

**FINANCIAL DISCIPLINE IN REPUBLIC MACEDONIA-
WAY OF MORE EFFICIENT MODE FOR
ENTERPRISES' ACTIVITIES**

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Abstract

The severe economic crisis that occupied the world economy can be felt in the Republic of Macedonia, too. The low solvency and the decreased buying faculties of the population and firms are a major problem in the economics in general. A great capability and power is necessary in order to survive in these difficult economic conditions, as well as a constant alertness by the firms as instigators of the economic activity in every country.

Entities in the Economy are realizing different types of transactions making financial obligations that, usually can not be fulfilled. As a result there is a problem with financial recovery that disrupts their liquidity, and at the end point, their activity in the economy is worsens.

Because of that, the Law for Financial Discipline was voted, for the first time in Republic of Macedonia in December 2013. This Law is regulation for payments on time for all financial activities made between private entities, also for financial activities made between entities among public and private sector preventing failure of the financial obligations on agreed terms.

In this article we would like to determine the reasons and needs for finding the way which will be regulatory instead of punishment for successful financial discipline of the entities, that will improve their liquidity and, of course, to ensure better activities in the economy as a whole.

Index terms – liquidity, financial discipline, business transactions, term, financial obligations.

1. Introduction

The culture of unpayments or delay in the payments and getting formal with on time money flows was one of the main motives when coming up with the Law for Financial Discipline in the Republic of Macedonia. [1] Expectations from practical use of this Law were: better market functioning, better liquidity, optimizing work of entities that will increase competitiveness of Macedonian companies and, on the bottom line, improving economical situation in the economy and society in the Republic of Macedonia. Delays with financial transactions between entities can lead to interruption in supply chamber, insecurity and indifference for all financial activities between small and medium sized entities. This was a case for the passing period in the Republic of Macedonia. From all the analyses in Public Procurement Bureau in RM there was no descent and reliable proposal for regulation of financial activities that leads to main reason for unsuccessful procurements in this past period. [2] Consequences from delayed financial obligations are even more stressed in the time of global economical crises, when approach to the financiers is harder and limited. For that purpose European Union brought Directive No. 2011/7/EU that refers to payment delay in commercial transactions that is upgrading of Directive 2000/35 /EU from 29 June 2000. [3] [4]

Accordingly the Report for Financial Stability in Republic Macedonia from 2013, published by National Bank of Republic Macedonia (NBRM) in July 2014, due days for financial obligations (approximation) in 2013 was period for 174 days, in 2012 that period was 168 days. This leads to a conclusion that „culture” for defaults or untimely payments is still alive. [5] Comparing to the EU countries, Macedonian average for delays is much bigger than what is considered as delay in monetary obligations within EU countries. Average delay of the monetary obligations in public procurements among EU countries in 2009 was 67 days, delays between economic entities was 57 days, with a smaller variations in some countries. These delays are result of around one of four bankruptcies that happens, lost for around 450.000 employees, and as a final result for the society around 290 billion euro in 2009 or 2,4% of Gross Domestic Product of EU. [6] [7]

Expectations by this Law will promote more rational use of available resources, technical improvement of managing and planning entities' resources, improving methods for planning and managing such resources, for better recording of claims and obligations and on time service of all obligations. Real fulfillment of the Law depends of financial condition within the entities. Those entities that will appear to have hard times with fulfillment of its obligations will come up with even worse situation in everyday functioning, and even with threats of misdemeanor, further costs for the delays for about 50 euro, regardless the amount of claims and period of delay. Directive No.2011/EU which covers materials about financial delay among commercial transactions, in article 6 prescribe that constituent has right on 40 euro compensation for the delay. [8] The constituent has right on this sum without any further reminders, as a compensation for the costs from delay.

This is the way for stopping reckless delay and prevents cheap lending of entities' activities. From the other side some problems might appear in everyday functioning of great number small and medium sized entities. Its financial situation appears to be unpredictable because they are financing their activities by the delayed financial sources. Sometimes the final effect appears to be reduction in entrepreneurial activities and having only the basic activities that can be done on time.

2. Need for continual adaptations of the laws in Republic Macedonia

In a healthy competitive environment, the firms should be able to combine, recombine and change the expensive producing factors to cheaper ones, so that to reduce the firm's expenses, to find a *more efficient and more effective functioning mode* and to stabilize the profit in the long run. Besides the exploitation of the firm's internal capacities and resources, some help and support is also necessary by the country, so that a right direction is provided for economics' development and prosperity. When it comes to this, Republic of Macedonia tends to draw the European economic actions nearer into its economy as well, by creating administration reforms. Those reforms are in the direction of providing public institutions' support for the firms, which, of course, should represent a solid base for the functioning of a healthy and convenient economics climate in our country.

The country, and its economics policy is the most important factor in the creation of a solid and sound economic climate to all subjects. It should take care of the development and the prosperity of the firms, as they are the instigators of the entire economic activity. The country's support of the firms is irreplaceable in every area and there can be no prosperity without it. The country's policies can have the biggest merit in leading to such a support. Namely, this refers to the reforms that are going to create such economics policy that is going to establish a beneficial investment climate which is an important precondition to investment drawing and facilitation, as well as a suitable spreading and emerging business climate in the market. At this point it should be mentioned that there should be a support, i.e. reforms in the area of formation of fair government regulations, elimination of administrative and bureaucratic barriers to small firms, simplification of the formation process, as well as the administration and taxes, infrastructure enhancement, etc. A greater law support is also necessary by the country itself in the areas of firm financing, providing finances with favorable interest rates and suitable lending conditions.

Population in Republic of Macedonia is about 2,1 millions inhabitants. According to the Statistics in RM the number of work force is 928.775 persons, among them 629.901 or 67,8% are registered as employed and 298.873 or 32,2% are unemployed. The fact that GDP in Republic Macedonia is lower when comparing it with the one of the smaller EU countries, gives us the right to realize that we need smaller public administration, but more effective one. Usually smaller countries, such as Macedonia, are „more expensive” than bigger countries, because governmental functions are realized by the same number of public institutions. From this conclusion it is clear that smaller countries should be more rational and organizational inventive comparing to the bigger countries. Because of this facts, Republic Macedonia, as a small country, should seek its competitive advantage in simple institutional frame, simple institutional structure and without traditional institutions. The whole process of reforms should result with professional and rational public administration that will lead to easier implementation of each process in the country.

3. What does the law on financial discipline stipulate?

The Law on financial discipline is applied on business transactions between private sector economic operators i.e. between public sector subjects and private sector economic operators according to which one party is obliged to provide goods, services or execution of works and the other party is obliged to meet the financial obligations arising from the transaction. In Article 4 the legislator comprehensively defines the terms of economic operator and public sector subjects. Even though the legislator did not specifically stipulated it in that way, Article 6, paragraph 1 of the Law stipulates that this law is applied in business transactions of public sector subjects only in cases when public sector subjects are in a position of debtors, and not when they are creditors. [9] This paragraph appears in practice and scientific and professional circles of this area, and it is also in accordance with Directive no. 2011/7/EU.

The legislator has determined different terms according to which the economic operators i.e. public sector subjects as debtors are obliged to fulfill their financial obligations. So, in a situation when a debtor is an economic operator i.e. when there are business transactions between private sector economic operators, a term longer than 60 days cannot be given for meeting the financial obligations. In order to minimize the possibilities for violation of starting date of the term, the legislator has determined the moment when it starts to be valid. It means that the term for fulfilling the financial obligations starts from the first date of invoice receipt by the debtor i.e. other request for payment by the creditor who has fulfilled the contracting obligations; when the creditor has fulfilled their obligation i.e. made a delivery of the agreed goods, service or work, and the debtor received the invoice or other appropriate payment request before or on the day of confirmation, whereby the term for case review cannot be longer than 30 days of date of receipt of goods or provided service, i.e. work, if by exception as a result of the particularities of the goods, services and works or due to the nature of the contract a longer term has been provided. Only by exception and only if there is an explicit written consent by both parties, a term longer than 60 days, but not longer than 120 days can be stipulated for fulfilling the obligations.

In a situation when the public sector subject appears as debtor, term longer than 60 days for fulfilling the financial obligations cannot be stipulated except in case of multiannual public procurement, when the term can be longer, with no determination of term upper limit by the legislator.[10] Public sector subjects whose accounts are within the treasury account of the Ministry of finance are obliged to submit the payment request of the past due invoices, according to the private sector economic operator, to the Ministry of finance, by the thirtieth day of the starting date of the term for fulfilling the financial obligation. The Ministry of finance is obliged to pay off the assets stated on the delivered invoice on the account of the economic operator of private sector within 30 days of the date of payment request submission in the treasury offices. For acting contrary to the stated obligation by the Ministry of finance, the legislator has stipulated paradoxical breach liability for the Ministry of finance, a fine in the amount of 750 to 1.500 euros. We shall see how this provision will be implemented in practice.

The unequal position of the economic operators as debtors and public sector subjects as debtors, i.e. the privileges of the latter are visible in the intermediate and final provisions of the law also, when unlike economic operators for whom the law was enforced starting from 1st of May 2014. In the case of public sector subjects as debtors the law will be enforced starting from 1st of January 2016.

If the economic operators, i.e. if public sector subjects as debtors in the contracts have not determined a term for financial obligations fulfillment with the economic operators in accordance with the law on financial discipline or when contracts contain void provision referring to the payment term, the law contains additional provision stipulating that the debtor should meet the financial obligations within 30 days.

The creditor who has met their obligations neatly and timely towards the debtor, on the basis of the Law on financial discipline and with no previous reminder or notice by the debtor, has a right to delay compensation in the amount of 3.000 denars. This compensation does not exclude the right for costs compensation which can be claimed by the creditor on the basis of a contract or some other regulations, as well as for penalty interest calculated and charged according to law. The Law on terms for fulfilling the financial obligations in the commercial transactions in the Republic of Serbia stipulates a delay compensation in the amount of 20.000,00 dinars, much higher than the determined minimum of the EU Directive – 40 euros. [11] The right to delay compensation ceases to be valid within three years of the day of term expiry for due financial obligation.

The method for protection against not complying with the term for fulfilling the financial obligations is presented as determination of nullity of contract provisions which in terms of creditor are significantly unrighteous and unfairly determine the payment date or term, penalty interest for delayed payment or costs compensation for delayed payment. The contract provision according to article 10 of the law: determination of payment term longer than the term stipulated for situations when the debtor is public sector subject is considered quite unjustified and unfair; the provision determining the term for invoice receipt date; provisions for exclusion, limitation and conditioning of right to calculation and charging of penalty interest in the amount determined according to law and exclusion, limitation and conditioning of right to delay compensation while meeting the financial obligation.

In the same article the legislator has authorized the trade and other professional chambers, cluster and other organizations, associations and independent professional organizations established according to law, representing the interests of appropriate private sector economic operators to take actions for filing a lawsuit in authorized court for application of contract provisions between private sector subjects which are significantly unrighteous and unfair in terms of creditors. We believe that this provision should not be interpreted restrictively so that only these subjects would be legitimated to file a suit on behalf of economic operators. It should be clearly understood that each economic operator has a right to immediately take actions for protection of their rights in the competent institutions. In addition to this is the situation when both the debtor and creditor belong to the same professional chamber, cluster or organization.

The legislator stipulates another mechanism for protection of financial discipline, so in a situation when a lawsuit has been filed in authorized court, a proposal for execution to an executor or a proposal for payment order to a notary, according to which the legal terms for obligations payment have been exceeded by the debtor, the executor or notary are obliged to notify in written the Ministry of finance – Financial inspection in public sector, in case when the debtor is public sector subject i.e. the Public revenue office in case when the debtor is an economic operator.

4. Discipline of fulfillment of obligations by law on orders

For improvement of financial discipline and implementing discipline in obligations settling, an promissory note has been implemented, which is a confirmed private document by which the debtor gives consent for forcible collection of creditor claim stated in the promissory note from all available assets of the debtor in the payment operations carriers. By adopting this law the debtor has been given a possibility outside and independent of any court procedure, by a qualified private document to give consent for seizing all their accounts with a payment operations carrier for charging certain creditor claim. Order issuing process is carried out electronically, through the system for running the Orders Register of the RM Central Registry.[12] According to the data received by the Central Registry inclusive of 15.01.2014, a total of 85 promissory notes have been recorded in the Orders Register of which 48 have been deleted. The total value of active promissory notes not deleted from the system is 88.624.628,00 denars, which indicates that small part of business subjects have decided to use the promissory note as means of claims providing. [13]

By the promissory note as means of claims providing the creditor can submit payment collection claim in case the obligations based on promissory note have not been paid until its due date. Claim is submitted until the day stated on the promissory note the latest as e final term for submission of payment claim. In this way the creditor claims can be met without initiating court and/or executive procedure. In the basic text of the Law on promissory note (Off. Gazette of RM no. 59/2012) an obligatory issuing of promissory note was not stipulated, simply, when there is a consent of the will of the debtor and creditor, but the Law on amendments of the Law on promissory note (Off. Gazette of RM no. 12/2014), stipulates an obligatory issuing of promissory note for debtor-creditor relations by which obligations in the amount of 300.000 denars (around 5.000 euro) and more have been imposed. [14] Furthermore the legislator has stipulated an offense liability and fine in the amount of 3.000 to 5.000 euros in denar equivalent for the legal entity who will not issue a promissory note for debtor-creditor relations which results in obligations in the amount of 300.000,00 denars (around 5.000 euro) and more. A fine of 1.000 euros in denar equivalent will be imposed on person in charge of the legal entity also for the same offense. These changes start to be valid as of 1st of January 2015. The reactions so far have been disapproving, especially towards the amount of the obligation of 300.000,00 denars, somewhat less than 5.000 euros, for which an obligatory issuing of promissory note has been stipulated as well as for the fine amount. Criticism has been pointed towards the stipulated criminal responsibility (fine or prison sentence up to three years) for the person in charge of the debtor who will issue promissory note for which there is no cover at the moment of due term of the promissory note. Criticism has been also pointed towards additional costs for issuing of promissory note in the amount of 3.000,00 denars for actions taken by the notary in terms of composition, electronic signing, recording and confirming (solemnization) of promissory note (art. 33 of Notary tariff Official Gazette of Republic of Macedonia no. 108/2012). [15] The fact that this law does not apply to situations when the country appears as a debtor caused numerous negative comments by the private sector legal entities that mostly face many problems when settling the obligations of the country towards them. The fact that the obligation for issuing obligatory promissory note will present larger administrative burden for firms that already have multiple business partners and successive procurements was also criticized. But, despite all observations that can be considered as criticism for improving the legal solutions, the fact that the promissory note will largely relieve the judicial authorities, courts, notaries and executors in these situations should not be overlooked, and it can very much improve payment collection. Anyway it remains to be seen how the law will be implemented from 1st of January 2015.

5. Conclusion

Besides the short period of application of the Law for Financial Discipline in Republic of Macedonia, we can make conclusion that its application will depend on financial situation among entities that will apply it. Entities will be more cautious in their activities if their liquidity and financial situation is bad, that can lower their activities only on the essentials one.

The situation would be different if the entities will use financial delay as a part of their bad planning and bad management of their financial resources, and delaying in order to use other cheap financial resources and maybe as a culture of delay. Only in such cases we are sure that this Law will have its positive effects and its implementation will be justified.

Consequences from implementation of the Law of Hostages amendments will be on further analysis after couple of months of its application.

In a mean time the question is still around us: Is it necessary to have threats and sanctions for normal financial flows? Is it so impossible to change the culture of entities' behavior when respecting the other entities? On this area maybe the answers are simply NO.

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