

INVESTMENT CLIMATE 2018 ON INSPECTIONS

**INVESTMENT COUNCIL MEETING XV
29 JANUARY 2019**

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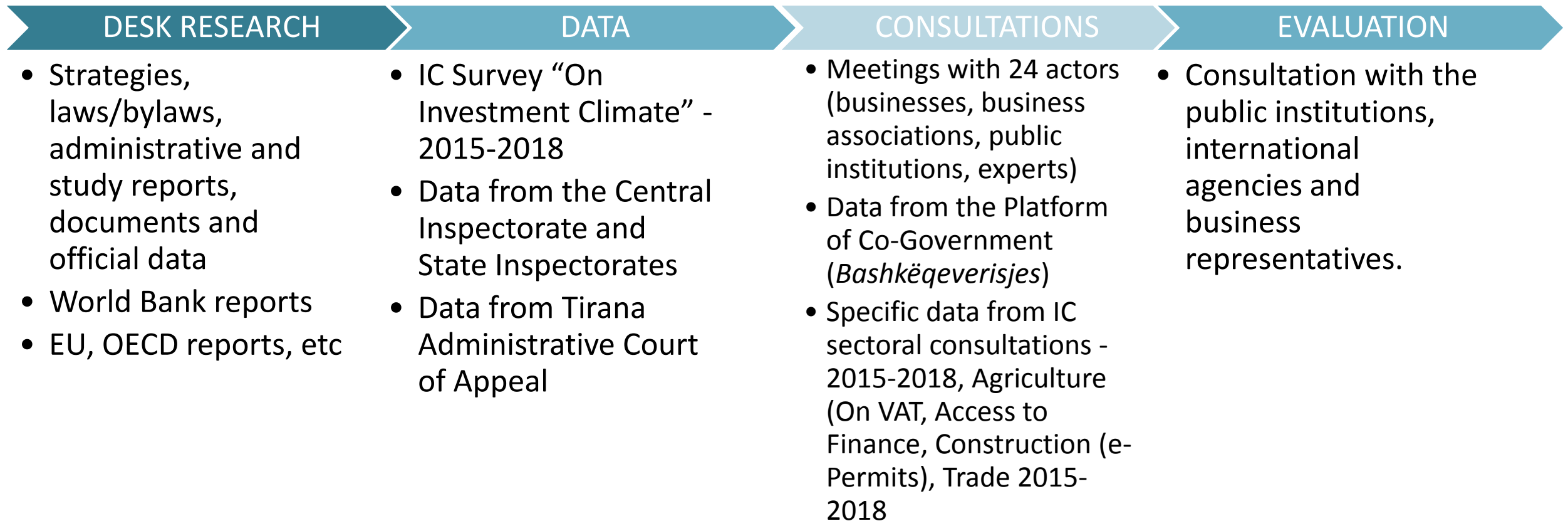
Comments from businesses, 2015-2018

- Without a transparent and professional regulatory system there can be no **formalization or fair competition**
- Construction sector - **lack of technical rules**, some good constructions, but other of poor quality, both categories are accepted by those who certify and control the works....
- In 27 years that Albania joined the free market economy, many investments have been made in *infrastructure but again we have poor quality of roads* - *Why? Lack of filters and lack of people with integrity.*
- Restricting or encouraging investments - Informality and unfair competition depend on both the State and business, while **Inspections depend only on Institutions...**
- AKU does not inspect **unregistered entities** ...
- **There is no coordination** between local and central inspectorates...
- Legalization of water wells (the legal basis was not completed) is inspected and fined. The decision is appealed to the inspectors and dismissed by the Inspectorate itself. While the permits for the wells are 8 months that is expected and is not yet given until the Basin Council meets ... (2017)
- There are **too many legal requirements and obligations** to be "compliant" - (small business)
- Every inspection has a positive effect even if it is tendentious, but in Albania inspections have to find a breach because the **state itself does not comply with the rules.**
- The manufacturer certifies the devices with the CE declaration of conformity and its placement on the market - is the company aware of it?
- Customs do not yet have an accredited laboratory?! (2016)
- Inspectorates **lack adequate technical, human capacities** and institutional memory.

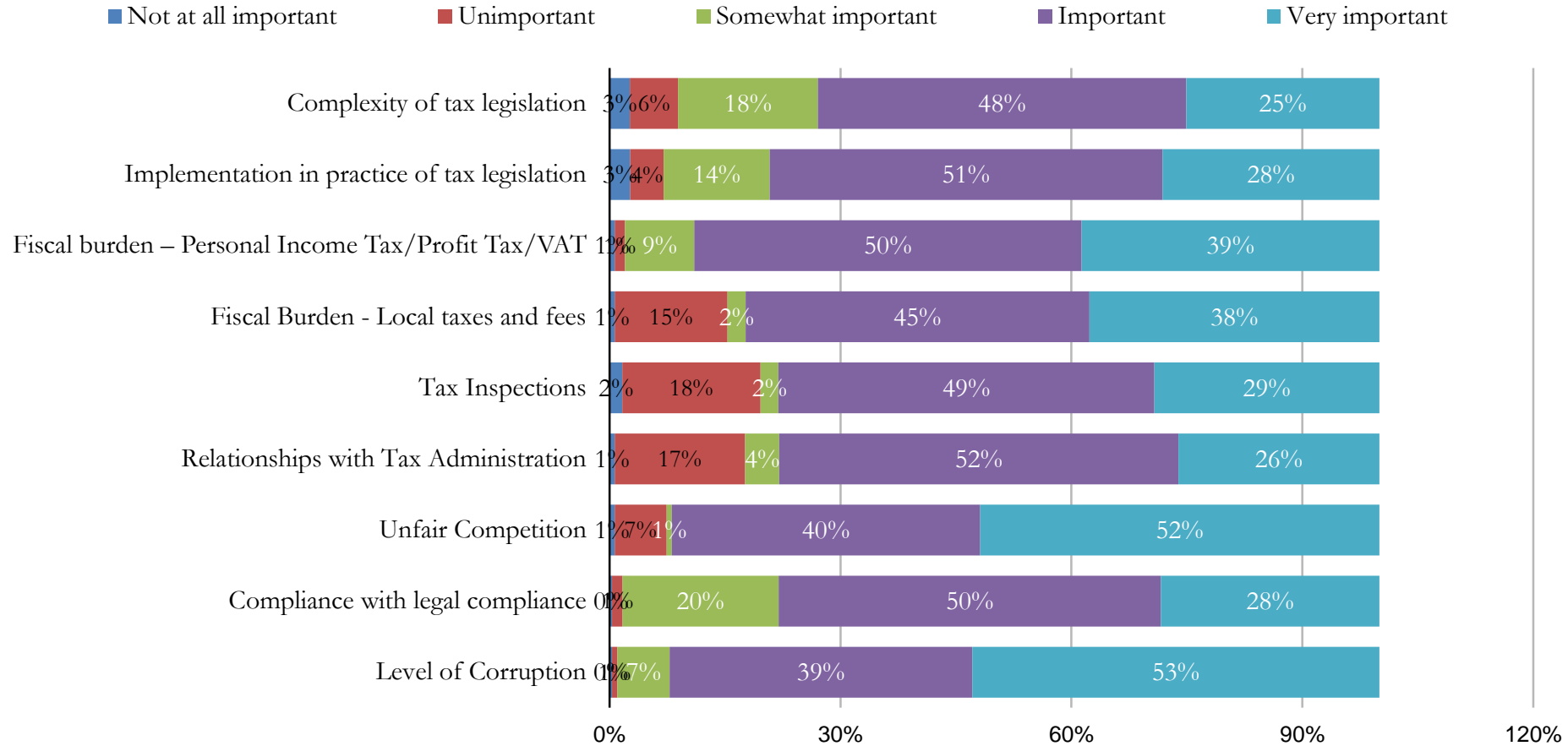
I. OBJECT OF THE ANALYSIS

To bring the business perception on the main factors influencing market well-functioning with a focus on transparency and efficiency of inspections, as well as to put forward concrete and constructive recommendations aiming improvement of the investment climate.

METHODOLOGY



II. Business Perception on Market Well-functioning (2018)



The Relationship and Role of Public Administration is perceived by 78% of businesses as a determining factor in the market well-functioning.

II. CONTEXT- Strategic and Regulatory Dynamics

**BERIS NATIONAL STRATEGY
2007-2012**

**REVIEW OF THE STRATEGIC,
LEGAL AND INSTITUTIONAL
FRAMEWORK OF
INSPECTIONS**

**LAW NO. 10433, DATE 16.06.2011
"On Inspection"**

The Inspection Law enabled:

1. Creation of CI as a regulator of inspectorates activity;
2. Changed the organization of inspections at the local and central level;
3. The law centralized the regulatory and methodological coordination of the inspection, introducing e-inspections;
4. Set some basic guarantees on the length of inspection "The maximum permissible annual inspection period is from 5 to 15 days";
5. Sanctioned the basic principles of inspection in view of reducing the burden of business.

II. CONTEXT

INSPECTION AS A SUPERVISORY MECHANISM OF A FUNCTIONAL MARKET

- Meeting point between Public Administration and business - professionalism, corruption, efficiency, etc.
- Appropriate enforcement of inspection functions **limits informality** and unfair competition among operators in the market

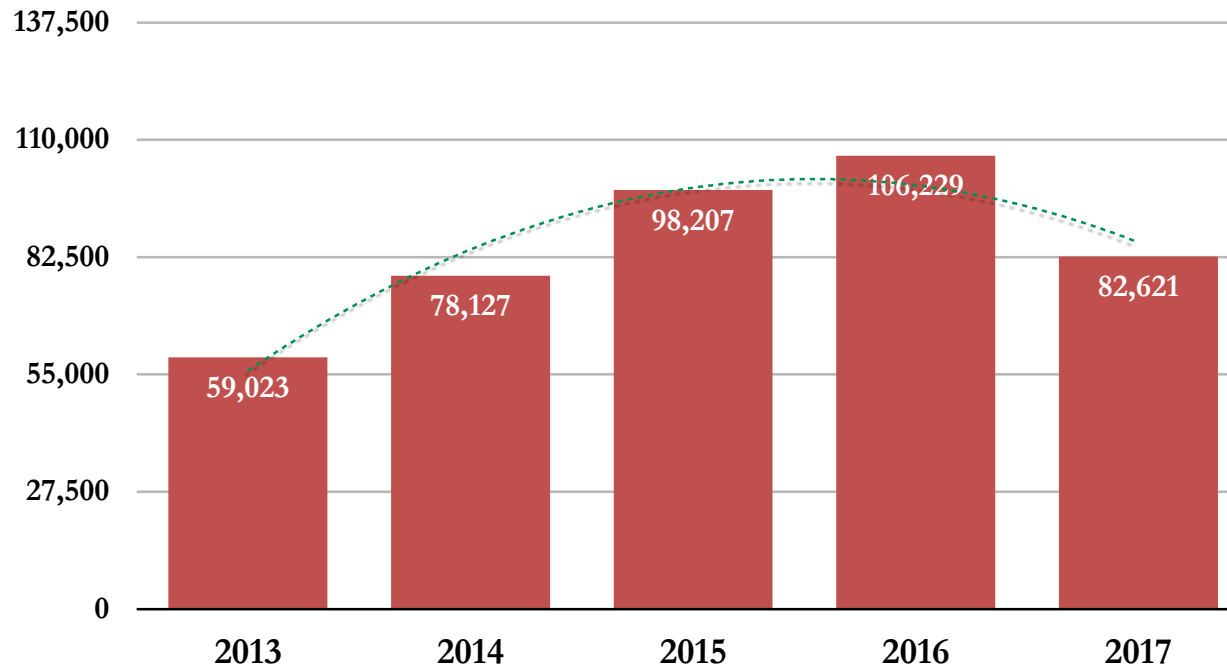
INSPECTIONS ARE CONSIDERED AS A SERIOUS ELEMENT OF REPORTING

- Reform started on reducing the number of inspections and increasing their efficiency. The **current status of reform?**

CURRENT REFORM CHALLENGES:

- *Alignment of Sector Legislation with EU Legislation*
- *Improve institutional capacities, human resources (especially technical), logistics and laboratory capacities (EU Progress Report 2019)*
- *Institutional Stabilization*
- *Proper functioning of dispute resolution mechanisms between business and public administration*

II. CONTEXT – Dynamics of inspections 2013-2017

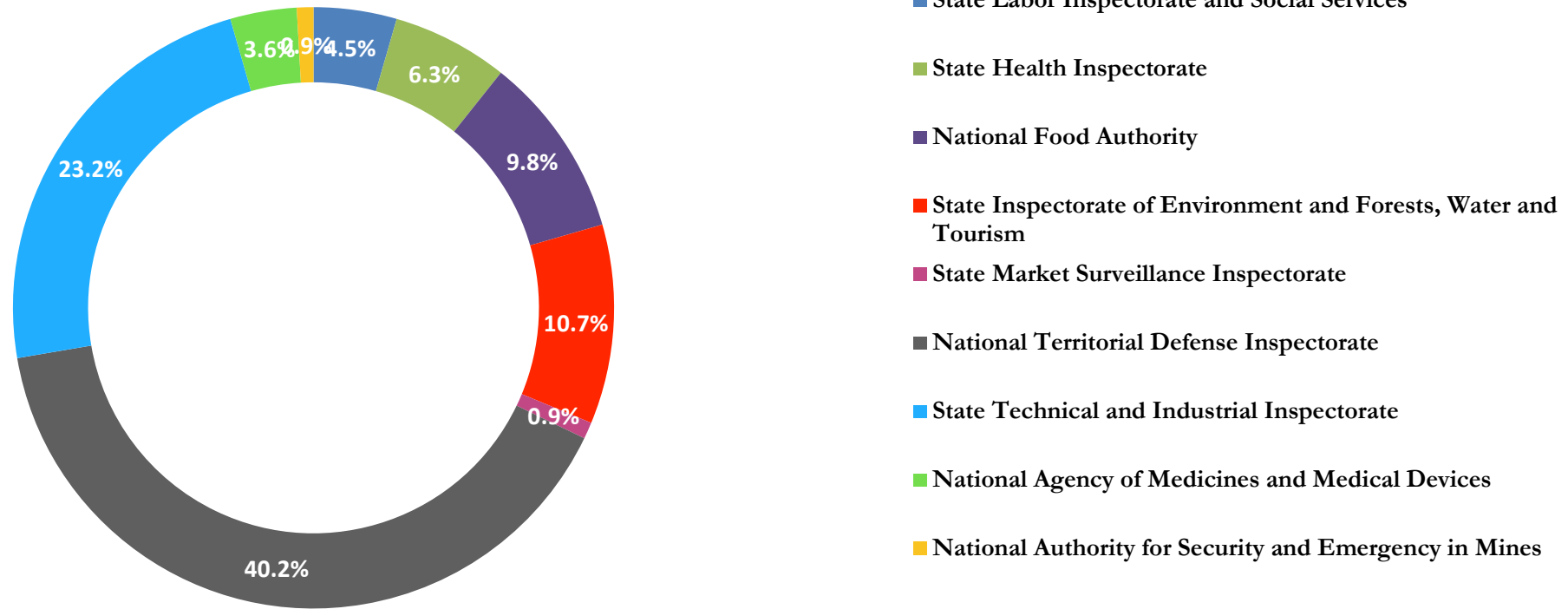


Downward trend in the number of inspections

Serious efforts (2007-2018) to not increase business administrative costs

II. Context – Most Attached Inspectorates in the Administrative Court, 2018

2018



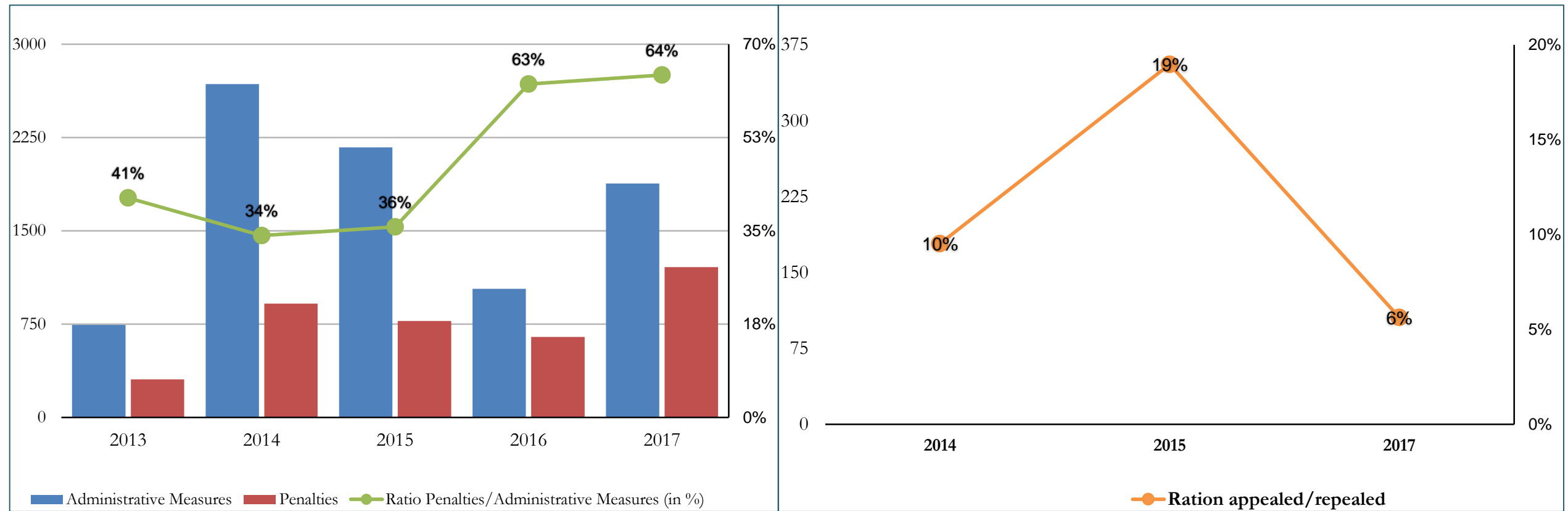
Inspectorates with a relatively large number of cases result to be **SMSI (40%)**, **SILSS (23%)**, **SIEFWT (11%)** and **NFA (10%)**.

The distribution of the issues that the inspectorates have at the administrative court of appeal indicates an increase in problems related to food safety, the environment and waters;

Labor relations and safety at work are also important issues to the attention of inspectors and businesses.

It turns out that on average for all inspectorates 62% of cases were obtained by inspectors and 38% of business-acquired issues.

II. Context – Administrative Appeal in Inspectorates



Downward trend of administrative measures;
Ratio penalties vs. administrative measures in increase.

Only 6% of the administrative measures have been appealed administratively within the inspectorates (it can be issue of trust, transparency, cost, time, etc.).

III.FINDINGS & RECOMMENDATIONS– *Strategic Approach*

FINDINGS

- **Inspection reform. What is the current status?** The current challenges of implementing the inspection reform require a revival of political engagement and strategic documents in coherence with administration reforms.
- **The institutional inspection structure** in Albania has radically changed since 2010 and remains dynamic. **In the inspections, there is overlapping of competencies** and functions among different inspectorates
- The downward **trend in the number of inspections** shows that there are attempts to create a positive business climate. **Frequent legal and institutional changes hamper business** compliance

RECOMMENDATIONS

To conclude as soon as possible the assessment of the current impact of the inspection reform as a way of prioritizing future steps and making reform clearer in the context of integration; Institutionalize the coordination between institutions with inspection functions as a way to optimize the positive impact of reform on business climate and formalization of the economy. For this is required:

- ✓ Clear institutional commitment of line ministries to support inspectorates in the execution of inspection functions.
- ✓ The eventual reduction of the number of inspectorates and the unification of their functions does not preclude the implementation of monitoring and regulatory functions.

Strengthen and structure communication with businesses for increasing transparency and compliance. This consultation should be structured integrally and be part of the RIA, to clarify the expected effects of regulatory changes to the business.

III.FINDINGS & RECOMMENDATIONS– *Legal Approach*

FINDINGS

- **The dynamics of laws and bylaws** in the field of inspection complicates business compliance
- **Large number of small and limited-capacity businesses**, as a challenge to meeting regulatory standards and their awareness.
- Procedural inspection practices are almost consolidated and unified within e-inspection. **The decision-making of inspectorates on the same issues inspections for different entities need further improvement.**
- Despite the decrease in the number of inspections, **businesses and St. Inspectorates (SI) themselves report that they are subject of frequent and different inspections** of different SI's uncoordinated among them. The burden of controls is mainly on formalized businesses.

RECOMMENDATIONS

- **Complete inventory of legal and regulatory inspection framework** and making it accessible to all interest groups (businesses, associations, inspectors).
- **Free and legal assistance in distance to inspection subjects by inspection bodies** through the preparation of simple manuals for specific sections, according to the typology of inspection and business characteristics. The focus of inspections should remain advising and assisting businesses to increase their compliance with legal obligations.
- **Consolidate the unification of administrative inspection practices through the publication of commentaries.** Technical focus with training, literary investment, technology and laboratory testing skills.
- Central Inspectorate to meet the legal obligations to carry out planned and coordinated inspections between inspectorates. **Improve the ratio between programmed and non-programmed inspections in 85% by 15% (during 2019).**

III.FINDINGS & RECOMMENDATIONS– *Legal Approach*

FINDINGS

- **Unclear assessment criteria and ambiguous administrative sanctions imposed by SI inspectors.** Extensive discretion available to their decision-making, handling in different ways, the same or similar cases.
- **Missing or incomplete information from SI** on the practices followed for imposing administrative sanctions.
- Check-lists for SI have been finalized. **The process for list-inspections of inspectorates at the local level which has started and remains not yet finalized.**

RECOMMENDATIONS

- **Preparation/Updating of risk methodologies on the latest sector-based monitoring database** will increase the efficiency of inspections and reduce the burden on businesses.
- **Adoption of the General Regulation on the Methodology for Imposing Administrative Sanctions,** and of the Methodologies for each inspectorate. **Publication and transparent methodologies applied by inspectors for appropriate and proportionate administrative measures.**
- **Finalization of check-lists for inspections functions in local level inspectorates and performing of such inspections on-line,** as in the cases of inspections performed by national inspectorates.

III.FINDINGS & RECOMMENDATIONS– Institutional Resources & Appeal

FINDINGS

- **Only 6% of the administrative measures imposed by the inspectorates have been appealed in administrative way;** Among administrative measures 64% were fines;
- Mechanisms of administrative appeal and their review in inspectorates are not yet consolidated;
 - The structures for reviewing of administrative appeal are not always transparent;
 - Lack of complete, transparent and systematic information on their decision-making.
 - The application of the principles of the Code of Administrative Procedures to review administrative appeals is limited.
 - The administrative appeal is considered in many cases as an ineffective mechanism by businesses
- Businesses, but also the head of inspectorates confirm that in the inspectorates there is a **lack of sustainable human resources, trained and updated with the legislation;** Limited resources for some inspectorates in relation to their field of inspection.

RECOMMENDATIONS

- **To consider the option of centralizing the mechanism for reviewing administrative appeals at the Central Inspectorate.**
 - Unification of consolidated practices on appeals against inspection bodies' decisions.
 - Conduct hearing sessions while reviewing administrative complaints involving three parties - the SI, businesses and CI.
 - Increases the professionalism and independence of appeal appeals structures.
 - Serves as a filter for issues that are forward appealed to the court.
 - Increase the chances of equal treatment of businesses and self-correction of the practices by the inspectorates.
- **Sustainability and training of inspectorate staff.** Motivation of inspection bodies, their periodic testing and performance evaluation on well-defined criteria; Financial support and human resources as per the area of interaction with businesses.

WE MAY CONCLUDE:

Inspection Reform - a revitalization of political decision making and institutionalization of coordination is required to move forward with a substantive inspection reform. Forward improvement of the sectoral legal framework and by-laws, regulations and inspection practices in coherence with the European integration agenda

Institutional coordination, avoidance of overlapping of competencies will bring optimization of the impact of this reform into the business climate.

Communication and transparency/stakeholders consultation, especially with businesses by following current best practices, should be strengthened and standardized in order to ensure success in implementing the reform.

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