

REFORMS FOR ECONOMIC GROWTH AND BUSINESS RESILIENCE 2022

COMBATING GREY ECONOMY COMMITTEE



AMCHAM SERBIA
A LEADER IN CHANGE

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OBJECTIVE 1: REDUCE ILLICIT TRADE ONLINE

...THROUGH BETTER CO-ORDINATION AND CAPACITY-BUILDING FOR INSPECTIONS

CHALLENGE: In recent years, illicit trade has tended to leave traditional markets and move online, but there are no clear inspection powers or capacities to oversee illegal e-commerce. One key challenge is the lack of structured and effective co-ordination between the various inspections in this area, whilst illicit practices include selling excise products (such as tobacco, alcoholic beverages, and the like), medicines, and other goods online, and intellectual property infringements.

Having recognised this problem, in December 2018 the Co-Ordinating Commission on Inspections Oversight developed a process chart for inspections seeking to tackle illicit trade online, which requires nine inspections and regulatory authorities (Market Inspection, Postal Inspection, Medicines and Medical Devices Inspection, Sanitary Inspection, Tax Administration, Customs Administration, Agricultural Inspection, Information Society Inspection, and Phytosanitary Inspection) to collaborate and share information on illegal online sales. The process chart assigns the key role to the Market Inspection, which utilises cutting-edge software to ‘crawl’ publicly available web sites, collecting data on goods sold illegally and notifying line inspections, and these bodies then assess the threats and initiate controls.

These advanced techniques are, however, still a relative rarity amongst inspections, and there is no monitoring of how the process chart is applied. The limited capacity of the Ministry of Interior and the Office of the Special Prosecutor for Cyber-Crime to provide assistance also often lead to bottlenecks. Finally, the inspections’ specialist expertise in these matters is quite limited.

RECOMMENDATIONS:

- In areas where risk assessments indicate large-scale illicit trade online (such as medicines and medical devices), develop the capacity of line inspections for independent inquiry based on initial information provided by the Market Inspection.
- Continue building capacity of inspections services tasked with controlling online transactions by envisaging new positions for inspectors and IT experts tasked with online oversight.
- Clarify the powers of inspection bodies to monitor online advertising and sale of goods, in particular in areas shown to suffer from overlaps or gaps in jurisdictions (such as between the Medicines and Medical Devices Inspection and the Market Inspection, etc.).
- Identify obstacles that prevent inspections from bringing criminal charges and have the Ministry of Interior and/or the Office of the Special Prosecutor for Cybercrime train inspectors in how to draft criminal claims.

OBJECTIVE 2: SAFEGUARD INTELLECTUAL PROPERTY

...BY DEVELOPING CAPACITY TO TACKLE SOFTWARE PIRACY

CHALLENGE: The transformation of the Tax Administration, which is tasked with inspecting whether businesses use legal software, began with the removal of non-core functions – one of which was software inspection – and the specialised software control unit has now been subsumed in the general oversight division. Amendments to the Law on Special Powers for Efficient Protection of Intellectual Property have made the Market Inspection responsible for safeguarding intellectual property rights in software, but this body is unable to exercise effective oversight as it lacks the required procedures, equipment, and expertise.

RECOMMENDATION: Develop procedures the Market Inspection could use to detect software piracy and improve technical capacity of this body (primarily by introducing appropriate software) and enhancing skills of its inspectors and operatives.

...BY STRENGTHENING CO-OPERATION WITH INTELLECTUAL PROPERTY OWNERS

CHALLENGE: After suspected counterfeit goods are seized, intellectual property owners have ten days to assess whether the products are genuine or not, a period they believe is often excessively short. Some of this time is frequently spent obtaining photographs of the seized products, which the copyright holders are required to do themselves.

RECOMMENDATION: Instruct all customs offices that Customs Administration staff should photograph seized goods and provide these photographs to intellectual property owners together with notice of seizure, in line with practice applied by most EU Member States; this will streamline procedures and make it easier for copyright holders to comply with the 10-day limit for authenticating the products. The instructions for customs officers should describe exactly what should be photographed (e.g. labels on clothing, codes on medicines and medical devices, and the like), since general appearance of a product is often insufficient for assessing whether it is genuine.

CHALLENGE: There is often limited co-operation and exchange of information between the Customs Administration and intellectual property owners and/or their distributors on the characteristics and prices of products in the Serbian market and other issues identified in court proceedings.

RECOMMENDATION: Ensure the Customs Administration provides evidence (findings of analyses, etc.) and other information obtained in court proceedings to intellectual property owners so as to strengthen risk assessment and improve identification of illicit imports and trade. This co-operation can be achieved by intellectual property owners provide more training for customs officials.

OBJECTIVE 3: CO-ORDINATE INSPECTION CONTROLS ON ILLICIT TRADE

...BY CONTROLLING APPLICATION OF PROCESS CHARTS (ESPECIALLY FOR EXCISE GOODS)

CHALLENGE: The Co-Ordinating Commission on Inspections Oversight has established working parties tasked with developing process charts for their respective areas. The Working Party on Illicit Trade has prepared eight process charts that map how inspections ought to work together to address illicit trade. The application of these process charts is not consistently monitored.

RECOMMENDATION: Ensure performance reporting to allow annual performance reviews of these process charts and permit amendments to be made as and when required.

...THROUGH BETTER ARRANGEMENTS FOR STORING AND DESTROYING SEIZED GOODS

CHALLENGE: Many inspection services have complained about the poorly designed system for warehousing and destroying seized goods, especially products that require specific storage arrangements or must be destroyed in compliance with environmental protection rules. Storage capacities for these products are limited, and the costs of destroying them are significant. Ultimately, these issues have affected the overall performance of inspections.

RECOMMENDATION: Assess inspections' needs for an organised system for warehousing and destroying seized assets. Special emphasis should be placed on products that require specific storage

arrangements or must be destroyed in compliance with environmental protection rules (such as municipal waste, textiles, chemicals, cosmetics, petroleum products, and the like).

Consider organising controls by phytosanitary or other inspections bodies that could immediately result in an order to destroy any counterfeit goods identified, for instance due to breaches of health standards, expiration, lack of mandatory declaration, or lack of approval for importing, exporting, or marketing such products, and the like. This would mean inspectors could order the destruction of the products regardless of the outcome of the civil or criminal case (which always take long to complete), thereby also reducing logistical costs (loading/unloading, transport, storage, etc).

OBJECTIVE 4: APPROPRIATELY PROSECUTE OFFENCES IN THE SHADOW ECONOMY ...THROUGH GREATER CO-OPERATION BETWEEN THE JUDICIARY AND INSPECTIONS

CHALLENGE: Offences in the shadow economy are rarely prosecuted appropriately. The procedure of detecting, preventing, and processing these offences requires the collaboration between a number of public authorities. The police or an inspection service may uncover an offence and possibly detain the perpetrators or seize the products involved. However, after these bodies have brought criminal or misdemeanour charges with the prosecution service, the prosecutors or courts will often find facts and/or identify procedural issues that greatly hinder prosecution. These issues, for instance, may involve improperly obtained or presented evidence, failure to properly or completely identify all materially relevant facts in a case, procedural violations, and so on. Lastly, even once a final ruling is made, decisions are rarely taken on how to proceed with any products seized for the duration of the procedure.

RECOMMENDATIONS: Enhance capacity of the prosecution service and courts to effectively prosecute shadow economy, illicit trade, and intellectual property cases, and establish an efficient co-ordination mechanism involving inspection bodies and the judiciary.

- Build the capacity of inspections for bringing criminal charges and working with the prosecution service and ensure those who bring charges are notified of the reasons for their dismissal by prosecutors. This should involve defining the various manifestations of these offences and prescribing actions to be taken, evidence-gathering procedures, and detection and prosecution models (such as, for instance, sampling techniques and number of samples for analysis, identification of premises or crop plantations, etc.). In parallel, inspections staff should receive training in how to follow these procedures, as well as in the Criminal Code and Criminal Procedure Code, in particular on the content and format of criminal complaints, rules governing examination of suspects, etc.
- Establish a more transparent record of criminal offences to permit monitoring of prosecution outcomes and analysis of shadow economy, illicit trade, and intellectual property cases. Continue co-operation between the prosecution service and other authorities by organising joint meetings, at least once every year or more frequently as and when required, to analyse the handling of criminal complaints, practical issues, and challenges and identify appropriate and inappropriate conduct with the ultimate aim of increasing consistency, efficiency, and effectiveness.
- Introduce ex-ante control by public prosecutors and ex-post control by higher public prosecutors for any criminal complaints dismissed and any cases not prosecuted due to operation of the principle of opportunity.
- Courts and other bodies that conduct these procedures would have to adopt formal decisions to destroy any objects involved in criminal offences or misdemeanours in this field.

OBJECTIVE 5: IMPROVE INSTITUTIONAL EFFICIENCY

...BY PROMOTING REGIONAL CO-OPERATION

CHALLENGE: All oversight bodies in the region face similar challenges with illegal trade, from combating illicit trade online to ensuring inter-departmental collaboration to co-ordinating their actions in tracking illegal goods across borders with those of their counterparts. There has been some cross-border collaboration, but it has been sporadic and on a case-by-case basis only.

RECOMMENDATION: Significantly improve routine collaboration between oversight bodies tasked with tracking illicit trade both across borders and internally. This co-operation could result in exchange of information about suspect shipments, exchange of experiences with efficient or innovative methods (internal organisation, risk assessment, use of technical tools), and mapping of powers exercised by individual bodies that affect procedural efficiency.