



# investment policy review



## BOSNIA AND HERZEGOVINA





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## Preface

UNCTAD investment policy reviews (IPRs) are intended to help countries improve their investment policies and to familiarize governments and the international private sector with an individual country's investment environment. The reviews are considered by the UNCTAD Investment, Enterprise and Development Commission. The recommendations of the IPR are then implemented with the technical assistance of UNCTAD. The support to beneficiary countries is delivered through a series of activities which can span over several years.

The *Investment Policy Review of Bosnia and Herzegovina*, initiated at the request of the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina, was carried out through two fact-finding missions conducted in March and July 2014. It is based on information that was current at that date and additional information made available to UNCTAD until 10 April 2015. The missions received the full cooperation of the relevant ministries and agencies, in particular the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina and the Foreign Investment Promotion Agency (FIPA). The missions also benefited from the views of the private sector, foreign and domestic, and the resident international community, particularly bilateral partners and development agencies. A preliminary version of this report was discussed with stakeholders at a national workshop in Sarajevo on 25 March 2015. The final report reflects written comments from various stakeholders, including government ministries and agencies of Bosnia and Herzegovina.

The analysis presented in this report is based on the 11 core principles of the Investment Policy Framework for Sustainable Development (IPFSD) developed by UNCTAD and released in the *World Investment Report 2012* (<http://ipfsd.unctad.org>). It follows the national investment policy guidelines of the IPFSD, which deal with concrete measures to formulate investment policies and regulations, and also ensure their effectiveness, especially in terms of grounding investment policy in development strategy and ensuring implementation and institutional mechanisms for policy effectiveness.

In addition to reviewing the investment framework, the Report, following a specific request from the country, elaborates on how to improve the coordination in investment promotion at all levels of government. Unless otherwise specified whenever this report makes reference to the entities of Bosnia and Herzegovina and it includes Brčko district.

This report was prepared by the Investment Policy Reviews Section under the supervision of Chantal Dupasquier, Chief of Section. Joerg Weber, Head of the Investment Policies Branch, and James Zhan, Director of the Division on Investment and Enterprise, provided overall guidance. The report was written by Hans Baumgarten, Trevor Killen and Massimo Meloni. Substantive contributions from Hamed El Kady and Kendra Magraw are also acknowledged. The report benefited from comments and suggestions, under a peer-review process from UNCTAD colleagues, including Richard Bolwijn, Stephania Bonilla, Maha El Masri, Ariel Ivanier, Kalman Kalotay, Joachim Karl and Elisabeth Tuerk. Irina Stanyukova provided research assistance, and Jovan Licina provided production support. The cover page was prepared by Nadège Hadjemian. This report was co-funded by the Government of Sweden.

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## Abbreviations

<b>ADR</b>	alternative dispute resolution
<b>APIF</b>	Agency for Mediation, Information and Financial Services
<b>BATA</b>	Bosnian Institute of Accreditation
<b>BEAR</b>	Business Excellence Area
<b>BIT</b>	bilateral investment treaty
<b>CBBH</b>	Central Bank of Bosnia and Herzegovina
<b>CEFTA</b>	Central European Free Trade Agreement
<b>CIT</b>	corporate income tax
<b>CPIA</b>	Country Policy and Institutional Assessment
<b>CRM</b>	customer relationship management
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>ECE</b>	Economic Commission for Europe
<b>EFTA</b>	European Free Trade Agreement
<b>EIA</b>	Environmental Impact Assessment
<b>EPA</b>	European Partnership Agreement
<b>FDI</b>	foreign direct investment
<b>FET</b>	fair and equitable treatment
<b>FIC</b>	Foreign Investors Council
<b>FIPA</b>	Foreign Investment Promotion Agency
<b>FZ</b>	free zone
<b>GDP</b>	gross domestic product
<b>IAS</b>	international accounting standards
<b>ICSID</b>	International Centre for Settlement of Investment Disputes
<b>IFC</b>	International Finance Corporation
<b>IIA</b>	international investment agreement
<b>ILO</b>	International Labour Organization
<b>IMF</b>	International Monetary Fund
<b>IMS</b>	Inspection Management System
<b>ICR</b>	investor contact report
<b>IPA</b>	investment promotion agency
<b>IPU</b>	investment promotion unit
<b>IPFSD</b>	Investment Policy Framework for Sustainable Development
<b>ISO</b>	International Organization for Standardization
<b>ISDS</b>	investor-State dispute settlement
<b>IT</b>	information technology
<b>ITA</b>	Indirect Tax Authority
<b>KM</b>	mark (currency of Bosnia and Herzegovina)



<b>km</b>	kilometre
<b>kWh</b>	kilowatt-hour
<b>M&amp;E</b>	monitoring and evaluation
<b>MFA</b>	Ministry of Foreign Affairs of Bosnia and Herzegovina
<b>MFN</b>	most-favoured nation
<b>MNEs</b>	multinational enterprises
<b>MOFTER</b>	Ministry of Foreign Trade and Economic Relations
<b>MoU</b>	memorandum of understanding
<b>MW</b>	megawatt
<b>OECD</b>	Organization of Economic Cooperation and Development
<b>OHR</b>	Office of the High Representative
<b>OSS</b>	one-stop shop
<b>PPP</b>	public–private partnership
<b>PREDA</b>	Agency for Economic Development of the Municipality of Prijedor
<b>R&amp;D</b>	research and development
<b>REC</b>	Real Estate Cadastre
<b>REDAH</b>	Regional Economic Development Agency for Herzegovina
<b>RDA</b>	regional development agency
<b>SAA</b>	Stabilization and Association Agreement
<b>SCM</b>	subsidies and countervailing measures
<b>SEA</b>	Strategic Environmental Assessment
<b>SEE</b>	South-East Europe
<b>SMEs</b>	small and medium-sized enterprises
<b>SOE</b>	State-owned enterprise
<b>SPS</b>	sanitary and phytosanitary standards
<b>SSC</b>	social security contributions
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNDP</b>	United Nations Development Programme
<b>VAT</b>	value added tax
<b>WTO</b>	World Trade Organization

## Key messages

- Bosnia and Herzegovina has the potential to attract significantly higher levels of foreign direct investment (FDI) across various sectors. These include traditional industries where the country retains know-how from the Yugoslavian era, including metal and wood processing, but also other sectors such as agro-processing, textiles and services.
- Several factors make the country an attractive destination for investment. Key among these are a well-educated workforce coupled with competitive labour costs, abundant and competitively priced energy, a comparatively low taxation burden on business, and near-shore, preferential trade access to major European consumer markets.
- The country's legislation is open to FDI with very few restrictions and foreign investors that enter the country tend to stay and reinvest. The main investment partner countries have strong historical and economic ties to Bosnia and Herzegovina, since they have come to learn how to navigate the domestic administrative hurdles that stem in large part from the country's highly decentralized government and public administration.
- A political and institutional structure with multiple layers presents unique challenges to the investment environment and is reflected in a complex regulatory framework. In particular, the lack of harmonization in several business laws, the existence of multiple regimes and enforcing authorities across the different constituent parts of Bosnia and Herzegovina create difficult administrative challenges. The situation may also trigger unhealthy competition and a possible race to the bottom in areas such as taxation.
- Furthermore, the reluctance towards political collaboration in recent years has affected the ability to enact key policy reforms needed to improve the investment environment, especially at the countrywide level. Resolving the current political stalemate will be necessary if Bosnia and Herzegovina is to make transformative changes to its legal and regulatory framework.
- At the same time, various regulatory issues identified in the Investment Policy Review (IPR) can be addressed in the short run and under the current institutional circumstances to facilitate investment. These include improving access to land and skills and reducing red tape in company operations such as business registration, licensing and permitting, and inspections.
- Aside from these regulatory obstacles, Bosnia and Herzegovina is also impeded from reaching its full potential in investment attraction due to a relatively limited capacity to effectively communicate the country's existing comparative advantages and business opportunities. Improvements in investment promotion could yield substantial gains in FDI attraction and catalyse economic and social impact for sustainable development.
- At the request of the authorities, the report therefore also identifies key bottlenecks to investment promotion. In this regard, the absence of strategic guidelines, including clear FDI objectives and targets for institutions in Bosnia and Herzegovina, is a prominent obstacle. Likewise, not enough policy guidance is given to the investment promotion agency of Bosnia and Herzegovina to effectively perform its function. As in other countries, various actors are involved in investment promotion at different levels of government with insufficient cooperation among them, often reducing the impact of already limited resources.
- In parallel with the improvements to the business environment, the IPR thus calls for the reorganization of the investment promotion agency of Bosnia and Herzegovina and increased cooperation among all relevant actors to support promotion efforts.



## Context

**Bosnia and Herzegovina is a transitional economy striving towards European integration.** Soon after independence from the Socialist Federal Republic of Yugoslavia in 1992, Bosnia and Herzegovina plunged into a conflict which came to an end with the signing of the Dayton Peace Accords in 1995. The ensuing agreement determined the current constitution and government structure, namely that of a decentralized State composed of two entities – the Federation of Bosnia and Herzegovina and Republika Srpska – and a specially administered district – Brčko district. Much of the country's policymaking, including in the area of economic policy, is within the remit of the entities. Since then, Bosnia and Herzegovina has been committed to peacebuilding, democracy and the transition to a market economy. The international community, spearheaded by the Office of the High Representative (OHR), has been an important partner in post-conflict development. Since 2003, Bosnia and Herzegovina has formally entered the accession process to the European Union and is working to achieve further economic integration with the regional bloc.

**An important industrial centre in Yugoslavian times, Bosnia and Herzegovina has potential to attract FDI across various sectors.** The industrial infrastructure and productive capacity were severely affected by the war. New investments have revived some of the traditional industries which still have know-how. The notable resurgence of the metal sector and related industries – from the extraction of minerals to the processing of metals and the manufacturing of metal components – is a case in point. In particular, the auto-parts industry has attracted FDI to become one of the most successful export-oriented industries. Other traditional manufacturing industries where competitive advantages exist include forestry-related industries, such as paper and furniture, agro-processing, textiles, apparel and footwear. In addition, Bosnia and Herzegovina is the only net exporter of electricity in South-East Europe (SEE), and has significant reserves in fossil fuels and renewables, especially hydropower, where only an estimated one third of total potential is being used.

**Labour costs are competitive and the workforce is well educated and trainable.** While not the lowest in the region, labour costs remain competitive, especially for the level of productivity offered. One of the main investment attraction assets is the quality of the workforce. Out of an estimated population of 3.9 million, 54 per cent is of working age and literacy is near universal. The private sector's assessment of the quality of skilled labour, both at the technical and professional levels, is generally very good, as corroborated by international surveys.<sup>1</sup> However, it has been noted that gaps in technical skills are growing and that some specialized technical skills are becoming scarcer. The most skilled and best educated workers also tend to migrate, leading to brain drain.

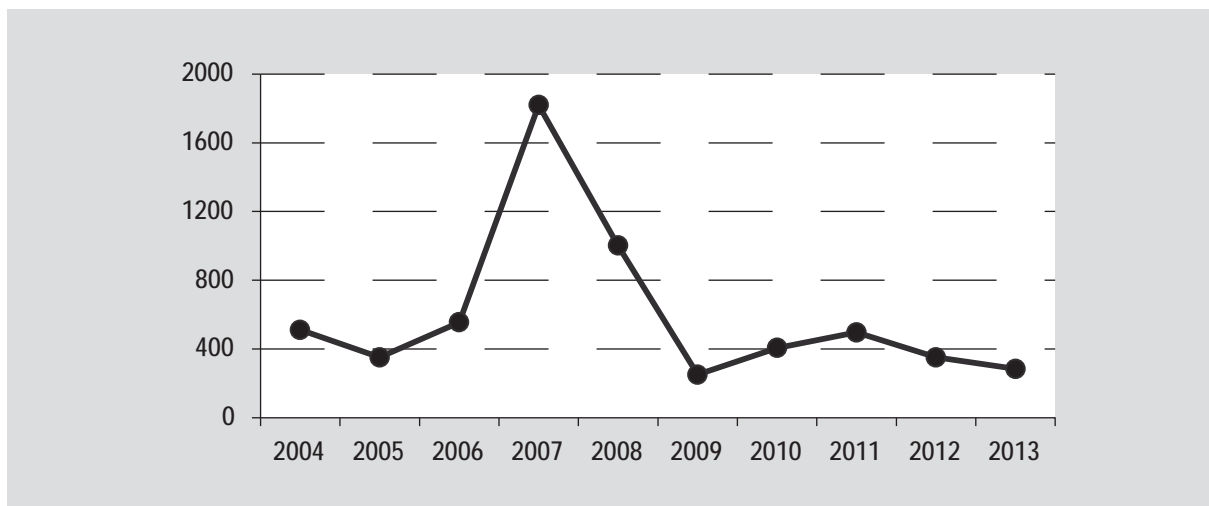
**Corporate taxes and operation costs are low.** The base corporate income tax (CIT), at 10 per cent across the country, is among the lowest in the region, and the overall tax burden is comparatively low, even taking into consideration other minor taxes on businesses. In addition, exemptions exist on CIT to promote new investments, exports and job creation. Although the tax regime is generally attractive to business, its administration is burdensome and leaves room for tax engineering and arbitrage. Operation costs are generally significantly lower than those of European Union countries and on a par with the most competitive priced economies in the region. Perhaps the greatest competitive advantage, in this regard, is the abundant supply of low cost electricity.<sup>2</sup>

**Geographic location and trade agreements make Bosnia and Herzegovina an attractive export platform.** Located in the heart of SEE, Bosnia and Herzegovina is well placed to service the regional and European Union markets. As part of the Stabilization and Association Agreement (SAA) with the European Union, the Interim Agreement on Trade and Trade-related Issues granting preferential market access came into force in 2008. It has encouraged efficiency-seeking foreign investors to locate export-oriented manufacturing centres in Bosnia and Herzegovina to service the European Union market and engage in "near-shore" outsourcing. For example, German companies have increasingly identified Bosnia and Herzegovina as part of their "extended workbench". Bosnia and Herzegovina has been a member of the Central European Free Trade Agreement (CEFTA) since 2006 and has preferential trade access to this market of nearly 22 million people. Investors from some former CEFTA members that have lost the preferential trade status after joining the European Union are now considering relocating some production in Bosnia and Herzegovina to benefit from the preferential access to this market. The Bosnia

and Herzegovina European Free Trade Agreement (EFTA) also entered into force in January 2015. In addition, the country's economic and cultural ties to the Middle East are a source of potential growth in trade and FDI. In this regard, it has also concluded trade agreements with Turkey and the Islamic Republic of Iran, and investment from Arab countries is on the rise.

**Despite potential, however, FDI inflows are modest, and the overall performance in FDI attraction is poor.** Bosnia and Herzegovina managed to attract modest levels of FDI in the early 2000s, not surpassing the \$600 million mark. It was not until 2007 that a record inflow of FDI of over \$1.8 billion was reported (figure 1). This is largely explained by privatizations in the telecommunications and energy sectors; Telekom Srbija acquired a 65 per cent stake in Telekom Srpska for a reported €646 million, the largest investment in the country's history, and Russian Zarubezhneft acquired two oil refineries and a network of fuel pumps for €121 million. The international financial crisis dampened FDI, however, and by 2009 inflows fell to some of the lowest levels in a decade. The slow economic recovery in the European Union – Bosnia and Herzegovina's main trade and investment partner – is reflected in the sluggish performance in FDI inflows since 2009. Poor performance in FDI attraction in recent years is not limited to Bosnia and Herzegovina and can be observed in many other SEE economies, with only few exceptions (table 1). While it is difficult to compare Bosnia and Herzegovina's performance with other countries in the region due to differences in statistical methodologies,<sup>3</sup> FDI data indicates that Bosnia and Herzegovina has had a greater loss in absolute and relative terms.<sup>4</sup>

Figure 1. Recent FDI inflows are modest (FDI inflows in million dollars, 2004–2013)



Source: Central Bank of Bosnia and Herzegovina.

Note: Data compiled using BPM6 methodology.

**Table 1. Bosnia and Herzegovina has underperformed in terms of FDI attraction in recent years (Comparisons with selected countries in dollars and per cent, 2004–2013)**

Country	Absolute performance			Relative performance							
	Average FDI infl ws		FDI stock	Average FDI infl ws						FDI stock	
	Millions of dollars			Per capita (dollars)		Per \$ 1000 GDP		As % of GFCF		Per capita (\$)	% GDP
	2004–2008	2009–2013	2013	2004–2008	2009–2013	2004–2008	2009–2013	2004–2008	2009–2013	2013	2013
Bosnia and Herzegovina	848	357	7 787	219	93	60	20	23	10	2 034	44
Albania	513	1 001	6 104	162	317	50	81	13	25	1 923	47
Armenia	523	533	5 448	175	179	71	56	22	19	1 830	52
Croatia	3 420	1 458	32 484	782	337	61	24	23	11	7 572	56
The former Yugoslav Republic of Macedonia	426	262	5 534	203	124	57	26	31	13	2 626	54
Georgia	1 086	888	11 676	245	203	122	65	49	31	2 690	72
Moldova, Republic of	370	222	3 668	100	63	87	34	30	15	1 052	46
Montenegro	617	783	5 384	999	1 262	190	187	76	86	8 665	123
Serbia	2 637	1 479	29 269	357	204	80	36	37	20	4 086	69
South-East Europe	8 800	5 753	90 387	379	249	68	38	27	18	3 928	59

Source: UNCTAD TNC/FDI database, Central Bank of Bosnia and Herzegovina, United Nations Statistics Division National Accounts Main Aggregates database.

Note: data compiled using BPM6 methodology for Bosnia and Herzegovina.

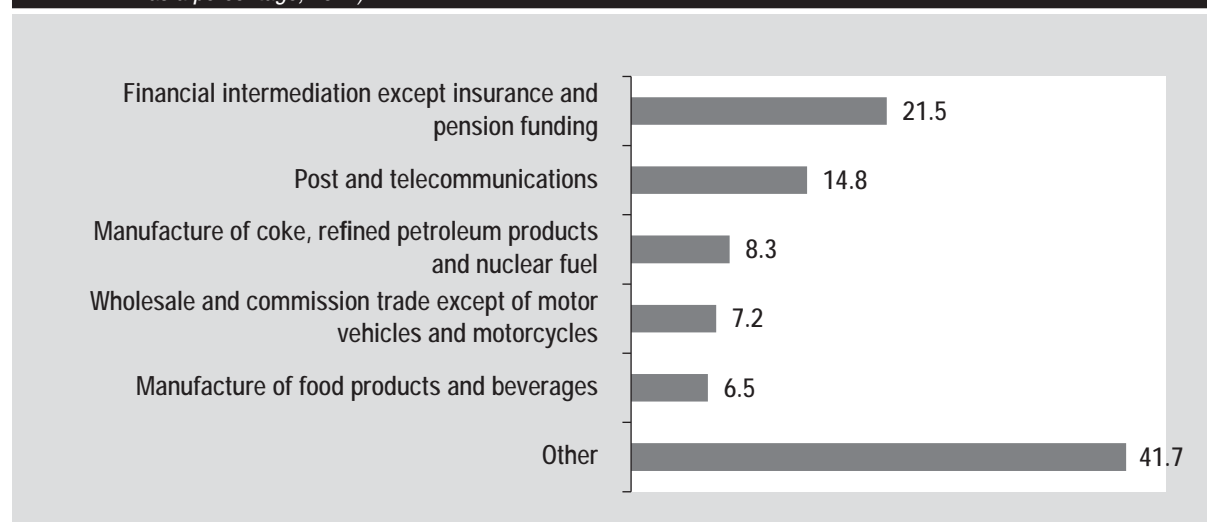
**Although the privatization process did attract significant FDI inflows the portfolio of large, commercially attractive assets has been mostly exhausted.** While there are some potentially attractive State-owned enterprises (SOEs) left, most of these have some public good component and there appears to be no political will to privatize them in the foreseeable future. Meanwhile, the remaining SOEs in purely commercial activities are not expected to attract significant FDI

**Outside of privatization, FDI has been piecemeal across various industries, and diaspora investment or outreach has been an important driver.** FDI has been dynamic in that it is diversified across many industries from agro-processing to manufacturing and services (figure 2). It is often the case that foreign companies identify a business opportunity or niche market to exploit in Bosnia and Herzegovina through the connection of a local partner or by recommendation of a citizen of Bosnia and Herzegovina. In this regard, although no targeted initiatives aimed at attracting diaspora investment are in place, the diaspora has been instrumental in materializing FDI projects, acting as the bridge between foreign investors and local authorities. The diaspora has also invested directly, typically in the municipalities of their origin, including in some large-scale projects.

**The main investor countries have historical and economic ties to Bosnia and Herzegovina.** They know the business opportunities in Bosnia and Herzegovina and how to navigate its complex regulatory framework. This is true of the top four investor countries: Austria (23 per cent share in total inward FDI stock at the end of 2013), Serbia (18 per cent), Croatia (13 per cent) and Slovenia (9 per cent), which all have well-diversified FDI portfolios in Bosnia and Herzegovina. The same countries were also involved in Bosnia and Herzegovina's privatization process from the beginning and have acquired key assets, often in joint ventures with domestic enterprises, both public and private. An exception to the rule is the Russian Federation (8 per cent share in total inward FDI stock at the end of 2013), which has recently become a major investor in strategic industries, notably in banking and energy, through privatization and the acquisition of previously Austrian-owned companies.

**Various factors explain the disappointing FDI performance relative to the country's potential, including the complex institutional structure.** The atomization of competences and powers between different levels of government affects the business environment and complicates the effective functioning of a single economic space. The frequent absence of intra- and inter-entity harmonization of policies, regulations and their administration present a major challenge to investors, increasing the cost of doing business. A highly decentralized government structure such as that of Bosnia and Herzegovina requires a well-defined distribution of responsibilities, strong coordination and clear lines of reporting and accountability among the institutions at different levels of government. Improvements in these areas should be a priority, as they will result in an immeasurable positive impact on the regulatory framework for investment.

Figure 2. Bosnia and Herzegovina's FDI stock is well diversified by sector (*Share of inward FDI stock expressed as a percentage, 2012*)



Source: Central Bank of Bosnia and Herzegovina

**From a policy perspective, a core challenge is the lack of long-term planning and strategies for economic development.** This presents a serious governance flow and leaves the country without a clear set of objectives to guide the design and implementation of economic policy and to monitor its effectiveness. Likewise, the lack of up-to-date guidelines on FDI targets<sup>5</sup> at the countrywide level limits the effectiveness of investment policy and hinders investment promotion. A political deadlock since the late 2000s that affects all levels of government exacerbates the institutional complexity, adding unpredictability and risk in the perception of investors. Much-needed reforms have been delayed, including the adoption of new laws for labour, forestry and public-private partnerships (PPPs). The latter in particular acts as a brake on the implementation of some key infrastructure development projects whose importance has increased since the devastating floods of May 2014<sup>6</sup>

**Inefficiencies and duplications in the public administration are often cited as a key barrier to FDI.** The perception of the private sector is that public administration is onerous and not client oriented. This affects various aspects of the investment environment, including business registration and the granting of permits and licences. This perception is reflected in international investment climate indicators.<sup>7</sup> Weak rule of law and commercial justice institutions and a lack of legal certainty in the enforcement of contracts are other challenges investors face. Despite shortcomings in the judicial system, however, most investors continue to trust more the capability of the courts to enforce contracts than other forms of alternative dispute resolution (ADR). As discussed in chapter 1, the entities are working actively to make improvements in some of these areas, and this is not always reflected in the international rankings on the investment climate, which only capture countrywide reforms. In Republika Srpska, for instance, business registration has been greatly simplified over the last years and in the Federation of Bosnia and Herzegovina, the inspections regime has recently undergone a major reform.

**Labour legislation and high severance payments are cited as obstacles to investment in general.** This is particularly the case for remaining SOEs and recently privatized companies that have inherited unresolved pension payment liabilities. The hiring of foreign skills is also problematic for some investors, particularly for specific technical skilled workers. The authorities across Bosnia and Herzegovina are well aware of the need to reform labour legislation to address these issues, and both entities are currently reviewing their labour laws to make them more conducive to job creation.

**Although growing steadily, the domestic private sector is still not well developed, and entrepreneurial skills are just beginning to take hold.** Bosnia and Herzegovina is a transition economy with a limited tradition in private enterprise formation and entrepreneurship. Small and medium-sized enterprises (SMEs) make up the vast majority of the domestic private sector, and several initiatives are in place to foster entrepreneurship.<sup>8</sup> In Republika Srpska, for instance, entrepreneurship is now part of the curricula of secondary and higher education. It is encouraging that SMEs are growing in number and diversifying into new industries, but their level of sophistication is variable, and the pool of potential suppliers to multinational enterprises (MNEs) is still small. In addition, the informal economy plays an important role and includes illicit activities like smuggling and piracy that present unfair competition to the burgeoning private sector.

**In spite of these difficulties many established investors ultimately find that the competitive features of Bosnia and Herzegovina outweigh the challenging business environment, suggesting that better promotion is needed.** Encouragingly, most established investors are re-investing.<sup>9</sup> This indicates, however, that part of the explanation for poor FDI performance is that Bosnia and Herzegovina still suffers from a negative country image and that investment opportunities are not effectively communicated to the international business community at large. In this regard, the lack of strategic guidance on FDI objectives and targets for Bosnia and Herzegovina, the focus on generalist investment promotion and weak coordination among public institutions at different levels of government complicate and ultimately thwart promotion efforts.

**To conclude, the potential to attract significantly higher investment inflows is undeniable, but if FDI is to play a larger role in the country's development, the key regulatory and promotional issues mentioned above must be addressed.** Having FDI play a larger role in the country's development will require enacting policy reforms that address the institutional and regulatory issues at hand, particularly by way of harmonization of economic policies; adopting FDI promotion strategies and guidelines for institutions in Bosnia and Herzegovina on target sectors for promotional activities and fostering coordination and harmonization in the country-branding message.

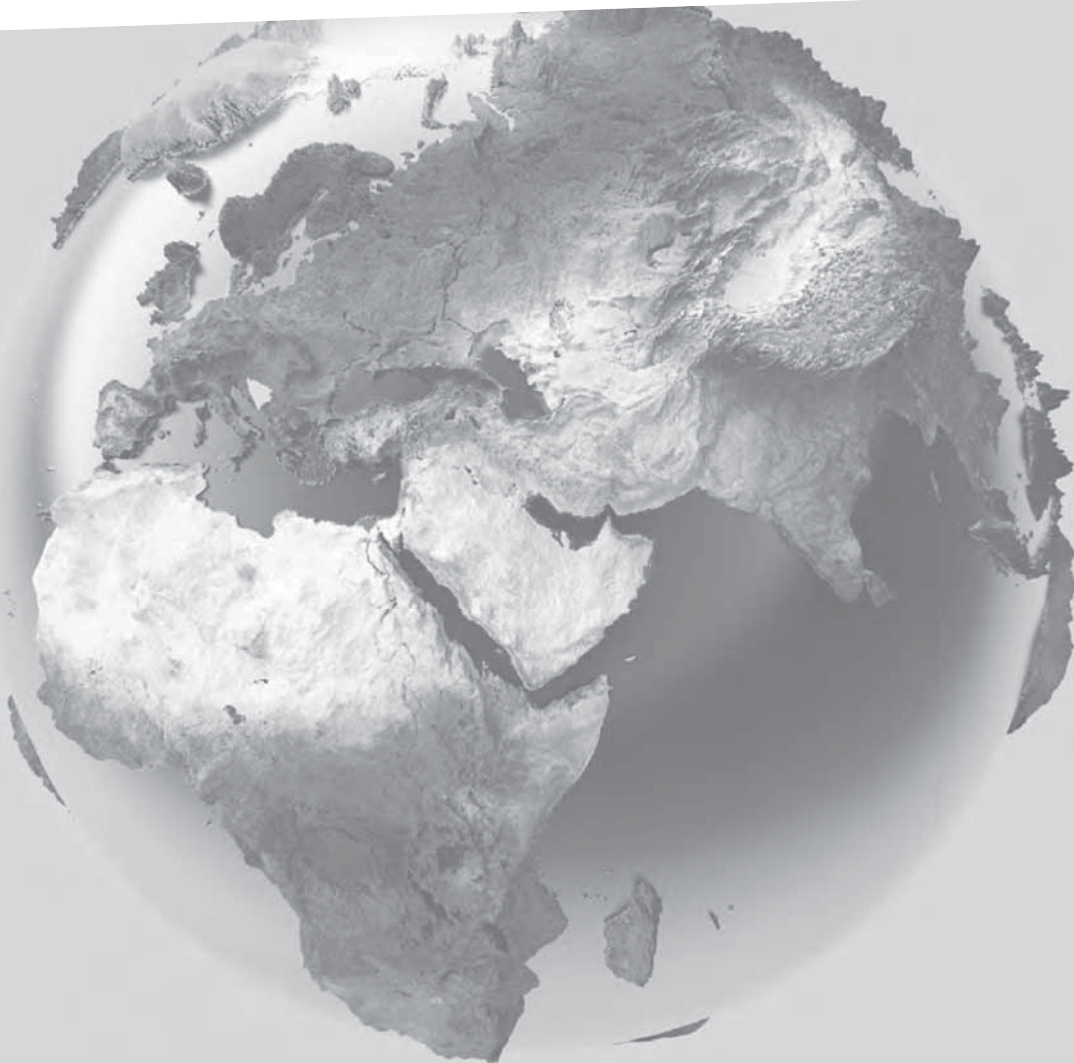
**This IPR is focused on helping Bosnia and Herzegovina fully exploit its investment potential and contribution to sustainable development.** It is inspired by the UNCTAD Investment Policy Framework for Sustainable Development (IPFSD), which provides policymakers with guidance on the formulation of national investment policies, as well as options to utilize the international investment agreements to foster social and economic development. The IPR is structured as follows: chapter 1 will assess and provide recommendations on the regulatory framework for investment, while chapter 2 will propose improvements to the institutional architecture and tools for FDI promotion.





# CHAPTER 1

## Investment regulatory framework



**The investment and business laws of Bosnia and Herzegovina are liberal and open to FDI.** They reflect the country's transition towards a market-oriented economy where the private sector is recognized as being a major driver for growth and development. At times some laws might even be interpreted as being excessively favourable to foreign investors in that they have provisions that limit the country's policy space by locking in conditions of entry. On the other hand, an exception is the labour legislation, perceived by the business sector as too protective of workers' rights and a remnant of the socialist economic regime. Bosnia and Herzegovina, however, has already committed to introducing more flexible labour codes (see section D.1). Bosnia and Herzegovina is also engaged in European integration and continues to work toward the gradual adoption of the European Union *acquis communautaire*, albeit at a slow pace.<sup>10</sup>

**The lack of harmonization of laws within and across multiple levels of government generates legal uncertainty.** While the spirit of the laws is the same throughout Bosnia and Herzegovina, differences in the text of the laws result in varying interpretations and regimes, depending on the jurisdiction. Secondary legislation, for instance, is less likely to be harmonized and, in practice, some lower level jurisdictions do not have the capacity to draft and implement the by-laws, even though it is within their competence to do so. As a result, investors considering entering Bosnia and Herzegovina are facing greater costs attached to the risks associated with legal uncertainty.

**Public administration suffers from the fragmentation of competences and the absence of well-defined lines of accountability.** The country's decentralized government structure creates a complex and multi-layered network of public institutions, administrations and regulations (box 1). For instance, in the case of the Federation of Bosnia and Herzegovina, authorities at different levels have discretionary power to implement regulation as they see fit with weak or no lines of accountability. Furthermore, cooperation is often scarce and duplication of work is not uncommon. It is difficult for investors, especially foreign ones that are not familiar with Bosnia and Herzegovina, to navigate through this regulatory network which applies to all aspects of corporate operations, including business registration, licensing and permitting, inspections and direct taxation. This regulatory burden is identified by most observers as the greatest deterrent to FDI.

**Bosnia and Herzegovina has taken steps to reduce red tape and to increase the transparency and efficiency of a wide range of institutions.** In the context of a political deadlock that has virtually paralysed legislative activity at Bosnia and Herzegovina level for a number of years, some public administrations at different levels of government, with the support of donors and the local private sector, have focused on implementing concrete and actionable improvements to the daily life of economic operators. Notable among these is the Investment Climate Project in Bosnia and Herzegovina (IFC, the World Bank Group), which focuses on regulatory simplification and investment climate reform. The Foreign Investors Council (FIC) of Bosnia and Herzegovina has also initiated a public-private dialogue whereby it prepares an annual report, known as the White Book, providing concrete recommendations to improve the investment climate. Entity-level initiatives have also brought about investment climate improvements. One example is the process of regulatory guillotine and the regulatory reform strategy of the Republika Sprska.

**However, the overarching challenge of ensuring the effective functioning and regulation of a single economic space within Bosnia and Herzegovina still needs to be addressed.** This would require harmonizing key laws, establishing clear lines of accountability and improving cooperation and coordination mechanisms between the different levels of government. As mentioned in this context, these systemic issues will also need to be addressed if Bosnia and Herzegovina is to maximize its potential in FDI attraction.

**This chapter will assess the most pertinent regulatory issues affecting FDI and provide concrete recommendations to improve the investment environment.** The policy areas covered are not exhaustive but address the most important regulatory issues affecting the investment climate. While the focus is on FDI, most recommendations are aimed at improving the business environment in general and for all investors, both foreign and local. Given the particular government structure of Bosnia and Herzegovina and its current political situation, the Review will propose two sets of recommendations where applicable. The first is a best-case scenario set of recommendations that will consider the legal and institutional changes that would be required to maximize the country's FDI performance in terms of attraction and developmental impact. These are transformational changes that would require political endorsement from key

### Box 1. The government structure of Bosnia and Herzegovina enables multiple regulatory regimes

**Bosnia and Herzegovina is a decentralized country, and its constituent parts enjoy a high degree of autonomy.** The Constitution of Bosnia and Herzegovina stipulates that the State is composed of two entities – the Federation of Bosnia and Herzegovina and Republika Srpska – and the specially administered Brčko district. The Federation is composed of 10 cantons. Both entities and Brčko district have their own government with executive, legislative and judicial branches and, in the case of the Federation of Bosnia and Herzegovina, each canton has its own government and parliament as well. The responsibilities of the institutions of Bosnia and Herzegovina are defined in article III of the Constitution and include foreign affairs, foreign trade, customs, monetary, immigration and inter-entity transportation policy. All other government functions and powers not specified in the Constitution are the responsibility of the entities. Thus, each entity has its own set of laws, regulatory regimes and implementing institutions in policy areas that are key to investment, such as direct taxation, employment, land titling and environmental licensing.

**Bosnia and Herzegovina institutions have a policy coordination role and limited accountability oversight.** The Constitution states that the Presidency of Bosnia and Herzegovina may decide to facilitate inter-entity coordination on other matters, unless an entity objects. Moreover, Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the entities. This subjects policy coordination to the political will of entities to collaborate on specific issues and often results in ad hoc cooperation arrangements. Ultimately, therefore, the power to formulate and implement a wide range of economic regulations belongs to the entities, and multiple regulatory regimes coexist.

*Source: Constitution of Bosnia and Herzegovina and UNCTAD*

institutions of Bosnia and Herzegovina at all levels. As such, they may prove difficult to implement in the short term and in the current situation. However, they may become viable and should be pursued in the future. The second is a set of immediately actionable recommendations that will focus on more targeted regulatory issues that can be addressed in the short term and within the existing institutional setting. All recommendations made in this report are summarized in annex I.

## A. Specific issues relating to foreign direct investment

### 1. Domestic investment legislation

**The legal framework provides ample treatment and protection guarantees for FDI.** Openness to FDI is enshrined in domestic legislation, and there are no discriminatory provisions against foreign investors. FDI is allowed in all sectors, and very few ownership limitations apply, related to national security considerations. Foreign investors are granted national treatment and are not given preferences in establishment. Expropriation rules, based on public interest, apply equally to domestic and foreign investments. However, FDI laws do protect foreign investors against subsequent regulatory changes that would result

in a less favourable environment. Such protection is not extended to domestic investors.

**Investment laws at the level of Bosnia and Herzegovina and the entities are in accordance with each other and consistent with an open and modern FDI policy regime.** The Law on the Policy of Foreign Direct Investment in Bosnia and Herzegovina (henceforth: the Bosnia and Herzegovina law) is the country's framework FDI law.<sup>11</sup> It offers liberal treatment for FDI and defines the rights and obligations of foreign investors. The entity investment laws are drafted in the same spirit and in line with the Bosnia and Herzegovina law.<sup>12</sup> They provide more detailed provisions to facilitate implementation but do not deviate from the Bosnia and Herzegovina law with respect to key treatment and protection guarantees. Thus, the three laws form a coherent legal framework for FDI that is clear, permissible and virtually uniform.

**There are no restrictions to FDI entry, and foreign ownership limitations apply only in few cases.** The open policy toward FDI is defined in article 3 of the Bosnia and Herzegovina law which specifies that foreign investors are entitled to invest in "any and all sectors of the economy". Foreign ownership limitations, as specified in the law, apply only to two "restricted" sectors: (a) manufacture and sale of arms, ammunition, explosives and military equipment, and (b) media, defined as television and radio broadcasting (amending Law 22/2015). Foreign investment in these sectors requires prior approval from the competent body of the respective entity and shall not exceed 49 per cent of

the equity.<sup>13</sup> However, entity governments can waive the 49 per cent foreign ownership limitation on FDI in the arms, ammunition and military equipment sector (article 4).

**National treatment in pre- and post-establishment is guaranteed by the investment laws.** The Bosnia and Herzegovina law stipulates that foreign investors shall have the right to entry, excluding the restricted sectors exemptions mentioned above, in the “same form and under the same conditions” as residents of Bosnia and Herzegovina (article 3). It also specifies that, once established, foreign investors shall have the “same rights and obligations as the residents” of Bosnia and Herzegovina and that Bosnia and Herzegovina and the entities “shall not discriminate with respect to foreign investors in any form” (article 8). Moreover, any restrictions arising from the need to ensure public order, such as considerations concerning public health and the protection of the environment, shall equally apply to both domestic and foreign investors (article 15).

**The Bosnia and Herzegovina law defines an open foreign exchange regime.** Foreign investors have the right to open foreign currency accounts in any commercial bank in Bosnia and Herzegovina; all payments related to their investments in Bosnia and Herzegovina can be freely converted too (article 11). Furthermore, foreign investors have the right to transfer abroad freely and without delay (after payment of fiscal obligations) proceeds resulting from their investment in Bosnia and Herzegovina, including profits, dividends, interest, funds from liquidation or other divestments.

**Expropriation rules are adequate and follow modern practice.** Foreign investors enjoy the same property rights as Bosnia and Herzegovina nationals (reciprocal treatment is required from countries which were part of the former Socialist Federal Republic of Yugoslavia, article 12). Expropriation, or any requisition measures which are tantamount to it, are only permissible in the public interest, in accordance with the law, without any type of discrimination and against the payment of appropriate compensation (article 16). The Bosnia and Herzegovina law clarifies that compensation is deemed appropriate if it is adequate, effective and prompt and that it “shall meet international standards”. Entity property laws<sup>14</sup> define “appropriate compensation” as an amount that cannot be lower than the market value of the property at the time of expropriation. The property laws allow the owner of the property to contest the decision and conditions of expropriation. There have been no cases of expropriation of

foreign investment to date in Bosnia and Herzegovina (United States [of America] Department of State, 2014).

**Disputes between investors and the State fall under the jurisdiction of domestic courts by default.** The Bosnia and Herzegovina law prescribes that foreign investment disputes shall be settled in the relevant courts of Bosnia and Herzegovina. However, interested parties can agree to another procedure to settle a dispute, including domestic or international conciliation and arbitration (article 17).

**Protection granted under the law is wide reaching.** Article 20 of the Bosnia and Herzegovina law certifies that the “rights and benefits of foreign investors granted and obligations imposed, by this Law, cannot be terminated or eliminated by the subsequently passed laws and regulations”. The article continues by clarifying that if subsequent passed laws are more favourable, then foreign investors “shall have the right to choose under which regime the respective foreign investment will be governed”. This type of language is unusual in national investment legislation, as it reduces the ability of the public institutions to regulate on investment policy in the future. Moreover, in principle, if less favourable regulations were to be introduced, these would only affect domestic investors, creating a dual regulatory regime that discriminates against nationals and favour foreigners.

## 2. International investment agreements

**Bosnia and Herzegovina’s network of international investment agreements (IIAs) covers most of its main investment partners.** As of September 2014, Bosnia and Herzegovina had concluded 40 bilateral investment treaties (BITs), 39 of which have entered into force (see annex II). Most BITs were concluded in the 1990s and 2000s. It is worth noting that of Bosnia and Herzegovina’s main investment partners only the Russian Federation does not have a BIT with Bosnia and Herzegovina. With the exception of six BITs,<sup>15</sup> the treaties concluded by Bosnia and Herzegovina include a requirement that investments must be made in accordance with host country laws and regulations.

**BITs concluded by Bosnia and Herzegovina tend to have a broad asset-based definition of investment.** Only the BIT with Turkey excludes portfolio investments from the definition. Nine BITs clarify that in order to be protected, the legal entities covered under the BITs should be carrying out substantial or real business activity.<sup>16</sup> Such a clarification allows contracting parties to deny treaty protection to those

companies that have no substantial business activity in the territory of the party under whose laws they are constituted. A large number of BITs cover not only citizens of the other contracting party, but also individuals, who qualify as permanent residents under the domestic laws of the other contracting party.

**Most BITs provide national treatment, fair and equitable treatment, and protection from expropriation.** National and the most-favoured nation (MFN) treatment are typically offered at the post-establishment phase.<sup>17</sup> The BITs with Turkey and the Islamic Republic of Iran include a clarification that national treatment should be provided to foreign investors who are “in like circumstances” or in a comparable situation to domestic investors. The BIT with Spain specifies that measures taken for reasons of public security and order or public health shall not be deemed to violate the national treatment standard. The BITs concluded by Bosnia and Herzegovina also include an MFN carve-out regarding membership in regional customs unions and taxation issues.<sup>18</sup> In addition, the majority of BITs include a fair and equitable treatment (FET) obligation. However, only the BITs with the Islamic Republic of Iran, the Netherlands, Qatar, San Marino, Spain and Sweden qualify FET by making a reference to international law. Finally, the BITs generally include a clause on indirect and direct expropriation and provide for compensation for losses. All BITs also include a provision for a free transfer of funds. Only six of the BITs contain free-transfer exceptions; two have a balance-of-payment exception and four have other specific exceptions relating to the fulfilment of financial obligations, for instance.

**Investor–State dispute settlement (ISDS) mechanisms are found in all of Bosnia and Herzegovina’s BITs and many also include umbrella clauses.** The ISDS mechanisms permit any type of dispute relating to an investment to be submitted to arbitration. The BITs allow arbitration to be initiated at the International Centre for Settlement of Investment Disputes (ICSID) or under the United Nations Commission on International Trade Law (UNCITRAL) Rules.<sup>19</sup> Two BITs (Qatar and Austria) require compulsory ADR procedures before recourse to arbitration. Several others permit it at the investor’s choice. In addition, a large number of BITs include an umbrella clause, i.e. the commitment to observe any investment obligation entered into by the State in addition to the BIT. This provision effectively elevates any host State commitments towards investors (e.g. in investment contracts) to an international treaty obligation, thus providing, among others, access to

international arbitration. There has been only one known ISDS case brought against Bosnia and Herzegovina that was settled by the parties.<sup>20</sup>

**Aside from BITs, Bosnia and Herzegovina has concluded five other IIAs** These are the following: (a) the preferential trade agreement with the EFTA; (b) the Stabilization and Association Agreement with the European Union; (c) the CEFTA; (d) the Energy Charter Treaty; and (e) the bilateral preferential trade agreement with Turkey. All these international treaties have some investment component with varying degrees of commitments, from basic obligations to the free transfer of funds (Stabilization Agreement with the European Union) to substantive investment protection that also foresees public health, safety or environmental exceptions to investment obligations (trade agreement with EFTA and CEFTA).

### 3. Recommendations

**Recommendation I.A.1** Consider abolishing or amending article 20 of the Bosnia and Herzegovina investment law and similar provisions in the entity investment laws so that policymakers retain the right to introduce and equally apply, without discrimination between domestic and foreign investors, regulatory changes to the legal investment framework.

**Recommendation I.A.2** Modernize international investment policy with a view to strengthening the sustainable development dimension of IIAs as outlined in the IPFSD. Taking into account the sustainable development dimension when negotiating BITs could be done by including, for instance, provisions that (a) focus the treaty scope more narrowly; (b) clarify obligations by crafting detailed clauses (e.g. on FET and indirect expropriation); (c) carefully regulate access to ISDS; and (e) strengthen investment promotion provisions. In this regard, Bosnia and Herzegovina could use the model BIT formulated with the assistance of UNCTAD as a basis for treaty revision.

## B. Company operations

### 1. Business registration

**Business registration is onerous in Bosnia and Herzegovina but some reform to facilitate it is taking place.** Bosnia and Herzegovina ranked relatively low in the starting-a-business indicator of the World Bank’s *Doing Business 2015* – 147 out of 189 countries; this is the lowest

score in SEE.<sup>21</sup> According to the survey, it would take 11 procedures and 37 days to open a limited liability company at a cost of 14.6 per cent of income per capita. Republika Srpska has recently undertaken reforms to facilitate the process of starting a business (see below) but potential improvements are not captured in the Doing Business survey as there is no subnational data.<sup>22</sup>

**The business registration legislation has been mostly harmonized.** The entities first harmonized the business registration procedures in response to the introduction of the Bosnia and Herzegovina-level Framework Law on Registration of Business Entities in Bosnia and Herzegovina<sup>23</sup> in 2004 and the adoption of nearly identical entity business registration laws the following year. Each entity has since introduced new laws to further streamline the registration process.<sup>24</sup> Another significant achievement of the Bosnia and Herzegovina-level framework law was the establishment of a centralized business registry.<sup>25</sup> The creation of this registry is an important step toward ensuring transparency and access to public information, but complete data integration between has yet to be achieved.

**However, significant differences in implementation exist.** Republika Srpska has recently taken further steps to simplify procedures to reduce the time and cost of business registration. Following amendments to the entity law in 2012 and 2013, some of the fees related to business registration in Republika Srpska have been reduced, including notarization costs<sup>26</sup> and the initial capital requirement (down from KM 2,000 to KM 1), and the court tax on initial foundation has been abolished. Perhaps the most significant change has been the introduction of a one-stop shop (OSS) service under the Agency for Mediation, Information and Financial Services (APIF) in December 2013. Under the OSS service, once APIF receives a complete and notarized application, it must process the request within three working days. The second phase of implementation of the OSS service, expected by 2015, will introduce online registration so that interested parties will be able to register a business electronically without having to visit an APIF office. Improvements in business registration made by Republika Srpska are evident when compared to the registration procedure in the Federation of Bosnia and Herzegovina which is still done through the ordinary court system (table 2).

**The legally mandated time frames for registration procedures are often not respected.** Many stakeholders observed that courts in Bosnia and Herzegovina are

overwhelmed by a backlog in cases and are unable to register companies in a timely fashion. There are 10 registration courts in the Federation of Bosnia and Herzegovina (one for each canton) and 5 in Republika Srpska. The move towards an OSS service in Republika Srpska is a welcomed development, and since APIF has been charged to administer business registration, access has increased to the 10 APIF business units in the entity. Other procedures related to business registration also tend to delay and become lengthy, like applying for municipal approval (Federation of Bosnia and Herzegovina only) or applying for a company tax identification number. Also, judges deciding on the approval of an application often have different views and may ask for additional documentation not required by law and reach different conclusions. Article 55 of the Federation of Bosnia and Herzegovina registration law, for example, allows for the suspension of the registration procedure if the registration court (judge) suspects the existence of a fact or irregularity that may determine whether the application merits approval or not, until a competent court has ruled on the matter, resulting in lengthy suspensions.

**Some procedures can be further streamlined to reduce time and costs.** Information sharing between different public administrations can be improved in order to facilitate business registration. For example, one of the steps necessary to register a business is providing proof that the founding members do not have any outstanding debts. To this end, the interested party must obtain a certificate of proof from the Registry of Fines, a procedure that can take up to seven days.<sup>27</sup>

**Other requirements in the registration process are antiquated or unnecessary and could be dispensed with.** The use of company stamps, for example, is no longer mandatory in most countries of the European Union and OECD. Many countries that have adopted regulations supporting electronic signatures have been able to dispense with company stamps altogether. The imposition to have companies that hire more than 15 workers draft a rule book on employment conditions and regulations is also unusual and seems unwarranted. A company's internal employment policy is usually developed organically to meet the needs of the firm's workers and employers.

**The involvement of notaries in the business registration process is superfluous in the perception of many investors.** The involvement of notaries in certifying establishment contracts and status changes of enterprises

Table 2. Business registration procedures in the Federation of Bosnia and Herzegovina and Republika Srpska

Federation of Bosnia and Herzegovina			Republika Srpska		
Step		Cost (KM)	Step		Cost (KM)
1	Establishment contract/decision (by notary)	300	1	Establishment contract/decision*	203.5
				Verification fee (by notary)	3.5
				Contract fee (by notary)	200
2	Payment of initial capital (minimum)	2 000	2	Payment of initial capital (minimum)	1
3	Registration at competent court	555	3	Registration at APIF	100–120
	Registration fee	405			
	Publication fee ( <i>Official Gazette</i> )	150			
4	Company stamp	20-50	4	Company stamp	20-50
5	Opening a bank account	No charge	5	Opening a bank account	No charge
6	Registration at tax administration	No charge	6	Registration at tax administration	No charge
7	Municipality notification	15			
8	Lawyer fees	600			
<b>Total cost (minimum)</b>		<b>3 490</b>	<b>Total cost (minimum)</b>		<b>324.5</b>

Source: FIPA

Notes: \* = Single-member limited liability companies do not require notarization of the act, only certification of signature, which costs KM 2.

are required by law, even though these are relatively straightforward procedures that could be directly submitted to the registration courts by the companies. The value added provided by notary services in the registration process is nominal, and many view it as unnecessarily adding to costs and delays. In Republika Srpska, the involvement of notaries in the registration of single-member limited liability companies has been recently reduced (table 2). In the Federation of Bosnia and Herzegovina, the latest amendment to the law on the registration of business entities, in 2014, has also reduced the number of procedures and documents requiring verification by a notary (such as those related to the change in capital, in business name, activity or seat). Making the use of notaries optional is considered a good practice for business registration reform and has been incorporated by countries in the region like the former Yugoslav Republic of Macedonia (IFC, 2013).

## 2. Licences and permits

**The administration of business licences and permits is complex and often inefficient** Most licences and permits are administered at a subnational level in Bosnia and Herzegovina and sometimes by more than one level of government, creating certain confusion and overlap in responsibilities. For example, in the Federation of Bosnia

and Herzegovina, depending on the type of licence, it could be issued by the entity, the canton or the municipality. In some cases, the positive opinion or consent from all levels are needed before issuing a permit. Even though by-laws governing the issuance of business permits and licences are generally drafted at the entity-level, their application falls under the responsibility of the municipalities, which also have autonomy to set the according fees. The competence of local administrations in regulating business licensing is variable in quality and efficiency with few examples of successful, proactive municipalities. The experience of obtaining the appropriate licensing to commence operations can vary greatly from one municipality to the next. Moreover, local administrations have sufficient discretionary power and can leverage the complexity of the system to delay licensing for unwanted investment projects.

**The administrative burden related to business regulation in Bosnia and Herzegovina is high in comparison with the region.** The number and types of business permits in Bosnia and Herzegovina are not that different from other countries in SEE, but the administrative burden to the private sector is higher. The IFC 2013 *Enterprise Survey* shows that 8.4 per cent of firms identified business licensing and permits as a major constraint and that 3.9 per cent rated it as the top constraint. While these statistics do not



seem particularly high, they are worse than other countries surveyed in the region.<sup>28</sup> For example, the share of time spent by senior management dealing with requirements of government regulation in Bosnia and Herzegovina was reported to be 14.5 per cent, compared with 13.5 per cent in Serbia and 10.1 per cent in Slovenia.

**Obtaining construction permits remains an important obstacle to investment.** The World Bank's 2015 *Doing Business* ranks Bosnia and Herzegovina 182 out of 189 countries in its dealing-with-construction-permits indicator; the lowest score in SEE. The regulatory burden is differentiated across the country, as reflected in subnational statistics, but overall, the time and cost to obtain construction permits is excessive when compared with peers (table 3). Obtaining construction permits is a long decision-making process that involves various public agencies. For instance, before construction can begin on a site, the applicant must obtain the approval from the municipality, the cadastre, the land registry, local utility services (e.g. water, electricity, telecommunications), the Institute for Protection of Monuments and, depending on the size of the construction, the entity (or canton) ministry for physical planning, among others. A missing link in the complex chain of decision-making can stall construction for months and, a key weakness in Bosnia and Herzegovina is that, no one agency has the oversight or supervision over the entire process. In this context, successful completion of a project often depends on the synergy and cooperation that the investor might establish with the municipality.

### 3. Inspections

**Bosnia and Herzegovina has made progress in consolidating the work of inspectorates at the entity level.** The entities have created independent administrations to coordinate the work of inspectorates that were formally part of the line ministries. This consolidation of inspection bodies was meant to clarify overlaps and duplications of jurisdictions as well as to establish detailed process rules for all inspections and to prevent abuses. In the Federation of Bosnia and Herzegovina, the Federal Administration for Inspections was established in 2007 and is responsible for coordinating the work of 10 inspection units,<sup>29</sup> while five still remain in line ministries. Likewise, Republika Srpska Administration for Inspection, created in 2006, is responsible for the coordination of 13 inspection units.<sup>30</sup> It is worth noting that, in both entities, fiscal inspection bodies have been kept separate. As part of a technical assistance project funded by USAID,<sup>31</sup> the entity inspection administrations

have introduced standardized inspection checklists and an automated Inspection Management System (IMS) that collects data to facilitate inspection coordination and supports risk-based management. As a result, the number of inspections businesses has to deal with on an annual basis has reduced by half or more (IFC, 2011).<sup>32</sup>

**Overlap in jurisdiction with inspection bodies in lower levels of government is an issue, particularly in the Federation of Bosnia and Herzegovina, but improvements should be felt soon.** Despite efforts to enhance coordination at the entity level, private sector representatives mention that they are subject to numerous and sometimes repetitive inspections by authorities at different levels of government. The division of labour among inspectors at higher and lower levels of government are not always clear and not effectively communicated to businesses either. In the Federation of Bosnia and Herzegovina, for example, entities and cantons both have the authority to conduct inspections and may do so without consulting each other. In this regard, it was reported that a new Federation of Bosnia and Herzegovina law on inspection of October 2014 should help address some of these issues, at least in the area of food safety.

**Investors complain that inspectors often have a confrontational attitude and rarely give assistance to comply with regulations.** While there are signs of change, investors allege that more often than not, inspectors, particularly in the fiscal domain, are more preoccupied with finding faults and giving fines than with helping businesses abide by required standards. Little guidance is given on what steps a businesses can take in order to redress infringements and comply with the law. Some investors also report instances where inspectors have abused their power, threatening to suspend the company's operation over minor infractions or directly engaging in corruption. In order to support the alignment of inspections to European Union requirements, the World Bank and the Swedish International Development Cooperation Agency (SIDA) have set up a \$5 million trust fund. The fund aims at improving inspection services and the information and data exchange system among institutions in Bosnia and Herzegovina, and at promoting capacity-building within institutions (World Bank Group, 2015).

### 4. Trade policy and facilitation

**Bosnia and Herzegovina has a liberal trade policy and is working towards integrating into the multilateral**

**trading system.** The trade regime is governed by the Bosnia and Herzegovina-level Law on Foreign Trade Policy,<sup>33</sup> which unequivocally embraces principles of free trade, including the prohibition of imposing quantitative restrictions (article 6). Bosnia and Herzegovina has been in the process of joining the World Trade Organization (WTO) since 1999, working continuously to align its trade policy with multilateral rules and it is expected that the process will be finalized in the near future.<sup>34</sup> As mentioned in the context, through its network of trade agreements, Bosnia and Herzegovina has preferential market access to its main trading partners, namely the European Union, CEFTA and Turkey.

**Trade procedures are permissive overall and in accordance with regional standards.** Trade procedures, in line with CEFTA obligations, are regulated by the Law on Customs Policy<sup>35</sup> and the Decision on Implementing Regulations of the Law on Customs Policy.<sup>36</sup> There are no custom duties on exports, while imports are subject to custom duties (6.8 per cent simple average MFN tariff), VAT payment (17 per cent) and excise taxes where applicable (e.g. alcohol, tobacco, fuels), as defined in the Law on Excise.<sup>37</sup> Licensing, justifiable by legitimate public policy concerns, is required for the export and import of some goods, including trade in goods for reproduction and protection of animals, goods for reproduction and the protection of plants, opiates, medications and weapons and ammunitions. Proceeds from exported goods and services must be collected and repatriated in full within 180 days of the date of exportation (i.e. customs clearance) or delivery of services. Exportation of goods and services with a contracted payment period longer than six months is considered a loan.<sup>38</sup> In addition, special customs regimes that grant exemptions to some duties and taxes exist to facilitate re-export industries.<sup>39</sup>

**Institutional reform has had a positive impact on trade facilitation.** Since 2006, the customs administration of Bosnia and Herzegovina has been centralized under the Indirect Taxation Authority (ITA). The Authority has received technical assistance from different development partners to bring customs administration in line with European Union standards and WTO norms. UNCTAD has assisted Bosnia and Herzegovina in improving the quality and efficiency of customs administration through the automation of procedures (box 2). Efficiency gains in customs administration are reflected in international statistics.<sup>40</sup>

**Failure to meet sanitary and phytosanitary standards is limiting Bosnia and Herzegovina's export potential.**

While Bosnia and Herzegovina is a signatory to most international SPS agreements<sup>41</sup> and has European Union-compliant framework legislation in place, there is limited technical capacity in the country to enforce these standards. For instance, out of 53 registered sanitary, phytosanitary and veterinary laboratories, only 12 have received national accreditation and none have received European Union accreditation.<sup>42</sup> According to the CEFTA market access barriers database, most cases of non-tariff barriers to trade are reported to be SPS measures.<sup>43</sup> The authorities have taken several initiatives to improve in this area. For instance, Bosnia and Herzegovina has created a focal point for SPS measures at the Ministry of Foreign Trade and Economic Relations (MOFTER), although it is not yet fully functional. The Institute of Standardization (BAS), created in 2004 finally began operations in 2007 and is now a member of the European Committee for Standardization and working towards the adoption of the European Union New Approach directives. The Institute for Accreditation (BATA) is also operational and certified by the International Organization for Standardization (ISO). Similarly, the Food Safety Agency and the recently created State Plant Health Agency have been bolstered. However, Bosnia and Herzegovina is still lagging behind other countries in the region and more work in the area of sanitary and phytosanitary standards (SPS) is needed.

## 5. Recommendations

### *Best-case scenario*

**Recommendation I.B.1.** Delink courts from business registration in the Federation of Bosnia and Herzegovina and replace it with a simplified procedure whereby municipal administration centres ensure that the applications submitted are complete and meet all requirements as prescribed by the entity and Bosnia and Herzegovina laws for approval.

**Recommendation I.B.2.** Establish a fully functional online business registration system that is identical across Bosnia and Herzegovina. The online system should allow interested parties to complete their applications and submit them electronically for approval. Given that Republika Srpska is pioneering an electronic OSS service, other entities could learn from their experience in this regard. Bosnia and Herzegovina may also consider seeking the assistance of the UNCTAD eRegistration programme.

**Recommendation I.B.3.** Make optional the use of notaries in the business registration process.

**Box 2. UNCTAD is assisting in the modernization of customs administration**

**ASYCUDA is a computerized system designed by UNCTAD to administer a country's customs.** ASYCUDA Version 3 (ASYCUDA++) was implemented in Bosnia and Herzegovina, from 1999 to 2003, first as three separate customs IT systems in the two entities and in Brčko district; subsequently it merged into one single customs IT system and was implemented nationwide. ASYCUDA++ was the technical backbone for the creation of the Indirect Taxation Authority (ITA), the first federal government agency dealing with customs issues.

**The current version of ASYCUDA is facilitating customs procedures in Bosnia and Herzegovina.** ITA ASYCUDA++ is used by 2,500 users in 80 locations throughout the country on a daily basis and enables the processing of an average of 2,100 electronic customs declarations daily (representing goods with the value of KM 4.3 million). It also enables the consistent application of the law at national level, 100 per cent direct trader input, electronic processing of all customs declarations, management of risks of fraud and combating corruption.

**New features in ASYCUDA's latest version will yield further efficiency gains in customs administration in the near future.** ITA is migrating now to the newest version – ASYCUDAWorld (Internet-based, compliant with European Union requirements). It will assist ITA to increase its operational capacity through the implementation of enhanced features, e.g. electronic payments, e-licences/authorizations/permits, multi-agency risk-management, the integrated tariff, the integrated system of management of guarantees, simplified European Union declarations, a system of real-time operational/enforcement alerts (e-mail, SMS) and exchange of data with other OGAs. This will further facilitate the legitimate trade while increasing the efficiency of customs controls.

*Source:* UNCTAD's ASYCUDA programme, [www.asycuda.org](http://www.asycuda.org)

**Recommendation I.B.4.** Harmonize all business licences and permits as well as the rule books for their implementation across the country.

**Recommendation I.B.5.** Coordinate all inspections at the entity level, make all inspectors accountable to the entity inspectorates and harmonize inter-entity inspection practices.

*Immediately actionable*

**Recommendation I.B.6.** The entities should cooperate to ensure that business registration data found in entity registries are fully integrated into the centralized registry.

**Recommendation I.B.7.** Share access to digital information among public agencies involved in business registration to expedite procedures. Courts could have access to the Registry of Fines, for instance;

**Recommendation I.B.8.** Abolish the requirement of a company stamp for business registration. If Bosnia and Herzegovina moves toward an online business registration system, company stamps can be replaced by electronic signatures.

**Recommendation I.B.9.** Abolish the requirement to draft a rule book on internal employment conditions for companies employing more than 15 workers.

**Recommendation I.B.10.** Continue to provide training in business licensing and permitting to civil servants at the municipal level.

**Recommendation I.B.11.** Establish deadlines for subentity governments to deliberate on approval or issuing of licences so that, if no valid objection is raised within the deadline, applications meeting all requirements shall be approved automatically.

**Recommendation I.B.12.** Design ethics and anti-corruption courses for inspectors and make them mandatory.

**Recommendation I.B.13.** Strengthen the sanitary and phytosanitary government agencies and seek international accreditation for local laboratories to facilitate trade in agricultural and animal products.

## C. Taxation

### 1. Corporate income taxation

**Bosnia and Herzegovina has adopted attractive corporate income tax rates.** Bosnia and Herzegovina has one of the lowest corporate income tax rates in the region, and the overall tax burden on business is low, despite the existence of various minor taxes, stamps taxes and parafiscal charges at subentity levels of government. The general corporate income tax (CIT) rate is 10 per cent across the country; withholding taxes on payments made abroad, outside of dividends, are harmonized at 10 per cent as well. The tax regimes also share some features like loss carry-forward and accelerated depreciation (table 3).

**Different provisions, definitions and interpretations of entity laws, however, increase the regime's complexity.**

In the Federation of Bosnia and Herzegovina and Brčko district, the taxable base is determined in accordance with International Accounting Standards (IAS), while in Republika Srpska it is not. Dividends and other profit distributions received are exempt from profit tax in all entities but, in addition, the Republika Srpska law in article 7 specifies that interests on securities and bank deposits are also exempt. The list of deductible expenditures and the rules for their calculation vary across entities. The Federation of Bosnia and Herzegovina law recognizes some reservations as deductible expenditures if they are used within a specified time period. These are part of a taxpayer's revenues reserved for contingent expenses, including severance pay, initiated court procedures, natural resources renewal and guarantee time frames (Federation of Bosnia and Herzegovina law, article 12).

**Depreciation rules are similar but with distinct features, including for accelerated depreciation.**

In general, depreciation is taken on a straight-line basis, and depreciable fixed assets are those whose acquisition value exceeds KM 1,000 and whose useful life exceed one year. The depreciation rates applied depend on the type of asset and are defined in the entity rule books. It is worth noting that information technology (IT) assets, both hardware and software, can be deducted in the year of purchase in all entities. In the Federation of Bosnia and Herzegovina, depreciation of intangible assets, including goodwill,<sup>44</sup> is allowed, up to 20 per cent annually. Accelerated

depreciation in the Federation of Bosnia and Herzegovina is allowed at rates of up to 50 per cent higher than prescribed rates for assets that are used for (a) the prevention of air, water and land pollution and noise reduction, and (b) education and training of staff (Federation of Bosnia and Herzegovina law, article 19). In Republika Srpska and Brčko district, accelerated depreciation is allowed for machinery and equipment and applied over a three-year period; 40 per cent is deducted in the first year, 30 per cent, in the second and third.

**Avoiding double taxation is a concern.** In general, resident<sup>45</sup> taxpayers in Bosnia and Herzegovina are subject to worldwide taxation, and income sourced from abroad or from other entities is included in taxable income; the exception is Brčko district which distinguishes income sourced from abroad (included in taxable income) and sourced from other parts of Bosnia and Herzegovina (not included in taxable income). Losses incurred in other parts of Bosnia and Herzegovina are not recognized for tax purposes in any of the entities. However, some double taxation relief provisions are in place in entity legislation. In the Federation of Bosnia and Herzegovina, resident taxpayers are granted a tax credit for the income tax paid on business units they might have in other entities. The tax credit is limited to the tax due in the Federation of Bosnia and Herzegovina and may be carried forward for five years (Federation of Bosnia and Herzegovina, Law on Corporate Income Tax, article 35). Non-resident taxpayers in the Federation of Bosnia and Herzegovina that have their principal place of business in another entity of Bosnia and Herzegovina are

Table 3. Overview of direct tax regimes in Bosnia and Herzegovina

	Brčko district	Federation of Bosnia and Herzegovina	Republika Srpska
Corporate income tax (CIT) rate		10%	
Capital gains (included in taxable ordinary income)		10%	
Withholding taxes on payments abroad			
Dividends	0%	5%	0%
Interests	10%	10%	10%
Royalties	10%	10%	10%
Fees	10%	10%	10%
Loss carry-forward		Up to 5 years	
Depreciation method		Straight-line method	
Accelerated depreciation		Yes, varying assets and rates apply	
Advanced rulings		Yes	No

Source: UNCTAD

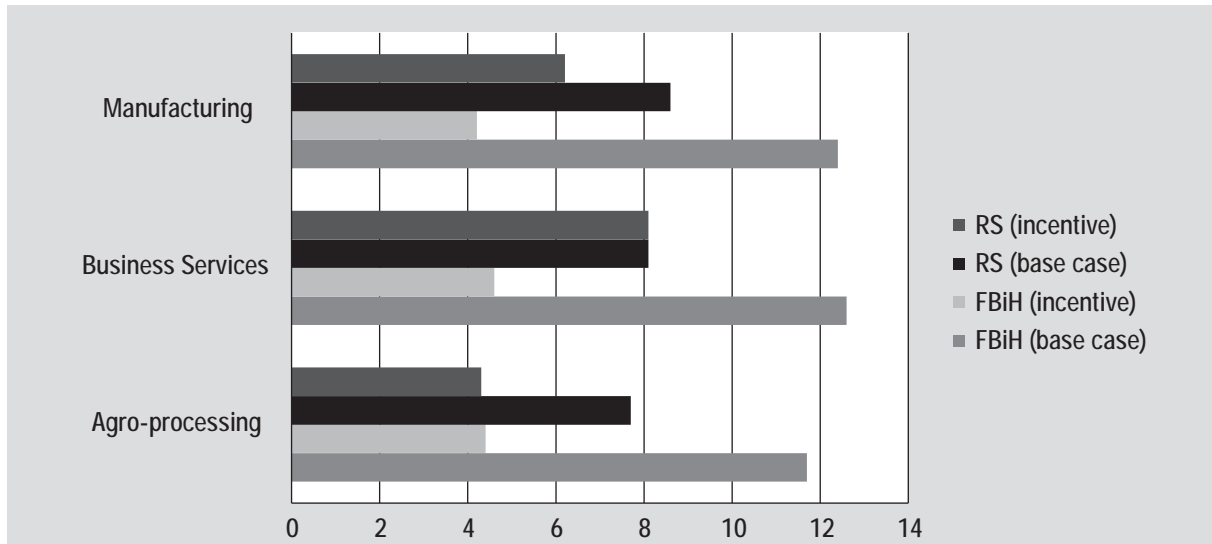
exempt from paying profit tax in the Federation of Bosnia and Herzegovina, a principle that is not reciprocated by other entities (Federation of Bosnia and Herzegovina, Law on Corporate Income Tax, article 34).<sup>46</sup> In Republika Srpska, the double taxation relief for resident companies is granted in the same way as in the Federation of Bosnia and Herzegovina, but the resident taxpayer has the alternative to treat the income tax paid abroad as an expenditure that can be deducted from the taxable base (Republika Srpska Law, article 26). In Brčko district, the option to treat taxed income as a deductible expenditure is only available for income sourced from abroad. Despite these provisions, investors still express concern over double taxation issues. For example, some indicate that tax authorities are hesitant in recognizing tax credits for income taxed in other entities and that they insist on taxing the activities of business units in their jurisdiction, leading to double taxation. This attitude of mistrust on behalf of the tax authorities is in part explained by the lack of coordination among them, but also by the fact that the current fragmented direct taxation system leaves a gap for companies operating across entities to exploit the differences in tax regimes to practice arbitrage and minimize fiscal contributions

**Group treatment is only possible for businesses operating in the same entity.** In the Federation of Bosnia and Herzegovina, the parent company must control at least 90 per cent of its direct subsidiaries and, once formed, the group must file a consolidated tax return for at least five years in order to claim eligibility. In Republika Srpska and Brčko district, the parent company must control at least 80 per cent of voting rights in the subsidiary companies; there is no requirement on the amount of years a group must file consolidated taxes. In addition, Republika Srpska and Brčko district laws have provisions that give the respective tax authorities the right to negotiate an agreement that allows a taxpayer that operates in more than one entity to file a single tax declaration to the tax authority where it has the principal place of business. If such an agreement is made, then the revenue from income tax will be distributed among the entities in accordance with the share in gross revenues the taxpayer obtains through its subsidiaries in the different entities (Republika Srpska Law, article 48; Brčko district Law, article 37).

**Tax incentives also vary across the entities and their impact is not monitored.** The Federation of Bosnia and Herzegovina provides full exemption from profit tax under three different schemes: (a) taxpayers whose exports amount to more than 30 per cent of their total turnover (which raises

WTO compliance issues); (b) taxpayers who in a period of five consecutive years invest at least KM 20 million in production in the territory of the Federation of Bosnia and Herzegovina and at least KM 4 million in the first year; and (c) taxpayers whose personnel during the year consists of more than 50 per cent of people with disabilities or special needs. A draft law awaiting approval in the Federation of Bosnia and Herzegovina Parliament is expected to amend these incentives.<sup>47</sup> No tax holiday is granted in Republika Srpska but there is a simplified tax regime for small enterprises that apply a reduced tax rate of 2 per cent on total turnover.<sup>48</sup> In addition, since 2012, taxpayers who invest in manufacturing equipment, plants and real estate may deduct the amount of investment from their taxable income, and taxpayers that hire at least 30 new employees for an indefinite period may deduct from their taxable income the personal income tax and social contributions paid on salaries of those employees (Republika Srpska Law on Profit Tax, articles 14a and b). Brčko district has adopted similar incentives to those of Republika Srpska, allowing deductions to the taxable income of a taxpayer who invests in machinery and hires new employees as well. These incentives aim at promoting economic development in some form or another, but there is no systemic cost–benefit analysis to evaluate their actual impact in any of the entities. If Bosnia and Herzegovina were to decide to offer more targeted incentives for strategic investment projects aligned with national development objectives, it would be advisable to follow a systemic cost–benefit analysis (see chapter 2).

**The lack of inter-entity coordination in designing incentives creates a risk for unhealthy competition and a race to the bottom,** where each entity concedes more and more benefits to attract investment. Figure 3 provides a comparison of the tax burden on investment in selected sectors in the Federation of Bosnia and Herzegovina and Republika Srpska, taking general and incentive scheme scenarios. It is based on the UNCTAD comparative tax methodology described in annex III. The tax modelling indicates that Republika Srpska has a lower tax burden on businesses in general but that incentives in the Federation of Bosnia and Herzegovina undercut this advantage in selected sectors. Although corporate tax rates are attractive and incentive schemes are in place to foster investment, the complexity of the tax administration in Bosnia and Herzegovina dampens the country's fiscal competitiveness.<sup>49</sup> This is particularly true for companies that operate in more than one entity; several complications arise from having to deal and comply with non-harmonized tax regimes and multiple authorities.

Figure 3. Inter-entity comparative taxation burden on investment (*Present value of tax, percentage*)

Source: Calculations by UNCTAD

**Anti-avoidance rules differ slightly across entities.** In Republika Srpska, a general anti-avoidance provision calls for cooperation with other tax authorities of Bosnia and Herzegovina. According to the rule book, the Republika Srpska tax authority also has the right to ignore the legal form of a transaction between taxpayers and investigate a transaction on the actual substance if there are suspicions of any tax avoidance practices, including interest-free loans, advance payments, delivering services and renting premises of sales of property below market prices. Transfer pricing rules are similar across entities but with different thresholds that determine whether companies are related and the method to determine the “arm’s length” or third party principle. Thin capitalization rules in the Federation of Bosnia and Herzegovina stipulate that interest and other costs of borrowing between related companies may not exceed the interest and costs of borrowing at the market; any difference between the market interest and the transfer interest will be treated as a dividend. Meanwhile, in Republika Srpska, if a company has received a loan from a related company with an interest rate below the market, it may deduct the amount paid in interest from its taxable base. There are no thin capitalization rules in Brčko district (IBFD, 2014).

## 2. Value added taxation

**Value added taxation, as all indirect taxes, is the competency of the Bosnia and Herzegovina level.** Starting in 2003, Bosnia and Herzegovina made thorough

reforms in its indirect taxation system to make the formulation of policy, administration and collection of indirect taxes the sole responsibility of the Bosnia and Herzegovina level. The Law on Indirect Taxation System<sup>50</sup> and the Law on Value Added Tax<sup>51</sup> were adopted to this end and today govern indirect taxation (i.e. value added tax, excise tax and customs duties). The value added tax (VAT) was introduced on 1 January 2006 and it is administered by ITA. VAT is the most important source of income for the central institutions.

### **Most resident companies are obliged to register for VAT.**

All individuals and companies that perform independent business activities for the purpose of generating income are subject to payment of VAT. Government agencies are not subject to VAT if they conduct transactions within their capacity of administrative authorities. However, they must pay the tax if transactions are carried out in competition with the private sector. Any individual or company whose annual taxable transactions exceed KM 50,000 or is engaged in agricultural or forestry activities and total cadastral income exceeds KM 15,000, must be registered for VAT purposes; companies operating below these thresholds may register on a voluntary basis. Non-residents who perform taxable business activities in Bosnia and Herzegovina but do not have an establishment are obliged to register for VAT and appoint a tax representative. Non-residents are entitled to VAT refunds within six months of filing an application.

**Bosnia and Herzegovina applies a low single VAT rate and allows for several exemptions.** All taxable supplies of goods and services<sup>52</sup> and imports of goods are subject to a flat VAT rate of 17 per cent, one of the lowest in the region.<sup>53</sup> Exports are zero rated. Activities of public interest, including education, medical, social, religious, and cultural services, are exempt from VAT (VAT Law, article 24). In addition, insurance and reinsurance services, supplies of immovable property (except for the first transfer of ownership rights), letting of residential property for a period longer than 60 days, leasing of agricultural land or woodland, and games of chance are exempt (VAT Law, article 25). Special exemption is also granted to economic activity, including importation, in free zones (VAT Law, article 30).

**VAT refund is standard and expedited for exporters.** Taxpayers are allowed to either claim a refund or a tax credit if the amount of the input tax paid (VAT) is higher than the amount of the output tax liability. If a tax credit is not used within a period of six months, it shall be refunded. Refunds shall be paid no later than 60 days after submitting an application and no later than 30 days for taxpayers whose main business is the export of goods. Taxpayers who do not receive a refund in time shall be entitled to interest at a rate prescribed by the law. Non-residents (without a permanent establishment) that perform no other economic activity in Bosnia and Herzegovina other than importation are entitled to full VAT refunds within six months of filing an application (VAT Law, article 53). However, the private sector has raised concerns that the definition of non-residents for the intent of VAT refunds is not adequately clear and thus ITA resorts to a non-exhaustive list of legal entities entitled to refunds found in the rule book that excludes individuals or companies that should be covered by the law (FIC, 2014).

**Investors claim that the procedure of obtaining an opinion from ITA is onerous, as it is a lengthy and non-transparent process.** Moreover, some claim that opinions issued by the Authority are inconsistent; depending on the department dealing with the issue, similar queries can arrive at very different decisions. This adds uncertainty and confusion among taxpayers. Furthermore, ITA opinions on tax issues are not made public so it is difficult for taxpayers to guide their actions by precedence established in previous cases. ITA argues that opinions cannot be made public because these are legally binding decisions made on a case-by-case basis and that private information on specific cases must be protected. On the other hand, ITA is working on expanding the questions and answers section

of its website for taxpayers' reference. It also points out that when a request for information from a taxpayer does not meet the requirements to warrant an opinion, it (the Authority) prepares information notes instead. The number of queries that are answered through information notes is much higher than the number of opinions issued and the delay to obtain an answer through an information note is also significantly less.

### 3. Real estate taxes

**Multiple property tax rates apply across the entities.** In the Federation of Bosnia and Herzegovina, property taxes are levied at the cantonal level, and the rates and conditions differ from canton to canton according to the law. The cantonal tax authority determines the applicable rate as a flat rate per square metre that varies, depending on the use of land or buildings.<sup>54</sup> In Republika Srpska, the Law on Property Tax<sup>55</sup> stipulates that the tax rate on real estate must be in the range of 0.05 to 0.50 per cent of the estimated market value of the property; the actual tax rate applied is determined by the municipality where the property is located. Some non-profit taxpayers are exempt from paying the real estate tax (e.g. government, diplomatic, cultural and educational entities). In Brčko district, the Law on Property<sup>56</sup> fixes the property tax rate in the range of 0.05 to 1 per cent of the estimated market value of the property, and the applied tax rate is decided on an annual basis by the Brčko district parliament.<sup>57</sup> In addition, municipalities in all entities have the prerogative to raise fees on land without restriction and these vary greatly.<sup>58</sup>

**The property transfer tax allegedly discourages the registration of real estate transactions but the entities have taken steps to address this disincentive.** Representatives of the private sector and several observers have indicated that many real estate transactions are not recorded due to high transfers taxes, leaving property transfers open to dispute.<sup>59</sup> This was certainly the case in previous years when the real estate transfer tax was as high as 15 per cent but recent reforms have lowered or abolished this type of tax. For example, in January 2012, the property transfer tax was abolished in Republika Srpska. In the Federation of Bosnia and Herzegovina the transfer tax remains but it has been reduced to 5 per cent of the market value of immovable property at the time of acquisition.<sup>60</sup> It is expected that property owners will be more likely to register transactions under the more lenient real estate taxation and contribute to updating the land registries and normalizing the real estate market to make it more dynamic.

## 4. Free zones

**Bosnia and Herzegovina has an unrestrictive and generous free zone regime.** The Bosnia and Herzegovina-level law on free zones<sup>61</sup> and the entity laws of the same name<sup>62</sup> regulate the free zone (FZ) regime in Bosnia and Herzegovina. FZs are defined in the Bosnia and Herzegovina law as parts of the customs territory of Bosnia and Herzegovina which are specially fenced and marked and where business activities are carried out under special conditions. Any industrial, commercial or service activity not endangering the environment, public health, property or national security can be carried out in FZs. The key requirement for FZs, and companies operating in it, is that at least 50 per cent of the total value of goods and services produced within a twelve-month period need to be exported. The founders can be national or foreign legal and natural persons. The Council of Ministers, MOFTER, and a special purpose commission<sup>63</sup> in each entity review applications for the establishment of FZs. Once established, the FZ becomes a legal entity of its own.

**The FZ regime offer several advantages to investors.** Companies in FZs are exempt from VAT and customs duties on imports and exports, except for customs processing fees. Goods or services supplied to Bosnia and Herzegovina's domestic market are subject to VAT. Each FZ must provide premises required for the work of the customs service in the zone. The FZ and its users may keep foreign currency earned in business operations in the FZ on a foreign currency account at an authorized bank. Foreign currency shall be disposed with freely for payments or for sale on foreign currency market; profit transfer and retransfer of investments shall be duty free. In addition, the FZ and users may freely take foreign currency loans for their business operations in the FZ which they must repay from the foreign currency infl w earned in the FZ. The entity FZ laws also have open-ended provisions that guarantee the rights and advantages offered in the legislation cannot be altered by subsequent amendments or laws if they are less favourable to the investor. The Republika Srpska law goes even further in that it grants full protection from nationalization or expropriation and that it ensures the right of zone users to employ workers from abroad freely "unless otherwise prescribed by the Republika Srpska Labour Law" in articles 7 and 8.

**Despite permissive conditions and advantages, the FZ regime is underutilized.** There are only four established FZs, all in the Federation of Bosnia and Herzegovina: Vogošća (Sarajevo), Holc (Lukavac), Hercegovine (Mostar) and Visoko

(Visoko). Several factors may explain this underutilization and the low FDI presence in the FZs. Since the entry into force of the interim trade agreement with the European Union, tariff rates on most imports are negligible or zero and the incentive to operate under the FZ scheme has declined considerably for the majority of investors doing business with the European Union. Some investors also claim that the customs and other tax exemptions granted under the FZ regime are not honoured in practice, including the exemption from VAT. Moreover, in the Federation of Bosnia and Herzegovina at least, the general tax exemption granted to companies that export at least the value of 30 per cent of annual turnover defeats the purpose of the FZ regime to a certain extent. Finally, given that Bosnia and Herzegovina is at an advanced stage of accession to WTO, the country will have to comply with the subsidies and countervailing measures (SCM) agreement, which will entail altering some aspects of the current FZ regime.<sup>64</sup> The current provisions of the entity laws that protect FZ users from future, less favourable regimes may be a source of contention if the FZ regime is changed to be compliant with WTO rules (i.e. WTO may find some aspects of the FZ regime to be a form of export subsidy and may ask Bosnia and Herzegovina to make regulatory changes it has committed to keep). As an alternative to FZs, many municipalities have taken the initiative to establish "business zones" that are tantamount to industrial parks equipped with the infrastructure (and in some cases the buildings) to house manufacturing, commercial and services companies.

## 5. Recommendations

### *Best-case scenario*

**Recommendation I.C.1.** The entities and Brčko district should harmonize their direct tax regimes so that they are applied uniformly across Bosnia and Herzegovina, including in the use of fiscal incentives

**Recommendation I.C.2.** Facilitate tax consolidation for companies operating in more than one entity, allowing them to file a single tax return by default without having to negotiate a special agreement to do so.

**Recommendation I.C.3.** Abolish the FZ regime and revise export incentives to ensure compliance with WTO rules, including the SCM agreement.

### *Immediately actionable*

**Recommendation I.C.4.** Establish formal channels of cooperation among the entities' tax authorities that envision



periodical meetings to share information and coordinate tax law enforcement.

**Recommendation I.C.5.** Republika Srpska and Brčko district could consider reciprocating the provision of the Federation of Bosnia and Herzegovina law stating that non-resident taxpayers are exempt from paying profit tax on their business units operating in an entity where they do not have their principal place of business.

**Recommendation I.C.6.** Republika Srpska could consider amending the profit tax law so that it requires companies to follow IAS to determine the taxable base.

**Recommendation I.C.7.** The Federation of Bosnia and Herzegovina could consider adopting stronger anti-avoidance provisions in its law so that it allows the tax authorities to investigate transactions, regardless of their legal form.

**Recommendation I.C.8.** The Federation of Bosnia and Herzegovina should abolish its tax incentive linked to export performance, as it would violate the SCM agreement of the WTO, an organization with which Bosnia and Herzegovina's accession process is at an advanced stage.

**Recommendation I.C.9.** Define the list of non-resident legal entities that are entitled to full refund of VAT in the rule book to include all individuals and companies that are envisioned in the VAT law.

**Recommendation I.C.10.** Expand the database of questions and answers on the ITA website so that it may serve as a reference for taxpayers.

**Recommendation I.C.11.** The Federation of Bosnia and Herzegovina could consider lowering the property transfer tax and making it unavoidable.

**Recommendation I.C.12.** Abrogate the open-ended provisions that protect investors in FZs from any future changes that would be less favourable. In Republika Srpska, this includes removing complete protection from expropriation and submitting it to clear criteria and conditions.

## D. Labour regulation

### 1. Labour protection and social security contributions

**The entity labour laws are not harmonized.** Although the labour law of the Federation of Bosnia and Herzegovina<sup>65</sup> and Republika Srpska<sup>66</sup> inherited many of the same

principles that date back to the Yugoslavian law, they have since evolved and deviated into distinct regimes with different rules and interpretations for an array of issues such as minimum wage, annual leave bonus, commuting allowance, payment of sick leave and maternity leave, and severance pay. (FIC, 2009). Deviations in labour legislation and its implementation can even occur within one entity, as in the Federation of Bosnia and Herzegovina there is no inventory of the labour and employment legislation enacted by the cantons; therefore, it is difficult to determine their compliance with entity-level regulation (ILO, 2008). As a result, investors find it complex to access and comply with all labour legislation requirements, particularly if they operate in more than one entity (or canton). This is problematic, as the country's unemployment rate, particularly as it concerns youth, is among the highest in the world.<sup>67</sup>

#### **The private sector interviewed by UNCTAD considers that labour regulations are too protective of employees.**

Employers are legally obliged to conclude collective agreements with their employees regulating the rights, obligations and responsibilities among the parties, including wages. Both entities have a template or general collective agreement that sets the minimum standards of protection and which must be followed in any given firm's collective agreement. Labour unions are allowed to represent workers' interests when negotiating these collective agreements. Investors allege that the protection granted to workers is high and that it is difficult and costly<sup>68</sup> to terminate contracts, even when the grounds for termination are legitimate, as defined in the law.<sup>69</sup> At the regional level, however, Bosnia and Herzegovina's protection of workers' rights is in line with peer countries, and its legislation is relatively lenient towards employers in some aspects (table 4). For example, the premiums on wages for overtime work and redundancy costs are among the lowest in the region.

**Social security contributions are high.** Social security contributions (SSC) are calculated differently by the entities (table 5). In the Federation of Bosnia and Herzegovina, SSC amount to 41.5 per cent of total gross salary; 31 per cent is withheld from salary (employee's share) and 10.5 per cent is paid in addition to salary (employer's share). In Republika Srpska, SSC amount to 33 per cent of total gross wages and it is entirely withheld from salary (employee's share). In Brčko district, SSC range from 31.5–36.5 per cent, depending on whether the employee is registered in the pension scheme of the Federation of Bosnia and Herzegovina or of Republika Srpska. Bosnia and Herzegovina has one of the heaviest SSC burdens in the region.<sup>70</sup>

Table 4. Labour regulations in Bosnia and Herzegovina are relatively flexible compared with those of the regio

Indicator	Bosnia and Herzegovina	Albania	Croatia	The former Yugoslav Republic of Macedonia	Montenegro	Serbia
<b>Difficulty of hiring</b>						
Fixed-term contracts prohibited for permanent task?	No	Yes	Yes	No	No	Yes
Maximum length of fixed-term contract including renewals (months)	24	No limit	No Limit	60	24	12
<b>Rigidity of hours</b>						
Premium for night work (per cent of hourly pay)	30	50	10	35	40	26
Premium work for weekly rest day (per cent of hourly pay)	20	25	35	50	0	26
Average paid annual leave for workers (days)	18	20	20	20	21	20
<b>Difficulty of redundancy</b>						
Retraining or reassignment obligation before redundancy?	Yes	No	Yes	No	Yes	Yes
Priority rules for redundancy	No	No	Yes	No	Yes	No
Priority rules for re-employment	Yes	Yes	Yes	No	No	Yes
<b>Redundancy costs (weeks of salary)</b>						
Average notice period for redundancy dismissal	2	10.1	7.9	4.3	4.3	0
Average severance pay for redundancy dismissal	7.2	10.7	7.2	8.7	6.9	7.7

Source: World Bank Doing Business 2015

Note: Whenever an average is reported, it is taken from the simple mean of what would apply for a worker with 1, 5 and 10 years of tenure.

**Labour disputes are settled through the ordinary courts in protracted processes.** Almost all labour disputes are settled in the ordinary judicial courts, involving a costly and unpredictable process that tends to favour employees. Legal uncertainty in the outcome of labour disputes is a major factor in determining the negative perception of businesses concerning workers' protection. Private sector representatives believe that these conditions deter companies from formally hiring more workers and contribute to Bosnia and Herzegovina's high unemployment and its large informal sector. Although the entity labour laws foresee and allow the use of ADR mechanisms for labour disputes, these are seldom used, in part because there is a general distrust of the enforceability of decisions arrived through these channels. In that sense, although the ordinary court procedures are lengthier, the enforcement of rulings is more secure.

**Bosnia and Herzegovina is committed to reforming its labour legislation.** The country was supposed to have adopted new legislation by the end of 2013 in line with its commitment under the stand-by agreement (2012) with IMF but failed to meet this deadline. In Bosnia and Herzegovina's

letter of intent to the Fund, it was stressed that the new laws would "(i) require all collective bargaining agreements to be time bound; (ii) give the Government a larger role in determining the level of minimum wages – including for young workers; (iii) promote differentiated wage setting based on skills and performance; (iv) rationalize severance payments while strengthening social protection of the unemployed; (v) step up labour inspections and increase penalties for labour law violations; and (vi) protect workers' rights consistent with International Labour Organization (ILO) standards and EC [European Commission] directives" (Bosnia and Herzegovina letter of intent to IMF, January 2014). As of June 2014, the authorities "continued to seek consensus with the social partners on new labour market legislation in the Federation of Bosnia and Herzegovina and Republika Srpska that is more conducive to job creation" (Bosnia and Herzegovina letter of intent to IMF, June 2014).

**Labour reform also has a prominent role in the Compact for Growth and Jobs in Bosnia and Herzegovina.** As a priority to move forward with the process of accession to the European Union, the country committed to implementing a reform package to reduce barriers to growth and

Table 5. Social security contributions in Bosnia and Herzegovina (Percentage of gross salary)

Type of contribution	Federation of Bosnia and Herzegovina		Republika Srpska		Brčko district	
	Employer	Employee	Employer	Employee	Employer	Employee
Pension insurance	6	17		18.5	6*	17* or 18
Health insurance	4	12.5		12		12
Unemployment insurance	0.5	1.5		1		1.5
Child protection	-	-		1.5		-
<b>TOTAL</b>	<b>41.5</b>		<b>33</b>		<b>31.5–36.5</b>	

Source: FIPA.

Note: (\*) rates apply only if the employee is registered in the Federation of Bosnia and Herzegovina pension insurance scheme.

### Box 3. Compact for Growth and Jobs in Bosnia and Herzegovina

In May 2014, the European Union Special Representative for Bosnia and Herzegovina convened a major conference aimed at helping the economic recovery of Bosnia and Herzegovina. The Forum for Prosperity and Jobs, organized in cooperation with IMF, the World Bank, the European Bank for Reconstruction and Development, and the Embassy of the United States, brought together representatives of government, the private sector and workers, along with international and domestic economic experts and citizens of Bosnia and Herzegovina who have insights on running businesses and creating jobs.

The conference proposed a number of measures aimed at tackling unemployment and corruption, restoring the flow of investment into Bosnia and Herzegovina, creating jobs and making the social protection system fairer and more efficient. These proposals have been developed into a compact for growth and jobs, an agenda of reforms which include reducing taxation on labour; increasing openness and competition in the labour market; slashing the requirements for and time taken to start a business; passing an improved insolvency framework; producing clear, public e-registers of procedures for licences and permits; reducing the amount of privileged pensions; and raising social assistance for those who really need it.

The six priority reform measures should be implemented by the new Governments following the October 2014 general elections. These measures have been endorsed by the international financial institutions and the European Union, which are fully committed to helping with their implementation and providing financial assistance to alleviate their short-term effects.

Source: Delegation of the European Union to Bosnia and Herzegovina, [www.europa.ba](http://www.europa.ba).

employment, which contains a number of measures aimed to improve the labour regime (box 3).

## 2. Employment of foreigners

**Immigration policy is the competence of the Bosnia and Herzegovina level, but the entities implement the regulations and issue work permits.** The Bosnia and Herzegovina-level Law on Movement and Stay of Aliens and Asylum<sup>71</sup> or immigration law, serves as the framework law and enshrines the legal provisions for the employment of foreign workers. The entity-level laws, the Federation of Bosnia and Herzegovina Law on Employment of Foreigners<sup>72</sup> and the Republika Srpska Law on Employment of Foreign Citizens and Stateless Persons,<sup>73</sup> share the same principles found in the immigration law but define the procedure for issuing work permits in

more detail. Differences in the procedures and types of documentation required to issue the work permits are not substantive. However, the time to process work permits is longer in the Federation of Bosnia and Herzegovina and varies depending on the type of worker.<sup>74</sup> In the Federation of Bosnia and Herzegovina, work permits are issued by the cantonal employment services upon approval of the Federal Employment Service. In Republika Srpska, work permits are issued by the Republika Srpska Employment Service, and in Brčko district by the Department for Professional and Administrative Affairs.

**Work permits grant holders the same work-related rights and obligations as Bosnia and Herzegovina nationals and are usually issued on a quota basis.** Work permits are issued for a specific post or type of job and for a maximum of one year. Under most

circumstances, work permits are issued on a quota basis and are subject to a local labour market test.<sup>75</sup> The work permit quota is determined annually by the Council of Ministers based on a needs assessment made by the entities. When setting the quota, the Council of Ministers first takes into consideration the number of existing work permits up for renewal and then determines the number of additional permits to be made available for the year. Under certain circumstances, work permits may be issued outside the quota, including in cases where foreigners have obtained a higher education degree in Bosnia and Herzegovina or perform key functions in a company.

**Most investors interviewed by UNCTAD are of the opinion that hiring skilled foreigners through the work permit scheme is difficult in practice.** For example, some noted that foreign education degrees and qualifications are not recognized by issuing authorities and are then used as a reason to reject applications. In addition, investors are apprehensive about the certainty of securing a work permit for a qualified candidate because work and resident permits are separate procedures and obtaining the former does not automatically guarantee obtaining the latter.<sup>76</sup> Also, the process of extension of a work permits is unclear, as the immigration law is silent on the renewal procedure. In practice, the entire permitting procedure is repeated, and renewal applications must be submitted at least 30 days before the expiration of the current work permit. Work permit extensions have priority over new work permits under the quota system but are still subject to review and not guaranteed.

**The work permit requirement may be waived under certain circumstances.** Article 84 of the immigration law lists the cases in which foreigners are exempt from obtaining a permit to work in Bosnia and Herzegovina. Importantly for foreign investors this includes key persons of a company, like board members and experts with knowledge essential to the operation of the enterprise. Furthermore, founders and managers who are performing tasks that “do not have the characteristics of employment” are exempt if their tasks do not exceed a total of three months a year. If a founder acts as a manager and receives a salary for his or her work, then he or she would be required to obtain a work permit. Individuals involved in the necessary work to establish and register a business in Bosnia and Herzegovina are

also exempt from work permits (immigration law, article 11). Other exemptions apply to certain types of short-term work like training, consultative or delivery services.

### 3. Recommendations

#### *Best-case scenario*

**Recommendation I.D.1.** Harmonize the entity labour laws fully so that regulations are applied uniformly across the country and they become easier to comply with for investors;

#### *Immediately actionable*

**Recommendation I.D.2.** Promote the use of mediation and other alternative dispute resolution mechanisms to resolve labour disputes.

**Recommendation I.D.3.** Consider unifying the work and resident permit procedures for skilled foreign workers so that only a single application is required.

**Recommendation I.D.4.** Clarify the procedure for work permit renewal and simplify the process by desisting from requesting documentation that was submitted in the initial procedure.

**Recommendation I.D.5.** Consider automatically extending work permits for foreign workers that maintain a contract performing the same or a similar position with the employer that originally applied for the work permit. In such a case, a notification from the employer, along with a copy of the new contract submitted 30 days before the expiration of the work permit, would suffice

**Recommendation I.D.6.** Facilitate the recognition of foreign academic degrees and professional qualifications in issuing work permits.

## E. Land

### 1. Real property rights and land administration

**Bosnia and Herzegovina guarantees foreign investors full access to land.** The right to property is enshrined in the Constitution of Bosnia and Herzegovina and in those of the entities. As mentioned before, the investment laws guarantee that foreigners have the same property rights as Bosnia and Herzegovina nationals with respect to real estate, with the caveat that citizens from the former Socialist Federal Republic of Yugoslavia receive reciprocal treatment (section A.1). Foreign investors are thus free to lease, let and purchase land; ownership is also allowed with no restriction. Other relevant laws regulating land ownership and administration are the harmonized entity Laws on Land Registry<sup>77</sup> and the Laws on Survey and Real Estate Cadastre.<sup>78</sup> The Laws on Land Registry are close to European standards, with the principal characteristics that property rights and other real rights are only constituted when they have been registered in the land book.

**However, title security and accuracy has been affected by inconsistent records and the Balkan war.** Bosnia and Herzegovina inherited a dual land administration system consisting of court-based land registries and land cadastres that dated back to the Austro-Hungarian Empire. In 1984, during the Yugoslavian era, the Law on Land Survey and Real Property Cadastre created a unified “real estate cadastre” which combined in one institution the functions of cadastre and title registration to replace the court-based system. However, by the time war broke out in 1992, it was estimated that only 20 per cent of the country’s territory had fully implemented the unified real estate cadastre (USAID, 2004; p. 12). During the conflict, court books of land titles were poorly maintained and many were destroyed or lost so that some 20 per cent of municipalities were left with no records at all. Displacement of people during the war worsened the situation.<sup>79</sup>

**The difficulties over conflicting or incomplete records have led to many legal disputes over ownership of land titles.** Most investors and private sector representatives indicate that the lack of legal certainty of land titles is still a limiting factor on investment, particularly in agriculture and agro-processing. Extensive

due diligence is required to make sure that there are no multiple claims on a parcel of land or building before purchase. The lack of secured (uncontested) land title means that many Bosnia and Herzegovina nationals are deprived from registering their property as collateral for finance, also limiting domestic investment.

**With the help of the international community, Bosnia and Herzegovina has taken important steps toward achieving more reliable and efficient land administrations.** Following a decision by the OHR, the entity Laws on Land Registry were adopted to terminate the real property cadastre and reinstate the court-based land registries, although many of them were incomplete or inaccurate. The international community has since provided technical assistance to modernize the land administrations in Bosnia and Herzegovina in order to increase their transparency, efficiency and reliability. In particular, the World Bank \$15 million land registration project has helped the entities in the consolidation and digitalization of land registry and cadastre databases, improving the security and efficiency of land title transactions (World Bank, 2012).<sup>80</sup> A successor \$34.1 million real estate registration project was launched by the World Bank in 2013 that will focus on developing a “sustainable real estate registration system with harmonized land register and cadastre records in urban areas of Bosnia and Herzegovina.”<sup>81</sup> In addition, SIDA is undertaking a complementary technical assistance project focusing on institutional strengthening and training.<sup>82</sup> The improvements in Bosnia and Herzegovina’s land administration are reflected in some international indicators, particularly in the reduced time it takes to register a business.<sup>83</sup>

**Institutional reform is in motion, though its speed differs among entities.** In Republika Srpska, the land register and cadastre were in 2011 merged into one centralized institution, the Real Estate Cadastre (REC), under the Republika Srpska Administration for Geodetic and Real Property Affairs. This facilitates the interaction between citizens and the public administration as all land titling transactions are dealt with a single agency. Meanwhile, in the Federation of Bosnia and Herzegovina, the dual agency land registration system of separate registry and cadastre remains.<sup>84</sup> The Federation of Bosnia and Herzegovina Administration for Geodetic and Real Property Affairs supervises and coordinates with the cantonal geodetic authorities and municipality cadastres but has no jurisdiction over the courts that administer the

land registries. A new law on survey and registration of the Federation of Bosnia and Herzegovina is being discussed that would introduce new canton-level administrations that would be responsible for compiling cadastre and land registry data from municipalities and local courts into unified cantonal databases. In turn, the entity-level Administration would compile the cantonal databases into a central database for the Federation of Bosnia and Herzegovina (CILAP, 2013). It is hoped that, with this new law, land title registration would be facilitated and further harmonization between the entity land administrations could be achieved.

**Some municipalities are establishing business zones to address access to land issues.** As a way to resolve persisting land access issues and to promote investment, municipalities in both entities have been creating business or entrepreneur zones. Generally, these are commercial or industrial parks located in land owned by the municipality that offer office space and appropriate infrastructure to accommodate businesses. In some instances, municipalities may also extend some incentives to businesses or entrepreneurs like offering lower rents or exemption from some municipal taxes. These are commendable initiatives but they risk unleashing another form of race to the bottom competition among municipalities due to lack of coordination at the entity level and Bosnia and Herzegovina level. In this regard, in Republika Srpska the problem of entity-level coordination does not apply as clear guidelines and rule books on the establishment of business zones exist. This is not the case in the Federation of Bosnia and Herzegovina. In addition, in the Federation of Bosnia and Herzegovina, systemic marketing and cost–benefit analyses on the viability of establishing business zones are not carried out so that their eventual effectiveness in attracting investment is hard to gauge. This risks creating an excess of business zones for the foreseeable demand and would be a counterproductive use of resources.

## 2. Recommendations

### *Best-case scenario*

**Recommendation I.E.1.** Harmonize the entity land administrations. In particular, the Federation of Bosnia and Herzegovina could move towards consolidating the land registry and cadastre systems under a single administration.

### *Immediately actionable*

**Recommendation I.E.2.** In the Federation of Bosnia and Herzegovina, adopt the new law on land survey and

registration that would allow for the establishment of a unified entity database compiled from cantonal court and cadastre data.

**Recommendation I.E.3.** Give priority to the establishment of secure, electronic land registration systems in the entities, including through the technical assistance offered by international development partners.

**Recommendation I.E.4.** Continue to address unresolved land claim disputes and related issues from forced displacements that occurred during the war.

**Recommendation I.E.5.** Create guidelines for the establishment of business zones in the Federation of Bosnia and Herzegovina. Entities should also coordinate among them to avoid a race to the bottom in establishing such zones.

## F. Environment

### 1. Environmental regulatory and institutional framework

**Bosnia and Herzegovina is moving towards adopting the environmental regulatory acquis of the European Union but progress is mixed.** The accession process to the European Union has played a catalytic role in reforming the environmental regulatory framework of Bosnia and Herzegovina. Starting with the adoption of a set of key entity-level legislations in the early 2000s – Laws on Environmental Protection,<sup>85</sup> Laws on Air Protection, Law on Waste Management, Laws on Nature Protection, Law on the Environmental Fund, Law on Waters<sup>86</sup> – Bosnia and Herzegovina has taken important steps in establishing the base for a legal and regulatory environmental framework compliant with European Union directives. The Federation of Bosnia and Herzegovina and Republika Srpska have since continued to revise their environmental regimes to harmonize them with European Union Directives, including on environmental impact assessment (EIA).<sup>87</sup> Much work remains to be done, however, for Bosnia and Herzegovina to comply with its commitments under the 2008 European Partnership Agreement (EPA).<sup>88</sup>

**There is no countrywide environmental plan based on entity-specific plans, and entity legislation is not fully harmonized.** Due to a political deadlock at the Bosnia and Herzegovina level, there has been no countrywide comprehensive environmental policy since the National

Environmental Action Plan 2003-2008. As a result, Bosnia and Herzegovina's mandate for environmental regulatory reform has been weakened and the process toward convergence with European Union environmental regulation has suffered. With no policy guidance at Bosnia and Herzegovina level, the entity Governments have developed legal and regulatory frameworks that are not fully harmonized, in large part due to the uneven pace of reform. Environmental legislation varies across entities, and not all relevant laws, including secondary legislation and rule books are adopted. For example, in the Federation of Bosnia and Herzegovina, out of 23 subordinate laws under the Law on Environmental Protection, only six had been adopted as of 2011. In Republika Srpska, more of these by-laws have been adopted but their implementation remains challenging (UNECE, 2011). There is an Inter-entity Steering Committee for the Environment that has functioned reasonably well in coordinating and harmonizing environmental law and policy between the entities but it has its limitations, primarily because it is a political body whose decisions carry no legal weight. Thus it can seldom raise environmental policy issues before the Council of Ministers or Parliament of Bosnia and Herzegovina for consideration (UNECE, 2011).

**Multiple administrative levels leave gaps and create duplication in the implementation of environmental protection regulations, particularly in the Federation of Bosnia and Herzegovina.** There is no clear distinction of responsibilities of environmental authorities across the different levels of government and a general lack of cooperation, both vertical (i.e. Bosnia and Herzegovina/entity/canton/municipality) and horizontal (i.e. inter-entity, inter-cantonal) (UNEP and MDG Achievement Fund, 2012). This results in inadequate environmental supervision where monitoring and reporting is neither systematic nor fully harmonized. In the Federation of Bosnia and Herzegovina, there are significant gaps between legally defined functions and those that are actually fulfilled leading to unaccountability. For example, there are no formal mechanisms of exchange of data and coordination between the Federation of Bosnia and Herzegovina Ministry of Environment and Tourism and the cantonal authorities. In Republika Srpska, coordination between the ministry in charge of environmental protection – Ministry of Spatial Planning, Civil Engineering and Ecology – and the municipalities is defined by law (UNECE, 2011).

**Investors express frustration with the lack of coordination of environmental administrations, as they**

**complicate ease of compliance.** Investors complain that when they face issues on environmental regulation they do not know which authority they need to consult; further, clarification regarding which agency has actual competency is not forthcoming. As a result, investors find it increasingly difficult to rectify violations of environmental regulations. On the other hand, private sector representatives also report that legal provisions and standards prescribed by law are very often simply not applied (FIC, 2012).

## 2. Environmental permits

**The entity laws on environmental protection introduced a two-tier environmental permitting regime.** Environmental permitting is carried out by various authorities at different government levels depending on the assessed environmental risk of an installation<sup>89</sup> as stipulated in the entity laws. In general, the entity ministries in charge of environmental protection<sup>90</sup> – the Federation of Bosnia and Herzegovina Ministry of Environment and Tourism and the Republika Srpska Ministry of Spatial Planning, Civil Engineering and Ecology – are responsible for issuing permits to large and medium-sized installations, or for activities above a certain environmental risk threshold as defined by regulations. Large and high-risk economic activities are classified as category A installations, while those that fall below the threshold are considered category B. In the Federation of Bosnia and Herzegovina, cantonal environmental protection departments are in charge of issuing category B licences, and permit registries at the canton and entity level are linked together in a network. In Republika Srpska, limit values (such as production capacity, transport line length and installation size) are the criteria used to assign which body (i.e. the entity or a municipal body) is competent to issue licences and permit registries.

**The entity environmental protection laws introduced strategic environmental assessment (SEA) and environmental impact assessment (EIA) tools.** The former is supposed to serve as a system to incorporate environmental considerations into policies, plans and programmes but it has not been implemented because no precise procedures have been drafted in secondary legislation. Meanwhile, EIAs have been carried out in the Federation of Bosnia and Herzegovina since 2004 and in Republika Srpska since 2006. The list of economic activities and types of installations that are subject to EIAs are defined in secondary legislation.<sup>91</sup> Both entities have set up environmental advisory councils that represent stakeholders

from the environmental field and assist the environmental protection ministries in the preparation of EIAs.

**However, there are concerns regarding the administration of environmental permits.** These relate in particular to the transparency in the preparation of EIAs and to the ability of civil society to participate effectively in the process (UNECE, 2011). Investors also claim that time frames and requirements for the issuance of permits may vary according to the interpretation of the issuing authority. For example, it was reported that a small hydropower plant project had to wait for five years to obtain a permit to start operations even though it met all legal requirements. Overlap in the competencies of issuing authorities and reluctance to take decisions that may be challenged by other levels of government partly explain such delays. Thus, businesses perceive arbitrariness in the issuance of environmental permits that contribute to operational risks. Moreover, in the Federation of Bosnia and Herzegovina, investors pointed out that the permits vary from canton to canton, there is no coordination effort for harmonization and the procedure to renew permits upon expiration is not developed in secondary legislation (FIC, 2012).

**Environmental inspection has been strengthened but enforcement is still lax.** With the establishment of the Administrations for Inspections of the entities, the roles of permit issuing and inspection have been separated, as inspectorates are no longer part of their respective line ministries (see section B.3). This reorganization strengthens inspectorates, as it ensures their independence and is in line with European Union directives. The powers of inspectors have also been bolstered. Inspectors have the power to conduct site visits without prior notice, issue compliance orders and, in cases of repeated non-compliance or serious danger to human health and the environment, order the suspension of activities. However, there are indications that enforcement is still lax. For instance, it has been noted that the majority of enterprises that are required to obtain an environmental permit fail to do so, claiming they are unaware or uninformed about their legal obligations (UNECE, 2011).

**The capacity of environmental protection institutions needs strengthening.** Insufficient staff<sup>92</sup> and inadequate budgets<sup>93</sup> affect the capacity of environmental protection institutions to fulfil their mandates. These include not only implementing the environmental legislation and ensuring its effective enforcement by all stakeholders, but also drafting the backlog of secondary legislation.

### 3. Recommendations

#### *Best-case scenario*

**Recommendation I.F.1.** Continue the implementation of the 2008 EPA requirements Bosnia and Herzegovina has committed itself to.

**Recommendation I.F.2.** Adopt a Bosnia and Herzegovina environmental action plan to serve as basis for environmental policy-setting, based on entity plans.

#### *Immediately actionable*

**Recommendation I.F.3.** Expedite the adoption of secondary legislation to the framework environmental protection laws.

**Recommendation I.F.4.** Strengthen the mandate of the Inter-entity Steering Committee for the Environment to harmonize environmental regulations across the country.

**Recommendation I.F.5.** Define the roles and competencies of environmental protection authorities at all levels of government to avoid duplication of work in secondary legislation.

**Recommendation I.F.6.** Harmonize the environmental licensing process and define the procedure for renewal. Consider establishing an online interface for the issuance of environmental permits to improve transparency and timeliness.

**Recommendation I.F.7.** Ensure that the principle of consultation with local communities is upheld in the enforcement of environmental laws, including in the issuance of permits (ex ante) and in inspection (ex post).

## G. Concessions and public–private partnerships

### 1. Legal and regulatory framework for concessions and public–private partnerships

**Bosnia and Herzegovina's infrastructure development needs, which were already sizeable due to the conflict of the 1990s, have become even more acute following the devastating floods of 2014.** Massive investments are thus required in infrastructure development (e.g. road, railroad and generation of electricity.) and the participation of foreign capital and know-how is necessary for the



realization of strategic concession projects. In this regard, the Bosnia and Herzegovina Commission for Concessions, as well as Republika Srpska and the Federation of Bosnia and Herzegovina Commissions for Concessions, have an important role. The goal is to “contribute to the creation of the best climate attainable in order to attract and induce more efficient investment of private foreign and domestic capital” (Commission for Concessions, 2006). Although a full review of the concessions regime is beyond the scope of this report, based on the information collected and on UNCTAD’s expertise in this matter (UNCTAD, 2009a and 2009b), several obstacles to private investment in infrastructure development can be identified

**Bosnia and Herzegovina is open to private investment in infrastructure but the relevant legal framework is fragmented, incomplete and often incoherent, thus reducing its attractiveness to investors.** The legal framework for concessions consists of the Law on Concessions for Bosnia and Herzegovina<sup>94</sup> and similar entity laws,<sup>95</sup> including several at the cantonal level in the Federation of Bosnia and Herzegovina. The concession laws of Bosnia and Herzegovina were first introduced in 2002 and were then harmonized. Subsequent amendments have led the laws to divert in some aspects that may affect contracts (e.g. definition of rights and obligations of concessionaire). In addition, Republika Srpska, Brčko district and the majority of cantons in the Federation of Bosnia and Herzegovina have adopted PPP laws. The laws are generally in line with international best practices and contain principles of transparency, non-discrimination and proportionality, and refer to consumer rights (EBRD, 2010).<sup>96</sup> The lack of PPP laws at the Bosnia and Herzegovina level and for the Federation of Bosnia and Herzegovina, and the existence of multiple disparate concessions regimes in the country create legal uncertainty for investors and hinder the attraction of significant FDI in infrastructure. A draft PPP law has been prepared and submitted to the Federation of Bosnia and Herzegovina Parliament. It has yet to be adopted and it is not clear whether it is harmonized with the ones for Republika Srpska and Brčko district.

**The legal definition of “concession” is broad and may create confusion with that of public procurement.** Article 3 of the Bosnia and Herzegovina Law on Concessions define concession as the “right granted by a Conceding Party to provide the construction of infrastructure and/or services and to exploit natural resources under terms and conditions agreed on by [the] Conceding Party and Concessionaire.”

This broad definition could be interpreted to include any public contract that could also be subject to the Bosnia and Herzegovina-level Law on Public Procurement.<sup>97</sup> This is problematic because the laws governing concessions and public procurement – which is the exclusive competence of the Bosnia and Herzegovina level – are not aligned and require different procedures to grant contracts. A new public procurement law was recently adopted by the Parliament of Bosnia and Herzegovina in May 2014 but it is unclear whether the definition of public contract has been changed.<sup>98</sup> In addition, future PPP laws and the Republika Srpska PPP law could also leave room for conflicting interpretation as to whether a contract with a public entity should be regulated as a public contract, a concession or a PPP.

**The scope for private sector involvement through concessions is wide in principle.** The Bosnia and Herzegovina Law on Concessions seeks to encourage the participation of the private sector, including through FDI, in the provision of infrastructure, services and the exploitation of natural resources by way of financing design, construction, rehabilitation, maintenance and/or operation of such infrastructure and services (article 1). The competent Commission reviews each proposed concession project for approval and then makes a public invitation extended to international investors. Foreign investors are equally eligible to participate in any public tender under the condition that, if they are granted a concession contract, they establish a legal entity in Bosnia and Herzegovina to carry it out. However, details as to how and when this obligation must be fulfilled are lacking. In addition, the Law foresees the possibility of evaluating and approving concession contracts for unsolicited proposals initiated by the private sector (article 25). The specific rights of the concessionaire are determined in the contract, which may include an international dispute settlement clause if all parties agree.

**However, multiple regulatory authorities add complexity and legal uncertainty to the concessions regime.** Diverse regulations are implemented by multiple concession regulatory authorities. This generates uncertainty, hampers the timely implementation of concession contracts and may deter investors from entering into concession contracts. As mentioned, there is a Bosnia and Herzegovina-level Commission for Concessions but each entity, and some cantons in the Federation of Bosnia and Herzegovina, have their own as well. The Bosnia and Herzegovina-level law stipulates that the Bosnia and Herzegovina Commission be

#### Box 4. Corridor Vc motorway

**Corridor Vc is a strategic transport infrastructure development project for Bosnia and Herzegovina and is part of a wider regional transport plan.** Following the Pan European transport conferences of Crete in 1994 and Helsinki in 1997, 10 Pan-European transport corridors connecting Central and Eastern Europe were devised. Corridor five branch C (Corridor Vc, also known as European route E73) is a 702-km north–south route that connects Budapest to the Adriatic port of Ploče, Croatia. The longest part of this corridor, some 340 km, is located in Bosnia and Herzegovina; the route in Bosnia and Herzegovina territory (A1 motorway) crosses the length of the country from north to south, connecting major cities such as Zenica, Sarajevo and Mostar. Although upgrading the existing road to a motorway that meets international standards is a top priority for Bosnia and Herzegovina, progress has been slow thus far.

**International development partners have assisted Bosnia and Herzegovina in upgrading its road infrastructure for Corridor Vc.** The European Investment Bank (EIB) and the EBRD have given sovereign loans to Bosnia and Herzegovina to finance the construction of priority sections of Corridor Vc in the amounts of €241 million and €180 million, respectively. With these loans and public funds, the State-owned company JP Autoceste (officially “Motorways of Federation of Bosnia and Herzegovina Public Company Ltd.”) – which became the legal successor of the Federation Directorate for Road Construction, Management and Maintenance in 2010 – has completed and habilitated the first sections of motorway: a 50-km plus toll road connecting Butila to Bilješevo north of Sarajevo, and a 4.1-km road connection to Croatia to the south in Kravice-Bijača. In addition, JP Autoceste is using the sovereign loans and its public funds to finance the following sections of Corridor Vc that are currently under construction: Svilaj-Odžak (11 km, €83.8 million); Drivuša-Kakanj (15.5 km, €157 million); Vlakovo-Tarčin (20.3 km, €369.5 million) and Zvirovići-Kravice (5 km, €62 million).

**Bosnia and Herzegovina is seeking to attract private investment for the construction of future road sections.** Given the enormous capital needs to complete the upgrading of remaining sections of Corridor Vc, Bosnia and Herzegovina has also began to explore the possibility of financing the construction of motorways through private investment in the form of concession or PPPs.

**Presently, the Federation of Bosnia and Herzegovina Ministry of Transport and Communication has identified two sections of Corridor Vc as pilot projects for concession or PPP.** The first is the 38.6-km section connecting Doboj to Žepče that was selected as a candidate due to its commercial viability and relatively easy topography for construction. The second is the 22.4-km contiguous section of Žepče-Zenica, which is also expected to be commercially viable, given its location in the country’s industrial heartland but with a more challenging topography. The Ministry expects that the entity and Bosnia and Herzegovina PPP laws will be adopted soon so as to prepare the pilot projects under PPP agreements. If the pilot projects are successful, Bosnia and Herzegovina will be keen to replicate this model in other sections of Corridor Vc, and consider it a channel to finance the reconstruction and maintenance of roads that were damaged during the flood of 2014

**Republika Srpska plans to build, through PPP, the 46-kilometre long Doboj–Vukosavlje motorway on the section of corridor Vc in the entity.** A public call for its implementation was issued on 1 August 2012 and two bids were received. After several months of negotiations regarding the technical aspects of the bids, the consortium between Strabag and Buig, i.e. the Republika Srpska Autoput Invest, was selected. Negotiations for the implementation of the project were ongoing at the time of finalization of this report.

*Source:* Motorways of the Federation of Bosnia and Herzegovina, Government of Republika Srpska and UNCTAD

an independent body with the authority to grant concessions that fall under the competence of Bosnia and Herzegovina<sup>99</sup> and that, when the competence is shared with other entities of Bosnia and Herzegovina, it shall act as a joint commission charged with harmonizing the conditions and forms of concession granting on behalf of the competent levels of government (Bosnia and Herzegovina Law on Concessions, article 4). Which concessions fall exclusively under the competence of Bosnia and Herzegovina and which ones are shared with the entities is not defined in the law; neither is the methodology adopted by the Joint Commission to harmonize differences in concession

regulations, which is presumably achieved on a case-by-case basis. Furthermore, the concession granting process is not well defined in the laws either.

**The majority of PPPs to date were established as traditional concession models.** Many of these concessions have taken place in the energy sector and include some of the largest investments in South-East Europe, such as the thermal power plants Stanari (installed power 300 MW) and Ugljevik 3 (installed power 2 x 300 MW). Another promising project is the Tuzla Thermal Power Plant Block 7 project, where the

relevant public utility has announced an agreement with a Chinese construction consortium.<sup>100</sup> Entity ministries have identified various other projects for concessions, they have prepared feasibility studies and some have been granted through public tender. However, it is reported that projects often fail to materialize due to the inability to find adequate financing for the entire project (Wolf Theiss, 2011). Meanwhile, at the Bosnia and Herzegovina level, only part of one infrastructure project has been seriously considered for concession or PPP development, the construction of Corridor Vc (box 4).

**Weak institutional and human capacities to manage PPP contracts are obstacles to their use.** For PPP projects, implementation and oversight in cantons is entrusted to ad hoc PPP Commissions. The draft PPP Law of Bosnia and Herzegovina entrusts this role to the Commission for Concessions. Such institutional arrangements are not ideal, as PPPs are long-term undertakings that require cumulative expertise in both preparation and implementation. In Republika Srpska, on the other hand, the Ministry of Finance has been designated as the main coordinating agency in the execution of PPPs and has created a dedicated PPP unit, following international best practice. However, the unit lacks not only capacities (with only four staff), but also the mandate to coordinate within and outside government to implement such partnerships.

**Republika Srpska is pioneering PPPs in Bosnia and Herzegovina but has yet to finalize a concrete project.** As mentioned, Republika Srpska adopted a law on PPPs in 2009.<sup>101</sup> The law defines PPPs as a form of cooperation between the public and private sectors that is realized by pooling resources, capital and expertise to meet public needs. The law foresees two main types of PPP arrangements: contractual and institutional. Under the contractual form, PPPs can be established through traditional concessions or private financing initiatives where the private partner finances or manages public buildings, and its services are paid by the public sectors (article 10). Under the institutional form, a public–private joint legal entity will be established to carry out a specific PPP project. As of April 2014, it had prepared eight projects for tender, none of which are yet in the implementation phase.

## 2. Recommendations

### *Best-case scenario*

**Recommendation I.G.1.** Harmonize the regulations on granting concessions and the practices of the concession commissions across all levels of government. Ideally one rule book stipulating all regulations and procedures in the granting of concessions should be developed and applied by all concession-granting authorities. The harmonized rule book should identify the responsibility of each authority involved in the process and the precise deadlines for each step.

**Recommendation I.G.2.** Adopt PPP laws for Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina and ensure alignment among all laws. The Bosnia and Herzegovina-level law should govern the PPPs for projects that are within the competence of Bosnia and Herzegovina, such as those involving both entities. Ensure that the new laws are aligned with the existing PPP law in Republika Srpska.

### *Immediately actionable*

**Recommendation I.G.3.** Better define the terms “concession”, “public contract” and “public–private partnership” in the relevant laws to avoid overlap or confusion concerning the jurisdiction of each law and its accompanying regulatory regime.

**Recommendation I.G.4.** Better define the procedure and time frame for a foreign investor to establish a local company to implement a concession contract in the relevant Bosnia and Herzegovina and entity legislations.

**Recommendation I.G.5.** Strengthen the capacity of the PPP unit in the Ministry of Finance of Republika Srpska. Seek training from specialized international organizations or establish cooperation agreements with leading PPP units from other countries, particularly during implementation of the first pilot projects.

**Recommendation I.G.6.** As PPPs are involved in complex terms and contractual relationships, capitalize on the experience matured through the PPP unit of Republika Srpska in its pilot phase to provide assistance in the establishment and operationalization of the PPP units for Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and its cantonal units.

# CHAPTER 2

## Towards more effective investment promotion



**Bosnia and Herzegovina has a tradition of industrialization to build on.** As part of the former Socialist Federal Republic of Yugoslavia, Bosnia and Herzegovina had developed an industrial base, principally in primary and manufacturing industries, owing largely to the establishment of SOEs. Much of it was severely damaged in the conflict of the 1990s and a great deal of expertise was consequently lost. However, as indicated in the context, mining and mining-related activities, steel production, vehicle components and assembly, textiles, tobacco products, wooden furniture and domestic appliances are still among the principal industries and contribute significantly to exports and employment generation. The potential of Bosnia and Herzegovina in terms of FDI attraction is strong – based, among other positive factors, on its industrial heritage, skills base and labour quality/value.

**FDI is vital to the future of Bosnia and Herzegovina.** As is the case in many countries, Bosnia and Herzegovina does not possess an indigenous industrial base that is large enough, sufficiently export-focused, with wide external business and market connections or which has sufficient levels of knowledge or technology to make a significant impact by itself to economic development. FDI is therefore vital to supplement the indigenous industrial/commercial base and support the continued economic growth and sustainable development of Bosnia and Herzegovina. Other than the benefits of employment generation and wealth creation, FDI is particularly important to Bosnia and Herzegovina for the following reasons:

- Major FDI projects could provide a boost to the indigenous business sector, including SMEs, and to the development of greater entrepreneurship through supply-chains, subcontracting, the development of value chains<sup>102</sup> and the possibility of spin-outs;<sup>103</sup>
- FDI can provide enhanced access to technology and knowledge transfer;
- As companies relying on FDI are usually larger and more export-oriented, FDI will likely boost Bosnia and Herzegovina's export performance and thereby improve its trade balance;
- Success in FDI attraction would likely offer Bosnia and Herzegovina better access to international business networks and help consolidate its position as a key regional market;

- As a country emerging from conflict Bosnia and Herzegovina needs enhanced economic development to aid social cohesion, which could be boosted through success in FDI attraction. Increased investment leads to additional jobs, higher value added employment offering better career opportunities, in particular for young people, and greater wealth, spending power and improved standards of living in communities. Bosnia and Herzegovina could learn from the experience of other post-conflict countries that have attracted FDI to the benefit of the peacebuilding (UNCTAD, 2009c).

**However, current performance in FDI attraction is weak.** As stressed in the context at the beginning of this report, outside of privatization, FDI has been piecemeal and Bosnia and Herzegovina's recent FDI attraction has been weak. FDI has frequently been facilitated in a business opportunity or niche market in Bosnia and Herzegovina through a local partner or by recommendation of a citizen of Bosnia and Herzegovina. However, to fully realize its investment potential, Bosnia and Herzegovina needs to widen its connectivity into other sectors, markets and companies where connections are not readily made. Individuals within the diaspora who hold senior positions in overseas companies can also assist such proactive investor outreach by providing introductions between and within larger companies in a range of overseas markets and in particular European markets such as Germany and the United Kingdom of Great Britain and Northern Ireland, and Scandinavian countries.

**FDI promotion in Bosnia and Herzegovina can play a much greater role in attracting FDI.** Chapter 1 highlighted a number of institutional and regulatory issues that help explain the country's poor performance in investment attraction and proposed a number of recommendations to improve the investment environment. Beyond those issues, Bosnia and Herzegovina faces a challenge in promoting FDI. Because of its internal political and administrative structure, there are multiple bodies at Bosnia and Herzegovina, entity and local levels involved in investment promotion, and insufficient coordination for effective operation and performance. This exacerbates the problem of limited human and financial resources for proactive investment promotion and creates an unnecessary obstacle for potential foreign investors. This problem is also reflected in the absence of up-to-date strategic guidelines for investment promotion at

Bosnia and Herzegovina level and consequent impact on the planning of marketing, branding and investment targeting.

**Stronger institutions, cooperation and capacities are necessary.** In its institutions, Bosnia and Herzegovina possesses core abilities to build greater investment promotion capacity and realize its investment potential in its traditional industrial sectors and to develop others, including in the services sectors. However, there is a need to build on existing resources to proactively promote FDI and maximize available resources through increased collaboration to present a more cohesive and streamlined approach to the potential foreign investor. The purpose of this chapter is to outline the current investment promotion structures and organizations in Bosnia and Herzegovina, their respective roles and functions and their relationships within the context of the various levels of Bosnia and Herzegovina, and entity and local levels. The objective is to assess structural and functional areas of weakness and identify issues that should be addressed to improve the delivery of FDI by proposing recommendations in line with global best practice models suggested by the investment promotion agency (IPA) and that are applicable to the specificities of Bosnia and Herzegovina's constitutional system. While having one single IPA would be the best-case scenario, this will most likely not be feasible due to the current political and administrative divisions. Therefore, unlike chapter 1, chapter 2 will focus only on recommendations that can be implemented in the short to medium term under the existing political structure. It will encompass an approach based on strengthening FIPA's investment promotion capacities, its Bosnia and Herzegovina and entity connectivity. This approach will also aim to strengthen and build on investment promotion successes at municipal and cantonal levels. Finally, the chapter will recommend actions to improve the performance of the existing individual bodies and a methodology for collaboration to achieve greater success in attracting FDI.

## A. Current investment promotion structures in Bosnia and Herzegovina: A need for collaboration

### 1. Existing investment promotion infrastructure

A multiplicity of bodies has a remit or input to the promotion of FDI in Bosnia and Herzegovina. Below is a summary of the roles and responsibilities of each, specifically with regard to their involvement in investment promotion.

#### Bosnia and Herzegovina level

##### *Foreign Investment Promotion Agency (FIPA)*

FIPA's mandate is to attract FDI into Bosnia and Herzegovina, and encourage existing foreign investors to further expand and develop their businesses there.<sup>104</sup> FIPA also facilitates the interaction between public and private sectors, and plays an active role in policy advocacy in order to contribute to further improving the business environment for investment and economic development. FIPA has a staff of 30 people based within Bosnia and Herzegovina, mostly in Sarajevo, with regional offices in Banja Luka and Mostar and an annual budget of €710,000. FIPA's Steering Board, composed of 9 members, is tasked with proposing the strategic goals of the Agency, its business strategy and action plan in cooperation with the MOFTER, entity Governments and Brčko district. More details on FIPA's structure and operations are provided throughout this report.

##### *Ministry of Foreign Affairs (MFA)*

The principal task of the Economic Diplomacy Department of the Ministry of Foreign Affairs of Bosnia and Herzegovina is the attraction of FDI and export promotion; part of its website deals with FDI and business partnerships (in a limited way). It has 56 overseas embassies, consulates or other missions representing Bosnia and Herzegovina in 44 countries or entities, such as the United Nations; in each of these, at least one official has investment promotion and trade responsibilities. However, these are rarely exclusive responsibilities and are often shared with other duties. The Ministry works closely with the Ministry of Foreign Trade and Economic Relations (MOFTER), as well as with FIPA and the Foreign Trade Chamber of Bosnia and Herzegovina.

#### Entity level

Republika Srpska

##### *Ministry of Economic Relations and Regional Cooperation*

The Ministry of Economic Relations and Regional Cooperation has a remit to attract FDI to Republika Srpska, including responsibility for improvement in the investment climate, assistance to potential investors, promotion of the

economic potential of Republika Srpska abroad, export promotion and a range of other economic development activities. The Ministry attends and/or organizes investment events inside and outside Republika Srpska and produces marketing material aimed at investors. It has eight representatives stationed in various locations outside of Bosnia and Herzegovina, at least part of whose duties are to promote investment. There is intermittent cooperation with FIPA, for example on investor visits, but this does not appear to be structured or policy based.

*Ministry of Industry, Energy and Mining*

The Ministry of Industry, Energy and Mining has no assigned role in investment promotion but deals with existing investors in Republika Srpska, including foreign investors, in the manufacturing, energy and mining sectors. Some of its other ministries also deal directly with investors, depending on the sector. For example, the Ministry of Agriculture deals with agribusiness investors. Some ministries also deal with prospective investors. There is stated coordination with the Ministry of Economic Relations and Regional Cooperation, but each ministry appears to have independent contact with individual investors.

*Agency for the Development of Small and Medium-sized Enterprises*

The Agency for the Development of Small and Medium-sized Enterprises aims to increase the participation of SMEs in the overall economy of Republika Srpska by encouraging technological development, increased competitiveness and the development of new markets, thus raising the number of businesses and employment opportunities. It is also involved in regional cooperation with neighbouring countries to exchange experiences and deals with the implementation of regional comparative advantage in entrepreneurship. It plays an indirect role in the promotion of FDI by participating in business events and trade fairs outside Bosnia and Herzegovina, producing marketing materials aimed at foreign investors, developing industrial zones and forging business partnerships. The Republika Srpska Agency for the Development of SMEs also promotes the creation of local development agencies (LDAs) and the development and coordination of a network of LDAs (see below).

*Investment Development Bank*

The Investment Development Bank is responsible for the development and diversification of the financial market in Republika Srpska and stimulates and encourages investment

in agricultural production, SMEs and construction. Its activities are intended to aid employment growth, reduce the foreign trade deficit contribute to balanced regional development, boost corporate governance and growth in the capital market, facilitate the efficient restructuring and privatization of State-owned enterprises and support the financial sector and investment. It has no direct role in investment promotion but deals occasionally with foreign investors, principally in the context of privatization proposals and its staff has with some investment promotion experience.

*Federation of Bosnia and Herzegovina*

It is important to note that the Federation of Bosnia and Herzegovina has no direct investment promotion counterpart within the Ministry of Economic Relations and Regional Cooperation of Republika Srpska – this point is addressed in recommendation II.D.10.

*Ministry of Development, Entrepreneurship and Crafts*

Among its functions, the Ministry promotes entrepreneurship zones in Federation, and provides FIPA with information on the zones and on relevant investment possibilities. Entrepreneurship zones generally offer infrastructure facilities as well as other services or benefits which are different from zone to zone (range from lower land cost, lower fees, clustering effect etc.). There are around 40 such zones in the Federation, targeting both domestic and foreign investors with 15 of them being operational. The Ministry also organizes and participates in fairs to promote linkages between local companies and foreign ones, particularly those originating from European Union countries.

*Ministry of Energy, Mining and Industry*

In Federation of Bosnia and Herzegovina, the Ministry of Energy, Mining and Industry's role in investment promotion is focused primarily on the restructuring and partial privatization of electricity, mining and major industrial sectors. There is no formal interaction with FIPA, but informal contacts exist and the Ministry supports any potential investor by providing detailed information, accompanying them on visits, etc.

Brčko district

*Department of Economic Development, Sport and Culture*

The Department of Economic Development, Sport and Culture of Brčko district (Brčko district) is responsible for economic

development. However, in practice this is principally in SME development and there is relatively little focus on or capacity for the promotion of FDI. The department has little or no interaction with FIPA. A Regional Development Agency (RDA) for Brčko district does not exist anymore (see below), and there is consequently no dedicated body which is proactively seeking to add further external investors to the main existing FDI investor, Bimal, which employs 400 people in operations producing cooking oil and refining suga .

### Local level

#### *Cantons and municipalities*

There are 10 cantons in the Federation of Bosnia and Herzegovina – Una-Sana; Posavina; Tuzla; Zenica-Doboj; Bosnia-Podrinje; Central Bosnia; Herzegovina-Neretva; West Herzegovina; Sarajevo; and canton 10. The 10 cantons are further divided into 79 municipalities. Republika Srpska is not sub-divided into cantons but is composed of 62 municipalities. In principle, all cantons and municipalities have an economic development function although, due to their small size, few have significant investment promotion role; some have a formal or informal relationship with existing foreign investors in their jurisdiction.

However, there are exceptions where, mainly through local initiative, some municipalities have played a much more proactive role in investment promotion. The UNCTAD review team visited two of the most successful ones: Tešanj and Prijedor (see section E).

#### *Regional and local development agencies*

Five RDAs in Bosnia and Herzegovina, involving the public, private and non-governmental sectors were established within the European Union Support to Regional Economic Development Project in 2004 / 2005. RDAs are not recognized by Republika Srpska, where similar responsibilities are the competence of LDAs.

RDAs elaborate and implement economic development strategies at regional level. Essentially, RDAs aim to stimulate economic development in their region, including economic regeneration, job creation and human resource and infrastructure development.

LDAs in Republika Srpska also aim to support SME development, entrepreneurship and to improve the general economic and employment situation in their local communities. In this context, they develop and manage projects, network with business entities and promote the

establishment of partnerships between the private and public sectors.

The RDAs and LDAs have limited scope on their own for investment promotion because of their restricted size and budgets and lack of access to foreign investors.

## 2. The need for enhanced cooperation

### **Investment promotion is not sufficiently coordinated.**

There is disparate investment promotion activity throughout Bosnia and Herzegovina at central, entity and local levels. Formal and informal contact, especially between FIPA and Federation of Bosnia and Herzegovina and Republika Srpska bodies is intermittent. For example, contact between FIPA and the Ministry of Economic Relations and Regional Cooperation of Republika Srpska is limited and ad-hoc in nature, while Federation of Bosnia and Herzegovina does not have an obvious counterpart with direct responsibility for investment promotion activity. The only formal channel to discuss investment promotion policy between the Bosnia and Herzegovina level and the entities is FIPA's nine-member FIPA Steering Board. Composition of the Board is laid down in the Law on the Foreign Investment Promotion Agency of Bosnia and Herzegovina (FIPA Law) adopted in December 2004. It is as follows: Council of Ministers of Bosnia and Herzegovina – two representatives; entities' Governments – two representatives; Foreign Trade Chamber of Bosnia and Herzegovina – one representative; and two representatives each from the foreign private sector and the local private sector. Intermittent and inconsistent contact is also the case between the main Bosnia and Herzegovina and entity bodies and regional and local development agencies/municipalities/cantons/chambers of commerce.

### **There is little sharing of limited marketing resources at Bosnia and Herzegovina and entity levels and no clearly identifiable brand for Bosnia and Herzegovina.**

Investors seeking a location for greenfield FDI begin a search by establishing a long list of potential places (worldwide or based on their regional interests). The countries or regions which have an identifiable brand are more likely to feature on that list. However, in Bosnia and Herzegovina, the multiple bodies at Bosnia and Herzegovina, entity and municipal levels involved or seeking to be involved in investment promotion pursue differing marketing routes, thus reducing effective operation and performance in securing FDI. This is



reflected in different websites and marketing materials and in the absence of a clearly identifiable brand for investment.

**There are multiple websites within Bosnia and Herzegovina aimed at potential foreign investors.** FIPA, the Ministry of Foreign Affairs, the Ministry of Economic Relations and Regional Cooperation of Republika Srpska etc. each have separate websites dealing with FDI, with differing messages and styles; this situation is likely to confuse the potential foreign investor. In addition, the websites – to varying degrees – are not sufficiently investor-focused. The websites of FIPA and the Ministry of Economic Relations and Regional Cooperation of Republika Srpska<sup>105</sup> are good in that they are reasonably clear, well-organized and contain a lot of information about investing in Bosnia and Herzegovina. However, they need to focus less on describing sectors at a macro level in Bosnia and Herzegovina and focus more on the competitive advantage offered by Bosnia and Herzegovina in each targeted sector. In addition, there should be more use made of non-governmental testimonials.

**There is no shared information resource to assist in dealing with investor enquiries.** No common resource exists to collect, analyse and disseminate information commonly required by investors – e.g. on land, real estate, labour market, energy, costs, etc. A considerable amount of information already exists in the various well-produced FIPA brochures for each targeted sector; however these contain principally macro level information describing each sector. A database accessible to all should exist which anticipates likely detailed micro-level queries from investors on key investment elements in each sector – for example, detailed information on labour and skills availability, wage rates, social costs, availability and cost of real estate, etc. which can be drawn upon to make detailed responses/proposals to investors.

**No coordinated approach to investor targeting exists overseas.** There is a lack of coordinated overseas representation and there is diversified responsibility for investment promotion outside Bosnia and Herzegovina. At least two separate bodies maintain two sets of staff outside of Bosnia and Herzegovina with investment promotion responsibilities – the Ministry of Foreign Affairs of Bosnia and Herzegovina and the Ministry of Economic Relations and Regional Cooperation of Republika Srpska. These bodies generally perform their own investment promotion abroad without coordinating a common country brand,

message or marketing materials. In addition, there is an absence of a clear role of/input from FIPA in supporting or guiding these representatives, other than intermittently as a partner organizing business forums.

**There is a lack of clear and coherent policy on incentives.** There is a variety of incentives available at Bosnia and Herzegovina, entity and local levels – 96 different potential incentives offered by up to 17 different bodies;<sup>106</sup> such a situation is likely to prove confusing and off-putting to potential investors. In addition, there appears to be little or no policy that differentiates investment projects on the type and level of incentives to be offered. Partly because of this situation there may also be a tendency for competition for investment through incentives to occur between various Bosnia and Herzegovina locations and bodies.

**Collaboration is therefore essential to maximize the impact of limited resources and successfully promote investment.** The emphasis should shift from unhealthy competition within Bosnia and Herzegovina to collaboration in dealing with FDI. Failure to collaborate can result in investment going to another country in the region instead. Belgium is an example of how strong national and subnational investment promotion bodies can successfully coordinate activities (box 5).

### 3. Recommendations

**Recommendation II.A.1.** There should be more regular formal and informal interaction between FIPA and the entities on investment promotion at the staff or project level, especially in relation to specific investment leads and opportunities, with greater shared resources and information on potential projects and investors. In Republika Srpska, the obvious counterpart for collaboration and interaction with FIPA is the Ministry of Economic Relations and Regional Cooperation of Republika Srpska; no such counterpart exists in Federation of Bosnia and Herzegovina, and a recommendation to address this is made in section D (see recommendation II.D.10).

**Recommendation II.A.2.** Each agency, ministry or body in Bosnia and Herzegovina that is involved directly or indirectly should cooperate in the investment promotion effort as well as share marketing information and resources to maximize investment results for all. This should be formalized at the senior level through agreed protocols and memorandums of understanding (MoUs).

### Box 5. Investment promotion within a federal structure: The case of Belgium

**The regions of Belgium are primarily responsible for FDI promotion.** Since the law on regional devolution (August 1980), investment promotion and investment incentives and subsidies have been the responsibility of the three regions – Brussels, Flanders and Wallonia. Nonetheless, most tax measures remain under the control of the Federal Government. In general, all regional and national incentives are available to foreign and domestic investors alike.

**Each Belgian region has its own IPA.** These are: Flanders Investment and Trade (FIT), Wallonia Foreign Investment and Trade (AWEX) and Brussels Invest and Export. All three regions have similar investment policies, emphasizing innovation, R&D, energy savings, environmental cleanliness, exports, and most of all, employment. Each of the independent agencies has staff that specialize on specific regions of the world, including the United States, and has representative offices in different countries.

**Brussels Invest and Export is the foreign trade and foreign investment department of the Brussels Region Public Service (BRPS).** It falls within the ambit of Brussels Economy and Employment, one of the six administrations that make up BRPS. It combines the responsibility for promoting Brussels exports that was formerly carried out by Brussels Export, tasked with attracting foreign investment to Brussels that had previously been entrusted to Invest in Brussels. Brussels Invest and Export provides economic development of the Brussels-capital region by fulfilling a twofold mission: helping companies based in Brussels to expand into international markets and prospecting among foreign companies and assisting them to invest in Brussels. It has access to a network of more than 90 economic and commercial attachés globally, covering nearly 150 countries.

**Flanders Investment and Trade is the government agency supporting companies interested in investing in Flanders.** It promotes international business, to assist both Flanders-based companies and overseas enterprises wishing to invest in Flanders, the northern, Flemish-speaking region of Belgium. It also assists overseas companies in establishing contact with Flemish partners for sourcing products or services and for business relationships, from joint ventures to technology transfers, and has 90 overseas representatives (not all necessarily dedicated investment promotion offices). The Government of Flanders is solely responsible for many of the laws and regulations that concern foreign investors, such as business incentives, environmental regulations, education, culture, scientific research, land, zoning and energy.

**Wallonia Foreign Trade and Investment Agency (AWEX) is Wallonia's governmental agency that is in charge of foreign trade promotion and foreign investment attraction.** AWEX has overall responsibility for the attraction of foreign investment in Wallonia – the southern, French-speaking region of Belgium – including seeking out and providing information to potential foreign investors. AWEX assists buyers, decision-makers, importers and foreign prospects by providing economic data on Wallonia region and its export potential and disseminating information on products and services offered by companies located in this region, as well as identifying companies in Wallonia for international partnerships. The Agency also offers a proactive follow-up service to investors already established in Wallonia. In addition, AWEX is in charge of identifying new foreign investors for the acquisition of industrial sites under restructuring in the Wallonia region. It has a network of overseas offices in Europe, the United States and Asia, and boasts 105 economic and trade attachés.

**However, there is a focal point in the federal government whose responsibility is to attract FDI.** The Belgian Foreign Direct Investments Department is the federal contact point and help desk for companies considering setting up operations in Belgium. It provides investors with relevant information on legal issues, human resources, incentives and investment plans; upon request, it also prepares programmes of contacts in Belgium and provides general and detailed information on aspects about the Belgian investment climate. The Department works in close cooperation with the regional investment promotion agencies of Brussels, Flanders and Wallonia, and the Belgian embassies.

**In addition, there is close cooperation among the national IPAs, and promotion is carried out using a common message.** A convention determines where each agency has investment promotion representation; however, representatives in many instances also work for the other agencies to reduce duplication and ensure that key countries are covered. Each recognizes that its region is an entry point for new and continued expansion into the western European market and the United Kingdom, and emphasizes its central location for logistics combined with excellent infrastructure, low-cost real estate and an educated, multilingual population. All three regions also promote the same Belgian tax incentive.

*Sources:* Websites of the Belgian Foreign Direct Investments Department, Brussels Invest and Export, Flanders Investment and Trade and AWEX; United States State Department Investment Climate Statement 2013.

The FIPA Steering Board may be tasked with the overall production and agreement of MoUs, initially by drawing up confirmed guidelines with the exact activities to be implemented. In doing so, the work of the Steering Board should be aided and supported by FIPA staff with contributions from staff of other participating bodies. The success of MoUs and proposals for coordination will depend partly on the precision and clarity of drafting, partly on ensuring clear distinction between the roles of the various participating bodies and partly on the willingness of bodies to engage in two-way communication and readiness to share information.

Some models already exist. For example, similar documents have been prepared in the Federation of Bosnia and Herzegovina and Republika Srpska to promote FDI and competitiveness in the agricultural sector (the IFC project), where activities are intended to be implemented together with FIPA. However, where no such document exists, the Steering Board should prepare and submit them officially, leading to a draft MoU (an example of a typical MoU's structure and content is provided in box 6).

Depending on the counterpart agency, key areas which may be covered in the MoUs may include but are not limited to:

- Sharing of key information relevant to investment enquiries (such as labour market, real estate and costs);
- Intelligence on key investment prospects;
- Handling of investor visits and coordination mechanisms for external promotion missions;
- Coordination of marketing information and materials;
- Feeding mechanisms, cross-referencing and coordination of information flow for shared website (see recommendation II.A.5).

The existence of MoUs is fundamental to constructing a formal agreed framework for cooperation and coordination. Formal arrangements usually make it easier for staff in the participating bodies to engage in cooperation and justify it. Independently from the formalized channels of cooperation, however, a culture should be developed within each body to encourage informal, day-to-day interaction, cooperation and exchange of information and expertise.

**Recommendation II.A.3.** A common brand for investment should be created for Bosnia and Herzegovina with defined common attributes and benefits "Brand Invest Bosnia and Herzegovina". This brand could and should be shared by all bodies at the entity and local levels Bosnia and Herzegovina, and its attributes should reflect the common benefits offered by each part of Bosnia and Herzegovina. This should not mean that all marketing outputs should be the same, but should share the attributes of a common "family" with clear brand identification.

It is important to stress that this does not mean any change in the roles of the various bodies at Bosnia and Herzegovina or entity level, nor does it mean the diminution of separate identities. It also does not necessarily imply standardization of logos or marketing materials, for example. It does, however, imply a structured attempt to develop a shared investment brand for Bosnia and Herzegovina.

**Recommendation II.A.4.** Further to brand development, common marketing content, marketing messages or templates could be produced, which could be used by each body at the levels of Bosnia and Herzegovina, the entities and the local authorities. FIPA should take the lead in producing these, with consultation and support at entity and local levels. Clear and consistent marketing messages should be developed, focusing on the common competitive advantage of Bosnia and Herzegovina, for example, energy costs, labour costs and geographical position.

**Recommendation II.A.5.** FIPA's website should become a shared resource focusing on investors who are interested in investing in all or part of Bosnia and Herzegovina. It would not replace or substitute any other website, but entity would support it by providing content and links. The website should be intensively investor-focused – i.e. to dwell less on technical descriptions of sectors, etc. in Bosnia and Herzegovina and focus on the competitive advantage offered by Bosnia and Herzegovina in each targeted sector. In addition, there should be more use made of non-governmental testimonials, in particular those from current investors; these should be more detailed and describe how exactly investing in Bosnia and Herzegovina has benefited each company. There should also be a very clear way of contacting a key contact point in each of the participating bodies.

**Recommendation II.A.6.** All responsible institutions should coordinate with FIPA in the collection and preparation of information likely to be relevant to investor enquiries that will be disseminated to target groups. For this purpose, an

investment product database should be created to collect, analyse and disseminate information that is commonly required by investors – e.g. on land, real estate, the labour market, energy and costs – and accessible to all bodies engaged in investment promotion. This database should anticipate likely detailed queries from investors on key investment elements in each sector – for example, detailed information on labour and skills availability, wage rates, social costs, availability and cost of real estate and telecommunications costs. Such information should be used in making detailed responses and proposals to specific investors based upon knowledge of each investor's specific interests. Wherever possible, this information should be comparative, i.e. data should be compared with that of competitors in the region and elsewhere. A comprehensive list of the information which could be contained in the database is given in annex IV. Brochures and other marketing materials should not attempt to provide very detailed information, but rather focus on the key marketing messages and statements of competitive advantage.

**Recommendation II.A.7.** There should be agreed sharing of information, investment intelligence, training and capacity-building between all external representatives dealing with investment promotion. This could include the creation of a shared database of investment leads, potential investors, an investment pipeline, targeted investors, investor enquiries and common investor outreach campaigns. In addition, each of the external representatives should have strong, clearly outlined relationship with FIPA who should have a coordinating role in the work of the external representatives.

**Recommendation II.A.8.** Efforts to secure FDI needs to move away from over-reliance on Business Forums to direct targeting of individual investors through shared investor outreach campaigns.

**Recommendation II.A.9.** A greatly rationalized and simplified incentives structure should be introduced for FDI across Bosnia and Herzegovina. As mentioned in chapter 1, incentives should be harmonized across the country to minimize competition within Bosnia and Herzegovina, which is potentially damaging to the overall investment promotion effort. All incentives should be directed at encouraging and attracting investment into Bosnia and Herzegovina, not between areas of Bosnia and Herzegovina. In addition, Bosnia and Herzegovina should consider adopting a policy of selective financial assistance applying to projects of strategic importance based on an appraisal

of the investment projects. The five tests of investment – eligibility, viability, efficiency, mobility and additionality should be understood and applied (box 7). Incentives should be selective and applied only to projects passing the five investment tests, especially additionality. Training on project appraisal should be given, and a cadre of staff capable of assessing the business and economic strengths of investment projects should be created.

**Recommendation II.A.10.** The role of the Bosnia and Herzegovina diaspora should be strengthened as additional means, not only of generating investment directly, but as a business network to provide possible investment leads. Consideration should be given to establishing a Bosnia and Herzegovina diaspora network that can be shared between FIPA, various ministries of the two entities and the municipalities and cantons. The Ministry of Human Rights and Refugees, in cooperation with FIPA, could be given responsibility for providing the organizational support for a diaspora network.

## B. Creating an overall strategic approach

**The lack of an updated Bosnia and Herzegovina investment promotion strategy is an issue.** An investment promotion strategy for Bosnia and Herzegovina was first adopted in 2006. The strategy, which had been developed with all the institutions involved in investment promotion, has served as the main policy document guiding FIPA's work. It has, however, not been revised since, and financing for its implementation action plans ended in 2010. The absence of updated strategic guidelines on investment for Bosnia and Herzegovina as a whole affects investment promotion efforts, in particular as regards the selection and prioritization of sectors and markets to be targeted. FIPA's role and mandate do not include creating or coordinating a strategy. Indeed, FIPA relies on inputs from the entities and Brčko district to carry out its promotional activities. In this regard, cooperation with and from the entities in the provision of the relevant inputs is seen as a precondition for the preparation of such guidelines.

**FIPA's annual plans prioritize different sectors each year.** This situation reflects insufficient guidance received from FIPA on strategic objectives for investment promotion or from more senior levels (e.g. the FIPA Steering Board) on sector prioritization. It may lead to a lack of consistency and a failure to develop investment expertise in specific sectors – all investment

### **Box 6. Structure and content of memorandums of understanding between FIPA and participating body at Bosnia and Herzegovina, entity or local level**

This box provides an example of the possible structure and overall content of a potential MoU between FIPA and a participating body. The exact content and provisions should be adapted to each participating body to reflect their specific mandate and objectives. This could include a Bosnia and Herzegovina-level institution, an entity-level institution, a municipal or local body or a public or private association interested or involved in investment promotion.

#### **Objective**

The MoU aims to improve the cooperation between FIPA and the participating body in attracting FDI. It is part of a network of MoUs between FIPA and other bodies designed to provide Bosnia and Herzegovina with a coordinated, coherent approach to investment promotion.

#### **Coordination and cooperation arrangements**

This section should provide the overall division of labour between FIPA and the participating body and define the coordination arrangements between the two parties in attracting FDI. In this regard, it will specify the services to be provided by FIPA, in cooperation and consultation with the stakeholders. These may include a range of investment marketing and facilitation services such as:

- Central marketing services
- International marketing planning
- Coordination of international promotional activities on behalf of Bosnia and Herzegovina
- Development of a range of investment propositions for FDI based on selected sectors
- Production of promotional materials and website content
- Identification and pursuit of FDI investment leads
- Central facilitation services
- Investor support via telephone, e-mail and face-to-face meetings
- Organization and coordination of events inside and outside Bosnia and Herzegovina aimed at the international business community
- Coordination of Bosnia and Herzegovina-level investment enquiries

The participating body will also commit to supporting FIPA in the promotion effort by providing timely inputs on the sectors, activities and markets to be targeted by FIPA, as well as key information relevant to the promotion effort (e.g. labour, costs and infrastructure), intelligence on investment leads and updates on the progression of new investment proposals.

#### **Customized services to be provided by FIPA**

In addition to the general division-of-labour arrangements, FIPA is able to provide a range of customized investment services to stakeholders to assist them in reaching specific objectives. This section will provide details on the nature and scope of the customized services to be provided by FIPA in support of the participating body's specific investment promotion projects. It should include details of the scope of the project, objectives, timelines, deliverables and associated costs. These services will be provided on a project basis and will include the following:

- Development and market-testing of propositions
- Engaging in investor outreach campaigns
- Representation at international exhibitions/conferences
- Coordination of Bosnia and Herzegovina-level investor visits
- Supplier development programmes

*Source: UNCTAD*

### Box 7. Strategic FDI projects: Test for offering additional incentives

Some of the key criteria that can be used to appraise investment projects and set priorities for investment include:

**Eligibility.** Is the proposed investment one that fits into the host country's investment strategy and that will benefit its economy?

**Additionality.** Will the investment provide incremental wealth and employment, or will it displace existing businesses and jobs? If the investment principally targets an indigenous market, then it may be less desirable. However, in developing countries, such investments may provide valuable import substitution and may be a stepping stone to export-oriented production.

**Mobility.** Is this a truly mobile FDI project? Or is it a project that must of necessity locate in the host country? The purpose of investment promotion is, after all, to persuade an investor to locate a desired project in your country that might otherwise locate elsewhere.

**Viability.** Is the project viable and more importantly, is it viable in the host country? Frequently, projects that might be viable elsewhere are not viable in a specific country, possibly because the necessary skills are not available, costs are too high or the domestic market is saturated.

**Efficiency.** Will the project, within a reasonable time frame (say, within five years) return more benefits (in salaries, taxes and other benefits) to the country's economy than the resources used to promote it, including any incentives offered? If not, then hard questions should be asked to determine whether it is truly desirable.

Source: UNCTAD

promotion is sector-based and lack of in-depth sector knowledge can be a critical issue in securing FDI. Therefore Bosnia and Herzegovina's sector focus should be on the long term and have continuity. FIPA also targets too many sectors – at least 10 on its website. This is an issue as even well-resourced IPAs can only effectively target up to five or six sectors

**FIPA needs to further sharpen its work in marketing sector-wide propositions.** FIPA's focus on identified investment sectors in Bosnia and Herzegovina is an example of good marketing practice for investment promotion, but could be sharpened by more clearly demonstrating the competitive advantage offered to the investor in each sector. Any investment targeting or marketing carried out should continue to focus primarily on the wider sector offering rather than specific projects (e.g. privatization).

**There is no clear, coherent and consistent integrated marketing plan.** FIPA's annual business plan provides a fairly comprehensive list of marketing activities. The range of activities planned is good and impressively comprehensive and represents a range of activities which could be expected from a large, well-resourced, mature IPA. The plan as it stands is a good basis to move forward; what is missing is the strategic/planning narrative to set out, measure and integrate the strategic thinking behind it. Such strategic thinking may well be present but, if so, it needs to be clearly documented.

**There is no business case supporting why each activity is planned, objectives and follow-up activity, where applicable.** Sectors have been selected for that year (see above) but there is no accompanying analysis indicating why these sectors have been chosen and not others, including market analysis, the Bosnia and Herzegovina proposition for each of these sectors (although this may be documented elsewhere). There is some degree of monitoring and evaluation (M&E), but this is at a fairly basic level – i.e. only output is measured (e.g. number of brochures produced) but no measurement of their use, outcome or impact. No cost figures are given for each activity, or a value for money assessment against benefits/outcomes

**Similarly, there is no explicit business case provided for proposed investment events.** There are only limited indications of FIPA's role at these events, no explicit strategic plan to provide guidance on which specific events are planned, and objectives, while these may exist, (i.e. image building, sector development and generation of investment leads) they are not explicitly stated. It would also be important for FIPA to state clearly how the achievement of these objectives would be measured and to systematize event planning and follow-up activity, especially in relation to possible investment leads emerging from events.

## 1. Recommendations

**Recommendation II.B.1.** A strategic framework on investment promotion in Bosnia and Herzegovina should be put in place to provide guidance to all bodies within Bosnia and Herzegovina engaged in investment promotion. Essentially the framework should arise from a consultative effort with close coordination between Bosnia and Herzegovina and entity bodies, including FIPA, the Bosnia and Herzegovina Ministry of Foreign Affairs, the Ministry of Economic Relations and Regional Cooperation of Republika Srpska and the proposed Federation of Bosnia and Herzegovina IPU. The process should be overseen and endorsed by the FIPA Steering Board, for ultimate consideration/adoption by the Council of Ministers. It should cover a three- to five-year period and clearly identify and prioritize markets and sectors to be targeted by FIPA.

However, before reaching this level of coordination, strategic development must also take place at entity level. It should be noted that Republika Srpska is already working on the formulation of a foreign investment encouragement and attraction strategy 2015–2019. Such strategies should

prioritize sectors based on each entity's perceived, actual and potential strengths and prioritize the geographic markets for investor targeting, based on, for example, proximity, size of the sector in each targeted market and past investment trends.

Ideally, this work should be supported by extensive sector and market research to identify sectors and markets that offer the best prospects for investment, including, if possible, subsectors where there may be niche competitive advantages. When each entity has formulated its investment promotion strategy, they should be exchanged to highlight areas where broad agreement may exist, for example on the initial list of sectors. For instance, there is currently at least 90 per cent similarity between sectors identified by FIPA and by the Ministry of Economic Relations and Regional Cooperation of Republika Srpska. Each entity would retain and implement its own strategy, but with a significant degree of cohesion, reflected in the strategic framework. A similar exercise of strategic coordination in investment promotion has already taken

### Box 8. Regional investment promotion agencies: The case of the United Kingdom

**The United Kingdom has devolved regional governments with significant powers, including economic development policy.** Scotland, Wales and Northern Ireland each have their own devolved government or executive and a devolved unicameral legislature. England, the largest country of the United Kingdom, has no such devolved executive or legislature and is administered and legislated for directly by the United Kingdom Government and Parliament on all issues. The Scottish Government and Parliament have wide-ranging powers over any matter that has not been specifically reserved for the United Kingdom's Parliament, including education, health care, Scottish law and local government. The Welsh Government and National Assembly have more limited powers than those devolved to Scotland. The Northern Ireland executive and legislative branches have powers similar to those devolved to Scotland. Each of the devolved governments has direct responsibility for economic development within their respective jurisdictions, including investment promotion.

**Although investment promotion is carried out by the devolved governments, the United Kingdom shares a strong IPA.** The United Kingdom Trade and Invest (UKTI) works with local businesses to ensure their success in international markets and to encourage the best foreign companies to invest in the United Kingdom. UKTI reports jointly to the Foreign Office and the Department for Business, Innovation and Skills. It has an international presence; across its network, UKTI employs around 2,400 staff and advisers, including overseas, in British embassies, high commissions, consulates and trade offices and regional offices in the nine English regions. By agreement, the trade and investment organizations for Scotland, Wales and Northern Ireland – respectively, the Scottish Development International, Wales Government and Invest Northern Ireland – each have their own structures and investment promotion policies and operations, but are also able to access UKTI services and support.

**There is close cooperation between the regional IPAs and UKTI.** The cooperation between UKTI and each of the regional IPAs is formalized and documented at the senior level, thus providing policy guidance for those implementing it. Each of the respective bodies has found it important to appoint at least one person to be the lead on inter-agency liaison, to drive this forward and maintain relationships. In addition, there is formal and informal cooperation and liaison between UKTI and the regional IPAs at CEO/chairman level, at middle management level and overseas between the respective representatives in specific locations. This is of great benefit to the regional IPAs, as they can utilize UKTI's extensive network of representations overseas to complement their own and pool together other resources to enhance their outreach.

Source: UNCTAD

place with success, although limited to agriculture and could serve as a model.<sup>107</sup>

**Recommendation II.B.2.** Arising from the new strategic framework, there should be a prioritized list of no more than three to four sectors to be targeted for investment promotion. These should be agreed between FIPA and bodies at entity level for targeting over a longer-term period (five years or more). Each of the bodies can, of course, adjust such targeting or prioritization to reflect their respective investment offerings. For example, for the United Kingdom, United Kingdom Trade and Invest outlines key priority investment sectors, and these sectors are broadly in line with those targeted by Scotland, Wales and Northern Ireland – e.g. information and communications technology, business services, financial services and life sciences – but each region will assign its own priorities in the resources applied to targeting each of these sectors. An example of how a strategic approach to investment promotion can be coordinated at national and subnational levels is described in box 8.

**Recommendation II.B.3.** Marketing and investor targeting should be carried out on a strong sector basis, highlighting the competitive advantage offered by Bosnia and Herzegovina for each targeted sector or subsector. As referred to earlier, FIPA does have a range of good sector brochures, but further work can be done to more clearly define and state the key marketing messages and competitive advantage factors offered in Bosnia and Herzegovina for each sector. These should also be listed on FIPA's website as "Investment Sectors", rather than "Investment Projects". Within a wider sector offering, specific investment proposals, such as the opportunity for investing in an existing SOE or investments in infrastructure and other projects with high sustainable development potential, should be highlighted for targeting.<sup>108</sup>

**Recommendation II.B.4.** Within the context of the proposed new strategic framework for investment promotion (see recommendation II.B.1, above), annual marketing plans should be prepared by FIPA, the Ministry of Economic Relations and Regional Cooperation of Republika Srpska and the proposed Federation of Bosnia and Herzegovina IPU. These plans should provide clear direction on the sectors and overseas markets to be targeted; how each of these will be addressed, including objectives, activities, outcomes, impacts and costs; how activities will be integrated into a wider marketing strategy for each sector or market and how each activity will be measured and evaluated in its

contribution to the overall objectives. In drawing up each marketing plan, there should be input and consultation with other stakeholders, including MFA (especially for overseas events), cantons, municipalities, RDAs and LDAs, as appropriate. In FIPA's case, the current FIPA annual business plan can provide a basis for the marketing plan, but needs to be significantly enhanced to create a coherent and well-directed plan.

**Recommendation II.B.5.** An annual marketing communications plan should also be constructed by FIPA, in tandem with the marketing plan, which indicates clearly which marketing communications channels will be used, showing objectives, impacts, costs, M&E and so forth. Ideally, the marketing communications activities should be measured, at least in part, by an externally conducted marketing audit.

## C. Strengthening the Foreign Investment Promotion Agency

### **FIPA is a competent agency that performs key functions.**

FIPA demonstrates significant awareness of some key investment promotion issues and a level of capability ahead of many emerging investment promotion agencies (IPAs). It has a range of functions, principally focused on investment facilitation, aftercare and marketing. As to the former, FIPA's key role is to provide an initial interface for new and potential investors through its ability to assist them directly and introduce them to other relevant bodies at entity and local levels, as appropriate. FIPA also offers investors advice on the legal framework pertaining to investment for Bosnia and Herzegovina, the tax system, work visas and business licences. There are strong and developing capabilities in marketing and a substantial programme of aftercare services, described more fully in subsequent paragraphs. FIPA also maintains a reliable, well-designed website and produces an impressive variety of marketing material, including a range of brochures on key investment sectors, and participates in domestic and international investment events.

**FIPA maintains an extensive network of contacts.** FIPA has fairly regular contact with municipalities, which it visits monthly to provide information and to try to resolve investor issues. It also organizes site visits, sometimes in conjunction with its regional offices in Banja Luka and



Mostar. FIPA possesses a database with more than 100 potential investment projects aimed at seeking investment and joint ventures. FIPA also has MoUs with some 50 foreign IPAs, under which they exchange newsletters and information. It continually seeks cooperation with other countries in the region, particularly in relation to regional investment opportunities.

**While FIPA's current resources are sufficient to carry out its existing range of activities, they will not suffice for a more proactive investment promotion effort.**

FIPA's staff is limited by budget funds and the relevant rule book to a maximum of 30, including only three people in its Investor Support Department. FIPA's current budget is equivalent to spending about €0.18 per capita, compared with for example Ireland at €56 or the former Yugoslav Republic of Macedonia at €3.3 (IDA, 2010; UNCTAD, 2011). Further building of capacity through additional resources and enhanced systems/processes, augmented by capability development should prove a valuable medium- to long-term investment for Bosnia and Herzegovina. Budget limitations affect FIPA's ability to perform and enhance its functions, and it results in departments which are very small and consequently likely to over-depend on one or two key individuals. Moreover, there are no clearly designated responsibilities for investment facilitation (including investment management and appraisal) and investment marketing, although these functions are at least partially covered within its existing departments.

**The investment promotion tools are used principally for reactive promotion.**

There is no dedicated department with a specific assigned responsibility for investment targeting or investor outreach. While FIPA attempts to utilize a variety of channels of investment promotion, including events and social media, and it responds to inquiries from potential investors, its investment outreach functions and capabilities are limited. This is a handicap in moving towards increased investment flows, as it is important to target priority investment sectors and individual potential investors through marketing campaigns and investor outreach campaigns using e-mail, telephone and face-to-face visits. Many potential investors seeking an investment location for a new project are not necessarily aware of all the options open to them, so to generate a flow of investment leads, it is vital for an IPA to make investors aware of what it can offer as a solution to their investment needs. Seeking investment only on a reactive basis (i.e. from investor enquiries) severely limits the range and number of investment leads

which might otherwise be secured. It is also exemplary that the department dealing with finance and administration is staffed at a comparable level to each of the other two departments dealing directly with investment promotion work; this requires adjustment, ideally by enhancing the resources of the investor/investment-facing departments. At the same time, low-cost marketing alternatives should be explored (see recommendations below).

**FIPA has made an excellent start in providing aftercare services.**

FIPA has developed, with assistance from IFC, a good aftercare programme, through which it visits around 50 companies per annum together with partner organizations (such as municipalities) and an additional 20-30 companies alone. It also organizes an annual aftercare event. The programme identifies and records issues raised by existing investors and also provides summary data of reinvestment and expansions. This programme is further-reaching than any usually implemented by an emerging IPA (indeed, it is relatively rare for such IPAs to have an aftercare programme at all). One of the aftercare programme's strengths is that it involves partner organizations (municipalities, cantons).

**But outreach to existing investors needs a sharper business focus.**

The key objective of an aftercare programme is greater awareness of investors' individual issues, the provision of aftercare and the encouragement to reinvest. The existing programme only partially addresses this, as it focuses on problem areas, especially on those that have a direct bearing on investors' interaction with government, rather than wider business issues or positive developments with the potential for reinvestment. It is also appears to have the identification of common investor issues as a focus to produce a report giving recommendations to improve the investment climate. While this is important, it is equally important to continue contact with each investor to monitor whether individual issues have been resolved. Care also needs to be taken to ensure that personnel from partner organizations – and from FIPA itself – have the necessary business skills and experience to carry out effective aftercare.

**Good investor aftercare should not be a function that is separate from the regular interaction of an IPA with its client companies.**

While FIPA's business plan specifies the criteria upon which companies are selected for its aftercare programme, it implies that these may be different companies each year and that the largest investors or those with potential for re-investment may not be visited even on an annual basis. Similar to good quality assurance in

a manufacturing company, investor aftercare should foster a close, integrated working relationship between the IPA's assigned account manager and the individual investor; in other words, aftercare is a continuous process, started when the investor establishes his operation and continuing throughout the lifetime of the investment. A good approach to aftercare is characterized not only by the effective resolution of any investor issues (not just those directly involving government) but also by the result in terms of expansion and reinvestment. As an example, Invest Northern Ireland's aftercare programme, implemented by dedicated account managers, has been responsible for a reinvestment rate for overseas investors in excess of 75 per cent.<sup>109</sup>

**Other issues of the existing programme require attention:**

*The programme has a questionnaire as a central feature. Care must be taken that this does not lead to an administrative approach – i.e. completion of the questionnaire pre-selects the type of issues to be covered and its completion may become an end in itself, rather than as a guide to explore the key business issues affecting each company.*

*Follow-up work with ministries/Federation of Bosnia and Herzegovina institutions are indicated, but not who will attend such meetings (e.g. FIPA, partners, the target companies themselves), nor if and how issues will continue to be followed up after these meetings. There is no provision for measuring whether issues raised by individual companies were resolved.*

*The expected outcome appears to be a macro-level report identifying cross-company issues to generate measures to improve the investment climate; while this is obviously valuable, it is also important to help provide solutions to the needs of individual investors.*

*Similarly, it is assumed that the issues to be dealt with in the aftercare programme will be focused exclusively on those involving government bodies; other potential critical issues outside of direct government remit (e.g. access to finance and recruitment and training issues) may not be covered. It is also important that the programme address positive as well as negative developments – e.g. the potential for expansion and companies seeking new markets.*

*The number of FIPA staff involved in the programme is relatively modest, which, given FIPA's small staffing complement, is understandable. However, it is not clear*

whether staff resources will be adequate to effectively complete the programme.

**Finally, FIPA's performance and measurement of performance is unclear.** Some monitoring and evaluation of its activities' impact is included in the FIPA Business Plan, but this is at a basic level and is far from comprehensive. There are some targets set – e.g. for the number of investor meetings, but no detailed targets or measurement of other activities and, most importantly no targets set or measured for projects, investment levels, or impact indicators, including the numbers of jobs generated by investment attracted through FIPA and tax returns. In this area, FIPA could learn from the experience of CzechInvest (box 9)

## 1. Recommendations

**Recommendation II.C.1.** Careful consideration should be given to significantly increasing FIPA's capacities to conduct proactive investment promotion. This can be done either through (a) the redistribution of the existing staff and budget or (b) a budget and staffing complement. Resources spent on professional and proactive promotion of FDI are likely to bring tax returns (as well as other major economic benefits) but will require time and consistency to bear fruit and must therefore be protected from competing short-term spending demands. However, public spending on FDI promotion is likely to result in the eventual availability of enhanced government revenues to address other spending demands. This is a strategy that has been successfully followed in Ireland with outstanding results on both corporate and overall tax revenues.

Should it prove difficult or impossible to provide extra funding from government budgets, other ways may be found to provide additional financial resources. One source is donor funding. However, most donors, while happy to support capacity-building or invest in climate reform, are usually cautious about directly funding mainstream investment promotion operations. Nevertheless, niche programme opportunities for funding may be possible to support the work of FIPA and other bodies, for example by funding research on sector and market opportunities.

Another possibility is wider funding participation in, for example, investor outreach or investor visit programmes from cantons, RDAs, chambers of commerce and city governments. Although the funding ability of each of them is likely to be limited, wide participation by a number of bodies would mean that the actual financial contribution by each need only be modest. In addition, providing resources

in kind – such as internal transportation for investor visits – would also be helpful.

Possibly the most significant potential source of additional funding for investment promotion may be offered by the private sector. This is a model used in other parts of the world, where a range of private sector companies provide part – or sometimes all – of the financial resources to attract FDI. It is a model used in the United States (for example, the metropolitan area of Denver, Greater Phoenix, north-western Ohio, and the states of Arizona, Ohio and Wisconsin). In structuring these models, it will be important to establish mechanisms to minimize conflict of interest

and inefficiencies in raising and managing private sector funding inputs.

Participation in private sector funding may be accomplished through a PPP arrangement, contributions to a common investment promotion budget managed by government or the funding of specific activities, for example, advance factory real estate development. There are a number of reasons why private sector companies may be interested in providing resources to aid investment promotion in Bosnia and Herzegovina. Funding may be provided, particularly by multinationals, within a programme of social responsibility or social investment. It may also be provided by large companies

### Box 9. The rise of a world-class IPA: CzechInvest

**The Czech Republic's IPA has become one of the best in the European Union in a short period of time.** CzechInvest, a subordinate of the Czech Ministry of Industry and Trade, offers a wide array of services to attract foreign investments and increase the competitiveness of the Czech economy, including assistance to SMEs, supply chain development, support to investors' needs through tailored information, investment incentives and aftercare services. The ten-year story of CzechInvest is a spectacular one of transformation from non-existence within a planned State economy, to a small marketing entity to a multi-service development agency. Recognized as the best IPA in the European Union accession countries, the best marketing campaign by an IPA, the best Greenfield investment by an IPA and the best deal facilitation by an IPA, CzechInvest has earned industry recognition as a leading IPA with a proven track record among investors.

**Various factors help explain the rise of CzechInvest as a leading IPA.** For instance, the IPA exercised strong leadership to gain robust political and stakeholder support through persistent advocacy. It also consolidated its steering committee with extensive private and public sector networks. With time, it managed to achieve financial autonomy, gaining control over its own budget without interference from other State bodies. It also shifted towards a customer-oriented IPA, operating with a private sector management style rather than on a political or administrative basis; it rejected a hierarchical, bureaucratic structure in favour of a strong customer focus and a team approach. Furthermore, it incorporated external expertise through inputs of consultants with experience in successful IPAs that engaged closely with dynamic, young Czech graduate staff who were empowered and incentivized. In addition, CzechInvest adopted a culture of actively seeking and acting on feedback received from existing international investors (i.e. aftercare) and of long-term product development in its investment promotion strategy.

**CzechInvest has built an impressive record in FDI attraction, and its impact is measurable.** Over 10 years, the Czech Republic saw the completion of 235 foreign investment projects, mobilizing \$7.3 billion in FDI and creating 67,225 jobs. Virtually all of these projects were in manufacturing, concentrated in three sectors, automotive, electronics and precision engineering. To take one outstanding example of its success, in December 2001, CzechInvest successfully promoted a joint venture between Toyota Motor Corporation and PSA Peugeot Citroen, the Toyota Peugeot Citroen automobile project, to manufacture an entirely new class of passenger car in the Czech Republic. With an investment budget of €1.5 billion, was the largest investment project in Central Europe, providing 3,000 new jobs within the Czech economy. Among the factors leading to the selection of the Czech Republic was the centralized, flexible and transparent approach orchestrated by CzechInvest, which had been won the the European IPA of the Year Award in 2000 and 2001.

**CzechInvest reports to a Ministry but it is granted significant autonomy.** It provides an excellent example of developing and increasing autonomy while remaining within the overall responsibility of a government ministry. CzechInvest closely collaborates with the Ministry of Industry and Trade on attracting foreign investments and developing the local business environment. CzechInvest's autonomy from the Ministry has increased since its inception in 1992. It has the authority to submit applications for investment incentives to other government agencies and prepares draft offers to grant them. The agency also facilitates and coordinates with other ministries on investment related projects.

**It also assists the regions in attracting FDI.** CzechInvest collaborates closely with regions within the country which provide investment support, including the identification of investment opportunities and local business partners and suppliers, as well as aftercare services and the facilitation of workshops and seminars on business environment support. Regional offices provided vital information to map out Brownfield investments, resulting in a detailed study covering 2,355 locations; providing a basis for the national Brownfield Regeneration Strategy.

Sources: UNCTAD; MIGA, Competing for FDI, 2004; Ecorys, Exchange of Good Practice in FDI Promotion, 2013

that have a vested interest in seeing the economy of Bosnia and Herzegovina, or the economy of an entity develop through increased foreign investment.

However, the clearest reason for private sector resource participation arises from companies which will view prospective investors as prospective customers; such companies may include real estate developers, telecommunications companies and recruitment agencies. Again, such funding may be provided as a direct budget contribution or specific programme funding aimed at enhancing FDI promotion. Examples are the funding of missions abroad, investor visits, business park development and loss-leading training programmes.

All of the above sources should be explored by FIPA and others to attempt to boost significantly the financial resources available to them for proactive investment promotion.

**Recommendation II.C.2.** FIPA's structure should be adjusted to more fully reflect the global best practice of IPAs. A full institutional development assignment should be carried out with expert assistance to formulate detailed recommendations on a new structure. Below are some pointers for the restructuring. The investment promotion department should be re-focused on marketing and include the public relations function. If possible, investor support should be expanded and include the proposed account management function (see recommendation II.C.5 for further details). It should, as far as possible be focused on the main target sectors (see section A). The designation "sector" (denoting a department within FIPA) should be replaced by "department" or "division", as "sector" can be confused with industry sectors. An investment targeting department should be added. This would provide support and information to overseas personnel carrying out investment promotion activity and assist them in targeting investors in their respective markets. This division would also deal with investor visits and lead on negotiations with prospective investors, including on incentives.

**Recommendation II.C.3.** FIPA should extend and re-focus its excellent aftercare activities. In particular, it should adopt an account management structure and appoint a number of account managers to enable regular and ongoing aftercare contact (not solely on an annual basis) with individual key investors, to be aware of all positive and negative business issues facing key investors (not only those relating to government), to intervene as and when required with advice

and assistance and to continually seek opportunities for re-investment. If necessary, the number of staff involved in aftercare account management should be expanded.

FIPA is likely to find that the 80/20 rule is likely to apply, i.e. that more intensive one-to-one work with the top 20 per cent of investors is likely to be more successful than a survey-based approach. However, regular, if more "light-touch" contact with all existing investors should continue, as well as the existing programme of investor surveys and workshops. Clear allocation of time to be spent on aftercare issues should be made for each member of staff and performance targets set and monitored.

**Recommendation II.C.4.** A company differentiation model should be developed to prioritize companies participating in the aftercare programme. The model would specify clear business criteria to focus effort where it may provide the greatest benefit. Such criteria may include the following:

- Size and employment levels;
- Strategic importance of the company to the Bosnia and Herzegovina economy;
- Existence of known critical issues (e.g. financial issues, potential for disinvestment);
- Companies that are rapidly expanding or are believed to have clear potential for doing so;
- Companies that have a high level of exports or are believed to have clear potential for exporting;
- Companies that use a high level of technology, especially where this is new to Bosnia and Herzegovina;
- New and recent investors;
- Companies that have a clear potential for reinvestment or that could generate additional investment projects.

**Recommendation II.C.5.** The aftercare programme should have a clear business focus, i.e. it should address the business needs of key individual investors, whether these arise directly from areas within government remit or not.

**Recommendation II.C.6.** Training of those involved in the aftercare programme should be evaluated and expanded, if necessary to include an ongoing training programme to provide or enhance a range of relevant business skills.

**Recommendation II.C.7.** Use of tools such as a questionnaire should be approached with care and as a guide only to explore issues relevant to each company's business needs – a better tool is an investor contact report (ICR). The results of each individual aftercare meeting should be recorded in an ICR, which should include a summary of the key issues, next steps to be taken by the company, FIPA or other bodies, timetable agreed for action and a clear indication of whether the issue has been resolved or not. The ICR should form part of the proposed customer relationship management system (see recommendation II.C.12).

**Recommendation II.C.8.** Each company participating in the aftercare programme should be assessed during and after meetings for its potential for expansion, reinvestment and export growth. A clear-cut business strategy should be proposed by FIPA staff members showing how they can assist in realizing such potential.

**Recommendation II.C.9.** A more comprehensive system of targeting and measuring results should be introduced. Specifically, input targets (number of investor meetings/business plans/investor visits/investor business plans received) and output targets (number of projects, jobs and investments) should be specified annually and out-turn evaluated against targets.

**Recommendation II.C.10.** A customer relationship management (CRM) system should be developed to record and track investors and investment projects. This should be developed from FIPA's existing recording of investors and investments to using a spreadsheet into a dynamic real-time system encompassing a wider range of CRM functions. For example, the system should record and track investment enquiries, details of new and prospective investors and existing investors/projects. It should include capabilities for analysing investor and investment project data and provide a management information system for senior management.

Most importantly, the CRM system should have at its core an ICR that describes dealings with each investor. The results of each meeting, telephone call or substantive e-mail exchange should be recorded in an ICR, which should include a summary of the key issues, next steps to be taken by the company, FIPA or other bodies, timetable agreed for action and a clear indication of whether the issue has been resolved or not.

Either a bespoke system can be developed for FIPA, or licences be purchased for one of the many CRM systems available on the market. The CRM system should be initially

developed within FIPA and made accessible to other entity organizations dealing with investors.

**Recommendation II.C.11.** Given the overall lack of resources, low-cost marketing opportunities should be used, including:

- Social media – e.g. a Bosnia and Herzegovina investment forum on LinkedIn. LinkedIn is often an effective way of social networking for business, as it tends to attract people with business and professional interests, rather than those with a predominantly social agenda. There are multiple business and investment forums on LinkedIn, and hosting an investment forum for Bosnia and Herzegovina would be a cost-effective way of attracting or identifying possible target investors. However, it would be important to ensure that such a forum is hosted professionally and consistently and that any investment enquiries and leads are diligently followed up. In addition, some IPAs rely on Twitter accounts to communicate with stakeholders but this also requires consistent attention to maintain professionally;
- Extended media relations with key European business journalists;
- A common Bosnia and Herzegovina e-magazine shared between the FIPA and entity bodies. FIPA already has a quarterly newsletter, which is an excellent start, and this could be widened in scope with inputs from the entity bodies and e-mailed quarterly to potential investors, influencers and others.

**Recommendation II.C.12.** Consideration should be given to engaging an overseas company to provide investment lead generation as a resource that could be shared between FIPA, the Ministry of Economic Relations and Regional Cooperation of Republika Srpska, the proposed new IPU for the Federation of Bosnia and Herzegovina, and commercial representatives of Bosnia and Herzegovina and entities overseas; this can also provide knowledge transfer and training to Bosnia and Herzegovina overseas representatives. Such a company would be engaged initially on a one-year pilot basis to identify target investors in one or more external markets, based on agreed criteria, to arrange and conduct initial and follow-up investor meetings overseas and to secure investor visits to Bosnia and Herzegovina, all on the basis of pre-agreed deliverables. The company could conduct investor targeting campaigns on its own, with liaison with Bosnia and

Herzegovina and entity bodies or, ideally, could do so in a close working partnership with local Bosnia and Herzegovina/ Republika Srpska overseas representatives in each targeted market, thus also providing on-the-job knowledge transfer and training to the overseas representatives.

**Recommendation II.C.13.** Consideration should be given to offering study visits and secondments for key staff of FIPA, the Ministry of Economic Relations and Regional Cooperation of Republika Srpska and the proposed new IPA for the Federation of Bosnia and Herzegovina to established IPAs, particularly those where investment promotion is decentralized – the United Kingdom, Ireland, or Belgium would be good examples to use for this. Ideally, such study visits and secondments would be arranged and coordinated in partnership with a national or regional agency with close links with the IPA(s) in its territory. A flexible approach could also be adopted to hire staff with external investment promotion and/or sector expertise on a renewable contract basis (ideally, but not necessarily, Bosnia and Herzegovina expatriates), outside existing staff grades and remuneration structures. It should also be noted that the recommendations contained in II.C.12 and II.C.13 are not mutually exclusive; a combination could prove particularly effective in helping accelerate investment promotion capability and capacity in Bosnia and Herzegovina.

## D. Strengthening the capacity and capabilities of the entities in investment promotion

### 1. Developing the role of the Ministry of Economic Relations and Regional Cooperation of Republika Srpska

**The investment promotion department of the Ministry of Economic Relations and Regional Cooperation performs a wide array of investment promotion functions.** The Ministry undertakes the promotion of Republika Srpska for investment using the designation “Invest Srpska”. Activities include the promotion of specific projects and opportunities, including privatization prospects and opportunities from local communities; monitoring, analysing and recommending improvements to the legal framework and the investment environment; and promoting exports from Republika Srpska. The Ministry also organizes

conferences, including a major investment conference (2011) and participates in international events such as the Munich Real Estate Expo (2013). Improving the business environment in Republika Srpska is a priority of the Ministry. In this regard, as mentioned in chapter 1, Republika Srpska has recently implemented an OSS service in business registration, from which they have seen positive outcomes.

**Staff and financial resources are limited.** As with FIPA, staff members in the Ministry show a high degree of awareness and considerable capability in investment promotion. However, given the wide and substantial remit of the investment promotion department, it is clearly underresourced. No budget figures were available to the UNCTAD team preparing this Review; however, the department has four employees, principally dealing with investment promotion and managing data sought by foreign investors. The current situation means that staff will be under pressure to facilitate incoming and existing investments and carry out aftercare, while the time and resources needed to proactively pursue new investment will be very limited.

**Invest Srpska does not have clear identity or branding for investment promotion.** Invest Srpska operates within the Ministry of Economic Relations and Regional Cooperation and coordinates the investment promotion activities of other Republika Srpska ministries. The Invest Srpska website offers information on investment-related laws, regulations, labour and utility costs, and how to establish a business in Republika Srpska. However, despite its title, the website does not have any brand or listing as Invest Srpska, calling itself “Republika Srpska Government”; the website requires some upgrading, which is covered separately under recommendation II.D.6.

**An investment promotion strategy for Republika Srpska is scheduled for adoption.** A new strategy for 2015–2019, following the one in place for 2009–2012, should be adopted by the Republika Srpska National Assembly before the end of the year. It was developed in cooperation with IFC/World Bank after wide consultations with a range of ministries and institutions. Likely key areas of the strategy may include reforms to attract major investments and the identification of sectors where Republika Srpska has a competitive edge to do so. Key sectors for existing investment include energy, agriculture, wood products and tourism. However, the strategy remains to be developed, in particular regarding

how and from where investment in these sectors is to be attracted, identification and prioritization of potential new investment sectors and, most importantly, a clear description of where competitive advantage exists for each sector. It is also unclear whether there are plans to coordinate this with a wider investment promotion strategy for Bosnia and Herzegovina.

**In the meantime, promotion is largely focused on specific projects, and greater focus on wider sector opportunities is needed.** The Ministry identifies specific investment opportunities by sector and by municipality, some of which have not been fully developed. The focus needs to shift from specific investments (largely privatization projects) to the identification of competitive advantage for priority sectors. While highlighting specific investment proposals, such as the opportunity for investing in an existing SOE are also important, the wider sector offering should be predominant. If not, this greatly narrows the potential appeal of the offering to investors.

**The role and structure of the investment promotion department may be hampered by being placed directly within a line ministry.** In most countries or regions, the body dealing with investment promotion is operated as an executive agency, publicly owned company or similar body to allow maximum flexibility in dealing with the private sector and in being able to recruit and remunerate specialist staff. The Republika Srpska Law on the Republic Administration of 2008 specifies that one of the functions of Ministry is the “promotion of the Republika Srpska potentials abroad”. The Ministry has informed UNCTAD that there is further provision in the Law for the establishment of a separate IPA but this has not yet been developed. The Ministry is therefore essentially carrying out part of the role of an IPA, without an agency structure; carrying out investment promotion functions within a line ministry is generally more difficult

**The role of the Ministry in investment promotion is not sufficiently coordinated with that of FIPA.** Its precise role is unclear in relation to the work of FIPA and its coordination with FIPA. There are formal contacts at the senior level, particularly on the FIPA Steering Board. Indeed, part of FIPA's role is to coordinate with the entities and members of the Republika Srpska Government who sit on the Steering Board of FIPA, where they give guidelines on an annual basis to FIPA on the prioritization of investment focus and recent developments. However, working-level contacts between the Ministry and FIPA appear to be intermittent and ad hoc.

**The Ministry should use its overseas representation to engage in more proactive marketing and investor targeting.** The Ministry maintains eight representative offices abroad to engage in trade and investment promotion. They are located in Austria, Belgium, Germany, Greece, Israel, the Russian Federation, Serbia and the United States. However, their proactive targeting of investors is limited, mainly due to cost considerations. The Ministry also produces a range of investment promotion material, principally brochures and videos on key sectors for investment, but it is not clear to what extent these are used in support of proactive marketing or face-to-face interactions with investors in the external markets.

**Further development of the aftercare programme of the Ministry is needed.** As with FIPA, the Ministry also has an aftercare programme, involving most Republika Srpska municipalities. Its aims are limited, presumably due to the limited availability of staff resources. It tracks two investors per municipality after the investment has been implemented. Training is also provided to local communities to perform aftercare services, as the Ministry is of the view that the local community is the best place to resolve issues because most issues arise at this level. While this is true to some extent, there are also likely to be broader issues, particularly with bigger investors. These are likely to need a higher level of expertise and better access to government decision makers, which can be provided only by a higher level of government. The programme was initiated in 2013 as a pilot scheme and included 9 municipalities and 19 companies, 93 per cent of which said that they would re-invest, citing reinvestment plans of KM 20 million. Five further municipalities were added to the programme in 2014 and three new municipalities in 2015. The Foreign Investors Council of Republika Srpska is also an active channel for providing aftercare services. The analysis in section C (Strengthening the Foreign Investment Promotion Agency) in relation to FIPA's aftercare programme also broadly apply here – e.g. a focus on wider business issues and consistency and continuity of contact, especially with larger, more important investors.

## **2. Developing a wider investment promotion capability in the Federation of Bosnia and Herzegovina**

**The Federation of Bosnia and Herzegovina does not have a body with investment promotion responsibilities**

**at entity level.** There is no direct counterpart to the investment promotion role of the Ministry of Economic Relations and Regional Cooperation of Republika Srpska within the Federation of Bosnia and Herzegovina. Indeed, no investment promotion body exists within the Federation of Bosnia and Herzegovina between the Bosnia and Herzegovina-level responsibilities of FIPA and the usually limited investment promotion roles of the cantons, municipalities and RDAs. Given the investment promotion role of the Ministry, an imbalance is created in that, FIPA, in fulfilling its State-level role of promoting investment for all of Bosnia and Herzegovina, does not have a counterpart of the Ministry for liaison on matters such as strategy, sharing of information, investor handling and training within the Federation of Bosnia and Herzegovina.

**There is no body to coordinate interaction with investors at local levels within the Federation of Bosnia and Herzegovina.** There is also a need to coordinate the inputs that can be offered by the cantons, municipalities and RDAs within the Federation of Bosnia and Herzegovina. FIPA, with its Bosnia and Herzegovina-wide responsibilities does not have either the remit or the resources to effectively undertake this role, and the result may be that there can be widely differing responses and levels of service throughout the Federation of Bosnia and Herzegovina in dealing with investors.

### 3. Providing investment promotion for Brčko district

**The promotional capacities of Brčko district are limited.** The independent unit of Brčko district, as noted above (see section A.1) has currently very limited capacity for FDI promotion. Given its current level of capacity and size, it is difficult to make an effective argument for developing a separate investment promotion body within the district to promote FDI. However, the potential for further investment in Brčko district, particularly given its strategic location close to the border with Croatia, should not be overlooked. In this regard, investment promotion for Brčko district may be most effectively addressed by the development of a much closer relationship between the Department of Economic Development, Sport and Culture of Brčko district and FIPA.

### 4. Recommendations

**Recommendation II.D.1.** The Ministry of Economic Relations and Regional Cooperation of Republika Srpska and FIPA should work together more closely to promote investment.

As recommended above, a higher level of cooperation among all institutions with an investment promotion function in Bosnia and Herzegovina may be formalized through the use of agreed protocols and memorandums of understanding (MoUs) (see recommendation II.A.2); equally important is the development of day-to-day informal contact and working relationships between the staff of both bodies.

**Recommendation II.D.2.** The investment promotion functions of the Ministry could be carried out more efficiently through a more defined agency-based structure or IPU, as an executive arm of the Ministry, with close links with FIPA. This does not mean removing the investment promotion function from the control of the Ministry, but creating a more flexible and business-focused structure, possibly with separate grading and remuneration policies and the ability to recruit specialist staff on a short- or medium-term basis, as required. The IPU could, with time and the input of greater resources, become the basis of an entity-wide IPA, along with the model of the regional IPAs in the United Kingdom.

**Recommendation II.D.3.** Serious consideration should be given to increasing the level of staffing and financial resources available to promote investment in the Ministry.

**Recommendation II.D.4.** The planned investment promotion strategy for Republika Srpska should be assigned a high priority and completed as soon as possible, particularly in terms of prioritizing sectors for investment promotion and identifying priority markets for sourcing such investment. However, consideration should also be given to coordinating this as part of the suggested new Bosnia and Herzegovina-wide investment promotion strategy (see recommendation II.B.1).

**Recommendation II.D.5.** Ideally, following the creation of the new investment promotion strategy, the marketing focus of the Ministry should be readjusted to identify wider sector-based opportunities and identify and specify competitive advantage for Republika Srpska within each targeted sector as far as possible. A new website and new marketing material reflecting these changes should replace the existing ones.

**Recommendation II.D.6.** Further to the above recommendation, the Invest Srpska website of the Ministry would need further improvements to make it more investor friendly, less confusing and more accessible to a wider external audience. For example, the series of brochures on the website listed under "Investment Potentials" needs to be re-focused to show



and define the wider competitive advantage for each sector – and not focus primarily on investment in existing projects, which narrows the scope of the potential offering – and to adopt a more consistent format in terms of both content and appearance. Another example is the list of presentations from the municipalities, which should be given in English and the summary document of existing projects for each municipality, which also needs improvement. However, these points are probably best addressed through the creation of the proposed new investor-focused website (see recommendation II.A.5).

**Recommendation II.D.7.** The brand identity of Invest Srpska should be reinforced by using this designation consistently, particularly on all media and materials aimed at an external audience, including the website and marketing materials. However, this recommendation should be taken as subsidiary to the recommendation for the adoption of a common Bosnia and Herzegovina brand for investment promotion (see recommendation II.A.3).

**Recommendation II.D.8.** The overseas representatives of the Ministry should be given training in marketing and investment targeting and they should form linkages and engage, wherever possible, with the overseas commercial representatives of MFA. FIPA should also be involved in such liaisons. The overseas representatives should be increasingly given investment targets, such as identifying and meeting with a given number of potential investors in their respective markets each year and promoting investor visits. It should be noted, however, that the development of the overseas representative function should be closely aligned with a new and coherent overall investment promotion strategy (see recommendation II.D.4) and adequate funding should be provided to perform such tasks effectively. Information and support provided by the overseas representatives of the Ministry, especially on intelligence on investment leads and on the overall Bosnia and Herzegovina investment product and marketing messages, should be shared with FIPA, and vice-versa.

**Recommendation II.D.9.** The aftercare programme of the Ministry should be developed to provide consistent contact at least with the largest and most significant incoming and existing investors in Republika Srpska. To do this, an account management structure should be adopted, on similar lines as suggested for FIPA (see recommendation II.C.4). It should be noted, however, that almost certainly further staff resources would be needed within the Ministry to do this effectively. The constraint imposed by limited

staff resources could be at least partially addressed by greater coordination with FIPA in terms of allocation of responsibilities and possibly in sharing training on aftercare and account management.

Other recommendations for FIPA given in the preceding section are also applicable.

**Recommendation II.D.10.** Consideration should be given to the creation of an entity-level investment promotion body within the Federation of Bosnia and Herzegovina. This may be known as an IPU and would fulfil at least some of the functions of the investment promotion department of the Ministry, in particular to deal with investor visits, provision of information and as a coordinating body for the investment promotion efforts of cantons, municipalities and RDAs with the Federation of Bosnia and Herzegovina. The IPU would be placed within an appropriate ministry of the Federation of Bosnia and Herzegovina, possibly the Ministry of Energy, Mining and Industry or the Ministry of Trade. Alternatively, it could be created as a special body for which there is an existing provision in the Federation of Bosnia and Herzegovina Government structure, such as the Agency for Privatization in the Federation of Bosnia and Herzegovina. This would be a matter for the Government of the Federation of Bosnia and Herzegovina to decide, but the important point is that it be given the maximum amount of flexibility and latitude to interact proactively with FIPA and the cantons and municipalities. Its cooperation with FIPA should be formalized through an MoU (see recommendations II.A.2 and II.D.1 above).

**Recommendation II.D.11.** The investment promotion relationship between FIPA and Brčko district should also be formalized through a protocol of cooperation or an MoU (see recommendations II.A.2, II.D.1 and II.D.10 above). The MoU should define the division of responsibilities for the external promotion of the district, information sharing and investment facilitation services. FIPA should include Brčko district in all appropriate marketing materials and on its website, including as a key potential investment location. It should also have regular contact with key actors in Brčko district, including the private sector, and should include it where possible in investor visit and business mission programme schedules. In turn, the Department of Economic Development, Sport and Culture of Brčko district should provide a local resource to FIPA of information and local knowledge likely to be of interest to foreign investors. Discussion should commence between Brčko district and FIPA to agree on an MoU for this purpose.

## E. Supporting success at the local level

**There are compelling success stories for investment at a local/municipal level.** These have been largely locally driven with only limited assistance from FIPA/Ministry of Economic Relations and Regional Cooperation of Republika Srpska, for example. The Business Excellence Area (BEAR) initiative is an outstanding example of how investment success can be driven from the bottom up (box 10). Another example can be found in the Agency for Economic Development of the Municipality of Prijedor (PREDA) in Republika Srpska (box 11). By focusing on the provision of services and infrastructure, business facilitation, a qualified workforce and selective incentives, and carrying out proactive investment promotion campaigns, these municipalities have successfully attracted significant levels of FDI and established themselves as high-quality investment destinations.

**Municipalities, towns and small regions thus have a role to play.** By possessing local knowledge, networks and access to key investment elements such as labour force and real estate, they can be effectively used as a local partner for a national or regional IPA in, for example, providing information and good local contacts to an investor. On occasion, smaller government areas can, with sufficient drive and ambition, and with the right external connections, successfully make contact with and secure investment from foreign investors, ideally with the active support of the national or regional IPA. This may be described as a bottom-up approach.

**RDAs and LDAs can also support the investment promotion effort.** The RDAs and LDAs have adapted to their roles of fostering regional economic development with varying degrees of success and impact. Some have been instrumental in attracting FDI into their respective communities and pose a different approach to investment promotion. For example, the Regional Economic Development Agency for Herzegovina (REDAH) has been very proactive in investment promotion, creating a brand for the greater Herzegovina region that encompasses 16 municipalities from three cantons in the Federation of Bosnia and Herzegovina and 7 municipalities in Republika Srpska. REDAH has been able to engage with the cantonal and municipal governments across the entities to develop a common investment and export promotion platform, including joint promotional material, a website<sup>110</sup> and representation in trade fairs and other events.

**The bottom-up approach to investment promotion should complement countrywide efforts.** In Bosnia and Herzegovina, BEAR and PREDA are examples of effective bottom-up investment promotion efforts. However, there have been only limited attempts to learn from them or replicate their success elsewhere. There is no reason why they should not be capitalized upon and replicated to successfully generate FDI. A bottom-up approach should therefore complement countrywide efforts coordinated or driven by FIPA.

### 1. Recommendations

**Recommendation II.E.1.** A bottom-up strategy should be considered as a complement countrywide FDI promotion efforts. There are compelling success stories for investment at a local and municipal level within cantons, municipalities, LDAs and RDAs, which should receive more consistent attention and support from Bosnia and Herzegovina and entity bodies, and more day-to-day interaction.

**Recommendation II.E.2.** Greater opportunities should be provided for other municipalities and cantons to learn from the BEAR/PREDA examples – e.g. workshops, training events and secondment of staff to Tešanj or Prijedor.

**Recommendation II.E.3.** The most appropriate role of the LDAs, RDAs, cantons and municipalities within the investment promotion sphere is likely to be in providing a valuable source of locally based information and knowledge in key investment aspects such as sources of recruitment of local staff, training (both for specific investors and training in generic skills in advance of specific investment proposals), guidance on specific investment locations and availability of real estate, and real-time local knowledge of costs, including labour costs. Essentially, there should be a two-way flow of information between local bodies and those of the entities and of Bosnia and Herzegovina (especially with the proposed IPU for the Federation of Bosnia and Herzegovina and the Ministry of Economic Relations and Regional Cooperation of Republika Srpska) and with FIPA. The potential of investor visit programmes will, in particular, be likely to be enhanced through the development of this Bosnia and Herzegovina/entity/local relationship.

## F. Summary

**Investment promotion efforts in Bosnia and Herzegovina need to be strengthened through greater cooperation and pooling of resources.** Overall, a great deal of investment promotion expertise is present within Bosnia and Herzegovina, especially within FIPA and the Ministry of Economic Relations

and Regional Cooperation of Republika Srpska. However, much can be done to further build capacity and capabilities, and strengthen the institutional infrastructure for investment promotion. The recommendations contained in this chapter aim to suggest how this might best be achieved. One of the most significant constraints facing those engaged in investment promotion in Bosnia and Herzegovina is a relative lack of human and financial resources and greater expertise in other areas. An obvious way to minimize resource constraints and maximize effectiveness is by enhancing cooperation and collaboration between the various bodies at Bosnia and Herzegovina, entity and local levels. This chapter provides a number of recommendations as to how this may be facilitated, including:

- Agreeing on an overall strategic framework for investment promotion in Bosnia and Herzegovina;

- Developing a focused and agreed approach for targeting foreign investors through collaboration between bodies and between representatives of MFA and the Ministry of Economic Relations and Regional Cooperation abroad;
- Developing a shared brand, marketing formats and improved website;
- Greater communication on investment data and investment leads, for example;
- Development of formal and informal day-to-day communications between bodies.

**Increasing resources allocated to proactive investment promotion will yield greater dividends in time.** Decision makers at all levels of government in Bosnia and Herzegovina, but particularly at Bosnia and Herzegovina and entity levels should consider increasing the human

#### **Box 10. BEAR: A success story in bottom-up investment promotion in Bosnia and Herzegovina**

**BEAR is a unique economic development and investment promotion agency shared by three municipalities.** It is an initiative of the Teslić (Republika Srpska), Tešanj (Federation of Bosnia and Herzegovina) and Žepče (Federation of Bosnia and Herzegovina) municipalities with the aim of facilitating economic progress by supporting private sector development, including investment promotion. BEAR was a self-generated initiative with the personal involvement and support of the mayors in each of the three municipalities. The key participating bodies are the Development Department of Teslić, the Development Agency of Tešanj and the Development Agency of Žepče. Tešanj and Žepče municipal administrations have ISO 9001 certification, and all three locations aim for Business Friendly Certification.

**Through BEAR, investors are provided support for all stages of setting up a business.** This includes an OSS facility, as well as assistance in dealing with entity and Bosnia and Herzegovina levels of government and other institutions. BEAR has an impressively professional approach with excellent relations with local entrepreneurs and larger investors. Indeed the private sector has helped local government to reform and be more business oriented. The thrust of BEAR is very much on self-help and is driven by local initiative and some key local champions. For example, the area has seen some successful privatizations involving both local and foreign investors.

**The municipalities have provided business infrastructure in the form of business zones offering good investment locations, as well as incentives.** A qualified workforce has been prepared and trained, and is ready for new investors. However, more significant has been the proactive search for strategic investors. As a result, some companies that were originally distributors have moved production to the area. The area has more than 20 overseas companies from seven countries, including Germany, Netherlands, Italy, Slovenia and Austria engaged in wood products, textiles, metal processing and automotive parts manufacturing and together employ around 25 per cent of the workforce.

**BEAR has managed to attract investment into the area in key industries for local development.** In textiles, the area has proved itself competitive in the near-shore manufacture of high-end quality socks, T-shirts and shoes because of lower transportation costs, higher productivity, quality of management and the greater ability to deliver orders on time, in comparison with many offshore locations.

**The success of BEAR has been driven primarily by its own initiative.** While FIPA has provided help in preparing promotion material, in aftercare and through its website, BEAR remains very much a locally driven initiative with international recognition and awards, including from *FT Magazine* as one of the most favourable investment destinations in Europe. It is also significant that the BEAR initiative not only involves three separate municipalities and a canton, but also represents communities in both the Federation of Bosnia and Herzegovina and Republika Srpska and provides an excellent model of how collaboration across entities can help provide investment success.

*Source:* BEAR website and interview during the UNCTAD fact-finding mission

### Box 11. PREDA: Proactive investment promotion at the municipal level

**PREDA is an example of successful investment promotion at the municipal level.** Established in 2006, the Agency promotes Prijedor as an investment destination and, through its own initiative, it has been able attract FDI and diversify the local economy to turn the municipality into a regional economic growth pole in Republika Srpska. Prijedor has 10 foreign investors, including Arcelor Mittal (employing 800 people in mining), Crash (a Croatian company that produces biscuits), an Austrian textile operation and additional companies from Italy, Norway and Croatia in industries such as wood products, footwear production, agribusiness and biogas.

**PREDA is proactive in FDI promotion, using connections abroad and engaging in research in target investment markets.** PREDA establishes connections and contacts with business institutions and investors in the European Union through diplomatic channels and targets them through e-mail, followed by personal meetings. PREDA provides a vast information centre for investors, which appears to be unique among municipalities in Bosnia and Herzegovina.

**PREDA has a relationship with both the Ministry of Economic Relations and Regional Cooperation of Republika Srpska and FIPA, but only draws on their support as necessary.** PREDA has organized four successful investment conferences in Prijedor, supported by the Ministry and the Republika Srpska Agency for SMEs and has good relations with Republika Srpska representations in Austria and Germany, with whom they organize business visits abroad.

*Source:* PREDA website and interview

and financial resources available for proactive investment promotion and should maintain this consistently over the long term. This is not necessarily a financial investment solely by government, as it can involve private sector inputs. It is however an investment that is likely to reap rewards greatly in excess of the resources allocated, in terms of greater wealth generation, increased quantity and quality of employment, enhanced knowledge and technology transfer and ultimately, more financial resources through increased flows of corporate and personal tax revenues.

**Investment promotion management should focus more on clients and strategy.** Throughout the entire effort of Bosnia and Herzegovina to promote FDI, it is important to achieve an ever-increasing business focus, enhanced strategic marketing planning, outreach to potential investors in targeted external markets and a clear statement of competitive advantage for each of the sectors targeted for investment. While privatization opportunities should always be pursued, investors whose plans do not necessarily include such investments may open up entirely new sectors to the Bosnia and Herzegovina economy.

**Complementarity in investment promotion pays.** The BEAR example shows how a self-starting bottom-up approach can provide investment success within a local area. While this must always be encouraged where it arises, it is however never a substitute for an approach that markets and sells the wider competitive advantage of a country or region. Indeed, the two should be mutually supportive. Greater interaction between the various investment promotion bodies

is desirable. There is great potential in mutual learning within and between the various investment promotion bodies of Bosnia and Herzegovina; it is likely that sharing experiences and learning will reveal complementary skills and knowledge to the benefit of all concerned

**A good way to strengthen investment promotion capabilities is to learn from other successful IPAs.** The input of external experts to build capacity and capability and to take forward the recommendations in this IPR would be highly desirable. There is a great opportunity to move forward quickly and to significantly enhance the investment flows into all parts of Bosnia and Herzegovina. The experience of UNCTAD has shown that there is already a strong pillar of knowledge, experience and enthusiasm on which to build. While it is to be hoped that the recommendations contained in this chapter will prove helpful in pointing a way forward in investment promotion for Bosnia and Herzegovina, further work could be undertaken, including as part of the follow-up activities to this Review.

**ANNEX I SUMMARY OF RECOMMENDATIONS**

What	Why	How	
1. Amend FDI-specific legislation	Bosnia and Herzegovina has open and modern investment laws. Some provisions may nevertheless encroach on the country's ability to regulate. In addition, sustainable development principles could be adopted in the country's international investment policy and introduced in future IIAs.	I.A.1	Consider abolishing or amending article 20 of the Bosnia and Herzegovina investment law and similar provisions in the entity investment laws so that the country retains the right to introduce regulatory changes.
		I.A.2	Modernize international investment policy with a view to strengthen the sustainable development dimension of IIAs as outlined in the UNCTAD Investment Policy Framework for Sustainable Development.
2. Reduce the administrative burden	Public administration related to business operations is often onerous, inefficient and not transparent. The private sector's perception is that the complexity and amount of red tape behind business regulations is a major deterrent to FDI. Improving public administration with a focus on making it more client oriented could yield important benefits including that of facilitating the regularization of the informal economy and increased FDI.	I.B.1	Delink courts from business registration in the Federation of Bosnia and Herzegovina and replace it with a simplified procedure at municipal administration centres.
		I.B.2	Establish a fully functional online business registration system identical across Bosnia and Herzegovina.
		I.B.3	Make optional the use of notaries in the business registration process.
		I.B.4	Harmonize all business licences and permits as well as the rule books for their implementation across the country.
		I.B.5	Coordinate all inspections at the entity level, make all inspectors accountable to the entity inspectorates and harmonize inter-entity inspection practices.
		I.B.6	Cooperate to ensure that business registration data found in entity registries are fully integrated into the centralized registry.
		I.B.7	Share access to digital information among public agencies involved in business registration to expedite procedures.
		I.B.8	Abolish the requirement of a company stamp for business registration.
		I.B.9	Abolish the requirement to draft a rule book on internal employment conditions for companies employing more than 15 workers.
		I.B.10	Continue to provide training on business licensing and permitting to civil servants at the municipal level.
		I.B.11	Establish deadlines for subentity governments to deliberate on approving or issuing of licences so that, if no valid objection is raised within the deadline, applications meeting all requirements shall be approved automatically.
		I.B.12	Design ethics and anti-corruption courses for inspectors and make them mandatory.
		I.B.13	Strengthen the sanitary and phytosanitary government agencies and seek international accreditation for local laboratories to facilitate trade in agricultural and animal products.

What	Why	How	
3. Harmonize tax policy and rationalize incentives	Different tax regimes across Bosnia and Herzegovina add complexity and pose difficulties to companies that operate in more than one entity. At the same time, it may in some instances leave room for tax engineering. The lack of inter-entity coordination in designing fiscal incentives also creates a risk for unhealthy competition and a race to the bottom. Incentive schemes, including FZs, should be revised and their impact monitored to make them more targeted and effective.	I.C.1	The entities and Brčko district should harmonize their direct tax regimes so that they can be applied uniformly across Bosnia and Herzegovina, including in the use of fiscal incentives
		I.C.2	Facilitate tax consolidation for companies operating in more than one entity, allowing them to file a single tax return by default without having to negotiate a special agreement to do so.
		I.C.3	Abolish the FZ regime and revise export incentives to ensure compliance with WTO rules.
		I.C.4	Establish formal channels of cooperation among the entities' tax authorities with periodical meetings to share information and coordinate tax law enforcement.
		I.C.5	Republika Srpska and Brčko district could consider reciprocating the provision of the Federation of Bosnia and Herzegovina law stating that non-resident taxpayers are exempt from paying profit tax on their business units operating in an entity where they do not have their principal place of business.
		I.C.6	Republika Srpska could consider amending the Profit Tax Law so that it requires companies to follow international accounting standards to determine the taxable base.
		I.C.7	The Federation of Bosnia and Herzegovina could consider adopting stronger anti-avoidance provisions in its law so that it allows the tax authorities to investigate transactions, regardless of their legal form.
		I.C.8	The Federation of Bosnia and Herzegovina could review its tax incentive linked to export performance, as it would violate the SCM agreement of the WTO.
		I.C.9	In the rule book, define the list of non-resident legal entities that are entitled to a full refund of VAT to include all individuals and companies that are envisioned in the VAT law.
		I.C.10	Expand the database of questions and answers on the ITA website so that it may serve as a reference for taxpayers.
		I.C.11	The Federation of Bosnia and Herzegovina could consider abolishing the property transfer tax.
		I.C.12	Abrogate the open-ended provisions that protect investors in FZs from any future changes that would be less favourable.
4. Reform labour policy	Unemployment remains one of the highest in the region, and the informal economy is large. Bosnia and Herzegovina is committed to reforming its labour policy to enhance flexibility and job creation. In this regard, it should prioritize the harmonization of labour legislation and could consider reducing some SSCs to foster formal employment. The country would also improve the investment environment by facilitating the hiring of skilled foreign workers, which is deemed restrictive by the private sector.	I.D.1	Fully harmonize the entity labour laws so that regulations can be applied uniformly across the country.
		I.D.2	Promote the use of mediation and other alternative dispute resolution mechanisms to resolve labour disputes.
		I.D.3	Consider standardizing the work and resident permit procedures for skilled foreign workers so that only a single application is required.
		I.D.4	Clarify the procedure for work permit renewal and simplify the process by desisting from requesting documentation submitted in the initial procedure.
		I.D.5	Consider automatically renewing work permits for foreign workers that maintain a contract performing the same or a similar position with the employer that originally applied for the work permit.
		I.D.6	Facilitate the recognition of foreign academic degrees and professional qualifications in the context of issuing work permits.

What	Why	How	
5. Improve access to land	Land titles security and accuracy in Bosnia and Herzegovina has been affected by inconsistent records and war. Moreover, the existence of more than one land administration system creates further complications over disputed titles, impeding investment. As a response, many municipalities have taken the initiative to provide access to land through business zones but more systemic marketing analysis should guide their establishment.	I.E.1	Harmonize the entity land administrations. The Federation of Bosnia and Herzegovina should move towards consolidating the land registry and cadastre systems under a single administration, as in Republika Srpska.
		I.E.2	In the Federation of Bosnia and Herzegovina, adopt the new law on land survey and registration that would allow for the establishment of a standardized entity database compiled from data from cantonal courts and cadastres.
		I.E.3	Prioritize the establishment of secure, electronic land registration systems in the entities, including through the technical assistance offered by international development partners.
		I.E.4	Continue to address unresolved land claim disputes and related issues caused by forced displacements that occurred during the war.
		I.E.5	Create guidelines for the establishment of business zones in the Federation of Bosnia and Herzegovina. Entities should coordinate among themselves to avoid a race to the bottom in establishing such zones.
6. Strengthen the environmental framework	Bosnia and Herzegovina has pledged to adopt the environmental regulatory acquis of the European Union and take steps to strengthen its environmental institutions under the EPA but progress has been slow. There is no countrywide environmental plan, and entity legislations are not fully harmonized. Investors express their frustration at the lack of coordination of environmental institutions and question their capacity to administer permits and inspections.	I.F.1	Continue the implementation of the 2008 EPA requirements.
		I.F.2	Adopt a Bosnia and Herzegovina environmental action plan based on entity plans.
		I.F.3	Expedite the adoption of secondary legislation for the framework environmental protection laws.
		I.F.4	Strengthen the mandate of the Inter-entity Steering Committee for the Environment to harmonize environmental regulations across the country.
		I.F.5	Define the roles and competencies of environmental protection authorities at all levels of government in secondary legislation to avoid duplication of work.
		I.F.6	Harmonize the environmental licensing process and define the procedure for renewal. Consider establishing an online interface for the issuance of environmental permits to increase transparency and timeliness.
		I.F.7	Ensure that the principle of consultation with local communities is upheld in the enforcement of environmental laws, including in the issuance of permits (ex ante) and in inspection (ex post).
7. Leverage private investment in infrastructure	Substantial infrastructure development needs in Bosnia and Herzegovina arose as a result of the war and the devastating floods of 2014. Public funds will not suffice to meet these needs, and Bosnia and Herzegovina is looking to attract private investment. However, the lack of harmonization in concessions laws, the absence of PPP legislation and policy at Bosnia and Herzegovina level and the limited experience in managing concessions help explain why Bosnia and Herzegovina has yet to attract significant private investment into infrastructure development, including FDI.	I.G.1	Harmonize the regulations on granting concessions and the practices of the concession commissions across all levels of government. Ideally one rule book stipulating all regulations and procedures in the granting of concessions should be developed and applied by all concession-granting authorities.
		I.G.2	Adopt the PPP laws for the Federation of Bosnia and Herzegovina and the cantons and proceed with the preparation of a PPP law for Bosnia and Herzegovina. Ensure that the new laws are aligned with the existing Republika Srpska PPP law.
		I.G.3	Better define the terms “concession”, “public contract” and “public–private partnership” in the relevant laws to avoid overlap or confusion with regard to the jurisdiction of each law and its accompanying regulatory regime.
		I.G.4	Better define the procedure and time frame for a foreign investor to establish a local company to carry out a concession contract in the relevant Bosnia and Herzegovina and entity legislations.
		I.G.5	Strengthen the capacity of the PPP unit in the Ministry of Finance of Republika Srpska. Seek training from specialized international organizations or establish cooperation agreements with leading PPP units from other countries, particularly during the implementation of the first pilot projects
		I.G.6	As PPPs are involved in complex terms and contractual relationships, capitalize on the experience acquired through the PPP unit of Republika Srpska in its pilot phase to provide assistance in the establishment and operationalization of the relevant units for both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

What	Why	How	
8. Enhance cooperation in investment promotion	Various bodies are involved in investment promotion but there is not enough cooperation or coordination among them, often reducing the impact of already limited resources. For instance, there is no common brand for Bosnia and Herzegovina and no sharing of marketing resources, including in overseas representations. Increased collaboration is essential to maximize the impact of investment promotion.	II.A.1	Increase the interaction and sharing of information and resources between FIPA and the subnational investment promotion institutions.
		II.A.2	Formalize cooperation among investment promotion bodies through MoUs.
		II.A.3	Create a common brand for investment promotion in Bosnia and Herzegovina.
		II.A.4	Develop clear and consistent marketing messages concerning the common competitive advantage of Bosnia and Herzegovina. FIPA should take the lead in this regard.
		II.A.5	FIPA's website should become a resource shared by all investment promotion bodies in Bosnia and Herzegovina.
		II.A.6	FIPA and the entities should share an investment product database that would collect, analyse and disseminate information commonly required by investors (e.g. real estate, labour market and operating costs).
		II.A.7	Encourage the sharing of information, training and capacity-building among all investment promotion representation abroad.
		II.A.8	Promote direct targeting of individual investors through investor outreach campaigns over business forums to secure FDI.
		II.A.9	Simplify and harmonize the existing investment incentive structure (fiscal and non-fiscal) Consider adopting a selective financial assistance scheme when projects are appraised and vetted through set criteria to qualify for incentives.
		II.A.10	Strengthen the role of Bosnia and Herzegovina's diaspora to establish a business network that could provide prospective investment leads.
9. Adopt a strategic approach to investment promotion	The lack of updated and revised strategic guidelines on investment promotion strategy is a major impediment to guiding the work of FIPA and investment promotion efforts in general.	II.B.1	Adopt a strategic framework on investment promotion in Bosnia and Herzegovina in consultation with all relevant stakeholders to provide guidance to all bodies engaged in investment promotion within Bosnia and Herzegovina.
		II.B.2	Establish a prioritized list of sectors targeted for investment promotion stemming from the strategic framework on investment promotion.
		II.B.3	Focus marketing and investor targeting on a strong sector basis, highlighting the competitive advantage offered by Bosnia and Herzegovina in each target sector.
		II.B.4	Adopt annual marketing plans that should provide clear direction on sectors and overseas markets to be targeted into a wider marketing strategy. FIPA should take the lead in the preparation of these plans in consultation with stakeholders.
		II.B.5	Adopt annual marketing communications plans that will indicate which channels, objectives, impacts and costs are expected and will help the M&E of marketing communications activities.



What	Why	How	
10. Strengthen FIPA	FIPA has done considerably well in fulfilling its mandate with limited resources but it is held back from further development by a lack of policy guidance and coordination with other investment promotion bodies. There are several functions where FIPA could improve its performance including in targeted, sector-specific promotion and aftercare. There are a number of management tools and systems FIPA could adopt to enhance some of these key functions. It is necessary to strengthen FIPA so that it can perform its role as the lead investment promotion coordinating body in Bosnia and Herzegovina.	II.C.1	Strengthen FIPA's capacity to conduct proactive investment promotion.
		II.C.2	Adjust FIPA's structure to better reflect IAs' global best practice. A full institutional development assignment should be carried out with expert assistance to formulate the new structure. It would be advisable to set up an additional investment targeting department.
		II.C.3	Adopt an account management structure and appoint a number of account managers to enable regular and ongoing aftercare contact with key investors.
		II.C.4	Develop a company differentiation model to prioritize companies participating in the aftercare programme.
		II.C.5	Provide a clear business focus to the aftercare programme.
		II.C.6	Evaluate and expand the training provided to officers involved in the aftercare programme to provide a range of relevant business skills.
		II.C.7	Develop an investor contact report tool to be used for each individual aftercare meeting. It should include a summary of the key issues, next steps to be taken by the company, FIPA or other bodies.
		II.C.8	Assess each participating company in the aftercare programme for their potential expansion or reinvestment and offer a clear business strategy for its realization.
		II.C.9	Introduce a more comprehensive system of targeting and measuring results.
		II.C.10	Develop the customer relationship management system to record and track investment enquiries and details of new and prospective investors and projects.
		II.C.11	Pursue low-cost marketing opportunities, including social media, relations with key international business journalists and publication of a common Bosnia and Herzegovina e-magazine.
		II.C.12	Consider engaging international companies to provide investment lead generation.
		II.C.13	Consider offering secondments and study visits for key FIPA staff and other promotion bodies in Bosnia and Herzegovina to leading IPAs, preferably from decentralized countries.

What	Why	How	
11. Build investment-promotion capacities in the entities	The entities of Bosnia and Herzegovina are engaged in investment promotion with varying degrees of capacity. If the entities are to be partners to FIPA in promoting the whole of Bosnia and Herzegovina as an investment destination, their capacities need to be built on and cooperation among them strengthened in order to offer a professional service and present a consistent country image abroad.	II.D.1	Increase cooperation between the Ministry of Economic Relations and Regional Cooperation, and FIPA. A higher level of cooperation may be formalized through an MoU but day-to-day contact is equally important.
		II.D.2	Increase the efficiency of the investment promotion functions of the Ministry of Economic Relations and Regional Cooperation through a more defined agency-based structure or IPU, as an executive arm of the Ministry, with close links with FIPA.
		II.D.3	Consider increasing the budget and staff for investment promotion within the Ministry of Economic Relations and Regional Cooperation.
		II.D.4	Adopt the investment promotion strategy for Republika Srpska as soon as possible. The strategy should prioritize sectors for investment promotion and identify priority markets for sourcing such investment.
		II.D.5	Readjust the marketing focus of the Ministry of Economic Relations and Regional Cooperation to identify wider sector-based opportunities and to identify and specify competitive advantage for Republika Srpska within each targeted sector.
		II.D.6	Improve the Invest Srpska website of the Ministry of Economic Relations and Regional Cooperation to make it more investor friendly.
		II.D.7	Reinforce the Invest Srpska identity brand on all media aimed at an external audience.
		II.D.8	Provide training to the overseas representatives of the Ministry of Economic Relations and Regional Cooperation in marketing and investment targeting. Encourage their cooperation with MFA representatives abroad.
		II.D.9	Develop the aftercare programme of the Ministry to provide consistent contact at least with the largest and most significant incoming and existing investors in Republika Srpska.
		II.D.10	Consider creating an entity-level investment promotion body or IPU for the Federation of Bosnia and Herzegovina. The IPU would fulfil at least some of the functions of the investment promotion department of the Ministry of Economic Relations and Regional Cooperation, in particular as a coordinating body for the investment promotion efforts of cantons, municipalities and RDAs within the Federation of Bosnia and Herzegovina. As in the case of the Ministry, its cooperation with FIPA would be formalized through an MoU.
12. Support successful local initiatives	Some promotion initiatives at the local level have proven to be successful in FDI attraction. Bosnia and Herzegovina should try to learn from and replicate these good practices and promote bottom-up approaches as a complement to countrywide efforts.	II.E.1	Promote bottom-up initiatives as a complementary strategy to countrywide investment promotion efforts through more consistent attention and support from Bosnia and Herzegovina and entity bodies.
		II.E.2	Disseminate the success stories of proactive municipalities in investment promotion through workshops, training sessions and secondments.
		II.E.3	Establish a two-way flow of information between local bodies and entity and Bosnia and Herzegovina bodies.

<b>ANNEX II BILATERAL INVESTMENT TREATIES SIGNED BY BOSNIA AND HERZEGOVINA</b>		
<b>Partners</b>	<b>Date of signature</b>	<b>Date of entry into force</b>
Albania	17 June 2008	6 April 2009
Austria	2 October 2000	20 October 2002
Belarus	29 November 2004	22 January 2006
Belgium–Luxembourg Economic Union	3 March 2004	16 September 2010
Canada*	21 December 1979	28 December 1980
China	26 June 2002	1 January 2005
Croatia*	23 July 2002	3 January 2005
Czech Republic	17 April 2002	30 May 2004
Denmark	24 March 2004	3 June 2008
Egypt	11 March 1998	29 October 2001
Finland	1 November 2000	8 December 2001
France	12 December 2003	
Germany	18 October 2001	11 November 2007
Greece	13 December 2000	15 June 2007
Hungary	26 September 2002	31 August 2005
India	12 September 2006	13 February 2008
Iran, Islamic Republic of	27 July 1996	2 June 2009
Italy	19 May 2000	10 February 2005
Jordan*	2 July 2006	25 November 2011
Kuwait	13 June 2001	23 December 2002
Lithuania	7 June 2007	16 March 2009
Malaysia	16 December 1994	27 May 1995
Netherlands	13 May 1998	1 January 2002
Pakistan	4 September 2001	14 May 2010
Portugal	13 March 2002	3 February 2009
Qatar	1 June 998	5 February 2009
Republic of Moldova	9 April 2003	9 June 2008
Romania	20 February 2001	3 December 2001
San Marino	2 August 2011	24 May 2012
Serbia	18 December 2001	25 August 2004
Slovakia	2 June 2008	19 November 2009
Slovenia	30 May 2001	1 July 2002
Spain	25 April 2002	21 May 2003
Sweden	31 October 2000	1 January 2002
Switzerland	5 September 2003	21 May 2005
The former Yugoslav Republic of Macedonia	16 February 2001	25 April 2004
Turkey	21 January 1998	10 February 2009
Ukraine	13 March 2002	22 January 2004
United Kingdom	2 October 2002	25 July 2003

Source: UNCTAD IIA database.

Note: (\*) = Text of treaty not available.

**ANNEX III METHODOLOGY OF CORPORATE TAX COMPARISON**

The Comparative Taxation Survey compares taxation on investment in several sectors in Bosnia and Herzegovina across the country's entities: the Federation of Bosnia and Herzegovina and Republika Srpska. These comparisons enable Bosnia and Herzegovina to assess the comparative competitiveness of taxation of its entities.

Taxation affects the cost of investment and its profitability, and thus the return on investment. This impact is not just a question of looking at the headline rate of tax on profits. The tax burden on the investor depends on a number of factors and their interaction such as expenses allowed, capital allowance rates (tax depreciation), the availability of tax credits, investment allowances and tax holidays, loss-carry-forward provisions and the taxation of dividends. Together, these make up the overall fiscal regime that affects the cost of, and return on, investment.

Comparative tax modelling is a method of taking into account the most important of these variables in the fiscal regime in a manner that facilitates comparison between countries. The tax variables included in the analysis are:

- Corporate income tax;
- Rate of tax including tax holidays, if any;
- Loss-carry-forward provisions;
- Capital allowances, investment allowances and investment credits;
- Tax on dividends.

VAT, sales tax and import duties are not considered in this analysis.

Financial models of project investment and financing revenues and expenses are utilized for a hypothetical business in each sector. These are based on typical costs and revenues experienced in such businesses in a developing economy. The business models cover a selected business within each sector.

The fiscal regime in Bangladesh and the chosen comparator countries for each sector are applied to the standard business model for each sector over 10 years beginning with the initial investment. The financial models calculate net cash flow to the investor, assuming that the company pays out all residual profits after tax (100 per cent dividend payout) and that the investor gains the residual value of the company, which is sold after 10 years for an amount equal to its balance sheet value.

The impact of the fiscal regime is presented as the present value of tax (PV tax percentage). PV tax percentage is the total of taxes collected by the government over the 10 years as a percentage of the project cash flow pre-tax and post-finance where both cash flows are discounted to a present value at a rate of 10 per cent per annum. PV tax percentage thus measures how much of an investor's potential project return is taken by the government in taxes and duties. The higher the percentage of PV tax, the more the fiscal regime burdens investors and reduces the incentive to invest.

**ANNEX IV. EXAMPLES OF INVESTMENT PRODUCT DATABASE INFORMATION****Demographics/labour availability**

- ✓ Total population in Bosnia and Herzegovina
- ✓ Total working age population
- ✓ Total working population (not the same)
- ✓ Total workforce
- ✓ Analysis of workforce by occupation
- ✓ Age breakdown of population of working population
- ✓ Unemployment rate
- ✓ Economic activity rate
- ✓ Availability of recruitment agencies
- ✓ Examples of recent recruitment exercises
- ✓ Population trends
- ✓ Travel to work area populations
- ✓ Size of economically active population
- ✓ Analysis of school leavers
- ✓ Industrial relations record
- ✓ Comparative data on above, where possible, with key competitors

**Skills availability**

- ✓ Breakdown of workforce by educational qualifications
- ✓ Total number of graduates: third level and higher
- ✓ Total number of students: technical/vocational/ third level
- ✓ Universities and colleges and specific courses available
- ✓ Total number of student places
- ✓ Graduate pipeline for key subjects, e.g. ICT, accountancy, engineering
- ✓ Numbers of training courses in key areas
- ✓ Universities and colleges
- ✓ Recruitment services,
- ✓ Pre-recruitment training
- ✓ Ongoing government training initiatives
- ✓ Educational achievement at second and third levels
- ✓ Percentage going to third-level education
- ✓ Breakdown of types of third-level courses by discipline
- ✓ Number of graduates per annum
- ✓ Number of graduates in the workforce, especially in key areas
- ✓ Numbers of professionally qualified people in the workforce
- ✓ Numbers of managers in the workforce

- ✓ Comparative data on above, where possible, with key competitors

**Site/factory/real estate availability**

- ✓ Register of available factory buildings – public and private sectors to specify:
  - Space available
  - Asking rent per square metre or
  - Asking purchase price
  - Service charges , if any per square metre
  - Lease length, if applicable
  - Lease or purchase terms
  - Currency specific
  - Description and plan of building
  - Bespoke rentalized terms
  - Water specific tion
  - Waste specific tion
  - Power specific tion
  - Telecommunications specific tion
- ✓ Register of available major office buildings public and private sectors to specify:
  - Space available
  - Asking rent per square metre or
  - Asking purchase price
  - Service charges, if any, per square metre
  - Lease length, if applicable
  - Lease or purchase terms
  - Currency specific
  - Description and plan of building
  - Bespoke rentalized terms
  - Power specific tion
  - Telecommunications specific tion
- ✓ Register of available industrial sites: public and private sectors to specify:
  - Size of site
  - Whether in industrial area or SEZ
  - Planning permission for construction
  - Asking rent per square metre or

- Asking purchase price
  - Service charges, if any, per square metre
  - Lease length, if applicable
  - Lease or purchase terms
  - Currency specific
  - Water specific tion
  - Waste specific tion
  - Power specific tion
  - Telecommunications specific tion
- ✓ Comparative data on above, where possible, with key competitors

**Infrastructure: power, telecommunications, water, sewage**

- ✓ Power networks and availability
- ✓ Accessibility to other countries in the region
- ✓ Airports and travelling times to major destinations
- ✓ Roads and travelling times to major destinations
- ✓ Ports and travelling times to major destinations
- ✓ Land freight services
- ✓ Sea freight services
- ✓ Air freight services
- ✓ Transport accessibility of workforce
- ✓ Telecommunications networks: data, fixed line mobile
- ✓ Water provision
- ✓ Sewage provision
- ✓ Comparative data on above, where possible, with key competitors

**Costs**

**Labour costs**

- ✓ Fully loaded cost of employing staff, including wages and compulsory other payments and benefit
- ✓ Employment levels and cost trends
- ✓ Application levels for jobs
- ✓ Labour attrition rates
- ✓ Training costs
- ✓ Comparative data on above, where possible, with key competitors

**Real estate costs**

- ✓ Average rent per square metre for factory and office buildings o
- ✓ Asking purchase price

- ✓ Service charges, if any, per square metre
- ✓ Average rent per square metre for sites in industrial zone or
- ✓ Asking purchase price
- ✓ Indicative property taxes
- ✓ Comparative data on above, where possible, with key competitors

**Infrastructure costs**

- ✓ Average power cost per kilowatt-hour (kWh)
- ✓ Average cost of Internet broadband (range of bandwidths)
- ✓ Average cost per minute for local mobile calls
- ✓ Average cost per minute for international mobile calls
- ✓ Average water cost per 1,000 litres
- ✓ Average waste charges
- ✓ Comparative data on above, where possible, with key competitors

**Transport costs**

- ✓ Average cost per container to nearest port
- ✓ Average cost per container to other regional countries
- ✓ Average cost per container to common destinations
- ✓ Average cost per container from nearest port
- ✓ Average cost per container from other regional countries
- ✓ Average cost per container from Rotterdam/Dubai/Baltimore
- ✓ Additional freight costs (e.g. port charges)
- ✓ Average air freight costs: per region
- ✓ Average air freight costs: Europe
- ✓ Average air freight costs: Asia
- ✓ Average air freight costs: North America
- ✓ Comparative data on above, where possible, with key competitors

**Taxation costs**

- ✓ Rates of corporation tax
- ✓ Rates of personal income tax
- ✓ Key corporation tax allowances
- ✓ Key personal tax allowances
- ✓ Key import duties
- ✓ Key export duties
- ✓ Rates of VAT
- ✓ Any other significant business tax



- ✓ Key tax exemptions
- ✓ Complexity of tax system and procedures
- ✓ Comparative data on above, where possible, with key competitors

#### **Incentives**

- ✓ Import and export duty incentives
- ✓ Fiscal incentives, if any
- ✓ Monetary incentives, if any
- ✓ Real estate incentives, if any
- ✓ Training incentives, if any
- ✓ R&D incentives, if any
- ✓ Marketing incentives, if any
- ✓ Equity involvement, if any
- ✓ PPP availability, if any
- ✓ Criteria for incentive eligibility
- ✓ Processes to gain incentives
- ✓ Contingent liabilities, if any
- ✓ Comparative data on above, where possible, with key competitors

#### **Physical security and quality of life**

- ✓ Crime statistics
- ✓ Corruption indices
- ✓ Level of terrorist threat, if any
- ✓ Details of schools
- ✓ Details of medical facilities
- ✓ Quality of life
- ✓ Data on leisure, housing and nightlife
- ✓ Comparative data on above, where possible, with key competitors
- Investment climate and security of investment
  - ✓ Outcomes of key Doing Business surveys and models (for example, UNCTAD, OECD, World Bank)
  - ✓ Key reforms of investment climate completed
  - ✓ Time required to establish a business in Bosnia and Herzegovina
  - ✓ Bosnia and Herzegovina investor guide
  - ✓ Evidence of investor-friendly attitude of Government
  - ✓ Ease of repatriation of capital and/or profit
  - ✓ Track record in providing security of investment
  - ✓ Comparative data on above, where possible, with key competitors
- Track record

- ✓ Number of international investors
- ✓ Range of length of time in Bosnia and Herzegovina
- ✓ Percentage of reinvestment
- ✓ Listing of key companies in each key sector, including a brief description of each, employment levels, plus any outstanding features
- ✓ Testimonials from international companies based in region
- ✓ Comparative data on above, where possible, with key competitors

## References

- EBRD (2010). *Commercial Laws of Bosnia and Herzegovina: An Assessment by the EBRD*.
- European Commission (2013). *Bosnia and Herzegovina 2013 Progress Report*. European Commission, Brussels.
- Ecorys (2013). *Exchange of Good Practice in Foreign Direct Investment Promotion*. Rotterdam.
- ETF (2006). *Labour Market Review of Bosnia and Herzegovina*. European Training Foundation. Torino.
- FIPA (2103). *Bosnia and Herzegovina Tax System*. Sarajevo.
- FIC (2009). *White Book 2009*. Foreign Investors Council of Bosnia and Herzegovina. Sarajevo. Ajla Mostarac, ed.
- FIC (2012). *White Book 2012–2013*. Foreign Investors' Council of Bosnia and Herzegovina. Sarajevo.
- IFC (2011). *How to Reform Business Inspections: Design, Implementation, Challenges*. World Bank Group. Washington, D.C.
- IFC (2013). *Reforming Business Registration: A Toolkit for the Practitioners*. World Bank Group. Washington, D.C.
- JP Autoceste (2014). Project: Motorway on Corridor Vc in Federation of BH. Progress Report No. 15. Mostar.
- IDA (2010). *Annual Report 2010*. Ireland Development Agency.
- ILO (2008). *Employment Policy Review: Bosnia and Herzegovina*. ILO and Council of Europe.
- IMF (2012). *Annual Report on Exchange Arrangements and Exchange Restrictions*. Country Chapters annex. Washington, D.C.
- MIGA (2004). *Competing for FDI: Inside the Operations of Four National Investment Promotion Agencies*. Investing in Development Series. Washington, D.C.
- UNCTAD (2009a). *Best Practices in Investment for Development. How to Utilize FDI to Improve Infrastructure – Electricity: Lessons from Chile and New Zealand*. Investment Advisory Series. Series B. No. 1. Geneva.
- UNCTAD (2009b). *Best Practices in Investment for Development. How to Utilize FDI to Improve Transport Infrastructure – Roads: Lessons from Australia and Peru*. Investment Advisory Series. Series B. No. 2. Geneva.
- UNCTAD (2009c). *Best Practices in Investment for Development. How Post-conflict Countries can Attract and Benefit from FDI: Lessons from Croatia and Mozambique*. Investment Advisory Series. Series B, No. 3. Geneva.
- UNCTAD (2011). *Investment Policy Review: The Former Yugoslav Republic of Macedonia*. Geneva.
- UNECE (2011). *Second Environmental Performance Review*. Geneva.
- UNEP and MDG Achievement Fund (2012). *State of the Environment Report of Bosnia and Herzegovina 2012*.
- USAID (2004). *Real Estate Finance and the Real Estate Market in Bosnia and Herzegovina: Unlocking Capital for Development*. The Urban Institute (subcontractor of USAID). Washington, D.C.
- United States Department of State (2014). *Investment Climate Statement: Bosnia and Herzegovina*.
- Wolf Theiss (2011). *The Wolf Theiss Guide to: PPPs, Concessions and Public Procurement*. Vienna.
- World Bank Group (2015). *Bosnia and Herzegovina Partnership: Country Program Snapshot*. October. Available at <http://www.worldbank.org/content/dam/Worldbank/document/eca/BH-Snapshot.pdf> (accessed 11 September 2015).
- World Bank (2012). *Implementation Completion and Results Report on a Credit in the Amount of SDR10.4 million to Bosnia and Herzegovina for a Land Registration Project*. Report No. ICR2105, Project IDA-41670. Sustainable Development Department, South-East Europe Country Unit.

## Notes

- <sup>1</sup> Bosnia and Herzegovina ranks 63rd out of 148 countries in the World Economic Forum's higher education and training index in its *Global Competitiveness Report 2013-2014*.
- <sup>2</sup> The average electricity price for industrial consumers in Bosnia and Herzegovina is €0.0653 per kWh, the second lowest, for which data is available, after the former Yugoslav Republic of Macedonia (€0.0391 per kWh). By comparison, the electricity prices in other countries in the region per kWh are: Croatia €0.0942, Montenegro €0.0733 and Slovenia €0.0838 (Eurostat, 2013).
- <sup>3</sup> The Central Bank of Bosnia and Herzegovina compiles FDI statistics according to the IMF's sixth edition of the *Balance of Payments and International Investment Position Manual* (BPM6). The majority of countries in the region still use the previous methodology (i.e. BPM5) when compiling their FDI statistics; therefore accurate data comparison is not possible.
- <sup>4</sup> In absolute terms, average FDI inflows to Bosnia and Herzegovina decreased by 58 per cent in 2009–2013 relative to 2004–2008, the largest decrease registered vis-à-vis the comparator countries (the SEE region as a whole registered a decline of 35 per cent). In relative terms, Bosnia and Herzegovina also registered the largest decline in FDI inflows per capita (58 per cent) and per \$1,000 GDP (66 per cent); only in the parameter of FDI inflows as a percentage of gross fixed capital formation (GFCF) did the former Yugoslav Republic of Macedonia register lower (a decrease of 59 per cent compared with Bosnia and Herzegovina's decrease of 58 per cent).
- <sup>5</sup> A countrywide investment promotion strategy was adopted in 2006 but has not been revised since (see chapter 2, section B).
- <sup>6</sup> The European Bank for Reconstruction and Development estimated damage amounting to more than €1 billion.
- <sup>7</sup> For example, the World Bank's 2015 Doing Business ranks Bosnia and Herzegovina 147 out of 189 countries in its starting a business indicator. The World Bank's Country Policy and Institutional Assessment (CPIA) score on the quality of public administration of Bosnia and Herzegovina is 3.0 out of 6.0.
- <sup>8</sup> According to the 2012 Structural Business Statistics of the Agency for Statistics of Bosnia and Herzegovina (BHAS), out of a representative sample of 25,882 enterprises, 24,668 were small (0 to 49 employees) and 1,035 were medium (50 to 249 employees), indicating the share of SMEs in the total number of registered businesses.
- <sup>9</sup> Thanks to a collaborative network approach to investment servicing and aftercare established in 2012, which combines all government levels and resulted in re-investments of over \$23 million over the last two years (see chapter 2).
- <sup>10</sup> The *acquis communautaire* is the accumulated legislation, legal acts and court decisions that constitute the body of European Union law.
- <sup>11</sup> *Official Gazette of Bosnia and Herzegovina*, Nos. 17/98, 13/03 and 48/10.
- <sup>12</sup> The entity FDI laws are the *Law on Foreign Investment – Federation of Bosnia and Herzegovina* (*Official Gazette of the Federation of Bosnia and Herzegovina* 61/01 and 50/03) and the *Law on Foreign Investment – Republika Srpska* (*Official Gazette of Republika Srpska* Nos. 25/02, 24/04 and 52/11).
- <sup>13</sup> The procedure for FDI approval in "restricted" industries normally takes 30 days from the date of submission of a complete application. The competent body may extend its approval deliberation for an additional 30 days but it must inform the applicant within the original deadline, if not, the application is considered to be approved after 30 days of submission. If an application is not approved, the competent body must provide an explanation in writing to the applicant. When approved, the investment is valid without limitation to duration.
- <sup>14</sup> These are the Federation of Bosnia and Herzegovina's Law on Ownership Rights and Republika Srpska Law on Property Rights.
- <sup>15</sup> The BITs with Belgium-Luxembourg, France, Germany, Kuwait, the Netherlands and the United Kingdom of Great Britain and Northern Ireland.
- <sup>16</sup> Albania, Austria, Egypt, the Islamic Republic of Iran, the Republic of Moldova, San Marino, Slovakia, Switzerland and Ukraine.
- <sup>17</sup> Only the BITs with Egypt and Malaysia do not provide for national treatment.
- <sup>18</sup> Two BITs (Spain and Kuwait) do not carve out taxation from MFN protection.
- <sup>19</sup> Only the BIT with the Islamic Republic of Iran does not contain a reference to ICSID, and only permits UNCITRAL rules.
- <sup>20</sup> *ALAS International Baustoffproduktions AG (cement manufacturing) v. Bosnia and Herzegovina* (ICSID case No. ARB/07/11). This case related to claims arising out of the repudiation of a long-term supply agreement by an entity regarding a privatized cement manufacturing plant. A settlement was agreed by the parties and proceeding discontinued at their request on 27 December 2007.
- <sup>21</sup> By comparison, the ranking of other countries in the region are the former Yugoslav Republic of Macedonia (No. 3), Slovenia (No. 15), Serbia (No. 66), Montenegro (No. 56), Albania (No. 41) and Croatia (No. 88).
- <sup>22</sup> In 2011, the World Bank conducted a subnational Doing Business study for SEE. The study indicated that starting a business was slightly easier in Banja Luka (Republika Srpska) than in Sarajevo (Federation of Bosnia and Herzegovina). It reported that it would take 12 procedures and 50 days to open a limited liability company at a cost of 15.6 per cent of income per capita in Sarajevo, while in Banja Luka it would take 10 procedures and 21 days at a cost of 16 per cent. Unfortunately, no subsequent subnational study has been undertaken since.

- <sup>23</sup> *Official Gazette of Bosnia and Herzegovina* No. 42/04.
- <sup>24</sup> The eponymous entity-level laws on *Registration of Business Entities* are registered in the *Official Gazette of the Federation of Bosnia and Herzegovina*, Nos. 25/05, 68/05, 43/09 and 63/14; and in the *Official Gazette of Republika Srpska*, Nos. 42/05, 118/09, 102/12, and 67/13, the latter being the only one now in force; and *Official Gazette of Brčko distric* No. 15/05.
- <sup>25</sup> <http://bizreg.pravosudje.ba/>.
- <sup>26</sup> Notary fees for a limited liability company were reduced from KM 351 to KM 3.5 per signature (Republika Srpska Government website).
- <sup>27</sup> Republika Srpska authorities reported to UNCTAD that this issue has been dealt with in the context of the new Law on Offences.
- <sup>28</sup> By comparison, in Croatia, 5.9 per cent of firms identified business licensing and permitting as a major constraint, in Serbia, 4.2 per cent, and in Slovenia, 2 per cent ([www.enterprisesurveys.org](http://www.enterprisesurveys.org)).
- <sup>29</sup> The following inspection units operate under the umbrella of the Federation of Bosnia and Herzegovina Administration for Inspections: market and tourism, health and pharmaceutical, work, urban and environmental, traffic agricultural, forestry, water, veterinary and technical.
- <sup>30</sup> The following inspection units operate under the umbrella of Republika Srpska Administration for Inspection: food, market, agricultural, forestry, veterinarian, water, technical, traffic urban and environment, labour, health, education, and fire protection
- <sup>31</sup> The Streamlining Permits and Inspections Regime Activity (SPIRA) project 2006–2009.
- <sup>32</sup> The number of days of inspection per business in a year in the Federation of Bosnia and Herzegovina fell from 18 in 2001 to 9.9 in 2007, while in Republika Srpska it fell from 28 to 7.5 days (IFC, 2011).
- <sup>33</sup> *Official Gazette of Bosnia and Herzegovina* , Nos. 7/98 and 35/04.
- <sup>34</sup> [http://www.wto.org/english/news\\_e/news13\\_e/acc\\_bih\\_07jun13\\_e.htm](http://www.wto.org/english/news_e/news13_e/acc_bih_07jun13_e.htm).
- <sup>35</sup> *Official Gazette of Bosnia and Herzegovina* Nos. 57/04, 51/06, 93/08, 54/10 and 76/11.
- <sup>36</sup> *Official Gazette of Bosnia and Herzegovina* Nos. 63/04, 60/06 and 57/08.
- <sup>37</sup> *Official Gazette of Bosnia and Herzegovina* No. 49/04.
- <sup>38</sup> Federation of Bosnia and Herzegovina Law on Foreign Exchange Operations, article 10 (Gazette of Federation of Bosnia and Herzegovina Nos. 35/98 and 10/11) and Republika Srpska Law on Foreign Exchange Operations (*Official Gazette of Republika Srpska* Nos. 96/03, 123/06 and 92/09).
- <sup>39</sup> Bosnia and Herzegovina recognizes the following special customs regimes: temporary importation, inward processing, outward processing, processing under customs control, customs warehouse, temporary warehouse and transit.
- <sup>40</sup> According to World Bank data, the average time to clear exports through customs in Bosnia and Herzegovina went down from 3 days in 2002 to 1.3 days in 2009. By comparison, the time to clear exports through customs in Serbia is 1.6 days, Albania 1.9, Slovenia 2.2 and the former Yugoslav Republic of Macedonia 2.5.
- <sup>41</sup> Bosnia and Herzegovina is a member of the Codex Alimentarius Commission, the World Organization for Animal Health (OIE), the International Plant Protection Convention (IPPC) and the European and Mediterranean Plant Protection Organization (EPPO).
- <sup>42</sup> <http://www.ceftaspsdatabase.info/LaboratoriesByNotifyingMember.aspx?id=2#>.
- <sup>43</sup> The database shows that 20 out of 69 cases reported since 2009 have been on SPS measures.
- <sup>44</sup> “Goodwill” refers to when, in the process of corporate acquisition, the buying company pays more than what is deemed to be the fair market value of the net assets of the company being sold.
- <sup>45</sup> The Federation of Bosnia and Herzegovina and Brčko district make a distinction between resident and non-resident companies while Republika Srpska does not. In the Federation of Bosnia and Herzegovina and Brčko district, resident companies are defined in the law as a legal person with a principal place of business in the entity’s territory as defined by the company’s registration or by the location of the “actual management and supervision over the business activities” of the company (Federation of Bosnia and Herzegovina law, article 4). Meanwhile, there is no definition of resident company in the Republika Srpska law, which applies jurisdiction to all business units registered in the entity.
- <sup>46</sup> UNCTAD was informed that the draft law would remove this provision.
- <sup>47</sup> Although a copy of the draft law was not made available, UNCTAD learned from a meeting with the Federation of Bosnia and Herzegovina Ministry of Finance that incentives would be amended so that (a) the export scheme would offer a reduction in the tax rate equal to the percentage value of the exports over total turnover as opposed to a full exemption, (b) the incentive of investing KM 20 million in a consecutive five-year period would be abolished and (c) a new employment incentive would be introduced whereby a company that hires new employees, that are retained for at least one year, will be able to report the gross salary expenditure as double so that the company gets a higher deduction from the tax base.
- <sup>48</sup> The eligibility requirements for the small enterprises simplified regime are as follows: (a) the enterprise must have a maximum of two owners who are individuals; (b) it must have a maximum of 9 employees; (c) total annual sales must not exceed KM 100,000, including

- in the previous year; (d) the share of the largest buyer must not exceed 50 per cent of total sales and (e) the activity of the enterprise is outside banking/finance/insurance (Republika Srpska Law on Profit Tax, article 34).
- <sup>49</sup> The *World Bank's Doing Business 2015* ranks Bosnia and Herzegovina 151 out of 189 countries in its paying-taxes indicator. It is estimated that enterprises spend 407 hours per year paying taxes and that it involves 45 payments to do so. By comparison, other countries in the region are ranked as follows: the former Yugoslav Republic of Macedonia (7), Croatia (36), Slovenia (42), Montenegro (98), Albania (131) and Serbia (165).
- <sup>50</sup> *Official Gazette of Bosnia and Herzegovina* Nos. 44/03, 52/04, 34/07 and 49/09.
- <sup>51</sup> *Official Gazette of Bosnia and Herzegovina* Nos. 09/05, 35/05 and 100/08.
- <sup>52</sup> VAT is levied at each stage of production and distribution; the input tax on purchases is fully deductible from the output tax.
- <sup>53</sup> By comparison, the VAT rates in the region are as follows: Serbia, 18 per cent; Slovenia, 20 per cent; Croatia 23 per cent.
- <sup>54</sup> For example, residential buildings may be charged in a range of €0.50 to €1 per square metre, and office buildings, in a range of €1 to €2.5 per square metre (FIPA 2013 Bosnia and Herzegovina Tax System).
- <sup>55</sup> *Official Gazette of Republika Srpska* Nos. 110/08 and 115/09.
- <sup>56</sup> *Official Gazette of Brčko district* Nos. 27/07 and 41/07.
- <sup>57</sup> For example, the property tax rate was fixed at 0.05 per cent in 2014.
- <sup>58</sup> The rate of municipal fees on land depends on the type and area of construction (e.g. agricultural, city, municipal) and fees are usually calculated by multiplying the usable area of the planned facility and set price for a particular zone in amounts that can range from €9 to €300 per square metre (FIPA 2013 Bosnia and Herzegovina Tax System).
- <sup>59</sup> For example, see the United States Department of State 2009 Investment Climate Assessment of Bosnia and Herzegovina.
- <sup>60</sup> The tax authorities may adjust the taxable base if the reported value does not correspond to current prices. In the case of property exchange, the taxable base is the difference between the market values of the exchanged properties. The taxpayer of the transfer tax is most often the seller of property; only in the cantons of Sarajevo and Herzegovina-Neretva is the buyer the payer.
- <sup>61</sup> *Official Gazette of Bosnia and Herzegovina* No. 99/09.
- <sup>62</sup> *Official Gazette of the Federation of Bosnia and Herzegovina* Nos. 2/95, 37/04 and 43/04, and *Official Gazette of Republika Srpska* No. 65/03.
- <sup>63</sup> The Commission on Establishment of Conditions for Beginning of Operation verifies whether all requirements for the beginning of operation, the application for the establishment and the actual situation on the ground have been fulfilled. The Commission is composed of one representative each from (a) the Indirect Taxation Authority, (b) the entity ministry in charge of spatial planning, and (c) the local government of the canton/municipality. Once the Commission has verified that all requirements have been fulfilled MOFTER will have 30 days to issue a decision of recommendation to Council of Ministers sanctioning the final approval.
- <sup>64</sup> Key among these will be the need to abrogate the requirement to export a certain amount of production.
- <sup>65</sup> *Official Gazette of the Federation of Bosnia and Herzegovina* Nos. 43/99, 32/00 and 29/03.
- <sup>66</sup> *Official Gazette of Republika Srpska* Nos. 38/00, 40/00, 47/02, 38/03, 66/03 and 20/07.
- <sup>67</sup> According to the Key Indicators of the Labour Market database (International Labour Organization), total youth unemployment, defined as the percentage of total labour force ages 15–24, stood at 60.4 per cent in 2013.
- <sup>68</sup> The law establishes that minimum severance pay may not be less than one third of the average monthly salary disbursed in the three months prior to termination for each full year of employment. Exceptionally the employer and worker may agree on other compensation in lieu of severance pay (Federation of Bosnia and Herzegovina Labour Law, article 100; Republika Srpska Labour Law, article 127).
- <sup>69</sup> An employer may terminate an employment contract in case of serious misconduct; dismissal on economic, structural or technological grounds; employee unfit to perform duties specified in the employment contract and failure to return to work within five working days after the expiry of unpaid leave or suspension period (applies in Republika Srpska only). An employer terminating a contract must inform the employee in writing. The notice period for termination is a minimum of 15 days in the Federation of Bosnia and Herzegovina and 30 in Republika Srpska if initiated by employer. If initiated by the employee, it is 7 days in the Federation of Bosnia and Herzegovina and 15 in Republika Srpska. In Brčko district, the minimum notice period is 14 days, regardless of who terminates. In all cases, extended notice may be established by the collective agreement, rule book or contract (ILO, 2008; appendix IV).
- <sup>70</sup> According to the World Bank's World Development Indicators, social contributions as a percentage of revenue were 38.9 in Bosnia and Herzegovina in 2012. By comparison, social contributions as a percentage of revenues calculated for other countries in the region were as follows: Serbia (35.5), Croatia (33.5) and the former Yugoslav Republic of Macedonia (30.6).
- <sup>71</sup> *Official Gazette of Bosnia and Herzegovina* Nos. 36/08 and 87/12.
- <sup>72</sup> *Official Gazette of the Federation of Bosnia and Herzegovina* No. 8/99.
- <sup>73</sup> *Official Gazette of Republika Srpska* Nos. 24/09 and 117/11.

- <sup>74</sup> In the Federation of Bosnia and Herzegovina, work permits for foreign investors, company founders, persons authorized to represent the employer (e.g. directors, procurators) or persons registered to carry out an independent activity are issued within 15 days. Regular foreign workers that apply through the quota and do not require a special examination (i.e. the issuing canton does not have a national with the same technical qualifications listed in its unemployment registry) are issued work permits within 25 days. In cases where a special examination is required, the procedure may take 30 to 47 days, depending on which authority is responsible of carrying out the examination (canton or entity). In Republika Srpska, the deadline for issuance of a work permit is two weeks from submission, regardless of the type.
- <sup>75</sup> The competent employment service authority will check its unemployment registry if there are Bosnia and Herzegovina nationals with the necessary qualifications to perform the job.
- <sup>76</sup> The work permit serves as a legal ground to which a foreigner is entitled to obtain a temporary residence permit. A foreigner must obtain a temporary residence permit before he or she can legally start to work in Bosnia and Herzegovina; obtaining the residence permit is a separate administrative procedure.
- <sup>77</sup> *Official Gazette of the Federation of Bosnia and Herzegovina* Nos. 19/03 and 54/04, and *Official Gazette of Republika Srpska* Nos. 67/03, 46/04 and 109/05.
- <sup>78</sup> The pre-independence Law on Land Survey and Real Property Cadastre (*Official Gazette of the [former] Socialist Republic of Bosnia and Herzegovina* Nos. 22/84, 12/87, 26/90, 30/90, 3/93 and 4/93) and the Republika Srpska Law on Land Survey and Real Property Cadastre (*Official Gazette of Republika Srpska* No. 19/96).
- <sup>79</sup> Such as returning displaced people to their land in the absence of secure titles, or registering the informal settlements erected during the war. Many displaced property owners who would be in minority status if they were to return to their formerly occupied or owned properties are showing no sign of wanting to return to these places.
- <sup>80</sup> The World Bank reports that, after the implementation of the project, online access to digital land registry was achieved in Banja Luka and Sarajevo and that 51 per cent of registration requests are completed in five days in the Federation of Bosnia and Herzegovina and 53 per cent of transactions are completed within one day in Republika Srpska (World Bank, 2012).
- <sup>81</sup> <http://www.worldbank.org/en/news/press-release/2012/10/25/world-bank-help-bosnia-herzegovina-improve-land-governance>.
- <sup>82</sup> <http://www.cilap-project.org/>.
- <sup>83</sup> The World Bank's Doing Business 2008 reported that the process of registering property in Bosnia and Herzegovina entailed 7 procedures and 331 days at a cost of 5 per cent of total value; the 2015 edition reports that the number of procedures remain the same but the days have been reduced to 24 and the cost increased to 5.2 per cent. These indicators are on a par with the OECD average of 4.7 procedures, 24 days and 4.2 per cent cost.
- <sup>84</sup> The land registries administer the book of real estate contracts, process registration requests and issue land register extracts to determine the legal ownership and rights of real estate property. They are maintained by municipal courts. The cadastres administer the cadastral maps and conduct surveys to determine the dimensions and locations of land parcels and are maintained by the geodesic administration at the entity level.
- <sup>85</sup> *Official Gazette of the Federation of Bosnia and Herzegovina* Nos. 33/03 and 38/09; *Official Gazette of Republika Srpska* Nos. 53/02, 109/05, 28/07, 41/08, 29/10 and 71/12; *Official Gazette of Brčko distric* Nos. 24/04, 1/05, 24/04 and 9/09.
- <sup>86</sup> After 2006, water management and protection became a responsibility of the Ministry of Agriculture, Forestry and Water Management of Bosnia and Herzegovina.
- <sup>87</sup> A list of all relevant legislation is available on the web page of the Ministry of Spatial Planning, Civil Engineering and Ecology.
- <sup>88</sup> For example, the European Commission's 2013 Progress Report of Bosnia and Herzegovina notes that Republika Srpska "adopted implementing legislation advancing its alignment with Strategic Environmental Assessment (SEA) and Public Participation Directives," but that the "implementation of SEA and Environmental Impact Assessment (EIA) Directives need to improve in both [E]ntities, especially on public consultation procedures" (European Commission, 2013).
- <sup>89</sup> According to the entity laws on environmental protection, installations are defined as "a site with a plant or one or more stationary technical units where activities are carried out that have or might have adverse impact (on the environment)."
- <sup>90</sup> In both entities, water policy, licensing and protection is performed by a different ministry: in the Federation of Bosnia and Herzegovina by the Ministry of Agriculture, Water Management and Forestry, and in Republika Srpska by the Ministry of Agriculture, Forestry and Water Management.
- <sup>91</sup> In the Federation of Bosnia and Herzegovina as defined by decision 19/04, "Installations and facilities whose operation may be commenced only if the environmental permit has been granted;" and in Republika Srpska as defined by decision 7/06, "Projects and installations for which EIA is mandatory, and the criteria for determining the obligation and extent of EIA."
- <sup>92</sup> For instance, there are only seven staff in the environmental protection ministry of the Federation of Bosnia and Herzegovina to conduct EIAs. In Republika Srpska there are four employees in the relevant ministry to study category A projects and only two that are directly responsible for issuing licences (source: meetings of UNCTAD during fact-finding mission)

- <sup>93</sup> It is estimated that the Federation of Bosnia and Herzegovina and Republika Srpska spent 0.9 per cent and 0.2 per cent, respectively, of their budget on environmental expenditure in 2009 (UNECE, 2011).
- <sup>94</sup> *Official Gazette of Bosnia and Herzegovina* No. 32/02.
- <sup>95</sup> Federation of Bosnia and Herzegovina Law on Concessions (*Official Gazette of the Federation of Bosnia and Herzegovina* No. 40/02), Republika Srpska Law on Concessions (*Official Gazette of Republika Srpska* No. 25/02) and Brčko district Concessions Act (*Official Gazette of Brčko district* No. 41/06).
- <sup>96</sup> A thorough assessment of Bosnia and Herzegovina's concessions legal framework was prepared in 2009 by SIGMA, a joint OECD and European Union initiative. See [http://www.koncesijebih.ba/home/images/Strukovni\\_pregled\\_Koncesije\\_javno-privatna\\_partnerstva\\_BiH.pdf](http://www.koncesijebih.ba/home/images/Strukovni_pregled_Koncesije_javno-privatna_partnerstva_BiH.pdf) (accessed 11 September 2015).
- <sup>97</sup> *Official Gazette of Bosnia and Herzegovina* No. 49/04.
- <sup>98</sup> Article 9 of the 2004 public procurement law lists all types of contracts that are exempt from public procurement regulations and concession contracts are not included. It is unclear whether concession contracts have been included in the new law of 2014 that was not made available to UNCTAD.
- <sup>99</sup> However, the final decision on granting concessions at the Bosnia and Herzegovina level remains subject to approval by the Bosnia and Herzegovina Parliament and Council of Ministers.
- <sup>100</sup> The Tuzla Thermal Plant Block 7 project consists of building a 450-MW generation unit extension to the existing Tuzla power plant. The project is estimated at €841.6 million. In June 2014, Elektroprivreda, the State-owned company that owns and operates Tuzla power plant, announced that the China Gezhouba Group–Guadong Electric Power Design Institute consortium had won the tender to build the new unit. The consortium is providing assistance in securing a loan from the Exim Bank of China to finance 85 per cent of the project: <http://www.seebiz.eu/blok-7-te-tuzla-finansira-exim-banka/a-88840/> (accessed 11 September 2015).
- <sup>101</sup> *Official Gazette of Republika Srpska* No. 59/09.
- <sup>102</sup> Value chains refer to the process or activities by which an enterprise or group of enterprises add value to a good or service rather than supply chains, which refers to the sequence of processes involved in the production and distribution of a good.
- <sup>103</sup> Spin-outs occur when a company breaks off parts or divisions of itself to form a new corporation or, as often occurs, individual workers or groups of workers who gain expertise with a product or a process within a large company set up their own company to carry out that process outside the large company. The large company then becomes the customer of the spin-out company which also may take on other large companies in the same sector as additional customers. Spin-ins occur when a smaller company – often a local business – operates as a supplier of a product, process or process to a larger company and is then taken over or forms a joint venture with the larger company.
- <sup>104</sup> According to the FIPA Law (*Official Gazette of Bosnia and Herzegovina* No. 56/04), “the Agency promotes and improves foreign direct investments in accordance with the law, decisions and instructions of the Council of Ministers of Bosnia and Herzegovina. The Agency creates the image of Bosnia and Herzegovina as a modern State, serious, competitive and safe partner for capital investment. In order to accomplish objectives referred to in the preceding paragraph, the Agency: provides information to potential investors about the legislation of Bosnia and Herzegovina; directs the investors towards potential investment projects in the entities, cantons, regions and certain economic sectors; presents the advantages and characteristics relating to the projects. These include the following: legal, economic and financial framework, tax system, industrial environment, and benefits given to the investors at the state, entity or lower levels; organizes and/or participates at seminars, exhibitions and conferences on promotion of the state; follows up and analyses the investment environment at the state and international level; proposes legislation and legal measures aimed at promoting investment conditions; takes part in negotiations on interstate, bilateral and multilateral investment agreements; initiates and maintains the cooperation with the same or similar agencies of other countries” (art. 5).
- <sup>105</sup> The [www.investsrpska.net](http://www.investsrpska.net) website does not appear to work in Internet Explorer, only in Google Chrome and this should be fixed as potential investors may use the former for searches.
- <sup>106</sup> See the full list at: [http://www.mvteo.gov.ba/izvjestaji\\_publikacije/izvjestaji/default.aspx?id=6175&langTag=bs-BA](http://www.mvteo.gov.ba/izvjestaji_publikacije/izvjestaji/default.aspx?id=6175&langTag=bs-BA).
- <sup>107</sup> See the draft of the two strategies for increasing competitiveness and attracting investments in dairy, fruits and vegetable value chains in the Federation of Bosnia and Herzegovina and in Republika Srpska, prepared on the basis of cooperation agreements between the entity Governments and the IFC, member of the World Bank Group.
- <sup>108</sup> For guidance on attracting FDI in support of sustainable development goals, see: World Investment Report 2014, *Investing in the SDGs: an Action Plan*. UNCTAD, 2014.
- <sup>109</sup> Source: Invest Northern Ireland.
- <sup>110</sup> See [www.redah.ba.t](http://www.redah.ba.t)



The Investment Policy Review of Bosnia and Herzegovina is the latest in a series of investment policy reviews undertaken by UNCTAD at the request of countries interested in improving their investment framework and climate. The countries included in this series are:

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