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**ANSWERS GIVEN BY THE CIVIL LAW FOUNDATION
TO THE WORLD BANK ON THE BEE PROJECT**

Are the issues included in the BEE project relevant for private sector development and is the overall design adequate?

The objective of BEE is to measure the ease of Doing Business for private sector development. It proposes three dimensions of private sector development: 1) Fostering economic growth through innovation and entrepreneurship, 2) Increasing equality of opportunity among market players, and 3) Overall long-term sustainability of the economy.

BEE aims to differentiate itself from Doing Business by looking at private sector development not only from the perspective of the individual enterprise but also from the perspective of private sector development as a whole ("market" logic). This is the main difference from Doing Business, which focused almost exclusively on the viewpoint of the individual firm in terms of value creation. BEE seeks to incorporate elements of economic development from a broader perspective as well: BEE will not only look at the regulatory burden [like Doing Business], but also at the provision of public services that are essential to the functioning of markets.

It constitutes a significant shift in the World Bank's approach, since government intervention no longer seems to be seen as a burden that needs to be reduced, but rather as a necessary condition for the proper functioning of a market economy, which ultimately contributes to the development of the private sector as a whole.

There is also a change in the time horizon in the analysis of firms' activity, as Doing Business was based on a rather "short-term" analysis (always with a view to maximizing shareholder value). BEE proposes to integrate a sustainable development logic, with criteria that would guarantee sustainability in the long term. Of course, it would be necessary to ensure that the other "stakeholders" (apart from the shareholders) are indeed taken into account in BEE.

Another interesting difference between BEE and Doing Business concerns the methodology. Doing Business tended to base its various indices and sub-indicators on scenarios with specific assumptions. The BEE would now be based on surveys and expert opinions that would not be systematically based on scenarios. Unlike Doing Business, which dealt with a list of business-

related topics in a rather arbitrary way, BEE's ambition is to take into account "all topics [...] and no major omissions will be tolerated".

Are there any important issues that the BEE project is not considering which should be included within the context of private sector development?

About firms location, the indicator is based on 3 pillars: a) Quality of the regulatory framework for land ownership, urban planning and real estate leases, b) Quality of public services and transparency of information and c) Efficiency of services to obtain a business location (corresponds to the effective application of the other two pillars). For the efficiency measure, it remains similar to Doing Business. The major evolution of this indicator in my opinion is the addition of environmental considerations with for example the inclusion of environmental licenses for construction or energy codes for buildings. In addition, it emphasizes the transparency of information and the availability of online services. It should be relevant to consider also the idea that a centralized system allows a better management of real estate databases (like the land register) compared to a decentralized system (apart from the question of blockchains).

In terms of service efficiency, it is still Doing Business oriented with an evaluation based on 1) the time and cost of purchasing, 2) the time and cost of obtaining construction-related permits and 3) the time and cost of obtaining environmental permits. A "quality" aspect should be added, with, for example, a sub-indicator on the quality of the service (for example, a notary's office system reduces information asymmetry, it collects taxes whereas without it the payment is the responsibility of private actors, and more generally all the discussions we have about the notary's assets). Bringing in the idea of preventive justice is more complicated because it benefits society as a whole, but here we are only measuring the development of the private sector. But perhaps it would be possible to integrate into the "Dispute resolution" part this idea that certain countries (civil systems) have mechanisms that reduce disputes ex-ante?

Considering labour regulation, we would suggest not to fall back into a Doing Business-style analysis where labor market regulation is seen as having a negative impact on activity. Here, the idea of maximizing all the stakeholders of the company and not only the shareholder value should be emphasized. Perhaps, in this sense, an index on wage differentials within companies?

Or perhaps an index that would correspond to the salary of the lowest paid worker(s) (in full-time equivalent) and see what standard of living this salary allows (with the idea that workers with a higher salary would have more incentive to be productive).

Competition is one of the major novelties of BEE, as this theme was not present in Doing Business. This point refers to the classic idea that competition promotes economic growth. The points measured are: a) The quality of competition regulations (taking into account the areas covered by competition law, such as cartels, merger control, etc.), b) The quality of regulations for public procurement tenders, c) The quality of competition law enforcement, d) The transparency of digital trading platforms and their transactional characteristics. For this last point, more emphasis should be put on the fact that large digital platforms need to be regulated. In addition, it should be relevant to introduce an indicator related to data protection (for example everything that falls under the RGPD)?

Does the BEE project strike the right balance between the quality of regulations and the provision of public services for private sector development?

The spirit of the BEE has evolved in comparison with Doing Business, taking into account longer-term interests, emphasizing the environment, the "well-being" of workers and the idea that the state is not a burden but provides public services necessary for the proper functioning of the economy. The Foundation's recent work based on the consideration of equity/efficiency tradeoff is undoubtedly compatible with this idea that a favourable business climate is not just about having more dividends (to go quickly...), but that it is also about taking into account other interests such as those of other stakeholders such as employees or future generations (especially with regard to environmental issues). Nevertheless, it must be borne in mind that the aim of the indicator is the development of the private sector and not the maximization of the well-being of society as a whole... It may be recalled that in the Index of Legal Certainty developed by the Foundation, we had integrated precisely this question by focusing on the issue of balance of interest between the parties. Similarly, the question of the conditions of access to the law could be better taken into account.

The purpose of this comment suggests to fill a gap by addressing the essential question of how the law can simultaneously deal with the allocative and redistributive aspects that characterize

the functioning of any society. Is not the counterpart of greater efficiency of specific legal system the counterpart of greater economic inequalities? In some of the literature, the dominant position is to consider distributive issues only through the prism of the tax system whereas legal environment has also significant impacts on wealth distribution. The legal system should not only respond to efficiency concerns to contribute to the development of the private sector. This question should be addressed by the BEE as suggested by the recent work of our Foundation.

Does the BEE project get the balance right between de jure and de facto indicators?

We need to know the details of the new indicators of the BEE project in order to give our opinion.

Do you have any feedback regarding the indicators included in each specific topic (please indicate the topic)?

See question 2