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NOTE

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Throughout this document, the working regional definition of South-East Europe (SEE) is taken to include Albania, Bosnia and Herzegovina, Montenegro, the Republic of Moldova,[§] Serbia and the former Yugoslav Republic of Macedonia, as well as Kosovo*.

§ As a participant in the SEE Investment Committee's Working Group on Investments and a Central European Free Trade Agreement (CEFTA) signatory, and at the request of the CEFTA and Regional Cooperation Council Secretariats, the Republic of Moldova is also included in the regional study even though it is not directly encompassed by the SEE 2020 Strategy.

* United Nations Administrative Region, Security Council resolution 1244 (1999).

The following symbols have been used in the tables:

- **Two dots (..)** indicate that data are not available or not separately reported. Rows in tables have been omitted in those cases where no data are available for any of the elements in the row.
- **A hyphen (-)** indicates that the item is equal to zero or its value is negligible.
- **A blank in a table** indicates that the item is not applicable.
- **A slash (/) between dates** representing years – for example, 2009/10 – indicates a financial year.
- **Use of an en dash (–) between dates** representing years – for example, 2008–2010 – signifies the full period involved, including the beginning and end years.
- **Reference to "dollars" ($)** means United States dollars, unless otherwise indicated.
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PREFACE

UNCTAD Investment Policy Reviews (IPRs) are intended to help governments improve investment policies and familiarize the private sector with the investment environment of the reviewed economy. The IPRs are considered by the UNCTAD Commission on Investment, Enterprise and Development, and the support to beneficiary economies to implement the recommendations is delivered by UNCTAD through a series of activities which can span several years.

The IPR of South-East Europe (SEE) was initiated at the request of the Regional Cooperation Council (RCC). It is the first IPR that UNCTAD has undertaken for a region. It is a joint project of UNCTAD and the RCC, representing the economies of Albania, Bosnia and Herzegovina, Montenegro, the Republic of Moldova, Serbia and the former Yugoslav Republic of Macedonia, as well as Kosovo*. The IPR was carried out using research and information made available to UNCTAD by the SEE economies until 15 June 2017. It includes responses to a survey on regulatory and investment promotion issues prepared by UNCTAD, as well as laws, regulations and other information collected through independent research and two expert group meetings. The meetings, which took place in December 2015 and November 2016, validated the IPR methodology, including the selection of the topics and the analytical approach. They also provided a forum for sharing information relevant to the preparation of the report and ideas for its implementation.

The competitiveness of an economy or a region and its capacity to attract foreign direct investment (FDI) depend on a number of factors, including the regulatory environment, the skills base, the market size, the resource endowment, and the quality of its infrastructure and investment promotion efforts. The IPR of SEE addresses primarily regulatory and investment promotion aspects as well as issues related to the availability of skills. To help focus the review and ensure its completion with the resources available, some common objectives were sought and joint priorities identified covering six areas: (i) the FDI-specific legal framework, (ii) international investment agreements, (iii) business facilitation, (iv) the tax regime, (v) labour policy and skills, and (vi) the competition regime. An additional chapter proposes a joint investment promotion initiative for the region. The six priority areas aim at boosting both the region's overall competitiveness as well as its capacity to attract FDI, especially in export-oriented industries and value chains, and benefit from it.

Throughout the preparation of the report, UNCTAD received the full cooperation of the RCC, the members of the Joint Working Group on Investment (JWGI) of the SEE Investment Committee and the relevant ministries, departments and agencies of the participating economies. It also benefited from inputs and support from the Central European Free Trade Agreement Secretariat (CEFTA). The final report reflects the comments received from all stakeholders, including those gathered during the consultations that took place in the context of the 7th meeting of the JWGI in Podgorica, Montenegro, on 24 May 2017.

The analysis contained in this review is based on the UNCTAD Investment Policy Framework for Sustainable Development (IPFSD) and its core principles (UNCTAD, 2015a). It follows, to a large extent, the investment policy guidelines of this framework, which provides concrete advice to formulate investment policies and regulations, and ensure their effectiveness, especially in terms of rooting investment policy in development strategy. The IPR also deals with institutional mechanisms for effective policy implementation.

FOREWORD

Enhanced cooperation at the regional level to attract investment in South-East Europe (SEE) makes sense: multinational firms and investors operate and invest regionally, based on strategic decisions about market size, regional production networks and infrastructure links. While recognizing that each economy will pursue its own efforts to attract investment, economies in a region can also meet the strategic needs of corporate investors by acting together. There are common cultural, linguistic and political links between several of the economies in the SEE region, which can leverage sectoral opportunities, for example, in tourism or infrastructure. Furthermore, investment promotion efforts could benefit from economies of scale if seven economies pool some of their resources and cooperate to attract FDI in a fiercely competitive global market.

This review therefore emphasizes regional cooperation in pursuing improved investment policy and promotion practices to achieve a joint strategic goal: attract increased levels of investment that contribute to the social and economic development of the SEE economies, in line with the objectives set in the SEE 2020 Strategy.

This regional IPR, the first of its kind, is meant to represent a practical contribution to achieving this objective and further strengthening the ties of cooperation and interdependence within the region. It also complements parallel regional mechanisms, namely the "Berlin Process" that addresses infrastructure and economic cooperation. Under this Process, on 12 July 2017, six Prime Ministers of Western Balkans met in Trieste at the WB6 Summit to reaffirm their commitments to further strengthen regional cooperation, increase coherence and deepen integration, through the establishment of the Regional Economic Area (REA) of SEE. In this respect, the development and implementation of the regional investment reform agenda has been stipulated as one of the priorities.

Through the efforts of the RCC Secretariat, CEFTA Secretariat and UNCTAD, this IPR has already brought the economies of the region into closer collaboration with each other. The recommendations of this report will inform the Regional Investment Policy and Promotion Programme, which will address the priorities of the regional investment reform agenda, aiming at regional harmonization of investment policies with a view to increase transparency, attract higher investment and allow the SEE to move towards EU standards and regulations. The follow-up programme will be implemented under the auspices of the RCC Secretariat, with technical support of the World Bank Group / IFC, financial support of the European Commission, and in close cooperation with the CEFTA and UNCTAD.

UNCTAD and the RCC hope that the Investment Policy Review of South-East Europe will be used as a policy tool for attracting increased investment in support of sustainable development in the region, as well as a model for other regions seeking to deepen regional integration and cooperation.

September 2017

Mukhisa Kituyi
Secretary-General UNCTAD

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This report was prepared by Joseph Clements, Hamed El Kady, Massimo Meloni, Ventzislav Kotetzov and Clive Vokes, under the supervision of Chantal Dupasquier, Chief of the Investment Policy Reviews Section, Division on Investment and Enterprise (DIAE). Overall guidance was provided by Joerg Weber, Head of the Investment Policies Branch, and James Zhan, Director, DIAE.

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UNCTAD wishes to thank the SEE economies reviewed in this report for their commitment and cooperation, including their participation in a series of regional meetings and in the extensive information collection efforts.

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ABBREVIATIONS

BIT	bilateral investment treaty
BEPS	base erosion and profit shifting
CAIPA	Caribbean Association of Investment Promotion Agencies
CEFTA	Central European Free Trade Agreement
CRM	customer relationship management
CSR	corporate social responsibility
DIAE	Division on Investment and Enterprise
DTT	double taxation treaty
EBRD	European Bank for Reconstruction and Development
ECA	Europe and Central Asia
EFTA	European Free Trade Area
EPZ	export processing zone
EU	European Union
FDI	foreign direct investment
FET	fair and equitable treatment
GDP	gross domestic product
GIZ	German Agency for International Cooperation
IIA	international investment agreement
ILO	International Labour Organization
IMF	International Monetary Fund
IPR	investment policy review
IPA	investment promotion agency
IPFSD	Investment Policy Framework for Sustainable Development
ISDS	investor–State dispute settlement
JIPI	Joint Investment Promotion Initiative
JWGI	Joint Working Group on Investment
MFN	most-favoured nation
MIS	market intelligence service
MNE	multinational enterprise
NT	national treatment
OECD	Organization for Economic Cooperation and Development
OEM	original equipment manufacturer
PPD	public–private dialogue
PPP	public–private partnership
RCC	Regional Cooperation Council
SAA	Stabilization and Association Agreement
SEE	South–East Europe
SMEs	small and medium–sized enterprises
SOE	State–owned enterprise
TIP	treaty with investment provisions
TFEU	Treaty on the functioning of the European Union
UNCTAD	United Nations Conference on Trade and Development
VAT	value added tax
WAEMU	West African Economic and Monetary Union
WIR	*World Investment Report*
WTO	World Trade Organization

KEY MESSAGES

- The 2008 global economic crisis exposed two weaknesses in the South-East Europe (SEE) region's investment profile, namely a concentration of foreign direct investment (FDI) in the financial sector and limited private sector development overall.
- Since then, the SEE region has put in place a structured process of cooperation and integration to help achieve a number of strategic economic targets by the end of the decade (Strategy 2020). Notable for this IPR are the targets adopted by the region to increase FDI by an annual average of more than 100 per cent and to attract investment in a broader range of sectors, including export-oriented activities.
- Towards this end, SEE economies have adopted a relatively open regime for foreign investment, with the exception of de facto restrictions in several industries dominated by State-owned enterprises. Investors are generally accorded high standards of treatment and protection, and the region maintains a comprehensive, though traditional, network of investment treaties.
- All economies in the region have undertaken wide-ranging economic reforms and have already achieved a great deal of progress: some of the region's economies now represent best practices in such areas as starting a business and streamlining tax regimes as well as simplifying authorisation procedures.
- However, market access, infrastructure and skills as well as remaining regulatory weaknesses continue to constrain private sector development and FDI diversification. For the region to attain the development targets it set for itself in Strategy 2020, including in terms of FDI attraction, these challenges need to be overcome. This report analyses a number of relevant regulatory, institutional and promotional aspects, and recommends focusing attention on the following priorities:
  - Strengthening the national framework for FDI to pursue openness, clarity and responsible investment;
  - Modernizing the network of international investment agreements (IIAs);
  - Continuing progress in business and trade facilitation measures, by adopting e-government solutions to enhance the transparency and efficiency of regulations, and improving public–private dialogue mechanisms;
  - Consolidating the reforms of tax regimes, better measuring the effectiveness of tax incentives, strengthening anti-tax avoidance measures and enhancing regional coordination to avoid the resurgence of a fiscal race to the bottom;
  - Orienting labour and skills policy towards addressing the region's unemployment and development challenges by fostering quality assurance, skills attraction, regional mobility and skills transfer;
  - Strengthening competition authorities and promoting their cooperation across the region and with other state bodies within each economy; and
  - Adopting a regional investment promotion initiative to complement national efforts in targeting regional FDI projects and regional value chains, and translating policy into performance.

CONTEXT

South-East Europe (SEE) has the potential to create a highly competitive business environment and boost investment. Following the global financial crisis, the region has averaged annual gross domestic product (GDP) growth of 2.3 per cent from 2010–2015: its growth was stronger than the annual average for the European Union (EU) at 1.2 per cent, but weaker than that of other European and Central Asian economies at 2.9 per cent. Average annual inflation has been declining across the region, especially in economies that experienced very high rates of price growth in the early 2000s: in 2015, average annual inflation was 2.8 per cent, supporting stable local currencies. With a combined market size of 21 million people – slightly smaller than Australia – a young workforce and competitive costs of production and with several of its economies either candidate for accession to the EU (Albania, Montenegro, Serbia, the former Yugoslav Republic of Macedonia) or potential candidate (Bosnia and Herzegovina, Kosovo*), the region has significant untapped investment attraction potential.

Recognizing this potential, the governments of the region adopted the *SEE 2020 Strategy: Jobs and Prosperity in a European Perspective* in 2013. The ultimate objective of the Strategy is to align and harmonize the economies of the region with EU accession criteria, with the expectation of eventual membership (RCC, 2013). The Strategy sets ambitious targets for regional trade integration, annual foreign direct investment (FDI) inflows, employment, innovation, entrepreneurship and governance, which provide a useful framework for policy action (table 1). The targets reflect a determination in the region to accelerate labour market reforms, raise living conditions and boost long-term competitiveness.

Table 1. **Specific objectives of the SEE 2020 Strategy**

Growth pillar	Objective by 2020
Integrated growth	• Increase intra-SEE trade in goods and services by more than 140 per cent • ***Increase annual FDI inflows to the region by at least 103 per cent (160 per cent including Croatia)***
Smart growth	• Increase GDP per person employed by 32 per cent • Add 300,000 highly qualified people to the workforce • Compete on value added, promoting knowledge and innovation
Sustainable growth	• Increase net enterprise creation from 30,000 to 33,500 per year • Increase annual exports of goods and services per capita from €1,780 to €4,250
Inclusive growth	• Increase the employment rate from 39.5 per cent to 44.4 per cent
Governance for growth	• Improve the effectiveness of regional governments, as measured by the World Bank Governance Index, from 2.3 to 2.9

Source: RCC (2013).

A regional trade and investment strategy can be mutually supporting. The SEE region has negotiated a network of free trade agreements with the EU and the European Free Trade Area (EFTA) (which does not include the Republic of Moldova), and has been working towards greater regional integration under the Central European Free Trade Agreement (CEFTA) and in the context of the Berlin Process to support regional infrastructure development. Restrictions on duty-free, quota-free access to the EU for some goods remain and the region (excluding the Republic of Moldova) has a negative trade balance with the EU, which stood at roughly €8.3 billion in the three years to 2016. Within CEFTA, it is hoped that members can finalize the negotiation of a trade in services agreement in 2017, as well as reduce the recurring trade disputes in the region. The deepening of trade integration and trade flows among SEE economies, as well as with its neighbours, would provide a strong signal to investors and boost the attractiveness of the region for market-seeking and efficiency-seeking FDI (RCC, 2013).[1] Equally, the expanding presence of multinational enterprises (MNEs) and other foreign investors could support trade flows through regional production networks (value chains).

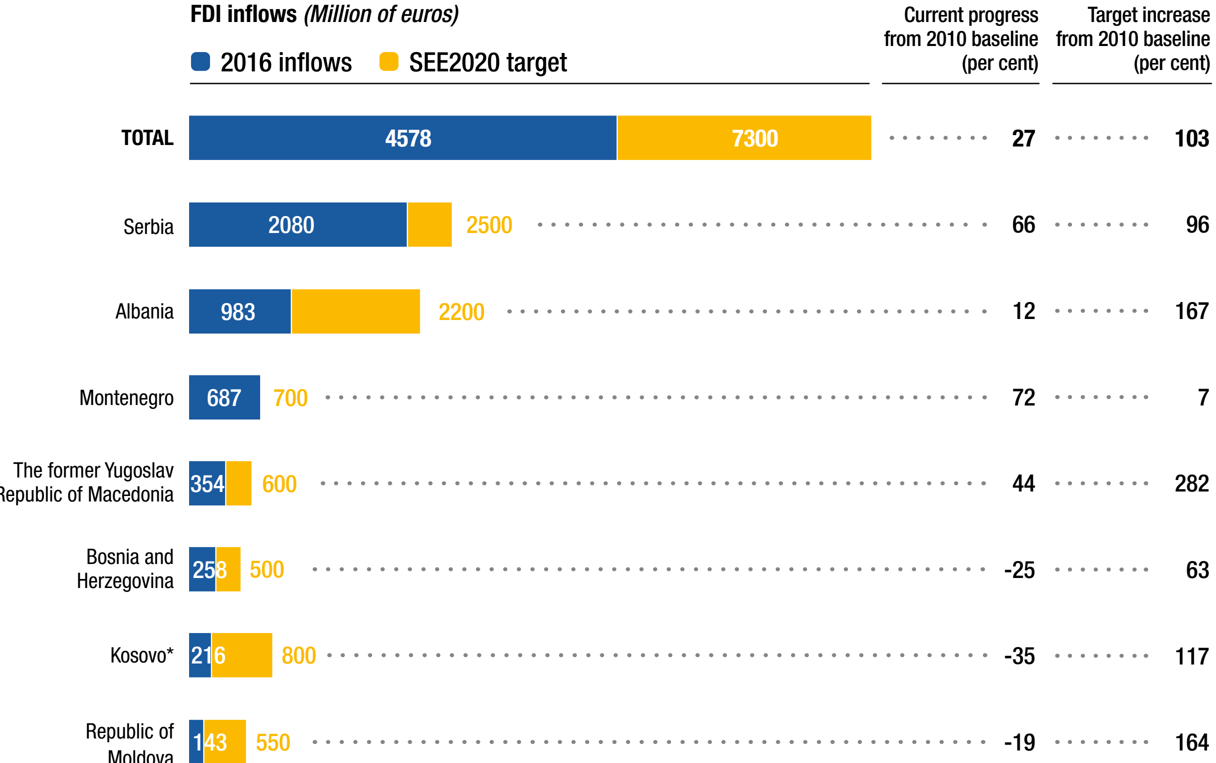
The SEE 2020 Strategy targets a major increase in annual FDI inflows across SEE economies, but progress has been limited. At the halfway point between the 2010 baseline and the 2020 target of a 103 per cent average increase in FDI inflows,[2] the region recorded an average increase of 27 per cent (figure 1). Notwithstanding a small decline in FDI inflows to $4.7 billion in 2016 from $5 billion in 2015, inflows to the region have partially recovered from the postcrisis low of $3.8 billion in 2012, but they remain far from the peak of $8.7 billion in 2008. Over the past decade, the SEE region has also performed poorly relative to other regional groups. For instance, the decline in FDI inflows experienced by the SEE region between the periods 2007–2011 and 2012–2016 has been markedly stronger than the decrease seen in transition economies (excluding SEE), and in the EU, in both absolute and relative terms (table 2). The FDI stock remains relatively more important in SEE economies when expressed as a share of GDP and per capita than in neighbouring economies in transition. This may be due to methodological reasons that overstate the FDI stock statistics in the SEE region (CEFTA, forthcoming).

Significant differences exist in the FDI attraction performance of individual economies in the SEE region. Whereas annual FDI inflows to some economies, such as Bosnia and Herzegovina and the Republic of Moldova, nearly halved between 2007–2011 and 2012–2016, they increased in Albania (table 2). Similarly, since 2013 (as shown in figure 2), FDI inflows to Albania and Serbia have resumed growth, unlike in most other economies in the region.[3]

At the sectoral level, FDI to SEE economies has predominantly targeted services, but the region has significant potential in manufacturing. Almost two thirds of inward FDI flowed to the services sector between 2004 and 2015. Investors have focused mainly on the financial industry, which has attracted annual average inflows of over $1 billion, or about 22 per cent of total inward FDI between 2004 and 2015. Trade and business-related activities account for a further 26 per cent of inflows, and the transport, storage and communication industries attracted 10 per cent of flows. Manufacturing attracted 22 per cent of inflows. With its competitive labour costs and proximity to European and emerging markets in Asia and North Africa, the region is strategically placed to attract efficiency-seeking FDI in the manufacturing export sectors and their value chains. This includes the automotive sector, in which cars have been produced since the 1950s (Pavlinek, 2008). Recent data show a build-up of FDI stock in vehicle and other transport

equipment. The SEE 2020 Strategy has prioritized export-oriented FDI in manufacturing, infrastructure and tourism as the main sectors for promotion. The electricity, gas and water industries, where the region has clear advantages, also offer significant interest for investors.

Figure 1. FDI inflows to SEE in 2016 and progress towards SEE 2020 FDI targets



Source: National Statistics, RCC and UNCTAD calculations.
Note: Total based on SEE economies, excluding the Republic of Moldova.

The region has made advances towards improving the environment for business, supporting private sector development and encouraging investment. As discussed in chapter I, the economies of the region are fairly open to FDI, with few formal ownership restrictions, and the key standards of investor treatment and protection are guaranteed throughout SEE. They have also made great progress on improving business facilitation procedures. The region is now a top performer on several regulatory aspects, ahead of many developed countries. For instance, it is now easier and quicker to register a business in SEE economies than in several countries of the Organization for Economic Cooperation and Development (OECD). Following a period of damaging fiscal competition among SEE economies, the tax burden on investors has stabilized around a level which remains competitive and tax regimes generally offer low levels of complexity. Other levers to attract FDI include several exemptions from value added tax (VAT) or import/export duties, and export processing zones (EPZs). Strong progress has also been made in the area of trade facilitation, although some economies are still catching up with initiatives to streamline customs procedures and improve governance at the border.

Table 2. **Comparative FDI performance in SEE economies and regional groupings**

Economies or regions	Average inflows of foreign direct investment								Foreign direct investment stock		
	Million of dollars		Per capita (dollars)		Per $ 1 000 gross domestic product		As percentage of gross fixed capital formation		Total million of dollars	Per capita (dollars)	Percentage of gross domestic product
	2007–2011	2012–2016	2007–2011	2012–2016	2007–2011	2012–2016	2007–2011	2012–2016	2016		
Albania	911	1 060	310	367	75	86	23	32	4 987	1 717	41
Bosnia and Herzegovina	795	351	207	92	45	20	22	12	6 848	1 801	41
Montenegro	948	498	1 527	796	225	117	81	57	4 663	7 448	113
Republic of Moldova	391	199	95	49	68	27	25	12	3 581	882	53
Serbia	3 578	1 999	394	225	82	49	38	27	30 345	3 443	80
The former Yugoslav Republic of Macedonia	434	277	211	134	45	26	N/A	N/A	5 016	2 410	46
Kosovo*	514	288	294	199	90	42	29	15	3 624	953	54
SEE	1 082	668	434	266	90	52	37	26	59 064	2 665	61
Transition economies	74 377	57 582	244	247	60	50	22	19	674 287	2 623	60
European Union	463 645	427 028	926	846	26	25	12	13	7 663 571	15 154	47

Source: UNCTAD, FDI/MNE database (unctad.org/fdistatistics).

Notes: The category 'Transition economies' excludes SEE.

Figure 2. **FDI inflows to SEE economies, 2007–2016** *(Millions of dollars)*

Albania, Bosnia and Herzegovina, Montenegro, Republic of Moldova, Serbia, The former Yugoslav Republic of Macedonia, Kosovo* (y-axis: 0, 1 000, 2 000, 3 000, 4 000, 5 000)

Source: UNCTAD, FDI/MNE database (unctad.org/fdistatistics).

Despite economic reforms centred on the privatization of State-owned industries, competition and labour markets, the transition to a market economy is incomplete, which affects investment. In the past two decades, SEE economies have implemented economic reforms centred on liberalization and the limited privatization of some State-owned enterprises (SOEs). Nevertheless, the weight of SOEs and public monopolies in the economy is generally high, which creates de facto barriers to both domestic and foreign investors. In this context, in several SEE economies, competition rules and regulations, though typically aligned with good practice, are relatively new for policymakers, the business sector and the public at large and the capacity of the competition authorities is often inadequate. Labour market regulations are also considered an obstacle by business in several SEE economies. Labour market rigidities are part of the problem, though SEE economies often fare better in this regard, both compared to the broader Europe and the Central Asia average and to other newly acceded member States of the EU. The effectiveness of public-private dialogue mechanisms, including with respect to labour market issues, is frequently called into question.

A young, educated population could be the bedrock of the region's competitiveness, but skill mismatches persist and a lack of opportunities is driving young people abroad. The region's high rate of graduates, in part inherited from the former regime, does not therefore always equate with the quality or skill set sought by firms and investors (Bartlett et al., 2012). This is affecting particularly companies

that export their products or services, and businesses operating in the industrial and related sectors (RCC, 2016). Added to this, the collapse of traditional industries has left persistently high rates of unemployment in the region. In this regard, generating new economic activity and jobs is critical for the region. Ongoing obstacles to intraregional labour mobility and, in some economies, burdensome procedures for hiring international staff further compound the situation. Currently, the region is facing the tripartite challenge of a lack of jobs, skills mismatches and poor labour mobility.

Increased cooperation should help address the region's poor infrastructure and connectivity, which remains a constraint on investment and growth. The region's competitiveness is severely hampered by poor infrastructure development in all areas, which continues to limit trade and investment opportunities. Several assessments have described the paucity of the region's transport, telephony and broadband, and energy infrastructure which require urgent attention.[4] Towards this end the declaration of the Western Balkan Summit, in August 2015, committed SEE Heads of Government to implement "core network corridors" by 2020.[5] This is a positive, coordinated approach to transport connectivity within the SEE region and with the wider European network. Recent developments in this area also include China's plans to establish a maritime route connecting China to EU markets through the Greek port of Piraeus and the Balkans as part of its "One Belt, One Road" policy.[6] Additionally, China signed an agreement with Serbia and Hungary, in 2013, for a €1.5 billion high-speed rail project to connect Belgrade with Budapest.

This report seeks to assist the economies in the region address some of these challenges and achieve the FDI and economic growth goals set out in the SEE2020 Strategy. The SEE region has the potential to attract significantly higher investment, but if FDI is to play a larger role in promoting sustainable development, the key regulatory issues mentioned above must be addressed. Towards this end, this IPR assesses and provides recommendations to improve the FDI-specific regime, but also several areas of the policy framework for investment which affect all investors, including business facilitation, taxation, labour policy and skills, as well as competition. Beyond investment climate improvements, greater coordination and cooperation in the efforts to position and promote the region vis-à-vis foreign investors, could also have a major impact on improving its image and attracting higher investment flows. In this regard, this review proposes a joint investment promotion initiative (JIPI) for SEE. This is meant as an operational platform based on a range of contemporary investment promotion tools and techniques, as well as institutional mechanisms that can be progressively built upon to increase the effectiveness of investment attraction efforts, particularly for those value chains and projects which have a cross-border nature. A summary of the main findings and recommendations of this report is contained in annex 4.

The following chapter presents the progress of the SEE region against a set of benchmark guidelines in six priority areas of the regulatory framework for investment. The analysis shows that, although many challenges remain, the region has made considerable advances to improve the investment climate. All SEE economies have adopted open FDI regimes and offer key standards of treatment and protection to investors, though several de facto restrictions exist. With respect to the international investment policy environment, the relatively "traditional" network of international investment agreements (IIAs) could benefit from updating in line with modern treaty practices supporting sustainable development objectives. In the area of business facilitation, most SEE economies are making good progress on the benchmark guidelines, especially on company establishment, but transparency can be improved. The economies in the region have also put an end to protracted fiscal competition and are making efforts to improve the ease of tax payment. Progress is less pronounced as regards the adoption of anti-avoidance measures. Labour policy is the area which presents the highest variance among SEE economies but skills issues stand out as needing attention throughout the region. Lastly, on competition policy, the region has generally made good progress, but capacity issues persist.

Chapter 1

Regulatory Framework for Investment

A. FDI-SPECIFIC LEGAL **FRAMEWORK**

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
1. Openness for FDI	=	=	=	=	=	=	=
2. Screening of FDI	+	+	+	+	+	+	+
3. Treatment of investors	+	+	+	+	+	+	+
4. Protection of investors	=	=	+	+	+	+	=
5. Responsible investment	+	=	+	=	+	+	=

+ = – : for definitions, see annex 1.

SEE economies are fairly open to foreign investment, with relatively few formal ownership restrictions. Nevertheless, de facto barriers to both domestic and foreign investors exist in most SEE economies, as certain sectors are dominated by government monopolies and/or SOEs. Investor protection standards are high throughout the region. All SEE economies guarantee non-discriminatory treatment between domestic and foreign investors in the postestablishment phase. Furthermore, all SEE economies protect investors' rights in case of expropriation; they allow investors to transfer abroad, in freely convertible currency, proceeds resulting from their investment. All economies bring investor–State disputes under the jurisdiction of local courts, and several explicitly provide investors with the option to settle such disputes through international arbitration proceedings. In terms of promoting responsible investment, SEE economies are split between those that actively promote corporate social responsibility (CSR) standards and those which have not undertaken any active measure in this direction.

Investment laws are the main instruments for regulating investment in most SEE economies. The regulatory framework for foreign investment in SEE economies is outlined in various legal instruments including the national constitutions, investment laws, expropriation acts, foreign exchange acts and company laws. In six SEE economies (Albania, Bosnia and Herzegovina, Montenegro, the Republic of Moldova, Serbia and Kosovo*), investment laws are the principal legal tool for regulating investment activities. In the former Yugoslav Republic of Macedonia, no dedicated investment law exists.

Formal ownership restrictions of foreign investment are limited across the region. Within SEE, as shown in table 3, legal restrictions on foreign ownership exist in the media and air transport industries (two economies each), and in the defence sector and gambling (one economy each).

Table 3. **Overview of de jure foreign ownership limitations in selected sectors in SEE economies** *(Percentage of FDI allowed)*

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
Air transport	49[a]	100	100	100	100	49[b]	100
Defence	100	100[c]	100	100	49[d]	100	100
Education	100	100	100	100	100	100	100
Gambling	100	100	100	100	100	49[e]	100
Inland water transport	100	100	100	100	100	100	100
Insurance	100	100	100	100	100	100	100
Maritime transport	100	100	100	100	100	100	100
Media	40[f]	100[g]	100	100	49[h]	100	100
Railways	100	100	100	100	100	100	100
Tourism	100	100	100	100	100	100	100

Source: UNCTAD based on existing laws in respective economies.

[a] Article 13.2, Law 10040/2008 “Air Code of Albania”.

[b] World Bank Database “investing Across Borders”, iab.worldbank.org.

[c] Subject to approval from the competent body for acquisitions of more than 49 per cent of the equity in a defense business (Article 4, Law on the Policy of Foreign Direct Investment of Bosnia and Herzegovina, No 17/98, 13/03, 48/10 and 22/15).

[d] 2015 IMF Report on Exchange Arrangements and Exchange Restrictions (page 2764), elibrary-areaer.imf.org.

[e] Articles 44, 54 and 60 of the Law on Games of Chance and Entertainment Games.

[f] Law on Public and Private Radio and Television in Albania (No. 8410/1998).

[g] Subject to approval from the competent body for acquisitions of more than 49 per cent of the equity in radio broadcasting and television broadcasting activities via terrestrial radiodiffusion (Article 4, Law on the Policy of Foreign Direct Investment of Bosnia and Herzegovina, No. 17/98, 13/03, 48/10 and 22/15).

[h] World Bank Database, “Investing Across Borders”, iab.worldbank.org.

However, de facto barriers to both domestic and foreign investment exist in most SEE economies. As shown in table 4, several sectors are dominated by government monopolies and/or SOEs. Although this can be partially explained by the socialist history of most SEE economies, the continued maintenance of numerous government monopolies and SOEs may have a detrimental effect on market competitiveness and discourage foreign investments in the economy as a whole. A high perceived difficulty of obtaining the required operating licences may further discourage foreign companies to engage in these sectors. Overall, SEE economies have recognized these challenges and the processes of structural reforms and of privatization are ongoing in Kosovo*, Montenegro and Serbia.

Table 4. **FDI limitations in selected sectors in SEE**

	Albania[a]	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia[b]	The former Yugoslav Republic of Macedonia	Kosovo*
Airport operation		X		X		X	X
Air transport		X					
Electricity transmission and generation	X	X	X	X	X	X	X
Forestry		X	X	X			
Health care (selected services)		X	X	X			
Postal services	X	X			X		X
Railway transport	X	X			X	X	X
Telecommunications (fixed line)		X		X			
Waste management		X				X	X

Legend: X = public monopoly and/or strong SOE in a particular sector.

Sources: UNCTAD, World Bank database "Investing Across Borders", iab.worldbank.org.

[a] Major SOEs are listed in the Investment Climate Statement for Albania 2016. It is available on the webpage of the United States Department of State (state.gov).

[b] Major SOEs in Serbia in 2014 were listed in the Fiscal Council document "Assessment of State-owned Enterprises in Serbia: Fiscal Aspects", available at fiskalnisavet.rs.

Foreign investors in SEE economies can typically own non-agricultural land, and their access to agricultural land is predominantly limited to leasehold. Foreign ownership of non-agricultural land is allowed throughout the region. It is unrestricted for investors from the EU and can be conditional on reciprocity for others (as in Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia). Access rights to agricultural land, in contrast, are limited to leasehold in the majority of SEE economies. Differences also exist among those economies which grant ownership rights to agricultural land. For instance, in Bosnia and Herzegovina, reciprocity is required for citizens of the former Yugoslavia (table 5). As part of their obligations under the EU Stabilization and Association Agreements (SAAs), Albania, Montenegro, Serbia and the former Yugoslav Republic of Macedonia are required to grant ownership rights to agricultural land to investors from the European Union. In this regard, for instance, Albania has introduced transitional measures to comply with the EU acquis.[7]

Sectoral restrictions on FDI are generally reflected in the umbrella laws on investment. This is particularly important because potential contradictions between umbrella laws and sectoral regulations on investment may create legal uncertainties. For instance, Article 2.1 of the Law on Foreign Investments in Albania (No. 7764, 1993, last amended by Law 46 of 2017) guarantees foreign investors national

treatment (NT) in the pre-establishment phase of investment, except for land ownership. Nevertheless, two separate regulations (Law 10040/2008 "Air Code of Albania" and Law 8410/1998, "Public and Private Radio and Television in Albania") impose foreign ownership limitations.

Table 5. **Overview of land acquisition rights by foreigners in SEE economies**

	Ownership of construction land	Ownership of agricultural land
Albania	Yes	No, only lease
Bosnia and Herzegovina	Yes, but reciprocity for citizens of the former Yugoslavia	Yes, but reciprocity for citizens of the former Yugoslavia
Montenegro	Yes	No, only lease
Republic of Moldova	Yes	No, only lease
Serbia	Yes	No, only lease
The former Yugoslav Republic of Macedonia	Yes for EU, reciprocity for others	No, only lease
Kosovo*	Yes	Yes

Sources: UNCTAD based on existing laws in respective economies.

Pre-establishment screening of foreign investment across all SEE economies is limited to some sectors. In line with good practice internationally, most SEE economies limit pre-establishment screening and approval procedures to a small number of sectors with FDI restrictions. This is typically the case in the defence sector and in some other sensitive sectors, such as the media (table 3).

National treatment of foreign investors in the post-establishment phase is guaranteed in all SEE economies. In this regard SEE economies are in line with international best practice (see also IPFSD national policy guideline 2.2.2). Four SEE economies – Bosnia and Herzegovina (Law on the Policy of Foreign Direct Investment, article 8), the Republic of Moldova (Law on Investments in Entrepreneurial Activity, article 6), the former Yugoslav Republic of Macedonia (Constitution, article 55) and Kosovo* (Law on Foreign Investment, article 4.2) – also guarantee most-favoured nation (MFN) treatment, which provides for equality of treatment among foreign investors (table 6).

All SEE economies protect investors' rights in case of expropriation, and most cover indirect expropriation. The relevant regulations describe the conditions for a lawful expropriation and provide guidelines for the calculation of the amount of compensation. The conditions under which the expropriation is lawful have been standardized to a large extent, and the laws regulating investment across SEE authorize expropriations for the public benefit, without discrimination, against compensation and under due process of law. Compensation must be equal to the real market value of the investment. The laws in Albania, Bosnia and Herzegovina, the Republic of Moldova, Serbia and Kosovo* explicitly cover both direct and indirect

expropriation. However, except for Kosovo*, no economy provides a definition of indirect expropriation by articulating, for example, the difference between indirect expropriation and non-compensable regulation taken for the public interest. The issue of regulatory takings is not mentioned in the surveyed Macedonian or Montenegrin legislation.

Table 6. **Overview of standards of treatment in SEE economies**

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
National treatment	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Most-favoured nation treatment	No	Yes	No	Yes	No	Yes	Yes

Sources: UNCTAD, based on existing laws in respective economies.

All SEE economies allow investors to transfer abroad – in freely convertible currency – proceeds resulting from their investment. All laws regulating investment in the region set out a non-exhaustive list of examples of capital movements that can be transferred. These may include the initial capital and additional amounts to maintain or increase an investment; returns such as profits, interests, dividends, capital gains, royalties or fees; proceeds obtained from the total or partial sale or disposal of an investment; and funds in repayment of loans, earnings and other remuneration of personnel; as well as compensation from expropriation. In line with good practice and UNCTAD's IPFSD, SEE economies also limit the scope of transfer provisions by clarifying that transactions are allowed only when investors have honoured their tax obligations in the host country. They may also stipulate that transfers will not be permitted if the satisfaction of judgments (Albania, Kosovo*) or the recovery of proceeds of crime (Kosovo*) will be impeded.

Foreign exchange transactions have been liberalized across the region, but restrictions affect residents of certain SEE economies. All SEE economies have liberalized foreign exchange transactions for non-residents. Opening a foreign currency account in a local bank is permitted across SEE, and there are few limitations associated with operations in foreign currency. Only Albania, Bosnia and Herzegovina and Kosovo* have not accepted Article VIII of the International Monetary Fund (IMF) Charter, which provides the conditions for the liberalization of current foreign exchange operations and the right of temporary restrictions in case of balance-of-payments (BoP) crises. Several SEE economies, however, maintain restrictions for the transactions of their own residents. In particular, in Bosnia and Herzegovina, the Republic of Moldova, Serbia and the former Yugoslav Republic of Macedonia, only certain types of residents are allowed to open deposits abroad. In Bosnia and Herzegovina, residents may purchase foreign securities if such purchases are made through authorized securities market participants, international agreements and other special regulations, whereas residents in the Republic of Moldova must seek the National Bank's approval for the purchase of certain types of securities abroad. In the former Yugoslav Republic

of Macedonia, residents are not authorized to buy real estate abroad or to buy securities abroad which are not traded on foreign stock exchanges that have agreements with the country. Such restrictions may complicate the plans of successful local companies or foreign affiliates to expand abroad.

Some SEE economies offer foreign investors additional legal protection including fair and equitable treatment (FET), full protection and security, and legal stability clauses. An unqualified guarantee to treat investors "fairly and equitably" or to grant "full protection and security" may increase the risk of exposure to legal claims by foreign investors (table 7). To reduce this risk, only Kosovo* specifies that the treatment shall not be less favourable than that required by the generally accepted norms of international law (Law on Foreign Investment, article 3.3). Additional investor rights are provided by the investment laws in Bosnia and Herzegovina (article 20) and Kosovo* (article 6), where stabilization clauses protect foreign investors against future legislative changes that would negatively affect their business activities. In Bosnia and Herzegovina, the law confirms that the rights and benefits granted therein cannot be eliminated by subsequent laws, whereas in Kosovo* foreign investors will receive monetary compensation for all damages and expenses incurred as a result of a change of the investment law. As stressed in the Investment Policy Review of Bosnia and Herzegovina (UNCTAD, 2015b), from a host-country perspective, such legal stabilization clauses reduce the ability of public institutions to adopt new laws and regulations. They may also expose the host country to financial liabilities and create positive discrimination in favour of foreign investors relative to domestic investors.

Table 7. **Investor protection standards in SEE economies**

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
Fair and equitable treatment	No	No	No	Yes	No	No	Yes
Full protection and security	Yes	No	No	Yes	Yes	No	Yes
Stability clause	No	Yes	No	No	No	No	Yes

Sources: UNCTAD, based on existing laws in respective economies.

In all SEE economies, investor–State disputes fall under the jurisdiction of local courts by default, and most allow access to international arbitration. A majority of these economies (Albania, Bosnia and Herzegovina, Montenegro, the Republic of Moldova and Kosovo*) explicitly provide investors with the option to settle investor–State disputes through international arbitration. Among the economies which offer investors recourse to international investment arbitration, the majority require the host economy's consent on a case-by-case basis. However, two economies – Albania and Kosovo* – consent in advance in their investment laws to international investment arbitration.[8] Although international investment arbitration is a widely used means for the settlement of disputes related to international investment agreements (IIAs), it is less commonly used for the settlement of disputes arising from domestic laws. In addition, an ex ante

unconditional consent by the host country to international arbitration is unusual. Reserving an economy's consent to international arbitration on a case-by-case basis would preserve the flexibility of host countries with regard to the choice of the dispute settlement forum and provide them with better control over their exposure to investor claims.

Most SEE economies encourage adherence to international standards of responsible investment, and several have adopted national CSR strategies or initiatives. As stressed in UNCTAD's IPFSD, governments should encourage compliance with high standards of responsible investment and corporate behaviour, including support for small and medium-sized enterprises (SMEs). In this regard, several SEE economies have taken proactive measures. In particular, Albania, Serbia and the former Yugoslav Republic of Macedonia have all adopted a national strategy on promoting international standards of responsible investment.[9] Although Montenegro does not have a national CSR strategy, it has 12 separate national strategies and 26 laws which include CSR principles directly or indirectly. Furthermore, all SEE economies except Kosovo* are parties to the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) and the UN Guiding Principles on Business and Human Rights. Within the SEE region, private-sector-driven CSR initiatives are becoming more widespread.

ASSESSMENT AND RECOMMENDATIONS

All SEE economies have established relatively open FDI regimes characterized by high standards of treatment, limited use of investor screening mechanisms and key investment protection guarantees. However, several restrictions on the entry of private investors persist in practice, in particular due to de facto barriers in SOE-dominated sectors. In addition, in some instances, the balance between investor rights and obligations seems to have tilted in favour of foreign investors. Examples are the formulation of stability clauses, which overly limit the legitimate right to regulate of the State, and the offering of automatic ex ante consent to international investment arbitration in domestic investment laws. In these regards, the following recommendations are proposed:

A.1. Review FDI entry and establishment limitations

- *A.1.1. Specify clearly restrictions on foreign ownership in specific industries* (IPFSD national policy guideline 2.1.3). Albania, for instance, may consider clarifying in its Foreign Investment Law which specific industries are subject to foreign investment limitations.

- *A.1.2. Initiate periodic reviews of existing foreign ownership restrictions and foreign ownership caps*, so as to evaluate whether they remain the most appropriate and cost-effective method to protect national interests (IPFSD national policy guideline 2.1.4).

- *A.1.3. Pursue a policy of general openness towards foreign investment, and continue the process of restructuring and privatization*. This is subject to qualifications and selective restrictions to address country-specific development needs and public concerns, such as the provision of public goods or the control over strategic industries and critical infrastructure (IPFSD national policy guideline 2.1.1).

A.2. Review investor protection standards

- *A.2.1. Clarify key investor protection standards.* SEE economies guaranteeing investors FET and full protection and security, may consider clarifying these standards and bringing them in line with recent reform moves in IIAs (IPFSD international policy guideline 4.3.2 and 4.3.1).

- *A.2.2. Abolish or phase out open-ended stability clauses.* Bosnia and Herzegovina and Kosovo* may consider abolishing or amending the legal stability clauses in their investment laws so as to retain the right to introduce and equally apply, without discrimination between domestic and foreign investors, regulatory changes.

- *A.2.3. Reserve consent to international arbitration on a case-by-case basis.* Albania and Kosovo* may consider revising their investment legislation to reserve their consent to international arbitration on a case-by-case basis (IPFSD international policy guideline 6.2.3).

A.3. Encourage further compliance with high standards of responsible investment and corporate behaviour. In particular, SEE economies that have not adopted CSR strategies should consider introducing policies and legislation in line with international instruments and promoting adherence to them.

B. INTERNATIONAL INVESTMENT AGREEMENTS

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
1. Mapping (key provisions)	−	=	+	=	+	=	+
2. Facilitation in IIAs	−	+	+	=	+	−	+
3. ISDS provisions in IIAs	−	−	−	−	−	−	−
4. Dispute prevention policies	=	=	−	+	+	+	=
5. IIA reform policies	=	+	+	+	+	+	=

+ = − : for definitions, see annex 1.

As of June 2016, SEE economies had concluded 227 bilateral investment treaties (BITs), of which 125 were with EU member countries, and 11 with other SEE economies.[10] SEE economies have also concluded 21 treaties with investment provisions (TIPs).[11] Most of these TIPs include general references to investment or establish a framework for cooperation on investment issues. Only a few TIPs to which SEE economies are a party contain substantive investment provisions similar to those found in BITs. Examples include the CEFTA,[12] the Energy Charter Treaty and the Organization of the Islamic Conference Investment Agreement. Whereas SEE BITs include all the traditional investment protection elements, there is a need to reform the network to enhance their sustainable development dimension. In particular, SEE economies should strengthen their dispute prevention policies and continue current efforts on IIA reform (for both BITs and TIPs).[13]

The analysis of IIAs signed by SEE economies highlights several differences in key substantive provisions. This section sets out the results of the analysis of the key provisions found in 175 SEE IIAs for which the text is available to UNCTAD. More specifically, it looks at the extent to which economies have undertaken reform efforts in respect of refining the definition of investment, qualifying the FET standard, refining the expropriation clause, providing for exceptions to the free transfer of funds clause, clarifying that the NT obligation requires a comparison of investors/investments that are “in like circumstances”, circumscribing the scope of the MFN clause, and strengthening dispute prevention and settlement mechanisms. As discussed below, IIAs under review display a number of differences in approaching these provisions.

The majority of IIAs concluded by SEE economies opt for a broad asset-based definition of investment, and most (79 per cent) include a legality requirement. This means that investment must be made in "accordance with host economy laws and regulations"; otherwise it will not be protected by the treaty. However, very few IIAs compile an exhaustive list of covered investments and/or exclude specific types of assets from the definition of investment. An open-ended definition of "investment" can end up covering economic transactions not contemplated by the parties or investments or assets whose contribution to countries' development objectives is questionable. This may expose States to unexpected investor claims and financial liabilities. For example, the IIA concluded by Bosnia and Herzegovina with Turkey (1998) excludes portfolio investments, and the one concluded with Austria (2000) excludes commercial transactions designed exclusively for the sale of goods or services with a duration of less than three years. None of the IIAs under review require investments to fulfil specific characteristics such as the commitment of capital, expectation of profit and assumption of risk.

Most of the IIAs concluded by SEE economies include provisions granting FET. FET is the most commonly invoked treaty standard by investors in investor–State dispute settlement (ISDS) proceedings. Almost all recent IIAs qualify or clarify FET in one way or another (table 8). However, in the SEE region, only 13 per cent of the IIAs under review have qualified the FET standard, mostly by reference to international law. An unqualified promise to treat investors "fairly and equitably" opens the door for an expansive approach to its interpretation, and suggests a relatively low threshold of State liability. It also risks posing limits on the right to regulate of SEE economies, thanks to the concept of protection of "legitimate expectations" that has been read into the FET obligation by many arbitral tribunals.

Table 8. **Key provisions of IIAs in SEE** *(Percentage of each economy's reviewed treaties)*[a]

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia
Definition of investment (legality requirement)	63.3	79.4	88	56	96.1	93.5
Non-discrimination (NT "in like circumstances" and circumscribing the scope of the MFN clause)	6.7	8.8	10	12	15.4	12.9
Qualifying FET	12.5	15.1	4	17.4	15.4	13.8
Refining expropriation clause	0	2.9	8	0	7.4	0
Exceptions to the transfer of funds obligation	16.7	14.7	52	28	29.6	6.5

Source: UNCTAD IIA database.

[a] The table excludes Kosovo* because of the small number of BITs signed.

All of the IIAs under review have included an expropriation provision covering direct and indirect takings. These are meant to protect investors against arbitrary or uncompensated expropriations, thus contributing to a stable and predictable legal framework conducive to foreign investment. However, very few IIAs under review (3 per cent) set out general criteria for distinguishing "indirect" expropriation (which refers to regulatory and other acts "tantamount to" or "equivalent to" expropriation) and legitimate public policymaking (e.g. environmental, social or health regulations) that does not entail a duty to pay compensation to affected investors. For example, the BIT concluded by Serbia with Canada (2014) clarifies that expropriation does not apply to the issuance of a compulsory licence granted in relation to intellectual property rights to the extent that the issuance, revocation, limitation or creation is consistent with the World Trade Organization (WTO) Agreement.

All of the IIAs under review grant foreign investors the right to freely transfer any investment-related funds into and out of the host country. Although transfer rights are a key element of investment protection, an unqualified transfer of funds provision can significantly reduce the ability of SEE economies to deal with sudden and massive outflows or inflows of capital, BoP difficulties and other macroeconomic problems. However, only 24 per cent of the SEE IIAs under review have included transfer of funds exceptions allowing States to impose restrictions on transfers, for example, to deal with a BoP difficulty or economic crisis or for the fulfilment of fiscal or financial obligations on the part of the investor. Interestingly, more than half (52 per cent) of the IIAs concluded by Montenegro include such exceptions; this is much higher than the regional average. Examples of such exceptions include the BIT between Bosnia and Herzegovina with the Slovak Republic (2008), which provides that in exceptional circumstances when capital movements cause or threaten to cause a BoP problem, the contracting parties may temporarily apply safeguard measures restricting or delaying the transfer; and the BIT between the Republic of Moldova and Cyprus (2007), which conditions the free transfer of funds on the fulfilment of fiscal obligations on the part of the investor.

The majority of the IIAs concluded by SEE economies include NT and MFN provisions. These prevent nationality-based discrimination and guarantee foreign investors a level-playing field relative to comparable domestic investors and investors from any third country. However, few (11 per cent) of the IIAs concluded by SEE economies specify that investors or investments must be "in like circumstances" and/or circumscribe the scope of the MFN clause. Such an approach (possibly accompanied by the criteria for determining this) explicitly clarifies that NT has to be granted to foreign investors only when they are in similar conditions as domestic investors. Concerning MFN, a number of arbitral decisions have read the MFN obligation as allowing investors to invoke more investor-friendly provisions from third treaties, e.g. to incorporate State obligations not included in the base (applicable) treaty. This mechanism allows investors to benefit from greater protection standards than the ones found in the base treaty or to circumvent procedural (ISDS-related) requirements in the base treaty.

The frequency, depth and scope of investment promotion and facilitation provisions found in IIAs concluded by SEE economies also vary greatly from one country to another. Whereas such provisions are included in about 60 per cent of the IIAs concluded by Serbia, they appear in only 13 per cent of the agreements concluded by Albania and in 9 per cent of the agreements concluded by the former Yugoslav Republic of Macedonia. On average, 28 per cent of the IIAs concluded by SEE economies have included one or more investment promotion and facilitation provision. This mirrors the

content of IIAs worldwide, which rarely include provisions that effectively promote and facilitate outward or inward foreign investment. Furthermore, these agreements typically use very general treaty language with few, if any, binding obligations.[14] Examples of SEE IIAs with investment promotion and facilitation provisions include the Serbia–Azerbaijan BIT (2011), which provides that to the extent possible, the laws, regulations, procedures, administrative rulings and judicial decisions of general application of the parties which may affect investments should be promptly published or made publicly available. Another example is the Republic of Moldova–Qatar BIT (2012), which includes provisions facilitating the issuance of permits in connection with an investment and endeavour to issue the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality (see also UNCTAD, 2017a).

The majority of the agreements include broad ISDS provisions. Very few IIAs (5 of the 175 IIAs under review) circumscribe the scope of the provision by, for instance, listing those issues or provisions to which ISDS applies; excluding certain policy areas from the scope of ISDS; prohibiting recourse to ISDS after a certain period has passed from the events giving rise to the claim ("limitations period"); including a special mechanism for taxation or prudential measures; or providing for more transparency by granting public access to arbitration. Examples include the Albania–Bulgaria BIT (1994), which specifies that only the provisions on expropriation and transfer of funds are subject to ISDS. The Serbia–Canada BIT (2014) includes detailed clarifications on the submission of claims based on taxation measures and ensures that awards shall be publicly available, subject to the redaction of confidential information. By June 2016, SEE economies had responded to 29 IIA-based publicly known ISDS cases, with the Republic of Moldova responding to 9 followed by Albania (7), Serbia (6), the former Yugoslav Republic of Macedonia (3), and Bosnia and Herzegovina and Montenegro (2 each). As arbitrations can be kept confidential under certain circumstances, the actual number of disputes filed against SEE economies could be higher.

About half of the SEE economies actively seek to raise domestic awareness, to improve compliance with IIAs and prevent investment disputes. Investment disputes usually come at a high cost for both the host respondent State and the investor (an average of $5–10 million per party per case). ISDS proceedings can result in orders to pay significant compensation to investors (including lost profits and sometimes moral damages) (UNCTAD, 2015c). It is therefore important for SEE economies to adopt policies and establish institutional mechanisms that are conducive to preventing the emergence and escalation of conflicts between the State and investors. This includes engaging in consultations with stakeholders to learn about potential disputes at the earliest possible stage, and engaging in domestic interinstitutional cooperation to prevent the escalation of investment disputes. For example, Bosnia and Herzegovina and Kosovo* have established investor aftercare mechanisms to monitor investors' concerns and resolve them at an early stage. In the former Yugoslav Republic of Macedonia, the Permanent Court of Arbitration attached to the Economic Chamber regularly organizes activities aimed at raising the awareness of companies about the option to resolve current or future disputes in arbitration proceedings.

Most SEE economies have conducted a stocktaking of their existing IIAs and/or are engaged in regular consultations with their investment treaty partners, including with a view to amend and/or renegotiate IIAs. However, very few respondents to UNCTAD's survey have set up (along with their treaty partners) mechanisms for joint interpretation of their investment treaty obligations, which is a useful tool to prevent unintended interpretation, while only Serbia has developed a model BIT within the past two years.

New model BITs set forward a country's strategic choices (e.g. the extent of reform), and positions during negotiations. The next phase of IIA reform would involve modernizing the existing stock of BITs.

ASSESSMENT AND RECOMMENDATIONS

SEE economies have a relatively "traditional" network of treaties and could benefit from updating and modernizing their network in light of modern treaty practices supporting sustainable development objectives. In terms of modalities for introducing change to the existing treaty regime, the *World Investment Report* (WIR) 2017 sets out the pros and cons of 10 policy options for reforming old-generation IIAs (UNCTAD, 2017b). In terms of designing treaty content, the Road Map for IIA Reform sets out five areas for reform: preserving the right to regulate while maintaining protection to pursue public policy interests; improving investment dispute settlement; strengthening investment promotion and facilitation provisions; ensuring responsible investment; and enhancing systemic consistency (UNCTAD, 2015c).[15] When pursuing IIA reform, policymakers and negotiators should consider the compound effect of reform options. Some combinations of these options may "overshoot" and result in a treaty that is largely deprived of its traditional investment protection rationale.[16] The following recommendations, based on the above-mentioned policy tools, aim to provide a balanced approach.

B.1. Clarify the scope and meaning of key IIA definitions and obligations. This would involve:

- *B.1.1. Improve the definition of investment*, by, for instance, excluding certain types of assets (e.g. portfolio investment – which can include short-term and speculative investments – or intellectual property rights that are not protected under domestic legislation).

- *B.1.2. Qualify FET*; several options exist to address the deficiencies of an unqualified FET standard. Some recent treaties clarify or replace the standard with a list of State obligations (e.g. obligations not to deny justice, treat investors in a manifestly arbitrary way or flagrantly violate due process, among others).

- *B.1.3. Qualify and clarify provisions on expropriation.* Options include (i) establishing criteria that need to be met for indirect expropriation; (ii) defining in general terms measures that do not constitute indirect expropriation; and (iii) clarifying that certain specific measures do not constitute indirect expropriation.

- *B.1.4. Clarify the non-discrimination provisions*. SEE economies may consider a clarification that the NT and MFN obligations require comparison of investors or investments that are "in like circumstances" and set out criteria for determining whether they are. It is also possible to circumscribe the scope of the MFN clause so as to limit the possibility of invoking more favourable provisions from third treaties.

- *B.1.5. Qualify transfer of funds clauses*. If left unqualified (i.e. without a list of permissible exceptions such as balance-o- payment difficulties), transfer of funds clauses can pose considerable economic challenges to economies in exceptional circumstances.

B.2. Strengthen investment facilitation and promotion provisions in IIAs. Recent IIAs tend to include more investment promotion and facilitation provisions than their predecessors.[17] SEE economies may wish to strengthen the investment promotion and facilitation dimension of their IIAs by, for example, including provisions encouraging investment flows and raising investors' awareness of investment opportunities. For options, see the action lines in the Global Action Menu for Investment Facilitation (UNCTAD, 2016b) as well as the follow-up review of policy practices (UNCTAD, 2017a).

B.3. Improve investment dispute settlement. The current way of settling investor–State disputes, their growing number and the stakes involved are among the primary reasons why IIA reform is high on today's investment and development agenda and why several reform processes are underway in countries around the globe. Options include qualifying the ISDS mechanism through, for example, defining the range of disputes that can be subject to ISDS, and circumscribing the scope of ISDS, (e.g. by excluding financial services and prudential measures).[18] In parallel, it is also possible to introduce improvements and refinements to the arbitral process by providing for more transparency, including by granting public access to arbitration documents (including settlement agreements) and arbitral hearings as well as by allowing the participation of interested non-disputing parties such as civil society organizations in ISDS proceedings and promoting the use of alternative dispute resolution methods (e.g. encouraging resort to conciliation or mediation; agreeing to cooperate in developing dispute prevention mechanisms (including by creating ombudspersons or "ombuds" offices). Efforts to find the best way to settle investment disputes should bear in mind current discussions on replacing the system of multiple, ad hoc arbitral tribunals with a standing international investment court that is competent to hear all investment disputes arising from IIAs, with judges appointed or elected by States on a permanent basis, and an appeals chamber.[19]

B.4. Adopt and strengthen dispute prevention policies. This would involve the establishment of adequate institutional mechanisms to prevent disputes from emerging and avoid the breach of contracts and treaties on the part of government agencies. It also requires ensuring that the State and various government agencies take account of the legal obligations made under investment agreements when enacting laws and implementing policy measures, and establishing a system for identifying more easily potential areas where disputes with investors can arise and for responding to disputes where and when they emerge.

B.5. Embark on a comprehensive IIA reform. SEE economies may wish to develop a strategic approach for addressing existing IIAs and negotiating new ones. In this regard, SEE economies could identify partners for joint action and adopt joint courses of action with other treaty parties. Guidance can be found in the 10 policy options for phase 2 of IIA reform set out and discussed in WIR 2017 (UNCTAD, 2017b).

B.6. Enhance regional cooperation and sharing of experience. The large number of ISDS cases faced by the economies of the region calls for a more systematic sharing of experience in preventing and managing investment disputes, as well as modernizing IIAs.

C. BUSINESS FACILITATION

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
1. Company establishment	+	−	+	+	+	+	+
2. Transparency of business procedures	+	−	=	−	=	−	−
3. One-stop services	+	−	=	=	=	=	+
4. Business perceptions of public–private dialogue	=	−	=	−	=	=	=
5. Trade	+	−	=	=	=	+	..

+ = − : for definitions, see annex 1.

Business and investment facilitation measures are high on the reform agenda of most SEE economies. In particular, consistent progress has been recorded in improving the procedures for registering new businesses, and the region is now a top performer in this area, ahead of many developed and developing countries alike. Good progress is also generally recorded in trade facilitation, though some economies are still catching up with initiatives to streamline customs procedures and improve governance at the border. Although some economies such as Albania have also taken the lead in addressing other business facilitation issues, critical gaps remain throughout the region in accessing the information relevant for business operations, interacting electronically with the public administration and establishing effective stakeholder consultations on policy decisions affecting business.

Business facilitation is key to attracting investment and securing its development benefits. As stressed in UNCTAD's Action Menu on Investment Facilitation and Promotion (UNCTAD, 2016b), investment can bolster economic growth for developed and developing economies alike and the extent of the positive impact depends on the dynamics of investment regulatory and facilitation measures. However, in the most common international instruments for investment, relatively little attention is being paid to ground-level obstacles to investment, such as a lack of transparency on legal or administrative requirements faced by investors, lack of efficiency in the operating environment and other factors that create high costs for doing business. Investment facilitation covers a wide range of areas, all with the ultimate focus of attracting investment, allowing investment to flow efficiently, and benefiting host countries effectively. Transparency, investor services, simplicity and efficiency of procedures, coordination and cooperation, and capacity-building are among the most important aspects (UNCTAD, 2016b). This section looks at some of these aspects.

Most SEE economies have simplified company establishment procedures in recent years. In all but Bosnia and Herzegovina, it takes a maximum of 10 days to establish a company, which is short by regional and world standards. In particular, the former Yugoslav Republic of Macedonia has made huge progress in streamlining company establishment procedures, including in response to UNCTAD's recommendations under the Investment Policy Review programme. As a result, a company can be established in two days, and the economy ranks fourth worldwide in terms of ease of establishment (table 9). Most other economies in the region also perform better than the average for Europe and Central Asia (ECA) on several efficiency criteria. Only Bosnia and Herzegovina still ranks very low, compared with both the region and the rest of the world. As stressed in the IPR of that country, however, this does not mean that significant differences exist among its entities (UNCTAD, 2015b).[20]

Table 9. **Business establishment in SEE economies and ECA economy as a whole**

	Europe and Central Asia	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
Procedures (number)	4.9	5	12	6[a]	5	5	2	3
Time (number of days)	10.2	5	65	10	6	7	2	6
Cost (% of income per capita)	4.7	10.1	13.5	1.5	6.2	6.5	0.1	1.1
Paid-in minimum capital (% of income per capita)	4	0	13.4	0	0	0	0	0
Rank	..	46	174	58	44	47	4	13

Sources: World Bank (2016a).

[a] This is disputed by the Government of Montenegro, according to which the number of procedures is four.

However, SEE economies generally rank poorly with respect to the transparency of their business procedures. As part of its efforts to assist countries in facilitating business registration to stimulate entrepreneurship, reduce corruption, expand the size of the formal sector and generate more tax revenues to finance sustainable development, UNCTAD launched the Global Enterprise Registration (GER) portal in 2014 (available at ger.co). The portal ranks business registration websites across the world on a number of criteria, including whether informational websites exist that explain the mandatory steps to register businesses, provide links to necessary downloadable forms, give legal justifications for the required steps, and offer a contact point for questions and complaints. Benchmarked from 0 (worst) to 10 (best) against these criteria, only Albania scores high (between 8 and 10) on the GER ratings Three SEE economies obtain an average score (between 4 and 7), while the remaining three perform poorly (between 0 and 3)

(table 10). Low scores are associated with a lack of transparency regarding “what to do” (i.e. whether the information portals describe all the mandatory steps needed to register a business), but also “how to do it” (i.e. where to go, what you get, what to bring, how much it costs, how long it takes and what the legal basis is) and “user orientation” (i.e. whether the process is presented from the user’s point of view, and whether the portal provides the contact details for filing complaints). These results are corroborated by a recent business survey, which identified the accessibility of information and the predictability of laws and regulations affecting business as among the key issues affecting enterprises, particularly small companies in the region (RCC, 2016).

Table 10. **Transparency of information portals in SEE**

	What to do	How to do it	User orientation
Albania	●●●	●●●●●	◐○
Bosnia and Herzegovina	●○○	●●○○○	◐○
Montenegro	●●◐	●○○○○	◐○
Republic of Moldova	◐○○	◐○○○○	○○
Serbia	●●○	●●○○○	●○
The former Yugoslav Republic of Macedonia	●◐○	●●●●○	◐○
Kosovo*	●○○	●○○○○	◐○

Source: UNCTAD (ger.co).

Notes: The GER rating system of dots indicates which websites provide basic features so that entrepreneurs can process their application online (“single windows”) or at least know what to do, why to do it and how to do it (“information portals”). More dots are good. For details, see ger.co/how-it-works.

One-stop facilitation services are widespread, though mostly in physical form… Establishing a single window or special enquiry point for all enquiries concerning investment policies and applications to invest has become common practice among developed and developing countries. Among the key tools in this regard is the establishment of “one-stop” approval authorities. However, the extent to which business registration and other procedures can be processed through one-stop facilitation services still differs greatly across SEE. For instance, only Albania, the former Yugoslav Republic of Macedonia and Kosovo* offer both physical and virtual (online) facilitation services for company establishment or operation.[21] Most other economies offer only physical one-stop facilitation, which limits the territorial reach as well as the potential time and cost-saving impact of the one-stop service. Bosnia and Herzegovina is the only economy in which no economy-wide one-stop facility exists, although Republika Srpska introduced physical one-stop shop services in December 2013 and is expected to also introduce online registration (UNCTAD, 2015b).

…and obtaining licences and permits remains a concern in several SEE economies... The administrative burden on businesses with respect to obtaining licensing and other permits remains high in several SEE economies. In particular, in some areas, the activities covered by the licences do not pose public interest, health or safety protection concerns that could not be addressed by means of regular ex post controls. For instance, Montenegro, which requires over 540 different licences, permits and permissions from some 36 government agencies, opened an internet portal in 2013 to guide investors through the permitting maze. In Bosnia and Herzegovina and in Serbia, where most licences and permits are administered at a subnational level, the problem is confusion and overlap in responsibilities between the different levels of government (UNCTAD, 2015b; OECD, 2010).

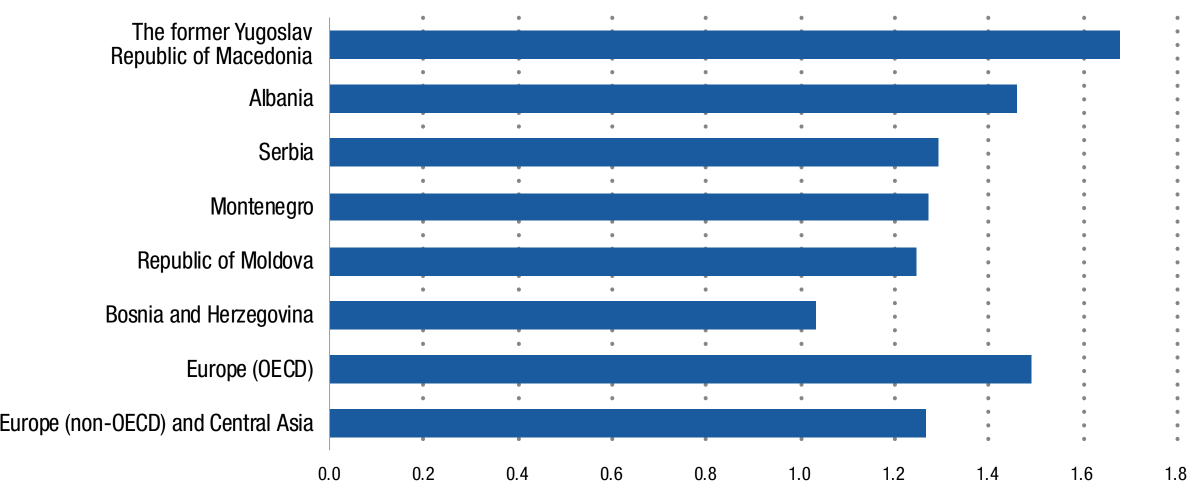
…but reform role models are emerging in some areas. A successful reform example was set by Albania in 2009, when many licences were abolished and the procedures to obtain the remaining ones were significantly streamlined.[22] The Republic of Moldova has carried out a number of “regulatory guillotine” exercises, which significantly reduced the number of activities requiring a licence (UNCTAD, 2013). The former Yugoslav Republic of Macedonia also set an example for the region in construction permitting. With the assistance of GIZ (Deutsche Gesellschaft für Internationale Zusammenarbeit) and the RCC, the economy has established an electronic building permitting system, which significantly streamlined the process for obtaining construction permits. As a result, the former Yugoslav Republic of Macedonia, which was 89th worldwide in the relevant Doing Business rank for 2015, jumped to 11th worldwide in 2017 (World Bank, 2016a). This e-building permitting system is being extended to other economies in the region, including Albania, Montenegro and Serbia, and there are plans to broaden its scope to include spatial planning.

Trade facilitation is a priority for SEE, and economies in the region are working to streamline customs procedures… The SEE 2020 Strategy stresses the need for investment and better trade facilitation within the region to support export-led and FDI-driven growth. Beyond measures to enhance the investment climate and competitiveness, the strategy calls for facilitating trade through transparency tools and simplification of trade-related procedures, improving customs interconnectivity and introducing paperless processes. Four SEE economies have ratified the WTO Trade Facilitation Agreement (Albania, Montenegro, the Republic of Moldova and the former Yugoslav Republic of Macedonia), and several SEE economies have already initiated reforms in this area. Albania, the Republic of Moldova and Kosovo*, for instance, reduced the time needed for customs clearance of imports by implementing UNCTAD’s ASYCUDAWorld electronic data interchange system, which is compliant with EU requirements. Albania also implemented an electronic risk-based inspection system, which reduced the time needed for border compliance (World Bank, Doing Business database). UNCTAD is also assisting Bosnia and Herzegovina in the modernization of its customs administration, through the migration to ASYCUDAWorld, which started in 2015 (UNCTAD, 2015c). The former Yugoslav Republic of Macedonia has harmonized customs procedures with the *acquis communautaire*, introduced a centralized single-window system and installed X-ray scanners. Further improvements of customs services are planned, including the implementation of a single-window approach (UNCTAD, 2012).

…but progress is mixed. International trade facilitation rankings show that significant differences persist in the levels of efficiency and transparency of customs regimes across SEE economies, with the highest

variance registered in custom formalities (automation, documents and procedures), in cooperation[23] and in governance. The greatest progress has been registered in the former Yugoslav Republic of Macedonia, followed by Albania (figure 3). These economies exceed the performance of both European countries that are not OECD members and of Central Asian countries on the OECD trade facilitation indicators, which cover the full spectrum of border procedures. The performance of the former Yugoslav Republic of Macedonia also exceeds the average performance of OECD members in Europe. Montenegro, the Republic of Moldova, and Serbia are on par with the other non-OECD countries in Europe and with Central Asia. Performance in Bosnia and Herzegovina lags that of the region, particularly on information availability, involvement of the trade community, appeal procedures, fees and charges, formalities (documents, automation and procedures), internal and external border agency cooperation, and governance and impartiality. The roll-out of ASYCUDAWorld, however, is expected to facilitate trade, while increasing the efficiency of customs controls (UNCTAD, 2015b).

Figure 3. **Trade facilitation indicators in selected SEE economies and comparator regions**
(Average score for 2015, index out of 2, with 2 being best)



Source: OECD Trade Facilitation Indicators 2015.
Note: Data for Kosovo* not available.

More effective public–private dialogue is called for across the region. The existence of effective channels of communication between policymakers and those affected by their decisions is among the most crucial ingredients of any investment facilitation effort. In this regard, UNCTAD's Action Plan on Investment Facilitation calls for mechanisms to provide timely and relevant notice of changes in procedures, applicable standards, technical regulations and conformance requirements (UNCTAD, 2016b, action line 1). It also stresses the importance of providing interested parties (including the business community and investment stakeholders) with an opportunity to comment on proposed new laws, regulations and policies or changes to existing ones before their implementation (UNCTAD, 2016b, action line 4). All SEE economies have established formal communication forums with the business community, and in several of them public consultations are required before legislation is adopted. Nevertheless, progress is still needed on both aspects discussed above in order to positively affect investors' perceptions. Indeed, according to the

RCC Balkan Barometer 2016 – Business Opinion Survey, the large majority of business respondents (over 66 per cent) are not satisfied with how the government consults with and involves the private sector in the process of drafting new laws and regulations relevant for doing business in two out of seven economies. In all other SEE economies, more than one third of respondents are not satisfied. This area therefore figures among the top priorities for reform.

ASSESSMENT AND RECOMMENDATIONS

All the economies in the region are actively engaged in business facilitation reforms, but these have so far focused primarily on the company establishment phase. Much progress is still required in improving the transparency and accessibility of both the rules and the public administration, which could be fostered through adequate e-government solutions and improved public–private dialogue. In this context, in line with UNCTAD's Action Plan on Investment Facilitation, the economies in the region should consider to the following actions:

C.1. Launch an SEE Business Portal to catalogue, compare and streamline company establishment and operation procedures in each economy of the region. The regional portal, accessible by all and regularly updated by each participating economy, would address the need to improve the transparency of the regulatory framework in the region, which has been highlighted as a key issue by investors. A second layer of the portal, access to which would be limited, would enable each government in the region to benchmark in detail its administrative processes relative to those of the other economies in the region, thus fostering healthy competition.[24] Finally, the portal could act as the gateway to the regional investment promotion initiatives discussed in chapter II, section C. The key phases of implementation of the SEE Business Portal would be as follows:

- *C.1.1. Map out all administrative procedures across a range of company establishment and operation procedures.* As an outcome of this phase, each economy could also review which procedures and steps are no longer considered necessary or could be merged, with a view to streamlining them.

- *C.1.2. Publish the complete list of requirements and procedures to improve transparency and predictability.* The portal would provide step-by-step guides on investment procedures in all SEE economies, describing the actual practice from the user's point of view. This includes providing the complete list of steps in each procedure and their cost, duration and legal basis, as well as information on where to go, who to see and what documents the user would receive.

- *C.1.3. Introduce a comparison module to benchmark each economy's administrative process relative to the others.* This module would be password protected and accessible by the authorities in charge of the relevant agencies within each economy.

C.2. Adopt virtual one-stop shops. This, the natural next step to the ongoing business facilitation reforms, involves providing virtual one-stop shop services that are accessible throughout each economy, improving efficiency and reducing the scope for rent-seeking by limiting the need for face-to-face interactions.

Each economy's virtual one-stop shop would be accessible directly or through internet links with the SEE Business Portal.

The UNCTAD Business Facilitation Programme, which has assisted several countries in the adoption of e-government solutions, could prove useful to the economies in the region, throughout the establishment of the portal and the virtual one-stop shops.

C.3. Align customs procedures with EU standards. SEE economies should continue their efforts to streamline customs procedures and align them with EU standards. In particular:

- *C.3.1. Further align customs declaration data with the EU single administrative document (SAD) requirements*. The SEE customs administrations that use ASYCUDA (Albania, the Republic of Moldova and Kosovo*) should consider further alignment of their customs declaration data with the EU SAD requirements for future interoperation with the EU systems, by migrating their ASYCUDA systems that are operational nationwide to the latest ASYCUDA platform (ASYCUDAWorld EU version).

- *C.3.2.wImprove the operational capacity of border control agencies*, including using ASYCUDAWorld Multi-Agency Risk Management, which ensures the consistent and integrated processing of border controls nationwide.

- *C.3.3. Foster the systematic use of the ASYCUDAWorld Cross-border Data Exchange function*, providing pre-arrival information to the transit or destination country, to improve the transparency and efficiency of customs operations, and the facilitation of legitimate trade in the region.

C.4. Improve public–private dialogue. The economies in the region should consider mechanisms to strengthen stakeholders' consultations in the policymaking process. This could take the form of regulatory impact analysis and assessment, and stronger consultation mechanisms which are activated before a policy initiative affecting business is adopted.

D. TAXATION

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
1. Complexity	+	+	+	=	+	+	+
2. Compliance	=	−	=	+	=	+	+
3. Tax incentives	−	=	+	=	+	+	+
4. Anti-avoidance measures	=	−	−	−	+	=	=
5. Double taxation treaties	+	+	+	+	+	+	−

+ = − : for definitions, see annex 1.

In recent years, significant progress has been recorded in ending a long and harmful fiscal competition among the SEE economies that has dented much-needed fiscal revenue without significantly fostering elements that attract FDI.[25] Corporate income tax regimes across the region generally offer low levels of complexity, but the tax compliance burden is uneven. Several SEE economies have also made efforts to streamline incentives, and some have introduced cost-benefit analysis. Although active tax cooperation within the region is limited, an extensive network of tax treaties among SEE economies is in place. Differences remain in the regulatory and institutional capacities to tackle tax avoidance.

An encouraging trend towards reducing the complexity of the tax regimes has emerged… Complex tax regimes characterized by multiple corporate tax rates and a large number of incentive schemes are typically difficult for the tax authorities to administer and for investors to comply with. They also tend to provide larger scope for tax avoidance (IPFSD guideline 3.2.9). Corporate income tax regimes in SEE are generally straightforward, with most economies relying on a single corporate income tax rate and a few offering simplified taxation for SMEs. In addition, over recent years, many SEE economies have taken steps to reduce the complexity of their regimes or ensure compliance with international obligations (as regards both the EU accession process and the WTO), by abolishing or phasing out many incentive schemes. In Bosnia and Herzegovina, for instance, following a recommendation contained in UNCTAD's IPR, the Federation of Bosnia and Herzegovina abolished tax incentives for export activities as of 2016, and the Republic of Srpska abolished the special profit tax regime for small taxpayers (UNCTAD, 2015b). In addition, some key differences in the corporate tax regime of the two entities were removed. The Republic of Moldova abolished incentives for commercial banks and microfinance in 2015, and Serbia abolished the tax credit for investment in new fixed assets in 2014. When excluding SME-specific regimes, only the Republic of Moldova retains multiple fiscal incentive schemes.[26]

…and measures are taken to increase tax revenues. Beyond streamlining their incentive schemes, several SEE economies have recently raised their corporate income tax rate or made other adjustments to increase corporate tax revenues. This indicates that these economies are effectively ending the fiscal race to the bottom that has affected the region for over 20 years. Albania, for instance, raised the corporate tax rate and the withholding tax on dividends distributed abroad from 10 to 15 per cent in 2014. Before 2015, in the former Yugoslav Republic of Macedonia, profits were taxed only on distribution; now corporate income tax is due on realized profits, in line with other countries in the region and with the recommendations contained in UNCTAD's IPR for the country (UNCTAD, 2012). The Republic of Moldova, which had brought the corporate income tax down to zero between 2008 and 2011, raised it to 12 per cent in 2012, a level comparable to that of other competitors in the region.

Although the corporate tax regimes differ across economies in the region, the effective tax burden tends to converge. There are substantial differences in the key features of the corporate tax regimes in the SEE economies (table 11). The statutory corporate income tax rate, for instance, varies from a minimum of 9 per cent in Montenegro, to a maximum of 15 per cent in Albania and Serbia. Similarly, dividend withholding taxes range from 0 per cent in Kosovo* to 20 per cent in Serbia. Most SEE economies have also made only limited efforts towards regional tax cooperation, with very few meetings on harmonizing tax policy taking place between economies (OECD, 2016). UNCTAD's comparative tax methodology, which is described in annex 3, shows that such differences are significantly reduced when taking into account the effective tax burden, particularly when incentives are considered (figure 4).

Table 11. **Key features of corporate tax regimes in SEE economies in 2016**

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
Corporate tax rate (%)	15	10	9	12	15	10	10
Tax on distributed dividends (residents, %)	0	0	9	0	0	10	0
Dividend withholding tax (%)	15	5	9	6	20	10	0
Loss carry-forward (number of years)	3	5	5	3	5	3	6
Capital gains tax rate (%)	15	10	9	12	15	10	10

Source: UNCTAD, based on the database of the International Bureau of Fiscal Documentation.

Figure 4. **Comparative tax burden on investment in manufacturing**
(Present value of tax, percentage)

	Standard	Incentive
Albania	25	22
Bosnia and Herzegovina	12	10
Montenegro	23	17
Republic of Moldova	16	13
Serbia	29	17
The former Yugoslav Republic of Macedonia	23	17
Kosovo*	9	0

Source: UNCTAD, based on methodology for corporate tax comparison presented in annex 3.

The policies on the provision of fiscal incentives, however, are only partially aligned with good practice. In each SEE economy, the administration of investment incentives is the responsibility of an independent entity or ministry that does not have conflicting objectives of performance targets for investment attraction, in line with good practice in this area (IPFSD guideline 2.4.16). In addition, in most cases, incentives are time-bound and offered on the basis of a set of predetermined and objective criteria. They generally are also associated with concrete development goals (i.e. employment generation, investment in underdeveloped areas or strategic sectors). However, investment incentives should also be carefully assessed in terms of long-term costs and benefits (IPFSD guideline 2.4.12). In this regard, only three economies in the region (Montenegro, Serbia and the former Yugoslav Republic of Macedonia) indicated to UNCTAD that they carry out periodic evaluations and cost-benefit analysis of the impact of incentives, to review their effectiveness in achieving the desired objectives.

Most economies in the region are working towards streamlining the payment of taxes… In a recent business opinion survey, when asked which regulations they consider as obstacles, a large majority of respondents from the region cited tax-related regulations as the largest barrier (RCC, 2016). Encouragingly, according to recent *Paying Taxes* reports from PwC and the World Bank Group, the time to comply with the tax regime in Central Asia and Eastern Europe has been reduced every year since 2005 and is the most improved of any region in the world since the first edition of the report in 2006 (PWC and World Bank, 2016). In particular, in 2016, this region recorded the largest decrease of any region in the number of payments. The region has an average time to comply of 233 hours and an average of 18.4 payments, below the global averages of 251 hours and 25 payments but still above the EU and EFTA averages of 164 hours and 11.8 payments (PWC and World Bank, 2017). As part of this trend, several economies in SEE have introduced e-filing or e-payment solutions in recent years. They include Albania, Montenegro, the Republic of Moldova, Serbia and the former Yugoslav Republic of Macedonia as well as Kosovo*. Following UNCTAD's recommendations, the Republic of Moldova has also recently embarked on a complete restructuring of its tax administration system to improve revenue collection, tax compliance and the quality of taxpayer services (UNCTAD, 2013; World Bank, 2016b).

…but large differences in the tax compliance burden for investors persist. For instance, the Republic of Moldova, the former Yugoslav Republic of Macedonia and Kosovo* have reduced the number of payments as well as the time required to pay taxes to less than the average for ECA, as the relevant Doing Business indicators from the World Bank confirm (table 12). Both the former Yugoslav Republic of Macedonia and Kosovo* also perform better on both indicators than the averages for the high-income OECD countries. Conversely, Albania, Bosnia and Herzegovina, and Serbia score below the regional average or the average for ECA on both counts, notwithstanding the fact that all four economies recorded a significant reduction in the time to comply with tax laws since the preceding year. Finally, all SEE economies but Bosnia and Herzegovina and Kosovo* score higher than ECA on the postfiling index, which measures the time to comply with indirect taxes and postpayment services. In the case of Bosnia and Herzegovina, the ease of compliance is particularly low for companies operating in more than one entity, which must deal and comply with partially harmonized tax regimes and multiple tax authorities.

Table 12. **Ease of paying taxes**

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
Number of tax payments per year	34	34	18	10	33	7	10
Time to comply with tax laws (hours)	261	411	300	181	226	119	155
Postfiling index (0–100)[a]	83	48	86	91	94	84	61

Source: Doing Business (World Bank, 2016a)

[a] The postfiling index is based on four components: time to comply with VAT or goods and services tax (GST) refund, time to obtain VAT or GST refund, time to comply with corporate income tax audit and time to complete a corporate income tax audit.

Several SEE economies are revising their domestic tax legislations to fight tax avoidance. Tax avoidance and evasion are global issues affecting countries at all levels of development, and several intergovernmental initiatives to curb the phenomenon are being discussed and considered, including the OECD's Base Erosion and Profit Shifting (BEPS) project and the EU's Anti-Tax Avoidance Package.[27] As stressed in UNCTAD's *WIR 2015*, tolerance or facilitation of tax avoidance should not be considered an instrument either to attract inward investment or to support the competitiveness of MNEs (UNCTAD, 2015c). In this regard, it is noteworthy that several SEE economies have adopted or revised transfer pricing legislation in recent years.

However, the level of development and the clarity of the anti-avoidance regimes across SEE are still generally low. Only Serbia has adopted general rules against tax avoidance and implemented

transfer pricing rules that clearly define transfer pricing methods in line with OECD guidelines. Conversely, in Bosnia and Herzegovina, Montenegro, the Republic of Moldova and Kosovo*, transfer pricing regulations are still at an early stage of development or missing altogether, and the arm's length principle is only partially observed.[28] Albania adopted new transfer pricing rules aligned with international standards in 2014 but preserved the possibility for tax authorities to use alternative assessment methods in examining related parties' transactions, which are not exhaustively listed (Ernst & Young, 2014). Finally, the new Law on Corporate Income Tax of the former Yugoslav Republic of Macedonia, in force since 1 January 2015, significantly broadened the definition of related parties for transfer pricing purposes to all non-resident legal entities registered in low-tax jurisdictions. However, in the absence of a published list of such low-tax jurisdictions, the applicability of this provision remains unclear (Rajšic, 2016).

The accession process to the EU fosters the enforcement of additional anti-avoidance measures. As part of the SAA with the European Union, the economies in the region will also need to establish cooperation with EU member States to enhance the exchange of information so as to facilitate the enforcement of measures to prevent tax fraud, evasion and avoidance. In light of the relevant articles of the SAAs, accession candidates "shall also complete the network of bilateral agreements with member States, along the lines of the latest update of the OECD Model Tax Convention on Income and on Capital as well as on the basis of the OECD Model Agreement on Exchange of Information in Tax Matters, to the extent that the requesting member State subscribes to these".

An extensive network of double taxation treaties is in place within the SEE and with the EU. In this regard, with the exception of Kosovo*, which is party to only seven double taxation treaties (DTTs) with EU member States (three more have been signed but are not yet in force), all other SEE economies have DTTs in force with at least 20 of the 28 EU member States. These DTTs generally follow the OECD model and foster the automatic exchange of information. In addition, each SEE economy has signed a DTT with at least six of the other seven SEE economies considered in this study.

Some SEE economies have also adhered to multilateral initiatives to promote the automatic exchange of information. In addition to bilateral instruments, Albania is a signatory of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information. Together with the former Yugoslav Republic of Macedonia, Albania also committed to implement the international standard of transparency and exchange of information in 2012 and is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.

ASSESSMENT AND RECOMMENDATIONS

SEE economies have come a long way since engaging in one of the fiercest cases of fiscal competition in the world. While retaining generally competitive fiscal regimes, they have strived, in recent years, to increase tax revenues in parallel with reducing the complexity of their tax regimes. Nonetheless, further initiatives should be considered to consolidate the recent reform efforts, improve tax compliance, increase the development impact of the tax regime for investment and fight tax avoidance. In particular, this report recommends the following actions:

D.1. Enhance regional coordination in tax policy. This is an explicit objective of the SEE 2020 Strategy, which calls for implementing guidelines for good practice in tax policy (Dimension K). Although the harmful fiscal competition in the region appears to have come to an end, this did not result from active coordination among the SEE economies. In order to avoid a resurgence of a fiscal rivalry while retaining competitive tax regimes across the region, the following actions should also be considered:

- *D.1.1. Establish a framework for tax coordination.* It should include structured coordination channels, as well as monitoring and reporting mechanisms. It is important, in this regard, to define the scope and extent of the coordination and assess whether it should take the form of harmonization of rates and tax structures, or a softer approach based on sharing best practices and limiting certain types of tax competition to avoid encouraging investors to "shop around". The second approach is likely to be best suited to achieve the objectives of SEE 2020 within the strategy's time frame.[29]

- *D.1.2. Create an online tax database that provides comprehensive information about tax structures across the SEE economies.* Beyond enhancing transparency and providing a useful public information tool, the database, regularly updated, would also make it possible to benchmark the competitiveness of the tax regimes across SEE with the rest of the world.

- *D.1.3. Foster the effectiveness of cooperation among tax officials within the region* through training programmes and seminars on tax design, policy and exchange of best practices. The objective should be to turn the old race to the bottom in incentives to a race to the top in tax administration that makes the region a top performer in terms of ease of tax compliance.

D.2. Monitor whether fiscal incentives lead to the desired development outcomes. In most SEE economies, incentives have been rationalized and are now time-bound. In general, they are also implemented by an agency that does not have a concurrent FDI promotion mandate, which is in line with good international practice. However, only a few economies in the region carry out systematic cost-benefit analysis of the incentives offered. Furthermore, some SEE economies still resort to tax holidays and other types of incentives, which can be prone to aggressive tax planning. Therefore, the following should be considered:

- *D.2.1. Carry out a systematic cost-benefit analysis.* In line with UNCTAD's IPFSD, investment incentives, in any form, should be carefully assessed in terms of long-term costs and benefits and they should be periodically reviewed so as to evaluate their effectiveness in achieving the desired development objectives (IPFSD guideline 2.4.12).

- *D*.2.2. *Ensure compliance with eligibility criteria.* Compliance of investment projects with the criteria required for benefiting from the incentive should be monitored on a regular basis (IPFSD guideline 2.4.18).

- *D.2.3. Favour "efficient" tax incentives*. SEE economies, which rely on ex ante incentives, such as tax holidays and other profit-based incentives that can act as a vehicle for tax minimization, should promote ex post fiscal incentive schemes. These schemes should be selected on the basis

of their capacity to remove the motivation to shift profits and erode the tax base, such as those aimed at fostering reinvestment and capital expenditure (IPFSD guideline 3.2.10). These include reinvestment allowances, investment tax credits or accelerated depreciation.

D.3. Fight tax avoidance. Most SEE economies have taken only preliminary steps to minimize tax avoidance, and the relevant regulatory and institutional capacities vary greatly across the region. Beyond replacing certain incentive schemes, which can foster tax avoidance, as discussed above, most SEE economies should consider the following actions:

- *D.3.1. Adopt well-established and clearly defined transfer pricing rules, and align local legislation to internationally established transfer pricing guidelines*. These are essential to minimize tax avoidance, particularly in the context of increasing participation in global value chains, which has the effect of increasing the scope for transfer price manipulation (IPFSD guideline 3.2.7).

- *D.3.2. Promote the automatic exchange of information among SEE economies.* International cooperation and effective exchange of information between tax authorities is key to counter aggressive tax planning (IPFSD guideline 3.2.7). The SEE tax cooperation framework proposed in D.1.1. should include the automatic exchange of information among participating economies.

- *D.3.3. Extend the network of DTTs with EU member States.* Much progress has been achieved in this area, but additional efforts are required to achieve the SAA objectives.

E. LABOUR POLICY AND SKILLS

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
1. Labour market regulation perceptions	+	−	−	=	−	+	+
2. Skills mismatch	+	+	−	−	=	−	+
3. Intraregional labour mobility	=	−	+	..	=	+	−
4. Hiring international staff	−	=	−	=	−	=	+
5. Transfer of skills	−	..	−	−	−	−	−

+ = − : for definitions, see annex 1.

High rates of unemployment affect most SEE economies, averaging 22 per cent across the region in 2015, with a high of 43 per cent in Bosnia and Herzegovina. Youth unemployment is particularly problematic, leading to significant brain drain, which affects current and future development prospects. In this context, certain labour market regulations are considered an obstacle by business in several SEE economies. Labour market rigidities are part of the problem, though SEE economies often fare better in this regard than both the broader ECA average and other newly acceded member States of the EU (IMF, 2015a). Due to skills mismatches, firms – particularly those that export – cannot find the level and type of skills they need, which raises questions about the quality and relevance of regional education systems. The lack of skills transfer policies also risks constraining labour market competitiveness and employment creation. These risks are further compounded by ongoing obstacles to intraregional labour mobility and, in some economies, burdensome procedures for hiring international staff. The SEE 2020 Strategy recognizes these problems and efforts are underway to tackle, for example, labour mobility.

Labour market regulations are perceived as an obstacle by the business community, but a less important one than others, such as workforce skills and tax administration. Findings from the European Bank for Reconstruction and Development (EBRD) and World Bank business surveys of the region show that firms in Bosnia and Herzegovina, Montenegro, the Republic of Moldova and Serbia rank labour market regulations as an obstacle for business at or above the average for ECA economies (see results of the Business Environment and Enterprise Performance Survey (BEEPS) V in EBRD/World Bank, 2016). Firms in Albania, the former Yugoslav Republic of Macedonia and Kosovo* assessed labour market regulations as less of an obstacle to business activities than the ECA average. Nevertheless, in all SEE economies, as well as in ECA economies as a group, labour regulations rank low on the list of challenges faced by business, below workforce skills and other challenges, such as tax administration. This is not to say that labour market

regulations do not pose problems; this may also indicate the persistence and seriousness of other constraints on the business environment.

However, discrepancies among SEE economies make it difficult to gauge the impact of regulatory aspects on the labour market. Indeed, indicators of governance (such as the difficulty of hiring, the rigidity of hours and the redundancy conditions and costs) show a mixed picture (table 13). Although it may be more challenging to apply redundancy criteria in some economies (e.g. Kosovo*), it may be more costly to terminate employment contracts in others (e.g. Albania or the Republic of Moldova). Likewise, indicators point to greater difficulty of hiring in the former Yugoslav Republic of Macedonia than in the Republic of Moldova, but the opposite is true when looking at indicators for the rigidity of hours. This makes the overall impact on labour market competitiveness more difficult to assess.

Labour relations in the region could be improved to better support wage bargaining structures and boost employment. In the context of a weak fiscal environment, including large deficits in social security funds, national processes for social dialogue are constrained by the polarized discussion on the labour market and labour law reform: employers and some governments insist on the need to adopt more flexible policies, while trade unions advocate for more effective compliance with existing legislation. Previous UNCTAD studies have described a mixed picture in the region with regard to labour relations. In Bosnia and Herzegovina, the IPR found labour dispute mechanisms were protracted and costly, which the private sector perceives as a deterrent to hiring workers (UNCTAD, 2015b). The ILO has since helped the economy put in place an improved mechanism. In the former Yugoslav Republic of Macedonia, the capacity of unions is relatively weak, with little bipartite and tripartite dialogue (UNCTAD, 2012), whereas in the Republic of Moldova unions are considered to have prerogatives that go beyond their usual mandate (UNCTAD, 2013). Overall, SEE economies have made some progress in implementing ILO standards on tripartite dialogue, and the ILO has supported several economies in improving their frameworks for consultation at the policy level (ILO, 2015). There is still a perception that collective bargaining has been weakened during the transition process (Kovtun et al., 2014) and that better bipartite and tripartite dialogue could improve labour relations and wage bargaining structures.

The persistence of legal and *de facto* discrimination represents lost economic opportunities for both female workers and the regional economy. The female participation rate in the workforce in SEE economies, in 2015, ranged from a low of 18 per cent in Kosovo* to a high of 57 per cent in Montenegro,[30] and within firms, the average share of female employees for the SEE region (excluding the Republic of Moldova) is a little over one third (RCC, 2016). Despite changes to labour law in some economies to reform parental leave and prevent discrimination on the basis of gender, women remain underrepresented in the labour market, with large differences between rural and urban areas. Maternity leave is, on average, more generous in SEE economies than for the ECA economies as a group (table 14). However, some inconsistencies should be resolved, such as comparatively short paid maternity leave for women in Montenegro and, at the same time, the continuation of a policy of lifetime benefits for women with three children or more. This has the effect of keeping women out of the work force. Concern also remains about the effectiveness of labour market reforms to tackle child labour across the region: in Kosovo*, for example, more than 10 per cent of children (5–17 years old) are involved in work (European Commission, 2016), and the ILO reports high rates of child employment in Albania and the Republic of Moldova, even among young children (ILO, 2012; ILO, 2010).

Table 13. **Selected aspects of labour market governance in SEE economies**

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
Difficulty of hiring							
Fixed-term contracts prohibited for permanent tasks?	Yes	No	No	Yes	Yes	No	No
Maximum length of fixed-term contract, including renewals (months)	No limit	24	24	No limit	24	60	No limit
Rigidity of hours							
Premium for night work (% of hourly pay)	50	30	40	50	26	35	30
Premium for work on weekly rest day (% of hourly pay)	25	20	0	100	26	50	50
Average paid annual leave for workers (days)	20	18	21	20	20	20	21
Difficulty of redundancy							
Retraining or reassignment obligation before redundancy?	No	Yes	Yes	Yes	Yes	No	Yes
Priority rules for redundancy	No	No	Yes	Yes	No	No	Yes
Priority rules for re-employment	Yes	Yes	No	No	Yes	No	Yes
Redundancy costs *(weeks of salary)*							
Average notice period for redundancy dismissal	10.1	2	4.3	8.7	0	4.3	4.3
Average severance pay for redundancy dismissal	10.7	7.2	6.9	13.9	7.7	8.7	7.2

Source: World Bank (2016a).
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.

Skill mismatches pose serious challenges for the region, as it seeks to develop industries with higher productivity and tackle the challenges of long-term and youth unemployment. Skill mismatches vary between SEE economies. The number of firms in Albania, Bosnia and Herzegovina and Kosovo* that identify inadequate workforce skills as a major constraint is below the average for ECA, whereas for other SEE economies it is on par with or higher than the ECA average (EBRD/World Bank, 2016). Currently, only three economies (Albania, the former Yugoslav Republic of Macedonia and Kosovo*) report the existence of a comprehensive skills survey that could begin to address the issue, although all SEE

economies conduct some form of skills gap analysis (OECD, 2016). Despite the difficulties of predicting future skills requirements and the lag time inherent in the longevity of the educational cycle (standard primary and secondary education covers 13 years) skills surveys can inform the drafting of a scarce skills list and contribute to targeted vocational training and curricula revisions, especially in the short to medium terms (ETF, 2016). Moreover, policies to support lifelong learning opportunities can help mitigate skill mismatches, as well as reintegrate workers who lost their jobs through the closure of traditional industries in the region (Kleibrink, 2012).

Table 14. **Maternity leave in SEE economies and the ECA average**

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*	**SEE Average**	**ECA Average**
Minimum length of maternity leave (days)[a]	365	365	45	126	135	270	270	**225**	**186**
Receive 100% of wages on maternity leave?	No	No	Yes	Yes	Yes	Yes	No	..	..

Source: World Bank (2016a).

[a] The minimum number of days that legally have to be paid by the Government, the employer or both.

At the regional level, a third of business respondents in SEE economies (excluding the Republic of Moldova) report that they are unsatisfied with the education system's ability to meet their needs. This is particularly so for companies that export to international markets and hence are more exposed to global competition (RCC, 2016). Firms in Bosnia and Herzegovina, which ranked workforce skills as one of the least challenging obstacles to the business environment in the BEEPS survey, rated the education system as inadequate to meet their needs in the Balkan Barometer Business Opinion Survey (RCC, 2016.). Evaluations of the education system, for example in Kosovo*, report a need to align technical and vocational education and training with labour market needs and improve the length and quality of apprenticeships (Kosovo* Ministry of Education, Science and Technology, 2015). Furthermore, more than two thirds of firms in the region report difficulties in filling positions, with nearly four of five citing lack of skills among applicants as the cause (Kosovo* Ministry of Education, Science and Technology, 2015). The SEE 2020 Strategy also calls for increased entrepreneurial education to help foster SME development and the social economy, and complete a cultural shift — in terms of working practices and mindset — to a market-based economy.

The economies of the region recognize the need to improve labour mobility to meet skill gaps but do not have active programmes to attract foreign talent. Improving labour mobility within the region can help resolve skill mismatches related to the demand and supply of labour. Moreover, facilitating the

movement of labour effectively creates a larger workforce that can prove attractive to investors that are based in one economy but able to draw on a pool of workers from across the region. Outward migration, particularly of educated, skilled workers, has been rising in recent years, and SEE economies are some of the top migrant-sending economies in the world (World Bank, 2015). This need not necessarily deprive the home economy of skilled workers if the occupational replacement rate is high enough. However, given the reported skill mismatches and shortages, it may be contributing to a net drain of educated and skilled workers. Active programmes to attract skills in priority areas from outside the region could complement efforts within the region to upgrade the skill base. This is especially applicable in the case of FDI and can be supported at an institutional level by investment promotion agencies (see chapter II) as well as by relevant ministries.

Most SEE economies are implementing policy measures aimed at facilitating the recognition of foreign qualifications. The mutual recognition of qualifications has seen progress, such as aligning processes with UNESCO, the Council of Europe and the Bologna Follow-up Group guidelines, and all economies have signed and ratified the Lisbon Recognition Convention. However, the mutual recognition of professional qualifications and skills within SEE is progressing at a slow pace, particularly in Bosnia and Herzegovina and Kosovo*, and to a lesser degree in Albania and Serbia. Montenegro and the former Yugoslav Republic of Macedonia are more advanced to the extent that their legislation in this area is aligned with the EU *acquis* (OECD, 2016). Moreover, there is still significant intraregional migration among several SEE economies. In Montenegro, most foreign workers come from the region (about 75 per cent of total work permits issued); the share is also high in Bosnia and Herzegovina. In other economies, such as Albania, Serbia, the former Yugoslav Republic of Macedonia and Kosovo*, the share of workers from SEE economies is much smaller, ranging between 10 and 20 per cent of all work permits issued. The data on work permits suggest that most of the region's migration is seasonal – that is, workers seeking employment in the tourism, agriculture and construction industries (Vidovic, 2015). However, much of the migration is irregular, and informal employment in general remains a problem for SEE economies. As economies adapt to technological change and seek to attract investment in higher value added industries or move up value chains, the region's economic development becomes critically affected by the mobility of labour, especially higher-skilled workers.

Establishing modalities for the mutual recognition of professional qualifications and skills has been identified as a key dimension of a free trade area in the region.[31] The SEE 2020 Strategy seeks to increase the free flow of skilled labour to boost the region's competitiveness and attractiveness to FDI, although the strategy does not specify a target. Facilitating labour mobility can remedy skill mismatches between the demand for labour and its supply, and contribute to economic growth. Moreover, it is a first step towards the liberalization of professions that is envisaged by the CEFTA negotiations on trade in services and, some way down the line, the conditions required for EU accession (Hook, 2014) – although recent reports on enlargement show that economies have made moderate progress, at best, towards greater labour mobility.[32]

The economies of the region have launched an initiative on the development of mutual recognition agreements on professional qualifications. In November 2015, under the framework of the RCC-CEFTA Joint Working Group on Mutual Recognition of Professional Qualifications, the participating economies

committed to (i) reduce restrictiveness and facilitate the free movement of experts and professionals, (ii) increase access to high-quality education and the smooth recognition of qualifications and (iii) enhance labour mobility.[33] Towards this end, the participating economies have agreed to prioritize the health and construction sectors as areas of mutual interest for removing obstacles to recognition of professional qualifications. Consequently, the professions of doctors of medicine, dentists and civil engineers and architects have been prioritized for the first round of negotiations, expected to start in September 2017 under the auspices of the RCC and in coordination with CEFTA.

In most SEE economies, the hiring of international staff and specialists is restricted by one or more mechanisms. Quotas on foreign workers exist in all SEE economies except the Republic of Moldova and Kosovo*. However, in Bosnia and Herzegovina exemptions exist for workers performing key functions in a firm and, in Serbia, although the possibility exists to impose quotas on foreign workers under exceptional circumstances, it has not been used. In Bosnia and Herzegovina, the number of work permits issued for foreign workers regularly exceeds the quota, calling into question its relevance (IOM/RCC, 2015). In addition to quotas, work permits for foreign workers are subject to a local labour market test in Albania, Bosnia and Herzegovina, the Republic of Moldova, Serbia and the former Yugoslav Republic of Macedonia. The test normally requires the employer or investor to prove that no local worker is available for the job, sometimes followed by a worker of regional origin and/or an EU or Schengen country worker, in that order. In the former Yugoslav Republic of Macedonia, the authorities carry out the test. Nevertheless, some skilled international workers or executives associated with FDI-type projects can be exempted from restrictions in several economies.

The application and certification procedures for work and residency permits can add a higher administrative burden, and often the two processes are not unified. A unified process for applying for a work and residency permit exists in the former Yugoslav Republic of Macedonia and in Kosovo*. In Bosnia and Herzegovina and in the Republic of Moldova, residency is dependent upon the right to work but may not be granted automatically even with the issuance of a work permit (UNCTAD, 2013; UNCTAD, 2015b). In almost all economies, work permits are valid for one year with the possibility of renewal. However, in some (for example, Serbia) the process of obtaining both work and residency permits requires additional steps; for example, the translation of certificates and curricula vitae. In others, the hiring of foreign workers is difficult due to the lack of recognition of foreign qualifications. Renewing or extending permits can require the applicant to start the entire process over. In no economy in the region is a spousal work permit available, which can create problems for the transfer of staff and their families, particularly intracompany transfers of staff in multinational firms.

Despite efforts by some SEE economies to analyse skill gaps, there are few or no mechanisms to promote the diffusion of skills from investor firms to the wider economy. As mentioned, several economies have carried out some sort of skills gap analysis. However, as reported in the survey conducted by UNCTAD in preparation for this analysis, no economy in the region has established proactive mechanisms to promote or facilitate the diffusion of skills, meaning that one of the potential benefits of FDI – the transfer of know-how, technical or managerial expertise — is being underexploited. In several economies, foreign investment, especially in export-oriented industries, remains confined to production enclaves, such as export processing zones, particularly in the Republic of Moldova, Serbia and the former

Yugoslav Republic of Macedonia.[34] Although evidence suggests that economic zones have had a positive effect on the attraction of FDI, there has been limited impact on backward linkages with the local economy, and forward linkages with regional and global supply chains have been limited (IMF, 2015b). The largest companies in Moldovan economic zones, for example, are part of global value chains, and they source most of the inputs internationally, with few links to domestic firms. In the automotive industry, high quality standards and control make it practically impossible for any sophisticated input to come from the domestic market even if such products existed. Domestic companies often provide non-industry-related services to economic zone residents, such as transportation and food. In this case, there are some limited spillovers to the rest of the economy, but they are unlikely to contribute to the diversification and sophistication of the domestic economy (World Bank, 2016c).

ASSESSMENT AND RECOMMENDATIONS

The region faces high unemployment and a lack of jobs. Labour market rigidities contribute to this but may not be the primary problem. Changing economic and investor needs on the demand side have not been met by adequate education and training systems on the supply side, which has contributed to significant skill mismatches throughout the region. Added to this, weak intraregional labour mobility is effectively reducing the size and quality of the workforce available to investors and consequently acts as a constraint on job growth. The SEE 2020 Strategy envisages an increase in the average employment rate from 39.5 per cent of the population over age 15 in 2010 to 44.4 per cent in 2020, or the creation of roughly 1 million jobs. The Strategy focuses on three areas to support job creation: (1) regional actions to ensure labour mobility; (2) strengthening of labour market governance; and (3) stimulation of social economy initiatives (for example, investment and activity in social businesses in the health and care industries, or the promotion of entrepreneurship and SME development). Moreover, all economies have taken steps to align their legislation with the *acquis communautaire* of the EU with the eventual goal of EU accession, and the creation of a regional economic area, as envisaged by CEFTA.[35] A focus on policy actions in all three areas of the SEE 2020 Strategy will be essential for attracting FDI and facilitating the diffusion of its benefits to the wider economy through linkages and the development of SMEs, the potential for skills upgrading, and the transfer of know-how and technology. Several options could help address these challenges:

E.1. Improve labour market regulation. This involves aligning labour market regulations towards a regional median to prevent regulatory arbitrage, and to accomplish the following:

- *E.1.1. Remove some of the more excessive labour rigidities in other economies,* such as, for example, certain lifetime benefits, while enhancing the coverage and sustainability of social security systems.
- E.*1.2. Strengthen bipartite and tripartite social dialogue and collective bargaining*, in accordance with ILO standards, to improve industrial relations and wage bargaining structures.
- *E.1.3. Strengthen labour market policies targeted at specific groups*, such as those that suffer discrimination and have lower labour market participation rates, especially women; improve the enforcement of anti-discrimination legislation, as well as laws on the prohibition of child labour.

E.2. Better align skills to market needs. Labour market policies should work in closer coordination with education policy to attenuate the collapse of traditional industries and the negative impact of privatization, as well as help realign skills with labour market needs and with the type of economic growth model targeted by the economies in the region. This will involve a better assessment of the region's skills needs and smoother functioning of public–private dialogue mechanisms, as discussed in section C of this chapter, as well as the following actions:

- *E.2.1. Update or finalize skills surveys in each participating economy* to get a better picture of labour market needs. On the basis of the surveys, a scarce skills list would be regularly updated, which would feed into the setting of curricula as well as better resourcing and strengthening of technical and vocational education and training. It would also affect the policy on foreign hires, as discussed in E.4.

- *E.2.2. Establish a quality assurance system focused on all levels of the education and training system as well as on teacher training.* Quality assurance should aim to align higher-level qualifications with the Bologna Process and the EU Quality Assurance Framework, as proposed by the SEE 2020 Strategy.

- *E.2.3. Align financial incentives to enrol in academic and vocational programmes* with the skill needs of the economy, to increase participation in these programmes and alleviate skill mismatches.

- *E.2.4. Strengthen entrepreneurship education and training* to promote the social economy and small enterprise development. Both UNCTAD and the ILO have programmes on entrepreneurship and stand ready to assist.

E.3. Promote regional labour mobility. Economies in the region need to adopt active programmes to foster labour mobility in order to meet the requirements of the labour market. To this end, they should undertake the following actions:

- *E.3.1. Open and conclude the negotiations on mutual recognition agreements of professional qualifications in the sectors identified as a priority under the auspices of RCC in cooperation with CEFTA,* and expand the initiative to other professions, to facilitate greater occupational mobility.

- *E.3.2. Continue to pursue negotiations on agreements for health, social security and pension benefits across the region* to facilitate greater labour mobility.

- *E.3.3. Consider providing automatic work permits for workers from SEE economies*, with the ultimate aim of removing work permits, in line with the modality currently offered to EU workers in some SEE economies.

E.4. Promote the attraction and diffusion of missing skills and talents. In view of the scarcity of certain skills and the need to develop new economic activities to generate employment and sustainable development, the economies in the region should consider proactive programmes to attract foreign skills and help their diffusion to the local economy. In this regard, it is suggested that they pursue the following steps:

- *E.4.1. Replace the labour market test with a scarce skills list approach*, to expedite decisions on the recruitment and hire of international staff, thereby facilitating the transfer of specialist knowledge and skills.

- *E.4.2. Consider reviewing the quota system* to facilitate access to those foreign skills that are in the scarce skills list, while retaining the existing regime for other foreign workers (compatible with EU requirements).

- *E.4.3. Unify the work and residency permits for skilled foreign workers* so that a single action is required and all economies are aligned.

- *E.4.4. Provide spousal work permits for international staff* to facilitate the relocation of intracompany employees and other workers.

- *E.4.5. Establish programmes to encourage and facilitate the transfer of skills from investor firms to the broader economy,* through linkages such as supplier development programmes or through other initiatives, such as tax contributions to a training fund or facilitated or fast-track access for companies with a proven record of providing training. International practice in this area provides a number of effective tools, and UNCTAD stands ready to assist in fostering the sharing of relevant experiences.

F. COMPETITION

	Albania	Bosnia and Herzegovina	Montenegro	Republic of Moldova	Serbia	The former Yugoslav Republic of Macedonia	Kosovo*
1. Core legislation on competition	+	+	+	+	+	+	+
2. State-owned enterprises	+	+	+	+	+	+	+
3. Competition authority	+	+	=	+	+	=	=
4. Competition advocacy	+	+	=	=	+	+	=
5. EU compliance and State aid	=	=	=	..	=	=	−

+ = − : for definitions, see annex 1.

Note: The "EU compliance and State aid" benchmark for the Republic of Moldova cannot be computed owing to the absence of an EU enlargement report for the country.

Competition rules and regulations are relatively new for policymakers, the business sector and the public at large in several SEE economies. At the same time, the weight of SOEs and of public monopolies in the economy is generally high (see section A of this chapter), which increases the risks of distorting competition, particularly in the regulated industries. In this context, the entry of FDI, including through the privatization process, can result in the replacement of State monopolies with private ones or in increased market concentration, thus reducing the potential benefits expected from FDI. The existence of strong competition regimes and well-structured competition authorities is therefore among the most crucial requirements for the region. In this regard, it is encouraging that competition rules and regulations across SEE are generally in line with good practice and standards, and that all of them apply equally to private and public enterprises. The authorities in charge of implementing those rules, however, are often ill-equipped in terms of both human and financial capacities. Differences also exist in the extent to which the authorities can effectively cooperate with other State bodies to ensure effective implementation of the competition regime. Finally, the level of compliance with State aid requirements under the EU accession process is generally low, due primarily to inadequate institutional frameworks in this area.[36]

All SEE economies have adopted the core competition legislation. Throughout SEE, the key laws and regulations on competition are aligned with EU law and with UNCTAD's model law. They cover practices involving restraint of competition (e.g. through cartels), abuse of market power and economic concentration. In all competition jurisdictions, the provisions concerning prohibited agreements (and the possibility of individual exemption of agreements) are aligned with Article 101 of the Treaty on the Functioning of the European Union (TFEU).[37] In most SEE jurisdictions notification regimes apply for the exception of agreements, when these comply with specific conditions (excluding in the former Yugoslav Republic of Macedonia). Some differences also exist regarding the definition of "dominant position", with

some economies applying a market share threshold (including Montenegro, the Republic of Moldova, the former Yugoslav Republic of Macedonia and Kosovo*), whereas the others consider it the position of one or more undertakings that are independent of their competitors, suppliers or customers. The most common forms of abuse of market dominance are also present in all SEE competition jurisdictions. In addition, SOEs operating in commercial sectors are subject to the same competition rules as private companies across SEE.

Independent, specialized competition authorities exist throughout SEE. Most SEE economies established an independent competition authority in the mid-2000s. Before then, various entities with a competition protection mandate existed, but they were typically under the aegis of a ministry. The most recent authority was created by Montenegro in 2013. To date, all competition authorities across SEE economies are autonomous of political authorities, their instituting legislations contain provisions guaranteeing their impartiality and independence, and they all possess independent investigative powers. They generally have a wide range of competences, many of which are similar (including enforcement of the competition law, market supervision, competition advocacy – see below), and – with the exception of the authority of Montenegro – they can all establish infringements under the competition law or impose sanctions. Most authorities can also adopt the regulation for the implementation of the competition law. In Montenegro, the Government adopts the relevant regulations on the proposal of the Ministry of Economy, and in Serbia, the authority can propose to the Government to adopt the relevant legislative acts.

However, the capacity of these institutions to enforce the law varies greatly. All competition authorities in the region can initiate proceedings both following a complaint and ex officio. There are differences regarding the necessity of court authorization to make an unannounced inspection. Generally, nonetheless, the authorities have sufficient powers during inspections. What raises concern is the different level of human and financial resources available to each competition authority. For instance, Albania reports that the staff of its competition authority has been growing for several years (totalling 36 in 2016), and that the staff is trained and qualified to effectively enforce the law; by contrast, in Montenegro, the agency has only seven case handlers, and due to limited financial resources and low salaries, finds it difficult to attract competent applicants to vacant posts. Both the former Yugoslav Republic of Macedonia and Kosovo* report severe difficulties in implementing the law owing to low or unprepared staff and resources.[38] According to a recent assessment, limited resources and experience, together with the principle of legality, which requires all competition authority in the region to deal with each complaint that is brought to their notice, unnecessarily adding to the caseload, have resulted in low levels of competition enforcement across the region (OECD, 2016).

All SEE competition authorities perform some form of competition advocacy. As the concepts and benefits associated with competition protection are relatively new to the region, awareness is low about problems arising from dominant-position, anti-competitive practices such as cartels and from unfair competition. Furthermore, judges and staff of national courts dealing with competition cases and merger control often lack adequate competence in this field. Competition advocacy therefore assumes a critical role. Although their mandate on competition advocacy is often limited, all competition authorities in SEE are involved in the promotion of free competition among all sectors of the economy. For instance, they all report being involved, either on a systematic basis (for most) or occasionally (as in the Republic of Moldova), in

the shaping of policies and measures that may affect competition, e.g. by providing opinions on draft or existing legislation on the request of the relevant State authority. Those are typically non-binding, except in Albania, where the Parliament has instructed that the competent State authority shall comply with the agency's opinions. And in the former Yugoslav Republic of Macedonia, the State authority is obliged to inform the competition agency about its reasons for not accepting the advocacy opinion. All of the jurisdictions also interact with various stakeholders, including judges, academia, business organizations and the mass media in order to enhance the competition culture. They are also all empowered to conduct sector inquiries, though very few market studies have been carried out to date.

The level of coordination and interaction with other State bodies, however, differs across the region. With regard to another important advocacy channel, i.e. the interaction between the competition agencies and the other State authorities, including in particular the sector regulators, SEE economies perform differently. In some, including Montenegro and Serbia, such cooperation has been formalized through signed agreements. In Montenegro, however, the extent to which that has helped improve actual cooperation is not clear. Indeed, although the majority of SEE economies report systematic or close coordination between the competition authorities and the sectoral regulators, in Montenegro, the cooperation is seen as ad hoc or occasional. In Kosovo*, the level of cooperation is judged as poor or insufficient. This may be explained by the fact that no competition commissioners had been appointed since 2013, a decision-making gap that was eventually filled in 2016.

Significant efforts are needed to improve legislative alignment and enforcement in the area of State aid. EU rules prevent governments from granting State aid that distorts competition, and all SEE economies are engaged at different stages of the EU partnership or accession process, which requires them to review their policy in this area. Most SEE economies, however, have reached only "some or a moderate level of preparation" in the EU Competition Policy chapter of their respective Enlargement Reports 2016,[39] largely due to the need to further improve their legislative alignment and enforcement record in the area of State aid. The implementation of State aid legislation falls within the mandate of the competition authorities in the Republic of Moldova and in the former Yugoslav Republic of Macedonia. State aid falls within the remit of separate bodies in all other SEE economies. In several of them, however, the SAA requirement of operational independence is not guaranteed (e.g. in Albania, Montenegro and Serbia), and the units in charge of State aid have insufficient enforcement capacity. In Kosovo*, for instance, only one staff member was employed in 2016, out of six planned for the secretariat of the State Aid Commission (EU Enlargement Report 2016 – Kosovo*).

ASSESSMENT AND RECOMMENDATIONS

Strong competition regimes can help SEE economies develop efficient markets, reduce inequalities and increase the benefits from FDI. All SEE economies have adopted the key regulatory tools to foster competition and redress anti-competitive behaviour. Nonetheless, the enforcement of those rules is often held back by institutional weakness, low competition awareness and poor coordination within the public administration. SEE 2020 singles out competition among the key areas of reform and calls for "promoting cooperation in the area of competition policy, by establishing a network of competition authorities and a coordination body; developing regional guidelines on the transparency of State aid; developing a common methodology

for peer reviewing, antitrust policies (policies increasing economic efficiency by preventing firms from unduly preventing competition) and network policies (policies encouraging and promoting competition by deregulating network industries)". This report supports the adoption of the recommendations contained in the SEE strategy and proposes additional efforts as follows:

F.1. Enhance the institutional capacity of competition authorities across the region. Insufficient staff, low wages and competence issues affect several competition authorities in the region. Staff dealing with competition issues require training and specialization; high turnover due to low wages results in high training costs and low enforcement capacity. Ensuring adequate human resource capacity to implement the competition legislation should therefore be a priority.

F.2. Promote competition advocacy and cooperation across the region. The region has already embarked on a successful initiative to foster cooperation in competition and the development of regional ties in the Balkan region, thus ensuring a uniform application of competition rules, through the Sofia Competition Forum to which UNCTAD is a member. Additional efforts may include the following:

- *F.2.1. Strengthen the competition curricula in universities and promote a competition culture, starting at secondary-school level.*
- *F.2.2. Improve coordination among the competition authorities and other State bodies, including sector regulators.* Beyond extending the use (and implementation) of formal cooperation agreements, options include temporary interagency staff exchange programmes and joint investigations.
- *F.2.3. Improve the exchange information between competition authorities in different economies during the investigation of cases.*
- *F.2.4. Foster a systematic sharing of experience among competition authorities within the region*. In particular, the activities of the Sofia Competition Forum should be supported and extended to the systematic sharing of experiences on the review of complex competition cases, as well as the preparation of sector enquiries and market studies.

F.3. Strengthen the rules and institutions overseeing State aid. This includes strengthening the operational independence of the agencies and units in charge of overseeing State aid regulations, as well as their enforcement capacity, to ensure good levels of compliance with the SAAs.

Increased cooperation between the investment promotion agencies (IPAs) in South-East Europe (SEE) is a specific priority of the SEE 2020 Strategy. The Integrated Growth Pillar of the Strategy calls for facilitating the free flow of investment through coordination of investment policies and investment promotion (Pillar 1, A.6). As highlighted in the context section of this report, the overall goal is an average annual increase of FDI inflows to the region of 103 per cent by 2020 (160 per cent including Croatia), and to attract, in particular, export-oriented FDI in manufacturing, infrastructure and tourism. Against this background, and further to consultations with the SEE economies, this chapter proposes a joint investment promotion initiative (JIPI) for SEE. A JIPI is an operational platform based on a range of contemporary investment promotion tools and techniques, as well as institutional mechanisms that can be progressively built upon. It draws on international good practice in the area and is adapted to the specificities of the region. If followed through, it could help catalyse investment attraction, growth and regional cooperation. Specifically, it would translate investment policy into investment targeting and attraction by helping economies in the region to achieve a step-change in the levels and quality of external and intraregional FDI. The JIPI is based on a smart-specialization strategy,[40] progressive capacity-building for the IPAs and phased implementation.

Chapter

2 A Joint Investment Promotion Initiative for South-East Europe

A. RATIONALE

Policy reform and innovative investment promotion tools are preconditions to achieve the SEE 2020 objectives. At a time of increased competition and disruption in the FDI market and after three years of flat FDI performance by the SEE economies (see the context of this report), achieving the target set out in the SEE 2020 Strategy of increasing FDI inflows in the region by over 100 per cent by 2020 cannot be a question of business as usual. As things stand, this target will not be reached. EU accession for most of the participating economies offers the prospect of an increase in FDI, as was the case with newly acceded members in Central Europe. However, this increase might prove short-lived if the underlying challenges within SEE are not addressed. These challenges include regulatory issues and skills and infrastructure deficiencies, as discussed in the preceding chapter, but they also relate to the capacity of the individual economies, and of the region as a whole, to market themselves to foreign investors.

The economies in the region share similar challenges as well as opportunities... These are reflected in the SWOT analyses (strengths, weaknesses, opportunities, threats) submitted by the SEE IPAs in preparation for this report (table 15). The IPAs identify many strengths, but they are somewhat generic and shared by many other regions around the world; as such, they do not indicate any compelling comparative advantage or reason to invest. The most striking weakness is the IPAs' apparent lack of national and subnational FDI strategies. The most promising opportunities are the prospect of EU accession and opportunities for investment in infrastructure. On its own, the first of these does not represent a compelling reason to invest and the timetable for accession is not explicit; the second of these, investment in infrastructure, needs to be prioritized, and specific projects should be packaged and marketed in a targeted way. In terms of threats, all IPAs regard other economies in SEE as their main competitors. This is probably true, but SEE economies are also potential collaborators and share many commonalities, which suggests the need for a change of mindset, as discussed in this chapter.

Competition in FDI promotion does not prevent cooperation, which would help address common challenges. Consultations with IPAs in the region, including a joint brainstorming session and individual meetings between the IPAs and UNCTAD at the 6th JWGI (17–18 November 2016) reflect a general acceptance that greater regional cooperation is necessary. The success of common platforms has been demonstrated by the experience of several other regions across the globe, as discussed in section B and annex 2. It was acknowledged that, in the current FDI landscape, cooperation and competition between the participating economies are not mutually exclusive; they can be prerequisites in creating a new regional FDI growth trajectory and a regional investment promotion initiative, provided that this be:

1. based on a phased, incremental approach and on pragmatic solutions;
2. relying on effective, progressive networking in building regional efforts; and
3. focused on the potential for developing joint cross-border/cross-sector opportunities.

Table 15. **SWOT analysis by SEE investment promotion agencies**

Strengths	Weaknesses
• Geostrategic location for trade • Emerging markets/sectors • Low wage/operating costs • Young population with excellent language skills • Incentives and free zones • Favourable tax and customs systems • International trade agreements	• Lack of national and subnational FDI strategies • Poor international image and visibility • Low skills, low value added production • Need for supplier development • Shallow, narrow sectors • Reactive approach to FDI attraction • Underdeveloped infrastructure
Opportunities	**Threats**
• EU accession • Private sector champions (Chambers of Commerce, Foreign Investors Council) • Infrastructure development • Cross-border clusters and supply chains • Diaspora • Public–private partnerships	• Regional competition • Brain drain • Silo mentality on FDI promotion • Failure to develop pool of talent/skills • Weak implementation of IPR • Investor migration • Inertia

Source: UNCTAD, based on inputs and interviews with IPAs in SEE.

The changing FDI landscape supports the need for a regional approach to investment promotion that complements national efforts. During the 1990s and most of the 2000s, when worldwide FDI flows were a rising tide, many economies felt little pressure to change their investment strategies, policies and structures. A long tradition of benchmarking between IPAs often resulted in many of them adopting the same or similar practices. Consequently, there was little innovation or even differentiation at the level of FDI strategies, policy and institutions. This served to increase the vulnerability of IPAs to disruptive change during periods of financial crises that affected FDI flows, such as the Asian financial crisis in 1997 and the global financial crisis in 2008. In recent years, however, as discussed in UNCTAD's *WIR* series, the global FDI market has been going through a period of transition, driven by a range of factors. These include increased market volatility, greater emphasis on risk management and risk mitigation by investors, changes in patterns of trade driven by the increasing complexity of global and regional value chains, and increased competition from developing and transition economies to attract higher value added FDI.

Investors' strategies have taken on an increasingly regional dimension. Importantly, and of particular relevance for the SEE economies, there is increased interest on the part of investors in adopting regional investment strategies at a time when markets, value chains and clusters have become increasingly

regionalized. In this context, the emergence of a new generation of investors, including globalizing SMEs (micro-multinationals) from developing and developed countries, has introduced a positive dynamic. These companies are an important new source of FDI and process innovation. They are not defined by their size but by their international mindset, their embrace of new technologies and their demand for customized services and competitive solutions from countries seeking to attract FDI. They also expect these services to be delivered promptly, in line with their own project time frames.

Co-creation and cross-border clusters are on the rise… FDI by micro-multinationals and traditional MNEs often takes the form of co-creation with regional and local partners to generate value in the form of new products, services and distribution channels. Co-creation with local partners represents an effective response to market pressure for increased innovation and reduced "time to market" for investors. Supply chains are still largely based on a hierarchy of tiers descending from original equipment manufacturers (OEMs), with tier 1 at the top of the chain and having a direct contact with the OEM; tier 1 subcontracts to tier 2; tier 2 to tier 3. The distinction between tiers, however, has become less rigid and it is increasingly common for suppliers to migrate up the supply chain as their competence improves. The availability of tier 1 suppliers is an important magnet for FDI (see Supplier Development Programme in section C.4). Cross-border clusters have also become a driver for intraregional investment. Traditionally, clusters were based on a specific, single location in one country; we are now seeing increasing numbers of cross-border clusters. One of the most successful cross-border clusters is the Medicon Valley life sciences cluster based in the region of Oresund between Denmark and Sweden (annex 2). Such new business models, directly or indirectly, help to attract FDI and to generate jobs and capital investment; they are also delivering greater horizontal spill-over benefits from foreign investors, when these are fully integrated into the host economy. These include the introduction of new processes, technology and know-how.

…and IPAs are adjusting to the new dynamics. The developments described above have led to the emergence of a new style of IPAs – small, less institutionalized and more responsive and catalytic in their orientation. Their focus is on developing investment opportunities at the niche level, where competition is less fierce and where they can design compelling value propositions for investors. General promotion has been replaced by new attraction strategies based on specialization and advanced market intelligence systems, i.e. a selective, focused approach to their choice of sector niches and the targeting of investors. Countries seeking to attract FDI must respond to the new challenges and opportunities. Increased regional competitiveness is essential but not sufficient. Good progress has been made in this respect by the RCC, the SEE Investment Committee and the SEEIC–CEFTA Joint Working Group on Investment. Important foundations have been laid, including especially the SEE 2020 Strategy, which provides the framework for reform and policy action. However, high-level policy must be matched with ground-level achievements and with the projection of a new image for the region, one that can help it attract more investment of the type required to generate jobs, exports and skills. This is the wider context for the JIPI presented in this chapter. Before presenting the specifics of the JIPI, the following section reviews the experience of existing regional and cross-country investment promotion initiatives.

B. DEVELOPING A JOINT INVESTMENT PROMOTION INITIATIVE FOR SEE

The international experience with joint investment promotion initiatives is encouraging. Joint promotion initiatives are not a new phenomenon, and several examples exist both among and within countries. The interest in regional investment promotion initiatives has increased with the growth of regional single markets and free trade areas over the last 10 years. Although it is still too soon to assess their full potential, some encouraging examples can offer lessons and insights for a joint investment promotion proposal for SEE. These examples include the Caribbean Association of Investment Promotion Agencies (CAIPA); the COMESA RIA, the Regional Investment Agency for the Common Market of South and East Africa; and the East Africa Trade and Investment Hub. Relevant case studies of cross-border collaboration in investment promotion also include the Four Motors Programme and the Baltic Sea Region Strategy. At the subnational level, cooperation in investment promotion can also provide good insight for cross-country cooperation. The close cooperation between national and subnational agencies in Sweden is a case in point. These cases share common features: they promote their respective regions as FDI destinations through a shared portal; they organize joint forums and training workshops; and they coordinate outreach activities on behalf of their members through investment roadshows or participation at international trade shows and conferences. They are presented in detail in annex 2.

A modern FDI platform for SEE is needed. Building on those successful experiences, this section proposes the adoption of a joint promotion initiative specific to the needs and concerns of SEE. The objective and driver of the JIPI is to attract FDI to support economic growth, employment and sustainable development in SEE. The regional IPAs, at the centre of the initiative, will act as catalysts for change. They will need to focus on activities and niches where their economies can offer comparative advantages and growth opportunities through their value chains, including through co-creation partnerships with regional enterprises. Their targets are MNEs, with a specific focus on micro-multinationals, which are expanding their footprint in Central and Southern Europe and for which co-creation represents a faster, lower-cost, lower-risk form of market entry (see section A). These key features of this JIPI are summarized in table 16.

Table 16. **Key features of the JIPI for SEE**

Drivers	Economic growth, job creation and sustainable development
Catalysts	SEE investment promotion agencies
Focus	Smart specialization (sectors, niches)
Offer	Regional value chains
Targets	MNEs and micro-multinationals

Notes: UNCTAD.

The proposed JIPI for SEE takes a flexible, modular approach, which can evolve. It is based on a set of investment promotion tools and modules that require varying degrees of commitment, coordination and cooperation among the economies and IPAs in the region. Individual economies can elect to proceed at their own pace, selecting modules to meet their specific needs. They can also cooperate with other economies on individual projects on a bilateral or multilateral basis. The JIPI provides a common framework within which each economy is helped to design and develop its own FDI strategy. The tools and modules that compose the JIPI include the following:

1. Smart specialization;
2. The SEE Investment Portal;
3. The Market Intelligence Service;
4. The Regional Supplier Development Programme;
5. The Regional Brand Management Programme; and
6. A regional JIPI coordinator.

The regional JIPI coordinator is proposed to provide the necessary institutional backing to the initiative. Over time, as the JIPI shows its worth and increasingly sophisticated modules are integrated, the institutional support structure may also evolve. Each of these elements is discussed below.

1. Smart specialization

Smart specialization lies at the heart of the JIPI. It involves concentrating policy efforts and resources on attracting investment in a limited number of priority areas for investment, which have growth potential and where the region has or can develop – through joint industrial, educational and innovation policies – a comparative advantage. The smart specialization approach is necessary if SEE is to position itself as a location for value added services and products that generate satisfactory returns on investment for investors and for the region. As such, it will drive the Regional Brand Strategy (see below), which focuses on (high) value-chain opportunities for FDI. Indeed, a focus on low value added investment will not promote growth; it will only increase the region's vulnerability to lower-cost competitors and promote a race to the bottom in attracting investment.

Detailed gap analysis and disaggregation is required to select the targets for regional promotion. Promotional opportunities for the JIPI will typically be found in niches within value chains. Value-chain mapping and gap analysis are therefore essential parts of the smart specialization process, supported by market intelligence and analysis (see section B.3, on the Market Intelligence Service). This is an effective way of creating "clear blue water" around the JIPI's value propositions for investors. Beyond addressing key bottlenecks that affect all investors, as discussed in chapter I, smart specialization would ensure that the specific business and investment climate for the targeted niche is internationally competitive, particularly with regard to infrastructure quality and skills availability.

Table 17. **Pilot outreach strategy: an example for infrastructure**

Strategy objective	Attract "multiplier" FDI, i.e. infrastructure investment that will improve the regional business and investment climate and act as a catalyst for further investment in other sectors
Strategy vision	For SEE to be positioned as a hub for FDI attraction based on the quality and functionality of its infrastructure
Target regions	EU, South-East Asia, North America
Type of investor	Public–private partnerships, greenfield, joint ventures, sovereign funds
Type of investment	Energy, transportation, distribution and logistics, water, sanitation and solid waste management, telecommunications
Value proposition	Geostrategic location with strong growth/need profile based on EU accession, wide range of projects available; public–private partnership possibilities; availability of competitive incentives package
Strategy focus	Attraction of logistics hubs to be located in new free economic zones dedicated to logistics, in border zones or transport corridors
Strategy challenge	Many possible infrastructure projects are competing for foreign investment in SEE; many require clearer articulation and definition. SEE economies need to focus on qualified and quantified opportunities.
Strategy implementation date	The Infrastructure Sector Strategy will be launched within three months from adoption.
Target trade show	MIPIM is promoted as the world's largest real estate trade show and conference. It spans other areas, including construction and infrastructure, and attracts many institutional investors and service providers. MIPIM 2016 (held in Cannes, France) attracted over 2,000 international exhibitors from more than 90 countries as well as over 3,000 CEOs and company chairs. Many investors and investment advisers attend on a repeated basis; it has the reputation for attracting decision makers.
Outreach strategy/ marketing mix	The risk in promoting a vast array of infrastructure investment opportunities is that it merely confuses investors and dilutes the sales message. A sector Investment Guide will be produced, showcasing eight infrastructure projects of regional significance, one in each economy. The projects will be promoted mainly to institutional investors and to companies specializing in concession agreements for infrastructure. Webinars would be a cost-effective way to engage this target audience at minimum cost. Investment roadshows will be organized in Europe, North America and Asia on the basis of market demand and donor support.

Notes: UNCTAD.

The mapping and analysis of SEE regional value chains has already started and could form the basis for regional investment promotion opportunities, in a pilot approach. Smart specialization would benefit from a whole-of-region approach. Some sectors will be of interest to all economies, while others may be of interest to fewer. In this regard, thresholds for selecting JIPI targets should be introduced

(e.g. to ensure regional impact, at least three economies should participate in each sector or niche), and consultation with IPAs will need to be held to select niches with the most potential. In this regard, a number of ongoing initiatives within SEE can already provide some preliminary analysis for selecting the first smart specialization targets. In particular, in the Working Group on Industrial Policy of the RCC, the development of economic and transport corridors and cross-sectoral value chains along these corridors is being explored. Two sectors have already been selected, and some preliminary analysis was carried out in tourism and food and beverages. RCC is now in the process of selecting a third priority sector: automotive parts or metals and machinery are being considered as candidates. In tourism, in particular, the RCC expects to sign a tourism support programme with the EU, aimed at strengthening the joint regional tourism offer and promotion, reducing policy barriers and supporting regional tourism products. The pilot will target niche tourism (cultural and historical tourism, as well as adventure tourism and eno-gastronomic opportunities). The programme would be implemented over the period 2018–2020, and its focus would be on attracting visitors, not investors. A regional FDI strategy would need to be developed to complement the existing analysis.

Infrastructure is also a good candidate for regional investment promotion. Infrastructure is the object of several regional initiatives. In the context of the Berlin process and the Western Balkan Six initiative, a Connectivity Agenda has been adopted. As reported at the Six Prime Ministers meeting in March 2017, 13 transport and energy connectivity investment projects were agreed at the 2015 and 2016 Western Balkans summits with total costs of €825 million, including EU grant funding of €303 million. Two of these broke ground in 2016, and the process of screening new projects has been launched. A series of connectivity reform measures was also adopted; among other targets, it aims at attracting further investments in transport and energy.[41] In this context, a focused approach will be required to narrow down the type of investment and investors that will be the object of the targeting campaign. Each IPA will be responsible for the identification and development of possible infrastructure investment opportunities in their economy; they will start with a long list of possible opportunities, which will subsequently be reduced to a short list of probable opportunities, following consultation within their own economies regarding the potential impact of such investments. A prospectus or opportunity profile for each opportunity will be produced by the pertinent IPA, and then discussed with the JIPI steering and coordination group (see section B.6), before the final selection of opportunities is made.

2. SEE Investment Portal

A first-stop shop for investment to the region should be set up. As an integral part of the JIPI, a SEE Investment Portal is proposed. It is designed to meet the needs of potential new investors, existing investors in the region, potential regional co-creation partners for new investors, regional stakeholder organizations, regional and national media and, importantly, civil society in the region. The portal will be informational, interactive and promotional (figure 5). It will provide profiles of each participating economy and the region as a whole. As recommended in chapter I (section C), the portal will also catalogue company establishment and operation procedures in each economy of the region, allowing policymakers to compare, benchmark and streamline them, thus fostering healthy competition. The portal will provide a platform for carrying out investor satisfaction surveys, as part of the policy advocacy role in strengthening the investment

and business climates of SEE. It will also provide potential investors with online information on the full range of investment and market access opportunities. Finally, it will promote the SEE region as a dynamic FDI destination through a series of case studies showcasing successful projects, thereby reinforcing the regional opportunity (see section B.5).

Figure 5. **The SEE Investment Portal**

Source: UNCTAD.

3. Market intelligence service

The Market intelligence service will provide fact- and data-based services to support the JIPI. The Market intelligence service aims to fill the pipelines of new investment opportunities and new investors. It will be responsible for value-chain mapping and gap analysis of all existing and emerging value chains of regional significance, as described in section B.1. It will also identify and profile potential new investors and, where appropriate, carry out due diligence on them. The Market intelligence service will develop a prospect evaluation and tracking system to ensure that projects of regional significance are identified and their progress monitored to the point of establishment and beyond. The Market intelligence service will also provide the RCC and national IPAs with feedback and recommendations for strengthening SEE's international competitiveness and its policy framework, based on benchmarking SEE with world-class regional platforms. Such policy advocacy is one of the most important, and cost-effective, contributors to increased investment and investment quality. The Market intelligence service will also use online databases to provide market and company intelligence. The fundamental requirements of such databases are that they provide up-to-date information on listed and unlisted companies operating in the target sectors.

4. Supplier development programme

A supplier development programme to support new regional supply chains and clusters will form part of SEE's value proposition to foreign investors. Based on the SWOT analysis by the IPAs in the region, the talent pool of regional suppliers operating at the tier 1 level is too narrow and too shallow. As part of the JIPI, the Regional Supplier Development Programme will create a competence map of the region identifying companies that have the specific skills and experience, or the potential, to supply the priority value chains identified through the Market intelligence service. The programme will build the

capacity of companies in SEE to meet quality and efficiency standards to migrate up the supply chain to tier 1. Regional supplier development will be part of the wider private sector development in SEE; it is an effective means of increasing regional competitiveness. The Regional Supplier Development Programme will assist investors in developing reliable supply chains, thereby growing deeper roots in the national and subnational economies of the region; it will encourage them to expand and to re-invest; it will lead to stronger, better regional supply chains by building the capacity of local suppliers to meet certified quality and performance standards.

5. Regional brand management

An efficient and effective programme to increase the visibility of SEE. It is important to raise SEE's visibility as an investment destination and give investors a clearer understanding of the investment opportunities that the region represents. However, conventional place-marketing can be expensive; it often promises more in the FDI market than it delivers and the opportunity cost is very high. A strategy of opportunity branding under a common overarching theme (for instance: "A region on the move") should focus on value-chain opportunities, which will be promoted through the SEE Investment Portal. An International Advisory Panel of brand ambassadors would be appointed to support and promote the opportunities. The panel would include members of the national and international investment communities, as well as members of the regional diaspora who have achieved corporate prominence in other countries. It would provide an insider-outsider perspective on brand competitiveness and propose ways of strengthening it in line with market changes. They will also facilitate introductions to their national and international networks.

6. Institutional arrangements

An institutional mechanism for coordinating the JIPI, while making the best use of scarce resources. Experience elsewhere confirms the benefit of having a JIPI coordinator or secretariat (see CAIPA case study in annex 2). The RCC is already working with the CEFTA Secretariat to ensure cooperation and to avoid duplication in the development and implementation of investment policy and promotion. The SEEIC and CEFTA have established a Joint Working Group on Investment (JWGI) to guide the identification and implementation of potential areas of cooperation. It is recommended that the JIPI steering and coordination be provided by the JWGI. It will also identify areas of cooperation with other regional initiatives and joint platforms in SEE in order to benefit from synergies and complementarities. Each IPA will be responsible for the delivery of the JIPI in its own territory. A JIPI coordinator should be responsible for the administration of the JIPI. The respective roles and functions of each participant in the JIPI will be formalized in a series of service-level agreements. One option is for the coordinator responsibilities to be provided by one of the stakeholder IPAs on a rotational basis. Another is for the RCC to take up the relevant role. Over time this arrangement may lead to the creation of a dedicated coordination unit for the JIPI. Responsibilities of the Secretariat will include the following:

- Management of the SEE Investment Portal;
- Production of marketing materials;

- Coordination of joint regional activities;
- Organization of training workshops;
- Acting as a point of reference for stakeholders;
- Providing help desk and signpost services for regional FDI matters.

There will be a need for comprehensive and continuous capacity-building for national and subnational IPAs, to help them transition to the new model. Traditionally, IPAs tend to be conservative in their response to a changing environment. The experience of Sweden with the national and the subnational IPAs in building the Swedish FDI attraction success story presented in annex 2 is informative. In this regard, training and capacity-building will be a constant service of the JIPI to ensure that the staff of national and subnational IPAs receive customized training and can fulfil their potential in all of the areas outlined above. All training will be based on a needs assessment of participating IPAs, and a "development pathway" will be agreed with each IPA consistent with its needs. The training module underpins all other aspects of the JIPI operating system. Based on the earlier SWOT analysis, a key area for training would include developing national and subnational FDI strategies. In addition, and as part of the professional development of JWGI members, it is recommended that the JWGI undertake an annual, short benchmarking/bench-learning mission to set a good-practice example of joint investment promotion in Europe.

C. SUMMARY AND RECOMMENDATIONS

Although considerable FDI opportunities are available to SEE, the region is performing below its capacity and its potential. The JIPI could be a catalyst for attracting FDI to the region. It has been designed as a contemporary operating platform embodying the features and characteristics of a modern, effective model of investment promotion. It represents a pathway for SEE economies to transition from their current fragmented approach to investment promotion to a coordinated model that can deliver significant performance improvements in the level and quality of investment. This will require a collective shift of approach and emphasis. For SEE economies the risk of doing nothing is that for many of them the pursuit of FDI will become a race to the bottom. For all of them it will result in unfulfilled potential. Regional cooperation alone is not a single solution in the search for FDI competitiveness. However, by combining and utilizing their resources in a targeted way the economies can improve their visibility as investment destinations and extend their international reach for new investors while mitigating the risks of regional arbitrage.

Failed initiatives in the past, regional differences and ongoing complexities in the SEE region underscore the need for a gradual implementation of the JIPI. A three-phase thematic approach is proposed, with each IPA responsible for implementation within its economy:

Phase 1. Consultation and consensus building (Year 1). In this phase, the SEE economies would decide the exact shape and scope of the JIPI, on the basis of the modules and models proposed above. Key actions and activities in this phase include the following:

- *1.1. Appoint the JIPI coordinator that will report to the JWGI.*
- *1.2. Carry out a comprehensive regional SWOT analysis and conduct consultation workshops to achieve consensus on JIPI objectives and priorities, including the selection of candidates for the pilot outreach strategy.*
- *1.3. Develop service-level agreements between the agencies and their stakeholder organizations and the JWGI, so that the expectations and obligations of all parties are clearly defined.*
- *1.4. Collect the information and documents required to launch the SEE Investment Portal and the Regional Supplier Development Programme.*
- *1.5. Determine individual and collective training needs.*
- *1.6. Lay out the JIPI Action Plan and implementation schedule.*

Phase 2. Coordination and capacity-building (Year 2). This phase marks the official launch of the JIPI's implementation. Key actions and activities recommended for this phase include the following:

- *2.1. Launch the SEE Investment Portal.*
- *2.2. Launch the Regional Supplier Development Programme.*

- *2.3. Carry out the mapping of the regional value chains to identify the targets of the JIPI Smart Specialization Strategy.*
- *2.4. Train JIPI participants on aligning the JIPI with national and subnational strategies.*

Phase 3. Co-creation and co-marketing of regional value chains (Year 3). In this phase, proactive, targeted investment promotion of cross-regional opportunities is carried out. Key actions and activities recommended for this phase include the following:

- *3.1. Launch a pilot market outreach strategy, along the lines of the infrastructure example presented in table 17.*
- *3.2. Conduct in-market missions following the COMESA RIA example discussed in annex 2.*
- *3.3. Introduce advanced tracking and promotion tools (including customer relationship management (CRM) and tracking systems).*
- *3.4. Set up the Regional Brand Management Programme and develop the regional identity and brand strategy, including establishing the International Advisory Panel, as discussed in section C.5.*

UNCTAD has assisted several developing countries and economies in transition in implementing good business facilitation, investment promotion and enterprise development tools. These range from the implementation of investment portals and e-government solutions to the establishment of supplier development and linkages programmes, to capacity-building activities in investment promotion and facilitation. Based on that experience, UNCTAD stands ready to assist the economies of SEE in implementing the recommendations discussed in this chapter.

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NOTES

[1] The RCC predicts intraregional trade alone to grow by more than 140 per cent to €30.5 billion by 2020.

[2] The SEE 2020 Strategy document set the target at 160 per cent. The new 103 per cent target excludes Croatia.

[3] For further details about FDI flows to the SEE region, see CEFTA Investment Report 2017 (CEFTA, forthcoming).

[4] World Economic Competitiveness Index for Telephony and Electricity Connectivity (2015–16). reports.weforum.org/global-competitiveness-report-2015-2016/economies/#economy=SRB.

[5] Croatia and the Republic of Moldova are not parties to the Regional Core Transport Agreement reached at the 2015 Western Balkan Summit (ec.europa.eu/enlargement/pdf/policy-highlights/regionalcooperation/20150828_chairmans_conclusions_western_balkans_summit.pdf).

[6] Petrakis, M. (2016). "Passage to Piraeus", 15 April, europe.chinadaily.com.cn.

[7] An Action Plan on acquisition of property by foreigners was prepared (European Commission, 2015).

[8] For Albania, the automatic consent is limited to disputes related to discrimination, expropriation and transfer of funds.

[9] Albania, Business and Investment Development Strategy 2013–2020; the former Yugoslav Republic of Macedonia, National CSR Agenda 2008–2012; Serbia, National Strategy of Socially Responsible Business Operations for 2010–2015.

[10] The complete list of BITs and their texts can be found on UNCTAD's IIA Navigator at the Investment Policy Hub (investmentpolicyhub.unctad.org).

[11] TIPs encompass economic agreements other than BITs that include investment-related provisions (e.g. investment chapters in economic partnership agreements and free trade agreements, regional investment agreements and framework agreements on economic cooperation). Three main types of TIPs can be distinguished: (i) TIPs that include obligations commonly found in BITs, including substantive standards of investment protection and ISDS; (ii) TIPs that include limited investment provisions; and (iii) TIPs that establish an institutional framework between the Parties to promote and cooperate on investment.

[12] CEFTA includes FET, pre- and postestablishment NT and MFN, but does not contain provisions regarding expropriation or free transfer of funds; it refers investment disputes to dispute settlement under applicable BITs. CEFTA confirms the obligations under the existing BITs between the parties.

[13] The following analysis and recommendations are informed by extensive research contained in the World Investment Report (WIR) series (including UNCTAD, 2015c and UNCTAD, 2016a), as well as the Global Action Menu for Investment Facilitation (UNCTAD, 2016b) and the IPFSD (UNCTAD, 2015a).

[14] Such clauses often call for the dissemination of information on investment conditions and opportunities, and investment laws and regulations in the other contracting party; provisions on the organization of investment promotion forums, business fairs and business–government networking events; provisions establishing an intuitional framework (committee) to review the implementation and operation of investment promotion and facilitation provisions in the IIA; and provisions establishing partnerships between investment promotion agencies (IPAs) of the contracting parties.

[15] E.g. by including clauses and mechanisms that manage interaction between IIAs, domestic policies and other bodies of international law.

[16] For an overview of empirical studies examining the impact of IIAs on FDI flows, see: investmentpolicyhub.unctad.org/Upload/Documents/unctad-web-diae-pcb-2014-Sep%2024.pdf.

[17] See, for instance, the recent Cooperation and Facilitation Investment Agreements concluded by Brazil.

[18] UNCTAD's Road Map for IIA Reform identifies three set of options: (i) fixing the existing ISDS mechanisms; (ii) adding new elements to the existing ISDS mechanisms; or (iii) replacing the existing investor–State arbitration mechanisms.

[19] It should also be noted that several of the recently concluded IIAs (notably the Cooperation and Investment Facilitation Agreements concluded by Brazil) do not include an ISDS mechanism.

[20] Republika Srpska has recently undertaken significant reforms to facilitate the process of starting a business, but improvements are not captured in the Doing Business survey, as there are no subnational data.

[21] Kosovo* introduced online business registration of companies in March 2017 (arbkonline.rks-gov.net), when it also adopted a single business identification number by unifying the business registration number with the Tax Administration and Kosovo Customs numbers.

[22] A National Licensing Centre (NLC) was established as a one-stop shop for licences and permits, including online application and payment, electronic communication and information, integrated exchange of information and documents among the public institutions and introduction of the "silent is consent" principle. A National Business Centre, merging the National Licencing Centre and the National Registration Centre was then established in 2016 and serves as a one stop shop institution for business registration and licencing.

[23] Internal cooperation refers to cooperation between various border agencies of the country and delegation of control to customs authorities, whereas external cooperation refers to cooperation with neighbouring and third countries (OECD Trade Facilitation Indicators, oecd.org/trade/facilitation/indicators.htm).

[24] A useful reference in this regard is the eRegulations portal of Viet Nam, set up with UNCTAD's assistance across all the provinces of the country. See vietnam.eregulations.org.

[25] See, for instance, UNCTAD (2015c); Kersan-Skabic (2015); Piatkowski and Jarmuzek (2008); Owens (2004).

[26] The Republic of Moldova offers incentives to farmers, free economic zone companies and residents of the Giurgiulesti International Free Port.

[27] Of the seven economies included in this study, only Serbia has so far signed, on 7 June 2017, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS.

[28] A draft law that covers transfer pricing rules, a definition of related parties and accepted transfer pricing methods in line with the OECD Transfer Pricing Guidelines was published on the website of the Ministry of Finance of the Republic of Moldova for public consultation in January 2016. It was scheduled for adoption in April 2016. The Government, however, decided to postpone the introduction of the law in response to inputs received from the business community (International Bureau of Fiscal Documentation, Moldova, "Draft transfer pricing rules", news item, March 29, 2016).

[29] Important lessons can be drawn from the experience of the West African Economic and Monetary Union (WAEMU), which has adopted one of the most advanced tax coordination frameworks in the world.

[30] Data from EUROSTAT, ILO and the Ministry of Social Protection and Family, Republic of Moldova.

[31] CEFTA 2006 Agreement, 19 December 2006.

[32] Based on European Commission Staff Working Documents for six SEE economies (exclude the Republic of Moldova), e.g. "Commission staff working document: Albania 2016 Report. COM (2016) 715 final".

[33] Decision of the Joint Committee of the Central European Free Trade Agreement, CEFTA 2006 Decision no. 2/2015 adopted on 26 November 2015, on the Amendment to Decision no. 5/2014.

[34] Such zones make a valuable contribution to exports: for example, technological industrial development zones (TIDZs) in the former Yugoslav Republic of Macedonia were the source of about 40 per cent of total exports in 2014 (IMF, 2015b).

[35] Decision of the Joint Committee of the Central European Free Trade Agreement, CEFTA 2006 Decision no. 2/2015 adopted on 26 November 2015 on the Amendment to Decision no. 5/2014.

[36] The analysis in this section is informed by the "Comparative overview of the Balkan competition regimes", prepared in 2014 by the Sofia Competition Forum, a joint initiative of UNCTAD and the Bulgarian Commission on Protection of Competition, the responses to UNCTAD's 2016 Questionnaire on Regulatory and Promotion issues and UNCTAD's completed IPRs as well as the EU Enlargement Reports 2016 for the economies of the region.

[37] These include agreements between undertakings, decisions by associations of undertakings and concerted practices which have as their object or effect the prevention, restriction or distortion of competition.

[38] Based on each economy's response to UNCTAD's 2016 Questionnaire on Regulatory and Promotion issues.

[39] This report is not available for the Republic of Moldova.

[40] Smart specialization refers to the adoption of a targeted approach to promoting investment opportunities in selected industries or niches, accompanied by focused policy efforts aimed at improving the competitiveness of the relevant value chains. See European Commission National/Regional Innovation Strategies for Smart Specialisation, available at ec.europa.eu.

[41] Joint Statement – Western Balkans Six Prime Ministers meeting, 16 March 2017, https://ec.europa.eu/commission/commissioners/2014-2019/hahn/announcements/joint-statement-western-balkans-six-prime-ministers-meeting_en.

[42] The ISA has since merged within the trade promotion agency to become "Business Sweden".

ANNEX 1. BENCHMARKING **GUIDELINES**

Question	Benchmark	Criteria[a]		
		+	=	–
A. National-investment-specific legal framework (FDI entry, establishment, treatment and protection)				
A.1	**UNCTAD's IPFSD**	Ownership restrictions or limitations on the entry of foreign investment (de jure or de facto) comply with each of the following conditions: (1) are limited to strategic sectors; (2) are in conformity with international commitments; (3) affected activities are clearly specified in legislation.	Ownership restrictions or limitations on the entry of foreign investment (de jure or de facto) do not comply with at least one of the conditions.	Ownership restrictions or limitations on the entry of foreign investment (de jure or de facto) do not comply with at least two of the conditions.
A.2	**UNCTAD's IPFSD**	If applied beyond strategic sectors, screening procedures for investment entry and establishment comply with the following conditions: (1) are based on pre-established criteria clearly stated in the legislation; (2) are objective; and (3) are not conducted by the agency in charge of investment promotion.	If applied beyond strategic sectors, screening procedures for investment entry and establishment do not comply with at least one of the conditions.	If applied beyond strategic sectors, screening procedures for investment entry and establishment do not comply with either of the conditions.
A.3	**UNCTAD's IPFSD**	(1) Foreign investors and investments are not discriminated against relative to national investors in the postestablishment phase both under the law and in the conduct of their business operations; (2) where development objectives require policies that distinguish between foreign and domestic investment, these are limited, transparent and periodically reviewed; (3) any discrimination is in line with international and regional commitments.	Core standards of treatment of investors do not comply with at least one of the conditions.	Core standards of treatment of investors do not comply with at least two of the conditions.
A.4	**UNCTAD's IPFSD**	(1) The free transfer of capital related to investments in productive assets is guaranteed; (2) the free convertibility of the national currency is guaranteed for current account transactions; (3) expropriations are subject to legitimate public policy purposes, non-discrimination, compensation and recourse; (4) legal stability clauses extend to foreign and domestic investors, exclude monetary compensation for investors, and preserve the "old" investment regime for a limited period of time; (5) consent by an economy to international investment arbitration is given on a case-by-case basis.	The standards of protection do not comply with at least one of the conditions.	The standards of protection do not comply with at least two of the conditions.

Question	Benchmark	Criteria[a]		
		+	=	−
A.5	**UNCTAD's IPFSD**	The Government promotes investor obligations and CSR with at least two of the following measures: (1) by encouraging adherence to international standards of responsible investment and codes of conduct by foreign investors (e.g. ILO Tripartite Declaration; the OECD Guidelines for Multinational Enterprises; the UNCTAD, FAO, IFAD and World Bank Principles for Responsible Agriculture Investment; the UN Guiding Principles on Business and Human Rights) and (2) by adopting national CSR strategies or initiatives.	The government promotes investor obligations and CSR by only one of the measures.	The government does not promote investor obligations and CSR by any of the measures.
B. International investment agreements				
B.1	**UNCTAD's IPFSD**	More than 25 per cent of the five key provisions below in the mapped BITs have their scope circumscribed and their meaning clarified: 1. Definition of investment 2. Non-discrimination: NT and MFN (reference to "like circumstances" in NT and excluding procedural issues from MFN) 3. FET (qualifying FET with reference to international law or list of State obligations) 4. Expropriation (refining expropriation, e.g. carve-out for general regulatory measures) 5. Transfer of funds (BoP exceptions and other specific exceptions (e.g. to protect creditors)	Some 20–25 per cent of the five key provisions in the mapped BITs have their scope circumscribed and their meaning clarified.	Less than 20 per cent of the five key provisions in the mapped BITs have their scope circumscribed and their meaning clarified.
B.2	**UNCTAD's IPFSD**	More than 25 per cent of IIAs include specific investment facilitation and/or promotion provisions with reference to (1) conducting specific investment promotion activities and (2) publishing, making available and/or notifying laws, regulations and/or other measures that affect investment between the contracting parties.	Some 20–25 per cent of IIAs include specific investment facilitation and/or promotion provisions.	Less than 20 per cent of IIAs include specific investment facilitation and/or promotion provisions.

Question	Benchmark	Criteria[a]		
		+	=	−
B.3	**UNCTAD's IPFSD**	More than 25 per cent of BITs includes provisions on transparency in arbitral proceedings (e.g. requiring documents to be made publicly available, requiring hearings to be open to the public, regulating amicus curiae submissions by third parties) and/or provisions limiting the scope of ISDS (e.g. limitation of provisions subject to ISDS, exclusion of policy areas from ISDS, special mechanism for taxation or prudential measures, limitation period for submission of claims).	Some 20–25 per cent of BITs include provisions on transparency in arbitral proceedings (e.g. requiring documents to be made publicly available, requiring hearings to be open to the public, regulating amicus curiae submissions by third parties) and/or provisions limiting the scope of ISDS (e.g. limitation of provisions subject to ISDS; exclusion of policy areas from ISDS; special mechanism for taxation or prudential measures; limitation period for submission of claims).	Less than 20 per cent include provisions on transparency in arbitral proceedings: (e.g. requiring documents to be made publicly available, requiring hearings to be open to the public, regulating amicus curiae submissions by third parties) and/or provisions limiting the scope of ISDS (e.g. limitation of provisions subject to ISDS; exclusion of policy areas from ISDS; special mechanism for taxation or prudential measures; limitation period for submission of claims).
B.4	**UNCTAD's IPFSD**	The government is actively seeking to prevent disputes by at least four of these measures: (1) improving compliance with IIAs, (2) engaging in consultations with stakeholders to learn about potential disputes at the earliest possible stage, 3) engaging in domestic interinstitutional cooperation to prevent the escalation of investment disputes, (4) developing mechanisms to manage conflicts, (5) encouraging State-to-State cooperation and communication with respect to matters of dispute prevention (e.g. establishment of cooperation and consultation mechanisms).	The government is seeking to prevent disputes by implementing two or three of these measures.	The government is seeking to prevent disputes by implementing fewer than two of these measures.
B.5	**UNCTAD's IPFSD**	The government is reforming its international investment regime by implementing more than four of these measures: (1) conducting a stocktaking of the existing IIA network, (2) engaging in an internal review of the potential impact of IIAs, (3) adopting a new model investment treaty, (4) engaging in regular consultations with its investment treaty partners, (5) attempting to amend and/or renegotiate existing treaties, (6) setting up joint interpretation mechanisms for their investment treaty obligations.	The government is reforming its international investment regime by implementing two or three of these measures.	The government is reforming its international investment regime by implementing fewer than two of these measures.

Question	Benchmark	Criteria[a] +	=	–
C. Business facilitation				
C.1	**World Bank Doing Business – starting a business**	At least two of the business establishment efficiency and cost criteria are below the average for ECA.	At least one business establishment efficiency and cost criterion is below the average for ECA.	All the business establishment criteria are below the average for ECA.
C.2	**UNCTAD's Global Enterprise Registration (GER) rating**	Scores 8 to 10 on the GER rating, which measures the extent to which mandatory business establishment procedures for a company to operate legally (e.g. business registry, national and/or State/municipal tax identification number, social security, pension schemes) are clearly listed online.	Scores 4 to 7 on the GER rating.	Scores 0 to 3 on the GER rating.
C.3	**UNCTAD principles on business facilitation/IPRs**	Physical and virtual one-stop facilitation services for company establishment or operation are offered.	Physical one-stop facilitation services for company establishment or operation are offered.	No one-stop facilitation services for company establishment or operation are offered.
C.4	**RCC Balkan Barometer 2016 – Business Opinion Survey**	Less than 33 per cent of respondents are unsatisfied with how the government consults and involves the private sector in the process of drafting new laws and regulations relevant for doing business.	Between 33 and 66 per cent of respondents are unsatisfied with how the government consults and involves the private sector in the process of drafting new laws and regulations relevant for doing business.	More than 66 per cent of respondents are unsatisfied with how the government consults and involves the private sector in the process of drafting new laws and regulations relevant for doing business.
C.5	**OECD trade facilitation indicators**	Scores 1.4 or more on average trade facilitation performance	Scores between 1.1 and 1.3. on average trade facilitation performance	Scores 1 or lower on average trade facilitation performance
D. Tax regime				
D.1	**UNCTAD's IPFSD**	There are one or two corporate tax rates and few selective incentives.	There are more than two corporate tax rates or several incentive schemes.	There are more than two corporate tax rates and several incentives schemes.
D.2	**World Bank Doing Business – paying taxes**	The tax payment efficiency criteria (number of payments per year and time to file taxes) are below the average for ECA.	One of the tax payment efficiency criteria is above the average for ECA.	Both payment efficiency criteria are above the average for ECA.

Question	Benchmark	Criteria[a]		
		+	=	–
D.3	**UNCTAD's IPFSD**	Existing incentives comply with the following conditions: (1) are time-bound, (2) are periodically evaluated against effectiveness, (3) are administered by an independent entity or ministry that does not have an investment attraction mandate.	Existing incentives comply with at least two of the conditions.	Existing incentives comply with only one or none of the conditions.
D.4	**UNCTAD's IPFSD/ OECD BEPS**	The economy has adopted and implemented well-defined transfer pricing rules in line with international practices, as well as general anti-avoidance rules.	The economy has adopted and implemented only well-defined transfer pricing rules.	The economy has neither adopted nor implemented well-defined transfer pricing rules and no general anti-avoidance rule exists.
D.5	**UNCTAD's IPFSD and SEE strategy/ EU accession**	The international tax treaty network covers 20 or more of the 28 EU economies.	The international tax treaty network covers between 10 and 19 of the 28 EU economies.	The country's international tax treaty network covers fewer than 10 of the 28 EU economies.
E. Labour policy and skills				
E.1	**EBRD-World Bank Business Environment and Enterprise Performance Surveys (BEEPS V)**	The percentage of firms identifying labour market regulations as a major constraint is below the average for ECA.	The percentage of firms identifying labour market regulations as a major constraint is on par with the average for ECA.	The percentage of firms identifying labour market regulations a major constraint is above the average for ECA.
E.2	**EBRD-World Bank BEEPS V**	The percentage of firms identifying inadequate workforce skills as a major constraint is below the average for ECA.	The percentage of firms identifying inadequate workforce skills as a major constraint is on par with the average for ECA.	The percentage of firms identifying inadequate workforce skills as a major constraint is above the average for ECA.
E.3	**OECD labour market subdimension (foreign qualification recognition)**	Intraregional labour mobility is facilitated by a framework for the mutual recognition of skills and qualifications, which has been approved by the government, and is being implemented.	Intraregional labour mobility is facilitated by a framework for the mutual recognition of skills and qualifications, which has been approved by the government.	Intraregional labour mobility is facilitated by a pilot framework for the mutual recognition of skills and qualifications which has not been approved by the government.
E.4	**WB/IFC Employing Skilled Expatriates (ESE) Index, UNCTAD/IPR surveys**	Hiring international staff is characterized by three of the four following aspects: (1) key personnel are automatically granted work permits; (2) if there is a labour market test, the burden of proof is not on the employer or investor; (3) work and residence permits are unified; (4) a spousal work permit is available.	Hiring international staff is characterized by two of the four aspects.	Hiring international staff is characterized by one or none of the four aspects.

Question	Benchmark	Criteria[a]		
		+	=	–
E.5	**UNCTAD's IPFSD/ IPR surveys**	The authorities actively encourage (1) the attraction of foreign talent and scarce skills, and (2) the transfer of skills from expatriate staff.	Only one of the two objectives is actively encouraged.	There is no active programme to encourage the attraction and diffusion of foreign talent and scarce skills.
F. Competition regime				
F.1	**UNCTAD's IPFSD**	Key laws and regulations on competition are aligned with UNCTAD's model law and cover practices involving restraint of competition, abuse of market power and economic concentration.	Key laws and regulations on competition are only partially aligned with UNCTAD's model law.	Key laws and regulations on competition are missing.
F.2	**IPRs**	SOEs operating in commercial sectors are subject to the same competition rules as private companies.	SOEs operating in commercial sectors are generally subject to the same competition rules as private companies, but in some industries and activities significant exceptions exist.	SOEs operating in commercial sectors are not subject to the same competition rules as private companies in the majority of industries and activities.
F.3	**IPRs**	The competition authority is endowed with each of the following capacities: (1) is autonomous of political authorities, (2) has investigative powers, (3) has sanctioning powers, (4) has trained staff and (5) has sufficient resources to effectively monitor and enforce competition law.	The competition regulatory authority is endowed with two to four of the capacities.	The competition regulatory authority is endowed with one or none of the capacities.
F.4	**UNCTAD's IPFSD**	The competition authority is actively involved in the shaping of policies and regulations that might have an impact on competition. It also coordinates closely with sectoral regulators (e.g. public transport, utilities, telecommunication) and other relevant government organs or ministries.	The competition authority is occasionally involved in shaping policies and regulations, or cooperation with sectoral regulators and other relevant government organs or ministries is ad hoc rather than systemic.	The competition authority is not involved in the shaping policies and regulations, and coordination with other government agencies is poor.
F.5	**EU enlargement reports**	The economy has reached a "good level of preparation" in the EU Competition Policy chapter of the economy's enlargement strategy report.	The economy has reached "some or a moderate level of preparation" in the EU Competition Policy chapter of the strategy report.	The economy is at "an early stage of preparation" in the EU Competition Policy chapter of the strategy report.

[a] For cells in the yellow and red columns, references to "conditions", "aspects", "measures" and "capacities" refer to the same list or examples included in the green cell of the respective row.

ANNEX 2. THE INTERNATIONAL EXPERIENCE OF JOINT PROMOTION INITIATIVES: **CASE STUDIES**

Case study 1. CAIPA – the importance of effective regional coordination

In 2007, the Caribbean Association of Investment Promotion Agencies (CAIPA) was established, with the support of the European Union and with the secretariat provided by the Caribbean Export Development Agency (CEDA). CAIPA's Board of Directors comprises a president, plus seven other members – all representatives of IPAs; there are biennial elections; each IPA has one vote. CAIPA provides administrative support, financial oversight, and technical and advisory assistance to its 19 member countries. It helps them to build institutional capacity and to promote regional cohesion and cooperation. The work of the Association emphasises the activities that are best undertaken at regional or subregional levels. The CAIPA Secretariat is a good example of regional coordination.

CAIPA maintains a web portal that contains profiles of the member countries, an overview of the region and its economies, investment opportunities and tenders, and press releases and newsletters. CAIPA promotes the Caribbean as a prime destination for intra- and extraregional investment. In so doing it organizes international investment conferences, promotes the use of technology-based solutions (e.g. new CRM systems), organizes sector briefings and participates jointly at international and regional trade industry trade shows, especially within the target sectors. It showcases FDI success stories and the wider benefits of FDI. Its online publications include "An Investment Opportunities Catalogue", "A Business Guide to Investing in the Caribbean" and "Top 10 Reasons to Invest in the Caribbean". CAIPA has grown in a measured, progressive way. It launched its Regional Investment Promotion Strategy (RIPS) in 2014, highlighting four target sectors: alternative energy, business process outsourcing, ICT and niche tourism, including health tourism and ecotourism.

CAIPA has established itself as the first-stop shop for investors and IPAs in the CARICOM (Caribbean Community) region. It has credibility with policymakers and thought leaders. Important in reaching this position have been the following factors:

1. A clear operational focus on FDI;
2. Joint and equal ''ownership" of CAIPA by all members;
3. A lean secretariat and efficient coordination by CAIPA;
4. Financial and technical support of the donor community;
5. The full-time FDI secretariat provided by CEDA;
6. Sharing of experiences, including by those member States with specific sector experiences (e.g. Trinidad and Tobago and Jamaica with their strong manufacturing sectors, Guyana with its minerals and agro-processing, Barbados with its niche tourism and financial services sectors);
7. Encouraging member States to develop their own FDI models within the CAIPA framework – the neighbouring countries of Haiti and the Dominican Republic (with two very different economic, cultural, linguistic and FDI profiles) have developed their own Joint Investment Promotion Strategy (JIPS) without in any way diminishing their commitment to CAIPA;
8. Mutual respect and trust between all IPAs;

CAIPA has not been an overnight success. It has evolved over several years, one step at a time. In doing so, CAIPA has stayed relevant in meeting the collective and individual needs of its members.

Source: CAIPA (caipainvest.org) and UNCTAD.

Case study 2. Regional investment promotion in Africa

COMESA RIA

The Regional Investment Agency of the Common Market for Eastern and Southern Africa (COMESA RIA) was launched in 2006 with the dual objectives of (1) making COMESA one of the major destinations for regional and international investors while simultaneously enhancing national investment and (2) carrying out joint activities in investment promotion, facilitation and advocacy. COMESA is Africa's largest regional economic community, including 19 countries, a combined population of about 450 million and a combined GDP of about $560 billion. The region is rich in natural resources, but the largest share of GDP (75 per cent), originates from other sectors such as transport and energy infrastructure and telecommunication, manufacturing, business and financial services, construction and tourism.

RIA promotes the region as an attractive destination and helps to improve the business and investment climate mainly through capacity-building programmes for IPAs. It also serves as a hub, providing information on legislation and policies affecting the business environment, the cost of doing business, investment incentives, investment procedures and investment opportunities. Where the RIA is perhaps most effective is in its outreach strategy. Its key selling point is that its rates of return on investment ''are the highest in the world". This is the central plank of its value proposition and outreach strategy. The RIA has an effective online presence and its portal, which highlights concrete investment opportunities across the region, receives about 200,000 visits per year. The RIA organizes high-level investment forums such as the annual Global African Investment Summit and ministerial roadshows. The agency also produces country- and regional-level investment guides promoting specific investment opportunities and showcasing sector success stories.

The East Africa Trade and Investment Hub

The East Africa Trade and Investment Hub is the United States Government's flagship project under the Trade Africa presidential initiative, launched in 2013 by the U.S. Agency for International Development to boost trade and investment with and within Africa. The focus of the Hub is on the East African Community countries – Burundi, Kenya, Rwanda, Tanzania and Uganda. But the Hub also provides support related to the African Growth and Opportunity Act (AGOA) in Ethiopia, Madagascar, Mauritius and Seychelles. The goals of the Hub are to deepen regional integration, increase the competitiveness of select regional agricultural value chains, promote two-way trade with the United States under the AGOA) and facilitate investment and technology to drive trade growth intraregionally and in global markets.

The project achieves these ends by working with the private sector and local governments to find practical solutions for trade and investment constraints that lead to a "pro-investment" environment. It also builds awareness of opportunities for African and United States firms to increase trade, expand business partnerships, and invest in East Africa. Among the project's reported achievements are the following:

- $176 million in exports supported through AGOA;
- $31 million of new private sector investment;
- 33,674 new jobs;
- 761 export buyer–seller linkages;
- 7,829 person-hours of training;
- 1,152 firms received capacity-building assistance;
- 32 trade and investment missions.

The partnership approach between the private sector and governments is among the keys to the Hub's success. Nonetheless, like any other donor-led initiatives, its long-term sustainability is a challenge.

Sources: COMESA RIA (comesaria.org), East Africa Trade and Investment Hub (eatradehub.org) and UNCTAD.

Case study 3. The Four Motors for Europe project

The Four Motors for Europe project was established in anticipation of the European Single Market in 1993 with a range of socioeconomic objectives, especially in the areas of joint innovation, research and development. Its stakeholders are regions that are the economic engines of their national economies: Baden Württemberg, centred on Stuttgart; Catalonia, centred on Barcelona; Rhone-Alpes, centred on Lyon; and Lombardy, centred on Milan. The shared objective is to improve the international competitiveness of each region through collaboration and cooperation. The partnership has since expanded with Wales and Flanders as associate members.

The Four Motors programme has been an enduring success, widely studied around the world. The lesson learned from their experience is that the search for competitiveness is never-ending. It results from a commitment to targeted and continuous development. Every year the Four Motors carry out "learning journeys" to a third country, as a means to benchmark the international competitiveness of their economies and to build strategic linkages. Countries visited include the United States of America, the Russian Federation, China and Chile. The enduring success of the programme is due to a number of other factors, including high-level support and strong emphasis on continuous innovation. This has resulted in an ability to adapt priorities to a changing landscape. The Four Motors programme was not conceived as a joint promotion initiative, but many of its activities have contributed to creating attractive enabling environments for FDI and linkages with potential investors, such as the establishment of a large automotive components plant by Robert Bosch in Wales (1991–2012).

Sources: Four Motors for Europe (4motors.eu) and UNCTAD.

Case study 4. The EU Strategy for the Baltic Sea Region

The EU Strategy for the Baltic Sea Region (BSR) is the first macroregional strategy in Europe. The region has over 85 million inhabitants across Sweden, Denmark, Finland, Latvia, Estonia, Lithuania, northern Poland and northern Germany. Iceland, Norway and the northwest of the Russian Federation have also become part of the strategy. The first programming period of the strategy (2007–2013) centred on delivering an integrated framework for the three main objectives: Saving the Sea, Connecting the Region, and Increasing Prosperity. Within this framework, the strategy called for the development of competitive markets across borders and the creation of networks for research and innovation. The One BSR project (2012–2014) was created to brand and market the region with the aim to attract investors, tourists and talent. This would be achieved by enhancing cooperation between national and subnational IPAs. One BSR presented itself as a platform for regional IPAs to come together to identify concrete collaboration opportunities; it also produced an Investors' Guide.

In 2014, as part of the One BSR project, the Baltic Development Forum commissioned a joint business plan for IPAs in the region. This plan recommended the establishment of a dedicated FDI coordination unit (the Independent Action Initiator) and 14 specific actions across three thematic areas: Learning and Sharing, General Promotion, Targeted Actions. Shortly after the publication of the business plan, One BSR came to the end of its life cycle; to date, the business plan has not been implemented. Purely from an FDI perspective, One BSR did not attract the anticipated support from IPAs. Its stated objective to simply increase the overall number of FDI projects in the region through marketing and branding and an outreach strategy based on general promotion probably did not represent a contemporary model to experienced national IPAs that had more advanced and highly successful models. A further challenge acknowledged by One BSR is that the BSR is not yet perceived as one region. The short lifespan of One BSR may also have been a factor. Conversations with IPAs in the region suggest that considerable opportunities for a JIPI still exist, but a new model may be required.

Source: EU Strategy for the Baltic Sea Region (balticsea-region-strategy.eu) and UNCTAD.

Case study 5. Sweden – a joined-up approach to capacity-building

Sweden came relatively late to investment promotion. Its first national investment promotion agency – Invest in Sweden Agency (ISA) – was established in 1995 and became operational in 1996.[42] Until then, investment promotion was carried out at a city-region level by Stockholm, Gothenburg and Malmö and by the East Sweden Development Agency. The ISA rapidly made up for lost time and within 10 years the number of MNEs in Sweden increased from about 3,000 to over 10,000.

This result happened in part because of a targeted approach to promoting investment opportunities in selected industries (smart specialization), which resulted in one of the highest levels of FDI per capita in the world. It also happened because the ISA had worked closely with its counties to establish a national network of 18 subnational IPAs that were coached by the ISA to implement an FDI partnership model and approach, so that national and subnational strategies were fully aligned. Ownership of the regional agencies varied from county to county, as did their target sectors. All these agencies and their stakeholder organizations had contracts (service-level agreements) with the ISA, so that the expectations and obligations of all parties were clear. The ISA and the regional IPAs received intensive training based on the guidebook "Attracting Foreign Investment to Your Region" (published by the ISA), through an intensive programme of more than 100 workshops over two years. The ISA and its regional partners introduced (and still work with) a shared CRM system that monitors all investment projects from the first date of contact through the decision-making process to the point of establishment and beyond. They also introduced a shared Investment Evaluation model for each new project, based on an assessment of the role played by the IPA(s) in each successful project and the expected socioeconomic impact of the investment.

The close cooperation between national and subnational agencies continues, based on a focus on smart specialization. Norrbotten, Sweden's most northerly county, has become one of Europe's most successful destinations for the attraction of "green" data centres due to its cold climate (promoted as "natural cooling") and abundant supplies of competitively priced hydropower. Facebook has established one of the world's largest green data centres in Norrbotten, has completed its first expansion and is now considering a further expansion. A concentration of data centres has developed. Interestingly, the public subregional agency charged specifically with promotion of data centre FDI (called The Node Pole) has been acquired by Vattenfall and Skellefteakraft, two power companies, with a view to increasing FDI in data centres. This development is a good example of smart specialization (see section C); it is also an excellent example of Sweden's enduring success in national and subnational capacity-building.

Source: UNCTAD, based on own research.

Case study 6. The Medicon Valley Alliance – a cross-border cluster

The Medicon Valley Alliance (MVA) is the binational life sciences cluster located in the cross-border region of Oresund, spanning Greater Copenhagen (Denmark) and the region of Skåne in southern Sweden. It is one of Europe's strongest life sciences clusters, with a large number of national and international companies and research institutions. It was founded in 1997 as part of an Interrreg project under the name Medicon Valley Academy. At inception it had 23 members; it enjoyed the strong support of the two regional governments, the Copenhagen and Lund Universities, and the major pharmaceutical companies in the region – Novo Nordisk, Lundbeck and AstraZeneca. This triple helix (government, private sector, universities) of support was crucial in laying the foundations of the MVA. A key catalyst in the process was the completion of the Oresund Bridge in 2000, connecting the region via road and rail.

The Medicon Valley Academy rebranded to the MVA in 2007 to broaden its network, to reach out to new cluster members and to attract international investment and talent. Today the MVA has approximately 250 member organizations, employing 140,000 people (40,000 of whom work for life sciences companies); each member pays an annual subscription. The MVA Secretariat is provided by the Copenhagen City Council. The MVA website is managed by the two regional IPAs – Copenhagen Capacity (Denmark) and Invest in Skåne (Sweden) – which have the task of attracting and maintaining FDI in the Medicon Valley cluster; both organizations manage very effectively the twin roles of competitors and collaborators. It is a winning formula. The MVA is currently home to 80 biotech companies, 30 pharmaceutical companies and 100 medtech companies (national and international).

The critical mass achieved by the MVA in such a short period of time is beyond the scope of the SEE at this stage of its development, but the lessons learned from the MVA experience are applicable, namely the importance of (i) close cooperation between the respective governments, private sectors and universities; (ii) a very clear value proposition based on cooperation and co-creation (and competition) between the cluster members; (iii) a joint investment promotion initiative by the region's IPAs (the subject of this chapter); and last but not least, (iv) infrastructure. An important catalyst was the completion of the Oresund Bridge on the importance of attracting infrastructure investment as a driver for FDI.

Sources: Medicon Valley Alliance (mva.org) and UNCTAD.

ANNEX 3. METHODOLOGY FOR **CORPORATE TAX COMPARISON**

The model used by UNCTAD compares taxation on investment in manufacturing across the economies in SEE (and in Bosnia and Herzegovina across the two entities – the Federation of Bosnia and Herzegovina, and Republika Srpska).

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 modeling is a method of taking into account the most important of these variables in the fiscal regime in a manner that facilitates comparison between economies. Included in the analysis are the following tax variables:

- 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 used for a hypothetical business in export manufacturing. These models are based on typical costs and revenues experienced in such businesses in a developing or transition economy.

The fiscal regimes in the chosen comparator economies for manufacturing 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 (called PV tax percentage). PV tax percentage is the total taxes collected by the government over the 10 years as a percentage of the project cash flow pretax and postfinance, 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 4. SUMMARY OF **RECOMMENDATIONS**

What to do?	Why?	How?	
1. Strengthen the national framework for FDI to pursue openness, clarity and responsible investment	SEE economies have established relatively open FDI regimes with high standards of investor treatment and protection. However, several de facto restrictions to the entry of private investors persist in practice. In addition, the balance between investor rights and obligations seems to have tilted in favour of foreign investors.	**Review FDI entry and establishment limitations**	
		I.A.1.1	Clarify the restrictions that can be imposed on foreign ownership in specific industries.
		I.A.1.2	Initiate periodic reviews of foreign ownership restrictions and caps to ensure that these are appropriate and cost-effective methods to protect national interests.
		I.A.1.3	Pursue a policy of general openness towards foreign investment and continue the process of restructuring and privatization, subject to country-specific development needs and public concerns.
		Review investor protection standards	
		I.A.2.1	Clarify key investor protection standards, including FET and full protection and security, in line with recent reform moves in IIAs.
		I.A.2.2	Abolish or phase out open-ended stability clauses so as to retain the right to introduce regulatory changes.
		I.A.2.3	Reserve consent to international arbitration on a case-by-case basis.
		Promote responsible investment and corporate behaviour	
		I.A.3	Adopt policies and legislation to promote responsible investment.
2. Modernize the network of IIAs	SEE economies could benefit from updating and modernizing their network of treaties in light of practices supporting sustainable development objectives.	**Qualify key IIA definitions and obligations**	
		I.B.1.1	Improve the definition of investment by, for instance, excluding certain assets (e.g. portfolio investment or intellectual property rights).
		I.B.1.2	Qualify the FET standard. Options include clarifying its scope or replacing it with a list of State obligations (e.g. not to deny justice, or flagrantly violate due process).
		I.B.1.3	Qualify and clarify provisions on expropriation, including indirect expropriation.
		I.B.1.4	Clarify the non-discrimination provisions such as NT and MFN.
		I.B.1.5	Qualify transfer of funds clauses by introducing a list of permissible exceptions, such as BoP difficulties.

What to do?	Why?	How?	
		Strengthen investment facilitation and promotion provisions in IIAs	
		I.B.2	Strengthen the investment promotion and facilitation dimension of IIAs by including provisions encouraging investment flows and increasing the investors' awareness of investment opportunities.
		Improve investment dispute settlement provisions in IIAs	
		I.B.3	Improve investment dispute settlement provisions by, for instance, including options qualifying and circumscribing the ISDS mechanism and scope, introducing improvements to the arbitral process and promoting the use of alternative dispute resolution methods.
		Adopt dispute prevention policies	
		I.B.4	Adopt and strengthen dispute prevention policies, including institutional mechanisms to prevent disputes or respond to them.
		Embark on IIA reform	
		I.B.5.1	Embark on a comprehensive reform of IIAs by developing a strategic approach for revising existing IIAs and negotiating new ones.
		Enhance regional Cooperation	
		I.B.6	Enhance regional cooperation and the sharing of experiences on preventing and managing investment disputes as well as modernizing IIAs.
3. Continue progress in business facilitation	Significant reforms are taking place in business facilitation throughout SEE economies with emphasis, so far, on company establishment procedures. Further efforts are required to improve the transparency and accessibility of rules and the public administration through e--government solutions. SEE economies should also streamline customs procedures and align them with EU standards.	**Launch an SEE Business Portal**	
		I.C.1.1	Map out all administrative procedures across a range of company establishment and operation procedures. Thereafter, consider streamlining them.
		I.C.1.2	Publish the complete list of investment requirements and procedures (inclusive of cost, duration, legal basis and the person to approach) in all SEE economies on the portal.
		I.C.1.3	Introduce a comparison module to benchmark each economy's administrative process relative to the other SEE economies.
		Adopt virtual one-stop-shops	
		I.C.2	Introduce virtual one-stop shop services for each SEE economy, thus improving efficiency and reducing the scope for rent-seeking.

What to do?	Why?	How?	
		Align customs procedures with EU standards	
		I.C.3.1	Align customs declaration data with the EU SAD requirements for future interoperation with EU systems.
		I.C.3.2	Improve the operational capacity of border control agencies, including using ASYCUDAWorld Multi-Agency Risk Management.
		I.C.3.3	Foster systematic use of the ASYCUDAWorld Cross-border Data Exchange function, which provides pre-arrival information to transit or destination countries.
		Improve public-private dialogue	
		I.C.4	Strengthen stakeholder consultations before a policy that affects business is adopted.
4. Consolidate the reforms of tax regimes and enhance coordination	SEE economies generally offer competitive fiscal regimes for investment. Initiatives should be undertaken to enhance regional coordination in tax policy, improve tax compliance, increase the development impact of the regimes and fight tax avoidance.	**Enhance regional coordination in tax policy**	
		I.D.1.1	Establish a framework for structured tax coordination in the region, as well as reporting and monitoring mechanisms.
		I.D.1.2	Create an online tax database (e.g. through the SEE Investment Portal) to provide comprehensive information about tax structures across SEE economies.
		I.D.1.3	Foster effective cooperation among tax officials within the region through training programmes and seminars on tax design, policy and exchange of best practices.
		Ensure the effectiveness of fiscal incentives	
		I.D.2.1	Introduce systematic cost-benefit analysis of incentives.
		I.D.2.2	Regularly monitor compliance of investment projects with eligibility criteria for incentives.
		I.D.2.3	Favour incentive schemes which foster reinvestment and capital expenditure over profit-based incentives that can act as a vehicle for tax minimization.
		Fight tax avoidance	
		I.D.3.1	Adopt well-established and clearly defined transfer pricing rules, and align local legislation to internationally established transfer pricing guidelines.
		I.D.3.2	Promote the automatic exchange of information between tax authorities to counter aggressive tax planning.
		I.D.3.3	Extend the network of DTTs with EU member States.

What to do?	Why?	How?	
5. Orient labour and skills policy towards addressing the region's unemployment and development challenges	High unemployment and a lack of jobs affect the whole region. Changing economic and investor needs on the demand side have not been met by adequate education and training systems on the supply side. Added to this, weak intraregional labour mobility reduces the size and quality of the workforce available to investors and consequently acts as a constraint on job creation.	**Improve labour market regulation**	
		I.E.1.1	Align labour market regulations towards a regional median to prevent regulatory arbitrage and remove some of the more excessive labour rigidities, while enhancing the coverage and sustainability of social security systems.
		I.E.1.2	Strengthen bipartite and tripartite social dialogue and collective bargaining, in accordance with ILO standards.
		I.E.1.3	Strengthen labour market policies targeted at specific groups, such as those that suffer discrimination and have lower market participation rates.
		Better align skills to market needs	
		I.E.2.1	Update or finalize skills surveys in each participating economy.
		I.E.2.2	Establish a quality assurance system aimed at aligning higher-level qualifications with the Bologna Process and the EU Quality Assurance Framework.
		I.E.2.3	Align financial incentives to enrol in academic and vocational programmes with the skills needs of the economy.
		I.E.2.4	Strengthen entrepreneurship education and training.
		Promote regional labour mobility	
		I.E.3.1	Conclude the CEFTA pilot initiative on mutual recognition agreements in professional services, and expand the initiative to other professions.
		I.E.3.2	Continue to pursue negotiations on agreements for health, social security and pension benefits across the region.
		I.E.3.3	Consider providing automatic work permits for workers from SEE economies, in line with the modality currently offered to EU workers in some SEE economies.

What to do?	Why?	How?	
		Promote the attraction and diffusion of missing skills and talents	
		I.E.4.1	Replace the labour market test with a "scarce skills list" approach to expedite decisions on recruitment and the hiring of international staff.
		I.E.4.2	Review quota systems to facilitate access to foreign skills which are reflected in the scarce skills list, while retaining the existing regime for other foreign workers.
		I.E.4.3	Unify work and residency permits for skilled foreign workers.
		I.E.4.4	Provide spousal work permits for international staff, to facilitate the relocation of intracompany employees and other workers.
		I.E.4.5	Establish programmes to encourage and facilitate the transfer of skills from investor firms to the wider economy, through linkages such as supplier programmes or through tax contributions to a training fund.
6. Promote the enforcement of competition regimes and regional cooperation	Competition regimes can assist SEE economies in developing efficient markets, reduce inequalities and increase the benefits from FDI. Even though all SEE economies have adopted key regulatory tools to foster competition, enforcement of these rules is lacking because of institutional weakness and poor coordination within the public administration.	**Enhance institutional capacity of competition authorities**	
		I.F.1	Ensure adequate human resource capacity to implement competition legislation.
		Promote competition advocacy and cooperation across the region	
		I.F.2.1	Strengthen the competition curricula in universities, and promote a competition culture, starting at secondary school level.
		I.F.2.2	Improve coordination among the competition authorities and other State bodies, including sector regulators.
		I.F.2.3	Improve the exchange of information between SEE competition authorities during the investigation of cases.
		I.F.2.4	Foster a systematic sharing of experience among SEE competition authorities.
		Strengthen the rules and institutions overseeing State aid	
		I.F.3	Strengthen the operational independence of the agencies and units in charge of overseeing State aid regulations, as well as their enforcement capacity.

What to do?	Why?	How?	
7. Adopt a joint investment promotion initiative (JIPI) for SEE	The SEE region is performing below its capacity and potential for FDI attraction. By combining and utilizing resources in a targeted way, the economies in the region can improve their visibility as investment destinations and extend their international reach for new investors, while mitigating the risks of regional arbitrage. A JIPI is proposed to move from the current fragmented approach to a coordinated model of investment promotion, which can deliver significant improvements in terms of level and quality of investment. The implementation of the JIPI is based on a three-phase thematic approach, with each IPA responsible for implementation within its economy.	**Phase 1. Consultation and consensus building (year 1)**	
		II.1.1	Appoint the JIPI coordinator reporting to the JWGI.
		II.1.2	Carry out a comprehensive regional SWOT analysis, and conduct consultation workshops to achieve consensus on JIPI objectives and priorities, including selection of candidates for the pilot outreach strategy.
		II.1.3	Develop service-level agreements among the agencies and their stakeholder organizations with the JWGI, to clarify the expectations and obligations of all parties.
		II.1.4	Collect the information and documents required to launch the SEE Investment Portal and the Regional Supplier Development Programme.
		II.1.5	Determine individual and collective training needs.
		II.1.6	Set out the JIPI action plan and implementation schedule.
		Phase 2. Coordination and capacity-building (year 2)	
		II.2.1	Launch the SEE Investment Portal.
		II.2.2	Launch the Regional Supplier Development Programme.
		II.2.3	Carry out a mapping of regional value chains to identify the targets of the JIPI Smart Specialization Strategy.
		II.2.4	Train JIPI participants on the alignment of the JIPI with national and subnational strategies.
		Phase 3. Co-creation and co-marketing of regional value chains (year 3)	
		II.3.1	Launch a pilot market outreach strategy.
		II.3.2	Conduct in-market missions.
		II.3.3	Introduce advanced tracking and promotion tools, including CRM and tracking systems.
		II.3.4	Set up the Regional Brand Management Programme, and develop the regional identity and brand strategy, including the establishment of the International Advisory Panel.

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