfer.
 - Project for Crafts Support –assists the Government in the development of legislation related to crafts operation.

- **USAID:**
 - Credit Union provides micro loans for the sole proprietors or small family owned business.
 - Macedonian Competitiveness Activity is directed towards the enhancement of competitiveness by using a value-chain based cluster approach.
 - Company Law Implementation Activity
 - WTO Compliance Activity provides technical assistance to the Government on the process of accession and harmonisation of national legislation with the WTO commitments.

- **Swiss Agency for Co-operation and Development** has two SME support activities:
 - Regional Enterprise Development Agency (PREDA) in Prilep providing technical assistance to business support providers and SMEs.

- Swiss Import and Investment Promotion Project (SIPPO and SOFI) directed toward development of export and investment opportunities for Macedonian SMEs.
- **IFC/Worldbank: South Easteuropean Enterprise Development (SEED)** - support and technical assistance to private training institutions, management consulting companies as well as to Business Associations. (www.seebiz.net.mk)
- **EBRD: Business Advisory Support Program (BAS)** – promoting the use of local consulting know-how and expertise.
- **DFID/UK Know How Fund – Enterprise Support Agencies (ESAs)** in Ohrid, Gostivar and Tetovo; advisory and support schemes through British Executive Services Overseas (BESO) and others.
- **World Bank** – established five Business Incubators in conjunction with the Privatisation Agency, credit lines for private sector finance and private farmer finance, a micro loan scheme with a \$5 million fund which is aimed at NGOs, IFC small enterprise equity fund of US \$40 million.
- **EBRD** – Credit scheme for SMES for loans above \$125.000 and an equity investment scheme worth \$500.000 for private companies. Trade guarantee facility to underwrite Letters of Credit for SMEs.
- **SEAF** - Macedonia Small Enterprise Assistance Fund (SEAF), a Washington based not-for-profit fund management organisation, providing equity, quasi-equity and technical assistance to SMEs
- **Credit Fund “Moznosti”** – administering funds provided by various donors (up to \$17.500) for the purchase of equipment and for working capital under the leasing contracts.
- **Open Society (Soros Foundation)** - Loans for publishing companies and for individual agricultural producers ranging from \$2.000 to \$10.000. Also it provides a credit line for SMEs and micro Industries.
- **Netherlands Bilateral Aid Programme** – Channelling its funds to the Macedonia Enterprise Development Foundation (MEDF) within the National Centre for International Cooperation (MCIC) and to “Moznosti” providing small credits and technical assistance to micro and small enterprises.
- **Norwegian Bilateral Aid Programme** – Trying to match university knowledge with practice.
- **Kreditanstalt fuer Wiederaufbau (KfW)** – providing funding for SME development to the Macedonian Bank for Development Promotion (MBDP) in the range EUR 52.000 to EUR 410.000

Small and Medium Enterprises and Their Access to Finance

Ana Nikolovska

About 98 % of European enterprises are small and medium-sized, and they are responsible for two thirds of the total employment. Due to that, SME should have access to financial instruments that match their needs at each stage of development.

Access to finance problems can arise either in the supply side, or in the demand side. The supply side fails when appropriate sources of finance are not available at all, or they are not available on terms and conditions that are suitable for SME. The demand side fails when SME do not make use of the financing opportunities that exist, because of lack of information, lack of collateral, or through poor presentation of their case for funding. In order to overcome the hurdles in accessing finance, both sides need to be addressed.

Due to growing awareness of the problems encountered by businesses in obtaining loan and risk capital finance and the recognition that the creation of a more favorable financial environment for businesses is essential to foster growth and job creation, the improvement of the SME access to finance has gained in importance within the last few years.

To promote entrepreneurship in an efficient way, generally speaking, European, national and regional actions are focused on three areas of SME finance:

- improving the framework conditions,
- focusing on early-stage financing and
- increasing equity in SME balance sheets.

The role of the public sector is primarily to improve the general framework conditions of finance and take limited direct action only when market failures warrant it. Experience has shown that best results in SME finance are achieved when the public sector works with the markets and acts as a catalyst to encourage their development.

The persistent gap in early stage finance makes it necessary for the private sector to work to overcome it. Easily and widely available guarantee instruments that share risk eventually address SME difficulties in getting bank loans. Microlending can provide start-ups with a decisive help and loan guarantees are used efficiently to promote it. However, banks, as a general rule, are unlikely to invest in new business. The use of additional financial intermediaries and programmes makes it possible for financial instruments to be tailored to the different financing traditions providing additional leverage to programmes targeted at the financing gap in early stage SME finance. Supplementary popular techniques to help entrepreneurs and start-up companies to survive their early years and grow and prosper in the community are Business Incubators and Business Angels and eventually Venture Capital Funds.

The needs of entrepreneurial growth companies and the SME are different, but both need stronger balance sheets with enough equity. Many SME need

stronger balance sheets although formal venture capital is an option only for entrepreneurial growth companies. In addition to developing venture capital markets, promoting the possibilities provided by business angel networks receive attention at regional, national and European level. Some angels work closely with formal venture firms, while others are unconnected with them.

Because of riskiness and lack of collateral, equity instruments are most suitable for innovation finance purposes in most cases, but hybrid debt-equity and guarantee instruments can be fruitfully used in later stages of enterprise development. Innovative companies' finance can also be successfully supported by public-private partnerships.

There have been established many successful promotional institutions providing SME with loan and equity finance. The tendency is to use more and more risk-sharing instruments like loan guarantees, counter guarantees, and co-guarantees. The promotional institutions can also help banks to offer a range of intermediate financing products linked to equity, subordinated loans, and long-term loans.

However, the practice shows that SME tend as whole to rely more on debt finance and less on equity than large firms.

It is expected in the future, the gradual increase in the use of equity and alternative forms of financing to make enterprises gradually less dependent on bank finance. Consequently, the providers of risk capital will exert an increased influence on smaller enterprises, both in providing management support and in influencing decision-making.

Access to Finance – Obstacle to Growth?

Whether due to supply or demand constraints, many SME in Europe, especially those from accession countries, still consider access to finance as a barrier to growth. Clearly, stimulating a competitive financing environment for all companies is a key element in promoting an entrepreneurial economy and strengthening economic growth.

SME can finance their activities from internal or external sources. There are considerable differences between EU Member States in respect of the financial structure of SMEs between the share of own 'internal' capital versus 'external' financing. In some Member States (for example in Germany and Austria) small businesses rely much less on own capital and more on readily available bank loans. In others (France, Belgium, Portugal) own capital financing is more prevalent⁴⁴.

What is common though is that in most cases SMEs require external finance for business expansion — be it loans, other types of debt, or equity.

Financial Instruments for SME in the EU

The financial instruments supporting SME in EU in addition to regional and national initiatives are implemented by the European Investment Fund (EIF), which is the risk finance arm of the European Investment Bank (EIB). The

⁴⁴ The European Observatory for SMEs, 6th Report

European Investment Fund is a public-private partnership, owned besides the [European Investment Bank](#) by the European Commission and the banking sector.

The EIF's venture capital instruments consist of equity investments in venture capital funds that support SME, particularly those that are in their early stages of development and those that are technology-oriented. It is backed by two sources of funding:

- [Capital from the EIB Group](#) (EIB and EIF) forms the bulk of the EIF's investments.
- Capital from the European Commission is allocated under two different programmes: *ETF Start-up Facility* and *Seed Capital Action*.

The ETF Start-up Scheme supports the financing of SME in their start-up phase by investing in venture capital funds and business incubators. The funds should in particular be seed funds, smaller funds, funds operating regionally or funds focused on specific sectors or technologies, or venture capital funds financing the exploitation of R&D results. EIF invests usually about 15 % in the capital of a new venture fund and the rest of the investment must be raised from other sources.

The Seed Capital Action provides support for the long-term recruitment of new investment managers to reinforce the capacity of seed funds. The grants are aimed at covering management costs of hiring in new funds or incubators that include seed capital in their global investment programme. However, there has been little demand for this instrument.

Venture Capital is one of the most relevant sources of finance for companies to fund their investments. Venture capital consists of funds raised on the capital market by specialised operators. Venture Capital funds buy shares or convertible bonds in the company. They do not invest in order to receive an immediate dividend, but to allow the company to expand and ultimately increase the value of their investment. Hence, they are interested in innovative SME with very rapid growth rates.

Some Venture Capital funds specialise in certain sectors of activity (e.g. biotechnology, information technology...). Others may only intervene in certain stages in the development of the project/company. Generally, the following investment stages are distinguished:

- **Seed finance**, provided to research, assess and develop an initial concept before a business has reached the start-up phase.
- **Start-up finance**, provided to companies for product development and initial marketing. Companies may be in the process of being set up or may have been in business for a short time, but have not sold their product commercially.
- **Other early stage financing**, to companies that have completed the product development stage and require further funds to initiate commercial manufacturing and sales. They will not yet be generating a profit.
- **Expansion (or Development) finance**, provided for the growth and expansion of a company which is breaking even or trading profitably.

Capital may be used to finance increased production capacity, market or product development and/or to provide additional working capital.

- **Mezzanine (Bridge) finance**, made available normally by banking institutions. This can be for instance capital for a silent partnership, dividend-right certificates etc., often given to a company in the period of business enlargement.
- **Management Buy-out finance**, provided to enable current operating management and investors to acquire an existing product line or business.
- **Management Buy-in finance**, provided to enable a manager or group of managers from outside the company to buy into the company with the support of Venture Capital investors.

The EU also had its Joint European Venture (JEV) Programme, which should encourage the creation of transnational joint ventures between European SME. In this context, "joint venture" means a consortium, partnership or joint venture in the sectors of industry, services, trade and craft. Through JEV, the Commission provided a financial contribution to cover costs incurred in setting up a joint venture, up to a maximum of Euro 100.000 per project. But in the last years, however, this programme ran out, also because the EU as administrative level was too far away from the single enterprises, and the administration of this programme was too difficult.

Supplementary popular techniques to help entrepreneurs and start-up business firms survive their early years and grow and prosper in the European economy are Business Incubators and Business Angels.

The Business Incubator is a physical facility, which provides various sizes of offices or office suite, warehousing and manufacturing space, common loading docks, shared board/meeting space, kitchen facilities and a common reception area. The incubator provides a receptionist to greet visitors and to assist tenants in using a shared copier, fax, and audio-visual equipment and often times computers. The incubator manager assists tenants in preparing business plans, securing financing, business counseling and management advising. Tenants are expected to graduate from the incubator within a reasonable time frame to allow others to use the service (sometimes 3, or 5, years). The incubator recoups costs by charging reasonable lease rates and fees and charges for the use of specialized services and equipment. In the EU, incubators are thus often instruments of regional or local business promotion.

"Business Angels" or Informal Investors are wealthy individuals who are prepared to use their financial resources to make risk investments based on their experience and interests. They may be often retired senior executives of major enterprises, or people who have sold their companies and now wish to use the money. Their motivations are manifold and they may invest alone or in small groups.

Informal Investors or "Business Angels" are likely to take a "hands on" approach to their investment, normally choosing to become a shareholder in the company, that is part owner of it. Typically, they are good for investments below Euro 250.000.

However, the most frequently used external financing sources in EU are **overdrafts, bank loans, and leasing**.

Loan finance is the most important source of external financing for most European enterprises, over 99 % of which have less than 250 employees. SME can obtain medium and long term bank loans in most EU Member States at rates that vary at present between 7 % and 9 %.

Banks, as a general rule, are unlikely to invest in the equity of a new company. They can, however, provide loans and they can also provide the conventional banking services: cheque and deposit accounts, overdraft facilities, etc. Apart from these, banks may offer world-wide financial transactioning, insurance and risk management provide information brokerage and consultancy services. These services are of considerable importance to the smooth financial running of the company.

Overdrafts are used at a very short notice (or without any notice period at all), but they are usually more expensive than loans, depending on the risk assessment of the SME. Banks typically charge 8 % to 20 % for overdrafts (rates charged for exceeding an agreed overdraft limit are even higher) and sometimes do not offer short, medium and long term loans, since overdrafts are more profitable. Nonetheless, SME are often prepared to pay higher rates for overdrafts because of the flexibility they offer.

In countries where overdraft use is high, recourse to bank loans tends to be low (Italy, Greece, Denmark, United Kingdom).

In order to improve the access of SME to medium and long term loans, several EU Member States have well functioning loan guarantee schemes and mutual guarantee societies at national or regional level.

Loan guarantee schemes and mutual guarantee societies can improve access to loans through guarantees. To reduce the risk for the guarantor, a mutual guarantee society often uses a selection committee including other entrepreneurs to choose the beneficiaries. Often these societies also discuss the soundness of the business plan with the entrepreneur. Some guarantee schemes are viable without any public support, others cover their management cost through fees, but losses resulting from exceptional situations would be covered through reguarantees or counter-guarantees by public sector institutions.

The European Investment Bank (EIB) aims also to improve the financial environment of SME. For this purpose it gives medium and long-term loans (global loans) to financial institutions (intermediaries) that lend to SME.

Additionally, the SME Guarantee Facility, as a part of the [European Commission's Growth & Employment Initiative](#), is aimed to increase the availability of loans to small or newly established firms through risk sharing with national guarantee schemes, mutual guarantee schemes and other appropriate institutions, including the [European Investment Bank](#) (EIB).

Microfinance is the provision of small credits and other financial services to individuals establishing or already running very small businesses, often as sole traders. Some microfinance instruments may be targeted specifically at groups like unemployed, ethnic minorities, young or women entrepreneurs. Although

the size of microloans differs between EU Member States, the term usually refers to loans below Euro 25.000.

Microfinance has expanded also because of a lack of interest in the banking sector in small loans, as high transaction and overhead costs make this type of lending unprofitable. The existence of a group of customers which are not profitable enough for the traditional banking sector has been given as a reason for the need to further develop the microfinance sector in Europe.

Microfinance is provided in many cases by non-bank organisations (like trusts and charities), although in some Member States, notably Germany, the public sector financing institutions take on the responsibility. When banking legislation forbids direct extension of credit from non-banks (Spain, Italy), microfinance is often channelled through banks with the microfinance institutions taking over the administrative tasks.

Innovation finance in this context means the supply of finance for companies, particularly start-ups, which develop and bring to market goods and services that are either new, science-based, or contain other innovative elements. Such companies can most often be found in sectors like information technology, life sciences, medical equipment and other science-based industries.

Innovative start-up companies are very dependent on an adequate supply of finance at various stages of their evolution, and often have problems fulfilling all their financing needs. Usually their funding must include both equity and debt finance as both sources have their place during a company's life cycle. In early stage, seed and start-up finance is the most important source in order to develop innovative businesses. Direct equity investments dominate innovation finance in the expansion phase. While expanding the business and marketing products and services, innovative companies have difficulty servicing loans with regular payments of principal and interests.

Besides investing its own and EIB funds, the EIF invests Commission funds through the *Start-up Scheme of the European Technology Facility* and the *SME Guarantee Facility*, which target the existing early stage finance gap for innovative enterprises and the lack of collateral preventing banks from lending to these clients.

Further alternative sources of SME financing are: leasing, factoring, bond finance.

Leasing is particularly advantageous for undercapitalised SME, as it ties no capital, in some cases has no effect on balance sheet, and avoids the use of bank limits of the lessee.

Some recent innovations in leasing are of particular interest for SME. For example, with venture leasing, start-ups can get additional seed and early-stage financing without unduly diluting their equity. Venture leasing can work like normal leasing through equipment, but financing can also be provided against equity warrants, options or stock subscription rights. Venture leasing companies usually establish a working relationship with the start-ups they finance.

Cross-border leasing is growing but rarely used, mostly for big-ticket items.

Factoring is a method of improving a company's liquidity by substituting a cash balance for book debts, usually around 80–85 % of the approved debts. A factor manages the trade credits of the client company and advances cash against these credits. SME can use factoring to manage liquidity and cover their working capital needs, especially in those EU Member States where access to bank loans is limited. Factoring is particularly attractive for SME selling to large companies with good credit ratings, and natural users of factoring are manufacturing and distribution sector SME.

There are three main types of factors. The factor can be affiliated with a commercial bank, they can be affiliated with big industrial companies providing factoring in specialised markets, or be independent.

The varieties of factoring include invoice discounting, where customer debts remain assets of the SME until they are paid, and the factoring company is advancing funds against them. Invoice discounting is often used by larger companies with well-established credit management procedures that require faster access to the money tied up in debtor balances.

Bond finance, where a firm issues its own debt securities to investors directly, is favoured by larger companies because it provides them with a competitive alternative to intermediation by banks. These corporate bonds are generally rated by credit rating agencies, listed on public securities markets and, for large liquid issues, actively traded by the investors.

This is limited financial source for many SME, since the minimum size for a listed corporate bond issue is typically Euro 100 million.

An SME can use **credit insurance**, another financial instrument, against financial losses caused by the insolvency of a debtor.

Usually, credit insurance has export-oriented SME as target group, those wanting to explore new markets, those broadening their product range, or those having strong growth potential.

Moreover, credit insurance could help SME to start exporting by reducing the risks.

Supplier credits are an important source of financing for SME, and between 20% and 50% of outstanding loan finance can consist of supplier credits. The use of supplier credit depends on the length of the payment period, on the available own funds, and on the access to bank loans. For a considerable number of SME supplier credits are a more important source of working capital than bank loans.

Supplier credit is more expensive than bank loans and overdrafts, as clients receive a discount in the case of immediate payment.

A relatively small number of SME receive venture capital to support their high growth, but many more need external equity capital. These companies can be of any age, size or sector, but they have in common moderate growth prospects with a moderate risk. For these companies the available financing instruments include subordinated, unsecured loans either with high interest rates, or with lower interest rates but combined with equity warrants.

Guarantees for equity allow the financing of riskier projects for which loan guarantees for conventional debt are not a very appropriate instrument. Guarantees for equity investments can be used by banks and by other investors to widen their scope of operations within the SME sector.

At European level, the guarantee for equity instrument has been incorporated in the financial instruments of the *Commission's Multiannual Programme for Enterprises and Entrepreneurship*, managed by the EIF. The SME Guarantee Facility offers a special window for guaranteeing equity investments, either by counter- or co-guaranteeing of national schemes, or by directly guaranteeing equity investments of banks and funds.

The Financial System Must Continue to Develop

Generally speaking, the financial systems of the accession and candidate countries for EU supply less equity investments and bank lending than in the current EU Member States. Small firms suffer most from underdeveloped financial and legal systems. In particular, if company performance is not transparent and creditor rights are weak, collateral-based lending is not attractive for banks. Weak legal protection also discourages the use of trade credit and long-term lending, which is at a low level in the accession and candidate countries.

Credit constraints limit the growth of SME in most accession and candidate countries, but there are differences. In countries that have a business environment favourable to financing, also the SME sector is numerically stronger. Furthermore, foreign bank penetration has improved financing conditions for all firms, including SME.

Venture capital markets in the accession and candidate countries suffer from the weak and illiquid stock markets that limit investors' exit possibilities, and the preferred exit option of venture capital funds in these countries is to find foreign strategic investors. The venture capital investments have concentrated on later stage investments, mature enterprises and low-tech companies. The countries lack high-tech entrepreneurship, but the foreign dominated and young venture capital industry also lack the means like local knowledge and informal networks to find potential entrepreneurs. Furthermore, there are administrative and cultural barriers to entrepreneurship emanating from universities and research institutions, and links between them and businesses are weak.

Since 1999 the European Commission has been supporting capacity building in the financial markets of the accession and candidate countries through the SME Finance Facility, which has been funded by the *Phare* and *Meda* programmes. This facility has been managed by the European Bank for Reconstruction and Development (EBRD), the Council of Europe Bank in cooperation with the KfW Germany (Kreditanstalt fuer Wiederaufbau) and by the EIB, which have offered credit lines to local banks for SME lending. These banks have also received financial incentives to train their personnel and to lend to SME.

Overall, the accession and candidate countries need to pay attention to the further development of their financial systems. This includes capacity building throughout the financial sector making it easier for banks to become more acquainted with SME and more willing to provide medium and long-term lending. Furthermore, a gradual emergence of an equity culture will open the

way for a more developed venture capital industry, business incubators and angels network.

Financial Instruments for Macedonian SME

A comprehensive overview of all available financial instruments in Macedonia cannot be found. Statistics on finance for SME are generally of low quality or non-existent.

Recently, The Macedonian Enterprise Development Foundation has published a booklet “*Support of Entrepreneurship in Macedonia*”, where some information on available donors’ and commercial banks’ credit lines as well as information on available non-financial services for SME in Macedonia can be located. However, it is a limited information source and SME do not have a clear picture of all available financial services in the country.

Macedonian Financial Institutions integrate:

- Banking sector
- Leasing Companies
- Business Incubators
- A Guarantee Fund
- A Venture Capital Fund
- Fund for Technology Development
- Funds for Promotion Activities
- Donors’ Institutions

Commercial Banks address short and medium-term SME financial needs by granting loans, using own resources or donors’ funds. At present, 14 donor credit lines exist on the Macedonian market, of which the interest rates vary from 6% to 12% p.a.:

Available Credit Lines for SME in Macedonia

- KfW (Kreditanstalt fuer Wiederaufbau) credit line
- Credit line for export promotion, administrated by the Macedonian Bank for development promotion (MBDP)
- Italian credit line, administrated by MBDP
- German credit line – KMB, administrated by MBDP
- Credit line for professionals, administrated by MBDP
- Credit line provided by the Kingdom Netherlands, administrated by the Macedonian Enterprise Development Fund (MEDF)
- Two credit lines of the Foundation Open Society Institute
- IFAD (International Foundation for Agricultural Development) I and II
- The SME Commercial Finance Fund credit line, provided by USAID
- APEX Global Loan from the European Investment Bank (EIB)
- EU Phare credit line
- Japanese credit line, administrated by the Ministry of finance

Lack of collateral is repeatedly raised as being one of the most difficult hurdles for entrepreneurs to overcome when trying to obtain loans. This problem is exacerbated by the fact that SME sector has only existed for just over 10 years, and businesses have had insufficient time to build up a good equity base.

Banks are generally very risk averse, demanding anything up to 200 % collateral for loans, and have little experience of lending to SME or assessing the projects that they present. In addition, most entrepreneurs themselves lack business experience, which increases the reluctance of banks to lend to them. The result is that many new or young SME encounter major problems in accessing the money they need to start up or fuel their growth.

However, the introduction of a comprehensive and pro-active approach to lending by banks and of higher transparency by SME can improve the situation.

Additionally, the situation is improving as foreign banks take control of some local banks, transferring skills and applying the latest techniques in risk assessment and risk management to ensure that lending to SME customers is profitable (and therefore sustainable in the long term). Greater emphasis in future on cash flow analysis should lead to lower collateral requirements, thus increasing the number of good businesses that can be financed and allowing them to build up both a track record and their financial reserves.

Micro lending has been promoted very recently in Macedonia by very few banks and the two saving houses. It is offered at rates around 18 % p.a.

The banks often perceive microcredit as a high risk and low return activity due to the important failure rate and the high handling cost for micro-loans.

However, development of guarantee (co- and counter-guarantee) schemes can make it easier for the credit institution to provide microcredit because its risk exposure is reduced and its capital requirement is mitigated.

Export credit insurance (ECI) is available since 2001 through the state owned Macedonian Bank for Development and Promotion. The very small number of subscribers shows the ECI has not been advertised at all. Additionally, many exporters operate on the basis of long established relationship with the same clients, and do not feel the need for insurance against a risk.

Tight rules are necessary to ensure sustainability of ECI, exporters must be considered reliable, which means that they must meet international standards. As of today, the situation in Macedonia is not satisfactory, eligible exporters are not very numerous.

Nevertheless, ECI should be offered to exporters at the initiative of commercial banks, which will take the role in encouraging their clients involved with exports in applying for insurance. Referring to this, it is advisable to let them to be financially interested in the development of ECI, through appropriate fees and appropriate legislation.

Leasing has been promoted very recently in Macedonia. With exception of SME, located in the country's capital, few SME in other parts of the country are conversant with it. Only two leasing companies operate on the market and cross-border leasing is undeveloped.

Better promotion of the leasing as an alternative to bank loans, introduction of standard yearly statements, efficient court decisions and several legal amendments can significantly improve the situation.

Factoring is not developed in Macedonia at all.

Forty out of seventy surveyed Macedonian companies announced that they will use the factoring, if it is offered by financial institutions⁴⁵, especially for domestic operations.

The internal debt in Macedonia is huge and SME face huge difficulties in recovering claims, especially under conditions of inefficient court system. The factoring can reduce the internal debt in the country, but the risk is higher. Actually it is a meter of pure domestic factoring that is more risky everywhere in the world and requires extra collateral.

Although the factoring is more expensive than the banks loans, it is more flexible and it is quite convenient for SME lacking excellent creditworthiness.

At present, two Guarantee Funds and one Venture Capital Fund operate on the market.

A limited number of loans – 27 financings for 300.000 EUR, within 2003 - have been processed with the assistance of the **Guarantee Fund** that is financed by the SIDA (Swedish International Development Agency). The poor performances lay down on the recent start of the Fund and the limited number of agreements, signed between the Fund and the commercial banks.

Very recently additional private Guarantee Fund, set up by the MEDF, has started with working.

Provided adequate legislation and efficient court system, private Guarantee Funds are quite capable to contribute to the improvement of lending to SME.

Moreover, clear comprehensive financial legislation and the introduction of standard yearly statements is a preliminary issue when trying to attract new foreign investors to consider the market like Macedonia.

Although several **Venture Capital Funds** were registered, only one, the **SEAF**, operates on the market, providing **expansion (or development) finance**. SEAF was created by the European Bank for Reconstruction and Development (EBRD), the International Monetary Fund (IMF), USAID and DEG.

Few performing and fairly developed SME have been benefiting from SEAF. Reasons for that are found in poor SME managerial capabilities, unclear financial statements, insufficient financial profitability of SME and SME managers' preference to stay independent. Additional drawback is the weak and illiquid stock market in Macedonia.

The investment programme of SEAF is about to be closed. This is a serious disadvantage taking into consideration the up-scaling trend in EU of **venture capital** as one of the most relevant sources of finance for companies to fund their investments.

The **Fund for Technology Development** is administrated by the separate Department for support of the technology development of the Ministry of education. The Fund is financed by the budget of the Republic of Macedonia and 0.01% of the total budget amount is aimed for technology transfer and development. Funds are publicized through yearly bid for co-financing, by the Ministry of education. The bid is organized to encourage projects introducing

⁴⁵ "Capital", 10th June 2004, Year 5, No.241

innovation/improvements and a key condition is established co-operation with state university and/or research centres.

Considering the limited amount of disposable funds, limited number of projects profited in the last period. At the same time, it seems that the public awareness on the existence of the fund is insufficient and the serious disadvantage is the practise of relating the projects with public research.

The **Fund for Promotion Activities** is administrated by the Department for promotion activities of the Ministry of economy. The Fund co-finances promotion and other marketing activities of SMEs in the country and abroad, as well as implementation of ISO standards.

Additional co-financing source for diversified advice and consulting services for SMEs is the Programme of BAS (Business Advice Services).

Complimentary techniques to help entrepreneurs, especially start-up business firms in the EU, are the Business Incubators and Business Angels.

The **Business Angels** network is not developed in Macedonia at all.

The World Bank has established seven **Business Incubators** in the country. Most of them tackle many difficulties. Although tenants are expected to graduate from the incubator within a reasonable time frame to allow others to use the service, it seems that “reasonable time frame” is more considered by SME as long or “forever” time frame.

Meanwhile, many if not most of SME are not informed neither on Business Incubators existence in Macedonia, neither on their activities and possibilities they offer.

Conclusions and Suggestions

Overall, Macedonia needs to pay more attention to the further development of its financial system in the forthcoming years.

On a macro level, for the improvement of the SME access to finance needs an improvement of the whole economic situation in Macedonia, among which the accomplishment of the rule of law and efficient court system is a basic task. Finance needs clear rules from the public sector. Moreover, that will significantly contribute towards the growth of a more liquid market for financial instruments, new financial products and more diversified financial structure for Macedonian SME.

On a lower level, further capacity building throughout the financial sector, making it easier for banks to become more acquainted with SME and more willing to provide medium and long-term lending, is necessary. Bank lending will remain the main source of outside financing for a large majority of SME and it needs to be promoted, in particular using loan guarantees. Capacity building in the banking sector is essential to overcome the short history of available data and experience.

Further capacity building refers to the alternative source of SME financing: leasing, for example. The development of factoring might be expected in the

nearest future. Alternative sources of financing add flexibility and choice for the enterprises.

Start-up companies are particularly dependent on the availability of suitable financing. The risky character of these investments make equity financing necessary, at least in the early stage. However, Venture Capital Funds in Macedonia are still insufficiently oriented towards early-stage financing, and this can create problems. These systems should head more and more towards risk sharing by partnership and joint ventures and towards business incubators and business angels network.

Furthermore, a gradual emergence of an equity culture will open the way for emerging new financial instruments, such as innovation and bond finance, cross-border leasing, suppliers credits, guarantees for equity etc.

Additionally, entrepreneurs lack information about financing alternatives and on how to approach different finance providers like banks, venture capitalists or business incubators. Due to that, more efforts should be directed towards extensive awareness campaigns.

The increasing diversification and the use of diversified instruments from several sources as well as the reform of relevant regulations will require that SME become more open and transparent in providing information on their activities and finances to financiers. New financial products and developed financial markets require that SME increase their use of information technology also in access to finance. This means that SME also need training and mentoring to successfully use the financing alternatives available.

The BEST Report on Business Environment Simplification and Its Applicability in Macedonia

Marija Risteska

I Introduction

The ministers in the Governments of the EU member states, as well as the business leaders from these countries continuously stress the importance of SME to the economy of the European Union, to its competitiveness, to its growth and to its potential to create employment. Recently there has also been a growing appreciation of the significance of entrepreneurship.

Micro, small and medium-sized enterprises are socially and economically important, since they represent 99 % of all enterprises in the EU and provide around 65 million jobs and contribute to entrepreneurship and innovation. Considering the significance of entrepreneurship and SME for the European economy it was at the Amsterdam European Council on 16 to 17 June 1997, that the Europe's political leaders confirmed their 'strong commitment to the simplification of existing and new legal and administrative regulations in order to improve the quality of Community legislation and reduce its administrative burden on European business, particularly small and medium-sized businesses'.

For entrepreneurs and SME to flourish it is vital that they have the right conditions. Therefore the European Union has conducted several efforts in order to grasp the business environment of SME, their needs and the constraints for their development. Some of the mechanisms that the Union has been undertaking to enhance the SME development are the following: the BEST (**B**usiness **E**nvironment **S**implification **T**ask Force) report, the Work Program for the Enterprise Policy, the SME Charter and etc. All these are policy measures and it is up to the member states to change the legislative framework and adopt mechanisms that will endorse favorable conditions for SME development.

In Republic of Macedonia the number of SME amounts up to 99.7 % and therefore the development of the small and medium enterprises is a priority for the difficult economic situation in the country. However, the Macedonian SME face the same particular difficulties as the EU ones, and though there are number of interventions which aim at promoting the SME sector, the Macedonian Government should look up to the EU pattern of redressing the business environment by granting various advantages to SME.

II The BEST Report

After the Amsterdam European Council of 1997 the European Commission was invited to establish a task force composed of entrepreneurs, public administrators and academic experts to research, but also review the already sustained investigations on various issues related to the development of SME and entrepreneurship; to indicate priorities and to draft recommendations for action.

The objective set for Business Environment Simplification Task Force was to prepare an independent report which would make proposals for concrete measures to be taken by the Commission and the Member States to improve the quality of legislation and eliminate the unnecessary burdens which restrain the development of European businesses, particularly small and medium-sized enterprises (SME). This task also included a look at the issues of finance for SME, management and employee training, innovation and technology transfer and all aspects of administration.

The first meeting of the group chaired by Professor Chris Evans, OBE was held on 28 October 1997. The BEST in the course of its work has been taking evidence, at both a European and a national level, from business organizations, from public administrations and from other interested parties.

A central theme of the report is ***promotion of enterprise and entrepreneurship*** along with the related concerns for enhancing competitiveness and creating sustainable employment. Having this in mind the task force looked at all possibilities and examining how improvements could be made in key areas, such as education and training, taking on employees, access to finance and access to research and technology.

The report has five chapters:

- better public administration
- better education and training
- better employment and working conditions
- better access to finance and helping research and innovation
- implementation.

The Report has been submitted to the European Commission in 1999 and has initiated the launching of the Best Procedure in December 2000.

The Policy Support to the Ministry of Economy team reviewed the report and tested its applicability in Macedonia. The following pages contain the review and recommendations on how the Macedonian Government should proceed in simplifying the business environment of Macedonian SME on the basis of the guidelines set by the BEST report.

1. Better public administration

Enterprises should get the first class service from the public authorities. For this to be achieved, a change of culture is required in public administration. Public authorities regulate the business environment of SME and provide support to them in the form of advice, assistance and information. Therefore the public administrators should fundamentally regard themselves as service providers to enterprises. It should not be forgotten that the business sector pays the taxes

and provides employment, which again means taxes, so that the public administration can be paid by the state.

To achieve both a central position for regulatory reform and the necessary shift in the culture of public administrations, a primary recommendation of BEST is that **better regulation units** (BRU) should be established, responsible to the highest political levels, in the EU institutions and in all the Member States.

'These better regulation units should ensure that regulatory reform is consistently pursued and that the logic of a service orientation is carried through into the operation of the whole range of regulatory and support activities. Careful appraisal of proposed and existing legislation should be undertaken as well as of the costs of new administrative procedures.'

But to enhance the effectiveness of the new regulatory framework and establish new behavior in the administrative culture, strengthening the responsiveness of civil servants to the needs of the business community, special attention should consequently be paid to the development and application of the techniques of regulatory impact assessment.

Producing a Regulatory Impact Assessment gives to the regulators and various stakeholders, particularly those potentially affected by the proposals, the opportunity to consider fully all the impacts, including whether there are any unintended consequences.

In the European Union, governments are nowadays often publishing more of its policy thinking and proposals in the form of strategy papers and discussion documents as well as the more established formats of Green Papers (discussion papers of the EU), White Papers (binding legislative plans of the EU) and consultation documents. Regardless of the format, any published proposal or set of options, which impact on business, charities or voluntary bodies and *could* result in regulation are accompanied by an Regulatory Impact Assessment, even if the recommended option is not of regulatory nature.

However, Europe needs to promote an entrepreneurial culture so that more people take the risk of creating an enterprise. Consequently, BEST makes some important recommendations in relation to education and training and in relation to the flexibility of the workforce. In both of these areas changes are required to help existing enterprises to operate more efficiently and to release the entrepreneurial talents of those who, with a little encouragement, could set up on their own.

Its applicability in Macedonia:

It is recommendable for the Republic of Macedonia to create a unit in which all the government departments involved in the business environment will be represented. This unit should help improve the quality of legislation and promote clarity, simplicity and coherence. It should also ensure that the final form of legislation has taken proper account of the effect on businesses, for instance, by checking that amendments to legislative proposals have also been subject to impact assessment.

The creation of a group or unit under the direct responsibility of decision-makers at the highest political level. Its objective will be to carry out regulatory review and reform and to ensure that the point of view of SME has been taken into account in legislative proposals.

The impact of the legislation on SME must be assessed and its results to be taken in consideration when determining the form and content of future legislation aimed at simplifying the business environment. In that process best practices should be identified and efficient tools/mechanisms for introduction of the new regulatory instruments developed, as well as undertake regulatory impact analysis and design instruments for evaluating compliance costs and administrative burdens of the introduction of the new regulatory framework. The legislators should also set reasonable time-frames for implementation of legislation and train the civil service on the new administrative practices including new administrative forms and questionnaires to ensure that they can provide the services envisaged in the new legislation.

In Macedonia the regulatory impact assessment is not practiced at all. The public administrators are not aware of the benefits of this tool and its introduction would definitely change the administrative culture of the Macedonian ministries, which often play a role of both policy makers and regulators⁴⁶. This would eventually help the ministries to avoid spending the majority of their time on routine administrative functions and re-align their roles and functions towards the core functions of policy formulation and implementation, priority setting, monitoring performance and coordination.

Furthermore, if the trigger for producing a Regulatory Impact Assessment in most EU countries is that it has an impact on business, charities or the voluntary sector, than in Macedonia it is highly recommendable to undertake full assessment of the impact that new legislation and particularly already existing legislation has on SME, given their role of accelerators to the development of Macedonian economy. The Regulatory Impact assessment process helps to:

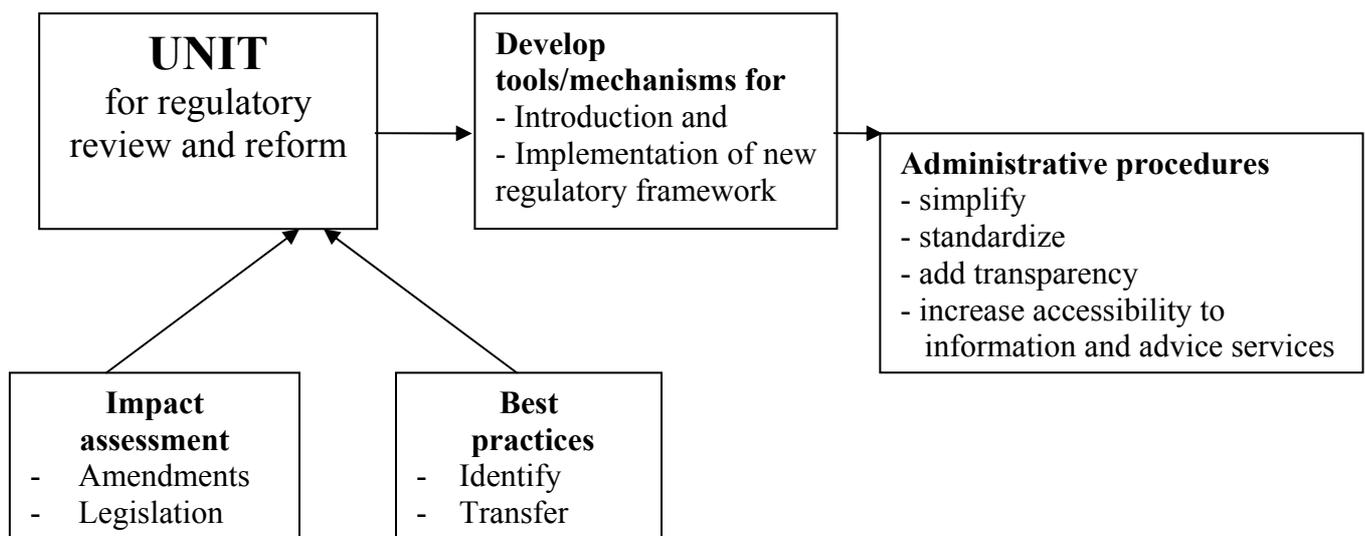
- think through the full **impact** of the proposals relevant to SME ;
- identify **alternative options** for achieving the desired policy change;
- **assess** options (regulatory and non-regulatory);
- ensure that the regulators **consult and that the consultation** is meaningful and reaches the widest possible range of stakeholders;
- determine whether the **benefits justify the costs**;
- determine whether particular sectors are **disproportionately affected** .

The efforts to create more favorable environment for enterprise development also involves introducing standardized and coherent procedures (for registration, submitting accounts, application etc.) in the public administration and the governmental agencies with which the enterprises have to deal. The simplification of such procedures should be a continuous process for the Government as well as to increase transparency so that enterprises would know what to expect and what is required from them. In that regard good

⁴⁶ In Macedonia in the last 12 years the Government proposed 90% of new legislation to the Parliament for adoption

information and advice services would be a valuable support in creation of business as well as helping them at critical stages of their development. Therefore access to information should be managed at many posts. The Agency for Support of the Entrepreneurship of Republic of Macedonia (APPRM) can have a considerable role in this effort, since it is ideal for enterprises to have only one place to contact in order to have access to all information and advice services.

The aforementioned process of regulating the business environment, introduction and implementation of new legislative framework and reform of the administrative procedures, would be more clearly perceived if put in a chart, such as the following:



This comprehensive effort would not only aim at creating more favorable environment for development of entrepreneurship and more importantly SME, but would also change the administrative culture in Macedonia, which has been persistently rated by citizens (in opinion polls) and foreign and domestic experts as “poor” or “very poor”.

2. Education and training

The new administrative culture that will support the development of SME is not enough for the economy to boost. A solid entrepreneurial culture has to be created. In order to achieve this in a comprehensive and effective way the education on entrepreneurship has to begin in schools and be carried through into the higher education and training systems. But at present there is a fundamental cultural problem in Europe due to the fact that the concepts of enterprise and entrepreneurial skills hardly figure in the school curriculum.

Therefore the BEST report notes that this situation has to change, and pupils and through their education students have to realize that enterprises and the entrepreneurial skills are vitally important for their own future. Their recommendations in this area are to encourage SME to work in close cooperation with schools; large businesses to recognize successful

entrepreneurs and SME within their sectors; government to set up a prestigious award for individuals, entrepreneurs and small businessmen.

This would praise the importance of entrepreneurship for the overall system and especially emphasize its role as a motor for national economy. Furthermore this approach makes the state and its policy makers responsible for providing ongoing training in entrepreneurial skills. The training should aim at improving the management abilities of entrepreneurs and ensure that they further develop their business, which will help develop the economy of the country as well as will create more jobs.

Its applicability in Macedonia:

Macedonia needs to develop entrepreneurship and recognize entrepreneurial drive as effective for the Macedonian economy. In that regard the country needs more new firms willing to embark on creative or innovative ventures and more entrepreneurs. As stated before **education** can greatly contribute to creating a more entrepreneurial culture, starting with young people and at school. Promoting entrepreneurial skills and attitudes provides benefits to society even beyond their application to new business ventures.

Entrepreneurship should be considered as a *general attitude* that can be usefully applied in all working activities and in life.

Therefore the objectives of education should include encouragement of those **personal qualities** in young people that form the basis of entrepreneurship, such as creativity, spirit of initiative, responsibility, capacity of confronting risks, independence. This type of attitude can be promoted already in primary school teaching.

Since Macedonia must meet the modern EU requirements for development of entrepreneurial and management skills this must be evident throughout the curriculum. Currently entrepreneurship is **neither required nor promoted** in Macedonia. In this respect, an important measure would be to **revise the national curriculum** in order to have entrepreneurship included either as a subject or as a cross-curricular theme and to address this measure coherently at all levels of education (from primary to higher secondary education, including initial vocational training).

However, some **international networks and NGO**, such as the Junior Achievement, GTZ, and EU (PHARE VET program) are currently disseminating entrepreneurship education among young people (primary and secondary school students) in Macedonia. They establish partnership with the Macedonian business community and receive a certain degree of support from the public sector.

Nevertheless, it must be noted that the teaching of entrepreneurship within the education system is promoted by external organizations, which have taken the lead in this area. Therefore, in addition to the direct action of these networks and NGO, relevant authorities should take this initiative and use them by for instance recognizing and better embedding of the existing international programs based on **student companies** or **practice firms** into the curricula,

as they provide well experimented methodologies that can be adapted to the local context.

Also further and innovative ways of promoting public/private partnerships need to be devised, and successful experiences as well as entrepreneurial best practices disseminated. Direct involvement of businesses and entrepreneurs in school activities and programs at local level needs to be encouraged.

Education on entrepreneurship is directly linked to training for teachers on entrepreneurship. In Macedonia there is no strategy for training on entrepreneurship for teachers. Possible tools that can address the education of teachers may be: the catalogue of training programs for teachers, supported by pedagogical material, ranging from developing entrepreneurial attitudes and skills to more specific business courses, such as courses in business administration and how to start up and run an individual business. In addition the already existing vocational training courses organized by the international networks and NGOs should include **“training for trainers”** targeted at teachers, with which effort they will strengthen the sustainability factor of their programs, but will also built an educational capacity of teachers in the area of entrepreneurship. The trainings should be organized in cooperation with the business community and should incorporate practical and useful skills for doing business.

The SME should also be encouraged to organize trainings for their staff. The aim of these trainings would be improving the skills of the businessmen and enabling them to follow new developments in the business world. The state could play an essential role in this respect by introducing fiscal incentives to encourage the SME to continuously train their staff.

3. Employment and working conditions

The SME need motivated employees that will easily adapt to the new conditions endorsed by the market itself and will adjust the operations of the company to those conditions. In that regard the BEST report is making major recommendations about the development of a direct dialogue between employers and employees at an enterprise and about addressing employment costs in order to ensure that the changes in attitudes and new entrepreneurial culture will take place within the right structures.

The report also raises the issue of enhancing the role of employees and SME organizations in the negotiations under the framework of the Social Protocol of the Maastricht Treaty.

**Engage employees more actively -
make SME operate more flexibly**

The flexibility of SME is triggered in regard to the application of the framework agreements that should provide space for the enterprise to adjust these agreements to their own state of affairs.

Its applicability in Macedonia:

In Macedonia the direct dialogue between employers and employees should introduce greater flexibility into application of the collective agreements, giving

firms the scope they need to adjust to their own particular circumstances. Also the SME should be better represented when the Social Contracts are discussed on national level. The existing national economic chamber does not articulate the SME voice as it is managed by the big companies. Therefore the initiative for adopting a law that will introduce the possibility for other chambers to be established should be strongly supported. This will strengthen the outreach of Macedonian SME and will consequently induce changes in the employment and working conditions in the country.

The employment regulations must be revised in order to allow fast commencement and fair termination of work contract. Currently the labor legislation is rigid at firing, which limits the hiring and directly influences the number of unemployed persons in the country. Macedonia has had unemployment since 1960s which has worsened with the transition to a market economy and have amounted to one-third of the workforce being unemployed, according to the Labor Force Survey. In that regard labor market flexibility must be improved through significant reforms of the legal and the administrative framework for employment. Subsequently sufficient growth is needed in order to spur job creation that would absorb significant numbers of those without work. In addition attention should be given to improvement of health and safety requirements, as well as completing of the social security system that is currently under reform.

4. Access to finance and helping innovation

When aiming at creating more favorable environment for SME development it is also necessary to generate a greater sensitivity to and awareness of the differences in the characteristics and needs of enterprises. SME are not homogeneous. The situation of a new, rapidly growing and highly innovative SME is not the same as that of a well established medium-sized company in a traditional manufacturing sector. Both situations are different from that of a micro-business providing a particular service.

Appreciation of the different situations facing SME is particularly important in ensuring that all firms have access to appropriate forms of finance. BEST's recommendations in this area are therefore aimed at identifying and remedying gaps in provision, and at ensuring that those enterprises that do have the capacity to grow and develop have the right conditions for doing so.

Cooperation between SME themselves, academics and large enterprises in 'clusters' is increasingly used as a means of putting together the necessary resources and skills and should be further promoted.

Its applicability in Macedonia:

In a not very developed entrepreneurial environment in Macedonia, the state has to develop various mechanisms to support, financially and non-financially, the start-ups of small businesses, as well as their future development. Therefore the government should design loan guarantee schemes that are

important for mobilizing a bank credit for smaller (micro) businesses at early stage.

In that regard a supporting legislative and administrative framework is needed to endorse the guarantee fund and a national credit rating agency. This is essential to increase the credit viability of Macedonian SME and to allow easier access to finance. The analyses show that finance is available for SME in Macedonia, though under rather restrictive conditions and for high interest rates, which influences on the utilization rate of these financing sources. Therefore the Government should encourage by introducing of different incentives for banks and other financial institutions, for them to lower the criteria for crediting.

Also the introduction of business angels as well as creation of networks of SME may contribute to the improvement of the business environment in Macedonia. Since taxation can be important for stimulating or in hindering the development of dynamic and innovative SME, the state should develop various mechanisms through which the taxation regime will be softened.

Research and technology development programmes in Macedonia need to be much more sensitive to SME requirements.

5. Implementation of the BEST report

Attention must be given to the process by which the proposed measures are implemented. These are the steps that the report itself is recommending as essential for the efficient implementation of afore mentioned findings:

- **First, it should be clear how much progress is being made and how quickly.**
Systems for monitoring progress need to be developed and used.

There should be a specific plan with a timetable as to how the recommendation will be carried out.

- **Then, there should also be a strengthening of the process by which other examples of best practice are identified and exchanged, particularly in instances where this could be an effective alternative to further regulation and legislation.**

The European Council sets out the actions taken at each level of the decision-making procedure: the European Commission, the Council of Ministers, the European Parliament and the governments of the Member States.

- In this way, BEST's recommendations will be contributing to a continuing programme of reform as well as pointing to the resolution of immediate problems.

The EU Commission, in consultation with the Member States and business organizations, sets up an Enterprise Panel composed mainly of entrepreneurs, to make a periodic evaluation of the progress being made.

III The European Enterprise Policy

1. The Best Procedure

Following the review of the BEST report conducted in 1999, the European Commission has launched the Best Procedure in December 2000 as a response to the **Lisbon European Council's** call for an **open method of coordination**. The Best Procedure provides a framework to support Member States' efforts to identify and exchange best practices in a limited number of specific areas of particular importance for enterprises.

The purpose of the Best Procedure is to **focus high-level political attention on key issues**, agreed with the national governments in consultation with business organizations, in order to initiate concrete changes in national policies that will ultimately improve the business environment for SME in the European Union. In more detail the Best Procedure aims to:

- **trigger policy change** in the Member States in areas of importance for enterprises, and so to improve the business environment;
- **attract high-level political attention** through clear, operational conclusions that capture the attention of Ministers, senior officials and the business community alike;
- serve the policy objectives of the **Multiannual Programme (MAP)** and the **European Charter for Small Enterprises**

The Best procedure endorses numerous projects. Best projects focus on **narrowly defined, well focused, issues and policy areas** significant for enterprises and where improvements in Member State performance are needed. These policy areas are usually identified through the various reports produced by the EU Commission's Directorate General Enterprise, including the Enterprise and the Innovation Scoreboards, the Competitiveness Report and the Implementation Report of the European Charter for Small Enterprises.

Best projects aim to generate policy change in Member States. All Best projects are financed under the MAP. Most importantly they target horizontal policy issues.

2. The Multiannual Program

The Lisbon European Council of 23 and 24 March 2000 set the European Union a new strategic objective for the coming decade: "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustained economic growth with more and better jobs and greater social cohesion". Therefore the European Commission in April 2000 proposed the Multiannual Programme indicating how the European enterprise policy could meet the challenges of globalization and the new knowledge-driven economy. In December 2000 the Council approved this proposal and subsequently adopted the Multiannual Programme for Enterprise and Entrepreneurship, and in particular for Small and Medium-sized Enterprises 2001-2005. The programme focuses on new economy challenges to SME and it is used as a means of progressing towards the objectives set by the European Charter for Small Enterprises. It builds on the best features of the Third Multiannual Programme for SME (1997-2000), as identified in an independent and external evaluation report in April 1999.

At present, the EU implements a Multiannual Programme (MAP) for Enterprise and Entrepreneurship, and in particular for small and medium-sized enterprises. This programme will expire on the 31st December 2005. Therefore in 2004, the Commission plans to present to the Council and the European Parliament a proposal for a successor programme to the MAP.

The objectives of the Multiannual Programme are rather horizontal than sectoral.

3. The European Charter for Small Enterprises

The European Charter for Small Enterprises is advancing on the basis of the Commission's proposed Work Programme for Enterprise Policy 2000-2005, as well as the proposed Multiannual Programme for Enterprise and Entrepreneurship 2001-2005.

<p>The European Charter for Small Enterprises was approved by EU leaders at the Feira European Council on 19-20 June 2000. The Charter calls upon Member States and the EU Commission to take action to support and encourage small enterprises in ten key areas:</p>

- Education and training for entrepreneurship;
- Cheaper and faster start-up;
- Better legislation and regulation;
- Availability of skills;
- Improving online access;
- Getting more out of the Single Market;
- Taxation and financial matters;
- Strengthening the technological capacity of small enterprises;
- Making use of successful e-business models and developing top-class small business support;
- Developing stronger, more effective representation of small enterprises' interests at Union and national level.

The Charter underlines the importance of small firms and entrepreneurs for growth, competitiveness and employment in the Union. Its objectives are also horizontal and not sectoral issues of the European Enterprise Policy.

IV Conclusions

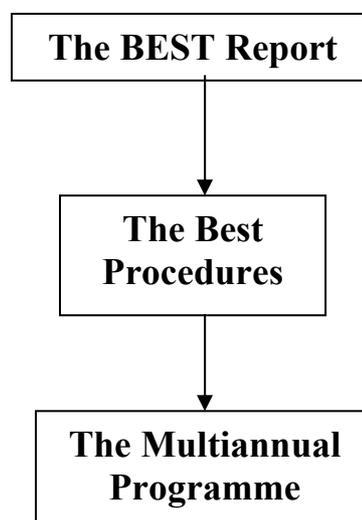
The European Union has a very wide and rather comprehensive enterprise policy. Some of the member states of the Union have been ambitious about the changes of their national policies in order to create more favourable business environment for SME, but others have at least temporarily internal reform difficulties (i.e. France, Germany, and Italy, three of the biggest EU members, have fallen behind in many important aspects of the Lisbon agenda).

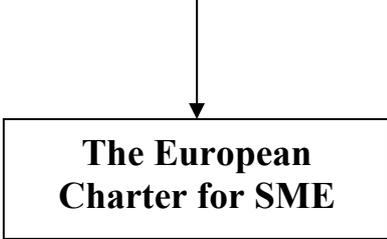
However, the mechanisms designed for evaluation and monitoring the implementation of the Multiannual Programme, such as the Best Procedure projects or the annual reporting on the European Charter for SME are sufficiently effective and influence change in the enterprise policy of the member states.

Therefore the EU approach of formulating and improving the enterprise policy advantageous to SME may be regarded as democratic, comprehensive, open and efficient, though rather slow. But this is somehow natural in a system of now 25 Member States, where every Member State has its own way of implementing EU recommendations.

The approach consists of

- analysing the state of affairs in the enterprise policy area, identifying constraints and proposing modes of improving the legislative and the administrative framework of particular importance to enterprises (BEST report and its recommendations);
- identifying projects that will target change in the member state policies towards SME (Best Procedure projects); and
- creating a tool with clearly set time-frames through which Member States are required to annually report on the progress they have achieved in introducing changes in ten key areas (European Charter for SME).





**The European
Charter for SME**

Macedonia should make use of the European experience and could undertake a nation wide study of the circumstances that characterize the business environment for SME. Such a study, that could follow the BEST report concept,

- would reveal all the constraints for SME development
- and can provide a basis for prioritising actions that should be taken in order to create a more favourable environment for entrepreneurship and small businesses.

The responsibility of the Government to submit annual reports on the status of implementation of the European Charter for SME should be considered to be very effective, since it would be a central mechanism that accelerates the change in the Macedonian business environment. The Charter has set clear timeframes, which are so far efficiently respected by the Ministry of Economy and its partners in the implementation process of the Charter.

EIC Network, EICs and EICCs: How to Work with the EICC in Macedonia

Dominique Guy-Chevanne

EU Enterprise Policy

EU Enterprise policy is in line with the aims specified in Article 130 EU Treaty insofar as it *"encourages an environment favourable for the development of SME throughout the European Union, improving the competitiveness of European SME and encouraging their Europeanization and Internationalisation."*

However, whilst SME offer a great potential for economic development in the EU, they are also more vulnerable and less prepared for the EU Single Market than larger companies, which are able to rely on the advice of their own specialists and legal experts. The Single Market offers SME large opportunities for economic development as a result of facilitating access to new markets, but most SME are still faced with major challenges:

- an increasingly complex
 - legal,
 - fiscal and
 - administrative environment,
- a shortage of information about Community issues,
- language barriers,
- and a lack of understanding about national laws that continue to apply.

EIC Network

Created in 1987 to facilitate access to pertinent EU information for businesses, the EIC network has since broadened its geographical scope and extended its range of activities. The EIC network has expanded greatly since its creation and, from the initial 39 centres it has reached the number of 286 EIC spread around the European Union, the EFTA member states in the EEA (European Economic Area⁴⁷) and the CEEC (Central and Eastern European Countries), 14 EICC (Euro Info Correspondence Centres) located in non-EU countries, and about 300 relay centres. In Macedonia, there is now one EICC, as Macedonia is closely linked with the EU, has a Stabilisation and Association Agreement (SAA) and has recently, on 22 March 2004 submitted an application for accession to the EU. The economy is already closely integrated, but of course there is still much to do. The EICC will help – as a kind of “third country” EIC – the local economy to close the gap gradually.

⁴⁷ The EFTA (European Free Trade Agreement) countries are Switzerland, Norway, Iceland and Liechtenstein. As Switzerland has refused to go into the EEA in 1992, only Norway, Iceland and Liechtenstein are member states of the EEA. The EEA is quasi the prolongation of the EU Single Market on EFTA countries, with the exception of agricultural trade.

European information provided by the EIC and EICC

Due to their strong relationship with the European Commission, EIC are a source of privileged information for SME. Equally, the network enjoys strong links with the business world at local, regional, national and international level. The combination of these alliances means efficient and quality services are provided, which can help companies positively position themselves on the European market. Whether companies:

- seek information on matters such as EU policy, legislation, funding or programmes;
- want to find a trade partner or supplier anywhere in Europe;
- need help with internationalisation or Europeanisation;
- require information products or documentation;
- are looking for accurate market or country analysis,

local EIC and EICC are always ready to help.

The information provided by EIC and EICC covers issues that may vary according to the current situation but the most common topics are as follows:

- freedom to provide services, for instance public procurement - EIC inform about relevant tendering opportunities; assist and advise companies along the different steps of the procedures; and help to find the right partners in case of subcontracting.
- EU aid and loans: EIC can help identify the most suitable Community funding source for a project. They can also advise and assist SME with regard to application procedures and accompany them through this process.
- Standardization, conformity assessment - EIC have been providing information and advice about certification and CE marking for many years. All EIC can provide lists of local certification bodies.
- Market Access - If a company wants to invest in or export to a foreign country EIC are able to provide information and products that can make internationalization easier. EIC can advise on customs regulations, legislative restrictions and requirements as well as investment incentives.
- Environment & Sustainable Development Information on: environmental legislation and standards; EMAS certification; Ecolabels and where to find assistance for environmental improvements can all be provided by the local EIC.
- Research & Development - Information on Commission research and development programmes and calls for proposals can be obtained from the network.
- Euro - EIC provided companies with Euro advice and information in order to be prepared in time for the currency changeover. This will once more be the case when accession countries or other Member States

decide to take part in the single currency, or have special problems with the application of the Euro.

- But also issues like Internal Market (harmonisation of national laws),
- taxation (VAT), or
- free movement of workers (social protection for migrant workers) (EIC only!)

EIC and EICC can, after all, boast a wide variety of specialists in fields, which can assist companies grow or embark on new ventures. Cultivated through the years, this expertise can be accessed by SME through any EIC in any country. This expertise ensures SME have the most relevant and current information and advice in a number of areas. EICC work closely together with EIC.

An all-inclusive and often preferred service that an EIC or EICC can do for a client is the **Business Co-operation & Partner Search** one. If companies are considering doing business inside or outside the EU, EIC or, where applicable, EICC can conduct a partner search and provide information on:

- funding and tenders,
- procedures for EU external aid,
- market analysis,
- legal provisions,
- co-operation initiatives.

The Skopje-based Macedonian EICC will be happy to work for all SME who have questions in the abovementioned sense. The address of the Macedonian EICC is:

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1000 Skopje, Republic of Macedonia
Tel. / Fax: + 3 89-2-3 16 32 33
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Macedonian SME Observatory⁴⁸ – What Does It Mean, How It Functions

Igor Nikoloski

According to the definition for an observatory, it represents a tool that helps scientists to overview the situation and the structure of the planet. Also, observatories are used for issuing reports and statistics about the findings.

In that context, the need of having a body that will overview the situation of Small and Medium Enterprises (SMEs) is of great importance for every country. Almost in every EU country 99% of all enterprises are SMEs. These enterprises also count for 2/3 of the total employment in a country⁴⁹. Usually, such a body in every country is the Observatory for Small and Medium Enterprises Observatory. The main concern of the SME Observatories is to overview the work of enterprises employing up to 250 employees (because by the definition SMEs are enterprises employing from 1 to 250 employees).

This Observatory collects data, conduct surveys on SMEs, produce analyses and every year it produces an Annual Report in which describes the situation in the country regarding the small and medium enterprises, their progress and growth from the last year, by commenting the data collected from various institutions.

The SME Observatory of Macedonia is a result of the commitment of the Government to support further the development of SMEs and to adapt its policy making to EU standards. The general objective of the Macedonian SME Observatory is to create a sustainable mechanism to follow up, analyse and compare with other countries the role and performance of Macedonian SMEs.

In Macedonia, the Observatory was established by the Policy Support Project (project managed by the European Agency for Reconstruction). The main task of the Observatory at this early stage of its existence is to collect data from the institutions and organisations dealing with SMEs. Also, the data and information gathered will be stored into a database specially created for the Observatory by the statistical expert working on the project.

Later on, after the data is collected, SME Observatory has to produce annual reports every year. In these reports, the overview of the SME sector into the country will be presented for that year for which the report is intended. In addition, some analyses and statistics will be made, as well as, some comments regarding the causes of such economic movements of small and medium enterprises.

⁴⁸ See full report: 2002 SME Observatory for Macedonia, Ministry of Economy, Skopje (SME Policy Support Project)

⁴⁹ Observatory of European SMEs No.2 (2002), *SMEs in Europe, including a first glance at EU Candidate Countries*, Luxembourg

At this point, SME Observatory has no capacity to conduct survey and to produce statistics according to these findings, but in the future it will become one of the major tasks of this unit.

Upon completion of the project the SME Observatory will be an integral part of the Agency for Promotion of Entrepreneurship (APE) in the FYR Macedonia. The main task of this Observatory is to provide information on SMEs to policy-makers, SME support organisations, researchers and SMEs themselves.

To create an SME Observatory is a complex adventure that requires a cooperative approach among public and private institutions that work with and for SMEs. This cooperation is vital to improve and ensure quality and reliability in the services, information and data provided by the SME Observatory.

After all, the task of the Observatory will be, besides the participation in the activities of the European Observatory for SMEs which is based in the Netherlands, to collect data and to publish them regularly:

- Data on the definition of SMEs, and on any change of it within the EU or Macedonia,
- Data on SMEs in their macroeconomic environment (SMEs and value added, gross output, intermediate consumption etc.)
- SMEs in the economy: their share in the economy, number of registered versus active enterprises, birth rate of enterprises, number of handicrafts per town, etc.
- SMEs and employment, size of employment in the SME sector
- Taxation and finance: SMEs and VAT as well as Profit Tax, SME profit before taxation, for the fiscal year; SME and financial investment, assets and short and long term obligations; the source of their finances
- SMEs and technology and innovation: transfer of technology, innovation, information technology and communication (ITC)
- Legal, regulatory and administrative environment, business support services and entrepreneurship

With all these data, now regularly raised from all the available sources, the Macedonian results can be compared to European averages, as well of course to single EU Member States and other European countries. This altogether will then be an interesting tool for policymaking and the Macedonian SMEs.