



## SPECIAL REPORT

### **Obstacles in the exercise of business and proposals for its support (Part One: The Budgetary Dimension)**

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*(The Report relies on the work of many senior investigators)*

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### SUMMARY

**This is the first of the two special reports of the Ombudsman aiming at recording its long and multilateral experience with regard to issues creating obstacles in the healthy development of entrepreneurship. The basic objective of this venture is to formulate proposals that aspire to contribute into finding solutions to boost entrepreneurship in the current adverse economic situation.**

In the first special report, the Ombudsman focuses on the obstacles arising from the application of rules by public services for the collection and payment of debts.

The Authority ascertains that in recent years with the outbreak of the economic crisis and the subsequent effort made by the State to limit its expenditures and increase its revenues, the strictly cash/collection interest of the State seems to have acquired a clear order of precedence, in the legislator's choices, compared to any other interest or right. A series of problems have therefore been created resulting in the shrinkage of the businesses' liquidity, and, at the same time, there are no effective debt settlement methods for the enterprises and no appropriate environment for the restart of their business.

In view of the above, the Ombudsman proposes the following:

***In order to deal with problems of delay of the public services in paying their debts to private parties/ enterprises:***

- Re-examination of the necessity to preserve all preventive approvals and controls to be replaced with strict suppressive controls so that there are no time and procedural obstacles in the development of entrepreneurship but also in order to ex post effectively deal with any confirmed violations.
- Clarification, with a regulation, of the substantive issue of the audit's extent when the expenditure is settled, meaning if the audit has the right to bend the presumption of legality of the administrative act.
- Provision stating that an invoice should be issued by the entrepreneur – counterparty of the public service upon the conclusion of the attestation procedure of the money order by the Court of Audit, meaning upon the collection of the debt.

- Utilization – application in practice of the already existing provisions stipulating the nonjudicial dispute settlement between citizens and public services so that the citizens, whose claims are rejected as non-legal when the expenditure is settled, are not forced to use judicial remedies but to have their claims examined non-judicially. The Ombudsman's role, as the unique mediation institution, can also be especially significant towards this direction.
- Automatic suspension of the VAT collection related to transactions for which the invoice or the receipt for services rendered were returned by the public service as impossible to be attested.
- Amendment of the provisions on the prescription of claims vs. the State, with suspension provision due to the extraordinary fiscal conditions for a period corresponding to the period of the country's fiscal adjustment.
- Disclosure of the tables, i.e. via uploading them to DIAVGEIA (Transparency), with the claims paid by the public services to the citizens and enterprises so that the generalized and, unfortunately, many times justified mistrust for the priority criteria according to which public services (mainly local authorities) pay economic claims towards them is dealt with.
- Priority payment by the public services of the debts for which there is a court decision so that the administration shall not only perform its duty arising from the Constitution and the European Convention on Human Rights to comply with the court decisions, but also to avoid the accumulation of default interests and non-compliance penalties.
- Provision for alternative payment methods of debts of public services to citizens and enterprises (i.e. via consideration), especially in the case of low economic value debts, provided, of course, the beneficiary would accept such a solution. Indicatively, in the case of Municipalities the consideration could be related with the provision of controlled parking cards, tickets for cultural events of the Municipality or other provisions for which the interested parties are required to pay some kind of financial charge. The possibility of providing other privileges could be also examined (i.e. in the case of beneficiaries of financial claims living in the debtor Municipality, their exemption from the payment of non-contributory duties or taxes for a specific period).

***In order to deal with the problems arising from the intensification of the method of finding and collecting debts of private parties/ enterprises towards public services:***

- Strict adherence to the provisions for the prescriptive date within which the debts of the public services should be confirmed in the ledger, in compliance with the standing case-law of the Council of State.
- Adherence to the principles of proportionality and proper administration by the competent services (i.e. Legal Departments of Tax Offices etc) when taking measures of compulsory distraint, and proper application of the provisions on the issuance of taxation clearance certificate.
- Provision of alternative payment methods of the citizens' debts toward public services, apart from money payment (i.e. via real estate transfer).
- Re-examination of the criminal degradation of the non-timely payment of overdue debts to the State or, anyway, increase of the amounts, the non-payment of which will be considered criminal offence.

***In order to investigate the debt set-off possibilities between private parties/enterprises and public services:***

- Abolition of the exemption from the possibility to be included in an overdue debt settlement for debtors that have been either convicted or prosecuted for tax evasion.
- Provision of real facilitations for enterprises affected by the economic crisis via settlements whose inclusion conditions will not be prohibitive and their beneficial results will not be able to be lifted by the State (via set-off or enforcement) at any time, provided the entrepreneur adheres to the settlement.
- Prompt issuance of the decision of the Minister of Finance, article 83, paragraph 5, Public Revenue Collection Code, on the exemption of non-overdue debts from netting.
- Exemption from the setting-off of its own motion of the cases in which the debt of the public service derives from a contract (based on which payment installments are stipulated and there are guarantees ensuring the public services' interests), when and if justifiably there is no risk of loss for the public service.
- Setting-off, under conditions, of taxation and other financial liabilities towards the narrow public sector with a debtor's unquestionable and netted claims against local authorities and the wider public sector.

***Pertaining to the other obstacles of entrepreneurship***

- Enactment of a fixed and simple taxation legislative framework
- Taking measures to ensure transparency and corruption fighting