

Municipal Entry Barriers and Systemic Sources of Corruption¹

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I. Introduction

The purpose of this report is to summarise the results of a study conducted by the Institute for Market Economics within the framework of the project *Municipal Entry Barriers: Retail Merchants and Service Providers*, funded by the *Local Government and Public Service Reform Initiative*, Open Society Institute, Budapest.

The main target of the study was to identify the entry barriers arising from contacts with the public administration and to suggest some steps for their reduction and elimination.

The data used in the study were compiled by way of in-depth interviews with SME representatives coupled with a review of existing Bulgarian legislation. The study was carried out from 1 March to 30 June 2000. In the area of retail sales, the focus was on drugstores, cafeterias, bakeries, and food shops. In the area of services, our main targets were beauty saloons, tour operators and tourist agencies, family-owned hotels, car washing and car repair facilities, gambling halls, fitness halls. A representative of an intermediary company was interviewed as well, i.e. a company acting as an intermediary between businesses and the public administration and authorised by the entrepreneur to apply, in his name and on his behalf, for all permits and licenses required for business operations. For the purposes of this study, interviews were conducted with representatives of small businesses and of the local authorities in the following towns: Sofia (Mladost, Students' and Lozenets boroughs), Samokov, Borovets, and Septemvri.

The members of IME's team - Yordanka Gancheva, Teodora Grigorova, Krassen Stanchev, George Stoev, and Pavlina Petrova - would like to acknowledge their sincere gratitude to Friedrich Bauersachs, CIM – Expert at IME, also to all people who made it possible to conduct the field interviews, and to the local authorities in the towns of Samokov and Septemvri for their assistance.

II. Public Attitudes and Capital

The legacy of the past and the structures established during the first years of transition have put in place a pro-corruptive political and institutional environment in Bulgaria. Though somewhat naturally, the inherited sources of confidence (based on professional connections, party links and friendships) remain prevailing in the new business relations. They impede the setting up of formal sources of confidence (institutionalised and impersonal, based on public registers and information, on equal opportunities and equality before the law) which would benefit the economic agents in their pursuit of new economic opportunities. In a way, reforms in Bulgaria already seem to lose the battle for public confidence. The self-evident examples in this respect are the protraction of institutional reforms, the lack of transparency in the privatisation process and the limited volume of foreign investments. There is a general perception that the reforms have been unfair and conceived so as to benefit semi-formal groupings. For most of the transition phase, most people (and hence entrepreneurs) who thought they had become the victims of reforms, have expected Government subsidies to make good past losses or have simply moved to the informal economy. This has been their way to solve their problems. Newcomers to the country's governance do not have a great choice but look for clientele and resources in the enterprises which depend on them. To a certain extent, voters tend to excuse the clientelism typical of the political parties in power. They think the

¹ This study was conducted with the support of the *Local Government and Public Service Reform Initiative*, Open Society Institute, Budapest

newcomers should "get rid of the old crooks" who deceived the public. Those who voted in favour of the new rulers are disillusioned with the old rulers and, hence, prepared to tolerate some lack of transparency.

We fairly often assume that macroeconomic indicators such as *per capita* GDP, purchasing power parity, employment, inflation rate, etc. give a full description of economic development. More often than not, however, economic statistics tell us little of the mechanisms of capital cumulation, of the sources of growth, of the forces enticing people in general, and entrepreneurs in particular, to aspire at welfare. ***The schemes that make people strive for development, the company strategies for revival and competitiveness, the public networks used by individuals in general and by entrepreneurs, form the inner visible aspect of the pursuit of economic objectives. These elements are the engine of a country's development.***

Broadly speaking, the term *capital* denotes the resources created by men which make it possible to produce and gain more in the future. The more complex these resources, the more competitive a given economy. ***It is not the nations or the economies that compete. Companies and people compete whose individual efforts underlie the relative competitiveness of an economy.*** No clear-cut definitions exist² but, besides the traditional understanding of capital as tangible and financial resources (inventory, machinery, production equipment, financial assets, etc.), production and development resources have another aspect as well. The cumulation of potential in terms of individual knowledge, skills and abilities which enable the production and the accumulation of wealth forms part of what is often referred to as human resources³. In parallel to financial, tangible and know-how resources, public networks exist which are joined or identified or recreated by individuals and companies alike. They form the so-called public capital which predetermines the manner of economic behaviour. Quite obviously, human and public capital are hardly susceptible of measurement. They also comprise elements like beliefs, mental attitudes, moral orders and structures (or sources) of confidence among the public.

"Every transaction has within itself an element of trust", Kenneth Arrow said and added that "much of the economic backwardness in the world can be explained by the lack of mutual confidence"⁴.

The views on public capital and beliefs take account of the fact that public networks develop rather slowly. Some of them are open-ended: they admit new members and disseminate information more quickly than others, thus allowing for quicker and cheaper capital mobility. Such networks are better suited to prompt economic efficiency than closed-end networks.

An economy is in fact an aggregate of different sources of confidence.

First, there is confidence based on the family. This type of confidence mediates the barter transactions needed for household maintenance, for exchange and for the division of labour in classical trades.

Second, there is confidence that could be labelled "collective". It relies on loyal connections inside or outside a profession and nets a variety of social segments and strata (*e.g.* business or professional circles, political formations, political parties' *nomenklatura*, clubs and the like).

Last but not least comes the "formalised" (or "impersonal") confidence. It is based on unified, formal and publicly accessible information about the possible parties to a contract (that is, information contained in company and estate registries, credit ratings and registers, stock exchange prospectuses,

² See Purtha Dasgupta, Economic Progress and the Idea of Social Capital, in: *Purtha Dasgupta and Ismail Serageldin* (eds.), *Social Capital: A Multifaceted Perspective*, Washington DC, The World Bank, 2000, p. 329-334.

³ See Gary Backer, *Human Capital*, New York, Bureau of Economic Research, 1964.

⁴ K.K. Arrow, Gifts and Exchanges, *Philosophy and Public Affairs*, 1974 Summer, vol. 1, No 4, pp 343-362, p. 357.

registers of shareholders, etc.). Such confidence also rests on measurable relations between the counterparts and on institutionalised contractual guarantees.

The latter form of confidence is thought to best serve the economic and human development⁵. Empirical evidence is also induced to that effect. In its recent study of contract enforcement in Poland, Romania, Slovakia and Ukraine, the EBRD found out that "the courts and commercial organisations enhance co-operation and the readiness to contract with unknown suppliers" and that "if the courts function well, suppliers able to raise their efficiency and reduce their prices would be rewarded for any such effort"⁶.

As far as the involvement of the State (central Government and local authorities) is concerned, the main problem in social relations arises when the State turns into a component of, or intermediary in, the business relations network. Alternatively, it might stay apart from that network and act as a guardian of property rights, contractual freedom and contract performance. In the latter case the State would promote the development of public capital. If the Government, however, stands "in-between", it would frustrate the development of both capital and welfare. The following pages describe the implications of local authorities' involvement in the context of contracts and deals.

III. Macroeconomic Reality

Three years after the introduction of a currency board in Bulgaria, the economy is heading for a third year of moderate economic growth in a row. If official statistical data are to be trusted, this or next year the real *per capita* income should reach its 1991 level. The *per capita* GDP in Bulgaria in 2000 would thus be around USD 1600 or, in the event of purchasing power parity, USD 4240.

However, official statistical data are an ever poorer reflection of economic reality in Bulgaria. ***There are suggestions that the share of the grey economy - i.e. those lucrative dealings which are not caught by the National Statistical Institute and have no link with the Treasury - is between 25 and 40 per cent and these figures have been confirmed by a number of studies.***⁷ Moreover, the informal sector seems to be the most dynamic one in Bulgarian economy. This could be easily proven if we look at the increase in broad money following the introduction of the currency board in 1997.

For example, in 1999 alone the broad money in Bulgarian economy rose by 17 per cent. Concurrently, the official statistics reported on a real GDP growth of 2.4 per cent and an average annual inflation rate of 2.6 per cent for the same year. This means that one of the following things should have happened in 1999:⁸

1. velocity decreased by over 10 per cent, or
2. the real GDP growth was 14 per cent, or
3. a combination of both, *i.e.* velocity decreased by less than 10 per cent and the real growth was higher than that officially reported, though less than 14 per cent.

After the currency board was put in place, the natural reaction of velocity would really be to drop as a result of increased confidence in the banking system and in the local currency. That, however, should only be valid true in the period following immediately the factual introduction of the currency board

⁵ See Mancur Olson, *Power and Prosperity: Outgoing Communist and Capitalist Dictatorships*, New York, Basic Books, 2000, chapters 6 and 10.

⁶ See Simon Johnson, John McMillan, and Christopher Woodruff, *Contract Enforcement in Transition*, EBRD Working Paper 45, p. 26.

⁷ See for example N. Nenovski and K. Christov, *A Study of Money in Circulation after the Introduction of the Currency Board in Bulgaria*, Bulgarian National Bank, May 2000; see also the forthcoming report of a joint study of the Institute for Market Economics and the Harvard Institute of International Development devoted to the informal sector in Bulgaria.

⁸ The calculation is based on the quantitative theory of money which is empirically correct in the long run. Nonetheless, the deviations from official data monitored over this short period of one year are sufficiently important in order to support the opinion expressed here.

arrangement⁹ (in the case of Bulgaria, April 1997). So we may assume that velocity was relatively stable throughout 1999 which, in turn, means that the real economic growth should have exceeded by far the official figures. With velocity being the same, the real growth in 1999 was 14 per cent. Then, if the share of the informal sector was nearly 35 per cent of the aggregate economic activity, the real growth of that sector alone should have been close to 36 per cent in 1999.

The macroeconomic reality in Bulgaria, both in statics and in dynamics, is invisible for the official statistics. Therefore, the macroeconomic policy could hardly be backed by reasonable arguments and any "fight" of the Government (*e.g.* the fight against unemployment) could hardly be justified.

We cannot be sure about the exact dimensions of the informal economy. It can be argued, though, that the growth of the informal economy is more dynamic than the registered economic growth or, to put it otherwise, the share of the informal sector is growing. This could mean either that many newly-formed companies start operating in the shades or that companies which start up in the daylight tend to go underground. In general, the reason is that the costs of staying in the daylight tend to grow as compared to the costs of operating in the shades. And, *ceteris paribus*, the costs of operating in the daylight grow when:

1. businesses spend more in their interaction with the State;
- or
2. the cost of staying in the shades - *i.e.* the informal payments to the administration, the sanctions or the chance of suffering a sanction - diminish;
- or
3. businesses change adversely their attitude to operating in the daylight, *e.g.* due to the worsening quality of public services.

This report tackles two of the above listed sources of change affecting the relative costs of operating in the daylight or in the shades. First, we have studied the sources of direct and indirect costs in dealing with the public administration, including the possible informal expenditures at the stage of a lawful starting up. Second, we have analysed the sources of informal costs to be incurred if a company chooses to operate in the shades in whole or in part. The recommendations made here aim at reducing the relative cost of operating in the daylight which, we believe, should encourage the informal economy to go legitimate.

IV. Statutory Procedure and Practical Problems Relative to Starting up a Small Business in Bulgaria: A Step-by-Step Overview

For the purposes of this report, the statutory procedure may be conditionally divided into five stages:

1. **Firm registration of the merchant¹⁰**: Subject to firm registration are all entrepreneurs engaged by way of occupation in any of the activities referred to in s. 1, subs 1 of the Commercial Code:
 - purchase of goods or other chattels for resale either in their original form or after processing or treatment;
 - sale of goods manufactured by the merchant;
 - purchase of securities for sale;
 - commercial representation and agency;
 - broking, shipping and transport transactions;
 - insurance transactions;
 - banking and foreign exchange transactions;
 - bills of exchange, promissory notes and cheques;
 - warehousing transactions;
 - licensing transactions;

⁹ The decrease in money velocity is in explicit correlation with the increase in the money multiplier, the latter being highest during the first year following the introduction of the currency board arrangement in Bulgaria.

¹⁰ For the purposes of this report the term "firm registration" denotes the process starting with booking a business name at the National Statistical Institute and ending with tax registration.

- supervision of goods;
- intellectual property transactions;
- hotel, tourist, advertising, information, programming, impresario and other services;
- purchase, construction or furnishing of real estates for sale;
- leases.

The following are considered merchants:

- commercial companies;
- co-operatives, except for housing associations;
- any person having formed an enterprise which, in terms of nature of business or volume, requires that the enterprise's affairs be conducted in a commercial manner even if the corresponding operations are not among those listed in s. 1, subs 1 of the Commercial Code.

The following are not regarded as merchants:

- natural persons engaged in farming;
- craftsmen, persons providing services through their own work or exercising a free-lance profession, unless their activities could be defined as an enterprise which, in terms of nature of business or volume, requires that the affairs be conducted in a commercial manner;
- persons providing hotel services by way of renting out rooms in the flats they occupy.

2. Approval of designs, obtaining a construction or reconstruction permit, carrying out of construction works: This and the next stages must be gone through by all entrepreneurs intended to construct or reconstruct the premises needed for their future operations.

3. Obtaining a permit to use the outlet.

4. Outlet registration: An outlet is registered on the basis of an ordinance issued by the competent municipal administration on the grounds of s. 22, subs 1 of the Law on Local Self-government and Local Administration¹¹. Every municipality issues its own ordinance for that purpose and is entitled to give a different definition of the term "commercial outlet".

For instance, Greater Sofia Municipality has defined the following as "outlets":

- shops for the sale of foodstuffs or goods other than foodstuffs;
- catering establishments;
- entertainment establishments;
- hotels;
- workshops and studios for the provision of services;
- kiosks and booths;
- street-stalls and facilities used for pedlary.

In contrast, the Municipal Council of Samokov has defined the term "outlets" as follows (Ordinance No. 3 of Samokov Municipal Council on the Organisation of Trade, Services and Catering in the Municipality's Territory):

- shops for the sale of foodstuffs or goods other than foodstuffs;
- catering and entertainment establishments;
- hotels and other accommodation facilities;
- sheds, workshops and studios for the manufacture of goods and the provision of services;
- kiosks and booths;
- street-stalls and facilities used for pedlary;
- fitness, callisthenics, sports halls;
- and others.

¹¹ Section 22 (1): "The municipal council shall adopt, on issues having local significance, rules, ordinances, decisions and instructions which shall be forwarded to the Provincial Governor within seven days."

5. Obtaining additional permits and licenses depending on the type of outlet:

- license for the sale of tobacco products;
- license for the sale of wine, grape- and wine-based products, alcohol, distillates and alcoholic beverages;
- categorisation of tourist outlets, with "tourist outlet" meaning:
- hotels and other accommodation facilities (motels, villas, bungalows, holiday resorts, camping areas, family hotels, private rooms);
- catering and entertainment establishments (restaurants, fast-food facilities, pubs, cafeterias and pastry shops, bars);
- permit to open a drugstore;
- permit for wholesale trade in medicinal drugs;
- licenses for the production, processing, storage of and trade in narcotic drugs and precursors in the country, or for their import, export, transit, carrying and transportation;
- licenses for any tourist activities: hotels, restaurants, tour operations, tourist agencies;
- permit to organise games of chance: lotteries, raffles, totalizers, bingo and keno lottery games, fruit machine or similar games, table games in casinos and bookmaking on the outcome of sports or accidental events.

As this study is focused on municipal entry barriers and sources of corruption, we would only dwell in detail on the licensing procedures administered by the municipal authorities. These are, in particular, the procedures for the grant of licenses for trade in tobacco products, wine, grape- and wine-based products, alcohol, distillates and alcoholic beverages. The categorisation of tourist outlets will be dealt with as well.

The other five types of licenses and permits are issued by central executive bodies, *e.g.* the Executive Agency for Medicinal Drugs, the High Board of Pharmacy, and the Pharmaceuticals Board with the Ministry of Public Health,¹² the Ministry of Trade and Tourism,¹³ and the State Commission for Gambling.¹⁴

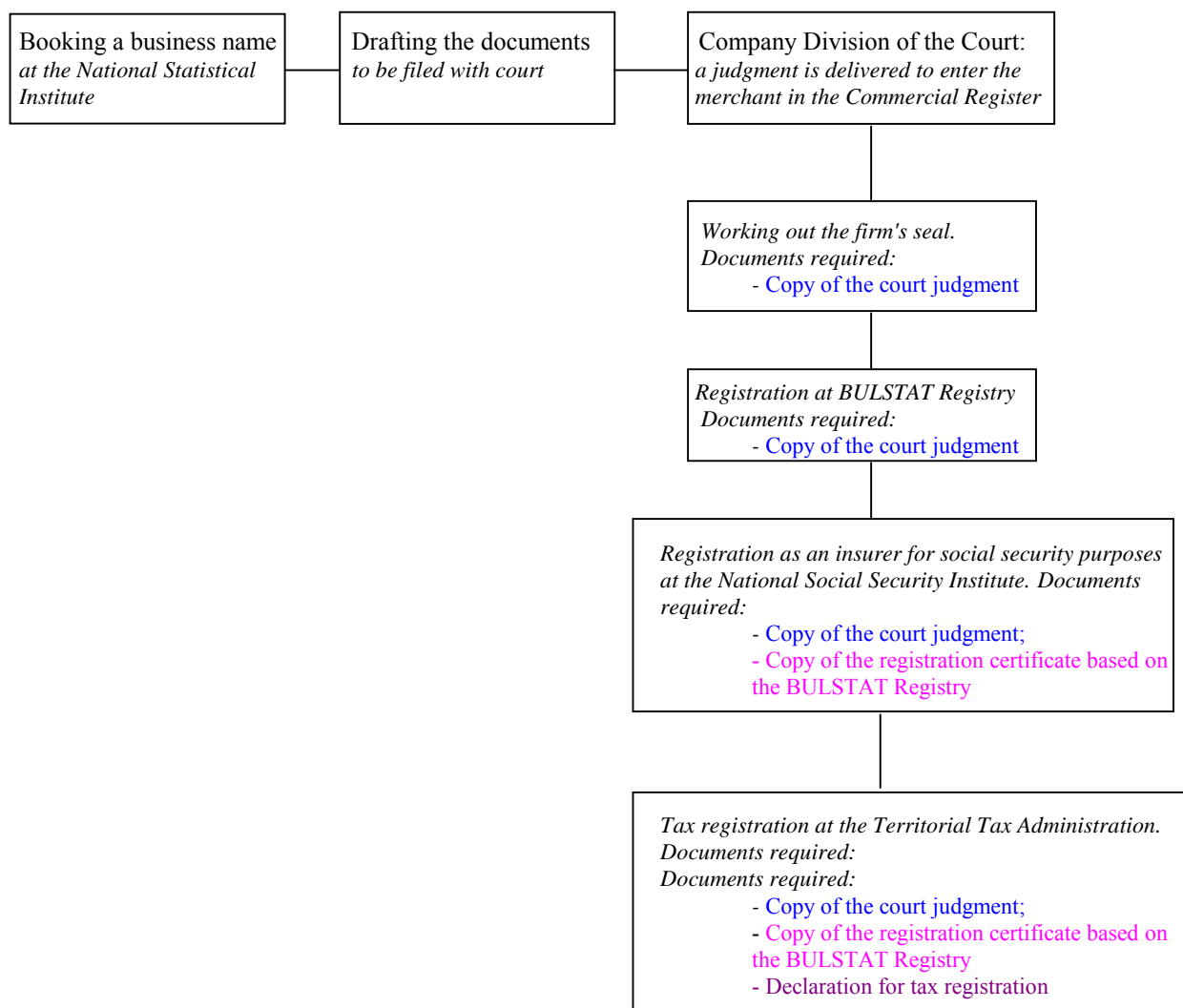
1. Firm registration of merchant

A merchant's firm registration is based on the Commercial Code, the Law on Statistics and the Tax Procedure Code. This is the fastest and *almost* problem-free stage of starting up a business, so we would dwell on it briefly in comparison to the other four stages. It comprises several steps which could be described most clearly and simply by using the following scheme:

¹² These are the authorities which issue permits for opening drugstores and for wholesale trade in medicinal drugs, or licenses for the production, processing, storage of and trade in narcotic drugs and precursors in the country or for their import, export and transit, carrying and transportation.

¹³ The Ministry of Trade and Tourism issues the licenses for all kinds of tourist-related operations: hotels, restaurants, tour operators' activities, tourist agencies.

¹⁴ The State Commission for Gambling authorises the organisation and carrying out of games of chance in the territory of the Republic of Bulgaria. May be organised and authorised only the games listed in the Law on Gambling.



On the face of it, the procedure seems simple and reasonable but, if we look at it in more detail, this is far from being the case. Even here, at the first stage of starting up a business the following problems can be easily identified:

First: The institutions involved *must* be visited in the sequence shown in the chart and each subsequent institution in the chain requires a copy of the document issued by the previous institution. ***The merchant, who is also a tax payer, all of a sudden becomes a courier linking together the different public administration authorities.***

A closer look at the legislative rules governing the procedure prompts at least the following questions:

- ✓ Why should the merchant copy the court judgment X times and submit a copy to each institution he goes to any time when he requires that institution to render him a service? Section 5 of the Commercial Code¹⁵ reads that the Commercial Register of the court is public. In other words, it is accessible to all persons or institutions interested in receiving any information available on that register.

¹⁵ "Section 5. Everyone has the right to examine the Commercial Register and the documents on the basis of which the entries therein have been made, as well as to receive copies therefrom."

- ✓ Why should the merchant also copy X times the identification card bearing his BULSTAT registration code and file a copy with each State institution he visits? The Law on Statistics contains the following provisions:¹⁶
 - The information in the BULSTAT Registry shall be public as far as it derives from documents relating to the setting up or formation, change in or winding up of subjects entered in that Registry;
 - The National Statistical Institute must provide the authorities of central and local administration with free-of-charge access to the public information contained in the BULSTAT Registry. Such access shall be provided within 3 days as from making an entry in the Registry;
 - The National Statistical Institute shall provide the National Assembly, the Council of Ministers, the Ministry of Finance, the National Social Security Institute and other agencies listed in a decision of the Council of Ministers with a daily free-of-charge access to all entries made in the BULSTAT Registry.

- ✓ On his visit to the territorial tax administration, why should the merchant bring copies of the court judgement, of the BULSTAT registration certificate and of the Articles of Association (if the merchant is a legal person)?:
 - Order No. 1 of 12 January 2000 Laying down the Procedure and Conditions of Tax Registration¹⁷ requires that the declaration for tax registration should be accompanied *solely* by a copy of the court judgement which proves that the merchant is entered on the Commercial Register of the court; and
 - The next question is: why should a copy of the court judgement be submitted at all, if the Tax Procedure Code provides that:¹⁸
 - the tax authorities shall receive free-of-charge information from the court or other public register about all tax payers, including those whose registration has been struck out;
 - the courts, the municipalities, the Ministry of Regional Development and Public Works, the National Statistical Institute and the Ministry of Interior *must* provide the tax administration with all the existing information needed to maintain the register free of charge.

Second: Upon completion of the firm registration, the merchant receives three different identification numbers¹⁹ whereby he should make himself known to the outside world. According to the Tax Procedure Code, the tax number of a person entered on the BULSTAT Registry forms the BULSTAT code.²⁰ Paragraph 5 of the Transitional and Final Provisions of the same Code, however, states that "[u]pon reaching full compliance between the BULSTAT Registry and the tax registry, tax payers shall be identified via the Single Identification Code (SIC). Until such full compliance is reached, the tax number shall be compulsorily used as well." Apparently, as at 30 June 2000 no full compliance had been reached yet and the tax number still differs from the BULSTAT identification code. Reaching full compliance cannot be expected in the foreseeable future for a number of reasons:

1. the Law on Statistics contains no definition of the notion of "full compliance";
2. the aforementioned paragraph 5 fails to specify the time limits or the institutions²¹ responsible for reaching full compliance. This means that the issue will not be on the agenda soon;

¹⁶ Sections 42 and 43, Law on Statistics.

¹⁷ Issued by the Director, Directorate General of Taxes with the Ministry of Finance (published, State Gazette, issue 6 of 21 January 2000, in effect as from 1 January 2000).

¹⁸ Section 45, Tax Procedure Code.

¹⁹ Identification number in the BULSTAT Registry, social security number and tax number.

²⁰ Section 30, Tax Procedure Code.

²¹ Except that paragraph 22 of the Transitional and Final Provisions entrusts the overall implementation of the Tax Procedure Code to the Council of Ministers.

3. taking into account and comparing the nature and scope of information required by the new declaration for tax registration²² and s. 33 of the Law on Statistics²³ (concerning the information to be entered in the BULSTAT Registry), it is more than clear that reaching "full compliance" is not a priority for the General Tax Directorate at the Ministry of Finance.²⁴

According to the sociological polls carried out by IME, in 1996 the average time needed for firm registration was 22 days,²⁵ whereas in 2000 it was 30 days in Sofia, 20 days in the large district centres and 10 days in the small towns.²⁶

The data from the interviews have shown that *the problems during that first stage are not in themselves insurmountable entry barriers but form the source of transaction costs for the firms. They may be solved by putting in place a computer network linking the different units of public administration to ensure an easy and quick access to the public registers.* Experience teaches, however, that if this is not combined with passing a legislative instrument to prohibit the administration from requiring private persons to give information already filed with other State institutions and public registers, computerisation alone would not be efficient.

2. Approval of designs, obtaining construction or reconstruction permit, carrying out construction works.

The procedures relative to the approval of designs, the obtaining of a construction or reconstruction permits and to the conduct of construction works are laid down in Chapters Five, Six and Eleven of the Rules Implementing the Law on Regional and Town Planning (hereinafter referred to as "the Implementing Rules"). The provisions in these chapters are binding on all entrepreneurs intended to construct or reconstruct premises for their business operations.

By virtue of ss. 219 and 220 of the Implementing Rules, all architectural designs - sketch designs, rational designs and technical designs - must be approved by the chief architect of the municipality on the grounds of a decision passed by the Architectural and Town Planning Board. The designs are approved upon submission of the following documents:

1. Title deeds, including if necessary documents proving the settlement of all accounts arising from town-planning changes;
2. A survey and design sketch (called "survey and design visa"). This is an excerpt from the existing detailed town plan issued by the chief architect of the municipality or an official authorised by him which should accurately indicate all necessary measures, elevations, distances and conditions;
3. Three copies of the design in question which should contain at least:
 - an architectural part;
 - a constructional part;
 - a tracing and levelling plan;

²² Introduced by Order No. 21 of 12 January 2000 Laying down the Procedure and Conditions for Tax Registration.

²³ "Section 33. The BULSTAT Registry contains data derived from the documents: grounds of setting up or formation, change or winding-up of the subjects referred to in s. 32."

²⁴ This is the new name of the General Tax Administration Directorate, better known by its Bulgarian acronym *GUDA*.

²⁵ The respondents were 108 owners of private firms in Sofia, Plovdiv, Varna and Silistra. This is a balanced random sample taking account of the structure of economic sectors (based on data of the National Statistical Institute) and representative of the private companies in the towns listed.

²⁶ The respondents were 120 owners of private firms in Sofia, Plovdiv, Varna, Bourgas, Rouse, Pleven, Assenovgrad, Kazanluk, Doupnitsa, Turgovishte, Gabrovo, Pazardzhik, Silistra, Shoumen, Smolyan, Kurdzhali, Vidin, Yambol, Haskovo, Dobrich, Stara Zagora. The study was conducted under the project *Rules, Regulations and Transaction Costs in Transition Bulgaria* sponsored by the Individual Research Support Scheme of the Open Society Institute, Budapest.

- the indispensable designs for the installations without which the future construction could not be used as intended;
- if necessary, a project for the organisation and conduct of construction works; and
- a technological part for those components of the future building where production or other technologies are to be installed.

Each part must be accompanied by an explanatory memorandum, drawings and calculations elaborated and signed by qualified architects and engineers²⁷. Besides, each part should be co-ordinated with the competent authorities of the municipality technical service.

4. Documents proving that the designs have been co-ordinated with the competent authorities (letters of co-ordination and opinions issued by those authorities). The competent authorities are:

- the environmental protection authorities: they issue a permit for construction works in respect of which an environmental impact assessment is required under the Law on Environmental Protection;
- the sanitary supervision authorities: they issue a "sanitary assessment" of each construction site;
- the National Fire Safety Service authorities: they issue "an assessment" of the site's fire safety;
- the State Technical Supervision authorities with the Committee of Standardisation and Metrology (recently renamed into Agency for Standardisation and Metrology): in respect of the technical safety and reliability of hazardous equipment and facilities subject to State technical supervision, if a construction site comprises such facilities and equipment;
- the specialised authorities of ministries and other agencies empowered by the legislation in force to co-ordinate the designs of certain types of construction sites;
- the specialised authorities of the Ministry of Regional Development and Public Works, for construction works in landslide areas.

5. Depending on the type, features and location of the construction, permits from the competent entities administering the supply of water for drinking, manufacturing and fire-extinction needs, the waste water disposal, the use of electricity, the communication links, the heating and gas supply, the construction of diversions from the national highway network or railway system, etc., as required by the legislation in force.

6. A conclusion by State experts, in respect of those construction sites for which such conclusions are required.

Once submitted, the designs are examined by the Architectural and Town Planning Board. If they relate to "buildings and constructions" with an unfolded built-up area of up to 300 sq. m., the municipal technical service can examine the designs *ex officio*. If violations of or deviations from the Law, its Implementing Rules and the norms are found out, the designs are remitted for revision. The revised designs are examined and approved under the same procedure. The time limit to approve the

²⁷ Section 3, Ordinance No. 6 on Technical Qualification in Design and Construction Works (title modified, SG, issue 2 of 1995, issued by the Chairman of the Regional and Town Planning Committee, published, SG, issue 65 of 21 August 1987), amended and supplemented, issue 2 of 6 January 1995, issue 66 of 25 July 1995):

"(1) Persons holding a university degree in engineering shall acquire full technical qualification in the speciality recognised to them. They may:

1. draw up designs and account estimates;
2. exercise technical supervision of designs provided that they have at least 6 years of technical experience in designing;
3. exercise specialised author's supervision, specialised technical management and investor's technical supervision of construction works, regardless of their volume;
4. carry out overall technical management or overall investor's technical supervision provided that:
 - a) they possess the qualification of civil engineer or architect;
 - b) they possess another technical qualification and have at least three years of technical experience in construction.

(2) Persons holding degrees of secondary technical education shall acquire the right to a limited technical qualification in accordance with the Schedule to the Ordinance."

designs is one month as from the date of their submission but this month does not include the period during which they are returned for revision in order to be brought into line with the law. If approval is refused, the investor is notified of the refusal within 7 days as from the expiry of the time limit for approval. Refusals are only possible on grounds of legality and must be supplied with specific reasons. Refusals and approved designs may be appealed against before the Directorate of National Construction Supervision within 14 days as from the notice of their issuance. All parts of an approved design must be affixed with a seal.

On the grounds of the designs thus approved, a procedure for the grant of a construction permit is launched. According to s. 224 of the Implementing Rules, construction works in the country shall only be carried out on the basis of a construction permit issued by the chief architect of a municipality.²⁸ The construction permit is issued following a written application by the owner or by a person authorised by the owner. The application must be filed with the municipal technical service and be accompanied by all documents listed above and already submitted for the approval of the designs. A construction permit must show all factual and legal grounds for its issuance, the conditions relative to the performance of construction works, including the demolition of buildings erected illegally or the possibility to preserve such buildings until completion of the construction works or for another interim period. The approved designs form integral parts of the construction permit.

The original of the permit is kept termlessly, *i.e.* for ever, in the records of the issuing municipal technical service. It must be accompanied by an authenticated copy of the approved design which, together with the executive documentation, is also kept termlessly at the corresponding municipal technical service.

After he obtains the construction permit, the site's owner must apply in writing to the mayor for inauguration of the construction site. Within 7 days as from receipt of that application, officials of the municipal technical service especially authorised by the mayor must, in the presence of the owner and of the independent construction supervisor, draft a report on the inauguration of the construction site. A billboard with data about the owner, contractor, type of construction, construction permit and the independent construction supervisor must be placed on prominent display.

Within 3 days as from drafting the inauguration report, the investor must notify the local Construction Supervision Directorate of the beginning of construction works and must present the so-called "Book of Orders" for authentication.

On the grounds of the construction permit, the inauguration report and the authenticated Book of Orders, an official of the municipal technical service must lay out on the spot the building line and draft a report indicating the town-planning and levelling benchmarks. The report must be signed by the owner, the constructor and the independent construction supervisor. The building line report must be issued within 5 days as from receipt of the application filed for that purpose and is kept termlessly in the records of the municipal technical service.

In the course of construction the owner must regularly require the municipal technical service to carry out, in the presence of the designers and of the independent construction supervisor, inspections of construction performance on the basis of the designs, construction permit and building line approved. Such inspections must in particular be required on reaching each of the following levels: foundation ditch, socle, cornice and apex. The inspections must be carried out within 3 days as from receipt by

²⁸ "Section 224. (Amended, SG, issue 2 of 1996) (1) (Amended, SG, issue 6 of 1998, amended and supplemented, issue 140 of 1998) Construction works in the country shall be carried out while observing the Law and the existing rules, norms and ordinances, on the grounds of a construction permit issued by the chief architect of the municipality or, in towns to which a territorial division applies by virtue of a law, following a decision of the municipal council, a construction permit issued by the chief architect of the territorial unit. (2) (Repealed, SG, issue 6 of 1998). (3) No permit shall be issued for new construction in a plot or estate in which an illegal construction exists until the illegal construction is demolished or legitimised."

the municipal technical service of the relevant request. The results of the inspections must be stated in reports of findings to be signed by an official of the municipal technical service, the owner, the designer and the independent construction supervisor. The findings are entered in the Book of Orders.

In general, this is the clearest and shortest description of procedures relative to the approval of designs, the issuance of construction permits and the conduct of construction works. Following their detailed and careful examination, IME's team attempted to answer the following questions:

- ✓ Why should an investor file the same documents twice - when applying for design approval and when applying for a construction permit - if both procedures develop within bodies forming part of the municipal authority: the Architectural and Town Planning Board and the technical service, respectively.

According to s. 8 of the Implementing Rules, the Architectural and Town Planning Board is appointed by order of the mayor and must consist of at least the following members:

1. the chief architect of the municipality in question, who chairs the board;
2. the head of the geodetic unit of the municipal technical service;
3. the in-house lawyer of the municipality or another person with a legal background;
4. the chief engineer of the municipality;
5. a representative appointed by the Ministry of Regional Development and Public Works;
6. a representative appointed by the Union of Bulgarian Architects and the Chamber of Architects in Bulgaria;
7. a representative appointed by the Federation of Research and Technical Associations in Bulgaria and the Constructors' Association.

In some cases the chairperson of the board may invite outside experts as non-voting members, as well as the designer of the approved town plan for the area in question and the author of the design subject to examination. At Greater Sofia Municipality and in the cities in which boroughs have been created under the Law on Administrative and Territorial Organisation of the Republic of Bulgaria and the Law on Territorial Division of Greater Sofia Municipality and the Big Cities, architectural and town planning boards may be set up in each borough.

In addition, by virtue of s. 9 of the same Implementing Rules the municipal technical service, which is subordinate to the mayor or to an official authorised by him, must be composed of at least the following members:

1. chief architect (having at least 3 years of working experience in the field);
2. chief engineer (having at least 3 years of working experience in the field);
3. a geodetic unit;
4. district architects or technicians;
5. an engineer or a group of engineers;
6. secretariat.

In cities where boroughs exist, borough technical services may be set up with the same composition and with functions defined by the municipal council.

If we look carefully at the structure of the two bodies, it is easily noticeable that nearly half of their members are the same people. In particular, three (out of seven) of the members of the first body are also members of the second body (composed of 6 members).

The question is: what is the rationale behind filing the same documents twice with virtually the same officials - once, in their capacity as members of the board and, second, in their capacity as representatives of the technical service?

- ✓ The approval of designs and the issuance of a construction permit are based on the same documents and, clearly enough, these steps are to be taken by almost the same people. Why should the construction permit be issued then following an application by the investor? It could simply be issued *ex officio*!

- ✓ Another paradox is the filing of a copy of the survey and design sketch. That sketch is an excerpt from the existing detailed town plan issued by the chief architect of the municipality or by an official authorised by him and indicating accurately all necessary measures, elevations, distances and conditions. In other words, the investor is required to lodge with the chief architect a copy of a document issued by the architect himself or by an official he has authorised for that purpose?!?

The law-maker has obviously failed to envisage the simplest solution: a file of documents should be compiled for each investor or, more precisely, for each construction site, and all documents should be collected therein in order to be used by all municipal services and departments.

These are, more or less, the issues raised by the legislative framework at the second stage of starting up a business in Bulgaria. Let us now see what happens in practice.

Further to the interviews conducted with entrepreneurs in the three towns covered by the study and after analysing the information obtained from the municipalities, the team has identified the following problems:

- ***The first key problem, also encountered at the other stages of starting up a business, is the access to information on what exactly should be done and how.***

At the monitored municipalities, two approaches could be seen:

- The first approach is to develop written instructions which are either stuck on the wall or could be obtained on request;
- The second approach is to give information on request only.

The first approach is typical of the municipalities in Sofia, whereas the second is applied in smaller municipalities in the countryside.

Having written instructions is not a bad idea provided, however, they are exhaustive and clear, and do not contain expressions like "etceteras" or "other [documents]", depending on the type of the site".

In Sofia, one could obtain such written instruction in four ways:

- a) on a request addressed to a municipal official. However, if the official in charge is on holidays or is sick or, to cut it short, is not at his or her workplace, the applicant moves to variant b), namely:
- b) to rewrite the copies stuck on the wall. Such instructions, however, are normally in the range of two pages, so the preferred variant is actually c), namely:
- c) the samples stuck on the wall are carefully pulled off and copied at the nearest copy centre. Needless to say that if no such centre exists or the copying machine is out of order, the variant chosen is:
- d) the entrepreneur leaves the building of the municipality conscience-struck but with the samples in his pocket.

As mentioned earlier, in smaller towns the information can only be obtained on request.

Explanations and further information are given also by the chief architect during his reception hours. In Sofia this normally means three hours per week, which is absolutely insufficient (see the table below).

Reception hours of the chief architect

Municipality	Reception hours of the chief architect
Students' Borough, Sofia	<i>Fridays</i> from 9 a.m. to 12.00, and <i>every second Tuesday</i> of the month, from 9 a.m. to 12.00
Mladost Borough, Sofia	<i>Tuesday</i> from 2 to 5 p.m.
Lozenetz Borough, Sofia	<i>Tuesday</i> and <i>Thursday</i> 10 a.m. to 12.00
Municipality Septemvri	<i>Two days</i> in the week

- *Another problem relates to designing itself.*

In the small towns only few qualified designers live²⁹ and, moreover, they are usually municipal employees. They draw up the designs either on the basis of their informal connection with an investor or on the basis of an order from the entrepreneur and the payment is effected face to face, without any contract, invoice or other document. This is a way for designs to get through the procedure and be approved more quickly. The practice at the borough councils in Sofia is slightly different. In some boroughs the designs are simply rejected and the entrepreneur is recommended a specific company suitable to draw up new designs. The prices of the company thus recommended are often higher than the average market value of those services but, in return, this ensures successful acceptance and approval of the designs submitted.

The members of our team regard this as a form of corruption and unfair competition alike, as such practices also result in placing other competitors at a disadvantage.

At all monitored municipalities, advertisements were indeed placed on the notice boards of one or two companies carrying on independent design and construction supervision.

- *Another problem at this stage, which bogs the process down and becomes a source of corruption, is the requirement to co-ordinate the designs* with the so-called HEI, NSPAB and RIOS³⁰ and to obtain a permit from the Water Supply Utility for the use of water for drinking, manufacturing and fire-extinction needs or for waste water disposal, etc.

The endless harrowing from one institution to another wastes an awful lot of time and gives rise to transaction costs, especially for entrepreneurs in the smaller towns. In Sofia one has to go from one end of the capital to the other. In the municipalities of Samokov, Borovets and Septemvri, however, the waste of money and time is much more serious for the following reasons:

- In the town of Samokov, the local branch of the National Fire Safety Service is the only unit empowered to co-ordinate designs independently. All other local units - of the Hygiene Inspectorate, the Water Supply Utility and the Electricity Supply Utility - are only entitled to affix their seals to the design but the final conclusions and opinions are issued by the superior units in Sofia. The distance between Sofia and Samokov is nearly 65 km, and that between Sofia and Borovets is 71 km. The entrepreneurs have stated that the institutions mentioned must be visited at least two or three times, which means that people from Samokov should travel between 780 and 1170 kilometres and those from Borovets - between 852 and 1278 kilometres on the average for the sake of co-ordination alone.
- The situation in the town of Septemvri is not that bad as the distances are shorter. The National Fire Safety Service and the Water Supply Utility have branches in Septemvri, the Electricity Supply Utility has a branch in Belovo, and the local branch of the Hygiene Inspectorate is in Pazardzhik. The distance between Septemvri and Pazardzhik is 20 km and that between Septemvri and Belovo is 10 km.

Design co-ordination costs

²⁹ By virtue of Ordinance No. 6 on Technical Qualification in Design and Construction Works.

³⁰ Hygiene and Epidemiology Inspectorate (hereinafter Hygiene Inspectorate), National Fire and Accident Safety Service (hereinafter National Fire Service), Regional Environmental Inspectorate.

City	Kilometers traveled to co-ordinate designs	Gasoline consumption (consumption rate 9 /100)	Costs in BGL
Samokov	780 km. - 1170 km.	70.20 l. - 105.30 l.	103.19 lv. - 154.79 lv.
Borovetz	852 km. - 1278 km.	76.68 l. - 115.02 l.	112.72 lv. - 169.08 lv.
Septemvry	120 km. - 180 km.	10.8 l. - 16.20 l.	15.88 lv. - 23.81 lv.

Here as well, especially in Samokov and Borovets, the institutions in charge (mostly the Hygiene Inspectorate branch in Bozhurishte) fairly often refuse to co-ordinate designs with the motive that they are drawn up unprofessionally or illegally and suggest that the entrepreneur should go to a real professional for a new design. The payment, again, is made face to face.

- *Another key problem, typical of entry all stages, is the ubiquitous failure of the administration to observe the time limits set by law.*

By virtue of s. 169(8) of the Implementing Rules, an official who fails to pronounce within 30 days on a request for the issuance of construction papers, sketches or assessments, or for the provision of other technical services, or who fails to forward the file to the competent authority, shall be liable to a fine from 50 to 250 Levs (unless a heavier penalty should be imposed by virtue of a law). However, the 30-day time limit is stayed every time that the designs are returned for amendments or corrections. The period could thus well drag from 30 days to 3 years (we actually came across such a case in Samokov). And, though the Implementing Rules entitle the parties concerned to appeal before the Directorate of National Construction Supervision against any action or failure of mayors to act in relation to a regional and town planning issue, entrepreneurs are reluctant to exercise their rights against chief architects and municipal technical services for two reasons:

- Firstly, because many entrepreneurs are simply unaware of their rights; and
- Secondly, because they do not trust the system. They think an appeal would hold up, rather than push, the process and would only cause more headaches.

These are the main entry barriers and sources of corruption that IME's team has identified at the second stage of entry. It is fair to say that most of them are also valid for the remaining three stages.

3. Obtaining permit to use site

A permit to use a site is obtained in accordance with Ordinance No. 6 on Authorising the Use of Construction Sites in the Republic of Bulgaria.³¹ Such a permit is issued by the Head of the Directorate of National Construction Supervision (hereinafter National Directorate) or by an official authorised by him, following a written application by the owner or by the independent construction supervisor (where the latter is so authorised).

The Head of the National Directorate issues a permit for the use of construction sites on either of the following two grounds:

- a report submitted by the independent construction (technical) supervisor concerning the following types of construction sites listed in s. 3, subs 1 of Ordinance No. 6:
 - construction sites for entirely residential purposes, regardless of their unfolded built-up area;
 - construction sites with an intended public (or mixed) use with an unfolded built-up area of up to 2000 sq. m.;
 - construction sites for intended manufacture use with an unfolded built-up area of up to 500 sq. m.;
 - yard networks forming part of the engineering infrastructure;

³¹ The Ordinance was issued on 23 July 1999 by the Minister of Regional Development and Public Works on the grounds of s. 201, subs 1 of the Law on Regional and Town Planning, and s. 304, subs 4 of the Implementing Rules to that Law.

- kiosk switchgears;
- subscribers stations;
- hydrophoric installations;
- road rehabilitation;
- reconstruction and change in the intended use of existing buildings and facilities.
- a report by the independent construction (technical) supervisor and Report, Form No. 16, by the State Acceptance Commission (in accordance with Ordinance No. 7 of 1999 on Drawing up Statements and Reports in the Course of Construction), suggesting to permit the use of any construction site outside those listed in s. 3, subs 1.

As regards completed constructions works, the independent construction supervisor must submit at the National Directorate a report accompanied by all co-ordination letters, permits and opinions issued by specialised State supervisory authorities and any other necessary documents, depending on the type of the construction site in question.³²

The owner or the independent construction (technical) supervisor, if so authorised, must apply for a permit to use the site or for the appointment of a State Acceptance Commission. A State Acceptance Commission must be appointed for all construction sites not listed in s. 3, subs 1 of Ordinance No. 6. The appointment is made by order of the Head of the National Directorate or of an official authorised by him within 10 days as from receipt of the application. The order must indicate the grounds for appointing the commission, its chairperson and members, their place of work and position, the date, time and venue of its meetings and the time limit for its work which may not exceed 10 working days. Following a reasoned report by the Head of the National Directorate, the appointing authority may extend the commission's period of work up to 30 calendar days. In exceptional circumstances, the commission may suspend its work and draw up a report on that. The maximum term of suspension is determined by the appointing authority on submission of the report. The commission must resume its work after the reasons for the suspension cease to exist.

In order for a commission to be appointed, the following documents must be filed:

1. a written application by the owner or by the independent construction supervisor;
2. a construction permit;
3. a deed of title or superficies;
4. a statement evidencing the worthiness of the site (or of a part or stage thereof) to be accepted, Form No. 15;³³
5. a declaration that the construction papers and the documents for the construction have not been appealed against or annulled;
6. a report by the independent construction supervisor accompanied by the documents listed in the Schedules to Ordinance No. 6;
7. co-ordination letters and opinions by the specialised State supervisory authorities (hereinafter referred to as specialised authorities);
8. the proposed members of the commission.

The commission must include:

1. representatives of the specialised authorities and of the municipalities, depending on their competencies;
2. the owners (investors);
3. the construction designers;
4. the contractors, according to the construction contract;
5. the representative of independent construction supervision;
6. the State Acceptance Commission must also include representatives of the utility entities and of the parties to supply and works contracts other than those referred to in point 4.

³² The Ordinance has 13 Schedules with sample documents for the certification of different types of construction sites.

³³ According to Ordinance No. 7 of 1999 on Drawing up Statements and Reports in the Course of Construction.

The exact composition of the acceptance commission is determined by the appointing authority, depending on the specific case.

On the basis of the inspection of the construction site, the measurements and the tests made, the documents submitted, the discussions at the meetings and the opinions of its members, the commission draws up a report, Form No. 16, suggesting that a permit to use the construction site be either issued or refused.

Within 3 days as from submission of a report by the independent construction supervisor or upon submission of Report Form No. 16 (in the event where a State Acceptance Commission has been appointed), the Head of the National Directorate or an official authorised by him must:

- issue a permit for use; or
- refuse the issuance of a permit for use, with reasons.

Even if Report Form No. 16 has been drawn up suggesting that a permit be issued and even if the independent construction supervisor has submitted a report, the Head of the National Directorate may refuse the permit for use in the cases listed in s. 305, subs 1 of the Implementing Rules.³⁴

If Report Form No. 16 is drawn up suggesting to refuse acceptance of the construction site, the Head of the National Directorate may appoint a commission with different members (if the conclusion of the previous commission is not well-founded) or may refuse to grant a permit to use the construction site.

Appeals against orders for the appointment of or refusals to appoint a State Acceptance Commission, and against permits for use or refusals to grant such permits may be lodged within 14 days with the superior body within the system of the National Directorate. If the permit or refusal in question has been issued by the Head of the Directorate himself, an appeal lies against it to the Minister of Regional Development and Public Works.

A permit may be requested for the use of the whole site or of a part thereof, if any such part is fit to be used autonomously before completion of the whole site.

The permit for use certifies that the construction site is worthy to be used as intended and that the safety requirements, as laid down in the construction, environmental, fire safety and sanitary regulations, have been complied with. The permit for use is forwarded to the municipality in order to be enclosed to the construction papers and is kept in the municipal records termlessly, that is for ever.

A permit for use is only issued after the owner or the independent construction supervisor has supplied the cadastre authorities with data about the building.

This particular stage of entry is not devoid of procedural nonsense and practical problems. As regards the regulatory framework, the following issues seem relevant:

³⁴ "S. 305. (1) The Head of the Directorate for National Construction Supervision or an official authorised by him shall refuse to grant a permit for use in the cases where he has found out:

1. that the construction, or a part thereof, is illegally erected;
2. illegally approved designs and/or an illegally issued construction permit or inadequacy of the construction papers submitted;
3. that the commission has been appointed illegally or has not had the required composition;
4. a lack, inadequacy or the existence of incorrectly drawn statements in the course of construction, where this is of material importance for establishing compliance with the safety requirements laid down in s. 42, subs 1 of the Law and the worthiness of the construction to be used as intended;
5. that a specialised supervisory authority has given an opinion to refuse acceptance of the construction;
6. that no independent construction supervision has been exercised in cases where this is compulsory, or that such supervision has been exercised by a person lacking the authority required by law."

- ***Here again, there is a total lack of co-ordination and co-operation among the various units of public administration. Hence, the requirements to submit documents issued by one institution which are already possessed by the requiring institution.***

Just one example:

Section 6, subs 2 of Ordinance No. 6 (on Authorising the Use of Construction Sites in the Republic of Bulgaria) lists the documents to be filed for the appointment of a State Acceptance Commission. On a closer look, it is hard to refrain from asking a few questions:

- ✓ Why is it required to submit the construction permit? According to s. 227, subs 6 of the Implementing Rules, the municipal technical services notify *ex officio* and in writing the local planning and construction supervision authorities of all issued permits for new constructions and of all permits for the reconstruction of existing sites. In addition, the original permit is kept termlessly in the records of the issuing municipal technical service and may be checked at any time.
- ✓ Why is it required to submit a deed of title or superficies again if the construction permit is also required? As we have noticed, the deed of title or superficies must be submitted to the municipal Architectural and Town Planning Board in order to obtain the construction permit itself (at the stage of design approval) and to the municipal technical service (when the construction permit is issued).
- ✓ Why should the investor sign and lodge with the National Directorate a declaration stating that the construction papers are not appealed against or annulled? According to s. 154a of the Law on Regional and Town Planning, designs approved or construction permits issued illegally or incorrectly are annulled exactly by the Head of the National Directorate or an official authorised by him.
- ✓ Why should the co-ordination letters and opinions by specialised authorities be submitted separately? They *must* anyway be attached to the report of the independent construction supervisor.

- ***Each public administration authority clearly tends to work independently, without co-ordinating its efforts with the other institutions involved, and to complicate the procedures as much as possible, while transferring the inherent costs to the entrepreneurs willing to enter the business.***³⁵

- ***The legislation gives an opportunity for endless extensions of the period of work of the State Acceptance Commission.***

As mentioned earlier, the rule is 10 days but it may, on the basis of a reasoned report by the chairperson of the commission, turn into 30 days and in exceptional circumstances the work may be suspended for a term set by the appointing authority. As the law does not fail to define the concept of *exceptional circumstances*, nor does it prescribe the reasons justifying an extension, the time limit to grant a permit for the use of a construction site may become entirely conditional on the subjective judgement of certain civil servants. The procedure thus turns into an entry barrier and in a conspicuous source of corruption.

- In addition, though going slightly out of the scope of the present report, we cannot refrain from commenting on the provision of s. 158, subs 3 of the Law on Regional and Town Planning.

³⁵ By virtue of Ordinance No. 6 on Authorising the Use of Construction Sites in the Republic of Bulgaria (s. 12), the owner (investor) who has required the appointment of a State Acceptance Commission must put in place normal working conditions and incur all costs relating to the commission's work (including *per diem*, accommodation, transport costs, etc.)

The text in question entitles the officials of the Directorate of National Construction Supervision to hold, with the authorisation of the Minister of Interior, personal arms *for defence*. This fact is more than interesting. It is apparently assumed that in the course of performing their duties the officials of the National Directorate are in need of defence equipment and, equally obviously, investors and construction entrepreneurs are regarded as dangerous criminals, so the supervising civil servants who are "mixed up with them" should be in arms!

Going back to the main topic, the practical problems at this stage could be tracked down in two main directions:

- relations with the Directorate of National Construction Supervision;
- relations with the so-called specialised construction supervision authorities and with the utilities.

As regards the relations with the National Directorate, there is no sufficient practice yet enabling proper conclusions as the current procedures on permits to use the construction sites were introduced in the Implementing Rules in October 1998 and the relevant Ordinances based on the Implementing Rules were only passed in August 1999.³⁶ Judging from the information we received from the respondents and during the on-site visits, we have identified the following main problems:

- ***Most entrepreneurs are not aware of the new procedure.***

The reception hours for questions and explanations at Greater Sofia Directorate and at the local construction supervision directorates are Tuesdays, from 10 a.m. to 12.00. Moreover, consultation is only given on the basis of a preliminary registration at the secretariat which receives visitors from 2 to 5 p.m. all week-days, except Tuesdays. Our team tried to register for consultation but there were no free consultation hours until end-July;

- ***For the smaller towns, distance again becomes vital.***

The local branch of the National Directorate for the town of Samokov is located in Sofia (65 km away) and for the town of Septemvri - in Pazardzhik (20 km away). ***When a State Acceptance Commission is appointed, its members insist on being driven to the small town and back which pushes up twice even the transaction costs envisaged in the law.***³⁷

Many more, and very serious, problems arise in the context of relations with the specialised State supervisory authorities and the utilities, viz.:

- Hygiene Inspectorate;
- National Fire Safety Service;
- the Electricity Supply Utility;
- the Water Supply Utility.³⁸

The main practical problems in complying with the procedures for co-ordinating the designs and obtaining opinions and permits could be summarised as follows:

- ***There is no accessible information about the requirements and the rules of the game. Thus, the institutions have to be visited several times which, in turn, slows down the process of starting up a business. Every delay escalates the transaction costs of an entrepreneur and his or her inclination to bribe in order to accelerate the process;***

³⁶ Ordinance No. 6 on Authorising the Use of Construction Sites in the Republic of Bulgaria, and Ordinance No. 7 on Drawing up Statements and Reports in the Course of Construction.

³⁷ See s. 12, Ordinance No. 6 on Authorising the Use of Construction Sites in the Republic of Bulgaria.

³⁸ These are four basic State institutions - which cannot be circumvented - issuing opinions, letters of co-ordination and permits for all construction works. For some peculiar types of constructions co-ordination is also required with other agencies but we will focus on the general case.

- Section 26, subs 1 of the Rules Implementing the Law on Public Health stipulates that the State sanitary control authorities shall issue permits and conclusions in writing, as follows: within 25 days in respect of standardisation documents, construction designs, legislative instruments and design and construction norms, or within 10 days in any other case.

The time limits set by the Rules, however, start running as from the submission of the full set of documents and of all additional data, if such data have been requested. As a matter of fact, additional information could be requested endlessly and, *hence, the authorities of the Hygiene Inspectorate could turn the 25-day period in a term to their liking*;

- *Embarrassingly enough, the branches of the Hygiene Inspectorate in the small towns*, such as Samokov, *are not entitled to issue sanitary permits autonomously*.

In such cases the Sofia branch in Bozhurishte must step in, authenticate the documents drawn up in Samokov and issue the sanitary permit. This would not be a great problem, were Samokov a borough of Sofia. Regretfully, this is not the case: as mentioned earlier, Samokov is 65 km away from the capital. If the Inspectorate's officials in Samokov are sufficiently competent to carry out the current sanitary supervision, why should not they issue sanitary permits as well?

- *Next, what is the sense of the fire safety certificate having a three-year validity?*

If the site has once conformed to the fire safety requirements, why should the owner, three years later, pay again a fee from 30 to 500 Levs (depending on the type of site)³⁹ in order to receive a new certificate stating that the door still opens in the direction of evacuation and that the advertisements and the refrigerators are connected to a separate electricity circuit, so that electricity can be turned out after the end of the working time? Is not it the job of the supervisory authorities to monitor and regularly check if the sites meet the requirements or not?

- *A serious problem exists in the relations with the administration of different utilities which are in fact State monopolies*, mostly with the Electricity Supply Utility.

The electric fittings installation of the sites must be put in place by a qualified technician and approved by the Electricity Supply Utility. The interviews with the respondents have made it clear that in some cases the Electricity Supply Utility (strongly) recommends a specific technician or company to provide the service.

These are the basic statutory procedures and practical problems relevant to the starting up of a small or medium-sized business, at the stage of obtaining a permit to use the site.

4. Outlet registration

The outlet registration falls within the competence of the municipal authorities whose powers derive from s. 22 of the Law on Local Self-government and Local Administration (hereinafter referred to as Law on Local Self-government). According to that provision, the municipal council is entitled to regulate the activities of local significance. This is also the main reason for the lack of unified rules and requirements for outlet registration throughout the country. Each municipality issues its own ordinance, prints its own sample forms and introduces its own rules of the game. In two out of the three monitored municipalities, *viz.* Samokov and Septemvri, outlet registration is not required at all.

The requirements for outlet registration in the territory of Sofia are laid down in the Ordinance on Rules of Carrying on Commercial Activities in the Territory of Greater Sofia Municipality (issued on 29 April 1993).

The table below shows the outlet registration requirements in three boroughs in Sofia.

³⁹ Section 31, Tariff No. 4 of Fees Payable in the System of the Ministry of Interior under the Law on State Fees.

Outlet registration requirements⁴⁰

№	Lozenets Borough	Mladost Borough	Students' Borough
1	Standard application form indicating the working hours	Standard application form indicating the working hours	Standard application form indicating the working hours: the form can be obtained at room 316, 3rd floor
2	Document for court registration	Court registration: copy of original judgment	Photocopy of court judgment
3	Document for tax registration	Copy of tax registration certificate	Photocopy of the registration
4	Document for registration at Metropolitan Directorate of Social Security	Document for registration at Metropolitan Directorate of Social Security	Photocopy of social security number or social security book (issued by Metropolitan Directorate of Social Security, 62 Stamboliyski Blvd.)
5	Document proving title or use of outlet (notarial deed or lease contract)	Document proving title (lease contract)	Title deed (for lessees, a photocopy of owner's title deed and of the lease contract).
6	Sanitary permit by the metropolitan branch of the Hygiene Inspectorate	Document for co-ordination with the metropolitan branch of the Hygiene Inspectorate	Document issued by the Hygiene Inspectorate for opening the outlet (20, Vrania St.)
7	Permit for use (s. 304 Law on Regional and Town Planning and Ordinance No. 6)	The technical service of Mladost Borough issues a written opinion on the legality of the building or premise in question	Construction permit, report on legalisation of the outlet by the municipal architectural department (approved reconstruction design)
8	In respect of a temporary facility (booth): permit issued by the chief architect of Lozenets Borough		
9		Document for co-ordination with the Fire Safety Service	Documents from the Fire Safety Service (Durvenitsa neighbourhood, behind block No. 10)
10		Document for co-ordination with the Electricity Supply Utility	Contract for electricity supply with the Electricity Supply Utility, Eastern Area, 6 Dondoukov Blvd, 4th floor.
11		Document for co-ordination with the Water Supply Utility	Certificate by the Water Supply Utility (48 Alabin St.)
12		Consent of the residents in a residential building	Consent of the residents in a residential building (authenticated by a notary public)
13		Approved reconstruction designs	
14		Co-ordination with State Veterinary and Sanitary Control	Permit by State Veterinary and Sanitary Control (7 Nikolaev Blvd., behind the former ISUL Hospital, for trade in milk, honey, meat, canned meat or fish, cold cuts).
15			For the registration of car washing facilities, workshops and studios with water-based technologies: a design for the use of an independent source of conditionally clean water with the required flow rate.
16			For parking, car repair and car washing facilities: also a decision of Regional Environmental Inspectorate, Traffic Police, Fire Safety Service, Hygiene Inspectorate, Electricity Supply Utility 3a
17		Permit by Ministry of Public Health for medicinal drugs, bread and whole-grain products	Permit by Ministry of Public Health, for drugstores

⁴⁰ The requirements are presented in the form in which they are shown on the premises of the respective municipality.

As far as this particular stage of entry is concerned, it could be reasonably claimed that ***the outlet registration procedure, as described, is absolutely needless*** for the following reasons:

1. *First*, the entrepreneur is required to lodge documents which he obviously possesses if he has received a permit to use the site, *e.g.* certificates and permits from the Hygiene Inspectorate, the National Fire Safety Service, the Electricity Supply Utility, and the Water Supply Utility;
2. *Second*, documents are required which have already been submitted to the municipal technical service and some of them are even kept in the records of that service *termlessly*. These are for instance the title deeds, the approved designs, the documents for co-ordination of the designs with various authorities, as well as the permits by the competent services for the use of water, electricity, communication links, thermal energy or gas, the construction permit and the permit to use the site (see the table below).

№	Issuance of use permit by Directorate of National Construction Supervision	Outlet registration by the municipality
1		Application indicating the working hours
2	Written application by owner or independent construction supervisor	
3		Approved reconstruction designs
4	Deed of title or superficies	Document establishing title (or lease contract)
5	Statement establishing that construction site (or a part or stage thereof) worthy of acceptance, Form No. 15	The technical service issues a written opinion on the legality of the building or premise in question
6	Declaration that construction papers or documents not appealed against or annulled	
7	Report by independent construction supervisor accompanied by the documents listed in the Schedules to Ordinance No. 6	
8	Co-ordination letters and opinions by the specialised State supervisory authorities (<i>i.e.</i> Fire Safety Service, Electricity Supply Utility, Water Supply Utility, State Veterinary and Sanitary Control, metropolitan branch of Hygiene Inspectorate)	Document for co-ordination with Fire Safety Service, Electricity Supply Utility, Water Supply Utility, State Veterinary and Sanitary Control, metropolitan branch of Hygiene Inspectorate.
9	Proposed members of the commission.	
10		Consent of the residents in a residential building
11		Document for registration at Metropolitan Social Security Directorate
12		Tax registration certificate
13		Court registration document

The table clearly shows that the sole documents not presented to other authorities on previous occasions are the application indicating the working hours and the written consent of the residents (where the outlet is located in a residential building).⁴¹ They are absolutely sufficient for the purposes of any outlet registration and such a procedure must really consist in *registration only*, not permission.

If we compare the outlet registration requirements introduced by Greater Sofia Municipality and the lists of requirements existing at different boroughs in Sofia, the following drawbacks immediately come to light:

⁴¹ Section 3, subs 3 and 4, Ordinance No. 1 on Public Order and on Preserving the Municipal Estates in the Territory of Greater Sofia Municipality.

- ***The requirements are extremely unclear and cannot be fulfilled without further explanations about the type of documents required.*** For instance, the requirements formulated by Students' Borough state one should submit "a document from the Hygiene Inspectorate for opening the outlet", "documents from the Fire Safety Service" and a "certificate from the Water Supply Utility". What documents are precisely meant here is certainly clear only to the person having phrased the requirements.
- The list of documents required by Mladost Borough is not definitive. There is one additional point reading "documents required under special legislative instruments". This could be any number of documents and they could only be known after additional consultation with officials at that municipality's economic department. The reception hours of that department are normally 4 hours, twice a week;
- The requirements of all municipalities should be based on the Ordinance on Rules of Carrying on Commercial Activities in the Territory of Greater Sofia Municipality. The Ordinance in question contains no mention of submitting a copy of the merchant's social security number or social security book. Nevertheless, such a requirement exists at both Mladost and Students' boroughs;
- At Students' Borough, the merchant is required to submit either copies authenticated by a notary public or the original documents themselves. It would be a straightforward absurdness to leave the originals at the municipality as any entrepreneur needs his documents in order to file them with many other institutions. This means that every entrepreneur should have authenticated by a notary public a total of 19 documents which are already available at this or that public institution, at a total cost of 20 Levs.⁴² The same requirement exists in Lozenets and Mladost boroughs;
- ***It is ultimately unclear why the procedure is called "outlet registration" instead of "outlet operation permit".*** The Ordinance on Rules of Carrying on Commercial Activities in the Territory of Greater Sofia Municipality (s. 4, subs 6) envisages a possibility to refuse registration. Such refusal should be "made in writing and with reasons". ***The Ordinance is silent on what reasons could be invoked to refuse registration.*** Imagine for a second that you are the entrepreneur and you have gone through all steps described so far - starting with the court registration and ending with the permit to use the site. You have invested countless hours to run from one institution to another, you have invested even more money as fees, rentals, repairs, and in the end someone refuses to register your outlet "with reasons"! Of course, you would be entitled to appeal against the refusal according to the Law on Administrative Proceedings but that means time and money again. Now it is certainly clearer why entrepreneurs are inclined to pay a bribe or to sponsor the municipality in order to speed up the process. This also partly explains why, according to the polls, the "supply" of bribes exceeds their "demand".
- The Ordinance referred to (paragraph 4, Transitional and Final Provisions) stipulates that "the Mayor of Greater Sofia Municipality shall issue written instructions for the implementation of this Ordinance within 1 month as from its entry into force at the latest". We failed to discover any such instructions in the records of Greater Sofia Municipality. Members of our team tried to obtain a copy of the statutory instrument on the basis of which the outlet registration requirements had been formulated in Students' Borough. The reply was that we could only obtain a copy with the authorisation of the mayor following a written application. Of course, this fully contradicts s. 43, subs 3(4) of the Law on Local Self-government which obliges the secretary of each municipality to see to it that the regulatory instruments issued by the municipality are drafted and *published*. Consequently, all municipal instruments are public and every citizen should have access to them whenever he wishes.

⁴² According to the Tariff of Notarial Fees annexed to the Law on Notaries and Notarial Affairs.

- ***The term of outlet registration - one year - is equally illogical.*** The Ordinance of Greater Sofia Municipality sets no term of validity for the outlet registration but the enclosed sample certificate states that "On expiry of the term of registration or in the event of a change in circumstances this certificate shall be deemed invalid". Why should the outlet registration be renewed every year? This implies that every year the municipality should be provided with authenticated copies of documents mostly evidencing unchangeable facts and circumstances. Moreover:
 - according to the Ordinance on Rules of Carrying on Commercial Activities in the Territory of Greater Sofia Municipality, the merchant must, in the event of any change in the conditions of registration, notify the mayor's representative who, following his own assessment, shall issue a new certificate or amend the existing one (s. 4, subs 8).

The outlet registration is renewed in accordance with the procedure applicable to the registration itself, *i.e.* upon submission of copies of all listed documents authenticated by a notary public.

Having said all this, there is no doubt that ***the municipal authorities take on themselves additional supervisory functions by requiring copies of any possible official documents issued by other institutions by virtue of different laws, and even copies of documents which are kept termlessly in a municipality's own records. This results in unjustified delays of business start-ups, increases the firms' transaction costs and turns into a source of corruption at the municipal level.***

5. Obtaining additional permits and licenses depending on the type of outlet

5.1 License for trade in tobacco products

Section 30, subs 1 of the Law on Tobacco and Tobacco Products (hereinafter Law on Tobacco) provides that in order to engage in trade in tobacco products, either manufactured locally or imported, the merchant is required to hold a permit for the sale of tobacco products issued by the municipality in the area where the outlet is located. The permit is issued following a procedure and a sample established in the Rules Implementing the Law.⁴³

The procedure for obtaining a license for trade in tobacco products is laid down in the Rules Implementing the Law on Tobacco, Division III.

According to s. 33 of those Implementing Rules, an application for such a license must be filed with the mayor of the municipality in the area of which the outlet is located and the following must be attached thereto:

1. an original document or a copy, authenticated by a notary public, of the judgement for the applicant's court registration;
2. a document for the applicant's tax registration;
3. a certificate by the territorial tax directorate in the area of the applicant's registered office concerning the existence or lack of debts to the Treasury;
4. a proposal to approve the outlet working hours, in line with the public order requirements;
5. a conclusion by the municipal technical service on whether the use of the respective outlet is lawful under the Law on Regional and Town Planning and its Implementing Rules;

⁴³ This is the now existing text of s. 30, subs 1(1). Since 21 April 2000 a new text has been inserted that will take effect in 2001, namely:

"S. 30. (1) (Amended, SG, issue 110 of 1996) The tobacco products manufactured locally or imported shall be sold on the domestic market under the following conditions:

1. (amended, SG, issue 33 of 2000, in effect as from 1 January 2001) the merchant must hold a permit for the sale of tobacco products issued under conditions and procedure laid down by the Council of Ministers; the permit for retail trade shall be issued by the mayor of the municipality in the area where the outlet is located."

6. documents proving that the outlet meets the requirements for commercial activities in the territory of the municipality in question, if such requirements have been imposed by order of the mayor.

The mayor must issue a license for trade in tobacco products within 30 days as from receipt of the application.

The outlets licensed for retail sales of tobacco products are entered in a special register kept at the respective municipality by an official appointed by order of the mayor.

A license may be refused in two cases:

1. where the applicant has failed to submit all required documents;
2. where the applicant has outstanding taxes, fees or other debts to the Treasury.

A license may be revoked where the merchant in question:

1. carries out retail sales of tobacco products in contravention of the Law on Tobacco and its Implementing Rules; or
2. has outstanding taxes, fees or other debts to the Treasury.

This is the regulatory framework relative to the issuance of licenses for trade in tobacco products. We would offer the following comments on it:

- Here again, the merchant is required to submit documents which form part of various public registries and which have either been already submitted to the municipality or which have been issued by the municipality itself;
- The grant and the revocation of a license are linked to the debts to the Treasury in a desperate attempt to increase the revenues. Needless to say, merchants who have always paid their taxes will pay them again, while those who evade taxes and work primarily underground will continue to do so. This is definitely not the right tool to bring the grey economy to light.

What happens in practice? The table below lists the documents which the monitored municipalities require in order to issue a license for trade in tobacco products.

Documents to be filed for license for trade in tobacco and tobacco products⁴⁴

N	Students' Borough	Mladost Borough	Lozenets Borough	Samokov Municipality	Septemvri Municipality	Statutory Requirements
1	Standard application form	Standard application form	Standard application form	Standard application form	Standard application form	Standard application form
2	Court registration		Original document or copy authenticated by notary public for applicant's court registration		Court judgment	Original document or copy authenticated by notary public for applicant's court registration
3	Outlet registration certificate issued by Students' Borough	Outlet registration certificate	Documents proving that outlet meets the requirements of Lozenets Borough possibly imposed by order of the mayor			Documents proving that outlet meets the requirements of the respective borough possibly imposed by order of the mayor
4	Criminal record certificate					
5		Certificate for current status of firm		Certificate for current status of firm	Current status of firm	
6	Sanitary permit by Hygiene Inspectorate for trade in alcoholic beverages and tobacco products	Sanitary permit			Sanitary permit	
7	Certificate by tax service for taxes and fees paid	Document for a fee paid	Certificate by territorial tax directorate in the area of applicant's registered office for outstanding debts to Treasury	Certificate by territorial tax directorate for outstanding debts to Treasury; cash receipt for rental paid under a lease contract with the municipality	Document for taxes paid данъци	Certificate by territorial tax directorate in the area of applicant's registered office for outstanding debts to Treasury.
8		BULSTAT		Copy of identification card based on the BULSTAT Registry	BULSTAT	
9	Tax registration		Document for applicant's tax registration	Copy of tax registration certificate	Tax registration	Document for applicant's tax registration
10	Existing lease contract or title deed					
11	Declaration that					

⁴⁴ The requirements are presented in the form in which they are shown on the premises of the respective municipality.

	<p>applicant: a) not disqualified to carry on trade in wine, alcoholic beverages and tobacco products; b) shall label the products in way to avoid any misleading impression of their origin, quality, category or type</p>					
12			<p>Conclusion by corresponding municipal technical service as to the lawful use of outlet in accordance with Law on Regional and Town Planning and its Implementing Rules</p>	<p>Documents for putting outlet in operation in accordance with Law on Regional and Town Planning, its Implementing Rules, Ordinance No. 6</p>	<p>Permit to use site issued by Directorate of National Construction Supervision</p>	<p>Conclusion by corresponding municipal technical service as to the lawful use of outlet in accordance with Law on Regional and Town Planning and its Implementing Rules</p>
13			<p>Proposal to approve outlet working hours in line with public order requirements</p>			<p>Proposal to approve outlet working hours in line with public order requirements</p>

Lozenets Borough is the only one requiring nothing but the documents listed expressly in the Rules Implementing the Law on Tobacco. All other borough councils have added at least one supplementary requirement, and Students' Borough has been the most pro-active by adding as many as four. The requirements of Lozenets Borough, however, are been literally taken from the law which makes them unclear and sometimes completely illogical. It is hard to ignore the following requirements:

1. Proposal to approve the outlet working hours in line with the public order requirements;
2. Documents proving that the outlet meets the requirements for commercial activities in the territory of Lozenets Borough possibly imposed by order of the Mayor.

These requirements naturally give rise to the following questions:

- ✓ Why should the merchant submit a proposal for approval of the working hours if these have been proposed and approved already at the stage of outlet registration?
- ✓ Is it possible to submit a document proving compliance with requirements that might be non-existent ("the outlet meets the requirements for commercial activities in the territory of Lozenets Borough *possibly approved by order of the mayor*"). Should the municipal administration know whether such an order exists or not and, if it exists, should not the order be at least quoted?
- Quite noticeably, in both Students' and Mladost boroughs the list of requirements applies to both licenses for trade in tobacco products and licenses for trade in wine and alcoholic beverages. The application form for a license in Mladost Borough, however, only refers to copies of three documents: outlet registration certificate; certificate of taxes paid for the previous fiscal year and document for the fee paid. Hence, additional consultation should be sought in order to clarify the requirements.

In addition, at Students' Borough a compilation has been made between the Implementing Rules and the Ordinance on Registration of Licensed Persons.⁴⁵ A few documents required by statute have been omitted while others have been added, *e.g.* criminal record certificate, existing lease contract or title deed, plus one declaration whereby the merchant should state that:

- a) he has not been disqualified to carry out trade in wine, alcoholic beverages and tobacco products;
- b) he will label the products so as to avoid any misleading impression of their origin, quality, category (grade) or type.

The first statement is partly based on s. 29, subs 1(2)⁴⁶ of the Ordinance on Registration of Licensed Persons. The provision in question requires that a license for trade in wine and alcoholic beverages be refused to persons whose license has been revoked, unless two years have elapsed since such revocation. In other words:

1. The municipality has no legal grounds to require such a declaration by the merchant in order to issue him with a license for trade in tobacco products;
2. The municipality has phrased its requirements inaccurately, as it has failed to refer to the 2-year time limit set by the Ordinance.

The second statement mirrors s. 8, subs 2 of a previous Ordinance repealed in April 1996, *viz.* the Ordinance on Licensing Producers of Wine, Alcohol and Alcoholic Beverages and on the Rules of

⁴⁵ Full title: Ordinance Laying down Conditions and Procedure for Registration, Licensing, Removal from the Register and Revocation of Licenses, Data Subject to Registration, the Manner of Keeping Daily Registers, the Contents and Form of Declarations of Crops and Stock, and for Control of Licensed Persons and Their Activities.

⁴⁶ "Section 29. (1) The mayor of the municipality shall refuse the grant of a license:
1. to persons in respect of whom it is established by [...]"

Trade in Wine, Alcohol and Alcoholic Beverages.⁴⁷ The now existing instrument does not contain such a text and the municipal administration is not entitled to require the filing of such a declaration in order to issue a license for the sale of alcohol or a license for the sale of tobacco products. The provision of s. 8 of the existing Ordinance resembles some rules of the Law on Consumer Protection but another question arises then: why should the entrepreneurs declare that they would obey a law if they are anyway bound to obey it?

At the municipalities of Samokov and Septemvri and at Mladost Borough Council in Sofia, a certificate of the current status of the firm is required as at the date of filing the documents, instead of a copy of the court judgement authenticated by a notary public. This is a condition laid down in the Ordinance on Trade in Wine, Grape- and Wine-based Products, Alcohol, Distillates and Alcoholic Beverages. At the same three councils a copy is also required of the identification card based on the BULSTAT Registry, which is also a condition under the above mentioned Ordinance.

At Samokov Municipality, the list of documents to be attached to an application for a license for trade in tobacco products comprises 5 documents. However, the standard application form available from the municipality contains the phrase "Enclosures" and lists seven documents instead of five.

- Another interesting document required by the administration at Students' Borough is the "sanitary permit by the Hygiene Inspectorate for trade in alcoholic beverage and tobacco products". As a matter of fact, no such permit exists. The repealed Ordinance on Licensing Producers of Wine, Alcohol and Alcoholic Beverages contained at one point a provision (repealed in 1994) referring to such a permit but only in the context of imported alcohol. The existing Rules Implementing the Law on Tobacco contain no such a requirement. Perhaps what is meant here is the sanitary permit for putting the outlet in regular operation which is required when a license for trade in alcohol is issued;
- The borough councils in Sofia, again, require original documents or copies authenticated by a notary public. As already mentioned, this makes the firms incur additional costs;
- The licenses for trade in tobacco products are issued for a term of one year. We failed to identify a legal ground for that term in the Law on Tobacco or in its Implementing Rules. None of these two instruments, which put in place the procedure for issuing and revoking licenses, mentions that those licenses should have a limited term of validity. It could only be guessed that the idea of the requirement is to link the regular license renewals with the collection of revenues.

5.2 License for trade in wine, grape- and wine-based products, alcohol, distillates and alcoholic beverages

According to the Ordinance on Registration of Licensed Persons, a wholesale or retail trader in wine, grape- or wine-based products, alcohol, distillates and alcoholic beverages, must hold a license. The Ordinance also stipulates that retail trade in the mentioned alcoholic beverages may take place at stationary commercial outlets and on board ships or aircraft, in dining cars or at other outlets where retail sales are permitted. Wine, grape- and wine-based products, alcohol, distillates or alcoholic beverages cannot be sold by peddlars in the streets, squares, open market places, in or from cars or trucks, at street stalls, in tents and the like, nor may they be sold in the territory of kindergartens, schools and hospitals.

The license is granted by the mayor of the municipality in which the outlet or the vehicle where the trade is to take place is located or registered, on the basis of an application by the merchant. By virtue of s. 27, subs 2 of the Ordinance, the following documents must be enclosed to the application:

⁴⁷ "Section 8. (1) [...]"

(2) Alcoholic beverages shall be labelled so as to exclude any possibility of misleading the consumer as to their origin, quality, category or type."

1. a certificate of current court registration status of the firm (as at the date of filing the documents);
2. a copy of the identification card based on the BULSTAT Registry and a copy of the tax registration certificate;
3. information about the location and an accurate description of the outlet, or registration number of the vehicle;
4. a copy of the sanitary permit for putting the outlet into regular operation; this permit is issued by the director of the competent Regional Hygiene Inspectorate;
5. a document for the fee paid.

Within one month as from filing the required documents, the mayor must grant a license which is termless.

The mayor is entitled to refuse license to:

- persons in respect of whom a supervisory authority has established by a report that has come into force that they had been carrying on trade without a license, where less than two years have expired as from the entry of the report into force;
- persons whose license has been revoked, unless two years have expired as from such revocation.

The refusal may be appealed against under the Law on Administrative Proceedings.

A license for trade in wine, grape- and wine-based products, alcohol, distillates and alcoholic beverages, shall be revoked by order of the mayor in the event of:

- carrying on trade at an outlet or vehicle not entered in the merchant's license;
- carrying on trade in wine, grape- or wine-based products, alcohol, distillates and alcoholic beverages by producers who are not registered or licensed.

The persons engaged in wholesale and/or retail trade in wine, grape or wine products, alcohol, distillates and alcoholic beverages, and the circumstances stated in each application and its enclosures are entered in a special register kept at the respective municipality by an official appointed by order of the mayor.

The next table shows the requirements of the five monitored municipalities for issuing a license for trade in alcohol.

Documents to be filed for license for trade in alcohol⁴⁸

№	<i>Mladost Borough</i>	Students' Borough	Lozenets Borough	Samokov Municipality	Septemvri Municipality	Documents Required by the Ordinance
1	Standard application form	Standard application form	Standard application form	Standard application form	Standard application form	Standard application form
2	Outlet registration certificate	Outlet registration certificate from Students' Borough	Information on the location and accurate description of outlet or registration number of vehicle			Information on the location and accurate description of outlet or registration number of vehicle
3	Current status certificate	Court registration	Certificate of current court registration status as at the date of filing the documents	Certificate of firm's current court registration status as at the date of filing the documents	Certificate of firm's current court registration status (as per court registers)	Certificate of current court registration status as at the date of filing the documents
4	Tax registration certificate	Tax registration	Copy of tax registration certificate	Copy of tax registration certificate	Copy of tax registration certificate	Copy of tax registration certificate
5	BULSTAT		Copy of identification card based on BULSTAT Registry	Copy of identification card based on BULSTAT Registry	Copy of BULSTAT card	Copy of identification card based on BULSTAT Registry
6	Document for fee paid: original	Document for fee paid	Document for fee paid	Document for fee paid	Document for fee paid	Document for fee paid
7	Metropolitan Hygiene Inspectorate	Sanitary permit by Hygiene Inspectorate for trade in alcoholic beverages and tobacco products.	Copy of sanitary permit by Hygiene Inspectorate for putting outlet into regular operation (issued by the director of the competent regional inspectorate)	Copy of sanitary permit for the outlet issued by the local Hygiene Inspectorate in Sofia	Copy of sanitary permit	Copy of sanitary permit by Hygiene Inspectorate for putting outlet into regular operation (issued by the director of the competent regional inspectorate)
8		Certificate by tax service for taxes and fees paid		Certificate by Territorial Tax Directorate in the area of applicant's registered office for outstanding debts to Treasury		
9		Existing lease contract or title deed				
10		Declaration that		Declaration under ss. 29, 30		

⁴⁸ The requirements in the table are presented in the form in which they are shown on the premises of the respective municipality.

		<p>applicant: a) not disqualified to carry on trade in wine, alcoholic beverages and tobacco products; b) shall label the products in a way to avoid any misleading impression of their origin, quality, category or type</p>		<p>and 31 of the Ordinance for Licensing (Regulation of Council of Ministers No. 54 of 6 April 2000)</p>		
11		Criminal record certificate				
12				Cash receipt for rental paid under lease contract with the municipality		
13				Order (certificate) for outlet's category (grade): required for catering and entertainment establishments only		
14				Documents for putting outlet into regular operation in accordance with Law on Regional and Town Planning, its Implementing Rules, Ordinance No. 6: permit for use, certificate / written conclusion by municipal Regional and Town Planning Department		

- The requirements of Students' Borough Council for issuing a license for trade in alcohol or trade in tobacco products apply to both types of licenses (see above). The standard application form is also the same. Thus, the only way for an entrepreneur to realise which documents he should produce exactly in either case is to request additional information during the reception hours, *i.e.* on Tuesdays and Friday, from 9 a.m. to 12.00.
- In this case, the requirements of Lozenets Borough are again identical to those in the Ordinance. However, an entrepreneur can hardly figure out what is meant by "information on the location and an accurate description of the outlet". This document cannot be submitted without additional explanations and any explanation can be received during the scanty reception hours of the municipality's economic department, *i.e.* on Tuesdays and Thursdays from 10 a.m. to 12.00. As regards Mladost Borough Council and Septemvri Municipality, their requirements are also based on the Ordinance but are sufficiently clear and may be fulfilled without additional consultations or inquiries.
- The case of Samokov Municipality is intriguing. The list of required documents includes four additional items as compared to the Ordinance, *viz.*:
 - a certificate by the territorial tax directorate in the area of the applicant's registered office concerning any outstanding debts to the Treasury;
 - a cash receipt for rental paid under the lease contract with the municipality;
 - a certificate of the outlet category (grade);
 - a declaration of the circumstances referred to in ss. 29, 30, 31 of the Ordinance on Licensing.

The local chief expert is of the opinion that these four documents are indispensable to grant a license and keeps on requiring them despite the protests of the entrepreneurs. As regards the declaration mentioned above (the last item), the circumstances to be declared are solely those under s. 29 of the Ordinance and they relate to the two-year time limit for previous violations and sanctions on the basis of which the mayor can refuse a license. Sections 30 and 31 of the Ordinance are binding anyway, so it is meaningless to declare their observance.

Another interesting thing is point 5 of the declaration according to which the applicant undertakes, "in implementation of s. 27, subs 2 of the Ordinance and s. 113 of the Law on Local Taxes and Fees to pay, upon expiration of one year as from the date of issuing the license, the fee due as a result of any amendment to that Law". People who have not read the Ordinance in question and the Law on Local Taxes and Fees may think this is a perfect requirement. However:

- *First*, s. 27, subs 2 of the Ordinance lists the documents to be enclosed to the application without any reference to the license fee; and
- *Second*, s. 113 of the Law on Local Taxes and Fees sets the fees due for issuing licenses for trade in tobacco products and wine, alcohol and alcoholic beverages. Section 114 of the same Law, however, goes on to provide that the fee shall be payable on filing the application and, as we have seen, the license is termless (s. 28, subs 3 of the Ordinance). What is the ground then to request an applicant to declare that one year after the grant of a license he shall pay "a fee due"?

Neither the Rules Implementing the Law on Tobacco, nor the Ordinance on Registration of Licensed Persons empower the municipalities to require additional documents at their discretion. Nevertheless, municipal authorities rely on s. 22 of the Law on Local Self-government in order to issue ordinances, orders and instructions whereby they interpret or revise legislative instruments of a higher rank, *e.g.* laws passed by the Parliament or implementing rules passed by the Council of Ministers.

5.3 Categorising tourist outlets

Tourist outlets are categorised on the grounds of s. 20, subs 1 of the Law on Tourism and Ordinance No. 2 on Categorisation of Tourist Outlets.

The tourist outlets subject to categorisation are:

- hotels and other accommodation facilities (motels, villas, bungalows, holiday resorts, camping facilities, family hotels, private rooms);
- catering and entertainment establishments (restaurants, fast-food facilities, pubs, cafeterias and pastry shops, bars).

The categorisation of hotels and other accommodation facilities and of catering and entertainment establishments is a mandatory requirement for a facility to be operated as a hotel or restaurant. Tourist outlets are categorised on the basis of a "five-star" scale.

A "three-", "four-" or "five-star" grade is awarded to hotels and other accommodation facilities, and to catering and entertainment establishments by order of the Minister of Trade and Tourism on a proposal from the Central Expert Commission for Licensing and Categorisation with the Ministry of Trade and Tourism. The Central Expert Commission sets up committees for the categorisation of hotels and other accommodation facilities. Those committees are appointed by the Minister of Trade and Tourism or by an official authorised by him and may include representatives of local, regional or branch tourist organisations.

The one-star category of hotels and other accommodation facilities, family hotels (boarding-houses) and private rooms advertised for tourist accommodation is awarded by order of the mayor of the municipality in which the outlet is located, in conformity with Ordinance No. 2. For the purposes of awarding a category, the mayor may set up specialised departments or commissions within the municipal administration. The commissions for the award of category to private rooms must include officials of the competent local branches of the Hygiene Inspectorate.

The one-star or two-star category of catering and entertainment establishments, except those located in hotels or other accommodation facilities, is also awarded by order of the mayor of the municipality in which the outlet is located.

The categorisation procedure is launched with the owner of the outlet or his authorised representative filing a standard application form⁴⁹ with the competent categorising body. The following documents must be enclosed to the application:

1. a certificate of the current court registration status of the owner, if the latter is a merchant within the meaning of the Commercial Code. That certificate must bear a date preceding the application date by 30 days at the most.
2. a copy of the identification card based on the BULSTAT Registry, if the firm is subject to registration there;
3. a certificate of outlet registration at the competent municipality, if such registration is applicable;
4. a category determination form;⁵⁰
5. a certificate of the outlet's conformity with the fire safety regulations issued by the competent branches of the National Fire Safety Service;
6. a title deed for the outlet;
7. a statement of outlet acceptance or a permit to use a newly-constructed, reconstructed, modernised or enlarged tourist outlet issued by the State Inspectorate for Regional Planning and Construction Supervision (currently called "Directorate of National Construction Supervision) or by the competent municipal authorities;
8. a power of attorney authenticated by a notary public, if the application is filed by a representative;
9. a document proving the payment of the fee due for examination of the documents, according to the Tariff of Fees Payable under the Law on Tourism.

⁴⁹ According to Schedules 6, 6.1 and 6.2 to the Ordinance on Categorisation of Tourist Sites.

⁵⁰ According to Schedules 7 or 7.1 to the Ordinance on Categorisation of Tourist Sites.

If necessary, the categorising authority may also request other data and documents in order to check facts or circumstances relevant to the categorisation procedure.

For the categorisation of private rooms, the owners of such rooms, or their representatives authorised to rent the rooms out, must file the applicable standard application form and enclose:

1. a category determination form;
2. a title deed;
3. a power of attorney authenticated by a notary public, if the application is filed by a representative.

Where catering establishments located in a family hotel (boarding-house) are also used by persons not staying at that hotel or house, such establishments must be categorised as independent catering and entertainment establishments.

Upon transfer of the ownership of an outlet categorised under Ordinance No. 2, the new owner must apply for categorisation following the general procedure laid down in the Ordinance.

On transformation of a commercial company or in the event of change in the business name of a merchant owning a categorised outlet, that merchant must file with the Ministry of Trade and Tourism or with the competent municipality an application for entering the change in the register of issued certificates. He must also enclose a copy of the court judgement whereby the change is entered in the Commercial Register and a document proving payment of the fee due.

The outlet must be categorised within 4 months as from the date of receipt of the documents. If the commission in charge finds out that the documents are inadequate, the merchant is given a period of 14 days to rectify the deficiencies or to provide the data or documents listed in the Ordinance.

During the categorisation procedure and as a result of on-site inspections, the commission in charge must draw up a report of findings with a proposal to award a certain category to the inspected outlet in accordance with Ordinance No. 2. If the applicant objects against the report of findings, a note of the objections is taken when signing the report on the spot, after completion of the inspection.

An outlet is awarded a given category for a period of 3 years by order of the competent authority (central or municipal). The order awarding a category may be appealed against under the Law on Administrative Proceedings.

During the time from filing an application for categorisation until the award of a category certificate, the merchant continues to operate in the outlet in question. The outlet category certificate is issued for a period of three years and must be exhibited visibly within the outlet. If the original certificate is lost or destroyed, the owner must apply for a duplicate. The circumstances under which the original was lost or destroyed must be described by the owner or his authorised representative in a written declaration submitted to the categorising authority. A duplicate is issued upon payment of a fee set in the Tariff of Fees Payable under the Law on Tourism.

The categorising authority shall refuse to award the category required by the merchant in the event of:

1. failure to rectify in due course the deficiencies in the documents filed or to provide data or documents requested in addition;
2. failure to satisfy the requirements and norms applicable to the respective type of tourist outlet, as laid down in Ordinance No. 2 on Categorisation of Tourist Outlets.

The order refusing the category applied for may be appealed against under the Law on Administrative Proceedings.

In the event of failure to satisfy the requirements and norms applicable to the respective type of outlet as laid down in Ordinance No. 2, the competent categorising authority awards a category other than that applied for or, if no lower grade exists, refuses to award a category.

The categorising authority may downgrade a tourist outlet in the event of:

1. failure to comply with the requirements and norms applicable to the respective type of tourist outlet as laid down in the Ordinance;
2. failure to apply, within one month as from the award of category, for a license for the respective type of tourist operations if such a license is required under the Law on Tourism;
3. systematic disrespect of the quality of tourist services established by the supervisory authorities.

The categorising authority shall revoke the category of a tourist outlet in the event of:

1. discontinuing the tourist operations at the outlet; or
2. change in the type of the tourist outlet.

When the type of a tourist outlet is changed, the owner must file documents for the award of category following the general procedure envisaged in Division III of the Ordinance.

The officials of the National Trade Commission with the Ministry of Trade and Tourism may impose a coercive administrative measure, *viz.* "temporary closing down of a tourist outlet", whereas the tourist organisations may lodge with the Minister of Trade and Tourism or with the competent mayor written complaints against failures to observe the requirements applicable to a category and to the quality of tourist services.

Such coercive administrative measures and the orders revoking the category awarded may be appealed against under the Law on Administrative Proceedings.

Once the order downgrading an outlet or revoking its category comes into effect, the supervisory authorities must seize the certificate of category issued for that outlet and submit it to the competent officials of the Ministry of Trade and Tourism or of the municipality in order for it to be declared invalid and in order for the downgrading or revocation of category to be entered in the register of the competent categorising authority.

This is the legislative framework applicable to the categorisation of tourist outlets. It is possible to outline a few problematic issues here which are also typical of other licensing procedures:

- ***There is a self-evident lack of confidence among the institutions and each of them attempts to introduce its own forms of control on the work of the other institutions.*** The list of required enclosures under s. 10, subs 2 of the Ordinance is just one more example in that respect.

Thus,

1. in order for a permit to use the site to be issued by the Directorate of National Construction Supervision, a fire safety certificate must have been issued already;
 2. in order for the outlet to be registered for operation, there must be a permit to use the site issued by the National Directorate and a fire safety certificate;
 3. the title deed should have been submitted in order to obtain a permit to use the site and to register it for operation, unless this has nothing to do with the category.
- The certificate of current court registration status should bear a date preceding the application date by no more than 30 days .

The reasons for this requirement are completely illogical. Firstly, any certificate of current court registration status has a validity of 6 months as from the date of issuance. Secondly, the time limit for categorisation is 4 months as from the date of filing the application. If we add to this one month before the application date (requirement for court registration status certificate), the total time becomes 5 months. Apparently the law-maker has calculated a "normal" lag in the procedure by more

than one month as a result of which the certificate of current court registration of the owner might expire before a category is awarded. Even this, however, should not be a problem at least for two reasons: firstly, the category is awarded to the outlet, not the owner, and, secondly, the Commercial Register of the court is public and the circumstances stated in the certificate may be checked at any time.

- Another interesting fact is that the transfer of the ownership of a categorised outlet entails an application by the new owner for a new categorisation under the general procedure.

This means, *inter alia*, that the acquirer should pay the fee set in the Tariff of Fees Payable under the Law on Tourism. Firstly, the cost is between 200 and 2000 Levs for hotels and other accommodation facilities, or 90 and 1100 Levs for catering and entertainment establishments (depending on their type). Second, this cost is absolutely needless, as the award of a category means the outlet satisfies the legislative requirements and, with respect, this has nothing to do with the owner.

- ***The certificate of category has a three-year validity.***

An owner willing to continue carrying on tourist activities at an outlet thus categorised, must file an application (based on s. 10 of the Ordinance) for outlet categorisation before the previous certificate has expired. In other words, he would again pay a fee and submit documents at least one third of which state unchangeable facts, such as the BULSTAT identification code and the permit to use the site. ***This is a typical example of a quasi-tax which makes the business environment repugnant to foreign and domestic investors alike.***

Section 10, subs 3 of the Ordinance entitles the categorising authority to also request "other data and documents in order to check facts and circumstances relating to the categorisation procedure". This possibility, coupled with the fact that the time limit for categorisation (4 months) starts running only after *all* documents are filed, may turn the whole procedure into a vicious circle. Not surprisingly, s. 15 of the Ordinance empowers the competent authority to refuse categorisation in the event of failure to submit the data or documents requested in addition.

In its current form, this procedure is indeed a systemic municipal source of corruption.

V. Conclusions and Recommendations

1. Conclusions

- 1.1 The licensing, permission and registration procedures administered locally are in fact municipal sources of corruption. They often erect insurmountable entry barriers and obstruct the development of small and medium-sized businesses in the country;
- 1.2 The so-called "small-scale corruption" oppresses the thriving of legal business. Instead, it fosters unfair competition and fuels the grey economy;
- 1.3 The procedures for issuing a permit for trade or services are complex and lengthy. They are devised for a well organised and technically well equipped bureaucratic machinery which is non-existing in Bulgaria. As many as 15 State institutions and agencies⁵¹ are involved in the licensing process, while no co-ordination exists among them at all. Four of those institutions issue registration documents for firms (court registration, tax registration, BULSTAT, VAT registration) and copies of those registrations must be submitted to all remaining 11 institutions as many times as they are required to provide a service;

⁵¹ For businesses for which special licenses are required (drugstores, gambling halls etc.) the number of institutions is larger.

- 1.4 The licensing procedure must be followed step by step and every next institution issues its permit on the basis of a certificate issued by the previous institutions. The whole procedure involves institutions which may not be visited in parallel but the conclusion of one must be obtained in order to proceed to the next one. This causes significant delays;
- 1.5 The unclear rules, the insufficient reception hours of the institutions involved and the restricted access to information on what exactly should be done and how, slow down the process of starting-up a business, raise the firms' transaction costs and entice corruption at the municipal level;
- 1.6 All along the line, the time limits set in the legislation are disregarded for most varied reasons, starting with those envisaged in the law, *e.g.* requesting additional documents and rectifying submitted papers, and ending with the absence of the official in charge, the lack of time to write the document or even the lack of paper to write the document on. Many of the institutions involved are not equipped with computers and, of course, this holds up the provision of services to firms. Every delay, however, encourages corruptive attitudes among the entrepreneurs since every month they incur ever-growing costs⁵² yielding a zero-rate return. One possible rescue is to start operating without a license but then the threat of sanctions or racketeering on the part of the supervisory authorities is imminent. The other way out is to pay a bribe in order to accelerate the licensing process and to start operating lawfully as soon as possible;
- 1.7 A trend is perceived for each unit of public administration to work independently, without co-ordinating with the other institutions concerned, and to complicate the procedures to the possible maximum while passing the costs for those complications on to the starting entrepreneur;
- 1.8 The municipal administration takes on additional supervisory functions by requiring copies of any possible and available official documents issued by other institutions under the legislation in force and even copies of documents kept termlessly in its own records. Such practices cause completely unjustifiable delays in starting-up a business, increase the firms' transactions costs and become steadfast sources of corruption in the local administration;
- 1.9 In general, the starting-up of a business in the sphere of trade or services depends on the so-called "outlet registration". This registration falls within the competence of the municipal administration. In this particular case the local administration derives its powers from s. 22 of the Law on Local Self-government which provides that the municipal council has the power to regulate the activities of local significance. This is the main reason for the lack of unified outlet registration rules and requirements in the country. Every municipality issues its own ordinance, prints its own standard forms and develops its own rules of the game;
- 1.10 Relying on the unclear phrasing of s. 22 of the Law on Local Self-government, the municipal authorities often issue ordinances, orders and instructions whereby they interpret or revise legislative instruments of a higher rank;
- 1.11 Another problem which should not be underestimated is the limited term of validity of many permits and certificates (*i.e.* they have to be renewed at regular intervals, normally one to three years). As regards the termless documents, the requirements for their acquisition are regularly modified, so the entrepreneurs, again, must renew them while paying the fee due on

⁵² Even if the outlet is closed, the entrepreneur still pays the rental as the lease contract is effective (the outlet registration procedure cannot be launched without it), carries out the necessary repair works (in order to bring the room in line with the hygienic and fire safety requirements), etc.

every renewal. The introduction of such "quasi-taxes", coupled with a legislative framework that is constantly on the move, makes the business environment unpredictable;

1.12 During the field work under the project several main modes of taking bribes have been identified, and cash is manifestly no longer in vogue:

- The first, and most widely spread, trick is to refuse approval of the designs submitted or the services provided and refer the applicants to a *specific private company* which would do the job again (sometimes at prices higher than market ones) but would not always invoice the service;
- Another approach that has become popular recently is to sponsor the municipality.

These methods of taking bribes are not covered by s. 301 of the Criminal Code.⁵³ Obviously this is why they are used prevalingly.

1.13 The situation in the small towns differs from that in Sofia. In a small town the people more or less know each other and the problems are not in the municipalities but in the fact that the local branches of central institutions (Hygiene Inspectorate, Fire Safety Service, State Veterinary and Sanitary Control, Electricity Supply Utility, etc.) do not enjoy the required degree of autonomy. In contrast to the small or medium-sized towns, where a municipal official cannot remain anonymous, the main problems in Sofia are to be found in the economic and architectural departments of municipalities.

2. Recommendations

The following recommendations form a set of measures that could produce positive results if, and only if applied concurrently. Somewhat conditionally, they could be divided into suggestions of principle and practical solutions.

2.1 Suggestions of principle:

2.1.1 State regulation should be restricted to preserving the life and health of citizens, public order and the national security;

2.1.2 If licensing is deemed to be the right approach to regulation, at least three principles should be complied with:

- *first*, licensing regimes should only be introduced by virtue of a law passed by the Parliament which lists expressly all necessary and sufficient conditions for a license to be obtained. The legislative instruments should not contain provisions supplying the administration with leeways to impose additional requirements outside those prescribed by the law;
- *second*, the licenses must be termless and subject to revocation only when violations are found out;
- *third*, the public institutions must be prohibited from requiring information already supplied to another public institution or register. In other words, the administration should incur itself all costs for the exchange of information among its units;

⁵³ Division IV.

"Bribe

S. 301. (1) Amended, SG, issue 51 of 2000) An official who accepts a gift or any other tangible benefit, which is not due to him, in order to perform or refrain from performing an act in the context of his service or because he has performed or refrained from performing such an act, shall be liable for bribe to imprisonment from one to six years."

- 2.1.3 The workload of licensing and supervisory institutions expands as a result of the increasing number of firms and the growing variety in the private sector. The lack of administrative capacity may be cured by reducing the number of and simplifying the existing procedures, and by building up a computer network to link the different public institutions and registries;
- 2.1.4 The instruments issued by the local authorities and the individual administrative acts issued by public institutions (instructions, ordinances, methodologies, orders, etc.) bearing on the business environment must be public. The recently passed Ordinance on the Register of Administrative Authorities and on the Acts Issued Thereby is a step in the right direction;
- 2.1.5 The existing Draft Law on Legislative Instruments must be modified so as to envisage a preliminary assessment of the impact of all newly-passed legislative instruments. In other words, there should be guarantees for the preliminary discussions on, and analysis, of all expected positive and negative implications and on who would suffer the disadvantages. The wide public involvement in such discussions makes it possible:
- to assess the upsides and downsides for various social circles;
 - to realise who gains what, who loses what and who pays the bill;
 - to avoid needless costs for the implementation, explanation of and compliance with the legislative instruments; and
 - to compare the costs and advantages of introducing a rule with the benefits lost as a result of not opting for other solutions.
- 2.1.6 The powers of the local authorities must be clearly delineated, and s. 22 of the Law on Local Self-government must be repealed. The Law should rather define specific areas which the local authorities are entitled to regulate. Though the amendments to that Law might seem easy at first sight, the factual motives of the municipalities to resist such amendments have to do with the setting of fees for registration and other services and, hence, stem from the general legislative framework of their financial autonomy;
- 2.1.7 The Government should continue its review of existing permission, licensing and registration regimes in the country. One option to restrict the regulations is to reduce their period of validity or the revision intervals. The difficulties stemming from the regulations may be reduced if people less frequently have to address the public authorities to obtain permit renewals or information.

Along these lines, a few examples could be given:

- the German Blue Checklist asks if the length of period a provision should remain in force should be limited. It further questions if it is possible to justify a time-limited "experimental" provision;
- the US. Paperwork Reduction Act establishes a three-year limit on the length of time any federal paperwork requirement can be implemented. After that the responsible agency must eliminate the paperwork unless independent reviewers in the Office of Management and Budget decide that it continues to be of use to the Federal government and imposes the lowest possible burden on the public;
- The Japanese propose that the time period a permission or authority is in force should be examined to determine if it can be extended to eliminate frequent reapplications;
- The Dutch Directives require that regulations be introduced on an experimental basis;
- According to the Finnish Manual, Proper Drafting of Norms, orders and guidelines are issued for a fixed period not exceeding five years. The Finnish Norms Act requires an assessment of the necessity and appropriateness of a norm every five years to determine whether repeal or updating is required.⁵⁴

2.2 Practical solutions

⁵⁴ See OECD, 1993, *The Design and Use of Regulatory Checklists in OECD Countries*, pp. 31-32, Paris.

The solutions suggested below are aimed to decrease, cost wisely, the waste of time by entrepreneurs and to introduce transparency in their relations with public institutions.

- 2.2.1 The branches of the National Statistical Institute (the first stop after the court's Company Division and court registration) and the municipal councils (the most accessible stop in all subsequent contacts with the administration) should exhibit, by type of firm, clear-cut, exhaustive and legally accurate descriptions of all required documents, the issuing institutions, the fees and time limits for their issuance while stating explicitly the legal ground on which a document is required. Such descriptions would become *sui generis* procedure inventory lists, thus helping detect the barriers and encourage a public debate on possible improvements;
- 2.2.2 The standard forms to be filled must be generally accessible and it should be possible to consult correctly filled sample forms. The instruments, be they legislative or individual (ordinances, instructions, orders, rules, etc.) on the basis of which a step or document is required, should also be at the disposal of entrepreneurs;
- 2.2.3 Some of the now existing procedures, particularly the so-called "outlet registration", must be moved from a permission-based onto a registration-based track. An entrepreneur must simply file with the municipality a declaration notifying of his location, working hours, identification numbers and numbers of certificates held. The supervisory authorities are the ones to check the accuracy of the data provided if they entertain any doubts;
- 2.2.4 The reception hours of officials issuing various permits must be changed from several hours a week into normal all-week reception time, established in advance and unchangeable.
- 2.2.5 The rules on administrative liability inserted in the legislation are obviously of no particular use in compelling compliance by the institutions. Many entrepreneurs complain of an all-out failure to stick to the deadlines but no one seeks judicial redress, the main reason being the lack of confidence in the judicial system. A possible way to ensure observance by the public administration of statutory deadlines is to introduce the option of a "tacit consent". In other words, if no written opinion has been issued to reason the refusal of a permit, consent should be presumed. The certificate which proves the existence of a permit could be obtained later, as is currently the case with tax registration certificates.
- 2.2.6 A good solution aimed at reducing the costs of both entrepreneurs and administration is the "one-stop shop" service. It would remove the redundant co-ordination with different institutions and would imply a lesser waste of time and money when entering the business. The costs of the administration would decrease over time, if the confusion of powers is overcome. The "one-stop shop" could simply bring together representatives of the Fire Safety Service, the Hygiene Inspectorate, the Water Supply Utility, the Heating Utility, the environmental protection authorities, the officials in charge of architecture and public works, and so on and so forth. One of the obstacles to normalising the working hours and introducing the "one-stop shop" approach is that most regulations require that a permit be issued by the head of a service or department. If simple and clearly formulated public criteria exist, a permit could be issued by another official.
In bigger towns it is thinkable to concentrate all permits after the firm registration at one point, whereas in smaller towns the "one-stop shop" could function in respect of all institutions which step in after the court.

VI. Quotes of entrepreneurs' opinions on entry barriers and problems of business operation

At the end of this report, the team has been tempted to present some respondents' opinions in their original form. We believe they are so eloquent that no additional comments are needed:

- "If I had to start now, I'd not even think of starting with business".
- "I could tell you how long it is in general. I have no recollection how many times I have gone for each permit. It is just insanely long".
- "I went many times and then gave up. Simply paid a company to do it instead."
- "During the inspections they nibble at every single thing. When they decide to pick up your money, there is no way out. They always find something to nibble at."
- "You must hold a law degree to be able to open a cafeteria."
- "Protest where? Courts, barristers, money and no result."
- "Instead of thinking how to be more efficient, we spend 60 per cent of our time in thinking how to cope with tax authorities and inspectors."
- "There should be rules of the game, but clear ones - and applicable to all."
- "The institutions assume no responsibility."
- "It is three years now that they do not approve the designs. Three architects have come and gone. They regularly give opinions and return the papers for something additional. We prefer to work illegally rather than have two families waiting and jobless."
- "Until we got the permit from the Fire Brigade, the law was amended and the conditions changed. New fees came into effect as well. We had to cope with that but then the validity expired and we had to renew the permit."
- "The inspectors are the sole ones who understand the requirements."
- "The centralisation is constantly on the rise and is ever more frustrating. You go to Sofia for every trifle and spend a lot of money."
- "I do not want anyone to help me, I just want no one to stand in my way."
- "People must be fair and honest. For their own sake and for the sake of their children. You can't teach your children to be dishonest!"