

## ADMINISTRATIVE BARRIERS TO DEVELOPMENT OF SMALL AND MEDIUM ENTERPRISES IN POLAND

Dziadkiewicz M., Calus T.\*

**Abstract:** Administrative barriers considerably hinder establishment of new and operation of the existing small and medium enterprises. These barriers should be understood as costs incurred by the entrepreneurs due to fulfilment of information obligations which result from legal regulations imposed by the state. The entrepreneurs frequently point to the barriers connected with bureaucracy and excessively developed administrative procedures. This involves in particular improper professional background of the people employed in public administration institutions as well as lack of diligence during dealing with different issues and long time of waiting for administrative decisions. The postulates are proposed that it is necessary to carry out a reform of administrative and economic law. The way of functioning of public administration and economic jurisdiction institutions should also be changed so that their operation stimulates development of entrepreneurship and enterprises in Poland.

**Keywords:** administrative barriers, development barriers, small and medium enterprises, enterprises in Poland

### Introduction

Sector of small and medium enterprises covers over 99% of all the enterprises in Polish economy: they generate 33% of PKB. As results from the investigations, over 60% of all the people employed in the economy are employed in small and medium enterprises. Small and medium enterprises have huge impact on improvement in functioning of mechanisms of market competition. The condition of efficient functioning of the market is the economy based on operation of a high number of small firms. This doctrine emphasizes the view that it is only small and medium enterprises which are able to strengthen competitiveness of the economy. High number of small and medium enterprises in the economy considerably improves functioning of the mechanisms of market competition. It is generally accepted that a precondition for efficient functioning of the market is the economy based on high number of small enterprises. Underdeveloped sector of small and medium enterprises results in economic slowdown.

Small and medium entrepreneurs in Poland have been facing a number of barriers for many years, both at the stage of establishment and operation of businesses. The barriers include those connected with non-financial labour costs, fiscal barriers, employment barriers, barriers relating to competition from gray market, competition from privileged enterprises, administrative barriers and others.

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\* **Michał Dziadkiewicz PhD.**, Czestochowa University of Technology, Faculty of Management, ✉ corresponding author: [mdz@interia.pl](mailto:mdz@interia.pl)

**Tomasz Calus MSc**, University of Silesia, Katowice, Faculty of Law and Administration

It is generally accepted that the most important barrier to development of SMEs are excessive non-financial labour costs. High non-financial labour costs affect reduction in competitiveness of small and medium enterprises and limitation of their willingness to increase employment. Reduction in these costs would be of important positive impact on the level of employment, not only due to opportunities of employment of additional employees but also reduction in the size of gray employment market.

In consideration of fiscal barriers, employers emphasize lack of transparency and unequivocal indirect taxes (VAT and excise tax) as well as taxes on business activity (CIT, PIT due to business activity). This status quo is the reason for increasing risk of economic activity and costs, which are incurred during this activity and affect the increase in competitiveness. The postulates are proposed to introduce a uniform, 15-percent VAT tax.

Level of income tax rate is also a barrier to the entrepreneurs. The personal income tax rate which is used in Poland (19%) is claimed to be too high and less competitive compared to taxes in e.g. Cyprus, Estonia, Ireland, Lithuania or Latvia. It is said that fiscal safety is more important to small and medium entrepreneurs compared to microenterprises.

The barriers to employment are also frequently emphasized. Joanna Zagórska lists three barriers connected with employment: inflexible labour law, lack of opportunity to use flexible forms of employment, lack of qualified employees [19]. The author indicates that small and medium enterprises build their competitive position on quality, specialization and adaptation of offer to individual customer requirements. Realization of this strategy requires creation of employee teams for particular projects, which, in consequence calls for utilization of a variety of solutions in labour law and opportunities of using flexible forms of employment. Another problem emphasized as a barrier to development of SMEs is insufficiency of qualified employees. According to J. Zagórska, *'in consideration of continuous high level of unemployment and low employment rate, there are a number of reasons for this phenomenon: economic growth which increases demand for employees, lack of structural adjustment of labour market to the needs of the economy, which results e.g. from improper educational policies, rise in emigration of Polish citizens to other EU countries as well as legal regulations which force the persons at the age of professional activity out of the labour market (early retirement schemes)'*[19].

One should also emphasize a barrier connected with competitiveness of gray market, i.e. hidden incomes and employment in enterprises. As results from the investigations, the highest level of gray market can be observed in construction sector and transport enterprises. Existence of gray market means to the entities which operate according to the law limited competitiveness. Costs in these enterprises are much higher than in those which dodge taxes and conceal the employment figures. This causes rise in prices for offered goods and services.

Another barrier is competition from privileged enterprises which build their position on the access to public support. This group includes public entities which operate in special economic zones, companies whose tax obligations and social insurance premiums are written off.

Based on opinions expressed by entrepreneurs, J. Zagórska also indicates *'problems with acquisition of financial resources for business activities and development of enterprises [...], payment backlogs, which lead to problems with financial liquidity and threaten with bankruptcy, particularly when economic courts adjudicate disputes within 800 days on average and large fluctuations in economic situation in local and regional markets. The obstacle to development of SMEs is also poorly developed infrastructure and continuously unstable political situation'* [19].

However, particular attention should be drawn to administrative barriers, which will be discussed in further part of the present study.

### **Definition of Enterprise**

A complex characteristic of the essence of an enterprise is relatively difficult, since the concept of enterprise is not unequivocally defined and interpreted: on the contrary, there is a huge variety in these terms [16].

The concept of enterprise can be understood in a variety of ways. The models of enterprises can be divided into particular disciplines and subdisciplines of science.

In the case of economic model, analysis of the concept of an enterprise concerns the effectiveness. The enterprise is approached as an entity which transforms the available resources (expenditures) into results (incomes). The effectiveness is understood as a difference between the expenditures and results.

According to the financial model, the enterprise is perceived as a system of resources (assets) transformed into financial streams. The goal of the enterprise is to maximize the company value in medium and long term.

In the case of the manufacturing (technological) model, the enterprise is understood as a technical system which transforms energy and matter into a final product. This model is utilized by product designers and production engineers.

According to the organizational model, the enterprise is approached as a particular type of organization. The sociopsychological (behavioural) model emphasizes the enterprise as a social system. The main focus is on the problems of managing employees. Main variables in this model are authority and leadership, motivation, loyalty, management style etc.

Legal model defines an enterprise as a set of tangible and intangible components used for business activities. At the same time, it defines subject-oriented issues, i.e. the concept of entrepreneur (owner of an enterprise or several enterprises), who are natural persons or organizational entities which have limited legal capacity (e.g. general partnership) and full legal capacity (joint-stock company, cooperatives) [7]. According to S. Sudół *'the company is an entity which performs business activities, motivated by the willingness to generate financial benefits, aimed at satisfying the*

*needs of other entities of social life through manufacturing product and/or providing services and these activities are performed independently at owner's (or owners') risk"[14].* His definition presents the essence of an enterprise, both from functional, object-oriented and purpose-oriented standpoint. It should be emphasized that it belongs to the most comprehensive and the most universal definitions of this concept. The author developed this concept through formulation of a set of features which distinguish the enterprise from other entities which function within the enterprise.

Characteristic features of the enterprise include:

- establishment for business activity in an organized and stable manner (for a longer time)[This feature is cited by 14],
- satisfying the needs in other business entities, institutions or natural persons with their own goods or/and services,
- exchange of products or/and services with other organizational entities or natural persons based on sale principles, both in the scope of procurement in the enterprise and sales of their products and services,
- having particular capital resources which come from the owner (owners) in the form of material, non-material and legal values,
- having (within the law regulations) a decision independence in terms of the character of business activity, relationships with the environment, buying factors of production and their utilization, internal organization (principle of autonomy),
- balancing costs with the obtained incomes (the principle of financial balance and self-financing),
- making profit, i.e. striving for achievement of particular benefits from business activity and maximization of income on the involved capital,
- taking risk of business activity,
- having legal personality (according to Polish law, this does not concern the civil law partnerships) [14].

According to the view expressed in the doctrine, the enterprises are basic business entities which create a foundation for the whole economic system. Within this foundation, a basic part of national income is generated, whereas the standard of life of the whole society depends on their economic effectiveness.

Multi-aspect nature of the concept of enterprise was emphasized by J. Duraj, who supported the definition of enterprise on possibility of determination of its concept in different dimensions i.e. in action, material and subject-related dimension [5]. The cited author concludes that *'an enterprise can be approached as an organizational entity which runs economic activity in a permanent manner, at own cost, risk and responsibility'*[5]. However, he emphasized that natural person is not an organizational unit and expressed the view that the term 'organizational unit' means institution whose members have common leaders. The institution should be understood as a group of people with common goal and resources used for action'[5].

J. Duraj firmly questions a common view that the enterprise exists only when it is established for achievement of profit-making goals i.e. it is profit-oriented, which indicates the existence of a number of non-profit enterprises (with particular focus on public utility business entities), which are improperly referred to as firms. Due to importance of an enterprise as an organizational unit within national economy, this concept is defined in current legal system, within the framework referred to as legal definitions [6].

It should be noted that in the literature of economic science, the concepts of 'enterprise', 'firm', entrepreneur, are used interchangeably. The most essential criterion for proper distinguishing of the concepts is a subject-related criterion.

Business entity can be established only by legal entities, referred to, for the purposes of legal transactions, as entrepreneurs. According to legal definition, contained in current act on freedom of business activities [9], an entrepreneur is a *'natural person, legal person or organizational unit which is not a legal person whom other acts grant legal capacity, performing business activity on their own.'*

Therefore, the legislature pointed to natural persons and organizational units, who are assigned:

- total or limited legal capacity, and, in consequence, possibility to be the subject of rights and obligations (e.g. ownership rights, fiscal obligations),
- ability to perform acts in law, i.e. creation of legal consequences through their own activities (e.g. concluding a contract).

The entities which might exist in legal transactions as entrepreneurs (except for natural persons), which register their business activities in the Register of Business Activity in gminas, enumerates Art. 36 of the Act on the National Court Register [10].

Status of entrepreneur can be obtained in particular by:

- unlimited company
- limited liability partnership
- limited partnership
- private unlimited with share capital,
- limited liability company,
- joint-stock company,
- European company,
- cooperative,
- European cooperative society,
- public enterprise,
- mutual insurance company.

One should also define the concept of an enterprise and an owner, which allows for establishment of business enterprise. The concept of an enterprise is separated through object-oriented criterion. According to the Art. 55<sup>1</sup> of the Civil Code [8], 'an enterprise is an organized set of non-material and material components, meant for performing business activities.

It encompasses in particular:

- denotation which individualizes the enterprise or its separated parts (name of the enterprise),
- property of real estate or movable values, including equipment, materials, goods and products and other property rights to real estate or movable values,
- liabilities, rights to securities and cash funds,
- concessions, licences and permits,
- patents and other industrial property rights,
- property authorship rights and related property rights,
- company's secrets,
- ledgers and documents connected with business activity'.

Therefore, an enterprise is an organized property complex aimed at performing business activities, where a decisive role is played by functional and organizational ties which connect individual varied components into a uniform wholeness [17]. Currently dominant and accepted view is that the enterprise (in an object-oriented approach) is a self-existing object of civil and legal relationships, thus legal transactions. The management activities such as sale, lease or granting a right to use occur only through a single legal activity [2]. It allows for selling, rental or even lease the enterprise.

Small and medium enterprises have an important role in the European economy. They are a dominant type of business entities. In the European Union, great importance is attached to creation of the conditions for development of the sector of small and medium enterprises [1]. In Polish system, legislature also emphasized creation of the basis for development of SMEs through implementation of legal definitions of micro-, small and medium entrepreneurs. This results both from the fact of integration with the European Union and is a reflection of attaching great importance by the government, local authorities and representatives of Polish capital, to development of SMEs [18].

Legal definitions of a micro-entrepreneur as well as small and medium entrepreneurs are based on the community law [11] i.e. recommendations of the Commission No. 361/2003/EC of 6th May 2003 and the appendix to the Ordinance No. 70/2001 EC of 12 January 2001 on application of Art. 87 and 88 TWE in relation to the support from the state for small and medium enterprises (Journal of Laws of the EU L 10 of 13 January 2001), which was replaced by the ordinance No. 364/2004/EC of 25 February 2005 (Journal of Laws, EU L 63 of 28 February 2004) [4].

Definition of micro-, small and medium entrepreneur was stipulated by the Act of 2 July 2004 on freedom of business activity [The Act of 2 July 2004 on freedom of business activity 9]. Definition of micro-entrepreneur was based on two premises: scale of employment and financial threshold of the entrepreneur [3]. According to the Art. 104 of the Act on freedom of business activity, micro-entrepreneur is an entity which employs not more than 10 employees annually on average. Approaching the number of employees employed in the entity within an annual

range means that the entrepreneur can employ a greater number of employees. However, the condition must be met that average number of employees calculated as a quotient of total of all the employed in a particular fiscal year and the number of 12 months is lower than 10 [11]. The latter premise was formulated alternatively. A micro-entrepreneur is an entity, which reaches annual net turnover not higher than zloty equivalent of 2 million euro. Calculation of the income occurs based on the act on value added tax (VAT), according to which the turnover means the amount due from sales reduced by the amount of tax due (i.e. personal income tax or corporate income tax): the amount due covers the wholeness of service due from the purchaser or an entity whose total of assets of annual balance does not exceed zloty equivalent of 2 million euro.

The starting point for the concept of small and medium entrepreneur was also regulations of EU law contained in recommendations of the Commission No. 361/2003/EC of 6 May 2003 and Art. 2 item 3 of the Appendix 1 to the ordinance No. 70/2001 EC of 12 January 2001 on application of Art. 87 and 88 TWE in relation to support from the state for small and medium enterprises (Journal of Laws EU L 10 of 13 January 2001, which was replaced by the ordinance No. 364/2004/EC of 25 February 2005 (Journal of Laws L63 of 28 February 2004) [11,3].

Definition of small entrepreneur was regulated in Art. 105 on freedom of economic activity. The premise for employment was formed at the level of fewer than 50 employees annually on average. On the other hand, the premise for financial threshold is an annual net turnover which does not exceed zloty equivalent of 10 million euro or the total of assets of its balance prepared at the end of one of these years does not exceed zloty equivalent of 10 million euro.

Medium entrepreneur, according to the Art. 106 of the Act on freedom of business activity means an entrepreneur who, at least in one of the last two years, employed on average fewer than 250 employees annually, whereas their annual net income did not exceed zloty equivalent of 50 million euro or the total of assets of its balance prepared at the end of one of these years does not exceed zloty equivalent of 43 million euro.

#### Administrative Barriers

Administrative barriers considerably hinder appearance of new and functioning of the existing small and medium businesses. Discussion of these problems should be started from definition of the concept of administrative barriers, which are the costs incurred by entrepreneurs due to performing information-related obligations resulting from legal regulations imposed by the state. This concept might be also defined by means of definition of administrative barriers as taxes and administrative fees and freedom of access to capital as well as information and reporting obligations resulting from particular legal regulations which stipulate activities performed by entrepreneurs. It is also necessary to define information obligations, which means being obliged to deliver information about activities and procedures with respect to socially adopted standard. As an examples of

information obligations, one can point to tax statements from legal persons, preparation and presentation of annual reports, application for permits, overall obligations connected with documentation in a partnership, delivering information about ill employees to labour inspectorate, presentation of annual reports on employee's insurance to social insurance office, internal inspections of work permits. Another information obligations towards third parties should be also indicated: obligation of entrepreneurs connected with informing work councils, obligation of delivering financial statement, obligations of pension funds to inform participants, obligation of providing information on product markings, information leaflets concerning use of medicines and other products, adding bills of lading during transport of products, obligation to prepare invoices in the case of some transactions.

A fundamental premise to assess if an information obligation is the reason for administrative barriers is imposing obligations on entrepreneurs. The attention should be also drawn to the situation when entrepreneurs are obliged to fulfil information duties in relation to self-regulation. In this case, this does not mean administrative barriers, since legal regulation were not introduced by the state. If the state obliged to use self-regulation, the entrepreneurs would experience administrative barriers.

Małgorzata Starczewska-Krzysztozek indicates that for nearly 57% of small and medium enterprises '[...] a barrier to their development is administrative procedures, the expensive ones, resulting from improper law, improper application of law by public administration and unprepared clerks and offices. For example, lack of 'one counter' for registration of business activity, different interpretation of the same stipulations of fiscal law in different tax offices in Poland; long and overlapping inspections in the enterprises, using different exchange rates for calculation of amounts due in foreign currency for the purposes of PIT, CIT, VAT and the Accounting Act; the necessity to determine each quarter of the year the basis premium for pension insurance for persons who run business activity and the persons who cooperate with them [...]' [13].

Entrepreneurs frequently indicate the barriers connected with bureaucracy and excessively extended administrative procedures. This involves mainly improper professional background of the persons employed in public administration institutions, lack of diligence during dealing with different issues and long time of waiting for administrative decisions.

It should be emphasized that, apart from large amount of administrative procedures, the impact on incurring costs by the entrepreneurs is also from frequently groundless changes in legal status and thus introduction of new regulations which require financial expenditures. M. Starczewska-Krzysztozek also indicates costs connected with regulation-related risk concerning controlling of accordance with regulations which define the principles for enterprises' operation and alternative costs, i.e. costs of lost opportunities. Occurrence of the



latter results from abandonment of investment and operational activities by enterprises.

One should also notice long judicial procedures in Poland. This concerns procedures for either civil cases and register-related cases. Both long-term waiting for adjudication and long execution of the rulings should also be emphasized. Another problem is high costs of proceedings, which are frequently too high for small and medium enterprises.

As mentioned before, entrepreneurs are obliged to observe legal regulations and acts imposed by the legislature. Observance of them forces entrepreneurs to incur some costs, which can be divided into financial costs and costs of adjustment.

Financial costs result from the obligation imposed on an entrepreneurs to forward a particular financial funds in favour of the state or statutory authority institution. These include taxes, administrative fees and other payments, cash penalties, bonuses. One should emphasize administrative fees, which are an amount due (payment) made by an entrepreneur in favour of the state in exchange for unit and transparent service. Entrepreneurs are obliged to pay in favour of the state (or statutory authority) in exchange for using their services or products.

Costs of adjustment are the costs incurred by entrepreneurs in order to ensure accordance with legal regulations. One can divide them into 'real costs of adjustment' and 'administrative barriers'. Real costs of adjustment (Real costs of adjustment include e.g. costs resulting from environmental protection regulations (costs of installation of filters) or costs which result from labour law (costs of facilities and equipment which are according to labour code) include costs which are incurred by the entrepreneurs in order to fulfil the obligations imposed by the law, stipulated in legal regulations in relation to the production process or a product.

### Summary

High number of administrative barriers, which hinder establishment of new enterprises and development of the existing small and medium enterprises is reflected in the world rankings. In the report by the World Bank *Doing Business 2011*, Poland took 70th place among 183 classified countries [15]. Experts from the World Bank conduct a survey every year in order to provide the answer to the question of what are the conditions of establishment and running business activity in different countries. The factors include e.g. procedures connected with opening and closing business activity, regulations concerning employment and taxes. Particular focus was on reforms carried out in individual countries. The country which, through the reforms carried out in recent time, was promoted in the report is the Czech Republic, which was classified at 63rd place (82nd place in the report *Doing Business 2010*). The emphasis should be also on high position of Hungary, which takes 46th place (52nd place in previous report), which results from a great number of reforms in that country.

Therefore, it is necessary to take actions aimed at removal of barriers of administrative character, which will make it easier to entrepreneurs to establish

new entities and will support development of those already existing. In the case of lack of actions from the state, Polish entrepreneurs might more frequently consider moving headquarters to other EU countries with more comfortable conditions for business activity.

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### BARIERY ADMINISTRACYJNE DLA ROZWOJU MAŁYCH I ŚREDNICH PRZEDSIĘBIORSTW W POLSCE

**Streszczenie:** Bariery administracyjne znacznie ogranicza tworzenie nowych i obsługę istniejących małych i średnich przedsiębiorstw. Bariery te powinny być rozumiane jako koszty ponoszone przez przedsiębiorców ze względu na wypełnienie obowiązków informacyjnych wynikających z regulacji prawnych nałożonych przez państwo. Przedsiębiorcy często wskazują na bariery związane z biurokracją i nadmiernie rozwinięte procedury administracyjne. Dotyczy to w szczególności niewystarczającego doświadczenia zawodowego osób zatrudnionych w instytucjach administracji publicznej, jak również brak należytej staranności w trakcie postępowania z różnymi kwestiami i długi czas oczekiwania na decyzje administracyjne. Zaproponowane postulaty wyrażają, że konieczne jest przeprowadzenie reformy prawa administracyjnego i gospodarczego. Sposób funkcjonowania administracji publicznej i instytucji jurysdykcji gospodarczej powinny być zmienione tak, aby ich działanie stymulowało rozwój przedsiębiorczości i przedsiębiorstw w Polsce.

### 波兰中小企业发展行政壁垒

**摘要:** 行政壁垒大大阻碍中小企业的运作。这些障碍应该理解为由于理解国家法律而发生的费用。企业主们经常反映这些障碍与官僚主义以及过度的行政化有关。这涉及工作人员缺乏专业知识和办事效率低下。因此，有必要根据经济规律进行行政改革。政府公共管理和经济仲裁机构的运作方式也应该改变，使他们的行动刺激波兰的创业精神和企业的发展。