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**The concept of entrepreneurship in the
regulative frameworks of Germany and
Belarus**

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The main purpose of GET Belarus is to conduct a dialogue on economic policy issues with the government, civil society, and international organizations. Experts of German Economic Team have experience in policy advice in several transition economies, including Ukraine, Georgia and Moldova. In Belarus the German Economic Team provides information and analytical support to the Council of Ministers, the National Bank, the Ministry of Foreign Affairs, the Ministry of Economy and other institutions involved in the process of formation and implementation of economic policy.

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The concept of entrepreneurship in the regulative frameworks of Germany and Belarus

Executive Summary

Belarus has recently adopted some reforms that simplify and liberalize the registration of a number of economic activities.

We compare and assess the recent reforms with the concept of entrepreneurship in the German law with a special focus on

- Permission and registration requirements and
- The legal status of natural persons, who carry out economic activities.

The freedom of economic activity is one of the basic principles of German Law. The Belarussian regulation is still not close to that principle, because many types of economic activities still require permissions and/licenses in Belarus. The recent reforms are step forward though.

The Belarussian legal construct “*Samozanyatyy*” – activities that require neither registration nor permission – does not exist in German law. Considering the Belarussian economic situation, the concept of “*Samozanyatyy*” could serve as a catalyst for the economic transition for a limited period of time.

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1 Introduction

Since 2017, the Belarusian government has implemented a number of reforms aimed at gradually improving the legal framework for entrepreneurial activities. These reforms have been summarized under the name "Package of regulatory legal acts to improve the business climate in the country".

Some of the important reforms are Ukas No. 337 as of 19 September 2017 and Decree No. 7 as of 23 November 2017 with the associated implementing provisions.

As part of these reforms, some simplifications for micro-entrepreneurs and small and medium-sized enterprises were adopted and implemented.

As one result of the reforms, the number of micro-entrepreneurs has increased. There is not yet enough reliable data to be able to assess how much of the increase is due to new activities and how much is due to formalizing shadow activities.

With regard to the regulatory framework, quite a number of legal definitions and tax regimes have existed since the recent reforms. In particular, there are several forms of micro-enterprises and several forms of simplified taxation.¹ Since the legal form of entrepreneurs and enterprises is not directly related to the forms of taxation, the complexity is further increased.

The laws and measures to promote the sector of small and medium-sized enterprises stipulate different definitions of entrepreneurs and enterprises, which have no relation to the corporate and legal forms or forms of taxation.

Last but not least, there are some fields of activity in Belarus which, according to the unanimous opinion of international experts, should belong to the category of entrepreneurial activities, but which are subject to special regulations in Belarus and which are not promoted by SME support programs.

The Ministry of Economy and Development has asked to assess the recent reforms in the light of German experience and to describe the German framework.

¹ There is only one simplified tax system, which is regulated by Chapter 32 of the Tax Code. There are several special taxation regimes that simplify taxation. They are regulated by Section 7 of the Tax Code.

2 Comparison of the regulatory framework in Belarus and Germany

2.1 Definition of Entrepreneurship

In German law, there are in principle only two types of economic activities: Entrepreneurial activities and activities of employees.

Entrepreneurial activities include the activities of corporations and the activities of all self-employed natural persons. Consequently, the activities of self-employed liberal professions and self-employed craftsmen are also regarded as entrepreneurial activities in Germany. Any natural self-employed person can employ employees.

By contrast, Belarusian law defines a variety of activities that are neither entrepreneurial nor employee activities.

In Belarus, for example, the legal construct *Samozanyatyy* exists. The word-for-word translation into German is "*selbständig*" (self-employed)", but the concept of *Samozanyatyy* does not correspond to the German legal term "*selbständig*". In Belarus, *Samozanyatyye* refers to certain types of activities that are considered non-entrepreneurial if they are carried out exclusively by natural persons without any employees or subcontractors. *Samozanyatyye* do not require any permission or registration as an individual entrepreneur in Belarus, but are taxed.

There is no equivalent in German commercial law to the *Samozanyatyye*. In German law, every natural self-employed person is at the same time an individual entrepreneur by definition. In German law there is no difference between self-employed and individual entrepreneur.

Furthermore, the activities of craftsmen, notaries, lawyers, arbitrators, mediators and the provision of services in agro-ecotourism are regarded as non-entrepreneurial activities in Belarus.

The following table visualizes the differences in the concept of entrepreneurship:

Table 1: Entrepreneurial Activity as defined in the German Law and the Belarusian Law

Activities of ...	Defined as entrepreneurial activity	
	Germany	Belarus
Self-employed natural persons with no employees and no sub-contractors in specific fields (<i>Samozanyatyye</i>)	✓	–
Individual entrepreneurs	✓	✓
Advocates, Notaries, Arbitrators, Mediators	✓	–
Temporary scientific teams	✓	–
Self-employed craftsmen with no employees and no sub-contractors	✓	–
Rendering services in the sphere of agroecotourism	✓	–
Corporations	✓	✓

Source: own display

2.2 Permission and registration of entrepreneurial activities in Germany

In Germany, a distinction is made between permission and registration. In principle, almost all types of entrepreneurial activity can be started without a permission. There are only some very specific entrepreneurial activities that require prior permission (see Box 1).

Box 1: Entrepreneurial activities that are subject to permission in Germany

Permission required as stipulated in the commercial code of Germany.

- Activities in the guarding business
- Broker, investment advisors
- Direct trade (doorstep selling)
- Exhibition of persons
- Holding Dance Entertainments
- Insurance intermediaries, insurance consultants
- Operation of an amusement arcade
- Operation of lottery machines and other games with a chance of winning
- Operation of private hospitals
- Pawnshop
- Property developers, construction supervisors
- Realization of auctions

Permission required due to other laws of Germany

- Air carriers (Air Traffic Act)
- Arms production and trade (Arms Act)
- Banking and financial services (Banking Act)
- Broadcasting (laws of the federal states)
- Catering industry (restaurants, cafés etc)- serving of alcoholic beverages (Act)
- Debt Collection (Legal Services Act)
- Driving school (Law on driving instructors)
- Employee Leasing (Act on the Regulation of Temporary Employment)
- Energy supply network (Electricity and Gas Supply Act)
- Handling explosives (Explosive Substances Act)
- Letter transport (Postal Act)
- Manufacture and trade of pharmaceuticals (Law on the circulation of pharmaceuticals)
- Passenger transport incl. taxi company (Passenger Transport Act)
- Pharmacy
- Road haulage (Road Haulage Act)
- Trade and keeping and breeding of animals (Animal Welfare Act)

Source: own display

Although most entrepreneurial activities do not require a permission in Germany, most entrepreneurial activities must be registered in Germany.

The registration is declaratory, not constitutive. This means that registration is obligatory, but not a prerequisite. If the timely, i.e. prior, registration of entrepreneurial activity is missed, this is not a criminal offence in Germany. The registration has to be made up, fines have to be paid for late registration.

There are two types of registers in Germany:

- The *Handelsregister* (register of companies and sole traders) functions as a source of information for private contractors, aims at decreasing transaction costs for private contracting
- The *Gewerberegister* (municipal commercial register), its main purpose is oversight of businesses

All business activities of corporations and partnerships must be entered in both registers.

In principle, all entrepreneurial activities of natural persons must also be entered in both of the registers. In the case of natural persons, however, there are three exceptions.

1. Agricultural and forestry activities carried out by natural persons do not have to be registered in either of the registers. All agricultural and forestry activities are still considered entrepreneurial activities.
2. Liberal Professionals (natural persons) are regarded as entrepreneurs, but not as sole traders. Liberal Professionals do not have to be registered in either of the registers. There are special registers for some special liberal professions, e.g. tax lawyers. All Liberal Professionals' activities are regarded as entrepreneurial activities in Germany. (See also Section 3.)
3. Very small businesses of natural persons (German: "*Kleingewerbe*") are entered in the municipal commercial trade register, but can choose whether or not they want to be registered in the register of companies and sole traders.

A "*Kleingewerbe*" is an entrepreneurial activity of a natural person that does not require a commercial operation. There are no fixed thresholds for turnover or profit. German case law assumes that the requirements for a commercial enterprise are different for each activity. In some areas one can make a lot of turnover and profit without needing a business (e.g. speculation with securities at an internet broker). In other areas one needs a real company with many employees, several branches, complex structures etc. even for small turnovers. Although there are no fixed criteria, the criteria outlined in Box 2 can be used as guidelines.

Box 2: Criteria for “Kleingewerbe” in Germany

The authorities use the following criteria to assess whether a particular entrepreneurial activity can be exempted from the duty to register in the register of companies and sole traders.

- Number of employees < 5
- Turnover < 250,000 €
- Operating assets < 100,000 €
- Not more than one plant (production facilities, branches, subsidiaries, etc.)
- No import and/or export of goods and services

Depending on the sector, other criteria may be decisive. The criteria are not firmly anchored in the law. The decisive factor is what is customary in the respective industry.

Source: own display

The following table provides with an overview of the obligations for approval and registration.

Table 2: Overview of the obligations for approval and registration in Germany

	Permission required before start	Gewerbe-register	Handels-register
Agriculture, Forestry	–	–	–
Liberal Profession	–	–	–
“Kleingewerbe”	–	!	–
Normal Business	–	!	!
Special Businesses (see Box 1)	!	!	!

Source: own display

2.3 Taxation of entrepreneurial activities in Germany

All types of entrepreneurial activity are subject to tax in Germany. Taxation is in principle the same for all types of entrepreneurial activity.

The accounting regulations are also basically the same for all types of entrepreneurial activity.

There is no regime of simplified taxation in Germany.

The basis of taxation for all types of entrepreneurial activity is always the profit. The rules for determining the profit are in principle the same for all entrepreneurial activities.

There are only a few minor tax peculiarities and special features in accounting for small agricultural and forestry enterprises, for Liberal Professions and for "*Kleingewerbe*". They do not need to keep double-entry bookkeeping, but only simple bookkeeping. As a consequence, the determination of profits is also somewhat simplified.

These simplifications are rather theoretical in nature and do not have a significant effect in practice. As a result, they also do not lead to a substantially different tax burden.

It is rather the case that the special features of tax law for some types of entrepreneurial activities have been gradually harmonized in recent decades, so that there are now only minor differences.

2.4 Reform of permission and registration in Belarus in the light of German experience

The activities of *Samozanyatyje* are exempt from permission and registration in Belarus, they only have to be taxed.

Ukas No. 337 as of 19 September 2017 significantly extended the list of economic activities exempt from permission and registration (see Box 3).

As already mentioned, almost all self-employed activities in Germany are exempt from permission. The extension of the list of *Samozanyatyje* must therefore be seen as the right step with regard to freedom from obtaining a permit to carry out activities without registration.

With regard to the many economic activities that have previously required authorization and registration, Decree No. 7 provides for the facilitation of the authorization and registration process. To start a business in the sectors listed in Box 4, it is now sufficient to send an e-mail to the competent authority and start operating immediately after receiving the confirmation e-mail and paying the tax. These types of economic activities are no longer subject to mandatory registration (application principle) and no longer require prior authorization. This simplification is also a step forward, although the list of such activities is still quite limited and the main goal is to supervise the activities of enterprises.

Further liberalization and liberalization of entrepreneurial activity took place without registration by Law No. 171-3 of 09.01.2019, which entered into force on 19.07.2019, in order to amend the Criminal Code. The main liberalization was to exclude the paragraph 234 of the article (authorization of fictitious companies and entrepreneurship). In addition, according to the old law (previous version of Article 233 of the Criminal Code), entrepreneurial activity without registration is a criminal offence that can be punished by imprisonment for up to five years (up to seven years if other aggravating circumstances are met). The new law excluded criminal liability for such types of entrepreneurial activity that do not require a license (e.g. real estate services, legal services, etc.). With regard to the licensed activities, the legal norms (including the punishment of imprisonment for up to seven years if additional criteria are met in case of aggravating circumstances) remained basically unchanged.

Box 3: List of activities that do not require permission and registration in Belarus (samozanyatyje)

List of activities that do not require permission and registration in Belarus since 26.08.2018

- Sale of bakery and confectionery products and finished culinary products made by these individuals at the markets and/or other places of their production and distribution, established by local executive and administrative bodies;
- Granting of premises, garden small houses, summer residences for short-term residing belonging on the property right to the physical person to other physical persons;
- Carried out on the orders of citizens who purchase or use goods (works, services) exclusively for personal, domestic, family and other needs not related to the implementation of entrepreneurial activities: Performance of works, provision of services in interior design, graphic design, design (decoration) of cars, interior space of capital buildings (buildings, structures), premises and other places, as well as modelling of interior design items, textiles, furniture, clothes and footwear, personal use items and household items
- Repair of watches and footwear
- Repair and restoration of home furniture made of the customer's materials, including the pull-over, of the furniture
- Furniture assembly
- Setting up musical instruments
- Sawing and chopping of firewood, loading and unloading of cargo;
- Manufacture of clothing (including hats) and footwear from customer materials;
- Plastering, painting, glass works, flooring and wall cladding, wallpapering, masonry (repair) of stoves and fireplaces
- Website development, installation (customization) of computers and software, recovery of computers after a failure, repair and maintenance of computers and peripheral equipment, and training on personal computers
- Hairdressing, cosmetic, manicure and pedicure services

List of activities that did not require a permit and registration in Belarus before 26.08.2018

- Provision of services for the cultivation of agricultural products
- Provision of services on grain crushing
- Cattle grazing
- Tutoring (advisory services on individual subjects, disciplines, educational fields and topics, including assistance in preparing for centralized testing)
- Cleaning and cleaning of residential premises
- Care of adults and children, washing and ironing of bed-clothes and other things in households of citizens, walking of pets and care of them, purchase of products, washing of dishes and cooking in households of citizens, mowing of grass on lawns, cleaning of the green territory from leaves, mowed grass and garbage
- Mining, acquisition and alienation of digital signs (tokens)
- Music and entertainment services for weddings, anniversaries and other celebrations

- Activities of actors, dancers, musicians and conversationalists who perform individually
- Provision of services by tamada
- Photography, production of photographs; video shooting of events
- Activities related to birthday greetings, New Year and other holidays
- Sale of kittens and puppies under the condition of keeping pets (cats, dogs)
- Pet maintenance, care and training services, except for farm animals
- Copying activities

Source: own display, Ukas of the President of the Republic of Belarus, 19 September 2017 N 337: On the regulation of the activity of natural persons (in the edition of the Decree of the President of the Republic of Belarus dated 25 January 2018 No. 29), <http://www.nalog.gov.by/uploads/documents/Ukaz-337.doc>, The Civil Code of the Republic of Belarus, 7 December 1998 № 218-3, Section 1, Article 1.

Box 4: List of economic activities subject to the declarative principle, which do not require registration as an individual entrepreneur, since 2018

1. Provision of hotel services, as well as temporary accommodation and temporary accommodation services.
2. Provision of household services.
3. Provision of catering services.
4. Provision of services for transportation of passengers and luggage by road (except for such transportation in regular traffic, as well as to meet the needs of legal entities and individual entrepreneurs).
5. Rendering services on repair and maintenance of vehicles.
6. Provision of tourist services.
7. Retail trade (except for retail trade in goods the turnover of which is limited or for which a special permit (license) is required).
8. Wholesale trade (except for the wholesale trade in goods the turnover of which is limited or for which a special permit (license) is required).
9. Manufacture of textiles and garments.
10. Manufacture of clothing.
11. Manufacture of leather, leather goods, including footwear.
12. Wood processing and production of wood and cork products, except for furniture.
13. Crop production, animal husbandry and fish farming.
14. Production of food products (except for production of alcoholic beverages).

15. Production of containers and packaging.
16. Production of furniture.
17. Manufacture of building materials and products.
18. Rendering of services in development of web-sites, installation (adjustment) of computers and software, recovery of computers after a failure, repair, maintenance of computers and peripheral equipment, training to work on a personal computer.
19. Psychological assistance activities.

*Source: own display, The Decree of the President of the Republic of Belarus, 23 November 2017 N 7
http://president.gov.by/ru/official_documents_ru/view/dekret-7-ot-23-nojabrja-2017-g-17533/*

3 Liberal Professionals as Entrepreneurs

Liberal Professions play an important role in the economic transition and development process. They provide high quality professional services that are a necessary input for sophisticated industrial production, for technology-based goods and service industries. At the same time, they provide high quality services for private households. An increase in a country's production and aggregate demand usually leads to an increase for such high-quality services, e.g. in the fields of health care, arts, education etc.

The development of the service sector is one major strategic option for economic policy in order to catch-up with the economic growth in Europe. Within the service sector, Liberal Professions play a key role.

The regulatory framework is of particular importance for the development of the Liberal Professions sector. The EU has recently focused on the regulation of the Liberal Profession sector with respect to increasing the sectors growth potential.

According to recommendations of the EU and to international experts, Liberal Professionals should be regarded first and foremost as economic entities. That is why Liberal Professions' regulation should be based on the business regulatory framework. In other words: all legislative provisions that apply to businesses apply to Liberal Professionals, too.

Against this background, our recommendation for Belarus is to regard the activities of advocates, notaries, arbitrators, mediators as entrepreneurial activities.

4 Conclusions

Germany has experienced almost a decade of constant growth limited only by a shortage of skilled labor. The demand for employed labor has exceeded the supply. As a consequence, the numbers of new businesses and people starting as individual entrepreneurs has been decreasing constantly for the past 15 years, because the labor market absorbs most of the labor force.

Therefore, policy makers see no need to stimulate small entrepreneurial activity by changing the regulative framework in Germany.

Belarus experiences a completely different situation. The demand side of the Belarussian labor market is not as competitive as it is in Germany.

Against this background, the recent deregulation of the permission and registration of economic activities in Belarus, can be welcomed.

The extension of the list of activities that do not require permission nor registration – *Samozanyatyje* – could contribute to cope with labour market imperfections during the transition period. The activities of *Samozanyatyje* could serve as complements to employed and entrepreneurial activity. Furthermore, becoming a successful entrepreneur requires developing skills and a mind-set that is different from the skills and attitudes of successful employees. For those people who do not have true entrepreneurial aspirations and who do not aim at developing entrepreneurial skills, the concept of *Samozanyatyje* is a possibility to earn a living.

We do not recommend a roll-back of the recent deregulation of *Samozanyatyje* at the moment. However, the list of *Samozanyatyje* should be reviewed regularly in the future. When the transition of the Belarussian economy has made progress and the demand for labour increases significantly, the *Samozanyatyje* framework will likely work as an impediment for further growth.

We recommend to address another related issue. In the light of international experience, we recommend to include all kinds of liberal professions, including advocates, notaries etc., in the framework of entrepreneurial activities. All liberal professionals should be acknowledged as entrepreneurs by Belarussian legislation. They all should be subjected to the same business law provisions as other businesses. This includes the same treatment regarding taxation (e.g. tax rates, deductible costs etc.). Last but not least, liberal professionals should have access to state SME support programs.

In this report, we have not addressed the issue of (obligatory or voluntary) pension fund contributions of entrepreneurs. Firstly, this issue is very complex and thus beyond the scope of this report. Secondly, the regulation regarding pension fund contributions of (individual) entrepreneurs in Germany has been under political discussion for the past five years, still no consensus on any of the reform proposals in Germany.

Summarizing, we recommend to develop a more comprehensive and more modern approach to entrepreneurship in Belarus. Such a comprehensive concept includes adopting a SME definition according to international standards (see Policy Paper PP/02/2017), extending the access to SME support and modernizing the SME support measures, taking into account different needs and different types of aspirations within the heterogeneous group of self-employed and entrepreneurs.

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