

TECHNICAL NOTE

**INVESTMENT CLIMATE 2018,
ON INSPECTIONS**

**Tirana,
January 2019**

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ABBREVIATIONS

CI	Central Inspectorate
FDI	Foreign Direct Investment
GDA	General Directorate of Archives
GTD	General Tax Directorate
IC	Investment Council
NBC	National Business Center
NFA	National Food Authority
NTDI	National Territorial Defense Inspectorate
RIA	Risk Impact Assessment
SI	State Inspectorate
SIE	State Inspectorate of Education
SIEFWT	State Inspectorate of Environment, Forestry, Water and Tourism
SILSS	State Inspectorate of Labor and Social Services
SMSI	State Market Surveillance Inspectorate
STII	State Technical and Industrial Inspectorate
SHI	State Health Inspectorate
TAD	Tax Appeal Directorate

I. INTRODUCTION

Deregulation reform remains one of the most challenging reform for transforming the Albanian economy into a market economy. Inspections are considered an essential element of the reform as a key mechanism for the practical implementation of laws and aims to improve compliance with the regulatory framework. Basically, a systemic reform of inspections involves many processes and institutions, and regardless of the model being pursued, it focuses on three aspects: (i) legal, (ii) institutional (iii) information systems¹. If the reform is implemented well, it will result in lowering the "administrative burden" on businesses, boost export potentials and new jobs, and also provide benefits from establishing the rule of law.

The EU report on Albania (2018) states that *"despite the progress on the reform of the inspections and the improvement of the legal framework, the necessity of improving and aligning sectoral legislation with the EU legislation is required."* The report also highlights the need *to improve institutional capacities, human resources, logistics and laboratory capacities* as a necessity to strengthen the function of inspection, monitoring the implementation of the regulatory framework by economic agents, and not only. The process remains highly challenging for the country in conditions when appropriate regulatory and monitoring support and oversight of the process are indispensable guarantees to meet Albania's obligations in the framework of European integration.

According to OECD² study, the re-organization of the *public service through the digitalization process - including in the design and implementation of the digitalization process both business and other interest groups - would result in mitigating mechanisms of business burden*. This is particularly related to the costs of business compliance with the regulatory changes that bring about the structural and systemic reforms undertaken by Albania in the context of European integration.

In the framework of business consultation and recommendations (2015-2018) on improving the investment climate in the country, IC has brought to the attention of policy making the prioritization of interventions regarding the improvement of the quality and efficiency of public administration services to the business, to institutions, legal framework or even computerization of services. Specifically, in addition to the systematic analysis of tax inspection, informality etc. in 2016, IC discussed the improvement of dispute resolution mechanisms between businesses and public administration³, where some of the recommendations specifically related to the legal and institutional aspects we can say are on a positive trajectory.

This analysis was based on the records of the Administrative Court of Appeal, which point out that *"businesses had the highest number of disputes with the tax and customs administration followed by issues between businesses and inspectors, although the latter ones had a relatively very low weight."*

In the 2018 IC "Investment Climate Survey"⁴, businesses perceive *'the implementation of legislation and the relationship with public administration'* to be moderate investment facilitators, with a respective

¹ *The role of inspection in the enforcement of legislation with main focus on business related inspection in Serbia, 2017, page 13,- published by Balkan Center for Regulatory Reform, USAID Business Enabling Project, Institute of Economic Sciences*

² OECD (2017), *Best Practice Principles on Stakeholder Engagement in Regulatory Policy*

³ IC Meeting IV: *"On the Improvement of Dispute Resolution Mechanisms between Business and Public Administration."* The analysis was based on data related to the number of administrative complaints registered in both the administrative appeals committees within the institutions and the number of business lawsuits registered at the Administrative Courts of all levels for 2014 and 2015.

⁴ *The Investment Climate Survey* conducted by the Secretariat of the Investment Council represents an instrument for gathering business perception in a structured way regarding issues such as tax inspection, VAT, communication with the tax administration and customs, informality. The investment climate index prepared based on the survey data combines the information on tax administration but also information related to licensing, relations with public administration, human resources or borrowing procedures / costs etc. The survey was

estimate of 3.42 and 3.62 out of 5. This perception recalls the fact that the practical implementation of legislation as well as the relationship between business and public administration has room for improvement.

Based on the above, as well as following the analysis on the role of public administration as a market regulator, this material summarizes the developments in the inspection reform focusing on those aspects of the inspection that impact the climate of business and investment. This analysis is based on data collected by the Secretariat from consultations with businesses during 2015-2018, administrative data published by the Central Inspectorate or special inspectorates; the data made available to the Secretariat by the Tax Appeal Directorate, the Administrative Court of Appeal and the Administrative Court of First Instance. This material does not intend to exhaust all issues related to Inspection or Inspection Reform in Albania which is still under process.

The main objective is to recall the fact that inspection and inspection issues remain as important as formalizing the economy with the aim of guaranteeing the same rules in the market, protecting fair competition as well as consumer and environmental protection.

A more in-depth analysis on inspections, including its business costs, will be the focus of IC's work during 2019.

II. CONTEXT

The reform of inspectorates, initiated within the deregulation reform, is entering the first decade of implementation. The Albanian Government undertook the inspection reform in 2008, as the assessments on the effectiveness of the inspections were rather low and the costs and barriers caused by the inspections on the economic and non-economic activity of the market agents were high. According to the World Bank (2013)⁵, businesses reported an average of 13.8 inspections per year from 14 different inspectorates, while inspectors spent on average 45 business days at every business. Also, the inspection bodies, in their entirety were fragmented, uncoordinated, with shortcomings in detailed and clear regulations and shortcomings regarding modern methods of inspections⁶.

According to literature (2008)⁷, the correlation and impact of a favourable legal and regulatory environment on economic growth and attracting FDI is confirmed, while the emphasis is placed on the important role of efficient coordination of "good regulatory governance" beginning with: a) drafting rules, b) implementation and enforcement, c) monitoring and evaluation serving as a basis for improving existing laws and regulations, and d) drafting new rules.

Under World Bank assistance through the *Business Environment Reform and Institutional Strengthening Project (BERIS) 2007-2012*, Albanian institutions were supported to build capacity to undertake the reforms needed to improve the business climate. One of the achievements of the project was

conducted for three consecutive rounds during the period 2015-2018, with the participation of approximately 577 businesses from all economic sectors at the national level.

⁵ World Bank. 2013. *Albania - Business Environment Reform and Institutional Strengthening Project (English)*. Washington DC; World Bank.

⁶Jacques Tallineau and Igor Gutan (2009) "Reform of Inspection System in Albania", p.6

⁷ Busse and Groizard (2008)

the review of the institutional framework of inspections by reducing the number of State Inspectorates (SI) from 34 to 12, drafting the law on inspection (Law No. 10433, dated 16.06.2011) and establishment of Central Inspectorate (CI) in September 2011.

The role of the CI is coordinating and regulating for all SIs, and to ensure that the inspection activity will be in the spirit of the law and in full coherence with its strategic objectives: a) Coordination of inspections; b) reducing administrative burden of business inspections, and c) increasing the effectiveness of inspections.

Institutions and Legislation:

A. CI⁸ *inter alia* has these basic functions:

- adopts basic rules for the risk assessment methodology, programming of inspections, documenting the inspection activity, and reporting the activity of inspectorates;
- creates and maintains a unique inspection portal that serves for programming and coordinating inspections, exchanging data between different inspectorates, and for informing the public;
- oversees the implementation of this law and of the special law by state inspectors for programming, authorizing and conducting the inspection, and has the right to propose disciplinary measures against the inspectors and the Chief Inspector in case of observing violations by the latter ones;

B. Law no. 10433, dated 16.06.2011 brought **some novelties** as relates to:

- the manner of organizing inspectorates at the local and central level, the principles of inspection and institutional relations between SIs and CI.
- the law centralized in a single institution the regulatory and methodological coordination of a number of independent inspectorates according to the areas of responsibility as per different ministries.
- setting some basic guarantees on the duration of the planned inspection. Specifically, Article 26/2 provides that: "*The maximum permissible annual inspection period is from 5 to 15 days*".
- sanctioning the basic principles of inspection in function of reducing the business burden by imposing the obligation on inspectors to carry out preliminary business briefing on inspections (Article 32)⁹.

We point out that since 2017, there is an initiative to progress with the Inspection Reform in the framework of deregulatory reform. Following the reformation of the inspection, it is important to analyze the impact of regulatory reform and business costs to build an ongoing reform roadmap. There are currently 16 SIs under IQ coordination with a published lists of inspectors in office.

⁸ Article 16.

⁹ *The inspection shall be notified to the business by prior notification of the authorization of the inspecting body not later than 3 days before the commencement of the inspection operations.*

III. METHODOLOGY

The methodology used for the drafting of this technical note is based on four methodological pillars, namely: (i) *literature review*, (ii) *administrative data collection*, (iii) *identification of business perceptions through surveys*, and (iv) *consultations of the Secretariat since 2015 with representatives of institutions/ inspectorates that have proven problematic in the context of legal disputes with businesses*. As noted above, this paper is a first step towards a more in-depth analysis in 2019, and aims to draw attention to the importance of the reform and critical momentum in the context of the country's integration in 2019.

- a) *Literature review*. The technical note is based on extensive literature review, more specifically the review of official documents of institutions related to the inspection activity, namely the CI, the 16 inspectorates and line Ministries, as well as the review of sectoral legislation. Regional experiences, studies and reports of international institutions on the drafting and implementation of deregulation reforms have been consulted and have assisted in the reflection of the situation and the presentation of challenges/issues.
- b) *Administrative data reported by the institutions*. The collection and processing of administrative data from various sources that exercise regulatory and monitoring functions of inspection such as the CI, the Ministries responsible for the 16 Inspectorates part of the current inspection system, GTD and TAD, MFE, MoI, the Co-Governance Platform and the Administrative Courts (First Instance and Appeal). The administrative data collected aim at identifying: (i) the number and dynamics of the inspections carried out by the inspectorates, (ii) the administrative measures undertaken¹⁰, (iii) the ratio between the number of such administrative measures and the number of inspections and (iv) the distribution according to the inspectorates¹¹.
- c) *Identifying the perception of businesses through surveying*. The business perception regarding the investment climate in general, and in particular the impact of business relations with the public administration including inspection, was part of the survey. The survey included 357 businesses across the country, randomly selected from a database of 10,000 businesses identified by the GTD and the NBC¹².
- d) *Consultations*. Consultations and interviews with 24 representatives of the inspectorates and businesses.

¹⁰ The administrative measures referred to in this Technical Note are administrative penalties or administrative sanctions, depending on the terminology used in the sectoral legislation and consisting of: fines, suspension or temporary closure of the activity, final closure of the activity as well as any other principal or complementary penalties provided for in the sectoral legislation.

¹¹ Administrative data on disputes between the parties and on the functioning of the administrative or judicial resolution mechanism were gathered from the inspectorates, the Administrative Court of Appeal and the co-governance platform.

¹² Based on statistical sampling criteria, the questionnaire has a 95% statistical accuracy, and a 5% margin of error, in reference to the target population consisting of 107,000 companies. The distribution is balanced among the districts, with the exception of Tirana. 59.3% of the surveyed businesses report an annual turnover amounting to less than ALL 8 million, 69.7% of the companies report that their staff consists of up to 50 employees and only 10.4% of the companies have foreign capital. Most businesses operate in the service sector, including tourism, financial and consulting services and technical services, while commerce and construction account for nearly 19% of the sampled companies.

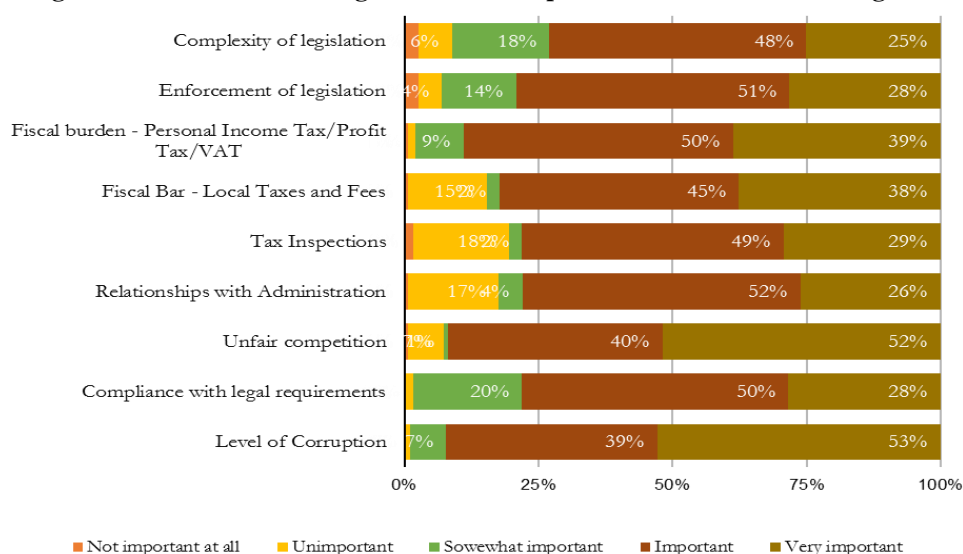
IV. ANALYSIS AND FINDINGS

The findings are not exhaustive of all control/inspection issues and do not generalize all regulatory bodies/inspection, but are grouped according to the issues identified by businesses and the Investment Council Secretariat during its operation. The data have been analysed by taking into account all available data on inspections, tax audits and appeals. The findings resulting from the analysis are grouped into four pillars, namely: 1. Strategic Framework and Institutional Capacities; 2. Administrative Appeal; 3. Institutional Coordination.

A. STRATEGIC FRAMEWORK AND INSTITUTIONAL CAPACITIES

The businesses surveyed through the questionnaire on "Investment Climate 2018"¹³ conducted by the Secretariat confirm that market well-functioning is significantly affected by unfair competition (72%), corrupt practices (92%), compliance with legal requirements (78% of businesses) as well as the relationship with the administration (81%) (see Figure 1). The surveyed businesses reported that *the implementation of legislation and the relationship with the public administration are perceived to "facilitate investments" at a moderate level.* The legal basis applied in practice is perceived as favourable and stimulating for investments, at a rating of 3.42 out of 5, which is the optimum evaluation, while the relationship with the public administration is estimated to be stimulating at a rating of 3.62 out of 5 (see appendix 2).

Figure 1. Factors Determining Business Perceptions on Market Functioning



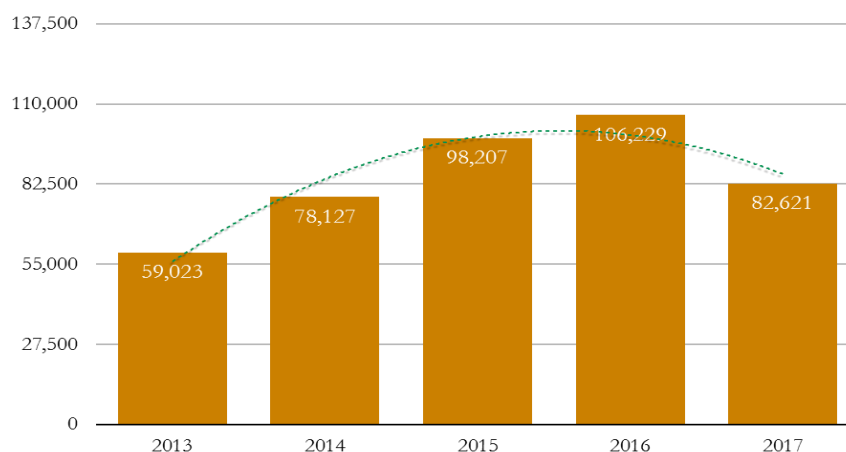
Source: 2018 Survey of Investment Council Secretariat

¹³ The Investment Climate Survey conducted by the Secretariat of the Investment Council represents an instrument for gathering business perception in a structured way regarding issues such as tax inspection, VAT, communication with the tax administration and customs, informality. The investment climate index prepared based on the survey data combines the information on tax administration but also information related to licensing, relations with public administration, human resources or borrowing procedures/costs etc. The survey was conducted for three consecutive rounds during the period 2015-2018, with the participation of approximately 577 businesses from all economic sectors at the national level.

1. Certainly, inspectorates are an important part of the public administration in contact with the businesses. This confrontation also influences the perception of business on the role of the administration as a market regulator. While there is a positive dynamic in the formal aspect of inspections, there is still room for improvement in the content aspect, avoiding overlapping of competencies and functions between different inspectorates and strengthening inter-institutional coordination. Sectoral legislation review and coherence in the distribution of competencies are factors that still hamper the optimization of the reform efficiency. At this current stage of implementation of the inspection reform as part of the wider deregulation reform, it may be necessary to restore the focus on political engagement and strategic reform documents, by making available to the public the types and plans of eventual measures or activities.
2. ***The institutional inspection structure in Albania has radically changed since 2010.*** Inspection remains under the competence of the local government, the Ministries and the inspectorates subordinate thereto. Inspection is coordinated and monitored by the Central Inspectorate established in 2011. At the first stages of reorganization of the inspectorates, their number was reduced from 34 to only 8. Currently, the number of SIs is 16. ***The number of inspectorates results in an upward trend as compared to the starting point of the reform despite the merger of several of them¹⁴.*** From the efforts to understand the volume of inspection through official statistics, *a transfer of inspection competencies from one inspectorate to another* was noted (e.g. water inspectorate, aquaculture). Instability in the distribution of inspectorate competencies and their growing number contradict the spirit of the reform which consisted in increasing the effectiveness of inspections with a lower number of inspectorates.
3. Currently, the total number of inspections reported, as a total of all inspections carried out by each inspectorate, in 2017 is estimated at 83,000 inspections. ***The downward trend in the number of inspections shows that there are attempts to create a positive business climate and not increase their administrative costs from multiple controls.*** These costs, measured in number of days per year in which a business needs to be inspected, have been reduced to 15 days from 59 days they used to be prior to the beginning of the reform. In 2017, about 16% of inspections were conducted through the e-inspection platform, significantly improving inspection effectiveness in terms of time and reducing corrupt practices. Progress in this regard, with the increase in the ratio of *online* inspections relative to the total of inspections, will continue to have a positive impact on the effectiveness of the reform.
4. From the analysis of the inspections distribution during 2017 it results that the inspectorates with the highest volume of inspections are the State Inspectorate of Health, the State Technical and Industrial Inspectorate and the State Labour and Social Services Inspectorate. The role of the State Inspectorate of Environment and Forestry appears to be increasing.

¹⁴ The "State Inspectorate of Environment, Forestry and Water" was merged with the "State Inspectorate of Tourism" pursuant to the DCM no. 338, dated 06/06/2018.

Figure 2. The dynamics of inspections 2013-2017



Source: Administrative data from the annual reports of the Central Inspectorate 2013-2017

The distribution of inspections during 2017 shows that the inspectorates that manage the largest volume of inspections are SIH, STII, SLSSI (see figure 3). The role of SIEFWT appears to be increasing. **By comparing the number of inspections to the number of businesses it appears that each active business should undergo on average one annual technical inspection.** Meanwhile, businesses participating in the business climate survey reported that the average number of tax inspections was 2.1 (in 2017), and the prevalence of controls was 53%, resulting in an average frequency of tax inspection at 1.1 inspections per active business, similar to that of other inspections (see appendix 4).

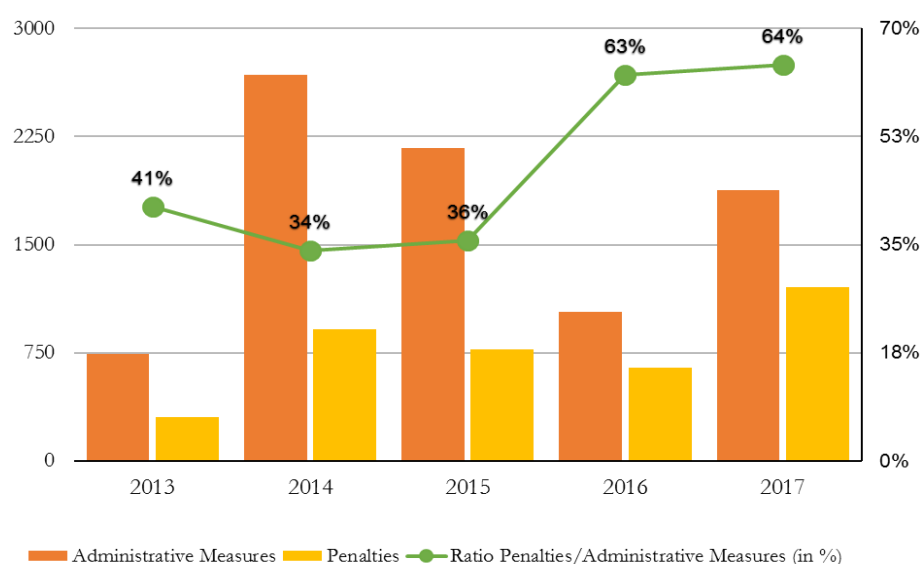
Figure 3. Distribution of inspections by inspectorates 2015-2017



Source: Processing of the Secretariat from the data of the CI's reports

5. The administrative data indicate that about 2% of the inspections have been concluded with the application of administrative measures such as suspension / closure of the business activity, measures for technical improvement, fines or even criminal prosecution. **64% of the administrative measures were fines, and the ratio between fines and the total number of administrative measures results to be twice as high compared to 2014. Increasing the number of administrative measures requires the consolidation of their appeal mechanism (see figure 4).**
6. Among the inspectorates, the highest rate of fines against administrative measures was reported by the National Inspectorate of Territory Protection (100%), the State Inspectorate of Health (93%) and the State Inspectorate of Environment and Forestry (84%) (See appendix 5). The 2017 annual report does not include information on the NFA, while some inspectorates have not reported data on administrative measures or fines. The amount of fines imposed (and reported) for 2017 is reported at ALL 343 million, while their collection is reported to be very problematic and for many inspectorates the level of collection is very low.

Figure 4. Administrative Measures and Fines imposed by Inspections, 2013-2017



Source: Administrative data, Annual Report of the Central Inspectorate 2013-2017

B. ADMINISTRATIVE APPEAL

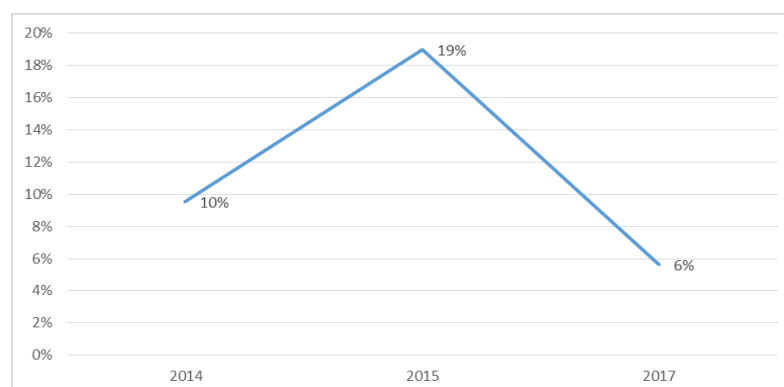
1. **Appeal as a guaranteed right.** The right to file an administrative appeal with a special superior body with the competence to review appeals is ensured by the formal and legal framework, as provided by in the legislation applied by the abovementioned institutions¹⁵.

¹⁵ The right to appeal is regulated by the following provisions:

The rules of administrative appeal against administrative acts are generally arranged by being identifiable by the business through a simple search in the content of laws. The latter, despite the differences between them in their formulation, reflect the basic principles on which the review of administrative appeals should be performed.

2. ***In relation to the number of administrative measures imposed by the Inspectorates, the number of administrative appeals within inspectorates is low.***

Figure 5. Appeals of administrative measures of inspectorates



Source: Findings of the Secretariat¹⁶

It appears that in 2017 only 6% of the administrative measures imposed by the inspectorates have been subject to administrative appeal. While this ratio in the case of administrative measures implemented by the tax administration after audits, according to the reporting of surveyed businesses is 14%. The prevalence of tax appeals is higher than the general average for large companies¹⁷, turnover exceeding ALL 8 million and over 50 employees, for which it is reported at 21.8%, among companies operating in the manufacturing and processing sector (50%), tourism as well as among free professionals (20%).

3. **The low ratio of administrative appeals reported in the official data and reports of the CI is attributable to the limited level of transparency/information, the fact that businesses (particularly the small ones) have a poor understanding of the internal procedures for appealing an administrative measure imposed by the inspectorates, as well as the lack of trust in the appeal commissions. Appeals**

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- *Administrative appeals in the field of tax procedures: Articles 38 and 106 et. seq. of Chapter III of Law No.9920, dated 19.05.2008 "On Tax Procedures in the Republic of Albania" (as amended).*
 - *Administrative appeals in the field of customs: Article 289 of Law No. 8449, dated 27.01.1999 "Customs Code of the Republic of Albania". This provision is currently in force and remains so until 01 June 2017, the date on which the provisions of the new Customs Code adopted by Law no. 102/2014, dated 31/07/2014, shall enter into force.*
 - *Administrative appeals in the field of inspections: Article 51 of Law No.10433, dated 16/06/2011, "On Inspection in the Republic of Albania"; specific provisions of the respective DCMs under which the respective inspectorates are established, organized and operate, as well as the provisions of the material laws implemented by each inspectorate.*
 - *Administrative appeals in the field of public procurement: Article 63 of Law no. 9643, dated 20/11/2006, "On Public Procurement" (as amended).*

¹⁶ Data from the Court of Appeal

¹⁷ Large companies, for classification purposes in this study, refer to companies with annual turnover over 8 million ALL, and number of employees over 50.

Commissions depending on the institution have different denominations, e.g. Tax Appeal Directorate (TAD) / The Commission for the Review of Tax Appeal (CRTA) for appeals related to Tax Procedures, the Fine Review Commission (STII) or the Commission for the Review and Assessment of Appeals (NFA). With a few exceptions, such as in the case of TAD¹⁸ or NFA¹⁹, which provide information on the appeal structure on their official web pages, other appeal structures in institutions (such as CRTA) or inspectorates (STII) have no such information. **In almost all cases, there is a lack of full transparency on the rules, procedures, deadlines related to the review of administrative appeals, published decisions or periodic reports on the number of imposed, appealed, and repealed or upheld administrative measures.** Furthermore, there are still inspectorates such as the SIEFWT which do not yet have an official website. CI²⁰, TAD²¹ and PPC²² have published some standard forms regarding the administrative appeal by providing reasonable assistance to the subjects in relation to the administrative appeal. SILSS official website provides information on applicable sanctions to businesses, upon the final inspection decision. While, additional work is being performed to enable the publication of membership of the Appeals Commission as well as notices for the dates of hearings of the administrative complaints. There is still a need for transparency and business education in relation to the mechanisms of administrative appeal.

4. ***Administrative appeal as a legal remedy to challenge administrative acts in these structures is viewed by the business rather as a mandatory preliminary condition or stage that needs to be completed in order to then address the administrative courts***²³. The decisions of the appeal commissions are often prejudiced due to the manner of their drafting, organization and functioning as defined by the law and because of the elements of “*conflict of interest*” of the collegial bodies dealing with the review of appeals, by being part of the same institution that has imposed the administrative measure. Decisions to repeal the administrative measures of inspectorates represent only 14% (in value) during 2017. ***This low number of decisions in favour of businesses in the cases of appeals filed against the inspectorates discourages businesses from filing appeals against administrative measures.***

Meanwhile, in the 2017 “*Investment Climate*” Survey, the businesses reported that the decisions of the appeal commissions have been in their favour in only 24% of the appeals filed against the findings of reassessments carried out by the tax administration. This perception seems to be confirmed by the official data of the TAD, according to which 21% of the appealed cases have been repealed.

¹⁸ <http://financa.gov.al/drejtoria-e-apelimit-tatimor/>

¹⁹ http://aku.gov.al/?page_id=2022

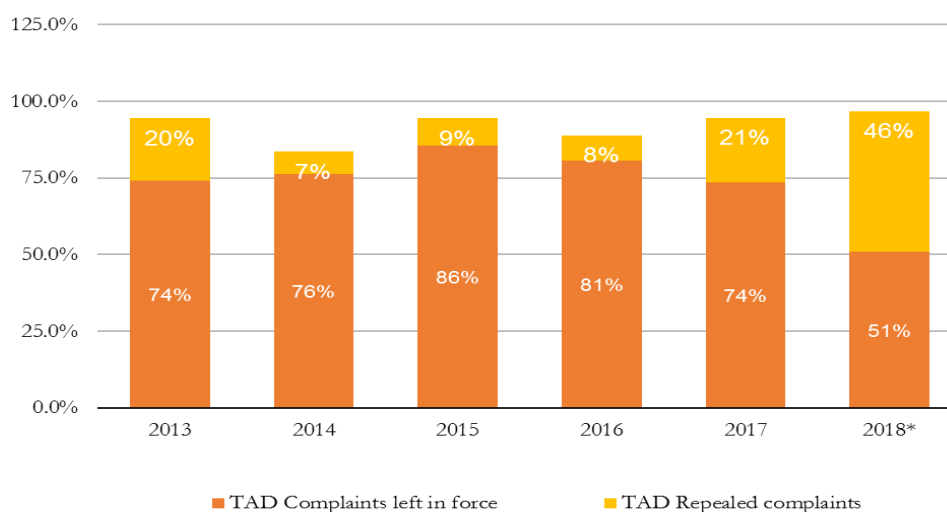
²⁰ *Standard Inspection Form – Appeal of Final Decision*

²¹ *Form of Tax Appeal*

²² *Form of Procurement Appeal*

²³ *In principle, interested parties may only address the court after exhausting the administrative recourse.*

Figure 6. Number of tax appeals repealed and upheld by the DTA



2018* Reflects data from the second half of 2018

Source: Findings of the Secretariat²⁴

The facilitation of administrative appeal procedures and the reorganization of the tax appeal procedure have doubled the use of administrative methods by businesses for the resolution of their disputes, with the public administration acting as a market regulator and supervisor. The tax appeal procedure as a good practice, although only recently restructured, can be considered as an example to be adopted in the cases of inspectorates as well.

5. **Administrative appeals are not always reviewed effectively within the appeal commissions.** From the Secretariat's analysis and from the information gathered by field experts and businesses, it is noted that in many cases *the administrative appeals are not effectively reviewed within the appeal commissions or in compliance with the provisions of the CoAP.* This is related to several reasons which are summarized as follows:

- *In many cases, there are no proper internal administrative review sessions or administrative appeal reviews.* With the exception of the Directorate of Tax Appeal²⁵, which follows a well-established procedure regarding the organization and conduct of hearings on the appealed cases, allowing appellants to be heard as well as to present evidence and arguments, all other appeal bodies suffice with the review of the documents submitted by the parties. Meanwhile, the appeal commissions in inspectorates are satisfied only by the review of the written acts submitted by the parties without their physical presence, or this is only enabled when such a thing is required by the appellant (e.g. NFA). According to the CI Regulation “*On Determining Inspection Procedure, as a Regular Administrative Process*”²⁶, the review of the appeal must be made in the presence of the appellant, prompting the conduct of hearing sessions in the context of the appeal filed by the subject. Although it is not possible for every appeal review to be made in the presence of the subject, e.g.

²⁴ Data from the DTA

²⁵ Document adopted by Order No.25, dated 10/08/2018 of Inspector General

because the subject may refuse to participate (*a case not provided for in the Regulation*), the standard to be followed for the administrative review of appeals should be at least that provided under the CoAP. In order to increase the transparency of the administrative review process, the provision of paragraph 35 of the Regulation provides that: “*All the documented stages of reviewing the Appeal Procedure by Collegial Bodies are uploaded to the e-Inspection System, by the Secretary and the Lawyer of the Collegial Body*”.

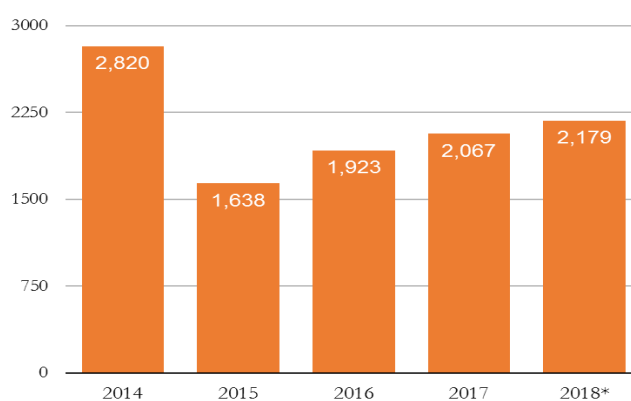
- *The competencies provided by the special laws for different institutions leave room for interpretation.* Even where these competences are well defined, the appeal commissions decide to overcome these competencies. This is due to the fact that these appeal structures do not recognize the principles and provisions of the Code of Administrative Procedures but are inclined to rigidly apply only the provisions of the special law under which they are organized and operate. In quite a few cases, there are discrepancies between the provisions of specific laws/instructions and the provisions of the Code of Administrative Procedures. In any case, the latter shall prevail as they are part of a legal instrument which is ranked higher than ordinary laws in the hierarchy²⁷ of laws.
- *In many cases, the administration does not construe the legal provisions of the legislation in good faith, and does not ensure the general principle of the law under which any vague provisions regulating a particular situation shall be construed in favour of the other party rather than in favour of the State.* The administration presumes “*a priori*” the violation committed by the entity, by also misusing the concept of the “*burden of proof*”, obliging the entity to prove that no violation has been committed, when it is actually the administration that shall first produce the evidence and arguments related to the committed violation, and only then shall the entity be obliged to produce its arguments and evidence to the contrary. However, several laws such as Law No. 10433, dated 16/06/2014 “On Inspection”, have introduced new approaches to the sanctioning of some principles of administrative law, which ensure a fair treatment by the inspection administrations. More specifically, Article 8 of this law, “*Principle of the most favourable legal provision*” stipulates that: “*1. When legal provisions regulating the inspection activity are vague or in contradiction with each other, the inspector shall act in such a manner that is most favourable for the inspected entity. 2. Where the inspected entity has acted in accordance with a legal requirement which is in contradiction with another legal requirement, its action shall not be considered as a violation*”.
- *Lack of adequate infrastructure for the conduct of administrative appeal hearings under fair conditions and based on the principle of a fair and public trial.* There are limited human resources to deal with the procedures related to such a wide field of activity, as in the case of the State Inspectorate for Market Surveillance and the National Food Authority, which, despite their good will, are conditioned by the aforementioned objective factors in the fulfilment of the duties assigned to them by the relevant legislation.
- *Lack of sustainable capacities with proper training, up-to-date with the legislation and the dynamical nature of its changes, and indoctrinated with the approach of treating businesses as a partner.* Almost all businesses, with which the Secretariat has held meetings, have

²⁷ Codes are approved by a qualified majority of 3/5 of the members of the Albanian Parliament.

raised their concern regarding the frequent staff changes in the institutions providing services to businesses. According to them, this leads to a loss of “institutional memory”, a need for constant training and undue delays in obtaining responses from such institutions, even for the simplest procedures that have already been consolidated, thus artificially increasing the number of disputes between the businesses and the administration. There is evident discontent about the professional capacities of the administration, their understanding/updating with the legislation and the dynamical nature of its changes, as well as their communication skills and their behaviour towards businesses.

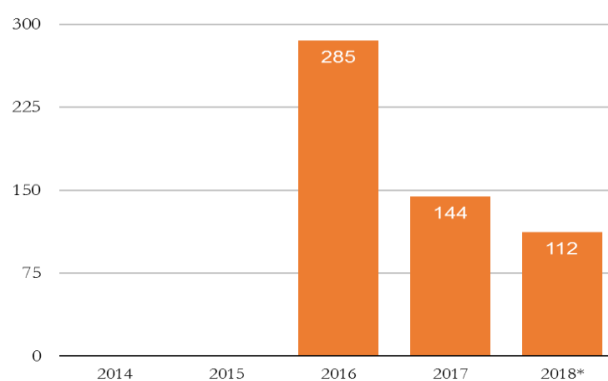
- *Businesses themselves have a poor understanding of the mechanism of administrative appeal against public administration acts.* More often than not, they suffice with the resolution of their issues through ordinary complaints or direct contacts, in cases where the administration provides a delayed response or no response at all, failing to observe the relevant procedures and deadlines for the filing of formal administrative appeals. In this aspect, there is room for investments from businesses in order to enhance internal professional capacities and to recognize and properly observe the institutional procedures related to the specifics of administrative appeal, as well as the principles of the Code of Administrative Procedures.
6. *On the other hand, the decisions of the Appeal Commissions are generally not published, particularly in the case of inspectorates.* Even when published, as is the case of decisions of the Directorate of Tax Appeal (genuinely not an inspectorate), their publication is not provided on a regular basis. As observed in the analysis of the Secretariat “*On Improving the Mechanisms for the Resolution of Disputes between Businesses and the Public Administration*”, the publication of reasoned decisions by the Appeal Commissions (the decisions of the Public Procurement Commission may serve as a reference) paves the way to the unification of the administrative practice applicable to the resolution of similar cases in the audit/inspection field, provides the entities with a comprehensive overview of the positions held on special or specific cases, and imposes on the administration the “burden” to stay faithful to its previous interpretations, thus limiting its excessive discretion which leads to subjectivism or arbitrary decisions. In this context, the publication of decisions should be viewed not only as an opportunity to enhance the transparency and accountability of the institutions, but also as an effective mechanism for the correction of institutional practices.
 7. The number of unresolved disputes between inspectorates and businesses, which are currently under review by the Administrative Court of Appeal, appears to be 2,179. Statistics of the Administrative Court of Appeal show that the number of pending cases is constantly increasing, while the number of new cases with businesses in the capacity of plaintiff and inspectorates in the capacity of defendant has decreased. We would like to emphasize that one of the reasons behind this is related to the insufficient resources of the Administrative Court of Appeal, which consists of only 13 judges, while another reason is the variety of cases under the jurisdiction of this court. Compared to the total number of pending cases (around 13,000), the number of cases related to the inspectorates is small. A comparative overview of the number of cases reviewed by the Administrative Court of Appeal, with businesses in the capacity of plaintiff and inspectorates in the capacity of defendant, is provided below.

Figure 7. Number of pending cases reported by the Administrative Court of Appeal



Source: Findings of the Secretariat

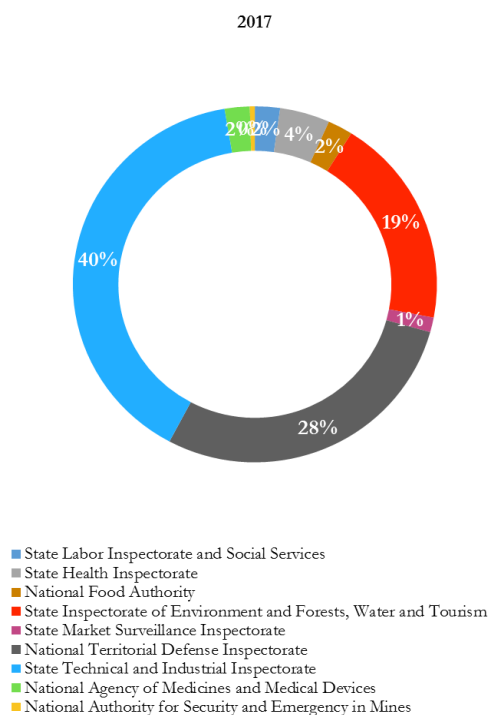
Figure 8. No. of new cases reported by the Administrative Court of Appeal



Source: Findings of the Secretariat

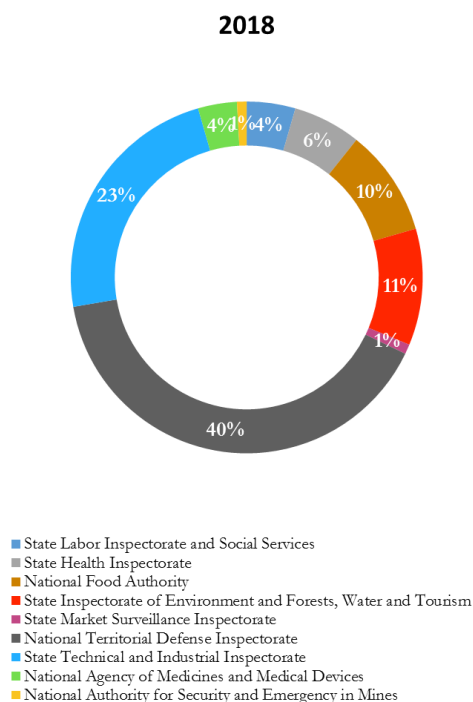
Figure 9 and Figure 10 provide a more detailed overview of the distribution of cases reviewed as per the relevant inspectorates for 2017 and 2018.

Figure 9. Distribution of cases reviewed by the Administrative Court of Appeal, with Inspectorates as litigant parties, 2017



Source: Findings of the Secretariat

Figure 10. Distribution of cases reviewed by the Administrative Court of Appeal, with Inspectorates as litigant parties, 2018.

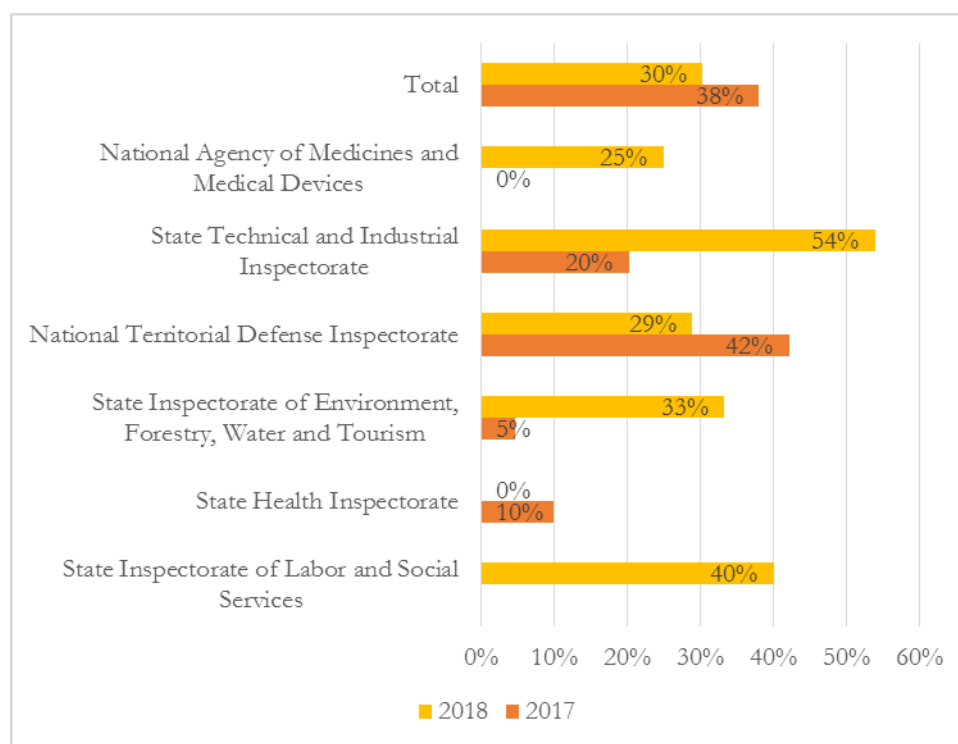


Source: Findings of the Secretariat

The inspectorates with the highest number of court cases are the State Labour and Social Services Inspectorate and the State Inspectorate of Environment, Forestry, Water Administration and Tourism (see Figure 9). In 2018, inspectorates with the highest number of cases are State Inspectorate for Territorial Management (40%), State Labour and Social Services Inspectorate (23%), State Inspectorate of Environment, Forestry, Water Administration and Tourism (11%) and National Food Authority (10%). The distribution of court cases against inspectorates shows increasing importance of food and health safety measures, environmental issues and labour safety.

8. By analysing the ratio between the number of court cases won by the inspectorates and those won by the businesses, which certainly depends on the specifics of the case and the relevant inspectorates, it appears that, on average, 62% of cases have been won by inspectorates and 38% by the businesses (see figure 11).

Figure 11. Report of measures repealed by the Administrative Court of Appeal, 2016-2018*



Source: Findings of the Secretariat

C. INTER-INSTITUTIONAL COORDINATION

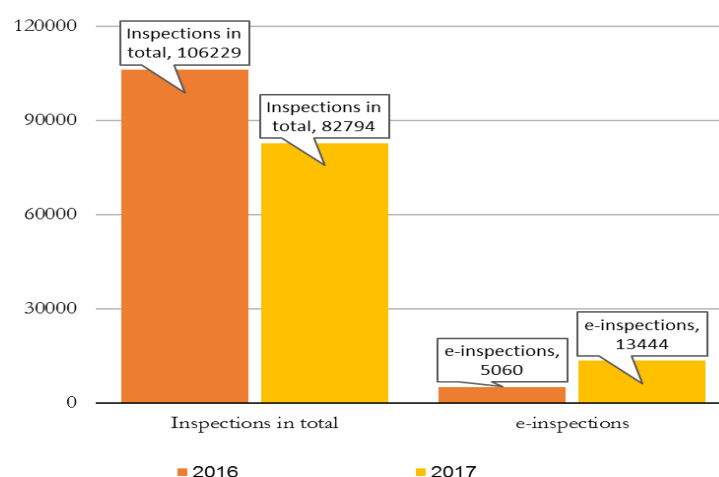
1. *The unique e-inspection portal, an opportunity to increase transparency of inspectorates. Its complete functioning and wide usage by all the inspectorates remains still a challenge.*

The Central Inspectorate, pursuant to Article 16 of the Law No. 10433, dated 16/06/2011, has established and administers the unique inspection portal that serves for the programming and coordination of inspections, as well as the exchange of data through different inspectorates. The secondary legislation framework on the rules, procedures, competencies and the contents of the e-inspection portal has already been consolidated²⁸.

The portal has standardized some of the preliminary documentations necessary for carrying out transparent inspection procedures, such as the inspection authorization or the sectoral *check lists*, as per the inspection field and specific sectors. The minutes of inspection and the final decision must be based on the findings in the course of the verification of the *check-list*. The inspection minutes and the final decision shall be signed by the inspection bodies and the representative of the inspected entity, at the site of inspection.

Based on the administrative data provided by the Central Inspectorate, inspections in 2017 have increased three times as compared to 2016. About 13.444 inspections, or 16% of inspections have been carried out through *online* inspection. The State Labour and Social Services Inspectorate is the inspectorate that has digitized the inspection process, the other inspectorates report a modest number of online inspections as compared to the total inspections they carry out. Online inspections constitute a transparency mechanism, by restricting the inspectors' discretion or their subjectivity during inspection. Online inspection helps real-time monitoring of the inspection bodies.

Figure 12. Number of online inspections as compared to the total inspections



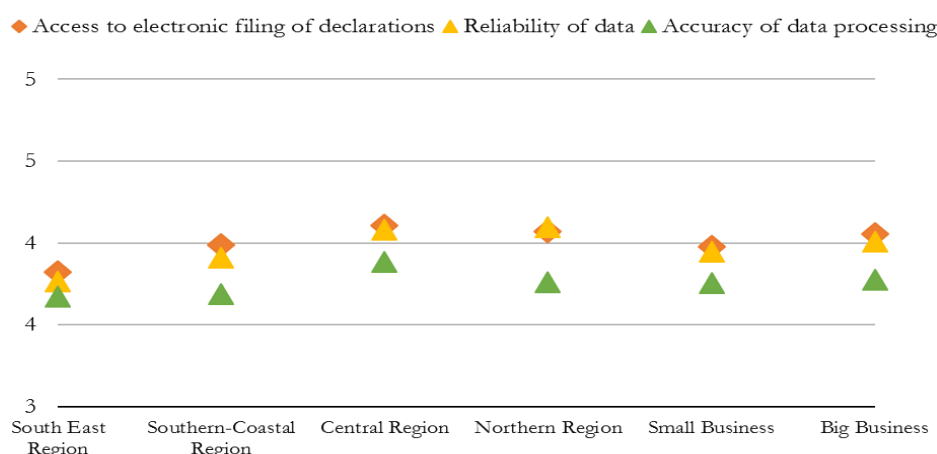
Source: Administrative data from the Annual Report 2017, Central Inspectorate

²⁸ The following acts have been approved with regard to the unique inspection portal:

- DCM No. 696, dated 16/08/2013 "On determining the procedures for the exercise of competencies by the Central Inspectorate and the Rules on the content and administration of the unique "e-inspection" portal";
- Order No. 15, dated 07/05/2015 of the General Inspector "On the approval of the Rules for determining the procedures and methods of using the unique "e-inspection" portal";
- Order of the General Inspector No. 95, dated 16/02/2017 "On carrying out on-line inspections"
- Order of the General Inspector No. 284, dated 03/05/2017 "On carrying out on-line inspections".

When asked to report the impact of the *online* business data declaration to the tax authorities, the businesses have stated that they are satisfied with the use of *online* systems, as regards the declaration and reliability of information, and the assessment measured using a likert scale format 1 (dissatisfied) – 5 (very satisfied) shows that the businesses are very satisfied with the use of *online* services. The level of satisfaction and ease of use of such systems is lower among small businesses and in some of the less developed areas, for which the lack of information and human capacities to use them may generate additional costs and compliance issues. In such cases, awareness raising and informing the business is necessary.

Figure 13. The level of validity of online tax inspection systems as reported by the business



Source: Survey on the Investment Climate 2018, Secretariat, Investment Council

Based on meetings held with the businesses and representatives of inspectorates, it results that there is new approach by some inspectorates to raise awareness among businesses regarding the fulfilment of the check-list requirements, by preliminary setting a deadline for their rectification (such as for e.g. In the case of inspection on working conditions by State Labour and Social Services Inspectorate, or the conditions for meat trade by NFA) and then inspecting them. Online inspections constitute only 16% of the number of inspections carried out by all the inspectorates. As also ascertained in the annual reports of the Central Inspectorate, *the online inspection is not yet being adequately implemented in practice by all the inspectorates*²⁹.

2. Unification and Standardization of Inspection Procedures as a guarantee for the legal documentation of the inspection activity

With the Order No. 58, dated 21/08/2014 and the special Regulation, the Central Inspectorate has approved the standard formats for the documentation of the inspection activity for all the inspectorates:

1. Authorisation of Inspection;

²⁹ P. 36, Annual Report 2017 Central Inspectorate

2. Inspection minutes;
3. Intermediate decision for taking the urgent measure;
4. Final Decision of Inspection;
5. Decision for resolving the separate appeal;
6. Authorization for replacing the inspectors;
7. Request for refusal of the inspector's authorization;
8. Request for postponing the authorization of inspection;
9. Decision for postponing the authorization of inspection;
10. Decision of the Appeal Commission;
11. Inspector Badge.

3. Institutional coordination between the inspection bodies for carrying out the joint inspections, as a prerequisite for increasing the inspections efficiency and decreasing the burden for businesses. Despite improvements, cooperation remains sporadic and depending on the will of the heads of the institutions. Administrative data indicate that the total number of inspections had dropped, however, the change in the inspectorates' competencies and coordination may enhance the monitoring efficiency and the market guarantee role that the inspectorates play. More specifically:

- *Law No. 10433, dated 16/06/2011 "On Inspection",* has provided for an important guarantee for the entities subject to inspection, by limiting the time at the disposal of the State Inspectorate for carrying out inspections at these entities. Specifically, Article 26/2 stipulates that "...the maximum period allowed for annual inspections is from 5 to 15 days". The purpose of this legal provision is to ensure a low burden for the businesses, but on the other hand to also encourage the institutional cooperation and coordination, with a view to ensure the maximum time for carrying out the inspections does not exceed 15 days. ***In practice, joint inspections have not been widely used, and the inspections plans of the State Inspectorate have not been adequately coordinated.*** This is still a burden to the businesses which have been subject to inspection by different inspectorates, even if for short periods of time. The above coordination is a duty of the State Inspectorate, which must ensure coordination of the programmed inspections on the basis of annual and monthly programs, submitted in advance by the inspectorates.
- ***The lack of institutional coordination is also noticed among the inspectorates and other bodies that perform audit activities outside the inspectorates' system, but carry out very important functions in the framework of identification of informal activities and protection of fair competition.*** More specifically, the scope of NFA inspections covers not only the entities registered with NBC on a voluntary basis, holders of Tax ID number (NUIS) identifying them as traders, and consequently as taxpayers to the tax bodies, but also the other entities exercising a commercial activity without being registered, such as the livestock traders or meat selling units. The category of these entities that have been subject to inspection by NFA due to violations of the elements related to food safety, are reported by NFA to the tax authorities as totally informal and unregistered entities. Regardless of this reporting, these entities were again identified in the future inspections by NFA as unregistered entities and out of the focus of the tax administration measures. *Furthermore, NFA confirms that in no case have they received an official*

notification related to the measures undertaken by the tax administration against such entities, and no joint controls/inspections have been coordinated. Such a lack of coordination is also noticed as regards the inspectorates or the local units bodies in charge of inspection activities which, even when they identify breaches of the hygienic and sanitary conditions by the commercial units, or unregistered entities do not report it to the respective inspectorate or the tax authority, but on the contrary, they legitimate informality by collecting only the local tax/tariff by these entities.

- ***The Secretariat points out a fact which has also been confirmed in the handling of other issues by the Investment Council (agriculture, tourism, BPO), that the state institutions are inclined to control or inspect only the registered entities, often excluding from their focus the entities operating completely informally and outside the institutional registries.*** This practice has brought about distortion of market and distortion of the fair competition, and on the other hand, has unfairly increased the administrative and fiscal burden only for the part of registered entities. In their everyday activity, businesses report the competition from informal or unregulated activities as one of the main barriers for doing business and fostering investment

V. RECOMMENDATIONS

Based on the above, we can conclude that there is progress (though not at the anticipated pace) of the Inspection Reform resulting in reducing the number of inspectorates, reducing the number of inspection days in businesses, standardizing inspection procedures, introducing of online inspection, publication of inspectors' lists. Meanwhile, the analysis brings to attention issues that have reduced the pace of the reform against the current challenges of the Albanian economy in the framework of EU integration as well as confrontation with regional and global competitiveness.

Recommendation 1

Further progress, as part of deregulation reform, requires a moment of reflection and to date impact assessment, by highlighting successes and prioritizing integrated reform interventions with other structural reforms such as public administration and civil service. The persistence of the focus of the reform and political engagement remain a prerequisite given the complexity of deepening the reform on its content, the complexity of the technical aspect of the inspection, the alignment of legislation with that of the EU, the qualitative growth of human resources capacities, and accreditation of technical-laboratory capacities at the respective costs. The business consultation mechanism should be structured integrally and be part of the RIA to clarify the expected effects of regulatory changes for affected parties, especially for business.

Recommendation 2

Consolidation of inter-institutional co-ordination and cooperation is of paramount importance for the success of this reform, particularly in terms of enforcing regulatory requirements that ensure fair competition between market operators and formalization of the economy sectors. This cooperation takes special importance also in the framework of the fight against informality where the role of the inspection functions such as GCD, GTD, SILSS, NFA and SMSI etc. has

an impact on the functioning of the market. For this reason, clear institutional commitment of the line ministries (existing or new directorates), further specifying the competencies, responsible for drafting and monitoring the policies and legislation implemented by the inspectorate, it is necessary and it would strengthen the cooperation between the Ministries, the Central Inspectorate and State Inspectorates.

Recommendation 3

Preparation of a detailed matrix with all the inspection functions and overlaps as an initial stage of *drafting a concrete timeline plan, responsible institutions, clarified methodologies in relation to revision of the sectoral legal framework by the Line Ministries, in cooperation with Central Inspectorate and State Inspectorates. Progress of the reform in terms of improving sectoral legislation serves the EU integration agenda.* Avoiding overlapping of inspections as a result of revising sectorial laws and clarifying competencies at the level both of national inspectorates and local inspectorates as well, will increase the efficiency of inspection to the optimal degree. *The eventually decrease of the number of inspectorates and merging of their functions as per their object, should not condition the enforcement of the monitoring and regulatory functions which foresee the protection of consumers and fair competition environment for the businesses.*

Recommendation 4

Full inventory of the legal and regulatory inspection framework and its easy access to all stakeholders (businesses, associations, and inspectors) will improve the efficiency of inspections, strengthen the regulatory/oversight role of inspections by reducing the compliance costs of the business.

Recommendation 5

Free legal and in-distance assistance for inspection entities by inspection bodies through the preparation of simple manuals for specific sections, according to the typologies of inspection and business characteristics. Reformation of the inspection has been dynamic, procedures and practices have been revised and standardized, these changes are easily followed by large companies, but with difficulty by small and medium businesses. The structure of our economy is dominated by small and medium-sized businesses, with limited capacities, for which assistance and counseling is needed. Legal assistance in the form of a call center/green number for inspection entities would facilitate the compliance process of businesses with the laws/regulatory framework.

Recommendation 6

Improvement (preparation in those cases of lacking) and updating of risk methodologies on the latest sector-based monitoring database will increase the efficiency of inspections and reduce the burden on businesses. The business structure in the country is segmented with typologies of small business units or in the service area. Meanwhile administrative capacity is limited both in human and financial resources. For this reason, the preparation of sectoral databases by each inspector and the risk identification of any activity on the basis of objective criteria would enable effective inspections and their reasonable distribution within a certain period. Risk criteria should be set out in sectoral legislation, while public institutions should keep systemic and structured statistics.

Recommendation 7

The preparation/improvement and disclosure of the methodologies applied by inspectors for the establishment of appropriate and proportionate administrative measures is considered as a means of limiting arbitrary and selective decisions. The standardization of inspection procedures makes it necessary to draft and standardize the methodologies for setting administrative measures, using the principle of proportionality in relation to the economic damage/consequence caused by the violation. To meet this purpose, on the basis of legal obligations deriving from the provisions of the Article 7 and 8 of Law No.10433, Council of Ministers/CI need approve the General Regulation on the Methodology for Imposing Administrative Sanctions, while state and local inspectorates need to approve their respective Methodologies for administrative sanctions in their field of inspections³⁰.

Recommendation 8

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.

Recommendation 9

Increase of the number of planned inspections during 2019, with the objective of reaching a ratio 85% with 15% between planned inspections and non-planned inspections. Focus of the inspections should aim to advise and assist businesses to meet the compliance with the sectoral standards, while administrative sanctions should be considered as the last mean to meet the inspection objectives.

Recommendation 10

Sustainability and training of the staff of the inspectorates. Motivation of the inspections bodies, their periodic testing and performance evaluation on the basis of well defined criteria. Staff training programs for inspectors and in particular for complaints review committees related to the inspection functions and sectoral standards required by the legislation.

Recommendation 11

Strengthen and structure communication with the business in the function of transparency and compliance with sectoral compliance standards and inspection procedures. The lack of prior consultation with businesses in a series of initiatives has become the source of administrative disputes that have been addressed by the appeals structures of the institutions themselves or the Administrative Court. It is

³⁰ SILSS is the first state inspectorate which has prepared and published on the official website of the institution a Matrix on the decision-making of inspectors and the administrative measures foreseen for each specific violation of the labor legislation: <http://inspektoriaipunes.gov.al/sq/testo-activity-per-application-of-law/>. The matrix is supported by a methodology that guarantees proportional administrative action in relation to the violation committed, promotes transparency and limits the arbitrary inspection practices and imposition of penalties by raising employer awareness to self-correction, as well as establishing positive premises to guarantee equal treatment for employers irrespective of the business segment where they operate. Adoption of a such Methodology/Matrix has been also a recommendation of IC Secretariat: <https://www.investment.com.al/wp-content/uploads/2017/06/On-Labour-Code-Penalties-Eng-1.pdf>

estimated that the existence of these mechanisms would enable the promotion of dialogue between the parties and the reduction of business costs. Economic operators should become aware on the challenges related to the compliance with the obligations and standards deriving from the alignment of the legislation with *acquis* and should be proactive in adoption and discussion of the sectoral legislation.

Recommendation 12

Unification of administrative practices through publication of commentaries. From the viewpoint of businesses, experts and stakeholders contacted by the Secretariat, the unification of consolidated practices is seen as one of the most essential elements that would considerably reduce the number of complaints against tax administration decisions and improve business perception indicators related to it. A very important role in unification can also play State Advocacy through its active role with interpretations of legal issues of general character for all public administration. For this, legal changes are required in Law no. 10018 dated 13.11.2008 "On State Advocacy".

Recommendation 13

It is suggested that there is a unification and centralization of the appeal of the Inspectorates at the Central Inspectorate to increase the professionalism, independence and trust of complaints at the State Inspectorates as well as the conduct of hearings during the examination of administrative complaints. The committees responsible for the review of the complaints shall be composed of experts of the actual field of inspection and representatives of the SI which has established the administrative measure. Modalities and procedures followed are to be set out in a separate regulation and be public on the website of CI and of any SI. For this, it is necessary to make changes to Law no. 10433 dated 16.06.2014 "On Inspection".

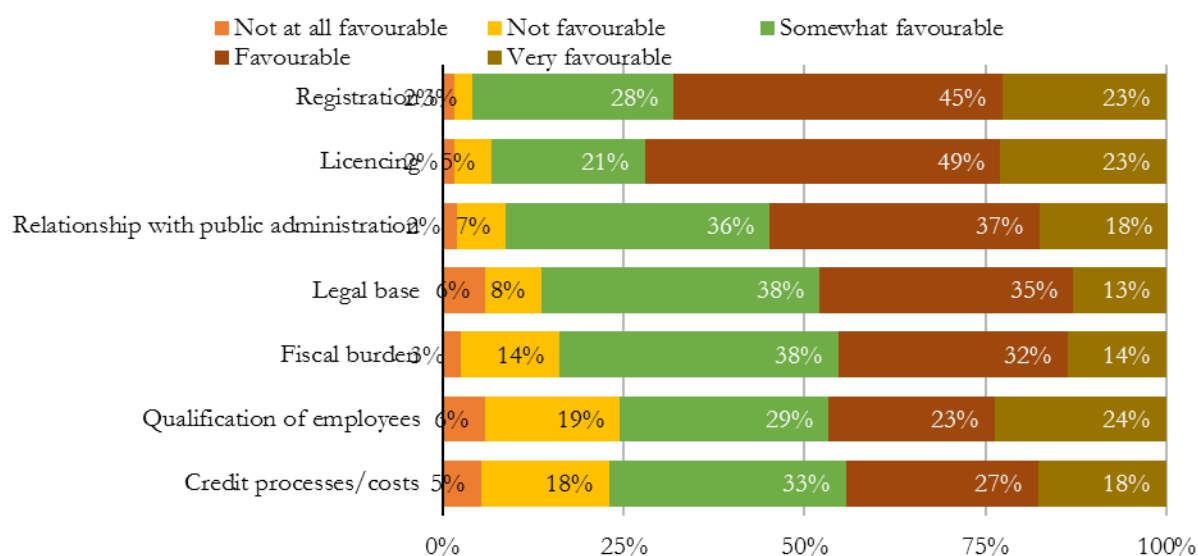
APPENDICES

Appendix 1. General sampling data for businesses involved in the survey

Questions	Response Category	Frequency (in No.)	Frequency in (%)
Regions			
	Southeast Region	67	19.4%
	Southern-Coastal Region	112	32.4%
	Central Region (Tirana)	123	35.5%
	Northern Region	44	12.7%
Annual Turnover	Response Category	Frequency (in No.)	Frequency in (%)
	Deri në 8 Mio Lek	197	59.3%
	Mbi 8 Mio Lek	135	40.7%
Number of Employees	Response Category	Frequency (in No.)	Frequency in (%)
	Up to 50 Employees	232	69.7%
	Over 50 Employees	101	30.3%
Regions/District	Response Category	Frequency (in No.)	Frequency in (%)
	Berat	6	1.7%
	Dibër	5	1.4%
	Durrës	51	14.7%
	Elbasan	9	2.6%
	Fier	14	4.0%
	Gjirokastra	15	4.3%
	Korça	37	10.7%
	Kukës	4	1.2%
	Lezha	11	3.2%
	Shkodër	24	6.9%
	Tirana	123	35.5%
	Vlora	47	13.6%
Tax/Inspection Authority	Response Category	Frequency (in No.)	Frequency in (%)
	No response	13	3.8%
	Regional Directorate	285	82.4%
	Big Taxpayer	48	13.9%
Shareholders	Response Category	Frequency (in No.)	Frequency in (%)

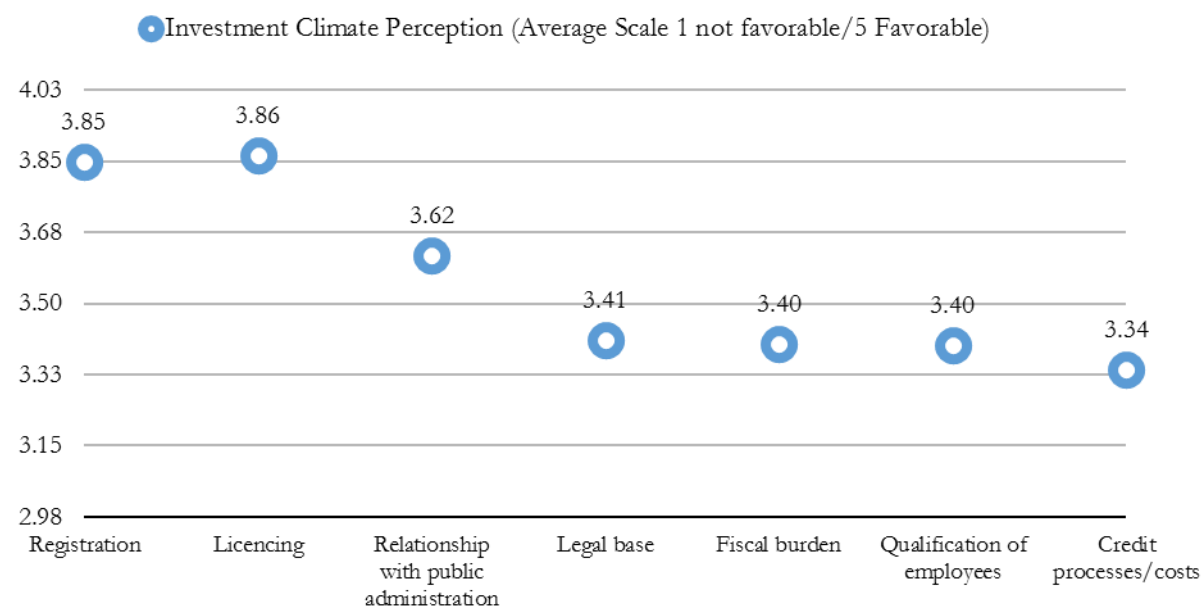
	No response	95	27.5%
	Local capital	215	62.1%
	Shared capital	19	5.5%
	Foreign capital	17	4.9%
Sectors	Response Category	Frequency (in No.)	Frequency in (%)
	Industry	18	5%
	Construction	20	6%
	Trade	44	13%
	Telecommunication, transport, warehousing	88	26%
	Hospitality/Food/Drinks	89	26%
	Financial/insurance/professional services	35	10%
	Other services (low skilled)	51	15%

Appendix 2. Business perception on investment climate 2018



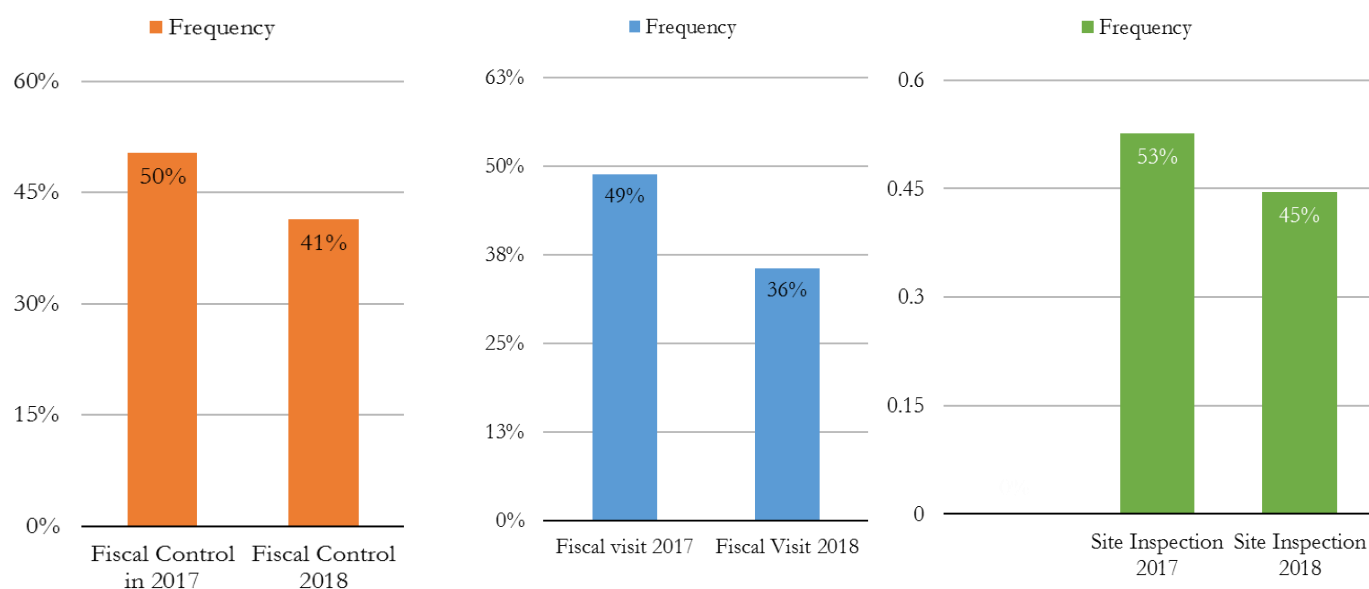
Source: 2018 IC "Investment Climate" Survey

Appendix 3. Business climate indexed (average score per components of investment climate based on likert scale 1- very unfavorable, 5- very favorable investment climate)



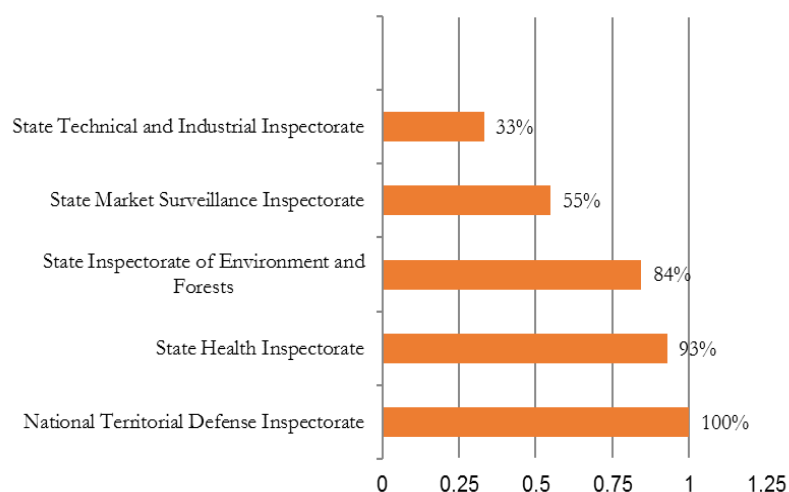
Source: 2018 IC "Investment Climate" Survey

Appendix 4. Frequency of businesses reporting to experience fiscal contorolls/visits or inspections (2017-2018)



Source: 2018 IC "Investment Climate" Survey

Appendix 5. Ratio between fines/Overall Administrative penalties for 2017 per main inspectorates

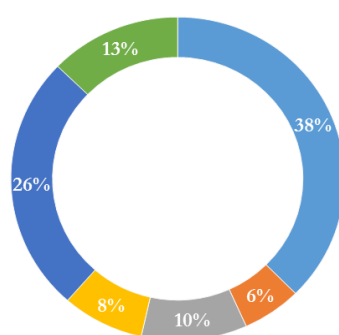


Source: Administrative Data, Annual Report of Central Inspectorate 2013-2017

Note: Rate of 100% reflects the fact that all penalties given by an inspectorate have been fines. The graph summarises only inspectorates that have reported fines and other administrative measures. The inspectorates listed are those bearing the majority of inspections in the system. From the data reported inspectorates having the highest rate of fines to administrative penalties are NTDI, SIEFWT.

Appendix 6. Distribution of fines by inspectorates in 2017 (in %)

■ NTDI ■ SMSI ■ SILSS ■ STII ■ SIEF ■ SIW



Source: Administrative Data, Annual Report of the Central Inspectorate 2013-2017

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