

Comments on the new Action Plan for Improving the Investment Climate Conditions

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1. Introduction

Background

- The Belarusian Government continues its effort to improve the investment and business climate in Belarus
- On March 18 2020, a new “Action Plan for Improving the Investment Climate Conditions” (hereafter “Action Plan”) was published by the Ministry of Economy
- The Action Plan includes 93 measures in 17 areas
- The government has called for comments on the plan, as regular updates are envisioned

Content of this Policy Briefing

- Suggestions on further measures and areas to be included into the Action Plan, drawing on our recent Policy Study “Improving the Business Climate – Boosting Private Investment”
- Comments on the specific measures included in the Action Plan

2. The plan for improving the investment climate

- The plan “Measures to improve the investment climate in the Republic of Belarus in the medium term” was published on 18th March 2020
- This is a very comprehensive plan covering 93 measures in 17 different policy areas with relevance for investment, effectively in 3 larger sections

1) Investment climate

1. Investment legislation
2. Real estate
3. Tax and customs
4. Investment agency
5. Free economic zones
6. Financial markets
7. Human resources

2) Investment attraction

8. Investment proposals
9. Foreign inv. attraction
10. Int. cooperation on investment
11. Priority industries
12. Inv. services specialists
13. PR events
14. Interaction with media, rating, consulting etc.
15. Communication

3) Updating the plan

16. Investor feedback
17. Progress of the plan

- **Very positive that the plan is not restricted to public investment attraction activities (sect. 2), but recognises the importance of investment climate, the conditions for private companies (sect. 1)**

3. Comparison with GET investment study

The GET study on investment climate

- GET Belarus published a Policy Study “Improving the Business Climate – Boosting Investment” ([PS/01/2019](#)) in Sep 2019 in cooperation with
 - the German-Belarusian Economic Club (DBWC),
 - the Representative Office of German Economy in Belarus (RDW),
 - and the German Eastern Business Association (OAOEV).
- Study comprised proposals by German business in Belarus on how to improve investment and business climate to unlock more private investment
- 35 proposals in 7 areas were identified, with 10 priority reforms highlighted

| Area | # of proposals |
|-------------------------------|----------------|
| Judicial system | 5 |
| Labour and immigration law | 4 |
| Legal regulation of companies | 6 |
| Investment regulation | 5 |
| Trade | 4 |
| Tax and accounting issues | 6 |
| Sector-specific proposals | 5 |

Source: own display

- **High complementarity: Same focus as section one of the government plan**
- **Which proposals and areas of the GET study are included in the government plan?**

Areas mentioned in government plan & GET study

- 2 areas of the government plan correspond exactly to areas in our study
 - Investment regulation
 - Tax and customs issue (GET study: “Tax and accounting” and “Trade”)

Comparison of GET proposals and measures in government plan in corresponding areas

| GET proposal code | Title | Match |
|-------------------|--|------------|
| Inv-1 | Introducing a waiver of state immunity in investment disputes | no |
| Inv-2 | Including a stabilisation clause in the law “On Investments” | YES |
| Inv-3 | Protecting investors in case of nationalization or requisitioning of property | no |
| Inv-4 | Allowing investors to unilaterally terminate investment agreements | YES |
| Inv-5 | Simplifying the conclusion of additional agreements to an investment agreement | YES |
| Tax-1 | Abolishing the taxation of unrealised profits from exchange rate adjustments | no |
| Tax-2 | Reducing the paper documentation requirement in accounting | no |
| Tax-3 | Abolishing the freeze on VAT refunds for shipments | no |
| Tax-4 | Introducing further deductions in the Corporate Profit Tax | no |
| Tax-5 | Consulting business stakeholders before changing accounting rules | no |
| Tax-6 | Improving the tax treatment of permanent establishments | no |

Source: own display

- Only limited overlap of measures: Only three out of 11 measures proposed by GET in these areas are included in the government plan, all in investment regulation
 - **Inclusion of further measures proposed by GET should be considered**
 - **Investment proposals: Level playing field between state and companies**
 - **Tax and accounting: Fix variety of difficulties for companies**

Areas considered by GET, but not in government plan

- Not included in the government plan, but in our study, are five areas:
 1. Judicial system
 2. Labour and immigration law
 3. Legal regulation of companies
 4. Trade issues
 5. Sector-specific measures
- No GET proposals in these areas are currently included in the government plan
- **Some of the GET proposals could be included under areas already in the plan:**
 1. Two sector specific measures could fall under “financial markets” area:

| GET proposal code | Title |
|-------------------|--|
| Sec-3 | Abolishing the need for National Bank permission to open foreign bank accounts |
| Sec-5 | Improving taxation rules for syndicate loans |

Source: own display

2. The four “Labour and immigration law” proposals in the GET study could be added to the government plan in the “human resources” chapter
- **It should be considered to include the remaining proposals under judicial system, legal regulation of companies, trade issues and sector-specific measures as new areas in the government’s plan**

Top-ten proposals by GET

| Priority | GET proposal code | Title |
|----------|-------------------|--|
| 1 | Tax-3 | Abolishing the freeze on VAT refunds for shipments |
| 2 | Tra-3 | Accepting invoices for customs clearance of goods |
| 3 | Jud-4 | Abolishing excessive account blocking during tax disputes |
| 4 | Tax-1 | Abolishing the taxation of unrealised profits from exchange rate adjustments |
| 5 | Jud-2 | Creating a database of judicial decisions |
| 6 | Reg-1 | Clarifying the rules on power of attorney |
| 7 | Lab -2 | Extending the maximum duration of work permits |
| 8 | Sec-3 | Abolishing the need for National Bank permission to open foreign bank accounts |
| 9 | Reg-2 | Creating a transparent tax registration of permanent establishments |
| 10 | Inv-5 | Simplifying the conclusion of additional agreements to an investment agreement |

Source: own display

- Top-ten proposals are identified as “quick wins”: Simple to implement, but significant positive impact on investment climate
 - Only no. 10 (Inv-5) is already included in government plan
 - Nos. 1 and 4 (tax and accounting proposals) could easily be included under the existing “tax and customs” heading
 - Nos. 7 and 8 could be included under “human resources” (Lab-2) and “financial markets” (Sec-3) headings
- **Although no suitable categories exist for them in the current plan, the remaining 5 top-ten proposals of the GET study should also be included in the government plan**

4. Comments on included measures (1/3)

Proposal to include a stabilisation clause in the law “On Investments”

- One has to consider that stabilisation or „grandfather’s“ clauses as a characteristic of the protection of legitimate expectations of investors are nowadays best-practice in international investment legislation.
 - Partially, in Belarus, a stabilisation clause is already in force for investors from some countries – e.g. for investors from CIS-countries granted in an international treaty. It is logical to **harmonise the legal environment for all investors** – those from outside of CIS countries, but also for investors from Belarus.
 - However, it must be taken into account that according to the Belarusian hierarchy of norms, a law can be easily overturned by certain legal acts adopted by the President, assumed that those are of higher legal force.
- **A final evaluation is only possible based on the wording of such clause, its implementation and application**

Comments on included measures (2/3)

Proposal allowing investors to unilaterally terminate investment agreements

- As of today, only the Republic of Belarus as a party to a concluded investment agreement is allowed to terminate such agreement unilaterally on grounds of mal- or misperformance of the investor.
 - We consider the proposal as a necessary step in order to introduce **equal terms for both parties** to an investment agreement.
 - Here, the wording will be crucial. In particular, it will be important how the grounds for a termination will be established – especially with respect to the procedure and questions related to a possible compensation.
- **A final evaluation is only possible based on the wording of such clause, its implementation and application**

Comments on included measures (3/3)

Proposal to simplify the conclusion of additional agreements to an investment agreement

- First of all it is to underline that all amendments to an investment agreement are made by additional agreements – even if only figures are to be amended or a date is to be postponed.
 - As of today, the process to conclude additional agreements to an investment agreement is very burdensome, since such agreements must pass through the same procedure as the initial agreement itself which requires formal consent of various administrative bodies and takes significant time.
 - To **simplify the very burdensome process of amending an investment agreement** is in general the right step. However, a lot depends on the particular proposal dealing with issues like “when can the simplified procedure be employed” or “who must be involved in the process”.
- **A final evaluation is only possible based on the wording of such regulations, their implementation and application**

5. Recommendations for areas and measures to be included

General recommendations

- All remaining 32 GET proposals should be included in the government's plan
- These proposals are highly suitable for this plan as they have been explicitly identified by companies to contribute to a better investment climate

Recommended sequencing for adding further proposals to plan

1. Ensure that all top-ten proposals by GET are included (quick wins; so far only one of them included)
2. Add remaining GET proposals in areas already existing in plan
 - 2 remaining proposals under “investment legislation”
 - 6 GET proposals on “tax and accounting” (2 of them in top-ten)
3. Include “labour and immigration law” proposals under “human resources” and two finance related “sector-specific measures” under “financial market”
4. Include further 11 proposals and 4 areas from GET study (judicial system, legal regulation of companies, trade issues, sector-specific measures)

About the German Economic Team



The German Economic Team (GET) advises the governments of Ukraine, Belarus, Moldova, Georgia and Uzbekistan regarding the design of economic policy reform processes and a sustainable development of the economic framework. As part of the project we also work in other countries on selected topics.

In a continuous dialogue with high-level decision makers of the project countries, we identify current problems in economic policy and then provide concrete policy recommendations based on independent analysis.

In addition, GET supports German institutions in the political, administrative and business sectors with its know-how and detailed knowledge of the region's economies.

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