

COMMENTS ON THE DRAFT LAW “ON THE DEVELOPMENT OF MICRO, SMALL AND MEDIUM ENTERPRISES”

SECRETARIAT OF ALBANIA INVESTMENT COUNCIL

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I. Appropriate context for the discussion of the draft law “*On the Development of Micro, Small and Medium Enterprises*”

- The draft law has been prepared and is being discussed at the same time with the “*Business Development and Investment Strategy 2021-2027*”, object of discussion, consultation with stakeholders in the most recent IC meeting held on June 21, 2021 - being also part of this Strategy’s action plan.
- There is a growing need to support MSMEs with support measures/state aid and mainly access to finance / grants (topics addressed in dedicated IC meetings and detailed analysis by the Secretariat) to increase their competitiveness. All these are constituent elements in the first pillar of the Strategy - Investment Attraction and Internationalization framework.
- On the other hand, it is necessary to promote and raise awareness of support measures and financial support schemes available to enterprises - the momentum created by the introduction of the electronic portal for financial instruments created with funds from the state budget and development partners (*provision in Article 11 point 7*), developed by AIDA in cooperation with the EBRD. In this sense, the concrete measures implemented, which seem to have preceded the draft law, are a positive practice.
- Filling in the gaps related to some legal aspects of Law 8927/2002 “*On Small and Medium Enterprises*” and specifically by defining clear legal obligations on managing the budget support fund, which are accommodated in Article 11, points 3 and 4.

II. Better legal framework in relation to law 8957/2002, but some provisions need improvement

A. Terms

- The title of the Draft Law correctly reflects the terminology of the European Commission Recommendation 2003/361/EC, published in the Official Journal of the EU L 124, p. 36 of May 20 2003. In contrast to Law 8957/2002, the term “*Micro-enterprise*” is included in the name, highlighting the growing role of the self-employed in the country’s economy.
- (Article 2) - Definitions are generally harmonized with European Commission Recommendation 2003/361/EC.
 - Definition (3) “total sales” is harmonized with the meaning of the concept according to the National Accounting Standard (NAS 15).
 - Definition (6) It is not clear which are the “*regions*” to which the definition 6 – “regional development funds” refers, at a time when Albania is divided into counties. If the definition is made on the basis of “*regions*” as defined in one specific law, then point 6 should refer to the relevant legal basis.
 - Definition (8) “unlisted businesses - business angels” is a relatively new concept in the Albanian context. We highlight that the definition of business angels in this draft law is different from the definition of this concept in the draft law “*On Support and Development of Innovative Start-ups*” according to which Business Angel is an investor who with his experience and funds, has made a capital investment in the initial stage of development, in at least two Innovative Startups. Based on the above, it is necessary

that for consistency of terminology, legislative technique and a clear understanding by its subjects, the definition of Business Angel be the same in these two draft laws.

- (Article 4) - The classification of enterprises has been done from time to time according to the provisions of the Commission Recommendation and its Annex, Articles 2 and 3. However, for practical purposes in point 5, there is a need for some interventions: Specifically:
 - “0 to 1 person”, it is suggested to be replaced with: “self-employed” according to the terminology widely used in the tax field.
 - “0-9 persons” is suggested to be written “up to 9 persons”.
- (Article 11 point 7) Each institution that provides financial support for micro, small and medium enterprises must submit information to AIDA within 5 days before the start of the implementation of the scheme.
 - *Question: (1) Are donors envisaged here as well? (2) Timeline is a very good monitoring instrument, but is it thought that the mechanism would be set in motion to enable timely updating of information by institutions and donors?*
- (Article 9) - It is not clear what does it mean in practical terms, “balanced gender access” nor is it provided elsewhere in the draft law, that any other sub-legal act will define this concept.
- (Article 10)
 - It is suggested to use the term “*development partners*” instead of “*donors*”;
 - In paragraph 1 point c) the phrase “*law in force on state debt and guarantees*” is suggested to be revised. This terminology is not clear and it is suggested to change accordingly. The name of the law to which the reference is made is *Law no. 9665, Dated 18.12.2006, “On State Borrowing, State Debt and State Loan Guarantees in the Republic of Albania”*.

B. Knowledge of the law by enterprises/Information

(Article 5) - The concepts addressed in this article are relatively new and not easily understood by the subjects of this law - despite being translations of the provisions of the Commission Recommendation and its Annex. However, it would be suggested that the preparation of a Guide should follow the law according to the models of the Commission which clarify in simpler terms the conditions, criteria and categories related to “*autonomous enterprises*” and “*partner enterprises*”. The model for this Guide may be found at this link: https://ec.europa.eu/regional_policy/sources/conferences/state-aid/sme/smedefinitionguide_en.pdf

C. Support programs and unification of criteria

- (Article 11) – As per our comments on the draft BIDS 2021-2027, it should be explicitly mentioned (in point 2) the support programs for “*digital*” and “*green transition*” which are also at the focus of the 2020 EU Industrial Policy, amended in May 2021.
- (Article 11 point 5) - What is the argument for this minimum time frame of existence as a natural or legal person? No explanation is given in the Report, RIA or Consultation Document.

The general criteria, however, are harmonized and exhaustive, limiting the discretion to set the following other criteria, which may increase administrative bureaucracies.

- (Article 11 point 6) - The definition “case by case” is not clear and leaves room for different interpretations. What is its meaning? The law should provide as far as possible unified criteria terms and benefit measures and not on a case by case basis.
- (Article 13) - the title should be revised. We suggest replacing the phrase “state institutions” with “local self-government units” because the article refers only to these and not to every state institution.
- (Article 15) - This is a declaratory and very blanket provision. Is there any concrete partnership mechanism that makes local self-government units interested institutions in supporting MSMEs, given that their current human and financial resources are limited?

D. Transparency and regulatory/institutional framework

- (Article 16) - In view of the transparency and institutional accountability but also of good governance practices, it is suggested to establish as a legal obligation the publication of these annual reports to the public. So, AIDA/MFE to publish the annual report of the previous year on their official website/s no later than July 15.
- (Article 19) - We suggest reformulating the article by radically changing the mechanism of the consultative council. In principle, the KK, as an advisory body to the institution responsible for the economy, can not be composed by the majority of representatives from the state institutions. This creates conceptual confusion as state institutions advise another state institution. We suggested that such mechanisms follow the good practices of “good governance” which guarantee “check” and “balance” of the regulatory framework and a format of representation in the majority of the private sector - enterprises as partners directly interested in monitoring and implementing law on MSMEs. On the other hand, the mechanism should enable a rotation of members from the ranks of businesses/categories of enterprises to ensure inclusiveness and broad representation.

Enterprise Advisory Council - is considered an advisory structure for increasing MSME access to funds, etc., as well as several existing inter-institutional councils or groups. Their main object is to increase the trust in the institutions, as long as there is bilateral engagement and reporting, but the risk of adding such instruments also increases the volume of work for analysis and reporting as part of credibility – therefore, in what way, from the institutional point of view, will be ensured the commitment to add such instruments to stimulate trust? Is there a need for a standardized approach to increase trust in inclusiveness and to manage well the boom of such platforms?