

CHALLENGE OF DEREGULATION

On the Functioning of e-Permits

Secretariat of Investment Council
Tirana, 13 February 2018

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I. OBJECT OF THE ANALYSIS

- ❑ To identify main business issues related to the simplification of the construction permits focusing on application procedures as well as transparency towards investors. More specifically:
 - ❑ Is the platform a one-stop shop?
 - ❑ Is there is a standardization of applications as relates to deadlines, procedures, and requested documents?
 - ❑ Has the platform stimulated the institutional coordination?

- ❑ To **structure** the debate and offer recommendations consulted with relevant actors aiming to address the problems, considering also the challenge of the territorial/decentralization reform.

I. METHODOLOGY

Desk-research

- Legal framework, technical manuals, EU Progress Report 2016, DB 2017, relevant models such as (Macedonia, Serbia etc.)
- Publication from government agency such as Territorial Development Agency
- Recent publications from INSTAT, BoA

Consultation

- Business feedback collected through the database of the Secretariat for 2015-2017 (concrete cases) as well as media, portals; A Guide “On e-Permits” prepared by the Secretariat, August 2016.
- 37 meetings – interviews (66 people) during June – September 2017, business, municipalities (Tirana, Durrës, Korçë with about 22 relevant people directly working with the process), and also other institutions.
- Detailed surveys filled in the business.
- Focus Grup (22 people) with experts, October 2017.



II. CONTEXT – COMMENTS FROM THE BUSINESS

❑ *The system of e-Permits works, it has disciplined the applications and standardized procedures, “reduced papers, time, improved inter-institutional coordination...”*

❑ Even for a simple construction in agriculture (stable), I have to go through many papers?

❑ The e-Permits platform is designed referring to the typology of civil construction (residence/service) and not **complex constructions** such as hydropower (about 80 million euro investment and concession of 30 years). We have problems (TDA/MEI/Construction Institute) related to the timetable of licenses, construction permits and land conversion. **Institutions** are not yet ready to meet the 60-day deadline. In Italy for example for one industrial complex it takes from 6 months to 2 years.

❑ How many **licences are** taken off as of today? What about Eurocode? The level of Structural Warranty (Technical Critique) at Construction Institute is to be analysed? The platform has “disciplined” but can not solve the corruption.

❑ The deadline of 45 days is not respected by the municipalities, on day **44 there is always something to postpone the deadline** – administrative capacities should be further improved.

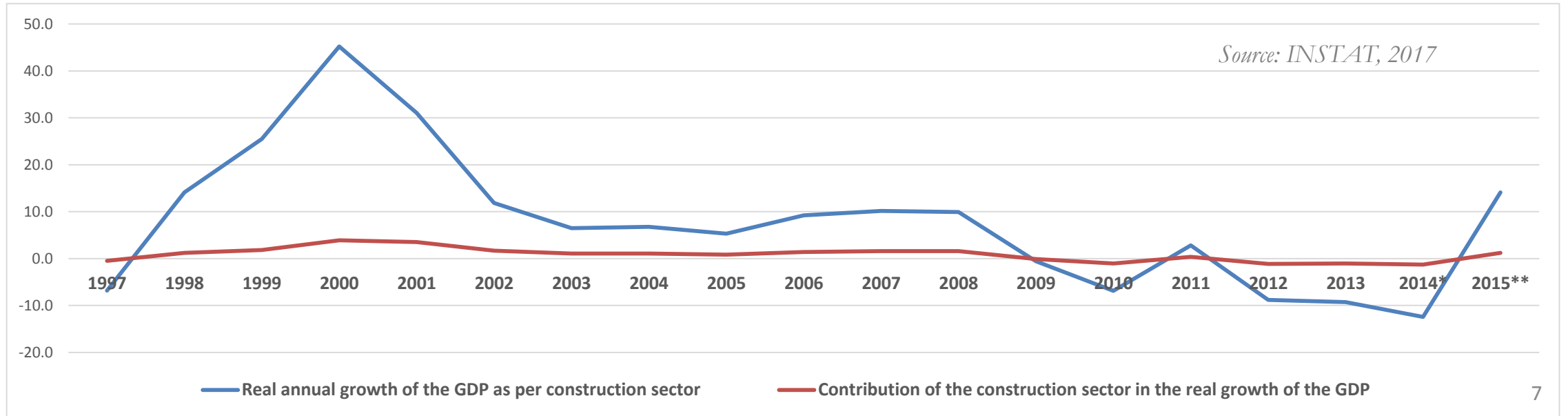
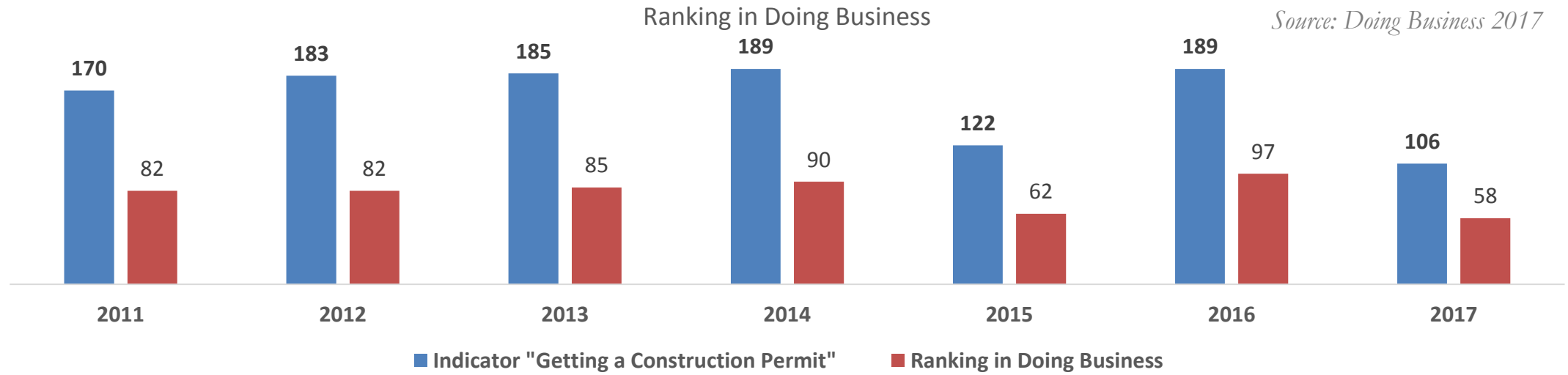
❑ Tirana Municipality asks more documents than provisioned by the law 107/2015 and CoM. How can the e-permits platform be closed for one entire month in August?

❑ Currently received a silent approval **but still don’t know if the IPRO and the Construction Inspectorate will accept it?!**

II. CONTEXT – COMMENTS FROM THE BUSINESS

- ❑ There is no supervisory structure that can coordinate the municipality and solve the issues. The portal has interrupted the contact between developers and administration. Municipalities demand absurd things such as legalization of licences. Different municipalities request different documents for applications...
- ❑ The “portal” has technical problems, formats, speed, etc. *“The architecture of the system it is not suitable for applications for complex projects...”*
- ❑ **Strategic Investor** – in practice I follow myself all the procedures of permits and licenses with my own human resources meanwhile what does AIDA do?
- ❑ **Infrastructure Tax 8%** - municipalities have increased the revenues. Builders should have received for this contribution a kind of service from the state e.g. a better quality of cooperation with the National Energy Corporation or Water Supplier. In reality, the Municipality ***does not facilitate or coordinate*** these services (energy and water). The builders themselves deal with the construction of electrical cabins which bear an additional cost, and for more, although an asset of the OSHEE (Electricity Power Distribution Operator) they are located in the first floors of the buildings. The infrastructure tax is **not foreseen to be paid in instalments** while banks might start to give crediting to pay such an amount, which is quite high.

II. CONTEXT & DB 2017



II. CONTEXT & MAIN DEVELOPMENTS IN THE DEREGULATION REFORM: E-PERMITS

Electronic
Platform

Legal
Framework

Institutional
Framework

Decentralization
Reform

Deregulation

III. MAIN ISSUES ON E-PERMITS

LEGAL

- Timelines
- Procedures and their implementation /Suspending of the platform
- Fulfilling of the electronic database from the institutions
- Harmonisation of the specific laws with the legislation for e-Permits

INSTITUTIONAL

- Different municipality implement different procedures
- Promotion of the services through e-Permits as an instrument for simplification of legal procedures

TECHNICAL

- Improvement of the functioning of the platform to stimulate the transparency and timely distribution of information to the users.
- Simplification of procedures for construction permits for specific category (e.g. farmers)

OTHERS

- Tax of infrastructure
- Standards for construction and the quality of projects
- Construction Inspection procedures

3.1 FINDINGS & RECOMMENDATIONS – Legal Aspects

FINDING- TIME-TERMS AND IMPLEMENTATION	RECOMMENDATIONS
<ul style="list-style-type: none"> ○ Meeting the legal deadlines for the review of the application for construction permits and their correct implementation remains a challenge for the administration of institutions. ○ There is a discrepancy between Law No.107/2014 and DCM No.408 with regard to the general time-term (60 days) for the approval of the construction permits. ○ Time-terms related to the procedures for payment of infrastructure tax are being implemented differently in different Municipalities. E.g. Municipality of Tirana applies a penalty of 0,2% per day, for non-payment of the infrastructure tax within the initial time-term of 5 days. 	<ul style="list-style-type: none"> ○ Increase of the capacities of the dedicated structures established for the review of permits. Reconfiguring of the general deadline 60 <i>calendar days</i> in the e-Permits platform. ○ Amendment to DCM No. 408 dated 13.05.2015 <i>“For the Approval of the Territory Development Regulation”</i>. ○ Review of Tirana Municipality Council Decision No. 59/2015 as relates to the time-term and the penalty that is applied for tax on infrastructure. The time-term at disposal for the payment of the infrastructure tax without any penalty should be 15 days.

3.1 FINDINGS & RECOMMENDATIONS – Legal Aspects

FINDINGS-DOCUMENTS

- **List of documents requested** by legislation is not sufficiently detailed and in some cases it is interpreted in a discretionary way by the Municipalities/Institutions.
 1. There are no sectorial checklist of documents as previously agreed between institutions (TDA and Ministries)
 2. There is no Manual/Instruction in place.
 3. Some Municipalities request additional documents beyond what it is provisioned by the Law No.107/2014 dhe DCM Nr.408.

- **Preliminary Declaration** - Different Municipalities require additional documents beyond the law provisions No.107/2014, for applications related to the works that can be done with a Preliminary Declaration.

RECOMMENDATIONS

- Preparation of detailed operational, technical and legal Manual. The Manual should provide details on the following:
 - a. Exhaustive list of documents necessary for construction permits as per their typology/category.
 - b. Competences and role of any institution.
 - c. Technical and legal workflow of the platform.

- Reconfiguring of the e-Permits platform as relates to the category of works under Preliminary Declaration regime as provisioned by Law No.107/2014.

3.1 FINDINGS & RECOMMENDATIONS – Legal Aspects

FINDINGS - LEGISLATION

- **Harmonisation of the legislation** - There are still some sectorial laws non-harmonised with the specific law on e-Permits. Legislation should be updated in order to be compliant with the digitalization requirements that are requested by the e-Permits.
- **Suspension of applications** (*despite preliminary declaration*) in the e-Permits Platform during August 2017 by some Municipalities, while Law No.107/2014 does not provide for such option.
- **Application Fee** for construction permits is not unified for all the Municipalities (*it varies from 2,500 All to 1% of the investment value*).

RECOMMENDATIONS

- Law No. 33/2012 “On the registration of the immovable properties”; Law No. 9048, dated 7.4.2003 “On cultural heritage”; Law No.8402/1998 “On the Controlling and Disciplining of the Construction Works” (amended); Amendment of the DCM No.416 dated 13.05.2015 & DCM No.268 dated 06.04.2016 as relates to the functioning of the NWA.
- Cases of suspension of applications in the e-Permits platform **only for objective and/or maintenance purposes** should be explicitly provided by Law No.107/2014, DCM No. 408 dated 13.05.2015 and other sub-legal acts.
- Amendments to the DCM No.408 which should refer in the Law No. 9632 date 30.10.2006 “*On Local Taxes System*” (*as amended*).

3.2 FINDINGS & RECOMMENDATIONS – Institutional Coordination

FINDINGS

- Different Municipalities apply different practices while review the applications filed in the e-Permits. E.g the case of implementation of the silent administrative approval.
- It has been noted lack of coordination between the several Directories of the Municipalities which are involved in the procedures related to the e-Permits. *(e.g. attestation for payment of Infrastructure Tax in the Municipality of Tirana/attestation from Fire Department in other Municipalities)*
- Structured **hearing sessions** with interested subjects (applicants) are not always organized with applicants especially for complex projects.

RECOMMENDATIONS

- Preparation of detailed operational, technical and legal Manual in the form of an Instruction for the users.
- Automating of the procedures among the directories and institutions dependent from the municipalities and digitalisation of the information aiming to reduce the administrative burden to the business.
- Raising of the transparency in the decision-making process for applications through the platform enabling structured hearing sessions with the applicant according to the provisions of the Administrative Procedures Code.

3.2 FINDINGS & RECOMMENDATIONS – Institutional Coordination

FINDINGS

- **Lack of the electronic databases** prepared by the National Environmental Agency (NEA), Institute of Cultural Monuments (ICM) and National Water Agency (NWA) and submitted to the Territorial Development Agency (TDA).
- **Platform architecture** lacks details on specific sectors e.g. energy.
- There has not always been an **interaction/coordination between the IPRO** and the Municipalities. It is reported a significant improvement as of Sep 2017.

RECOMMENDATIONS

- Completion within a deadline of 3 months of the electronic databases from NEA, IMC and NWA. Implementation of the obligations deriving by the PM Order No.143 dated 03.11.2015.
- Unification and firmly establishing of the procedures followed by the responsible authorities which decide on the approval of the construction permits.
- Finalization of the digitalization of the immovable property registry. Compliance with the reciprocal obligations under the Law No.107/2014.

3.2 OTHER

- **Re-categorise the constructions for which it is necessary environmental permit based on the risk analysis and environmental impact.** For the residential constructions or other constructions without an impact to the environment should not be required an Environmental Permit when Municipalities have approved environmental strategic plans for their territories.
- **To facilitate the foreseen procedures and deadlines in the e-permits platform for farmers/collectors/exporters which desire to build light constructions for storing agricultural products and medicinal plants which do not have an impact on the environment.** Amendment to the DCM No.408 dated 13.05.2015 and other sublegal acts.
- **Digitalisation of the registry of permits/licenses/authorisations issued by MIE in the frame of the Deregulation Reform.**

3.3 FINDINGS & RECOMMENDATIONS – Technical Aspects

FINDINGS	RECOMMENDATIONS
<ul style="list-style-type: none"> ○ The platform does not enable to upload documents of DxF format. 	<ul style="list-style-type: none"> ○ Discussion at technical level by TDA, NAIS, Municipalities and users of technical improvements. Increase the technical capacities of the platform to reduce the time and enable the submission of application documents also in other format apart from pdf.
<ul style="list-style-type: none"> ○ GIS Cadastre for the Municipality of Tirana is not part of the e-Permits platform. 	<ul style="list-style-type: none"> ○ To consider including of GIS Cadastre Tirana as part of e-Permits.
<ul style="list-style-type: none"> ○ The platform does not enable the user to check responses from other institutions. 	<ul style="list-style-type: none"> ○ The structure of the e-permits platform to enable involved parties in an application procedure, to see the exchanged responses thus raising the transparency offered until to date.
<ul style="list-style-type: none"> ○ The platform can display a limited number of developers although the legislation has foreseen that there might be several of them. 	<ul style="list-style-type: none"> ○ Any amendment in the structure of the e-Permits platform should be communicated in advance to its users through notifications in the account of the user and/or by e-mail. To make it possible to add in the platform the number of developers since the law itself recognises the possibility to have several developers.

3.4 Other – Procedures Before Application – Simplification in the Frame of Deregulation Reform (for discussion)

a) Environmental Impact Assessment (EIA)

- Can the EIA be deposited through e-Permits Platform?
- Is EIA necessary for any category of residence construction?

b) Conversion of the land

- Should be built or not in the agricultural land and in rural areas which are not yet covered by General Local Plans?
- Long and bureaucratic procedures.
- Could the Conversion of the Land be part of the platform?
- Should it prevail the interest for building industrial and agricultural warehouses or the need to protect the existing agricultural land stock?

3.4 Other – Construction Sector

- It remains a challenge the quality level of the applications and the control filter in the content of the documents and studies submitted during the application phase for construction permits. Continuous training, qualification, and quality of the projects and investments is not a challenge only for the central and local administration, but also for the private sector.
- Some builders ask the liberalisation of the procedures related to the making of the Structural Warranty (Technical Critique), with the reasoning that this should not remain of sole domain to the Construction Institute.
- Standards for construction – Should they be mandatory? Is it time for a Construction Code?
- Construction inspection procedures – should they be reviewed?
- Methodology for the calculation of the infrastructure tax – does the business take in return the development of the infrastructure?
- The income tax paid by the builder also for the exchanged part with the landowners should be revised.

CONCLUSIONS

Implementation of e-Permits platform has unified the procedures for all 61 municipalities in the country and it has disciplined the review of applications from the deadlines point of view, both for applicants and institutions by also reducing the operational costs for both parties. There is a positive opinion on the qualitative step done with the implementation of the e-Permits platform.

Finalization of the procedures related to the reviewing process within the time-frame of 60 calendar days remains a challenge for the administration of municipalities. The new legislation principles such as the principle of approval in silence is not always applied. Increasing the capacities of the administration and uniform application of the procedures, determine the optimization of the benefits ensured by the e-Permits platform.

Platform is working as a one-stop shop service. Despite this, lack of the digital databases showing those parts of the territory which are not eligible for development/construction according to the sectoral laws, make it difficult the institutional coordination. Preparation of the databases and harmonizing of some sectoral laws with the platform concept under the Deregulation Reform principles will improve institutional coordination.

Territorial Development Agency has been proactive to coordinate the activity on e-Permits platform and performing the trainings for the users. Despite this, it still remains not clearly defined in the legislation which institution is the administrator of the platform from the legal point of view.

Preparation of a detailed Manual covering legal, operational and technical aspects of e-Permits platform it is broadly considered by all the actors as an appropriate measure that will enable to the 146 institutions under the platform, the compliance with the deadlines and procedures foreseen by the legislation.

THANK YOU!
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